

Is the current FIFA regulation equally fair for players and clubs?^{1, 2}

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ABSTRACT

Underneath the sport aspect of football and the well-known FIFA competitions like the Football Worldcup or the UEFA Champions League, lays another aspect which we could call the « business » aspect of Football. Indeed, the football world is one of competition and rivalry as the clubs are continuously in a race to get the best players in the transfer market. In this world, most of the relationships are governed by contracts, which leads to disputes in case of disagreements. Disputes are particularly frequent between a club and a player because of contract termination linked with an injury or negative results in a medical examination. Therefore, the FIFA regulation includes several clauses to protect both parties from breach of contract.

However, some still argue that FIFA's regulation benefits the players more than the clubs. To identify what would be the potential other alternatives to deal with disputes in football and understand which alternative is the best one, we will use several methods of qualitative and quantitative analysis and comparison in this paper.

The results of this analysis show us that the current regulation actually protects both clubs and players equally and that keeping the regulation as it is now is the best alternative.

Keywords: contracts, disputes, football, FIFA, dispute resolution, RSTP, breach of contract

INTRODUCTION

A few months ago, on July 15th 2018, France won the Football Worldcup. For one month, from June 14th to July 15th, the Worldcup was all that the whole world was talking about. This football competition is the second most followed sport event in the world behind the Olympic Games.

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Indeed, football is the most popular sport in the world and is even a part of the culture in certain countries.

The international governing body of football is the FIFA (the International Federation of Association Football). This federation gathers 211 national football associations around the world, which make up 6 confederations that represent the FIFA at the continental level. The FIFA's authority in the football world is complete as this federation is responsible for organizing major football competition and governing football worldwide. It is also responsible for solving disputes and has a specific body to that effect: the Dispute Resolution Chamber (DRC). The main legal document that governs the status and transfers of football players is the « Regulation for the Status and Transfer of Players » (RSTP). The DRC refers to this document to make its decision during dispute resolution.

Disputes are not rare in the football world because most relationships are governed by contracts. Indeed, the relationship between a player and a club for example, or the transfer of a player between two clubs are both governed by contracts. When there is a disagreement between two parties linked by a contract, there is a need for proper dispute resolution. As per Max Wideman's Comparative Glossary, « a contract is a legally binding agreement between two parties or more, which creates an obligation to do or not to do a particular thing »³. It is characterized by competent – that is to say not under age or insane – parties, a subject matter, a legal consideration and a mutuality of agreement and of obligation. In a contract, each party acquires rights and duties relative to the rights and duties of the other parties.

Root cause analysis⁴ – 5 Why's:

Problem statement:

Disputes can arise between two parties that have signed a contract.

(For example, a dispute between a player and a club or between two clubs during a player's transfer)

WHY?

Because one of the parties accuses the other party of breach of contract.

WHY?

Because one of the parties has not respected the terms and conditions clearly stated in the contract.

WHY?

Because the party who hasn't respected the terms no longer wants to complete its part of the contract (bad faith or ill will)

³ Max Wideman's Comparative Glossary (<http://www.maxwideman.com/pmglossary/>)

⁴ By Author

WHY?

Because the party has just realized that the contract is more beneficial to the other party than itself, or has just realized that there is a clause in the contract that the party disagrees with.

WHY?

Because the party didn't read the contract carefully enough before signing it and agreeing to the terms and conditions stated in it.

Disputes can arise between parties that have signed a contract because one of the parties didn't pay enough attention before signing the contract and now disagrees with something in it. Not reading the contract carefully enough before agreeing to it is a root cause of disputes between parties tied by a contract.

In project management, a **project** is « a novel undertaking to create a new product or service that involves risk and is typically constrained by limited resources »⁵; and according to the Guild of project controls compendium, projects are « means to an end to “acquire, create, update, maintain, expand and eventually dispose” of organizational assets »⁶. Therefore, in the context of football, each individual game is a single project.

A programme is « a group of related projects managed in a coordinated way to obtain benefits and control not available from managing them individually »⁷. So in football, a regular season is one programme and every championship organized by the FIFA or one of its confederations is another programme. The type of programme that exists in football is a type called «Multi-Project Programme». Mutli-Project Programmes aim at « achieving synergies from project with common traits such as shared resources, similar clients or product technology»⁸.

A portfolio of projects is like any investment portfolio. In every organization, there is a portfolio of assets (which are basically resources) available to dedicate to projects, and the objective of this portfolio is « to develop the best « mix » of projects which will generate the most favourable return on those assets »⁹. In the context of football, the « assets » would be firstly the players and the coaches as they are the resources that are dedicated to the projects (which are the individual games). In football, the most common type of contract that exists between players and clubs are employment contracts. After this analysis and those definitions, we can affirm that this topic is clearly linked to project and programme management.

⁵ Max Wideman's Comparative Glossary (<http://www.maxwideman.com/pmglossary/>)

⁶ Guild of Project Controls Compendium (<http://www.planningplanet.com/guild/gpccar/introduction-to-managing-project-controls>)

⁷ GlobalPMStandards (<https://globalpmstandards.org/tools/complexity-rating/program-typology/>)

⁸ Guild of Project Controls Compendium (<http://www.planningplanet.com/guild/gpccar/introduction-to-managing-project-controls>)

⁹ Guild of Project Controls Compendium (<http://www.planningplanet.com/guild/gpccar/introduction-to-managing-project-controls>)

This research paper is based on a thorough review of the information available and legal documents currently used in football. Its purpose is to provide an overview of the employment contracts regulation in football.

During this research, we will first take a look at the **Regulation on the Status and Transfer of Players (RSTP)** and take a closer look at what particular articles protect the parties from breach of contracts. The method to do so is to analyse this legal document and read existing papers on this topic. Then we will focus on a specific aspect of football contracts which is **the medical examination** and focus particularly on **the article 14.8 of the RSTP** which sets strict rules concerning medical examinations and contracts. Finally, we will conclude by trying to determine if this article 14.8 of the RSTP is equally fair for the players and the clubs.

The purpose of the RSTP is to set clear rules so that both parties (clubs and players) are protected during contractual agreements. Different clauses on the RSTP protect the parties against breach of contracts. For instance, the article 14 expressly prohibits termination of a contract without just cause: « *A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause* »¹⁰; when the article 17 determines the consequences of terminating a contract without just cause. If it happens, the respondent will face monetary compensation for breach of contract and might be banned from registering new players for a certain period of time.

A crucial part of the contracting process between a player and a club is the medical examination. Indeed, football being a very physical sport, the physical condition of a player is of utmost importance. That is why the medical examination is crucial and is preferably done before the signature of the contract. Nevertheless, sometimes, clubs are in a rush to pursue a player before another club beats them to it and therefore sign the contract with the player prior to the end of the medical examination process, and subject the validity of the contract to successful results of the medical examination. However, the article 14.8 of the RSTP expressly prohibits it: « *The validity of a contract may not be made subject to a successful medical examination and/or grant of a work permit* »¹¹ and states that any clause to that effect in a contract will be considered null and void by the FIFA's DRC in case of disputes. Moreover, the DRC and the Court of Arbitration of Sport (CAS) both consider that the injury of the player during the contract, even a debilitating injury, does not constitute a « just cause » to terminate a contract. Consequently, if a player gets injured during the contract and can no longer perform what he signed the contract to do, and that the club terminates the player's contract, then the club will face sanction and will have to pay a monetary compensation to the player for breach of contract.

But we can wonder if this regulation is equally fair for both the players and the clubs, and argue that it benefits the players more than the clubs. Indeed, one may argue that if a player can no

¹⁰ Regulation on the Status and Transfer of Players (<https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-2018-2925437.pdf?cloudid=c83ynehmkp62h5vgwg9g>)

¹¹ Regulation on the Status and Transfer of Players (<https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-2018-2925437.pdf?cloudid=c83ynehmkp62h5vgwg9g>)

longer respect his part of the contract (which is to perform as a football player), then his club should have the right to terminate the contract. But another may argue that an injury is a random and uncontrollable event and that therefore it should not penalize the player and not be a just cause for contract termination.

METHODOLOGY

Step 1: Problem recognition, definition and evaluation

What if article 14.8 of the RSTP didn't exist? There might be other alternatives to deal with football players injuries during contracts.

To sum up, this research paper has been undertaken in order to answer the following questions:

- What are the other alternatives to handle the issue of a player's injuries while in contract with a club?
- What is the best alternative to handle this issue?
- Does the current legislation benefit equally the players and the clubs?

To answer these questions, we will use the MADM method (Multi-Attribute Decision Making method), with the non-compensatory method of Dominance, which is a tool of decision making that allows to evaluate and rank different alternatives and choose the most appropriate one.

Step 2: Development of the feasible alternatives

After having determined that the current situation was maybe not optimal and that other fairer alternatives might exist, let us now suggest three feasible alternatives to deal with the issue of players injuries whilst in contract with clubs:

1. The article 14.8¹² stays on the RSTP and the situation remains as it is currently.
2. The article 14.8 is removed from the RSTP and replaced by an article that allows to subject the validity of a contract to a successful medical examination.
3. The article 14.8 is removed but not replaced by another article and there are no specifications in the RSTP concerning medical examination and contracts.

¹² Regulation on the Status and Transfer of Players (<https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-2018-2925437.pdf?cloudid=c83ynehmkp62h5vgwg9g>)

Step 3: Development of the outcomes and cash flows for each alternative

1. For the first alternative which is to keep the situation as it is currently and not change anything, the main outcome is that the players will still be protected by article 14.8 and the clubs would not be able to terminate their contract in the event of an injury¹³. Moreover this alternative would not be time consuming or costly as nothing has to be done. However, one may still argue that the players benefit more from this regulation than the clubs.
2. Concerning the second alternative, which is to remove and not replace article 14.8, the main outcome would be to give more freedom to the clubs as they would not be threatened by article 14.8 anymore in case of termination of contract¹⁴. However, this article not being replaced by another one, there would be a gap in the RSTP in case of breach of contract and this would create an unclear area where none of the parties would know exactly what to do. Therefore, legal procedures will be engaged by the player and attorneys and law experts will be involved and the resolving of the dispute would be costly and time consuming.
3. As for the last alternative which is to replace article 14.8 by an article allowing to subject the validity of a contract to a successful medical examination, the main outcome would still be to give more freedom to the clubs. Indeed, the clubs would tend to close more transactions and sign contracts with players prior to the end of the medical examination process since they would not suffer any sanction if a player fails the medical examination and that the club cancels his contract¹⁵. However, this alternative would be time consuming and costly. Indeed, amending a legal document takes time, and writing a new article concerning this issue involves discussions and bringing in law experts which would generate some costs.

Step 4: Selection of criteria

In order to analyse the three alternatives detailed above and to determine which one is the most appropriate, we will start by using the MADM method to eliminate any poor alternative.

Here are the five criteria that need to be taken into account while considering each alternative:

- **Cost to the clubs:** If there is no clear indication on the RSTP on what to do in case of failure of medical examination of a player after signature of the contract, then legal

¹³ Sity, B – Can player contracts be made conditional on passing a medical examination ?

(https://www.lawinsport.com/topics/articles/dispute-resolution/item/can-player-contracts-be-made-conditional-on-passing-a-medical-examination-comparing-the-approaches-in-football-and-basketball?category_id=397)

¹⁴ Regulation on the Status and Transfer of Players (<https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-2018-2925437.pdf?cloudid=c83ynehmkp62h5vgwg9g>)

¹⁵ Sity, B – Can player contracts be made conditional on passing a medical examination ?

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procedures would have to be undertaken to solve the disputes and it would be costly for the clubs¹⁶. On the contrary, if what to do in this situation is clearly mentioned in the RSTP, then solving the dispute would not generate any cost to the clubs.

- **Time gain for the clubs:** If legal procedures have to be undertaken to solve the dispute, then it would be a huge loss of time for the clubs as those procedures are often very long and time-consuming¹⁷. On the contrary if there are clear indications on the RSTP then it is a time gain for the clubs.
- **Advantages for the clubs:** What would be advantageous for the clubs would be to be able to terminate a contract with a player if he fails the medical examination¹⁸, in other words removing article 14.8 was from the RSTP.
- **Risk taken by the clubs:** Granted, some may argue that the current regulation is more profitable for the players than it is for the clubs because if players fail their medical examination after signing the contract or if they get injured during the contract, the club is not allowed to terminate the contract. However, this regulation protects both the player and the club because article 13 of the RSTP states « *A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement* »¹⁹. However, if article 14.8 came to disappear then article 13 would need to be modified as well as they are interdependent and the clubs will not be protected against players who want to terminate their contract with a club to sign a more profitable contract with another club for example.
- **Clarity for both the players and the clubs:** The more indications there are on the RSTP and the clearer they are, the less disputes there will be. On the contrary loopholes and grey areas in a legal document makes it more likely for dispute to arise²⁰.

Thanks to the three feasible alternatives and the five criteria, we can build the following table that will help us support our decision:

¹⁶ Legal League (<http://www.legal-league.com/services/football/price/>)

¹⁷ LawInSport (<https://www.lawinsport.com/topics/features/item/football-creditors-rule-is-the-football-league-s-new-insolvency-policy-a-step-in-the-right-direction>)

¹⁸ Sity, B – Can player contracts be made conditional on passing a medical examination ?

(https://www.lawinsport.com/topics/articles/dispute-resolution/item/can-player-contracts-be-made-conditional-on-passing-a-medical-examination-comparing-the-approaches-in-football-and-basketball?category_id=397)

¹⁹ Regulation on the Status and Transfer of Players (<https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-2018-2925437.pdf?cloudid=c83ynehmkp62h5vgwg9g>)

²⁰ Legal League (<http://www.legal-league.com/services/football/>)

Alternatives / Criteria	Alternative 1 : Leaving the situation as it is currently (article 14.8 remains on the RSTP)	Alternative 2 : Replacing article 14.8 by an article that allows to subject the validity of a contract to a successful medical examination	Alternative 3 : Removing article 14.8 from the RSTP and not replacing it by another article (leaving a loophole)
Cost to the clubs	EXCELLENT	EXCELLENT	POOR
Time gain for the clubs	EXCELLENT	EXCELLENT	POOR
Advantages for the clubs	FAIR	GOOD	FAIR
Risks taken by the clubs	GOOD	FAIR	FAIR
Clarity of the indications	EXCELLENT	GOOD	POOR

Figure 1 : qualitative analysis²¹

The colour code is the following:

- Green: the alternative is a perfect fit for the criteria
- Light green: the alternative is a quite good fit for the criteria
- Yellow: the alternative is not the best fit for the criteria and could be better but could also be worse
- Red: the alternative is a bad fit for the criteria

The minimum acceptable level to continue the analysis of the alternative is FAIR. Therefore, we can already eliminate the alternative 3 since this alternative scored POOR for three criteria. Let us continue our analysis of the two remaining alternatives.

FINDINGS

Step 5: Analysis and comparison of the alternatives

Now we need to determine which alternative is the most appropriate between alternatives 1 and 2. To do so, we are going to make a quantitative analysis using the relative weighted technique. We will use the same criteria used for the qualitative analysis and convert the previous color code into base 1 scoring model in order to know how the two alternatives score relative to one another.

²¹ By Author

The conversion is as follows:

- EXCELLENT = 1
- GOOD = 0,67
- FAIR = 0,33
- POOR = 0

We obtain the following table :

Alternatives / Criteria	Alternative 1 : Leaving the situation as it is currently (article 14.8 remains on the RSTP)	Alternative 2 : Replacing article 14.8 by an article that allows to subject the validity of a contract to a successful medical examination	Alternative 3 : Removing article 14.8 from the RSTP and not replacing it by another article (leaving a loophole)
Cost to the clubs	1	1	0
Time gain for the clubs	1	1	0
Advantages for the clubs	0,33	0,67	0,33
Risks taken by the clubs	0,67	0,33	0,33
Clarity of the indications	1	0,67	0
SUM	4	3,67	0,66

Figure 2 : quantitative analysis²²

Let us keep in mind that alternative 3 has been eliminated and that we only analyse alternatives 1 and 2 now. For a better analysis of the two remaining alternatives, we will use the Additive Weighting Technique. We obtain the table as follows:

Attribute	STEP 1	STEP 2			ALTERNATIVE 1		ALTERNATIVE 2	
	Relative Rank	Normalized Weight (A)			(B)	(A)x(B)	(C)	(A)x(C)
Cost	2	2/15	=	0,13	1	0,13	1	0,13
Time	1	1/15	=	0,07	1	0,07	1	0,07
Advantage	4	4/15	=	0,27	0,33	0,08	0,67	0,18
Risk	3	3/15	=	0,2	0,67	0,13	0,33	0,06
Clarity	5	5/15	=	0,33	1	0,33	0,67	0,22
SUM	15		SUM	1	SUM	0,74	SUM	0,66

Figure 3 : Additive Weighting Technique analysis²³

²² By Author

²³ By Author

Step 6: Selection of the preferred alternative

In the figure 3 above, the relative rank of the attributes shows which criteria are the most important for the clubs. Thanks to the quantitative analysis done in figure 2, we can make the following calculation: 4 (sum of alternative 1) / $3,67$ (sum of alternative 2) = $1,08$ and $1,08 \times 100 = 108\%$. Which means that alternative 1 is 108% times better than alternative 2.

Now let us look at the result of the analysis with the Additive Weighting Technique. We can make the following calculation: $0,74$ (sum of alternative 1) / $0,66$ (sum of alternative 2) = $1,12$ and $1,12 \times 100 = 112\%$. According to this analysis, alternative 1 is still 112% better than alternative 2.

Therefore, we can conclude that according to both the quantitative analysis and the Additive Weighting Technique analysis, the preferred alternative is alternative 1 over alternative 2 which is to leave the situation as it is and not modify the RSTP.

Step 7: Performance monitoring and post-evaluation of results

The two best ways to monitor the performance of the chosen alternative would be the following:

- To evaluate the proportion of disputes related to players injuries or failure of medical examination (this proportion should be decreasing).
- To evaluate the number of contracts signed prior to the end of the medical examination process and for which the validity is subject to a successful examination (here again, the number of those contract should decrease).

CONCLUSION

Firstly, we start by reminding ourselves why this research paper has been undertaken. In football, FIFA's regulation is the highest authority in case of disputes. We have explained in this paper that disputes are not rare in football as most relationships are governed by contractual agreements. More specifically, a common cause of dispute in football is the injury of a player or a failure at the medical examination. Indeed, the medical examination is a crucial step in a contract between a player and a club and must ideally be done prior to the signature of the contract but it is not always the case.

Some clubs subject the validity of the contract to a successful medical examination and would like to be able to terminate the contract if the result of the medical examination are bad. But an article of the Regulation on the Status and Transfer of Players expressly forbids the clubs from doing so: the article 14.8²⁴. This article – along with other articles from the RSTP – therefore

²⁴ Regulation on the Status and Transfer of Players (<https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-2018-2925437.pdf?cloudid=c83ynehmkp62h5vgwg9g>)

protects the players against clubs who would like to terminate their contract because of an injury or bad result at the medical examination. However, some might argue that the FIFA's regulation is more advantageous for the players than it is for the clubs. Indeed, one may argue that in a contract between a player and a club, the main role of the player is to be able to perform in football and it is the essence of the contract. Therefore, if for some reason the player is not able to respect his part of the contract which is to perform as a football player. Consequently, the clubs would be disadvantaged by the FIFA's regulation.

The purpose of this paper was to answer the following questions: « Are FIFA's regulations equally fair for both players and clubs? » and « What is the best alternative to deal with the issue of an injury or bad result in a medical examination during a contract? ». We have seen during this research that FIFA regulations were protecting both parties against breach of contract with the articles 14 and 17 of the RSTP. Indeed, those articles forbids the termination of contract without just cause and provide sanctions in case of termination of contract without just cause²⁵. But it is important to stress that the clubs are as protected against breach of contract as the players thanks to this regulation. Because clubs are not the only one to be in the capacity to terminate a contract; a player could also want to terminate his contract with a club because he is being offered a more advantageous contract by another club. But this is not possible thanks to the RSTP which protects the clubs as much as the players against breach of contract.

Moreover, we have seen with the Multi-Attribute Decision Making Method that other alternatives to deal with the issue of failure of the medical examination or injury of a player during a contract would not be more beneficial to the clubs. Indeed, removing article 14.8 from the RSTP and replacing it by another article or not replacing it and leaving a loophole in the regulation would be a loss of time and money for the clubs and it would be more risky for them as they would not be protected from breach of contracts anymore. Finally, at the end of our quantitative analysis and Additive Weighting Technique analysis, we were able to conclude that the best alternative to solve that issue was to leave the situation as it is currently and to let article 14.8 on the RSTP.

Therefore, we can conclude this paper by answering that the FIFA's regulation is indeed equally fair for the players and the clubs. Indeed, football players do not benefit from this regulation more than clubs do as both parties could perpetrate a breach of contract (not only the clubs) and the regulation protects both parties against it.

²⁵ Sity, B – Can player contracts be made conditional on passing a medical examination ?

(https://www.lawinsport.com/topics/articles/dispute-resolution/item/can-player-contracts-be-made-conditional-on-passing-a-medical-examination-comparing-the-approaches-in-football-and-basketball?category_id=397)

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About the Author



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Anta DIOP is a French graduate student pursuing a Master of Science in Project Management at Skema Business School in Paris. She completed two years of preparatory class in economics before entering Skema BS. During her education in Skema, she had the opportunity to travel around the world and live in different countries, she studied in China for one semester and in the United States for another semester. She also gained experience in event and project management thanks to the internships she has integrated in her educational pathway. She passed the PMI exam during her MSc in Project Management and is now a Certified Associate in Project Management. After she finishes school, she would like to go back to Asia and work as a project manager in different industries to build a diverse experience in project management.

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