FIFA Players’ Agents Regulations and the relating jurisprudence of FIFA and the Court of Arbitration for Sport

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Preamble

The author herewith pays special attention only to a few key points of the edition 2008 of FIFA Players’ Agents Regulations (PAR)\(^1\) in force (since 1 January 2008), which are conducive to confusions or conflicts among the football stakeholders, and to the relating important past decisions rendered by FIFA and the Court of Arbitration for Sport (CAS).

The “natural person” requirement

Agents’ activity may only be carried out by natural persons who are licensed by the relevant FA for this purpose. An agent may organize his occupation as a business as long as his employees’ work is restricted to administrative duties connected with the business activity of an agent. The following examples of FIFA and CAS jurisprudence clarify the situation, as it appears to be some general confusion as to how agents should utilize such companies:

Partrizia Pighini vs. Atletico de Madrid
In a case of 2006 opposing the licensed agent, Mrs. Pighini, acting for Image Promotion Company of Monaco, to Club Atletico de Madrid, FIFA, applying the edition 2001 of PAR, decided that the claim filed by the Agent would be partly accepted and ordered the Club to pay the Agent a certain amount of money.

The Agent appealed against the FIFA Decision before CAS.\(^2\) CAS decided that the Agent is not a party to the Contract at stake and therefore, not entitled to submit a claim – the only party entitled to a claim is the Company. The Panel was of the opinion that a company is, in principle, entitled to file and pursue a claim at FIFA and that the 2001 PAR provisions do not preclude such claim being filed. CAS held that the \textit{lex specialis} rule stipulated in 2001 PAR, pertaining to the right of an agent to organize his/her occupation as a business, overrides the \textit{lex generalis} provisions contained in 2001 PAR\(^3\), as well as that article 22 of 2001 PAR (particularly par. 2 which governs international disputes) does not provide that legal entities cannot claim before FIFA. CAS finally ruled that in the particular case FIFA lacked jurisdiction to entertain the matter and dismissed the appeal.

Pinhas Zahavi vs. Besiktas
In an arbitration of 2007, conducted by FIFA pursuant to the edition 2001 of PAR, between Club Besiktas and the renowned licensed agent, Mr. Zahavi, acting for GOL INTERNATIONAL LTD., FIFA adjudicated that it has no jurisdiction and rendered the Agent’s claim for commission payment inadmissible. FIFA first pointed out that it has jurisdiction only on those individuals who

\(^{1}\) The editions 2001 and 2008 of PAR are available on FIFA.com.
\(^{2}\) CAS 2007/A/1260.
\(^{3}\) \textit{Lex specialis derogat legi generali}.
carry a valid agent’s license issued by the relevant FA. FIFA recalled, among others, that an agent license is issued to natural persons only – applications from companies are not permitted, and that this fact constitutes one of the crucial principles of PAR and is based on the general approach that, in the relationship between an agent and his client, the personal element is of outstanding importance. FIFA concluded that the Agent is “not legitimated to sue as the proper party”, since the Agreement was apparently concluded between the Club and the Company. For the sake of good order, FIFA referred to article 6 par. 1 FIFA Procedural Rules in order to remind that only members of FIFA, clubs, players, coaches or licensed match and players’ agents are admitted as parties before the relevant decision-making bodies of FIFA.

On 5 December 2008, the Agent and the Company filed jointly a Statement of Appeal at CAS.\(^4\) The Panel first decided that the edition 2001 of PAR is applicable to the appeal of the Agent, whilst the edition 2008 of PAR is applicable to the claim of the Company.\(^5\) CAS then noted that none of the Appellants has ever tried to suggest that the Agreement implemented a partnership agreement or an active solidarity between the Agent and the Company, creating a co-ownership of the whole claim and enabling each of them to demand from the Club the payment in dispute. CAS pointed out that in any event the claim of the Company is prescribed. CAS then noted that the wording of article 22 par. 2 of 2001 PAR is quite ambiguous. However, the case of the Company has to be reviewed by 2008 PAR, which clarifies the situation under article 30 par. 2 and 5, in combination with article 6 par. 1 FIFA Procedural Rules. For these reasons, CAS concluded that the Company is not only late to file a claim before FIFA, but also that it cannot be admitted as a party to proceedings before FIFA. The Panel, relying on the CAS Code in conjunction with article 62 par. 1 FIFA Statutes, held that the Company has no standing to be a party in this appeal procedure at CAS. In continuation, CAS was of the opinion that the Agent was not a party to the Agreement. The Panel was comforted in its position, among others, by the fact that, as an experienced professional, the Agent could not ignore that, if he was acting in his name, he was required to use the FIFA standard representation contract and to send copies to the competent FAs. The Agent did not fulfill these requirements. Formally, he did not have to do so since he was acting “on behalf of” the Company. For these reasons, CAS upheld the FIFA Decision.

Out of the scope of its considerations on the merits, CAS emphasized that the representation contract between the agent and the client must be properly concluded and strongly recommended the use of the FIFA standard representation contract contained in Annex 3 PAR. CAS said that the agent should ensure that he/she is a party to the contract, so he/she is able to enforce his/her rights under it. Using words such as “on behalf of” or “representative of” leave the agent outside of the contract. Words such as “and” or “along with” would seem to be more appropriate, so that both the agent and his/her company are parties to the contract. Likewise and as for billing, if the agent wants the invoice to go through his/her company, then the remuneration section of the agency contract should state that the company receives the commission. Finally, CAS recommended that the parties to the agreement should consider the possibility to include an arbitral clause, submitting a possible dispute exclusively to CAS. Such a clause would enable all the parties to the contract (incl. a company) to have their case heard by CAS, in an expedited manner, in a neutral forum, with the ability to choose at least one member of the decision-making body.

\(^{4}\) CAS 2008/A/1726.

\(^{5}\) Tempus regit actum.
The representation contract
Agents conducting agency activity on behalf of a club or player must have a written contract in place before they conduct any agency activity. Such a contract must contain the following minimum details: the names of the parties, the duration and the remuneration due to the agent, the general terms of payment, the date of completion and the signature of the parties. The contract is only valid for two years and it may be extended in writing only. If the player is a minor, the player’s legal guardians have also to sign the contract. The representation contract must explicitly state who is responsible for paying the agent and in what manner. Payment is to be made exclusively by the client of the agent directly to the agent. Clubs may only discharge the player’s obligation to pay the agent via a deduction from the player’s salary, if there is written consent from the player for the club to pay the agent on his behalf. Such payments should only be made in accordance with the general terms of payment agreed between the player and the agent. Every agent has to ensure that his name, signature and the name of his client appear in any contracts resulting from transactions in which he is involved. These provisions are without prejudice to the client’s right to conclude an employment contract or a transfer agreement without the assistance of a representative. The agent has to abide by further formal requirements laid down in PAR.

Vincenzo Morabito vs. Ittihad Club
On 9 December 2005, the licensed agent, Mr. Morabito, lodged a claim against Ittihad Club for outstanding commission for a couple of transactions allegedly brought about by the Agent himself. FIFA concluded that, given that the Agent did not present any written agreement between him and the Club, it cannot be established that the Club agreed to pay to the Agent any commission in connection with his supposed services as an agent with respect to both transfers at stake.

The Agent appealed against the FIFA Decision to CAS. CAS held, among others, that in order for the Agent to succeed in his appeal he has to substantiate and prove primarily that a contract was concluded between him and the Club regarding the transfers concerned. The Agent admitted that no written contract was entered into and submitted in his Appeal Brief that “An oral agreement ... had clearly been concluded”. Based on the evidence in file, CAS pointed out that it is likely that the Club mandated the company PromoSport to arrange the transfers at the center of the dispute, but that the legal personality of a company is distinct from that of its members, i.e. the Agent in casu. Consequently, CAS confirmed the FIFA Decision, on the ground that the Agent did not have a right to file a claim against the Club (legitimatio ad causam).

Christian Casini vs. Vestel Manisaspor
In a letter of 26 November 2007, the licensed agent, Mr. Casini, lodged a claim with FIFA against the Club Vestel Manisaspor, in which he purported that he was owed commission payments. The Agent, among others, maintained that the Club had already made a partial payment of 1/3 of the alleged total outstanding commission and has therefore acknowledged its debt. In its decision passed on 2 September 2008, FIFA, among others, recalled that an agent may represent the interests of a player or a club only if he has concluded a written contract with the client and that such contract must explicitly mention who is responsible for paying the agent’s fee, the type of fee and the requisite terms for the payment of the fee. Furthermore, FIFA underlined that for every transaction in which an agent represents the interests of a club, his name and signature must, without fail, appear in the relevant transfer and/or employment contract(s). The Agent did not remit to FIFA any kind of a written contract signed between him and the Club, or between the Club and

CAS 2007/A/1274.
the player in question, to corroborate his entitlement to receive any commission from the Club. On account of that, FIFA decided that the demand of the Agent must be rejected.

**Dual representation and conflicts of interest**

Agents have to avoid all conflicts of interest in the course of their activity. An agent may only represent the interests of one party per “transaction”\(^7\). In particular, an agent is forbidden from having a representation contract, a cooperation agreement or shared interests with one of the other parties or with one of the other parties’ agents involved in the player’s transfer or in the completion of the employment contract. A good illustration of the application of this rule is the following pertinent CAS case:

**Bruno Heiderscheid vs. Franck Ribéry**

On 15 April 2005, the non-licensed agent, Mr. Heiderscheid\(^8\), signed an exclusive agency contract with the renowned player, Mr. Ribéry, valid for 24 months. Two months later the Player concluded an employment contract and an annex to it with the Club Olympique de Marseille – the Agent acted for the Club. On 30 November 2005, the Player and the Agent entered into a new representation agreement, valid until 30 November 2007, which replaced the first contract. Thereafter, the Player and the Club entered into three additional agreements, amending the terms and conditions of the existing employment contract – the Agent acted for the Player this time. On 2 May 2007, close to signing with Bayern Munich, the Player terminated the Second Agreement with the Agent.

On 20 June 2007, the Agent filed a claim against the Player directly to CAS\(^9\). On the basis of the provisions in the Second Agreement, CAS retained its jurisdiction over the case and established that the dispute will be resolved in accordance with French law. CAS decided that the Second Agreement was null and void, because: i) under the relevant provisions of the French Code of Sport (and PAR), the Agent was not entitled to act as agent, since, in 2000, he was sentenced to one year imprisonment for forgery, false bankruptcy, swindle and violation of Belgian accounting law. Likewise, he did not possess a valid agent license. CAS further stated that the Second Agreement is not only unlawful, but error and fraud; and ii) the Agent was acting as dual representative for both the Club and the Player, which is also forbidden by the French Code of Sport (and PAR). As a result of the nullity (*quod nullum est nullum producit effectum*), the effects of the First Agreement were restored, as neither of the parties questioned its validity. Consequently, CAS, on the one hand, condemned the Agent to restitution of payments to the Player, and, on the other hand, ordered the Player to pay a certain fee to the Agent due under the First Agreement in connection with the Player’s contract with the Club – CAS ordered a set-off of the parties’ respective claims. CAS further established that the Agent is not entitled to a fee for the subsequent transfer of the Player to Bayern Munich, because the Player moved to Germany only after the expiration of the First Agreement, as well as the Agent did not bring about this transaction. All other parties’ motions or claims were dismissed.

**Entitlement to remuneration**

The agent’s fee is calculated on the basis of the player’s guaranteed annual basic gross income, including any sign-on fee, when he/she has negotiated the employment contract. Such amount will

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\(^7\)“[…] a normal understanding of the word “transaction” covers more than the final negotiations, thus preventing an agent from switching side if he has taken care of the interest of the player at an earlier stage of the transfer”, Ronny-V. van der Meij for ASSER International Sports Law Journal 2009/1-2, p. 46.

\(^8\)Mr. Heiderscheid was licensed as an agent later by the Luxembourg FA and he continues to be a licensed agent even until now, which fact breaches the PAR rule for impeccable reputation of the applicant, set out in article 6 par. 1 PAR.

not include the player’s other benefits or privilege which are not guaranteed. The agent and the player may choose to pay the agent by means of a lump sum at the start of the employment contract that the agent has negotiated for the player or annual installments at the end of each contractual year. If no agreement is reached in this respect, the agent is entitled to receive 3% of the annual guaranteed income of the player, including any sign-on fee. If the agent and the player do not agree on upfront payment and the player’s contract negotiated by the agent on his behalf lasts longer than the agency agreement between them, the agent is entitled to annual remuneration even after expiry of the representation contract. This entitlement lasts until the relevant player’s contract expires or the player signs a new contract without the involvement of the same agent. Payments to agents in respect of agency activity on behalf of a club must be made by the club only, in a lump sum that has been agreed upon in advance.

Mujdat Gorel vs. Alpay Ozalan
On 10 February 2003, the licensed agent, Mr. Gorel, and the player, Mr. Ozalan, entered into a standard 2-year representation agreement. The Agreement was exclusive and provided for commission due to the Agent, amounting to 10% of the annual gross salary due to the Player as a result of the employment contracts negotiated by the Agent. On 27 January 2004, the Player signed a 2-year employment contract with the Club Incheon United. The Player signed the employment contract by himself. On 21 May 2004, the Agent complained to FIFA that he had acted for the Player as an agent and as a personal assistant, having negotiated the terms of settlement between the Player and Aston Villa (signed on 23 October 2003) and that, on 18 January 2004, the Agent sent to the coach of the Club a fax to commence negotiations on behalf of the Player, informing that he represents the Player “solely and exclusively”. On 21 November 2005, FIFA rejected the claim of the Agent. FIFA in its Decision referred to the function of an agent, which briefly stated brings players and clubs together, so as to explore the possibility of establishing working relations, stressing that the agent’s actions should culminate in the signing of a mutually acceptable contract between the player and the club. In this respect, FIFA referred to a letter/direction, dated June 1999, whereby the Bureau of the Players Status Committee informed and/or advised the licensed agents of the circumstances under which they could demand their remuneration where contracts were concluded between players and clubs without the agents’ involvement. The gist of the Bureau’s standpoint was that the agent’s activities must be causal to the conclusion of the employment contract. Considering the issue of “exclusivity”, FIFA correctly found that these operated with respect the player’s effort to appoint other agents, if this would be the case.

The Agent filed a Statement of Appeal against the FIFA Decision with CAS. The Agent insisted, among others, that he is entitled to 10% of all sums received by the Player from the Club. The Player replied, among others, that the Agent’s activities were not causal to the conclusion of the employment contract. CAS held that, in principle, the agent does not become entitled to his commission until the event has occurred, upon which his entitlement arises. CAS was of the opinion that the mere introduction of the player to the club is not sufficient, because in law even where such an introduction may lead to a contract, the introduction itself does not create a contract between the player and the club. It is CAS understanding that commission is not payable on the introduction of the player, but when the contract is actually concluded. An agency contract, where the principal is bound to pay a commission for an introduction, must be expressed in writing. In the particular case, the Agreement did not contain express provisions that the Agent will be remunerated in any event, even in the case he does not bring about the particular transaction, i.e. the signing of the contract.
with the Club. Without an express provision for the agent to be remunerated, notwithstanding his involvement and the bringing about of a certain event, i.e. the conclusion of an agreement for the provision of the player’s services, he will not be entitled to claim a reasonable remuneration on a contractual quantum merit basis. In the absence of an agreement to the contrary, the fact that the Player placed his “placement rights” exclusively with the Agent does not prevent the Player from contracting himself and having done so, before the Agent concluded any contract (which he did not), the Player is under no liability to pay any commission. If the Player had appointed the Agent as a “sole agent”, the Player could not employ any other agent, but if he contracted himself, he could not be liable to the Agent to pay commission or damages. The facts of the matter at stake did not evidence the involvement in bringing about the conclusion of the transaction, i.e. the signing of the contract with the Club, the Agent himself having failed to produce evidence of any significant involvement, save for the act of introduction mentioned above. Accordingly, CAS was of the opinion that the FIFA Decision was and is correct and should be upheld.