International Transfers of Minors:

Recommendations to Improve the Protection of Young Players in the Current Transfer System

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- Dedications -

“Thanks to my mother, Kezban CELEN and to my brother, Burak CELEN”
Burcin Celen

“Thanks to my family and in special, to Fernanda”
Leo Lederman

“To my family for all the support and in memory of Zippo…”
Angelo Rigopoulos

“To the football, to the –ITM group members – for the goals and the long hours, to my family and friends, and to you…”
Jose Alfonso Rodriguez

“With thanks to my wife for her great support”
Piotr Sadowski
EXECUTIVE SUMMARY

"It is our duty to the youth of the world to protect young players. We must do it together. Stop the slavery of these young players!"\(^1\)

This strong quote by Fédération Internationale de Football Association (FIFA) President Mr. Joseph S. Blatter stresses the relevance of protecting minors in football, an issue than has steadily gained prominence by the day. This assumes significance especially when linked to international transfers of all football players under the age of 18 years old from one country to another. Considering the negative connotations associated with the movement of minors, facts highlighted by many recent cases, has ensured that it is one of the most discussed concerns by all stakeholders in football.

The situation is often referred as “trafficking” or “slavery” of young talents, though, no definition of trafficking or smuggling of children in the sport context can be found in International agreements. Nevertheless definitions from other social contexts and from diverse international bodies can be used to identify this subject. Some of them were deeply analysed in this paper.

However, the main aim of this research was to examine the current situation on the transfer system involving minors. The analysis centred on three main areas of interest, social, management and legal. After identifying the problem areas the next goal of this Paper was to propose a set of recommendations that could strengthen the protection provided to minors.

To understand the social consequences, a detailed study on the implications of the youngsters moving country to country was conducted. The process involved assessing the origins of migration’s phenomenon, the impact of the Bosman case,\(^2\) till the study of most recent cases ruled by the Court of Arbitration for Sport (CAS).

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\(^1\) Joseph S. Blatter speaking about the protection of minors in the 59\(^{th}\) FIFA Congress held in Nassau on the 2\(^{nd}\) and 3\(^{rd}\) June 2009. http://js.fifa.com/aboutfifa/federation/bodies/media/newsid=1065926.html
In the managerial part of the research, for purposes of this final project, it was important to deduce how the increase of players’ wages and transfer fees in the last few years have led football clubs to look for different strategies to maintain their economic and sportive success. After broadcast revenue, sponsorship contracts and stadia, the transfer of players represents the most important income for football clubs. The focal point was to observe at which level the investment in youth sector could represent a good strategy for football clubs to remain competitive against other clubs and increase their profitability.

Finally the legal aspects of this thesis concentrated in examining the current regulations on transfers of minors. In particular, FIFA Regulations on the Status and Transfer of Players (Articles 19, 19bis, 20 and 21) as well as conflicts that may arise with national and international laws.

Before coming to possible recommendations, it was vital to ascertain the challenges that these regulations face and the extent of the level of protection offered to underage players.

Research Methodology

The method of research used was qualitative analysis, and this included studying different books, journals, articles and on-line reports in order to gain a profound knowledge of the issues involved. This was followed by a study to review the strategies by clubs from the top five countries (England, Italy, Germany, Spain, and France) and their policy towards investment on youth players.

To fully comprehend the position of FIFA’s Dispute Resolution Chamber and CAS on this sensitive matter, three main case studies were included the Acuña, Sarmiento and Midtjylland cases.

The next phase was to conduct interviews in person where possible or conference calls with the most important stakeholders. The information gathered with the assistance of FIFA, UEFA, ECA, FIFA Sub-Committee, FIFA TMS, EU Commission, Football Clubs, different sport lawyers and FIFA Agents provided an insight of the system to better develop the recommendations. And this led to several intense group meetings to
discuss the main areas that the authors of this paper consider useful to intervene.

*Key Findings*

From the beginning of the research it was abundantly clear, barring a few situations that aided the development of minors’ career, that international transfers in such a situation has more negative consequences in case of failure. These problem areas were needed to be tackled through recommendations.

Analyzing the role that academies play in the club policies, two different trends were discovered. There is one point of view that considers the easiest way to obtain new talent is buying them from other clubs, especially clubs with fewer economic resources. And on the other hand, there are those clubs who made a conscious decision to implement a better youth programme attempting to develop talented players that could join the first team.

Finally, the legal examination based on the jurisprudence, showed difficulties in the interpretation of the FIFA Regulations and in some situations even the extreme possibility to bypass them. To counter balance that, the measures implemented in the current FIFA Regulations have partially improved the protection provided to underage players through better control, in particular by the introduction of the Transfer Matching System (TMS) and the new sub-committee within the Players’ Status Committee.

*Challenges*

The main challenge endured during the research was the sensitivity of the topic which set a limit on the information and data gathered, particularly during discussions with agents and other stakeholders. Moreover, parallel research done by UEFA to justify their position of banning all transfers involving football players under 18 made the project more challenging, especially when providing recommendations, since the intention of this work was to elaborate proposals that will not fully conflict with the existing Regulations. Finally, it has to be taken into consideration that the recent introduction of the FIFA Sub-committee, responsible for approving each international transfer of minors, has been operative only since October 2009 and therefore without a significant amount of cases at their disposal.
Recommendations

While preparing the recommendations it was clear that the involvement of all the stakeholders had to be increased in order to strengthen the protection of minors.

Looking at the FIFA Regulations, the authors deducted that some amendments are needed to avoid situations where the club, involved in an international transfer of minor, gains a benefit without assuming any obligation towards the youngster. Therefore, extending the education obligations imposed from Article 19.2 letter b. to the exception cases of letter a. is recommended. It is also suggested that the fourth exception for permitting an international transfer of minor (the case of a player registering for the first time who has lived continuously for at least five years in the country of intended registration prior to this request), officially recognized by the jurisprudence of the Players’ Status Committee, shall be included in the wording of Article 19.

Furthermore, the TMS, which is already playing a significant role in the protection of minors, should be upgraded to the new 2.0 version. It is advisable to develop and refine the compliance and checking processes. This should comprise the implementation of TMS within National Associations for a better controlling right from the beginning of a player’s career. Next proposal to this is the creation of a new area where clubs will have to upload documentation regarding the academic participation of the minor. This tool aims to better control the compliance of the club with its obligations of providing a dual career opportunity to the minor.

Considering the role played by agents in the transfer system, it is recommended that their representation activity for a minor shall be done without the provision of any fee. This to avoid the recurrent situation where agents earn a significant amount of money when the player reaches a high level, but when the youngster fails to succeed they disappear leaving the minor without any support.

Another advice is the inclusion of a new requirement in the UEFA Licensing System and particularly within the Personnel and Administrative Criteria. This aims to strengthen the support from the clubs to the minors signed. To achieve that, it is suggested, for every club to provide special assistance to minors internationally
transferred, by a person that will be responsible for them on a daily basis. The role of this “tutor” would be crucial in order to help the young players adapting to their new environment.

Finally it is suggested to establish a monetary reward to the private academies (which are not linked legal, de facto or financially to clubs) for training of their players. This is aimed at encouraging them to register the minors within the Association with a motivation of developing their facilities and providing the trainees a better education. This incentive will counter balance the difficulty currently faced as many private academies fail to register their minors since they are not part of the organized football, and therefore without any legal obligation. A better monitoring will lead to less cases of exploitation in the transfer system.

Conclusions

There are many other possible suggestions that can be given for improving the protection of minors in the current transfer system; for instance, the additional involvement of other institutions like Professional Football Players Observatory (PFPO) in the consulting and monitoring of the children rights protection. Any other recommendation should have education and higher awareness as principles that all stakeholders must have toward the topic. Protecting the current youth generation means developing the future of football. It is important to safeguard the minors for the game and for the world.
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# Abbreviations

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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CAS</td>
<td>Court of Arbitration for Sport</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>DBU</td>
<td>Dansk Boldspil-Union (Danish Football Association)</td>
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<td>DRC</td>
<td>Dispute Resolution Chamber</td>
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<td>EC</td>
<td>European Community Treaty</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<td>FA</td>
<td>Football Association</td>
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<tr>
<td>FC</td>
<td>Football Club</td>
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<tr>
<td>FIFA</td>
<td>Fédération Internationale de Football Association</td>
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<tr>
<td>FIFPro</td>
<td>Federation Internationale Des Associations de Footballeurs Professionels</td>
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<td>FIGC</td>
<td>Federazione Italiana Giuoco Calcio</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>ITC</td>
<td>International Transfer Certificate</td>
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<td>ITM</td>
<td>International Transfer of Minors</td>
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<tr>
<td>KNV</td>
<td>Koninklijke Nederlandse Voetbalbond (Dutch Football Federation)</td>
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<tr>
<td>NA</td>
<td>National Association</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>OIM</td>
<td>International Organization for Migration</td>
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<tr>
<td>PFPO</td>
<td>Professional Football Players Observatory</td>
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<tr>
<td>TMS</td>
<td>Transfer Matching System</td>
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<tr>
<td>UEFA</td>
<td>Union des Associations Europeennes de Football</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UNICEF</td>
<td>United Nations Children's Fund</td>
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<tr>
<td>URBSFA</td>
<td>Union Royale Belge des Sociétés de Football Association ASBL</td>
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</table>
- Key Definitions -

**Minor:** a player who has not yet reached the age of 18.

**International Transfer:** transfer of a player between clubs belonging to different associations.

**Transfer Matching System (TMS):** the transfer matching system is a web-based data information system with the primary objective of simplifying the process of international player transfers as well as improving transparency and the flow of information.

**International Transfer Certificate (ITC):** documentation produced for an International Transfer. Players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate from the former association.

**Training Compensation:** payments made in accordance with Annexe 4 of the FIFA Regulations on the Status and Transfer of Players to cover the development of young players.

**Academy:** an organisation or an independent legal entity whose primary, long-term objective is to provide players with long-term training through the provision of the necessary training facilities and infrastructure. This shall primarily include, but not be limited to, football training centres, football camps, football schools, etc...
Currently there is an existing debate concerning the involvement of underage players within the football world. This debate becomes more sensitive when specifically referring to the international transfer of minors (ITM). This research pretends to observe the situation of the wellbeing of minors implicated in an international transfer, who are thereby placed in a context of recently disseminated regulations which are and not yet fully comprehensive within a constantly shifting transfer market. In order to guarantee the protection development and proper training of the youngsters involved in international transfers, it is essential to reinforce the current mechanisms of protection and also implement new measures to successfully face this situation.

To fully comprehend the extent of this issue, it is necessary to deeply analyse all stakeholders involved, bearing in mind their current interests as well as previous strategies implemented. Furthermore, it is important to evaluate the origins of the transfer phenomenon, the socio-economical implications and the legal framework under which the international transfer of minors occurs, recognizing both the converging and contradictory points of the existing regulations and identifying the possibilities for the future.

This paper considers the unique character of the children involved in competitive sports, particularly in football, vis-à-vis the development of minors nurtured under the protection of a less demanding environment. This research intends to be based on an international consideration of the topic, nevertheless it must be stressed that the accessibility of information in addition to the proactive nature and economical capability of regional stakeholders led this research to a more European perspective.

Finally, the objective of this paper is to provide a holistic and composite series of recommendations which guarantee a positively enhanced safeguarding of the rights of youngster in the international transfer system.
1. ORIGINS AND SOCIAL ASPECTS OF THE INTERNATIONAL TRANSFERS OF MINORS

1.1 General Review of the International Transfers System

The transfer market in football refers to the buying and selling of players, for a long period of time football has been operating a system whereby money is exchanged between clubs in order to secure the services of players, involving experienced as well as young footballers. In this context, the athletes are the employees, and their clubs, the employers. The transfer is, in principle, the process in which the player who belongs to a club could change to another club. Moreover, the transfer system is in its essence a business where everyone involved is always aiming for the maximum profit, including football clubs, agents and the players.¹

Until the early 1980s the financial exploitation of football and its impact had not yet reached its full potential, both nationally and internationally. It is possible to identify the sudden exploitation of transfers in the international transfer network that came about after the Bosman ruling.² Consequently, freedom of movement together with the increase in transfer fees made clubs realized the importance of investing in training of players.

In recent times, it has been recognised that not only financial returns and eagerness of attracting better players are the reasons behind the movements of footballers. There are also other subtle factors that can be identified as explanations behind football players’ migrations such as political, social and influence of globalization.

1.2 Influential Factors in the International Transfers of Players

1.2.1 Internationalization of football

From the very start of the twentieth century, the question of football players’ geographical movements and regulations regarding these movements constituted a

major subject of concern for the international football stakeholders. At the time, the intention of the main governing body of football, Fédération Internationale de Football Association (FIFA), was to maintain the national football identity of each member federation and their affiliated clubs, and to restrain the constant movement of certain “orbiting” players. FIFA’s aim was directed to prevent the participation of foreign players in national competitions, nevertheless some clubs such as the Italian club A.S. Bari had in their squad Swiss, German, Austrian, French, Spanish and British players.

Although FIFA aimed to restrict the international movement of players, it was expressed in their first statute that their intention was to promote matches between nations and to create an international competition among them. The first FIFA World Cup organized in Uruguay in 1930 can be considered as the first internationalization of football. After the World Cup, South American players started to attract the interest of European clubs, followed by the known pattern today. As Lanfranchi and Taylor explained, the movement of players could be determined by several variables. According to them, international migration is directly linked with the cultural relationship between the origin and destination country, the attractiveness of the wages, the strength of European clubs, and the flourished performance of established institutions.

Currently, the internationalization of the football transfer system reached a significant level like in the beginning of the previous century with A.S. Bari. Nowadays, it can be noticed the existence of football clubs having a significant number of foreign players, for instance F.C Internazionale. It is noticeable that the movement of players is inherently connected with general migratory trends, financial interests and actions of international sporting governing bodies. However, massive media coverage, developments in communication and transportation also have a significant influence in

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6 The World Cup had the participation of 13 nations, 4 from Europe, 9 from the Americas.
the current international transfer.

Although, the main stakeholders had aimed to limit the migration of football players, they had to recognise the magnitude of this social phenomenon after the encouragement of Inter-European movements by the European Community Treaty (EC Treaty)\(^9\) dispositions and the *Bosman* ruling.

### 1.2.2 Financial and Political Stability

The political and financial stability of destination countries in the international football transfers has strengthened their sporting institutions by guaranteeing constant investment and highest level of competition. In comparison, sporting institutions in many developing countries are facing the problem of losing their best talents to developed countries because of the social, political and economical instability at home. They cannot invest in training or developing their talents in consequence of poverty of their sporting organizations.

European countries have recognized the need to establish a cohesive system between the administrative measures taken by sport institutions and national policies put in place by the state. This notion is reflected in the existing attempts to integrate the state policies to the measures taken by different level of football institutions. It is especially noticeable in the case of football development practices, existing patterns of behaviour and presence of monitoring mechanisms, in which the football federations follow the indications stressed in governments’ policies ensuring coordination between stakeholders. This cannot be observed in the political environment of developing countries, where national Federations tend to be in opposition to government policies which weaken the stability of the football institutions in the country resulting in the stagnation of football development. In those countries, there are not official young talent detection agencies or regulations to protect the interest of players, particularly young footballers.\(^{10}\)

Political and institutional stability of European countries have led to prosperous growth of European clubs. These clubs have had historically a better financial status compared

\(^{9}\) Article 39, European Community Treaty.

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to the rest of the football world, allowing them to attract and recruit the best players across the world by offering better wages and the prospect of social growth. The vision of reaching social upward offered by European clubs represents an incentive for players from the developing countries which are eager to come to Europe in order to provide better living conditions for their families.

Movements of African footballers to European clubs in the end of 1990’s and 2000 are examples of this phenomenon. At the beginning of 21st century Nigeria found itself in the mids of an economical and political instability. The problems in this country demonstrated itself clearly when the youth Nigerian national team travelled to Hungary for an official match some of the players abandoned the team as soon as they arrived and only 30% of the players returned home after the game. The rest was disappeared only discover after while that they were seeking asylum. The young footballers seemed to be really desperate in seeking for a better standard of life and football practice, not only escaping into Western European countries, but as well into Eastern European post-communist countries.

The absence of institutional structures in developing countries as well as the unstable political and financial environment, in which the football can prosper, do not only represent a marked contrast with the reality in Europe but at the same time it fosters irregular practices regarding the international transfer of minors.

1.2.3 EC Law and the Bosman Ruling

The main reason on increase of numbers of transfers in the football world, and more specific in Europe, was the result of the Bosman case, which will be analyze in depth on the following chapters. It can be said that the case was a landmark not only for football, but also for the European Community.

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The creation of the European Community in 1992 gave the EU citizens new set of rights and regulations. The principal aim was to realise the objectives set up by the European Union. The integration between its members, which involves the abolition of obstacles to the free movements of goods, persons, service and capital among member states, was the principal objective. Although the importance of a single market, the European Community Law (EC Law) did not specify any Article directly related to sport issues. Despite the lack of an Article in the European Community Treaty (EC Treaty), European institutions have been able to set up sports policies over the years. According to the EC Treaty, all matters in sports including financial activities were associated with the interpretation of Article 2 EC Treaty.

The general sense of the *Bosman* decision suggests an increasing juridification of professional football, which has been, and is, generated by an increasing commodification of the sport.\(^\text{14}\) The theory highlighted by the EC Treaty was enforced by the European Court of Justice (ECJ) ruling on the Bosman case. The impact of the Bosman decision was significant to the football world, and even more so for the free movement of players. With the Bosman decision quota systems were considered illegal, and European clubs were able to play as many foreigners from other Member States as they wanted. After a long period of being treated as commodities and having their rights violated, the players were able to freely move across Europe.

### 1.3 FIFA Regulations on the Status and Transfer of Players

After *Bosman*, the European Commission took the clear view that the transfer system needed to be restructured in order to come in line with EC law. On 15 December 1998, the European Commission launched general formal investigation into the operation of the international transfer system. As a result, football governing bodies were required to amend the existent transfer system.

Only in 2001, after a long period of negotiation, it was established an agreement between European Commission, FIFA and the Union des Associations Europeennes de

Football (UEFA). The agreement represented a compromise between the interests of all parties, which had to be implemented in the FIFA Congress, in July 2001. The two major changes were (i) in the case of a transfer of a player under the age of 23, compensation for training would be provided, even if the player was at the end of his contract with that club, and (ii) in case of the unilateral breach by the player, the player would not be able to play for another club during that season or for the first four months of the next season.

Finally, in September 2001, the new Regulations on the Status and Transfer of Players (FIFA Regulation) came into effect. The final draft of the 2001 FIFA Regulation was a balance of principles, which on one side sought to protect the principles of freedom of contract, freedom of movement of players, and free competition, and, on the other side, to protect clubs with a bonus by investing in training and development of young athletes. It can be observed, that the new set of rules had a special attention to the protection of minors.

In 2005 FIFA amended for the first time the Regulations on the Status and Transfer of Players. However, comparing to 2001 rules there were no major changes. Basically it was established new provisions to simplify the calculation of transfer fees due for training and development of a player. Also, it was introduced a mechanism of solidarity payment of 5% in all the cases where a non-training compensation fee is paid for the player at any time in his career.

After only three years, in 2008, FIFA’s new amendments were introduced. It can be said that the modifications on the Regulations were created to establish more control and transparency on the football world. Especially regarding the minors where FIFA had always demonstrated a significant concern. This concern about the protection and development of underage players lead FIFA, in 2009, to include a specific Article on its Regulations, the new Article 19-bis, which will be discussed in this paper.

1.4 Children in Sports

Sport is often considered as a key tool for social development by parent and coaches across the globe for child development. But this blissful experience is often denied to children involved in competitive. Youth sport is often blemished with parent trying to live vicariously through these youth performers. As a result they grow up in a world ruled by adults with little room for freedom, self-initiative and alienated from their normal behaviour.

Before the child reaches six or seven years, he can not understand the concept of competition, and children less than nine years are unable to differentiate between the concept of effort and ability, which implies they believe winning can only be achieved by effort and inability to succeed is due to lack of effort.\(^{18}\) Many experts believe that until the age of 11 or 12 years children give the same weightage (if not more) to winning than to other factors such as pleasure, social interaction, improvement of their skills and personal involvement.\(^{19}\) The child is potentially at risk when adults impose, rather than adapt their own values, perceptions and physical and mental demands.

On average 70 per cent of children in competitive sport obtain great benefits and are empowered by their activity, 20 per cent are potentially at risk of being abused while the remaining 10 per cent are victims of some form of violation of their human rights.\(^{20}\) Experts feel that there is insufficient information available and more in depth research is required to understand the kind of abuse that these children suffer. Nevertheless, the current inability to provide protection to youth athletes through Sport and State Saw together when combined with the increase of international transfer of football players in the last decade\(^{21}\) places the safety of children involved in football transfer in stake.


1.4.1 Children Rights in Sports

The Convention on the Rights of the Child (CRC)\textsuperscript{22} adopted by the General Assembly of the United Nations (UN) in 1989 was the first instance when the human rights of a child were recognized by international authorities. This has been ratified by 192 states, making it the most ratified treaty of the world.\textsuperscript{23}

As mentioned above, the question of general rights of children in sport have been raised regularly in the world.\textsuperscript{24} Regional organizations have been active in this regard nevertheless there is no binding international regulations across board.

In football, FIFA Regulations on the status and transfer of players has been the guiding principle but there have been instances of measures adopted by other stakeholders.\textsuperscript{25}

The CRC defines a child as any human being under the age of 18, unless national law establishes a lower age.\textsuperscript{26} The football regulations do not establish any express definition of young athlete; but in the Regulations on the Status and Transfer of Players there is a mention of two significant ages in the life of a youngster. A player can only be issued an international transfer certificate by the club after he turn twelve,\textsuperscript{27} the same is the case in the provision for players’ passports by the registering Football Associations (FAs);\textsuperscript{28} This too is considered as the starting point for the calculation of training compensation and solidarity mechanism.\textsuperscript{29} The second relevant age limit considered is the age of 18, imposed as the minimum limit to allow the international transfer of minors.\textsuperscript{30}

The importance of these two considerations relies in the fact that FIFA is indirectly recognizing the last formal stage of cognitive development of the children (from 12 to
16) as established by Piaget.\textsuperscript{31} According to which an adolescent will reach full development and be able to function and think on the basis of abstract parameters. So FIFA regulations are complying with the CRC parameters by indirectly recognizing the age of 18 as the transition into adulthood by the player.

There is no an direct reference to the rights of children in the international football transfer regulations or in other sport regulations but the movement of minors abroad puts the Convention on the Rights of Child at risk.

\subsection*{1.4.1.1 Freedom of Association and Freedom of Movement}

In the football context the freedom of association implies the right of the child to decide, if they want to change the team or whether they want to join any labour union.\textsuperscript{32} This right is recognized by the Article 15 of the CRC. When a young athlete is forced to move abroad following an economical or any other reason by the family, agents or by any other third party, the superior interest of the child welfare is not been taken into consideration.

In the instance of a young player intent on moving to another club his employer is entitled to compensation fee in lieu for developing the athlete’s potential. This can have dire consequences if the transfer fee requested by the current employer is exorbitant and thereby denying the minor a chance to exorcise his will. According to some experts this represents a serious threat to the freedom of association of minors and they have a right to belong to a labour union. Article 15 of the CRC does not make a reference to this and can be considered from the analysis of the International Labour Organization Convention No. 138,\textsuperscript{33} which establishes the minimum age of employment at 15 years.

\subsection*{1.4.1.2 Right to Education}

A child athlete often ends up devoting most of his time, energy and concentration around the game of football and a direct result is to follow an education program.


According to the CRC it is the right of every child to have access to education and an obligation of the state.\(^{34}\)

One of the biggest threats at present is that the lure of a successful career and financial reward makes it difficult to encourage a child to put in as much effort into studies. When a minor is involved in an international transfer, measures should be taken by parents, new coaches and clubs to ensure a smooth transition of the player to his new environment and this includes access to good education.

### 1.4.1.3 Physical and Psychological Integrity

The participation in competitive sport by itself represents a considerable physical and psychological risk to the child’s health.\(^{35}\) Article 24 of the CRC establishes the State obligation to guarantee the “enjoyment of the highest attainable standard of health”. In most cases of illegal transfers the similarities with human trafficking is unfortunately very close and the child is exposed to a wide range of physical maltreatments and psychological abuses.

### 1.4.1.4 Age Limits and Adapted Sport

It was previously mentioned the importance of recognizing the young athletes physical development and to understand how the minor envisages football during his growth. This line of thought supports the idea that for a physical activity to be beneficial to the children it must be adapted to their age, fully comprehending the nature of minors’ participation in sports.

In the case of football this is not only referred to the modification of the rules of the game to suit their need but extended to the transfer of children under the age of 16.

### 1.4.2 Responsibility of Adults in Children’s Sports

The parents are primarily responsible for the overall development and are recognized to be the first initiators and sport teachers of the child.\(^{36}\) The influence role of the parents

\(^{34}\) Article 28, Convention on the Rights of the Child.


in the development of the child is not only limited to the growth and motor learning process but is extended to the future application of these skills up brought in the young footballer.

The CRC recognizes the primary responsibilities, rights and duties of parents in the development of the child.\(^{37}\) In the field of international transfers the misinterpretation of this notion will lead to abusive relationships, forced separation of family, deprivation of liberty and non consideration of their will.

It is the responsibility of the parent to enforce the best interests of the child player but the responsibility isn’t just restricted to them. When considered in the sport context this indirect obligation recognized by the CRC can be extended to “any other person who has the care of the child”.\(^{38}\) A young athlete spend more time training than with their parents this responsibility also binds coaches, agents, clubs and even federations. This is still a sensitive point amongst many societies and the football world, since there is reluctance to assume any possible responsibility regarding the protection of rights of the child while he is in a domestic environment.

Since the state can be ultimately held accountable for ensuring the defence of the children rights in sport, in the context of the international transfer of players the main football organizations have an obligation to protect the rights of young athletes. The illegal acts committed by some agents, academies or clubs and the omission to act or the failure to prevent from some national FAs in the international transfer of minors make it all the more imperative for FIFA to assume a more active role in the protection of children human rights in sports.

### 1.5 Social Impact of International Transfers on Minors

According to Galeano “(...) the itinerary of a player from the southern reaches of the globe who has good legs and good luck. From his home town he moves to a provincial city, then from the provincial city to a small club in the country’s capital. The small club has no choice but to sell him to a large one; the large club suffocated by debt, sells him to an even larger club in a bigger country. And the player crowns his career in

\(^{37}\) Articles 5 and 18, Convention on the Rights of the Child.

\(^{38}\) Article 19.1, Convention on the Rights of the Child.
Europe”. If only this was completely truth, and good legs and good luck were all needed, the plight of the minors cannot be understood from some isolated cases. The case of a child spotted by an international scout in a troubled neighbourhood from any part of the globe, lured by an opportunity to play quality football abroad to become the best player in the world is not the rule. Not every young player has an opportunity to become the next Lionel Messi. The international transfer of players is not always a success story, and in many cases it falls into the realm of human trafficking.

It is important to point that the transfer of young players is not always a result of an illegal human trade. However, the vulnerability present in young footballers is constantly exposed to excessive pressure to sign the contracts, false promises and might be based on abusive behaviour from clubs, agents or even parents.

1.5.1 Child Vulnerability

The common features present in all forms of trafficking the persons trapped in this situation are always considered or treated as commodities, with minimum or no rights taken into consideration. This phenomenon does not exclude the football world in which human trafficking is observed in the form of young athletes being transported across international boundaries through illegal transfers between clubs.

The transfer market is no longer based on the need of the child but on the competition by clubs. Rules of supply and demand under which the transfer system operates, undermine the rights of the minors and open the window to unscrupulous traffickers to profit from the socio-economical and psychological vulnerability of young athletes and their families.

For many children football represents the best opportunity to see their dreams fulfilled, but for those unfortunate without the emotional or economical support of their families, the possibility of trying and failing to become a football player will permanently affect

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their lives. This is more common in minors mainly from Africa, Eastern Europe and South America that are selected to play in Western European countries.\(^{42}\)

In many cases traffickers convince the families to pay money in order to have a chance to eventually sign a football contract in Europe, and once they receive the money it is impossible to contact them.. As an example of this situation, Poli notices an statement of the International Organization for Migration (OIM) and the United Children’s Fund the 27\(^{th}\) march of 2007 the case of thirty-four young footballers from Cote d'Ivoire, in which:

\[
(\ldots) \text{the boys' parents were tricked into paying as much as $600 dollars for each boy to a rogue agent who promised to place the youngsters in European football clubs (\ldots). Instead of being sent to Europe, the boys between the ages of sixteen and eighteen, were kept for the past three months against their will in a villa in the town of sikasso in southern Mali}.^\text{43}\]

These instances will continue as the minors find themselves in a situation of economic dependence with the person who facilitated their movement, making the transfer conditions financially and administrative uncertain.

The economical aspect involved in transfers is not the only one that must be considered when analysing the trafficking of human beings in football, it is just as important to analyse the concept of vulnerability and consent of the minors.\(^{44}\) In the illegal transfer of players one sensitive point to clarify is how players can be considered as victims of trafficking when they agree on the terms of their transportation, however it must be recognized that the “the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person”\(^{45}\) makes the consent of the person trafficked irrelevant since the local underdevelopment of their sporting conditions compared with the type of business offered by European clubs renders them vulnerable.

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1.5.2 Human Trafficking in Football

No definition of trafficking or smuggling of children in the sport context can be found in International agreements; nevertheless definitions from other social contexts and from diverse international bodies can be used to identify this subject. The United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air defines the concept of smuggling in such a way: “Smuggling of migrants shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.\(^{46}\) The Report of the Council of Europe Convention on Action Against Trafficking in Human Beings is clear when referring to it, stating: “Trafficking in human beings, with the entrapment of its victims, is the modern form of the old worldwide slave trade. It treats human beings as a commodity to be bought and sold”.\(^{47}\)

The sale of child players in competitive football is a unique phenomenon when assessing the different cases of human trafficking across the world. It is linked to an international pattern of migration from southern countries to the north.\(^{48}\) The most common procedure observed occurs when “players’ agents, who do not necessarily have the permit to carry out this profession, mostly organize this commerce. These middlemen, mainly based in Europe, act in collusion with collaborators present in the countries exporting players (other middlemen, businessmen, coaches, club managers, heads of national federations, etc”).\(^{49}\)

Amongst the first international reports referring to this situation was written by Ofelia Calcetas-Santos, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography in 1999, reporting the commerce of young footballers in Belgium.

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These children were illicitly taken from African countries with the idea of becoming football players. In the report it is stated how non official agents select children to be taken to Belgium, offered them to clubs and if no place is found then they abandon them. Since this report many investigations have been conducted with reports emerging of similar situations of abuse. Due to the commercial nature of the transfer of minors issues related to human rights are frequently cast aside. It has been observed that the benefits of having cheap labour or the possibility to sell those young players at higher price in the future induces the clubs to recruit players at younger ages from developing countries.

The significance of the issue can be measured by the inclusion of a Chapter referring the protection of minors by the European Commission in the “White Paper on Sport”. The paper states that “the exploitation of young players is continuing”. The most serious problem concerns children who are not selected for competitions and abandoned in a foreign country, often falling in this way in an irregular position which fosters their further exploitation. Although in most cases this phenomenon does not fall into the legal definition of trafficking in human beings, it is unacceptable given the fundamental values recognized by the EU and its Member States. It is also contrary to the values of sport. Protective measures for unaccompanied minors in Member state immigration laws need to be applied rigorously.

Football is seen a pathway to social ascension in Africa and Latin America and this has meant the increase in the number of agents who want to cash in on the complex transnational transfer networks. Furthermore, the lack of clarity by international and national federations under which the transfer occurs not only worsens the situations but makes it difficult to assess the extent of the problems and the numbers of minors affected by this.

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1.5.3 Difficulties to Adapt to a New Environment

Ignoring the unimaginable risks the young players face by leaving their homes and the risk of falling prey to human trafficking there is always the latent risk of failing to adapt to the new environment in which they will find themselves. The difficulties faced by many young players vary according to the place of their arrival, their personal behaviour, the clubs or the manner in which football is practiced. For the minor the professional football places high demands physically, tactically, and technically, the player must adapt to a new way of playing the game. Tshimanga states the different obstacles for the adaptation of young players from the south into the European environment through the cases of major young footballers that went to Europe at a very young age.53

A lot of factors contribute to the successful integration of young players, these include the policies of the clubs and FAs regarding the treatment of foreign players and the demands from the professional environment. The interpersonal relationship between the minors competing each other needs to be handled carefully.

Some of the other challenges include socio-cultural challenges, difference of language, the mentality and customs of the place arriving, and presence of xenophobic and racist elements. This can be detrimental to the development of a young football player.

Psychologically this adds to the stress while the minor is dealing with the pressure to succeed and the pain of being separated from family and friends. For a child the pressure to succeed and the fear of failure is paramount as the families from developing countries consider them as an investment. The Non-Governmental Organization (NGO) Save the Children reports the case of Stephane, in which the child recognizes the major efforts assumed by the family in order to send him to the trials and after failing the test in Europe, he points out the impossibility of simply returning to his country because of the shame and high expectations that were invested in him.54

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But there have been rare cases of success and Paulo David cites the two diverse accounts of French World Cup winners Didier Deschamps and Zinedine Zidane. In the first case, it was stated by the player regarding leaving home at the age of 14 that “living far from home made him stronger and tougher”, but in the opposing case Zidane states that leaving his family at 14 to join AS Cannes was very traumatic: “I cannot count the number of nights I spent crying, I missed my family. Football took away my youth”.55 These two cases take presence in a milieu in which the player spoke the language and was relatively in line with the cultural characteristics of the environment; in the cases of players coming from other regions of the world the reality can be even harder.

The off chance of being the next Lionel Messi is a journey that many young players (and their families) are ready to make without understanding the enormous price they might have to pay to realise this dream. The sad reality is of the increasing number of young athletes lured to move abroad (legally or illegally) just to fulfil the ambitious interest of clubs, agents and family. A direct result is a child’s dream turned into a nightmare.

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2. YOUTH SECTOR AS A FOOTBALL CLUB STRATEGY

2.1 Introduction

Since 2001, when FIFA established the first set of Regulations regarding players’ transfers, the commodification of football players has increased significantly. Together with broadcast revenue, sponsorship contracts and stadia, the transfer of players represents the most important income for football clubs. However, the increase of players’ wages and transfer fees in the last years, has led football clubs to find different strategies to maintain their economic and sportive success. As a consequence, football clubs found out that the investment in the youth sector could represent a good strategy for them to be competitive against other clubs and increase their profitability.

Several factors could be pointed out as reasons why clubs changed their strategies in respect to the youth sector in the last years. The cause may be determined by the historic tradition of a specific club or country, or could be imposed for external reasons, for example, when Sporting Governing Bodies, such as FIFA or UEFA, enforce requirements or regulations.

Currently, football clubs have different strategies for the youth sector, but what can be said is that more than a strategy, it is a significant source that generates and maintains sportive and economic competitiveness.

2.2 Investment on the youth development programme

Historically, the investment on the youth sector to develop and give proper training to young players used to be a strategy applied by only a few clubs in not many countries. For the majority of the clubs, the first team represented the main priority. The youth sector was just a small part of the football industry. However, during the 90s, this tendency changed. Football started to represent big business generating new sources of income, more stakeholders’ activity, also, new regulations were implemented.

Especially after the Bosman ruling in 1995, which made a decisive contribution to the

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57 Leicester University, Fact Sheet 16: The Bosman Ruling, Football Transfers and Foreign Footballers (Leicester: 2002). www.le.ac.uk/so/css/ (accessed 10 June 2010).
explosion of transfers in the football industry and the increase in the exploitation of the football as a business, it was possible to observe a new phenomenon: if on the one hand, football clubs revenues with broadcast and sponsorship contracts had significantly increased, on the other hand, the value of transfer fees and players’ wages proportionally increased. Football clubs observed that in order to maintain both economic and sporting success, new strategies should be taken. With this in mind, some clubs observed that the investment on youth players could be a lucrative solution for them. As a consequence, clubs started to give much more importance to the youth sector, which for years was left aside.

Nevertheless, it could be observed that clubs adopted two different approaches. One group decided that the easiest way to obtain new talent was just buying new talents from other clubs, especially clubs with fewer economic resources. Several clubs in Europe started to recruit talented young players especially from South America and Africa, as the cost of this operation was cheaper and more likely to discover a new talent than train a local player. Other clubs, however, made a decision to implement a better youth programme attempting to develop talented players that could join the first team.

So, it was possible to observe that the investment on young players has become a common practice. Basically, the teams bring or train these players to generate a potential income through the transfer fee advent of the young talent due to the new football tendency, where wages and transfer fees were highly inflated.

According to the Deloitte Annual Review of Football Finance, the amount spent on wages payment by football clubs in the English Premier League reached more than GBP 1.3 billion in 2010.58 In this way, the decision for football clubs to invest on the youth sector could represent a strategy to have financial advantages. Firstly, and more important, when training and developing a young player, the club is not required to pay a transfer fee to have the player in the team. Secondly, in the event of selling the player, there will be no depreciation on the transfer value for the youth player, since no transfer was paid before as he was developed by the original team. Thirdly, it can decrease expenses with salaries as young players’ wages are likely to be less expensive for the

clubs than an experienced football player. ⁵⁹

If, on the one hand the investment on the youth sector could generate economic profits for football clubs, reducing the amount spent on transfer fees and wages, on the other hand there is still an uncertainty regarding the sporting success of the club. It is not possible to predict whether the young player will succeed or not in the first team. When hiring an experienced player, as the club already knows what to expect from the player, may be considered a safer investment.

As explained before, there are different reasons that led the clubs to invest in youth development programmes, but it is undeniable that the main motivation is the strategy to maintain financial profitably and sporting competitiveness. It is notorious that clubs with better financial structure have more chances to provide better training conditions for the development of young players. With more money, consequently, those top teams can attract the best new talent to their programmes. For the other clubs, however, the chance to implement a youth development programme is only possible through subsidies given to them to invest money on the youth sector.

In England, for instance, clubs in divisions 2, 3 and 4 are entitled to obtain more than GBP 40 million to invest in youth sector,⁶⁰ provided by the English Football League Trust. The financial support it is extremely important, especially for medium and small clubs, to maintain their investment in youth sector. Without this financial support, those clubs would have to stop their programmes and the training of thousand of young players would be jeopardized.

It is possible to observe that the strategies of investment in training and development of youth players may differ from one country to another. In Europe, for instance, the amount spent on youth development programmes by football clubs shows a large discrepancy between the leagues. A study made in conjunction by Taj Societe

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D’Avocats and Ineum Consulting in 2008/2009\textsuperscript{61} shows that the annual budget for a youth programme in the top European leagues is approximately EUR 2.5 to EUR 3.5 million per year, whilst medium leagues spent an average of EUR 1 million. At the same time, the small leagues spent only half amount of the latter, that is, less than EUR 500,000. According to graph 2.2.1 it is possible to notice that the investment of clubs in second division of top leagues is still higher than clubs in the first division in the medium and small leagues.

Graph 2.2.1 - Average football youth programme budget of European Union professional clubs in first and second divisions (in million of Euros).

The discrepancy of investment between clubs of the so-called ‘big five’ European leagues\textsuperscript{62} and the others, can be understood by the amount of money generated by those leagues. According to the Deloitte Annual Review of Football Finance in 2010, the ‘big five’ generated more than EUR 7.9 billion in revenues. This amount represents more than the half generated in the total European football market.\textsuperscript{63} The consequence of this difference is that football clubs in the top European leagues are able to invest more money in the youth sector.

In an attempt to diminish the gap of investment in youth sector across Europe and at the same time create incentive to more clubs to implement youth development programmes,

\textsuperscript{62} England, Germany, Spain, Italy and France
UEFA has established a solidarity mechanism\(^{64}\) providing financial help for clubs from leagues which do not participate in the UEFA group stage competitions (UEFA Champions League and UEFA Europa League). 6.5% of the total UEFA Champions League income is distributed between those clubs in order to support, among other matters, youth development programmes. During the season 2009/10, approximately EUR 55 million were available for re-distribution to these clubs by way of the national associations and professional leagues.\(^{65}\) Several clubs across Europe benefited from such a mechanism, but its impact on youth development is more evident in medium and small leagues. Graph 2.2.2 shows that the youth development programme budget for those clubs is, in some cases, basically funded by the solidarity mechanism, as in Armenian and Georgian clubs.

Graph 2.2.2 - Percentage of clubs’ youth budget funded by UEFA Solidarity Mechanism.\(^{66}\)

As explained above, the amount invested on youth training programmes varies from league to league. It is also important to analyze the discrepancy of money spent on the youth sector in the same league. France, for example, that traditionally invests a large percentage of turnover in youngsters, has a large gap between the clubs’ investments. As can be observed in Graph 2.2.3, the budget of all clubs in the French Ligue 1 on the youth sector is more than double of the money invested by clubs in French Ligue 2.

\[^{64}\text{According with UEFA website (www.uefa.com), leagues without participants in last UEFA Champions League season’s will receive a solidarity contribution. The payment is being made by UEFA as part of the solidarity scheme associated with the UEFA Champions League. It is aimed at supporting youth development activities in professional football, and complements other UEFA initiatives such as club licensing and the introduction of rules on locally-trained players.}\]


Even in the French League, which according the Deloitte Annual Review of Football Finance appears only as the 5th force in Europe, clubs’ investment on the youth sector is still higher compared to the other “big five”. Analyzing the English League, notably the richest league in the world, that generates more than GBP 1.9 million in revenue, it can be observed that the investment on youth development programmes has been increasing in the past years, however, considering their profits, the English clubs’ investment on youth development programme is still lower compared to some French clubs.

Although regular investment is not a guarantee of sporting success for football clubs - as it is not a reliable way to produce youth players that will succeed in the first team or

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generate future income through transfer fees - the strategy taken by clubs in the last years has shown that the investment on the youth sector is usually an effective way to achieve future income and sporting improvement.

### 2.3 Academies

As explained above,\(^7^1\) the impact of the *Bosman* ruling was very important to the football industry. An important result that could be observed was the rapid increase of the number of players going to play in the European top leagues. Furthermore, it was possible to observe the increase of South Americans, Africans and Eastern Europeans players moving to play in the top leagues. For the clubs in top leagues, the recruitment of players outside Western Europe was a good strategy to attract talented players at a lower cost.

As a consequence of the success of players coming from outside their country for a small investment, some clubs implemented a different strategy; they started to develop academies outside their borders in the search for future talent.

Firstly, European clubs implemented a partnership project in conjunction with African local teams to form joint-academies. The European clubs started to invest money in African clubs in order to have preference on choosing players for their own teams. The first Afro-European academy to have a significant international relevance was the Feyenoord Football Academy, settled in Ghana, in 1999. The Feyenoord Academy was inspired by another very popular African academy, the ASEC Mimosas, which had a good reputation for developing young players.\(^7^2\)

The operational system was based on an academy for players between 13 to 17 years old offering football training and education. Nevertheless, the primarily objective of running this academy in Africa was to develop talented players for the European partner. Moreover, in addition to the importance of developing young players and transferring them to Europe, the Feyenoord Academy in Africa also had a significant social responsibility for the young players and the local community, and this was

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\(^7^1\) Chapter 1, Topic 1.2.3, page 5.

\(^7^2\) E.g: Kolo Toure, Gervinho, Sekou Cisse, Emmanuel Kone, Salomon Kalou, Romaric, Emmanuel Eboue, among others.
highlighted by cooperating in some projects with UNICEF. Nevertheless, currently only one player - Mohammed Abubakari – has been selected from the academy to play in Feyenoord Rotterdam first team, evidencing the low return on the investment spent.

Secondly, football clubs had implemented a different strategy in order to attract young players to their squad. They implemented academies in foreign countries without partners. One example is FC Red Bull, which recently opened an academy in Sogakope, Ghana. Red Bull has four other teams (Leipzig, Salzburg, Sao Paulo and New York). However, this is the first one only linked with youth sector. Red Bull’s idea is to export the best players developed in Ghana’s academy to the other teams. Other clubs such as AC Milan and Barcelona FC have also demonstrated their intention to open academies in South America.

Finally, it is possible to observe that, for some football clubs, the foreign academies represented a good method to attract talented players at a low investment. Recently, however, the importance of having a strong academy in their own country has been shown as an important strategy to fulfil the requirements imposed by sports governing bodies.

2.4 Licensing System

Even though the implementation of youth development programmes by clubs represents a strategy to maintain their sporting and financial balance, there is another important reason that leads football clubs to implement that programme: the external pressure provided by confederations and NFs through their regulations. The most influential for football clubs regarding their youth sector is the so-called Club Licensing System. The logic behind the introduction of the Club Licensing System was to improve corporate

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73 According to unicef.org/sports, Feyenoord together with the Netherlands Committee for UNICEF have through various activities in 2003-2004 raised over 250,000 Euros to be used for two projects in Ghana, one disseminating HIV/AIDS information among the young people participating in Feyenoord Football Academy and the other funding the repair of sixty old water pumps in northern Ghana.
75 Currently both clubs have holiday camps in several countries across the world, but not an academy.
76 Due to the Licensing System that will be explained in the section 2.4.
governance, minimum standards in football, financial transparency and stability.\textsuperscript{77}

The first model of the Club Licensing System was introduced by UEFA in the season 2004/2005, obliging all clubs participating in UEFA’s competition to have a club license. This system essentially covers internal organization, infrastructure, sporting requirements, internal organization and economic-financial management. It can be said that the UEFA Club Licensing System represented the first step towards the introduction of a certification system for the quality of management of professional clubs.\textsuperscript{78}

In order to obtain the License, the clubs are required to follow rules and fulfil requirements such as medical support for youth players and have qualified staff. According to UEFA’s Club License System 2008, football clubs are obliged to have a written youth development programme approved by the licensor.\textsuperscript{79} As a result, it is possible to observe that the youth sector can be considered one of the key areas to football clubs to obtain the License.

Although the Club Licensing System started as a requirement for clubs to participate in UEFA competitions, after a short period, the licensing became mandatory for clubs to participate not only in continental competitions, but also in domestic competitions. According to the UEFA 2009 Benchmarking Report, 24 National Federations adopted UEFA Licensing System and a domestic system at the same time.\textsuperscript{80} Across European leagues, 101 top division clubs, 307 second divisions clubs, 186 third division, and 70 fourth division applied for domestic licenses based on the UEFA Licensing Club System.\textsuperscript{81}

In addition, it is important to observe that the impact of the Licensing System model has changed football clubs’ approach in respect to protection, training and development of young players. The sporting criteria are very important to improve the quality of youth

\textsuperscript{77} Francesca Sanzone, ‘UEFA Club Licensing System’ (Lecture, Coverciano, Italy, 18 February 2010)
\textsuperscript{79} Article 17, UEFA Club Licenseing and Financial Fair Play Regulations, (2010).
\textsuperscript{81} Francesca Sanzone, ‘UEFA Club Licensing System’ (Lecture, Coverciano, Italy, 18 February 2010).
development programmes adopted by the clubs. In some cases, the requirements established by national federations are stricter than the one imposed by UEFA. As a consequence, after only four seasons of implementation of the first UEFA Club Licensing System, it was possible to observe the increase in the number of youth teams managed by the clubs.

Currently, the amount spent by licensed clubs to support their youth development programmes has been increasing yearly. In the German Bundesliga, for instance, the amount invested boosted from EUR 61,629 in 2006/2007 to EUR 69,232 in 2008/2009, increasing almost 12,3% in one season - as can be observed in the Graph 2.3.5.

Graph 2.3.5 – Cost in Youth Academies of Licensed Clubs in Germany (in € ’000).

As can be analyzed, the impact of the requirements of the Licensing System has created new implications for football clubs. Football stakeholders are convinced that investment on the youth sector is essential to maintain financial transparency, stability and corporate governance. It is also relevant to mention that football clubs need to comply with this idea in order to fit into the pattern established by UEFA.

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82 e.g: In Italy, to obtain a license, all clubs are obliged to participate in official competitions of youth teams recognized by the FIGC, having at least one team per age group: 16-19 years old; 14-16 years old; 12-14 years old; 10-14 years old 8-10 years old UEFA only requires one team for the 10-14 range.

2.5 The Globalization of the Youth Sector

After the adoption of the Club Licensing System, UEFA introduced another important rule which changed youth development programmes, that is the so called “homegrown” rule.\(^{84}\) This rule establishes a minimum quota of locally trained players in a squad. Currently, for a club to be allowed to participate in a UEFA competition, it is mandatory to have a maximum of 25 players but 8 must be locally trained. According to UEFA, the concept of “locally trained” is a player who has been trained by his club or by another club in the same national association for at least three years between the age of 15 and 21.\(^{85}\) The intention of UEFA on implementing the homegrown rule, is to guarantee secure promotion of young player training and local identity of players with clubs.

According to FIFA Players’ Transfer Regulation, Article 19, all transfers involving minors are totally prohibited, unless one of the three exceptions mentioned in the Article is applicable.\(^{86}\) Article 19.2.b allows European players, aged between 16 and 18 years old, to move within Europe. As a result of this exception, and the introduction of the “homegrown” rule, there was an increase of transfers involving European minors inside Europe. Especially the richest clubs started to use this prerogative to attract the best players and guarantee their training to be in conformity with UEFA “homegrown” rule. As a final point, it is important to notice that national associations have adopted the homegrown player rule as a criterion for providing a license to clubs to participate in domestic leagues, as in the cases of Germany, Italy and Switzerland, for example.

With the adoption of regulations about a minimum number of players, which has to come from the youth sector, football clubs in Europe has started to attract young talented players in earlier ages. However, instead of choosing ‘local’ players to join the clubs, the internationalization phenomenon of the football academies is taking place.

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\(^{84}\) UEFA introduced the rule in three phases:
Season 2006/07: minimum of four homegrown players in 25-man squad
Season 2007/08: minimum of six homegrown players in 25-man squad
Season 2008/09: minimum of eight homegrown players in 25-man squad

\(^{85}\) Union of European Football Associations, Protecting Young Players,

\(^{86}\) Chapter 3, topic 3.1.1 page 31.
Currently, the number of non-nationals players in the youth sector of top teams is noticeably high. In order to highlight this fact, in England, clubs such as Manchester United F.C. \(^{87}\) and Chelsea F.C. \(^{88}\) have 6 and 9 non-national players out of 20 in their academies, respectively.


3. INTERNATIONAL LEGAL FRAMEWORK

3.1 Articles 19 & 19-bis of the FIFA Regulations on the Status and Transfer of Players

The rules concerning the protection of minors in the transfer system are regulated in the FIFA Regulations on the Status and Transfer of Players established from the agreement between FIFA and the EU Commission on March 2001.  

Before that, the issue of the international trafficking of young players was already known to sport authorities, but did not receive appropriate international regulations although domestic sport rules already provided restrictions in several countries. The argument was generally considered by European and National authorities as part of the wider problem of the child labour legislation.

Indeed, in early 2001, FIFA, together with UEFA, FIFPro and European Leagues, entered into negotiations with the EU Commission on the Transfer System. On the one hand, the contractual stability issue required extensive negotiations before reaching an acceptable compromise, while, on the other hand, the protection of minors was a principle immediately accepted by all parties involved in the negotiations, notwithstanding the relevant differences concerning the EU citizens.

The purpose of Article 19 is to provide a stable environment for the training and education of young players, and to safeguard the human (as opposed to economic or football-related) interests of minors. Article 12 of the previous FIFA Regulations basically anticipated the rules now expressed by Article 19 of the 2005 Regulations.

3.1.1 Article 19 FIFA Regulations

Article 19 of the FIFA Regulations was introduced in order to stop the trafficking of young football players and, in fact, the general rule creates a ban on all the transfers of minors. However, and in order to comply with EU regulations and also to give the possibility for transfers for reasons not directly related to football, some exceptions to the general rule were recognized. Before discussing the new Article 19-bis, it is worth

taking into consideration one by one the three different exceptions to the general rule.

3.1.1.1 Exception Article 19 a) “the parent exception”

The first one, the so-called “parent exception”, is certainly the most utilized but also the most misused one. The rule, which allows an international transfer of an under 18 years old football player when his parents move to the country where the new club is located for reasons not linked to football, is quite clear and it has the goal of avoiding trafficking of young players by mean of simulation of family reasons. Indeed, in many circumstances the player’s family does not move to a foreign country as “real” immigrants for labour reasons, but just to legitimise an already agreed transfer to the local club of their young son as a player, usually with the cooperation of an international agent.

Even if Article 19 requires an accurate examination on a case by case analysis in order to determine if a violation has occurred in the case of international transfer of a minor many difficulties are evident. For instance, difficulty in discovering and proving a relationship between the employer and the club would lead to the impossibility of declaring the transfer illegal.

The leading case in this matter is the Acuña case, a case about the dispute raised by the transfer of a young Paraguayan player, Carlos Javier Acuña Caballero, from the Paraguayan club Olimpia of Asunciòn to the Spanish club of Cadiz C.F. In this case, a mother moved from Paraguay to Spain, Cadiz, and the son moved with his mother and registered with Cadiz C.F. However, the deep investigations, first by FIFA Players’ Status Committee, and later by the Court of Arbitration for Sport (CAS), were vital in order to establish that the transfer of the young player from the Paraguayan Federation to the Spanish Federation violated Article 19 of the FIFA Regulations.

The first decision was taken by the Single Judge of the Players’ Status Committee, who decided that the player could not be registered with the Spanish club due to his minor age and to the fact that the mother was not moving to the country of the club for reasons

91 CAS 2005/A/956 Carlos Javier Acuña Caballero v/FIFA and Asociación Paraguaya de Fútbol, CAS 2007/A/1403 Real Club Racing de Santander, SAD v/Club Estudiantes de la Plata.
92 CAS 2005/A/956 Carlos Javier Acuña Caballero v/FIFA and Asociación Paraguaya de Fútbol.
not linked to football. The Spanish club appealed against this decision and claimed particularly that the applicable regulations of FIFA would be contrary to Spanish, Swiss and International employment and human rights legislations.

The Panel, on the other side, in the award, stated that:

“the contested FIFA rules limiting the international transfer of players who are less than 18 years old, do not violate any mandatory principle of public policy under Swiss law or any other national or international law insofar as: i) they pursue a legitimate objective, namely the protection of young players from international transfers which could disrupt their lives, particularly if, as often happens the football career eventually fails or, anyways, is not as successful as expected; ii) they are proportionate to the objective sought, as they provide for some reasonable exceptions.”

With this award, CAS recognized the validity of the restriction imposed by FIFA Regulations in order to pursue a legitimate task, as well as the proportionality of such measure, since it provides a reasonable mechanism to protect minors.

Moreover, this CAS jurisprudence was confirmed by a recent award, the Sarmiento Case, based on a case concerning the Spanish club Real Club Racing de Santander and the Argentinean team, Club Estudiantes de la Plata, with respect to the transfer of the young player Brian Oscar Sarmiento.

3.1.1.2 Exception Article 19 b) “the EU exception”

The second exception, the so called “EU exception”, allows the transfer of a player aged between 16 and 18 when the same takes place within the territory of the European Union (EU) or European Economic Area (EEA). The need for this provision came from the necessity to comply with the free movement of workers within Europe established by EU Law, as will be shown later.

In the case of this exception, however, the new club must fulfill some minimum obligations. All these obligations have as a goal to provide a good education and training to the player as well as to guarantee an alternative career should he cease

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93 In CAS 2005/A/956 Carlos Javier Acuña Caballero v/FIFA and Asociación Paraguaya de Fútbol; the Panel discussed the validity of the FIFA rules on the protection of minors (paragraph 7.2).
94 CAS 2007/A/1403 Real Club Racing de Santander, SAD v/Club Estudiantes de la Plata.
95 Chapter 3, Topic 3.4.1, page 49.
playing professional football. The issue of the “dual career” is very important for the EU commission and FIFA, as it is considered a tool that can help players, who move to other countries and fail to succeed as footballers, to find an alternative occupation. The club must also ensure the minor an optimum living standard.

The EU exception is much debated, first because it is considered that it favours clubs in those countries belonging to the Relevant European Territory but also because it demands to the clubs that register a player from 16 to 18 years old to provide a set of guarantees that are not asked to be provided in the other exceptions. Therefore, one can consider the rule as discriminatory since it does not give the same rights to the minor moving from one non-EU country to an EU country or between non-EU countries. Comparing the rights guaranteed to the minor by this exception with the previous one, it could be assumed from the analysis of the Regulations that FIFA considers that the educational responsibility lays amongst the parents and not within the club since the movement occurs with the parents.

According to the official commentary of the FIFA Regulations, Associations are entrusted to carry out on-the-spot investigations to ensure that any club that has registered a player under 18 years of age continues to comply with the obligations established by the Article 19. If a club has failed to meet these obligations, it is liable to be sanctioned.

Moreover, the FIFA Sub-committee responsible for all the decisions regarding the transfer of minors can ask specific documents to the applicant association (for example, the school timetable of the minor).

The delimitation of the European Union or European Economic Area creates some issues as well. This is because, on one side, a minor citizen of a country that is not part of the EU can be transferred only at the age of 18, but, if the country enters the European Union, then he can be transferred from the age of 16, and also because players from a country that has a bilateral agreement with the EU (for example Switzerland) on

96 European Union and European Economic Area.
97 Article 19, FIFA Regulations on the Status and transfer of Players, (2009).
the free movement of workers profit from the same conditions as EU players.99

3.1.1.3 Exception Article 19 c) “the border exception”

Finally regarding the third exception, that can be found under Article 19 paragraph 2 letter c), well known as the “border exception”, it is interesting to remark that this exception was established after a request of Belgium, Netherlands and Luxemburg. Due to the close borders between those countries, they asked for a special provision that allows the players living close to the border to decide in which club and country they want to play. In fact, sometimes, the club on the other side of the border is closer than the closest club in the player’s own country. The rule has to be applied only if the two associations concerned give their explicit consent and the distance has to be calculated on a straight line basis.

3.1.1.4 A “New Exception”: jurisprudence of Article 19 FIFA Regulations

There is also another special case which, even if not included in the wording of Article 19, is accepted as an exception and it is a result of the jurisprudence of the Article mentioned above, from the Players’ Status Committee. The exception refers to the case of a player registering for the first time who has lived continuously for at least five years in the country of intended registration prior to this request.

3.1.2 Article 19-bis FIFA Regulations

Article 19-bis regards the registration and the reporting of minors at academies. It involves both academies with legal, financial or de facto links to a club, as well as, private academies.

According the wording of this Article is duty of the NAs to guarantee that private academies either “(i) run a club that participates in the relevant national championships, [in this case] players shall be reported to the association (...) or, (ii)
report all minors who attend the academy for the purpose of training (…)"\textsuperscript{100}

The importance of this Article is that will provide better control of the minors even before their eventual transfer. This will help also to promote the training clubs through the training compensation and solidarity mechanism.

### 3.1.3 Applicability of Article 19 FIFA Regulations

It is crucial to clarify that Article 19 is applicable to both amateur and professional players; according to paragraph 3, the rule also applies to any player who has never previously been registered for the first time. As in the other regulations, Article 19 does not take into consideration minors under the age of 12 years old.

An important CAS Award needs to be mentioned at this point. The \textit{Midtjylland} Case\textsuperscript{101} dealt with the EU exception of Article 19. The case involving the Danish Football Association (DBU) and the Danish club of Midtjylland, refers to the registration in the club academy of three minor Nigerian students allegedly in possession of a valid student visa granted by the Danish authorities.

The Danish club, as well as the Danish Association, asserted that the players were registered as amateurs in accordance with DBU’s definition of amateur players; they also affirmed that a strict application of Article 19 of FIFA Regulations with respect to the three young players living in Denmark with a valid residence permit for students would constitute a violation of basic human rights. The argument raised by the Danish club before the CAS Panel was that the players should, according to Article 13 paragraph 3 of the Cotonou Agreement,\textsuperscript{102} benefit from the EU exception.

CAS followed the same rules applied by the FIFA Players’ Status Committee and sanctioned the club. First of all, the Nigerian minors (being students) were not employed in Denmark, so that Article 13 paragraph 3 of the Cotonou Agreement could

\textsuperscript{100} Article 19-bis, FIFA Regulations on the Status and Transfer of Players, (2009), Annex II of this Paper.

\textsuperscript{101} CAS 2008/A/1485 FC Midtjylland v/FIFA.

\textsuperscript{102} The Cotonou Agreement is a partnership agreement between the European Community and certain African, Caribbean and Pacific states; Article 13, par. 3 prevents the member states of the European Union from discriminating on the basis of nationality against workers of the relevant signatory countries who are legally employed in a member state “as regards working conditions, remuneration and dismissal” http://ec.europa.eu/development/geographical/cotonouintro_en.cfm (accessed 23 June 2010).
not be applied. Moreover, the FIFA Committee went through the details of the case and noted that the three Nigerian players were not registered with any third institution like a local university or a local school, but they only were making use of the club’s educational facilities. Furthermore, FIFA established that the fact that a young player entering a country for educational purposes does not affect the general interdiction contained in Article 19, which is applicable also in the circumstances alleged by the Danish FA. A national football association is not entitled to grant other exceptions than those explicitly provided for by Article 19. Consequently, we can say that until now the jurisprudence of the Players’ Status Committee and CAS has been strict and consistent with the letter of Article 19 of FIFA Regulations.

However, considering how wide and still alarming the trafficking of young players is (particularly in Europe), we should draw the conclusion that a bigger commitment of the EU Commission and of the national authorities is needed. UEFA is proposing, on the basis of a research which will underline the problems of the transfers within the EU and also will provide figures and statistics with the negative consequences of those transfers, the total banning of international transfer of players under 18 years old even within the EU. In order to see that happening, however, there must be a good legal basis that is able to limit the free movement of workers established by EU law.

3.1.4 The FIFA Sub-Committee

The last paragraph of Article 19 states that every international transfer of a minor and every first registration is subject to the approval of the sub-committee appointed by the Players’ Status Committee for that purpose.

Due to the difficulties of the Players’ Status Committee, mainly regarding the particularity of the cases and the time needed to take decisions, the above mentioned Committee appointed a sub-committee that has the duty to deal with all the cases where a minor is involved. The new sub-committee must give approval to any transfer of a minor before the associations can proceed to the request of the International Transfer Certificate (ITC).

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103 Union of European Football Associations, Media Release N. 024, 09/03/2009.
The Sub-committee has been effective from October 2009 and it is composed of the chairman and deputy chairman of the Players’ Status Committee and nine members. All the decisions can be passed with at least three members; however, in urgent cases the chairman or a member appointed by him may pass decisions as a single judge. Annex 2 of the FIFA Regulations explains the procedure governing the applications for first registration and international transfer of minors.

With the circular letter n.1209, the Players’ Status Committee established that, in order to ensure the proper functioning of the system to safeguard the principle of the protection of minors, an association, under special circumstances, may submit to the sub-committee a written request for a limited exemption from the obligation to refer applications for approval, in the sense of Article 19 paragraph 4 of the Regulations, for amateur minor players in case of first registration. In any case, such limited exemptions, if granted, are only applicable to amateur minor players intending to be registered with purely amateur clubs. In other words, any registration of a minor player for a professional club or any club or academy with legal, financial or de facto links to a professional club will still be subject to the approval of the sub-committee.

This led to the creation in some countries of national sub-committees with the specific role to ensure that the principles regarding the protection of minors as contained in Articles 19 and 19bis of the Regulations are respected, when the limited exemption is granted to the national association.

### 3.2 Transfer Matching System

The Transfer Matching System (TMS) was approved at the 57th FIFA Congress held in Zurich at the end of May 2007; TMS was created with the scope, on the one hand, to make sure that football’s authorities have more details available to them on each and every transfer, and, on the other hand, to increase the transparency of individual transactions, which will in turn improve the credibility and standing of the entire transfer system.

Practically, TMS is an online platform for entering all the relevant information

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104 FIFA, Circular Letter n. 1209, 30 October 2009.
concerning the international transfer of professional players. In fact, since the 11\textsuperscript{th} March 2010, it is the only way available to the associations for international transfers. Even the International Transfer Certificate will no longer be sent from association to association via fax but will be automatically produced from TMS when all the criteria of a transfer are matching properly.

Generally, as said, TMS was created in order to provide a more efficient and transparent transfer system, but, at the same time, it has a very important role when discussing the protection of minors. Through TMS, in fact, it will be ensured that clubs who have trained up young players will receive the compensation they are entitled to and also better control of youngsters’ movement will be possible thanks to the registration of each one of them.

Since 1st October 2009, if a minor player is being registered for the first time with a club in a country of which he is not a national or is being transferred to a country other than his own, the approval of the sub-committee will be needed in order to be able to proceed with the registration. The request for approval and the subsequent decision-making process is managed by TMS.

The benefit for the clubs who develop young players is significant since the system can be used for ensuring both that those clubs receive the proper amount of payment due to them as part of the recently increased training compensation for minors who are transferred abroad, but also the solidarity contributions as set out in FIFA’s Regulations.

Ultimately, TMS is a very powerful tool when discussing transfers and certainly through the evolution of this platform an even stronger control on the international transfers of minors will be possible.

3.3 Transfer Fees, Training Compensation and Solidarity Mechanism

The FIFA Regulations on the Status and Transfer of Players have produced some principles in order to create a balance between the principles of freedom of contract, freedom of movement for players and free competition, whilst still ensuring redistribution of income to those clubs involved in training and developing players. In other words, respective regulations attempt to create stability upon contracts, provide
better protection of ‘International Transfer of Minors’, promote youth training and generate sources for clubs and national associations to invest on development of youth players. FIFA, therefore, sought to achieve these aims through the implementation of the following mechanism,\textsuperscript{105} which is described as:

“Clubs to be entitled to receive a ‘training and development fee’ for any players that it has trained if the player leaves such club up to age of 23. All clubs involved in the player’s training and development from the player’s 12th birthday up to when training and development have been completed (maximum age of 21) will be entitled to a proportion of the total ‘training and development fee’ calculated in accordance with the regulations and categorization figures provided by each National Association.”\textsuperscript{106}

Training Compensation and Solidarity Contribution together are, not only but one of the important mechanisms that ensure the protection of International Transfer of Minors. The importance has also been stated by FIFA in its Circular Letter number 769 as follows: “this system is designed to encourage more and better training of young football players, and to create solidarity between clubs, by awarding financial compensation to clubs which have invested in training young players. At the same time, care has also been taken to ensure that the amounts of training compensation do not become disproportionate, and unduly hinder the movement of young players.”\textsuperscript{107}

Moreover, FIFA also confirmed the significance of the Solidarity Contribution in the Commentary on the Regulations for the Status and the Transfer of Players under the following wording: “the Solidarity Contribution has proven to be an efficient mean to support grassroots of football in particular. In fact, even many years after a professional player has left the club(s) for which he was playing at an early age, the club(s) may receive a financial incentive from the transfer of this player through the payment of a Solidarity Contribution.”\textsuperscript{108} In addition, both mechanisms have an indisputably close connection with the transfer fees incurred from an international transfer. Therefore, in international football, the redistribution of transfer fees is assured through FIFA’s provisions relating to training compensation and its solidarity

\textsuperscript{105} There are more than one mechanism that has been implemented by FIFA through its regulations, nonetheless in this paper, only the relevant ones to our topic are discussed.

\textsuperscript{106} Adam Lewis and Jonathan Taylor, Sport: Law and Practice, (Oxford: Totel Publishing 2009), 598.

\textsuperscript{107} See FIFA’s Circular Letter no: 769 page 2.

\textsuperscript{108} Annex 5, Article 6, FIFA Commentary on the Regulations of Status and Transfer of Players, (2006).
mechanism. Each of these provisions is related to ensure that when the player becomes professional and upon his following transfers, money is distributed proportionately to those clubs that have trained the player, and the national association with which the player was registered.\textsuperscript{109}

According to Lewis and Taylor, “the trickle-down effect of transfer fees is not only applicable to professional clubs. It also confers other parallel benefits to players. For example, players benefit from the redistribution of transfer fees since there is a direct relationship between the level of money circulating within football, and amount that clubs are able to pay players for their services”\textsuperscript{110}.

Furthermore, given the fact that transfer fees represent an essential source of income for most of the lower league clubs, the social impact of the circulation effect of transfer fees should not be ignored. First, the payments of transfer fees to professional clubs generate employment opportunities for players, managers and other club employees at all levels. Secondly, the existence of such clubs means that young players are able to benefit from transfer income invested in youth academies and training facilities at all levels.

### 3.3.1 The Analysis

Regarding the Training Compensation, there are special rules for the transfer of players up to the age of 23. There are some procedures that need to be followed for players under 23, considering that there is an additional fee payable for the transfer of their registration. In this case, the club will be entitled to a “Training Compensation” fee and a Solidarity Contribution. This rule does not apply for transfers where player is over 23. As part of the principles, FIFA agreed to implement a system to guarantee a redistribution of wealth and motivate clubs to train young players.

Whilst Training Compensation and Solidarity Contribution aim a similar redistributive purpose, there are various differences between them. First, as set out below, Training Compensation is calculated pursuant to a set of mathematical formula devised by FIFA based on the cost of training players, whereas, Solidarity Contributions are calculated as

\textsuperscript{109} In some cases, Training Compensation can be claimed by respective club’s national association as well. Please see page 60 for details.

\textsuperscript{110} Adam Lewis and Jonathan Taylor, Sport: Law and Practice, (Oxford: Totel Publishing 2009), 599.
a percentage of a transfer fee. Secondly, Training Compensation may be payable in respect of the transfer of players both during and after the end of their contracts, whereas Solidarity Contributions are only payable where transfer compensation has been paid (thus, not in the case of out of contract transfers). Thirdly, liability for Training Compensation does not arise for players over the age of 23, whereas Solidarity Contributions remain payable throughout the career of a player on relevant transfers.

3.3.2 Training Compensation

According to Lewis and Taylor, “Training Compensation is paid by the player’s new club to those former clubs that trained and developed him between the ages of 12 and 21 or earlier if the player’s training is deemed to have been completed.”\(^{111}\) For instance, CAS has decided that in certain cases, a player’s training and development may have ended before he is 21 since he may have fully established himself in a club’s first team, or may otherwise has showed maturity and technical ability to demonstrate that he should no longer be regarded as a trainee player. For example in CAS/2003/O/527 Hamburger Sport – Verein c. V v Odense Boldklub, Lars Jacobsen played for Odense between 1991 and 2002. During the season 1996/07, when he was 16/17, he played for the first time on five matches; during season 1997/98, he played for the first team 15 times, and subsequently he played in the first team until he signed a contract with Hamburg, when he was 22. Odense claimed Training Compensation up to the player’s 21\(^{st}\) birthday and FIFA Dispute Resolution Chamber (DRC) awarded Odense EUR 277,500. Hamburg brought the case before CAS on two bases, one of which was that the cost of training Jacobsen was disproportionate to the FIFA DRC’s award. CAS held that as a question of fact, the point at which the player ended his training should be established. On the facts, CAS decided that since by the time of the season 1996/07 Jacobsen had already participated in five first team games for Odense and had signed a professional contract with the club, his training was effectively completed before the start of the season 1997/08. Therefore CAS decided that Training Compensation should be set at EUR 255,000.\(^{112}\) This decision underlines that it will consider many criteria in deciding whether the player’s training has come to an end.


\(^{112}\) For more information with regards to this example, please see FIFA Circular Letter No 826 dated 31 October 2002, 2.
Such criteria will include whether the player has signed a professional contract, the number of first team games he played, and the reason for his participation in the first team, and the standard of the games in which he played in.

Moreover, the right to training compensation exists, alongside the case where a first contract is signed as a professional, if a professional transfer occurs before the end of the season of his 23rd birthday between two clubs belonging to different football associations. It is not important whether this transfer occurs during or after expiry of the contract. An entitlement to compensation thus also arises if a professional leaves a club and signs a contract with another club some time later.

In addition in FIFA circular no. 826 it was decided that in the case of a subsequent transfer, only the previous club of the player would have a right to training compensation, and that all other former clubs would not. This was confirmed by the DRC. This rule remains in force following the introduction of the FIFA Regulations on the Status and Transfer of Players of 2005.

Nonetheless, there are some exceptions with regards to aforementioned rules. For instance, in circumstances where a player is transferred to a Category IV club, the transferee club is not entitled to pay a Training Compensation to the transferor club. The rules of 2001 provide an exception to this if the player obtains non-amateur status again within three years. The rules of 2005 state the term as 30 months.

Secondly, Training Compensation is only due on the transfer of players between different national associations. Liability for training compensation does not arise in domestic transfers. And thirdly, a player's former club has no right to any training compensation if that club has terminated the contract with the player without just cause.

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113 Annex 4, Article 2 sub ii and 20, FIFA Regulations for the Status and Transfer of Players, (2005).
114 FIFA Dispute Resolution Chamber, Decision numbered 36645 of 23 March 2006.
116 FIFA Dispute Resolution Chamber, Decision numbered 74353 of 22 July 2004 (FC Twente/Schalke 04-Simon Cziommer).
117 See Chapter 3, Topic 3.3.2.1, page 44.
118 For exceptions, see FIFA Commentary on the Regulations of Status and Transfer of Players 2008, Annex 4, article 2.
Ultimately, the 2005 rules also provide that the training compensation has to be paid by the player's new club to all clubs which have a right to it, within 30 days following the registration with the new football association. It is also stated that if a link cannot be established between the player and his previous trainer clubs, or if those clubs do not claim their rights within 18 months of the player's first registration as a professional, the training compensation shall be paid to the association(s) of the country (or countries) where the professional was trained. The compensation must be used by the FAs for developing youth football.

### 3.3.2.1 The Calculation of Training Compensation

The calculation of Training Compensation is based on a fixed formula whereby clubs are divided into four categories according to the financial investment they have made in the training and education of young players. For the purpose of this categorisation, FIFA allocates a different monetary figure to clubs that participate in the national associations within each of the particular confederations. In the circular letter dated 16 March 2005, FIFA has confirmed that the following training costs shall be assigned to clubs in each category and confederation:

<table>
<thead>
<tr>
<th>Confederation</th>
<th>Category 1</th>
<th>Category 2</th>
<th>Category 3</th>
<th>Category 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian Football Fed.</td>
<td>US$40,000</td>
<td>US$10,000</td>
<td>US$2,000</td>
<td></td>
</tr>
<tr>
<td>African Football Fed.</td>
<td>US$30,000</td>
<td>US$10,000</td>
<td>US$2,000</td>
<td></td>
</tr>
<tr>
<td>Confederation of North, Central American and</td>
<td>US$40,000</td>
<td>US$10,000</td>
<td></td>
<td>US$2,000</td>
</tr>
<tr>
<td>Caribbean Football Assoc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S. American Football Con.</td>
<td>US$50,000</td>
<td>US$30,000</td>
<td>US$10,000</td>
<td>US$2,000</td>
</tr>
<tr>
<td>Oceanic Football Con.</td>
<td>US$30,000</td>
<td>US$10,000</td>
<td></td>
<td>US$2,000</td>
</tr>
<tr>
<td>European Football Assoc.</td>
<td>€90,000</td>
<td>€60,000</td>
<td>€30,000</td>
<td>€10,000</td>
</tr>
</tbody>
</table>

Pursuant to the above, once the category of the club has been established, the training cost allocated to the confederation in which the club participates is multiplied by the number of years over which the club trained and developed the player.\(^\text{120}\)

The training costs allocated to a particular club in any case may be challenged by either the new club or the former club. In this case, the FIFA DRC will analyze the circumstances of the case in order to establish whether the allocated training cost is disproportionate to the actual training cost incurred by the former club. The burden of proof will always remain with the party that disagrees the allocated cost. CAS has cleared this issue in its decision regarding *AC Venezia v Club Atletico Minero & AS Roma*.\(^\text{121}\) Alessandro Fairolhe Amantino known as Mancini signed a professional contract with Venezia in 2003 after being trained by Atletico Minero between the ages of 15 and 22. Atletico claimed Training Compensation from Venezia for the relevant period and the FIFA DRC awarded Atletico Minero EUR 540,000 according to its category system (i.e. EUR 90,000 x 6 years). Part of Venezia’s appeal to CAS on the substantive award was based on the argument that the costs awarded were not representative of the actual costs incurred by Atletico Minero in training Mancini. CAS considered FIFA Circular No 826 in making its decision, stating at paragraph 7.6.2 that “any club objecting to the calculation of Training Compensation bears the burden of proof of establishing that the award is disproportionate on the basis of concrete evidentiary documents, such as invoices, costs of training centres, budgets, etc.”\(^\text{122}\)

To sum up, the calculation is based on the time the player was trained by his former club multiplied by the training costs assigned to the category of his new club. Thus, in effect, the new club is paying the former club an amount as if it had incurred its own costs in training the player. In the case of transfers between two clubs in different NAs within the EU/EEA, if a player moves to a higher category club, Training Compensation will be calculated based on the average training costs of the new and the former club. On the other hand, if the player moves to a lower category club, Training Compensation

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\(^\text{120}\) Annex 4, FIFA Commentary on the Regulations of Status and Transfer of Players (2008).

\(^\text{121}\) CAS 2004/A/560 *AC Venezia v/Club Atletico Mineiro & A.S Roma*.

\(^\text{122}\) CAS 2004/A/560 *AC Venezia v/Club Atletico Mineiro & A.S Roma*. 
will be calculated on the costs of the club in the lower category.\textsuperscript{123}

### 3.3.3 Solidarity Contribution

As with Training Compensation, Solidarity Contributions are paid by the new club to the player’s former clubs responsible for his training and education during the relevant period. Nonetheless, former clubs can only claim Solidarity Contributions in cases where transfer compensation has been paid, warning that therefore out of contract transfers cannot be subjected for Solidarity Contribution claims. Furthermore, unlike Training Compensation, Solidarity Contributions are payable in respect of the transfer of a player after his 23\textsuperscript{rd} birthday. In fact, they remain payable throughout the career of a player in respect of his relevant transfers.

As it is stated by Lewis and Taylor, Solidarity Contributions are calculated as a percentage of the transfer compensation over the duration of the player’s participation in a club. The level of Solidarity is 5%. However, this amount is not payable to every relevant club. It rather represents the maximum cumulative solidarity payment that can become payable in any transfer.\textsuperscript{124} The Solidarity Mechanism is explained most clearly at Annex 5 of the FIFA Regulations as follows:

\begin{quote}
If a professional moves during the course of a contract, 5\% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years. This solidarity contribution reflects the number of years (calculated pro rata if less than one year) he was registered with the relevant club(s) between the seasons of his 12th and 23rd birthdays, as follows:
\end{quote}

\textsuperscript{123} In 2006, after the revision of the regulations regarding Training Compensation, 50 reported cases concerning training compensation were heard by the FIFA DRC.

Pursuant to Annex 4 of FIFA Regulations, the total amount of the Solidarity Contribution would only become due where a player trained with his former club throughout the period of his training and education; for example, between the ages of 12 and 23. In this case, as set out above, the new club is entitled to pay 100% of the 5%, so the cumulative total of the Solidarity Contributions for the player’s training and education for the relevant period would be 5% of the transfer compensation.\(^{125}\)

The burden of calculating the Solidarity Contribution rests with the new club, which should, where appropriate, be assisted by the player in finding out the correct beneficiaries should be. Thereafter, once the player is registered with his new club, the new club should make the payment of the Solidarity Contribution within 30 days. However, whilst the responsibility to calculate and make payment of the Solidarity Contributions rests of the new club, there are no specified sanctions in the FIFA Regulations for failing to do so, except for the obligation of paying the interest in case of a late payment of the relevant amount.

3.4 Conflicts Between National Laws and FIFA Regulations

Sport itself has existed for ages and has usually been self-regulatory. It has its own homemade rules, which are bylaws and other regulations of federations as well as national, European and international rules. Football governing bodies such as FIFA and its affiliated national federations are autonomous bodies which are entitled to regulate their own judicial system. Nevertheless, although this autonomy empowers the relevant federations to create their own rules, it does not eliminate obligation of obeying their respective national laws such as labor law, competition law and human rights namely freedom of labor and free movement of workers. In addition, especially with the commercialization of the sport, it has evidently turned into an economic activity and subsequently EU law has become applicable. The commercialization of sport is still developing rapidly. With this continuous evolution of sports and the occurrence of new cases, conflicts between FIFA regulations, EC Treaties and national laws have become inevitable.

One of the most important areas of EU law, which had substantial impact on the transfers of the football world, is the free movement of workers. The free movement of workers is one of the European Union pillars. To describe the application of the free movement rules to the European sports sector it is necessary to start first with the basis by mentioning the content of Article 39 (48) of the EC Treaty:

1. Freedom of movement for workers shall be secured within the Community.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: a) to accept offers of employment actually made; b) to move freely within the territory of Member States for this purpose; c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

Under the light of these provisions, in order to have a better understanding of the
application of the free movement rules and its relation with transfers of minors, two cases should be analyzed; one, the *Bosman* case, a significant case in the European Sport and the other one, the *Bernard* case;\(^{126}\) sometimes referred as the new *Bosman* case.

### 3.4.1 The *Bosman* Case

Jean Marc Bosman was a player employed by the Belgian RC Liege club and was working under a contract which had almost expired. Bosman was offered a new contract by his current club, RFC Liege, the terms of which were less favourable to him than his current contract. Hence, Bosman refused to sign a new contract under such conditions and started looking for a new club in order to continue his career. Eventually, a transfer was negotiated to a second division French club, US Dunkerque, on the basis that this was to be a temporary transfer for one year with an option thereafter for a full transfer to take place. However, although the transfer fee had been agreed between clubs, because of being in doubt regarding the Dunkerque’s financial solvency, RFC Liege collapsed the deal and refused to give the Belgian football association permission to issue the Bosman’s transfer certificate, which in accordance with the rules and regulations of that time, was needed to be given in a specific time in order to finalize the transfer even though he had a free transfer status. Bosman was suspended from playing anywhere. He therefore took action before the Belgian courts and went before the European Court of Justice, which ruled the following in his favour:

\[(114)\text{ The answer to the first question must therefore be that Article 48 (39) of the Treaty precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training or development fee.}\]

\[(137)\text{ It follows from the foregoing that Article 48 (39) of the Treaty precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organise, football clubs may field only a limited number of professional players who are nationals of other Member States.}\]\(^{127}\)

\(^{126}\) *ECJ, C-325/08 Olympique Lyonnais SASP v. Olivier Bernard.*

\(^{127}\) For a further explanation on the Bosman case and its implications see Robert Blanpain, *The Bosman*
Until the *Bosman* judgment the European Court of Justice appeared to be rather lenient towards sport as regard the EC law application. However in the *Bosman* case the Court changed its attitude towards sport. Since that moment football and sports in general have been subject to the pure application of EC law. Nevertheless, it has to be stated that in *Bosman* the ECJ recognized that the social importance of sporting activities could justify an exemption from the application of Article 39 but not in *Bosman* case.¹²⁸

Football has a significant impact and scope, and has become subject to constant monitoring by the regulatory bodies of the European Union. First, the freedom from restriction on numbers of non-national players has led to a vast increase in the number of foreign players in the European football leagues. Secondly, the financial power was shifted to players from clubs. In addition, longer contracts were started being offered by clubs in order to secure their investment in case the player wishes to move. The *Bosman* case changed the transfer system, the nationality restrictions and the entire notion of football across Europe.

### 3.4.2 The Bernard Case

The European Court of Justice’s decision regarding the *Bernard* case,¹²⁹ once again brought out the issue of dispute between national laws, FIFA Regulations and EU laws with regards to freedom of movement and training compensation.

ECJ discussed the issue after being enquired by the French Court of Appeal for ruling on whether the principle of the freedom of movement for workers, laid down in Article 39 EC, preclude a provision of national law pursuant to which a ‘joueurs espoir’¹³⁰ who at the end of his training period signs a professional player’s contract with a club of another Member State of the European Union may be ordered to pay damages. In addition, the Court of Appeal also asked whether the necessity of encouraging the recruitment and training of young professional players constitutes a legitimate objective or an overruling reason of general interest that justifies such a restriction.

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¹²⁹ For more information please see: ECJ, C-325/08.
¹³⁰ Players between the age of 16 and 22 employed as trainees by a professional club under a fixed-term contract.
ECJ decided that national laws obliging trainee players to sign their first contract with their trainer clubs, failing to do so, sanctioning them to pay compensation to the respective clubs would discourage promising young players from exercising their right of free movement. Therefore, such laws must be considered in the scope of restriction on freedom of movement for workers guaranteed within the European Union by Article 45 EC Law. Moreover, ECJ stipulated that calculating the training costs equivalent to which Mr. Bernard would have received over one year if he had signed the contract offered by Olympique Lyonnais do not meet the requirements of proportionality and collides with the FIFA Regulations on the Status and Transfer of Players which establishes the rules for the calculation of ‘compensation fees for training’.

Consequently, this decision on the issue of the training compensation and its justification under EC law, will have a significant impact on the international and national sports regulations, on the freedom of movement of football players, and of course, on the development and international movement of minors. Precluding the laws which restrict the movement of trainee players and diminishing the compensation scheme will first of all deteriorate the control power of clubs over minors. Secondly, clubs, which are under the threat of losing their promising talents to wealthier foreign clubs, might be discouraged on investing in training minors. On the other hand, youth players now have more options to choose the best path for their career. Moreover, since they are no longer under the obligation of signing their first professional contract with their trainer clubs, the bargaining power shifted from clubs to minors. Hence, minors can get better contracts, better education and develop their skills more effectively.

Pursuant to the French Football Charter Article 23, French clubs are entitled to require their trainee players to sign a professional contract upon completing training.
4. RECOMMENDATIONS

The preceding research has allowed us to develop several ideas toward the strengthening of the regulations related to the protection of minors. Having analyzed the position and interests of all primary and secondary stakeholders involved in the international transfer of minors, it was a natural consequence that the establishment of recommendations would engage all of the football family through a holistic approach.

It has been considered the fact that UEFA, together with representatives of clubs, leagues and players agreed on the principle that there should be no international transfer of minors either into Europe or within Europe\(^{132}\). On the other hand, FIFA is keen on keeping the original drafting of Article 19 or if needed just make minimal modifications, that would not collide with EC law. A total ban regarding the international transfer of minors between 16 to 18 years old, can ostensibly be regarded as an effective solution to the problem of the transfer of minors within Europe as suggested by UEFA. However, this consideration would raise the argument of whether such a ban would actually be beneficial to minors, protect the interest of clubs or it would it rather be simply to lessen the workload of national federations. Consequently, such a ban, created to protect minors could be questioned on the basis of restrictions on freedom of movement.

The objective of this paper is to provide recommendations, which are not in conflict with any law or regulations and that, if applied, could lead to a better system where minors are more sheltered.

4.1 Expanding Article 19 FIFA Regulations on the Status and Transfer of Players

Official statements and reports from NGOs, UN Offices and other international organizations regarding the transfer of minors have only recently started to have more presence in the public domain. FIFA Regulations stand alone as the only internationally binding compound of rules regarding the transfer of minors in sports. Beyond the political stands that were involved in its drafting, FIFA Regulations should be

\(^{132}\) UEFA, Media Release n. 024, date: 09/03/2009.
appreciated by the ideals imposed, which represent an attempt to regulate international transfer of minors while simultaneously setting parameters under which some primary football stakeholders are expected to abide.

The unique character of FIFA Regulations implies that thousands of minors from the entire system rely on the obligations imposed. Together with the uniqueness of the Regulations stands the fact that the of a changing global market, evokes the constant evolution of illegal practices taking place in a political and economical context of contrast between the origin and destination countries of transfers; this situation therefore demands constant revision of the Regulations in order to effectively include the needs of the underage and fully comprehend the background in which each transfer occurs.

4.1.1 Education for All

FIFA has recognized the value of education in sports and developed measures to employ football as a tool for the extension of schooling and education to children. Mr. Joseph S. Blatter, President of FIFA, when announcing the establishment of the 1GOAL Education Summit in South Africa stated: “We need to take the tool of football, what we need for South Africa, Africa and the world is schooling. This is the legacy, not just for football but for your societies.” 133 Education for all should now be part of the football legacy, and measures toward the achievement of this goal be taken.

Considering that FIFA has embraced education through football as an ideal of the organization, the activities implemented by the different departments of the main governing body of football should support this perception. If, through the 1GOAL campaign, FIFA intends to raise the topic of millions of children lacking access to education, it is reasonable to expect that the entire organization, together with the regulations of the sport, work toward making education for all a lasting heritage of football.

Within the international transfer of minors in football, one issue which arises is the.

133 1GOAL: Zuma announces education summit as Blatter confirms 1GOAL as lasting legacy from the World Cup 6 June 2010http://www.join1goal.org/mediaIntern.php?page=1&MediaID=21.
vulnerability of the underage and the transgression susceptibility of their human rights. Rights regarding access to education are particularly at stake due to intensive training, difficulties to adapt or other negative circumstances under which the transfer occurs. Moreover, as an outcome of this research it was observed that the existing behaviour of football stakeholders, dependence of the children on the coordinating parties, the time spent by the child within the club environment, together with the CRC considerations on the joint liability of third parties with parents in the care of the child, make clubs, federations and other stakeholders mutually responsible for the protection and assurance of decisions made in the best interest of the child.

Considering the statements previously mentioned, it is recommended that the conditions requested in the article 19.2.b, concerning mandatory obligations of clubs, to look after the education and wellbeing of the foreign minor should be extended to the exception stated in the Article 19.2.a. This recommendation ultimately intends to guarantee the right to schooling and education of the minor, request the compliance of the CRC regarding the joint liability of “any other person who has the care of the child” and at the same time represents a complementary addition to FIFA’s intentions of making education a part of football’s legacy.

As the research has shown the “parental exception” contained in the Article 19.1.a have lead to different interpretations regarding its application. Beyond the difficulties of establishing common ground regarding the implementation of this article, it must be stressed the existence of a recurrent situation, the possible difficulties faced by the minor, with respect to his adaptation into a new environment may not be solved only by the exertion of the parents. It is suggested that other football stakeholders be obligated to provide the maximum assistance in the transfer system as a measure to guarantee the wellbeing of the child. This recommendation is considered a useful mechanism to ensure the respect of the education rights of the minor.

4.1.2 Inclusion of the Jurisprudence Exception

Together with the three exceptions stated in Article 19 of FIFA Regulations, the presence of a fourth exception, determined by the Players’ Status Committee, has been internationally accepted. Thus, it is recommended to incorporate the already existing jurisprudence case into the drafting of Article 19 in order to secure the publicity and common knowledge of this exception between the football stakeholders.

The implementation of this recommended update will also imply the incorporation of the suggestion referring to the wellbeing and education of the child proposed in the previous measure of this section. The five years of continuous presence of the minor in the country of intended registration should not be considered as an indicator strong enough to assume the successful protection of the rights of the minor in the country. Together with the first and the second exception of Article 19 joint responsibility between parents and other related stakeholders should be considered in order to safeguard the interest of the youngster.

The improvement of the existing Regulations is of great importance in order to maintain symmetry with the evolving complexities of the transfer system; nevertheless these updates should be accompanied with the presence of effective monitoring and controlling mechanisms. The role played by the FIFA Sub-committee within the Players’ Status Committee must be strengthened; at the same time other institutions such as the Professional Football Players Observatory could be more involved in the consulting and monitoring of the protection of the rights of these children.

4.2 Transfer Matching System (TMS) 2.0

Another important recommendation to improve the protection of minors in the current transfer system is the evolution of Transfer Matching System (TMS). As discussed earlier, this is an extremely powerful tool that with improvement could lead to a better control of the minors’ transfers.

Through this research it has been shown that there are two critical areas where problems

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139 See Chapter 3, Topic 3.2, page 38.
regarding the international transfers of minors arise, firstly during the application of one of the exceptions of article 19 FIFA Regulations to permit the transfer. And secondly on the verification of compliance of the respect of clubs’ obligations in case of article 19 letter b. The development of TMS could be very helpful particularly in this area.

To begin with, it is recommended to create a system based on TMS within all National Football Associations. The Dutch Football Association (KNVB) was one of the first to successfully start using TMS for international transfers and they are looking at using it to handle national transfers as well.\textsuperscript{140} There would be many advantages gained if other associations where to follow this recommendation. In fact, considering that footballers under the age of 18 years old are mainly transferred nationally, early registration and monitoring through the national TMS would help track and supervise their career. Thereby have a detailed account of the clubs where they played that would help in case of an international transfer once they reached the permitted age. Moreover, TMS sets as mandatory field the identification of player’s agent. Applying this rule to the national TMS would help to protect the minor by keeping the agent’s activity under control. This aspect is crucial primarily as it is recommended to abolish any fees for the agents representing a minor\textsuperscript{141} and also to gain transparency of the manner in which agents’ operate. This is vital considering that they are one of the main stakeholders within the transfer system involving minors.

Another aspect involving improvement of TMS is the expansion of the already existing database. What is suggested is the creation of a new tab area on the online platform that will allow FIFA a deeper control of the clubs activity once the transfer of a minor has been granted.

The new tab, ideally named “academic performance” be located under the minors section and include documentation of the school performance (mainly by submitting the grades in order to properly measure the student’s attendance) of the minor. The responsibility lies with the employer to update the information every six months. In fact, in accordance with article 19 FIFA Regulations, and particularly letter b) point ii. and iv. the club must provide the dual career opportunity to minors and the proof of

\textsuperscript{140} Mark Ledsom, “Monitoring the Market”, \textit{FIFA World, March}, (Zurich: FIFA, 2010), 19.
\textsuperscript{141} See Chapter 4, Topic 4.3, page 58.
compliance to the obligations imposed. This recommendation is a positive step to avoid recurring situation were clubs provide the school documentation for transfer purposes but in reality the school administration does not enforce the minimum attendance criteria for the young player. All documents must be, where needed, translated in one of the official languages of FIFA before their submission. The clubs shall also be free to upload other optional documents that prove the involvement of the minor in activities not just pertaining to football. Further to facilitate the smooth functioning of this process, it is suggested to include an automated email system that serves as a reminder to clubs of the deadline term. In case of failure to provide the requested documentation within seven days from notification the case shall be reported to FIFA Disciplinary and Governance Committee for further investigation.

It is advised that the practice of confidentiality accorded to the employment contract by the system be extended to the other documents uploaded related to the academic performance of the player. This as practiced not be available to other associations or clubs and only be accessible by FIFA.

For the implementation of the TMS 2.0 it is suggested to categorize the national associations in three main groups and to proceed respectively to three different phases of activation. For best results the primary phase should include countries from Africa and South America as they are highly involved in international transfers of minors and there is no efficient control in these continents. Phase two include those countries that are not habitually involved in transfers of minors; like for example Asian associations. Finally, the tertiary phase of implementation should incorporate European countries where according to the research though the transfer is more frequent but at the same time the controls to safeguard the minors’ interests are much higher. Considering that TMS software already exists, this recommendation can be implemented easily and be up and running from January 2012. A possible implementation timetable is presented in the graph below:
4.3 Abolishment of Agents’ Fees Representing Minors

As analyzed in Part 3 of this paper, the transfer of minors could represent a very good strategy for football clubs to achieve economic and sportive success with considerable low investment. To attract young talented players to their academies, football clubs use several mechanisms. Some clubs have strong scouting networks, specialized to identify the best talents. Nevertheless, for the major part of clubs the principal mechanism is a partnership with intermediaries, the agents.

Sport Governing Bodies, such as FIFA and UEFA, have been working very hard to implement a better transparency in the role of agents, especially when there is an underage player involved. According to Article 19.2 of FIFA Players’ Agents Regulations, if a player is a minor, the player’s legal guardian(s) must sign a representation contract in conformity with all requirements established by the national law of the country in which the player is domiciled.142 Such bodies want to establish a better control to avoid ill-intentioned agents to abuse of youth players and their families.

Although Article 19 of FIFA Players’ Transfer Status prohibits the transfer of minors, this rule is not known by millions of young players across the world. The consequence is that a significant number of underage players, mostly coming from developing countries, believes that agents will help them to move to a top club in Europe. Nevertheless, most of the time those players are misguided by ‘agents’. There are several cases where the minor is left without any assistance in Europe after failing to succeed in European clubs. According to Gallavotti, currently there are more than

20,000 African minors living on the streets of Europe after been taken to trials by agents and left for them, being victims of human trafficking.\textsuperscript{143}

In conclusion, it can be observed that the participation of agents in transfer of minors, even with the consent of legal guardians, it has been prejudicial for a significant number of young players across the world. In order to safeguard the interest of the minors, who are the weakest part in the transfer system, it is recommended that the participation of agents in transfer involving minors should not be awarded with fees. This measure could avoid ill-intentioned agents to exploit players and their families to obtain their consent for signing representation contract.

\textbf{4.4 Additional Requirements to Obtain a Club License}

The Licensing System, introduced for the first time by UEFA in 2004/2005, has changed the conception of duties and responsibilities of all clubs involved within European competitions. Furthermore, the introduction of the club licensing system represented a step forward in terms of improving transparency and promoting standardization of the regulatory requirements in football across Europe.

As mentioned before in this paper,\textsuperscript{144} there are five categories of minimum criteria, according to the UEFA Club Licensing system,\textsuperscript{145} that a football club has to fulfill in order to obtain a license: (i) Sporting Criteria; (ii) Infrastructure Criteria; (iii) Personnel and Administrative Criteria; (iv) Legal Criteria; and (v) Economic-Financial Criteria. Currently, in some European countries, clubs are also required to obtain domestic license, which, in some cases, may be stricter than the one established by UEFA.

Since the early stages of the implementation of the Licensing System, UEFA has always shown its concern for the protection and development of minors. UEFA introduced requirements involving youth sector as a paramount condition for a club to be granted a license. According to UEFA Club Licensing and Financial Fair Play Regulations 2010, it is mandatory to fulfill the requirements in implementing a youth development programme established by the Sporting Criteria. Article 17 of these Regulations

\textsuperscript{143} Mario Gallavotti, ‘III International Congress of Football Law’ (Speech, Madrid, Spain, March 2009).
\textsuperscript{144} Chapter 2, Topic 2.4, page 26.
\textsuperscript{145} UEFA Club Licensing and Financial Fair Play Regulations, 2010.
establishes several requirements that should be respect for a youth programme.\footnote{See Annex III of this Paper.}

Although there are concerns in respect to the safeguard, development and proper training for youth players, the Regulations does not make any comments directly related to football clubs that have international minors in their youth teams. Especially in Europe, the number of international underage players is considerable. Also, it is important to note that some of those players come from different cultures and speak different languages. Thus, in order to have a better adaptation and progress in their careers, it is essential for them to be assisted by a “tutor” that could give them all kind of support till reaching the age of 18. Therefore, it is recommended that football clubs, which have international minors in their squad, provide a specific “tutor” to take care exclusively of them. This requirement should be included in the Personnel and Administrative Criteria of the Regulations. The implementation period for clubs to fulfill this new requirement should be of one year, therefore starting from the season 2012-2013.

\section*{4.5 Training Compensation for Academies}

Respective regulations regarding Training Compensation grant only football clubs to claim training compensation over a transfer of a football player. As it is stated above, Training Compensation system is a well – established system, which prevents trainer clubs to be exploited by losing their trainee players at a younger stage by providing clubs with a rather satisfactory source of income. However, such regulations do not offer any compensation for Football Academies where many young players obtain their first education and training before they turn into professionals.

In order to allow a better protection of minors, extending the Article with regards to the Training Compensation by endowing the academies without any \textit{de facto}, legal or financial link to a club, with a similar monetary reward in case of a trainee player involved in a transfer, can be suggested as a solution. A practical benefit of such suggestion can be analysed in three aspects.

First of all, the role of the academies regarding the international transfers of minors has
increased rapidly. Especially, many European clubs have turned their attention into private academies, mostly based on Africa, with the intention of discovering young talents. Due to this interest, it can be observed that more often young players with an academy training background move internationally. Taking into consideration this fact, creating an extra source of income for academies from the respective transfer of their trainee players can allow such academies to develop their facilities and provide better education to minors.

Secondly, bringing a burden for clubs which take out minors from academies might prevent such clubs to exploit the transfer system. Nowadays, many clubs sign with lots of young players pulled from academies, seeking to be football stars. Nevertheless, the majority of these youngsters are being left alone by the same clubs after realizing that they will not meet the expectations. Many of them are forced to turn back to their previous lives; disappointed and discouraged.

Thirdly, providing a legal reward for Academies might create a better tracking system of the movement of the minors. Although the academies are entitled to register their trainee players to their respective federations, due to lack of enforceability of the regulations, academies which are not linked legal, de facto or financially to clubs, do not always register every player in their possession, therefore, in order to benefit from training compensation, academies will register all their players to their respective federations. Thus, with the registry of the young players a healthier observation and analysis can be made regarding the movement of minors. Moreover, with this implementation a more effective involvement of football academies into football family can be achieved. Recognising their economic structure and providing them with monetary reward will create an improved communication between the Academies and all the other stakeholders involved in the football world.
5. FINAL CONSIDERATIONS

After a deep analysis of the current transfer system in football, it is possible to conclude that the current structure does not entirely satisfy the needs nor does it guarantee the rights, of young players involved. Considering that this system is based on a restrictive notion of the protection of minors, in which only certain exceptions allow the free movement of young players, together with a practical scenario that presents a complex compound of interests between stakeholders, any measures implemented should be adapted to the children’s needs and not vice versa.

The objective of this work is to provide a comprehensive set of recommendations in order to protect the minors’ rights in the international transfer system. These proposals represent an attempt to bridge a social minded conception of minors’ best interests with more economic aspects to allow for simultaneous application into the legal framework.

Moreover, these proposals do not pretend to fully restrict the transfer of minors but to foster conditions of safeguarding, effective development and proper training to all young players. The leading conception of this project is to demonstrate that football can be fair to all parties, and at the same time remove the general misperception that the international transfer is always threatening to the minors.
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7. ANNEX I - Article 19 of FIFA Regulations on the Status and Transfer of Players

19 Protection of minors

1. International transfers of players are only permitted if the player is over the age of 18.

2. The following three exceptions to this rule apply:

   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 fulfil 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.

      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 neighbouring association is also within 50km of that border. The maximum distance between the player’s domicile and the club’s headquarters shall be 100km. In such cases, the player must continue to live at home and the two associations concerned must give their explicit consent.

3. The conditions of this article shall also apply to any player who has never previously been registered with a club and is not a national of the country in which he wishes to be registered for the first time.

4. Every international transfer according to paragraph 2 and every first registration according to paragraph 3 is subject to the approval of the sub-committee appointed by the Players’ Status Committee for that purpose. The application for approval shall be submitted by the association that wishes to register the player. The former association shall be given the opportunity to submit its position. The sub-committee’s approval shall be obtained prior to any request from an association for an International Transfer Certificate and/ or a first registration. Any violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code. In addition to the association that failed to apply to the sub-committee, sanctions may also be imposed on the former association for issuing an International Transfer Certificate without the approval of the sub-committee, as well as on the clubs that reached an agreement for the transfer of a minor.
8. ANNEX II - Article 19-bis of FIFA Regulations on the Status and Transfer of Players

19bis Registration and reporting of minors at academies

1. Clubs that operate an academy with legal, financial or de facto links to the club are obliged to report all minors who attend the academy to the association upon whose territory the academy operates.

2. Each association is obliged to ensure that all academies without legal, financial or de facto links to a club:

   a) run a club that participates in the relevant national championships; all players shall be reported to the association upon whose territory the academy operates, or registered with the club itself; or

   b) report all minors who attend the academy for the purpose of training to the association upon whose territory the academy operates.

3. Each association shall keep a register comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies.

4. Through the act of reporting, academies and players undertake to practise football in accordance with the FIFA Statutes, and to respect and promote the ethical principles of organised football.

5. Any violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code.

6. Article 19 shall also apply to the reporting of all minor players who are not nationals of the country in which they wish to be reported.
9. ANNEX III - Article 17 of UEFA Club Licensing and Financial Fair Play Regulations

1. SPORTING CRITERIA

Article 17 – Youth development programme

1. The licence applicant must have a written youth development programme approved by the licensor.

2. The programme must cover at least the following areas:
   a) Objectives and youth development philosophy;
   b) Organisation of youth sector (organisational chart, bodies involved, relation to licence applicant, youth teams etc.);
   c) Personnel (technical, medical, administrative etc.) and minimum qualifications required;
   d) Infrastructure available for youth sector (training and match facilities, other);
   e) Financial resources (available budget, contribution by licence applicant, players or local community etc.);
   f) Football education programme for the different age groups (playing skills, technical, tactical and physical);
   g) Education programme on the Laws of the Game;
   h) Education programme on anti-doping;
   i) Medical support for youth players (including medical checks);
   j) Review and feedback process to evaluate the results and the achievements of the set objectives;
   k) Validity of the programme (at least three years but maximum seven).

3. The licence applicant must further ensure that:
   a) every youth player involved in its youth development programme has the possibility to follow mandatory school education in accordance with national law; and
   b) no youth player involved in its youth development programme is prevented from continuing their non-football education.