

Decision of the FIFA Appeal Committee

passed in Zurich, Switzerland, on 24 June 2020,

COMPOSITION:

Mr. Thomas Bodström, Sweden (Chairman)

Mr. Salman Al Ansari, Qatar (member)

Mr. Samuel Ram, Fiji (member)

RESPONDENT:

Arsenal Football Club, England

Regarding the appeal lodged by the Arsenal Football Club against the decision passed by the FIFA Disciplinary Committee on 26 February 2020

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the FIFA Appeal Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.
2. On 2 August 2018, the English club Arsenal Football Club (hereinafter: *Arsenal*) signed an agreement with the Greek club FC PAOK Thessaloniki (hereinafter: *PAOK*) in order to release the player Chuba Akpom (hereinafter: *Player 1*) to the latter.
3. In this regard, the transfer agreement uploaded in TMS by Arsenal (hereinafter: *Agreement 1*) contains Clause 3.6 that reads as follows:

“Future transfer of the Player

3.6 If PAOK agrees to transfer, on a permanent basis, the registration of the Player to another football club (the “Future Transfer”), PAOK shall pay to Arsenal an amount in cash (the “Future Transfer Compensation”) equal to (a) in the event of a Future Transfer to a football club in the UK, 40% (forty per cent.), or (b) in the event of a Future Transfer to a football club outside the UK, 30% (thirty per cent.), (...)”

4. On 2 August 2018, Arsenal entered the relevant transfer instruction in TMS (TMS ref. 207457) in order to release the Player 1 to PAOK. The club indicated in TMS that it *“has not entered into an agreement which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence its independence and policies in transfer-related matters”*.
5. Moreover, on 15 August 2018, Arsenal signed an agreement with the Italian club Frosinone Calcio (hereinafter: *Frosinone*) in order to release the player Joel Nathaniel Campbell Samuels (hereinafter: *Player 2*) to the latter.
6. In this regard, the transfer agreement uploaded in TMS by Arsenal (hereinafter: *Agreement 2*) contains Clause 3.5 that reads as follows:

“Future transfer of the Player

3.5 If Frosinone agrees to transfer, on a permanent basis, the registration of the Player to another football club (the “Future Transfer”), Frosinone shall pay to Arsenal an amount in cash (the “Future Transfer Compensation”) equal to (a) in the event of a Future Transfer to a football club that is regulated by a national football association in the United Kingdom (UK), 30% (thirty per cent.), or (b) in the event of a Future Transfer to any other football club, 25% (twenty-five per cent.), (...)”

7. On 16 August 2018, Arsenal entered the relevant transfer instruction in TMS (TMS ref. 210338) in order to release the Player 2 to Frosinone. The club indicated in TMS that it *“has not entered*

into an agreement which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence its independence and policies in transfer-related matters”.

8. Following an investigation conducted by FIFA’s TMS Compliance, disciplinary proceedings were opened against the Appellant on 28 January 2020 for a possible violation of art. 18bis par. 1 of the Regulations on the Status and Transfer of Players [2018 ed.] (hereinafter: *the RSTP or the Regulations*) and art. 4 par. 3 of Annexe 3 of the RSTP.
9. On 26 February 2020, the Disciplinary Committee passed a decision against the Appellant (hereinafter: *the Appealed Decision*), whereby it decided as follows:
 1. *The FIFA Disciplinary Committee found the Arsenal Football Club responsible for the infringement of the relevant provisions of the Regulations related to third-party influence (art. 18bis par. 1) and the failure to enter correct information in TMS (art. 4 par. 3 of Annexe 3)*
 2. *The FIFA Disciplinary Committee orders the Arsenal Football Club to pay a fine to the amount of CHF 40,000.*
 3. *In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the Arsenal Football Club is warned on its future conduct.*
 4. *The above fine is to be paid within thirty (30) days of notification of the present decision.*
10. The terms of the Appealed Decision were notified to the Appellant on 27 February 2020. Upon request of the Appellant, the grounds of the Appealed Decision were notified on 29 April 2020.
11. On 30 April 2020, the Appellant informed the secretariat to the FIFA Appeal Committee (hereinafter: *the Secretariat*) of its intention to appeal the aforementioned decision.
12. On 7 May 2020, the Appellant submitted its reasons for the appeal and provided a copy of the proof of payment of the appeal fee.
13. On 23 June 2020, the Secretariat acknowledged receipt of the two abovementioned correspondences and confirmed that the payment of the appeal fee had been duly received by FIFA.

II. APPELLANT’S POSITION

1. The position of the Appellant is summarized hereafter:
 - Arsenal continues to rely on its submissions before FIFA TMS and the FIFA Disciplinary Committee dated 20 December 2019 and 7 February 2020.

Alleged breach of Art. 18bis of the Regulations:

- One of the reasons Arsenal denies that the sell-on clauses breach art. 18bis of the RSTP is because it did not acquire any “real or effective ability” to influence in employment and transfer-related matters the club’s independence, their policies or the performance of their teams. This is consistent with the test laid down in CAS 2017/A/5463 and also reflects the fundamental and original purpose of art. 18bis of the RSTP, which was designed to capture and prevent provisions which give a club a ‘voice and vote’ on decisions relating to another club’s employment and transfer-related matters (which the sell-on clauses do not).
- The fact that a club has agreed to financial consequences that arise from certain actions does not necessarily equate to a restriction that would amount to influence for the purposes of art. 18bis of the RSTP. In this case, the clubs are not influenced by Arsenal but (if at all) by the fact their actions could trigger a financial consequence. In particular, financial consequences do not, per se, undermine a club’s independence.
- The FIFA Disciplinary Committee concluded in para. II.13 that in a scenario in which the clubs receive two similar or identical offers for the transfer of the relevant players, they would be more inclined to accept the offer coming from outside the UK as it would be more profitable for them. Arsenal claims that *“whether the Clubs are ‘more inclined’ to take a particular course of action is not the same as the Clubs being restricted from accepting either offer or Arsenal being able to influence the Clubs’ decision-making, which is what is required for there to be an infringement of Article 18bis. This also ignores, for example, that PAOK may be ‘more inclined’ to sell the Player just before a payment is triggered under clause 3.4 of the relevant transfer agreement – if, say, the Player is nearing 10 appearances, then, following the FDC’s logic, PAOK may be more inclined to not play the Player and/or to sell the Player before this threshold is met, so as not to trigger a liability to pay contingent compensation of €50,000 to Arsenal – clause 3.4 of that transfer agreement is not, however, considered to breach Article 18bis(1). By extension, the FDC’s logic suggests that the use of any sell-on clause (variable or otherwise), or indeed any contingent payment, would ‘influence’ a club’s decision of whether or not to transfer a player in the future and therefore be considered in breach of Article 18bis”*.
- Arsenal held a legitimate expectation that the sell-on clauses do not infringe art 18bis of the RSTP, which it relied on when entering the transfer agreements. Such expectation was founded upon Arsenal’s experience, its understanding of the custom and practice in the industry and FIFA’s previous approach to such matters. At para. II.15 the FIFA Disciplinary Committee simply observes that Arsenal had a legitimate expectation that it was not breaching the RSTP but it does not then address this any further.
- Arsenal has requested details of any related disciplinary cases which were commenced before the 2019 summer transfer window (when the last of the Players was transferred) and no such details were provided, which would suggest that no established jurisprudence exists.
- For all the above reasons, Arsenal denies having acted in breach of art. 18bis of the RSTP in relation to the sell-on clauses.

- Furthermore, Arsenal claims that the FIFA Disciplinary Committee failed to consider its first and second submission in the decision which constitutes a violation of Arsenal's right to be heard as the principle of the right to be heard includes a minimum duty for the decision-making body to examine and address the legally relevant arguments presented by a party which are important for the resolution of the matter.
- It is not sufficient for the FIFA Disciplinary Committee to simply say, in a footnote that it "*thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted*" – it evidently did not because otherwise, given the significance of submission 1 and 2 and their importance to the merits of the case, the FIFA Disciplinary Committee should have indicated why they did not address or accept Arsenal's submissions in this regard.
- The wording of art 18bis of the RSTP is not clear, especially as many other clubs have seemingly followed a similar approach to Arsenal.
- It is interesting that the FIFA Disciplinary Committee noted that Arsenal does not have any precedents related to violations of art. 18bis of the RSTP as Arsenal has, historically, agreed clauses similar to the sell-on clause in this case, and FIFA has not taken any issues with these. Therefore, the FIFA Disciplinary Committee appears to have taken an entirely inconsistent (and new) approach.
- Ultimately, it appears from the Appealed Decision that Article 18bis is being enforced in a manner that goes beyond the purpose for which it was implemented. Variable sell-on fees have been commonly used in the industry for a number of years, and have hitherto been accepted or gone unchallenged by FIFA. If FIFA now seeks to apply a wider interpretation to capture these types of provisions, then it is incumbent on FIFA to issue rules or guidance to inform clubs of the change in the enforcement of the rule, before disciplinary action can be taken.

Alleged breach of art. 4 par. 3 of Annexe 3 of the Regulations:

- The FIFA Disciplinary Committee also fails to deal with Arsenal's submissions in respect of Article 4 par. 3 of Annex 3 of the RSTP. This provision (unlike Article 18bis) makes no reference to 'counter club', which is significant. Clubs are not third-parties for the purposes of the RSTP as the definition of third-party in the RSTP is "*a party other than the two clubs transferring a player from one to the other, or any previous club, with which the player has been registered*".
- The FIFA Disciplinary Committee said in para II.22, that "*it is clear that the mandatory declaration of third party influence refers to the engagement of contracts as described in art. 18bis of the RSTP*" but that is not the case. The FIFA Disciplinary Committee's construction would have force if art. 18bis of the RSTP was expressly referenced or the words 'counter club' were used but in the absence of that, and given the specific definition of 'third party' in the RTSP, the FIFA Disciplinary Committee's interpretation is misconceived and should be overturned.

Requests for relief

- The appeal is admissible and well-founded; and

- i. The Decision is overturned on the grounds that the FDC erred in deciding that Arsenal breached Article 18bis par. 1 and/or Article 4 par. 3 of Annex 3 of the RSTP in relation to the relevant transfer agreements; and/or
- ii. Alternatively, the Decision is overturned on the grounds that the FIFA Disciplinary Committee violated Arsenal's right to be heard; and
- iii. The costs of proceedings before the FIFA Disciplinary Committee and the Appeal Committee be borne by FIFA.

III. CONSIDERATIONS OF THE APPEAL COMMITTEE

1. In view of the circumstances of the present matter, the Committee first decided to address some key procedural aspects (A), before entering into the substance of the case at stake (B).

A. PROCEDURAL ASPECTS

1. Competence of the FIFA Appeal Committee and admissibility of the Appeal

2. First, the Committee recalled that the procedural aspects of the matter at stake were governed by the 2019 edition of the FIFA Disciplinary Code (hereinafter: *the FDC*), in particular considering that the Appellant lodged the present appeal on 30 April 2020, *i.e.* while the 2019 FDC was applicable.
3. In this context, the Committee underlined that the sanctions imposed by the first instance on the Appellant were a fine amounting to CHF 40,000 and a warning. As such, the Committee pointed out that, in accordance with art. 56 in conjunction with art. 57 of the FDC, it was competent to hear the appeal presented by the Appellant against the decision rendered by the Disciplinary Committee on 26 February 2020.
4. This having been established, the Committee acknowledged that:
 - i. The grounds of the Appealed Decision were notified on 29 April 2020;
 - ii. The Appellant communicated its intention to appeal on 30 April 2020;
 - iii. The Appellant submitted its reasons for the appeal and the proof of payment of the appeal fee on 7 May 2020;
 - iv. FIFA received the appeal fee.
5. In view of this, the Committee held that the requirements of art. 56 pars. 3, 4 and 6 of the FDC have been met and therefore declared the present appeal admissible.

2. Applicable law

6. In continuation, the Committee deemed that it had to determine which edition of the Regulations on the Status and Transfer of Players (RSTP) applied to the substance of the matter at stake.
7. In these circumstances, the Committee noted from the Appealed Decision that the Appellant was sanctioned for having infringed the provisions of the RSTP related to third-party influence

on clubs (art. 18bis par. 1) and the failure to enter correct information in TMS (art. 4 par. 3 of Annexe 3), in relation to the Agreement 1 signed on 2 August 2018 with PAOK for the release of Player 1 and the Agreement 2 signed on 15 August 2018 with Frosinone for the release of Player 2.

8. Consequently, the Committee considered that the present matter should be analysed in light of the 2018 edition of the RSTP, which was the edition in force at the time of the signing of the Agreement 1 and Agreement 2.
9. This being established, the Committee subsequently analysed the merits of the present case.

B. MERITS

10. In this context, the present proceedings are related to a decision rendered by the Disciplinary Committee by means of which the Appellant has been sanctioned (i) for entering into two transfer agreements which enabled it to influence the counter club's independence and policies in transfer-related matters, and (ii) for not declaring that influence in the relevant transfer instruction entered in TMS to release Player 1 to PAOK and Player 2 to Frosinone.
11. In this sense, the Committee noted that in the Appellant's opinion clause 3.6 of the Agreement 1 and clause 3.5 of the Agreement 2 were not in breach of art. 18bis of the RSTP as the fact that a club has agreed to financial consequences does not necessarily equate to a restriction that would amount to influence for the purposes of art. 18bis of the RSTP, and consequently the Appellant has neither breached art. 4 par. 3 of Annexe 3.
12. In this regard, the Appellant claimed that the Agreement 1 and 2 did not give it the possibility to exercise a real and effective influence on PAOK or Frosinone, as the two clubs are both free to transfer the Player 1 or Player 2 and to decide on the conditions of the transfer and even the clubs to which the players are to be transferred, being the relevant clauses mere provisions to decide on the financial consequences of an eventual transfer of the players.
13. In light of the Appellant's allegations, the Committee considered that in order to decide on this appeal there were five questions that had to be answered:
 - i. Was the Appellant's right to be heard respected by the FIFA Disciplinary Committee?
 - ii. What is the prohibition foreseen in art. 18bis of the RSTP?
 - iii. Do clauses 3.6 (Agreement 1) and 3.5 (Agreement 2) constitute a breach of art. 18bis of the RSTP?
 - iv. Did the Appellant fail to enter correct information in TMS and breach art. 4 par. 3 of Annexe 3 of the RSTP?
 - v. Is the sanction imposed by the FIFA Disciplinary Committee on the Appellant proportionate?

i. Was the Appellant's right to be heard respected by the FIFA Disciplinary Committee?

14. First and foremost, the Committee referred to the allegations made by the Appellant that the Disciplinary Committee violated Arsenal's right to be heard as the principle of the right to be

- heard includes a minimum duty for the decision-making body to examine and address the legally relevant arguments presented by a party.
15. In this regard, the Committee highlighted that the fact that the Disciplinary Committee did not make reference to all the points raised by the Appellant in the Appealed Decision does not purport that these points were not duly taken into consideration.
 16. In this sense, the Committee considered that the Disciplinary Committee had no obligation to directly and explicitly rebut each argument submitted by the Appellant. In this respect, the Committee emphasised that according to CAS jurisprudence, a decision of a sport organization such as FIFA requires a (short) reasoning that enables the addressee to understand the findings and the reasoning of the association tribunal¹.
 17. In addition, pursuant to the Swiss Federal Tribunal's jurisprudence which stated that the right to be heard does not mean that the judge must draw the attention of the parties on the facts which are decisive for the judgment². Moreover, the Swiss Federal Tribunal considered that the right to be heard does not encompass a right to obtain a decision that accurately assesses the facts or applies the law, but it simply protects the parties from situations in which they would be prevented from presenting their arguments, stating their case and submitting evidence³.
 18. In this sense, the Committee noted that, in order to reflect that all positions submitted were taken into consideration, a footnote in the Appealed Decision mentions that the summary of the Appellant's position "*does not purport to include every single contention put forth by the Club. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits*" and that "*[a]ll documents included in the proceedings conducted by FIFA's TMS Global Transfers & Compliance Department were duly analysed and considered by the FIFA Disciplinary Committee in its discussions and deliberations*".
 19. In view of the foregoing, the Committee concluded that the Disciplinary Committee considered all the submissions provided by the Appellant and that its right to be heard was respected by the Disciplinary Committee.

ii. What is the prohibition foreseen in art. 18bis of the RSTP?

20. The Committee referred to the allegations made by the Appellant that the Disciplinary Committee's interpretation of art. 18bis of the RSTP went beyond the purpose for which it was implemented.
21. In this sense, the Committee wished to stress that a correct interpretation of the FIFA regulations in general, and of art. 18bis of the RSTP in particular, must show their true

¹ CAS 2015/A/3879

² ATF 108 IA 293 at 4c p. 295, ATF 117 Ib 64 consid. 4 p. 86, ATF 114 Ia 233 consid. 2 p. 242, ATF Ia 107) (4A 450/2017)

³ 4A_672/2012 section 3.1.2

meaning. This is possible only through the analysis of the purpose sought, of the interest protected as well as of the legislator's intent⁴.

22. In this respect, the Committee recalled the content of art. 18bis par. 1 of the RSTP, which establishes that:

"No club shall enter into a contract which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams."

23. In this context, the Committee first of all pointed out that according to the wording of art. 18bis of the RSTP – *"No club shall enter into a contract which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence [...]"* –, there is an active stance: clubs are prohibited from being able to actively influence other clubs in employment and transfer-related matters. In this sense, the Committee emphasised that this provision is addressed to both clubs, *i.e.* the influencing club and the influenced club. As far as the influencing clubs are concerned – as is the case of the Appellant –, the Committee stressed that they are undoubtedly responsible to ensure that they do not exercise any kind of influence on the counter club.
24. In other words, this prohibition aims at avoiding that a club concludes any type of contract by means of which it is in a position to influence another club's independence in employment and transfer-related matters, its policies or the performance of its teams. In particular, there should be no influence on the other club's ability to independently determine the conditions and policies concerning purely sporting issues such as the composition and performance of its teams. This provision applies to the influencing club as well as to the influenced club (*vice versa*).
25. Secondly, the Committee referred to the jurisprudence of the Court of Arbitration for Sport (CAS) which has shed some light on the notion of "influence"⁵. In this regard, CAS ruled that the prohibition foreseen in art. 18bis of the RSTP applies whenever *"any other party to that contract or any third party"* is granted the real ability to effect on, determine or impact the behaviour or conduct of the concerned club in relation to employment and transfer-related matters in such a way as to restrict the club's independence or autonomy in such matters.
26. Consequently, the Committee considered that a club will be in breach of art. 18bis of the RSTP every time it enters into an agreement that enables it to have a real ability to determine or impact the behaviour or conduct of another club in employment and transfer-related matters or the performance of its team, and therefore is in a position to influence the club's independence and policies in these matters. Furthermore, the Committee emphasised that the mere fact that such a clause is included in an agreement is an infringement *per se* and it is therefore irrelevant whether any influence has actually been exercised or not.
27. In light of the above, the Committee observed that the Appealed Decision clearly set out the background and *rationale* of art. 18bis of the RSTP in order to enable the Appellant to understand the intention of the legislator and the interest that this provision intends to protect. Moreover, the Committee noted that the Appealed Decision also specified the regulatory content and the scope of application of art. 18bis of the RSTP.

⁴ CAS 2008/A/1673; CAS 2009/A/1810; CAS 2009/A/1811; CAS 2017/A/5173

⁵ CAS 2017/A/5463

28. As a result, the Committee was fully satisfied with the Disciplinary Committee's analysis of art. 18bis of the RSTP and therefore considered that the said Committee had correctly interpreted this provision.

iii. Do clauses 3.6 (Agreement 1) and 3.5 (Agreement 2) constitute a breach of art. 18bis of the RSTP?

29. As a preliminary remark, the Committee highlighted that it was undisputed from the information provided by the parties in TMS that the Appellant entered into the Agreement 1 with PAOK to release the Player 1 and into Agreement 2 with Frosinone to release the Player 2. Therefore, the Appellant can be considered the counter club to PAOK and Frosinone in accordance with the wording of art. 18bis of the RSTP.
30. Having determined the above, the Committee analysed the possible breach of art. 18bis of the RSTP by Clause 3.6 of the Agreement 1, which reads as follows:

“Future transfer of the Player

3.6 If PAOK agrees to transfer, on a permanent basis, the registration of the Player to another football club (the “Future Transfer”), PAOK shall pay to Arsenal an amount in cash (the “Future Transfer Compensation”) equal to (a) in the event of a Future Transfer to a football club in the UK, 40% (forty per cent.), or (b) in the event of a Future Transfer to a football club outside the UK, 30% (thirty per cent.), (...)”

31. In this regard, the Committee shared the view of the Appealed Decision that the abovementioned clause is deemed to have an influence on PAOK's freedom to decide to which club to transfer the Player 1 as PAOK is not fully independent in the case that one of the offers received for the transfer of Player 1 comes from a club from the UK, given that the part of the profit that PAOK would have to pay to Arsenal in case of accepting an offer from a club from the UK is considerably higher than in case of accepting an offer from any other club. Consequently, it would be more inclined to accept the offer from a club that is not from the UK.
32. Therefore, the Committee concluded that PAOK is not completely independent as the financial outcome of its decision could vary negatively in case of accepting an offer from a club from the UK.
33. The Committee subsequently analysed clause 3.5 of the Agreement 2 in the same manner, which reads as follows:

“Future transfer of the Player

3.5 If Frosinone agrees to transfer, on a permanent basis, the registration of the Player to another football club (the “Future Transfer”), Frosinone shall pay to Arsenal an amount in cash (the “Future Transfer Compensation”) equal to (a) in the event of a Future Transfer to a football club that is regulated by a national football association in the United Kingdom (UK), 30% (thirty per cent.), or (b) in the event of a Future Transfer to any other football club, 25% (twenty-five per cent.), (...)”

34. In this regard, the Committee considered that the same applied as to clause 3.6 of Agreement 1. In other words, it adhered to the Appealed Decision's conclusion that Frosinone is limited in its independence to decide to which club to transfer the Player 2, as it would have to pay a higher amount if it accepted an offer from a club from the UK.
35. Therefore, the Committee concluded that Frosinone is not completely independent as the financial outcome of its decision could vary negatively in case of accepting an offer from a club from the UK.
36. Moreover, the Committee pointed out that in order to establish a breach of art. 18bis RSTP, it is irrelevant if any influence was actually carried out or not by Arsenal, but the breach is materialized whenever a real possibility to affect PAOK's or Frosinone's decision-making process is agreed upon – as it is the case in the abovementioned clauses – regardless of the influence being exercised or not.
37. Finally, the Committee considered that the fact that the influence is only limited to certain clubs or to a specific geographical area is irrelevant to establish a breach of art. 18bis of the RSTP, given that the prohibition of the aforementioned article applies to the signature of the agreement that enables a club to influence on a counter club, regardless of the more or less limited scope of the said influence.
38. Consequently, for the reasons explained above, the Committee concurred with the Appealed Decision in the fact that clause 3.6 of the Agreement 1 and clause 3.5 of the Agreement 2 contravene art. 18bis of the RSTP.

iv. Did the Appellant fail to enter correct information in TMS and breach art. 4 par. 3 of Annexe 3 of the RSTP?

39. The Committee noted that the Disciplinary Committee found the Appellant in breach of art. 4 par. 3 of Annexe 3 of the RSTP, since it wrongly declared in TMS that there was no third-party influence in the scope of the transfer of the Player 1 and Player 2.
40. In this context, the Committee first stressed that the objective of the creation of TMS is to enable a better safeguard of the FIFA values and improve the credibility and transparency of the entire transfer system.
41. In this regard, it is essential that clubs are aware of their responsibility and the importance of inserting correct information supported by the relevant documents in a responsible manner and at regular intervals in TMS.
42. In line with the above, clubs have the obligation to declare in TMS whether they have entered into any agreement enabling them to acquire the ability to influence the counter club's independence in employment and transfer-related matters.
43. In this regard, even though the Appellant uploaded the relevant agreements in TMS, it was a mandatory obligation to declare the influence on the counter clubs, even more so when the

Disciplinary Committee considered that the said agreements breached the provision of art. 18bis of the Regulations.

44. In light of the foregoing, and having concurred with the Appealed Decision in the fact that clause 3.6 of Agreement 1 and clause 3.5 of Agreement 2 are in breach of art. 18bis of the RSTP, the Committee also adhered to the Appealed Decision's conclusion that the Appellant is in breach of art. 4 par. 3 of Annexe 3 of the RSTP, given that it failed to declare the third-party influence in TMS.

v. Is the sanction imposed by the FIFA Disciplinary Committee on the Appellant proportionate?

45. The Committee noted that the Appellant requested that the Appealed Decision was set aside, as it considered not to have committed any violation of the RSTP, and that the sanctions imposed therein be cancelled and the appeal fee of CHF 1,000 be reimbursed to the club.
46. In this regard, and having been established for the reasons explained above that the Appellant has breached the relevant provisions of the RSTP, the Committee subsequently wished to analyse the sanction imposed on the Appellant in the Appealed Decision.
47. In this respect, the Committee noted that the Appellant was sanctioned with a fine of CHF 40,000. Additionally, the Appellant was warned as to its future conduct and has to bear the costs and expenses of the disciplinary proceedings amounting to CHF 1,000.
48. In this sense, the Committee recalled the jurisprudence of CAS according to which a decision-making body fixing the level of pecuniary sanctions should, amongst others, take into consideration the following elements: (a) the nature of the offence; (b) the seriousness of the loss or damage caused; (c) the level of culpability; (d) the offender's previous and subsequent conduct in terms of rectifying and/or preventing similar situations; (f) the applicable case law and (g) other relevant circumstances⁶.
49. In light of the foregoing, the Committee observed that the Appellant infringed art. 18bis of the RSTP, a provision aiming at protecting the clubs' freedom and independence in relation to recruitment and transfer-related matters as well as to ensure that the integrity of the game of football and its most essential values were safeguarded. In other words, this provision intends to protect one of the FIFA objectives which is to *"to promote integrity, ethics and fair play with a view to preventing all methods and practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches, competitions, Players, Officials and members or give rise to abuse of Association Football"*⁷.
50. In this regard, the Committee endorsed the developments of the Appealed Decision in the sense that any possible situation where a third-party acquired a possibility to directly influence a club in its employment and transfer-related matters should not be tolerated and is absolutely forbidden. In particular, the Committee reiterated that clubs are responsible to assure that the RSTP are duly respected and to ensure that no third-party acquires a possibility to directly influence them in such areas. In the same line, the Committee

⁶ CAS 2014/A/3813

⁷ Cf. art. 2 lit g) of the FIFA Statutes

considered that the failure to enter correct information in TMS is also a serious violation of the Regulations, as it puts the transparency and credibility of the international transfer system at stake and prevents the football authorities from supervising it in an effective manner.

51. Against such background, and in view of the violations of the Regulations committed by the Appellant, the Committee unanimously decided that the sanction imposed on Arsenal is not disproportionate, keeping in mind the deterrent effect that the sanction must have on the reprehensible behaviour to avoid similar unacceptable conducts in the future.
52. In this sense, and with regard to the fine, the Committee noted that in accordance with art. 15 par. 1 a) and art. 6 par. 4 of the FDC, it may not be lower than CHF 100 and greater than CHF 1,000,000.
53. In addition, the Committee took into account the usual practice of the Disciplinary Committee, which for similar breaches has been imposing sanctions between CHF 10,000 and CHF 100,000, depending of the seriousness of the breach.
54. Furthermore, the Committee also considered the fact that the influencer's behaviour is more reprehensible than the one of the influenced. In the matter at hand, the Committee noted that Arsenal is the influencing club as it was only in Arsenal's interest to impose such clause.
55. In addition, the Committee took into consideration that Arsenal entered into two agreements infringing art. 18bis of the RSTP and art. 4 par. 3 of Annexe 3 of the RSTP.
56. Taking into account all the circumstances of the case, the Committee concurred with the Appealed Decision, as it considered a fine of CHF 40,000 and a warning on its future conduct to be adequate and proportionate to the offences committed by the Appellant.

C. CONCLUSION

57. Bearing in mind all of the foregoing, the Committee concluded that the Appeal lodged by the Appellant had to be rejected and the decision taken by the FIFA Disciplinary Committee on 26 February 2020 confirmed in its entirety.

D. COSTS

58. The Committee decided, based on art. 45 par. 1 of the FDC, that the costs and expenses of these proceedings amounting to CHF 1,000 shall be borne by the Appellant.
59. In this sense, the Committee observed that the Appellant had already paid the appeal fee of CHF 1,000 and decided that the aforementioned costs and expenses of the proceedings are set off against this amount.

IV. DECISION OF THE APPEAL COMMITTEE

1. The FIFA Appeal Committee found the Arsenal Football Club responsible for the infringement of the relevant provisions of the Regulations on the Status and Transfer of Players related to

third-party influence on clubs (art. 18bis) and to the obligations of clubs with respect to the TMS (art. 4 par. 3 of Annexe 3).

2. The appeal lodged by the Arsenal Football Club is rejected and the decision of the FIFA Disciplinary Committee passed on 26 February 2020 is confirmed in its entirety.
3. The costs and expenses of the proceedings amounting to CHF 1,000 are to be borne by the Arsenal Football Club. This amount is set off against the appeal fee of CHF 1,000 already paid by the Arsenal Football Club.
4. The fine is to be paid within thirty (30) days of notification of the present decision.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Thomas Bodström

Chairman of the Appeal Committee

LEGAL ACTION

According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

The full address and contact numbers of the CAS are the following:

Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
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