

# A Survey of International Legislations Governing the Protection of Professional Players

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## A. Introduction

The athlete has traditionally been the main focus point of sporting action.

The introduction of commercial practices in sport has led to the athlete being regarded as a “market-product”/his performance being connected with some economic result.

In this framework it is important to guarantee the protection of the personal and economic freedom of athletes, and this is going to be the subject of my presentation.

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## B. Aspects of protection of professional players

### 1. Protection of Athletes from unfair contract terms FIFA “Regulation on the Status and Transfer of Players”

According to art. 17 in case of unilateral termination of a contract “*the party in breach shall pay compensation*”. This provision seems as the logical consequence of art. 13 of the regulation (principle of *pacta sunt servanda*), stating that “*A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement*”. This provision is strengthened by art. 16 according to which “*A contract cannot be unilaterally terminated during the course of a season*”.

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**CAS 2007/A/1298, 2007/A/1299, 2007/A/1300  
(Webster case)**

The specificity of sport requires specific solutions in order to achieve a reasonable balance between the contractual stability on the one hand and the need for free movement of players on the other, fairly reconciling the conflicting interests of groups and players.

After the expire of the protected period of two years, the compensation for unilateral termination of contract without just cause should not be a punishment or lead to the enrichment of the parties and shall be calculated on the basis of criteria which seek to ensure equality in the conditions that determine the compensation that the team or the player may be forced to pay to each other.

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**(continues)**

The decision was welcomed by representatives of the players, for facilitating the athletes transfer after the end of the "protection period", and giving them the right to choose a new employer at a much lower cost for them, while restricting the ability of the teams to stop them when they want to leave. On the other hand, FIFA did not share the same opinion, stating that CAS "did not properly take into consideration the specificity of sport".

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### **Other important provisions:**

- a) The minimum length of a contract shall be from its effective date until the end of the season, while the maximum length of a contract shall be five years. Contracts of any other length shall only be permitted if consistent with national laws.
- b) Players under the age of 18 may not sign a professional contract for a term longer than three years.
- c) If an agent is involved in the negotiation of a contract, he shall be named in that contract
- d) The validity of a contract may not be made subject to a successful medical examination and/or the grant of a work permit
- e) A club intending to conclude a contract with a professional must inform the player's current club in writing before entering into negotiations with him.

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### **2. Rules for the activity of agents – Protection of minors**

Conditions under which the transfers of minors are permitted:

- a) The player's parents move to the country in which the new club is located for reasons not linked to football.
- b) The transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between 16 and 18. In this case, the new club must fulfill the following minimum obligations:
  - i. It shall provide the player with an adequate football education and/or training in line with the highest national standards;
  - ii. It shall guarantee the player an academic and/or school and/or vocational education and/or training, in addition to his football education and/or training, which will allow the player to pursue a career other than football should he cease playing professional football;

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- iii. It shall make all necessary arrangements to ensure that the player is looked after in the best possible way (optimum living standards with a host family or in club accommodation, appointment of a mentor at the club, etc.).
- iv. It shall, on registration of such a player, provide the relevant association with proof that it is complying with the aforementioned obligations;
- c) The player lives no further than 50km from a national border and the club with which the player wishes to be registered in the neighboring association is also within 50km of that border. The maximum distance between the player's domicile and the club's headquarters shall be 100km.

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### **3. Protection of Athletes during doping testing – personal data of athletes**

The WADA International Standard for the protection of privacy and personal information (2009)

#### **Code Article 14.2.1**

The identity of any Athlete or other Person who is asserted by an Anti-Doping Organization to have committed an anti-doping rule violation, may be Publicly Disclosed by the Anti-Doping Organization with results management responsibility only after notice has been provided to the Athlete or other Person in accordance with Articles 7.2, 7.3 or 7.4, and to the applicable Anti-Doping Organizations in accordance with Article 14.1.2.

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### **Code Article 14.2.3**

In any case where it is determined, after a hearing or appeal, that the Athlete or other Person did not commit an anti-doping rule violation, the decision may be disclosed publicly only with the consent of the Athlete or other Person who is the subject of the decision. [...]

### **Code Article 14.6 Data Privacy**

When performing obligations under the Code, Anti-Doping Organizations may collect, store, process or disclose personal information relating to Athletes and third parties. Each Anti-Doping Organization shall ensure that it complies with applicable data protection and privacy laws with respect to their handling of such information, as well as the International Standard for the protection of privacy that WADA shall adopt to ensure Athletes and non-athletes are fully informed of and, where necessary, agree to the handling of their personal information in connection with anti-doping activities arising under the Code.

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## **C. Protection shortage and international legitimized basis for the *Lex Sportiva***

### **1. Personality of Athletes – The right to participate in the Olympic Games**

**CAS cases 2008/A/1622, 1623, 1624 :** CAS dismissed the claim of the football federations of Brazil and Argentina ruling: a) that FIFA Transfer Regulations do not provide for the mandatory release of players for matches played for the Olympic Games and b) that no customary law providing an obligation for clubs to release their players to the Olympic Games 2008 has been developed, or at least, has been proven to have been developed.

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*“The next summer Olympic Games will take place in London on 2012. The Panel noted that after the operative part of this Award was notified to the parties and published by CAS, on August 7, 2008, FIFA called upon the parties, a call that was actually addressed to all the clubs, and recommended to release the players for the Olympic Games. This call was made on the grounds of the Olympic Spirit. In view of the same spirit, CAS had called upon the good will and good sense of the clubs and of FIFA to find a reasonable solution with regard to players who wished to represent their country in the Olympic Games. The Panel therefore would like to express its hope and belief that within the long period of time until the next summer Olympic Games, FIFA and its affiliated members will provide for a clear, fair and widely agreed solution on this question in light of the Olympic Spirit”. (CAS cases 2008/A/1622, 1623, 1624)*

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## **2. Bargaining power of the Athletes against mandatory clause of arbitration**

### **Compulsory arbitration as dispute resolution system: Issues to be examined:**

- 1) Whether both parties have the ability to choose arbitrators to ensure objectivity of the tribunal and
- 2) Whether the arbitration agreement is taking due notice of the interests of the weaker party.

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### 3. Personal and economic freedom in the international field of sport

Matters of personal and economic freedoms of the athletes are also related with provisions of Federations regulating the number of non-national players in professional leagues.

The new 6+5 FIFA regulation: *“merely a rule of the game declared in the general interests of sports in order to improve the sporting balance between clubs and associations and so ensure appropriate sporting competition between clubs and associations”* or a rule *“based on direct discrimination on the grounds of nationality, and is thus against one of the fundamental principles of EU law”*?

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### *Regulatory framework of the Lex Sportiva*

The legislation on matters falling within the scope of the organization and control of economic activity and the fundamental freedoms is the sole responsibility of the public authorities. The fact of the lack of an international legal framework for these issues in connection with sport, does not give the right to the international sports bodies to exercise such a regulatory function (for matters of not purely sporting nature).

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## D. Conclusion

- The application of *Lex Sportiva*, as formed today in the international field of sport, tends to secure the rights of professional athletes, not avoiding, however, conflicts between rules of different nature.
- It is necessary to increase the transparency in decision-making process of the sports organizations and to strengthen their democratic nature (with the participation of athletes and others) in this process. This will make the system of institutional organization in the sport fairer and more representative and reduce the tensions and conflicts that may arise.

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- It is necessary to develop a common framework of international sports law authorities by all the international sports bodies, so as to establish a global framework of general principles for sporting disputes.
- By adopting the existent dispute resolution system before CAS, this system, with the guarantee of international sporting legitimacy, could be used as a guide by the states to ensure proper, prompt and impartial dispute resolution by establishing a special court (athlodikeion) on the model of CAS, based on the above mentioned legitimized international basis.

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Thank you  
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