

**Decision**  
of the  
**FIFA Disciplinary Committee**

Mr. Anin Yeboah [GHA], Chairman;  
Mr Alejandro Piera [PAR], Deputy Chairman;  
Mr Thomas Hollerer [AUT], Member

on 13 August 2019,

to discuss the case of:

Club AFC Ajax, Netherlands

(Decision 190494 TMS)

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*regarding:*

Entering into a contract which enables a third-party influence on the club's independence in employment and transfer-related matters and entering incorrect information in TMS

(Art. 18bis par. 1 of the Regulations on the Status and Transfer of Players (2015 ed.) as well as art. 4 par. 2 of Annexe 3 of the Regulations on the Status and Transfer of Players (2016 ed.))

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## I. Inferred from the file

1. On 21 July 2016, the club AFC Ajax (hereinafter "*the Club*" or "*Ajax*") entered a transfer instruction (TMS ref. 143862) in the Transfer Matching System (hereinafter "*TMS*") to release permanently the player Juan Carlos Familia Castillo (hereinafter "*the Player*") to the English club Chelsea FC (hereinafter "*Chelsea*") for a fixed transfer fee amounting to EUR 370,000.
2. The transfer agreement concluded between Ajax and Chelsea on an unknown date in 2016 (hereinafter "*the agreement*"), duly uploaded into TMS in the aforementioned transfer instruction, contained the following clauses:

*"5.1 The transferor hereby represents and warrants to Chelsea that: (...)*

*(c) It shall continue to retain the Player's registration unencumbered until 30 June 2016 or on such other date as Chelsea directs that the Player's registration be transferred to it on a permanent basis, and will not transfer the Player's registration to any other club on a temporary basis without Chelsea's written consent;*

*(d) prior to the registration of the Player with Chelsea it shall release the Player to Chelsea for such periods of training and development or participation in friendly matches or tours as Chelsea shall reasonably require subject to the applicable rules and requirements of FIFA, The FA and The PL.*

*(...)*

*(f) neither it, nor any of its advisors, agents or intermediaries shall, either directly or indirectly, solicit, accept or engage in any discussion or negotiation in relation to any offer from any other club for the temporary or permanent transfer of the Player's registration without Chelsea's express prior written consent.(...)"*

3. Additionally, in the transfer instruction TMS 143862, the Club indicated that it had not entered into a contract which enabled 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.
4. On 12 June 2019, FIFA TMS sent a correspondence to the Club and requested the latter to provide its position in what concerns the potential breach of art. 18bis of the FIFA Regulations on the Status and Transfer of Players (hereinafter "*the Regulations*" or "*RSTP*") regarding the clauses 5.1 c), d) and f) of the agreement.

5. On the same date, the Club provided FIFA TMS with a position which can be summarized as follows:
  - The player was never under contract with Ajax. As such, the player was free to go to any club of his choice at any time he desired. Because the player was an amateur Ajax had no position in respect of his registration or release.
  - The payment recorded in the financial agreement is the amount of training compensation calculated by the parties. By mistake this amount has been declared in TMS as a transfer fee, which should have been declared as training compensation.
  - Therefore, the wording in clause 5.1 bears no meaning or value.
  - The wording in clause 5.1 are boiler plate clauses which can be found in most contracts between clubs. In particular, if any of the English clubs are involved. It would come as a complete surprise that these boiler plate clauses would suddenly (in this case three years after signing) be regarded as in violation with article 18bis of the RSTP. This cannot be right.
  - According to clause 5.1 and clause 9.1 the arrangements between the parties are subject to the applicable rules and requirements of – governed by – and construed in accordance with the FIFA regulations. If and insofar certain wording of clause 5.1 is held to be in violation with article 18bis of the RSTP, this element is carved out and is not agreed because the parties have explicitly agreed that the FIFA regulations will prevail and that invalid and unenforceable terms are deemed not to form part of the agreement.
6. On 21 June 2019, FIFA TMS informed the Club that the matter had been transferred for consideration by the FIFA Disciplinary Committee.
7. On 24 July 2019, the Secretariat to the FIFA Disciplinary Committee (hereinafter "*the Secretariat*") opened disciplinary proceedings against the Club for a potential breach of art. 18bis par. 1 of the Regulations, 2015 edition, as well as of art. 4 par. 2 of Annexe 3 of the Regulations, 2016 edition.

8. On 30 July 2019, the Club provided its position which can be summarized as follows<sup>1</sup>:
- There is no violation of article 18bis par. 1 of the RSTP (2015) and article 4.2, Annexe 3 of the RSTP (2016), at all.
  - The Player was registered as an amateur during his entire registration period with Ajax. Ajax and the Player never concluded an employment contract or any other contract. Ajax could not and did not have any control, whatsoever, regarding a future registration or release of such a player.
  - Considering that the Player was an amateur, in essence the provisions under scrutiny have become moot, *i.e.* bear no meaning or value in practice. Ajax fails to understand how any of these provisions at stake can prevail over the actual situation.
  - Training compensation was due by Chelsea to Ajax, resulting in an amount of EUR 370,000. By accident, however, the amount for training compensation of EUR 370,000 was referred to as a "transfer fee" in the agreement, which amount was also mistakenly declared in TMS as a "transfer fee" (which obviously should have been declared as 'training compensation'). It is, however, absolutely clear, and there is no doubt, that there was no "transfer fee" due by Chelsea to Ajax considering that the Player was an amateur.
  - Certain provisions were included unintentionally in the agreement. The clauses are so-called "boilerplate clauses", which are standard contractual terms that are routinely included in many contracts for professional players. Chelsea drafted the agreement based on a standardized format. In the summer transfer period of 2016 Ajax was involved in many transfers of professional players as a result of which the legal department was totally overloaded. Former board members were involved in this relatively small transfer of the amateur player to Chelsea. As these former board members were not qualified lawyers, it seems that they might not have valued, as lawyers would have done, the legal consequences of certain provisions as included in the agreement for the transfer of the registration of this

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<sup>1</sup> The summary 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.

amateur, such as the aforementioned "boilerplate clauses". In fact, an agreement was not required as no other agreement was made between Ajax and Chelsea besides payment of the training compensation.

- Ajax admits that certain provisions, in particular the three clauses under review, at least at first sight, seem to suggest that these provisions contravene article 18bis par. 1 of the RSTP and article 4.2, Annexe 3 of the RSTP. However, the fact that the Player was an amateur plays a decisive role with regard to the evaluation of the facts in this matter and sheds a different light on the case.
- None of the clauses conferred any ability on Chelsea to exercise any influence on the independence of Ajax, because the option only covered a very short period. In fact, as also follows from the Player Passport, the agreement was entered into TMS on 5 May 2016 and the registration date with Chelsea was 9 August 2016, which resulted in a period of almost 12 weeks.
- From Clause (c) it follows that Ajax was not allowed to transfer the Player on a temporary basis without Chelsea's written consent. However, as the Player had amateur status Clause (c) could not have had any effect at all. For the simple reason that an amateur cannot be transferred on a permanent or on a temporary basis (*i.e.* only the registration rights of an amateur player can be transferred). As such, in practice, Clause (c) could not have created any irregular effects. Clause (c) must actually be considered as a "boilerplate clause". Ajax had no legal power as to any release, at all, of this amateur player. As such, the Player was free to go to any club of his choice at any time he desired. Ajax did not have any position nor was any position contractually created with respect to the Player's future registration or release. Clause (c) did not force and not could have forced Ajax into a position whereby its independence was at jeopardy.
- From Clause (d) it follows that Ajax was obliged to release the Player to Chelsea for periods of training and development or participation in friendly matches or tours as Chelsea required this. However, also in relation to this provision, it is of utmost importance to keep in mind that the Player was an amateur during his entire stay with Ajax. Only insofar as the Player was a professional, instruction power was contractually created that might have had any effect to release the Player to Chelsea for periods of training and development or participation in friendly matches or tours. However, as the

Player was an amateur, Ajax had no say in this, at all, and Clause (d), similar as with Clause (c), in essence could and did not materially limit the independence of Ajax. Similar as with Clause (c), this is, and so once again, a mere indication that also this clause actually had to be considered as a "boilerplate clause" and, as a result, did not have legal meaning, at all.

- From Clause (f) it follows, in essence, that Ajax (or its advisors, agents or intermediaries) was not allowed in any discussion or negotiation regarding any offer from any other club for the temporary or permanent transfer of the Player's registration without Chelsea's express prior written consent. Similar as with Clauses (c) and (d), Ajax had no legal power as to any temporary or permanent release of the Player as an amateur. There was no offer to be made for the Player as an amateur. As said before, an amateur player cannot be transferred on a permanent or on a temporary basis. As such, also Clause (f) did not create any contractual effects. As with the other clauses, Ajax did not have any position nor was there any position contractually created with the insertion of this provision regarding the Player's future registration or future release. Clause (f) did not force nor could have forced Ajax into a position whereby its independence was at jeopardy.
- The obligation of art. 4.2 of Annexe 3 of the RSTP did not apply to Ajax as the player was an amateur.
- To conclude, Ajax did not empower Chelsea to influence it by means of contractual obligations and there was no such situation whereby it was contractually granted a possibility of materially affecting Ajax' decision-making process when it came to employment and/or transfer-related decisions. At any event, Ajax did not have any intention to act in contradiction with the FIFA regulations. In conclusion, there is no violation of article 18bis par. 1 RSTP as well as article 4.2, Annexe 3 RSTP.

## II. and considered

### A) Jurisdiction of the FIFA Disciplinary Committee

1. In accordance with art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter also referred to as *the Committee*) may pronounce the

sanctions described in the Statutes and the FIFA Disciplinary Code (FDC) on member associations, clubs, officials, players, intermediaries and licensed match agents.

2. In application of art. 53 of the FDC the Committee is competent to sanction any breach of FIFA regulations which does not come under the jurisdiction of another body.
3. In this respect, art. 25 par. 3 of the Regulations stipulates that disciplinary proceedings for violation of the Regulations shall be conducted in accordance with the FIFA Disciplinary Code.
4. In particular, art. 18bis par. 2 of the Regulations provides that the Committee may impose disciplinary measures on clubs that do not observe the obligations set out in article 18bis.
5. Art. 9 par. 2 of Annexe 3 of the Regulations further stipulates that sanctions may also be imposed on any association or club found to have entered untrue or false data into the system or for having misused TMS for illegitimate purposes.
6. Moreover, the Committee notes that the Club at no point challenged the jurisdiction of the Committee or the applicability of the FDC.
7. As a result of the foregoing considerations, the Committee deems that it is competent to evaluate the present case and to impose sanctions in case of corresponding violations.

## **B) Analysis of the applicable articles**

### **1. Article 18bis of the RSTP**

8. The Committee firstly points out that article 18bis par. 1 of the RSTP establishes a prohibition that is addressed to clubs only (i.e. *"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."*). Consequently, clubs are responsible to ensure that they cannot be influenced by a counter club (or a third party).
9. In other words, this prohibition consists of avoiding the conclusion of contracts that grants anyone the possibility of influencing a club's independence in employment and transfer-related matters, its policies or the performance of its

teams and the clubs' abilities to determine the conditions and policies concerning purely sporting issues such as the composition and performance of their teams, independently.

10. The Committee therefore concludes that no one – other than the relevant club – is entitled to determine by itself, the conditions and policies concerning purely sporting issues of a club such as the composition and performance of its teams.

## **2. Analysis of article 4.2 of Annexe 3 of the RSTP**

11. Annexe 3 of the RSTP analyzes in a very detailed manner the Transfer Matching System, a web-based data information system that was developed to ensure that football authorities have more details available to them on international player transfers in order to increase the transparency of individual transactions, improve the credibility and standing of the entire transfer system.
12. In this sense, 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.
13. In order to achieve the above, Annexe 3 of the Regulations describes in detail all the specific steps that users of the system must follow, as well as the obligations that must be met in order not to commit any violation and incur possible sanctions.
14. In this regard, article 4 par. 2 of the Regulations, addressed to any club, imposes the obligation on clubs to upload various types of information within the framework of an international transfer:

*"Clubs must provide the following compulsory data when creating instructions, as applicable:*

- [...]
- *Declaration on third-party payments and influence*
- [...]".

## **C) Analysis of the violations of the RSTP by Ajax**

15. The above having been established, the Committee subsequently analyses the evidence at its disposal, in particular the documents uploaded into the TMS, the documents gathered during the investigation conducted by the FIFA TMS as well as the correspondence and documents provided by the Club within the frame of the present disciplinary proceedings.

16. Firstly, the Committee notes that it is undisputed that Ajax and Chelsea concluded a transfer agreement in 2016.
17. Therefore, it is clear that the club has not questioned or disputed either the existence, nor the content or validity of the contract at any time.

**1. Analysis of the transfer agreement in connection with article 18bis of the RSTP**

18. As a preliminary remark, the Committee wishes to emphasise that Chelsea is to be considered as a counter club in accordance with the wording of art. 18bis of the Regulations.
19. Consequently, and having determined the above, the Committee proceeds to analyse the content of the relevant clauses of the agreement which read as follows:

Clause 5.1 (c)

*"The transferor hereby represents and warrants to Chelsea that: (...)  
(c) It shall continue to retain the Player's registration unencumbered until 30 June 2016 or on such other date as Chelsea directs that the Player's registration be transferred to it on a permanent basis, and will not transfer the Player's registration to any other club on a temporary basis without Chelsea's written consent."*

Clause 5.1 (d)

*"The transferor hereby represents and warrants to Chelsea that: (...)  
(d) prior to the registration of the Player with Chelsea it shall release the Player to Chelsea for such periods of training and development or participation in friendly matches or tours as Chelsea shall reasonably require subject to the applicable rules and requirements of FIFA, The FA and The PL."*

Clause 5.1 (f)

*"The transferor hereby represents and warrants to Chelsea that: (...)  
(f) neither it, nor any of its advisors, agents or intermediaries shall, either directly or indirectly, solicit, accept or engage in any discussion or negotiation in relation to any offer from any other club for the temporary or permanent transfer of the Player's registration without Chelsea's express prior written consent.(...)"*

20. In this respect, the Committee wishes to point out that clause 5.1 (c) clearly limits the freedom of Ajax in transfer-related matters. The Club is prevented from loaning the respective player to another club without Chelsea's prior and written consent. In fact, clause 5.1 (f) prevented Ajax from even engaging in discussions or negotiations for possible temporary or permanent transfers of the respective player without Chelsea's prior and written consent.
21. In this context, the Committee noted that the Club argued that these clauses were without effect as the player was an amateur, *i.e.* not under contract with the Club, and as such, could leave freely. At first sight, the Committee concurred with such line of argumentation, in the sense that, in principle, only professional players could be loaned to another club (cf. art. 10 of the RSTP).
22. However, the Committee wishes to qualify this point by recalling that, should it not have signed this agreement with Chelsea, it could have concluded an employment contract with the player covering the period up to the transfer to Chelsea (in June 2016), and then loan the player to a third club during this period – and this, without jeopardizing the said upcoming transfer to Chelsea –. In sum, Ajax could have faced the situation where it was interested in transferring the respective player on loan – e.g. to allow the player to have more possibilities to play and develop before being transferred to Chelsea, or even to monetize its prior investment in the player – and yet being prevented from doing so independently, as a result of the agreement concluded with Chelsea.
23. In this respect, the Committee considers that clubs, in order to be considered truly independent, shall be free to negotiate and loan their players with no need to obtain the prior approval from another club. As a result, the Committee considers that, by the existence of these clauses, Ajax was influenced in its employment and transfer-related matters, thus affecting its independence.
24. Furthermore, it appears to be clear that, in accordance with clause 5.1 (d), Ajax had to release the player to Chelsea upon request of the latter. The Committee considers that such clause clearly limits the independence of Ajax concerning the composition and performance of its team which could even entail an adverse effect – e.g. when Chelsea unilaterally decides to request the release of the player, such player may have other matches with Ajax in which the player cannot participate due to his departure to Chelsea at the given time. An independent club cannot be the subject of such limitations with respect to its teams.
25. The Committee considers that these clauses clearly grant Chelsea the ability to influence in employment and transfer-related matters Ajax's independence, its policies and the performance of its teams.

26. For the sake of clarity, the Committee wishes to emphasize that a club is guilty of the prohibited conduct when the contract in question effectively enables or entitles the club to have an influence on the other club in such matters and/or capacities, regardless of whether or not this influence actually materializes.
27. Following an analysis of the aforementioned clauses, the Committee considers that Ajax entered into this agreement enabling Chelsea to influence the independence and policies of Ajax in employment and transfer-related matters as well as the performance of its team and is therefore liable for a breach of article 18bis par. 1 of the RSTP in relation to the agreement.

## **2. Analysis of the facts: article 4.2 of Annexe 3 of the RSTP**

28. The Committee further noted that in the relevant transfer instruction (TMS ref. 143862) Ajax apparently declared that it did not enter into a contract enabling a "*third-party influence*".
29. The Committee considers, as demonstrated above, that the transfer agreement signed between Ajax and Chelsea, clearly allowed Chelsea to acquire the ability to influence Ajax *in employment and transfer-related matters its independence, its policies or the performance of its teams*.
30. Therefore, by declaring in TMS that there was no third-party influence the Club failed to disclose full and correct information in TMS, thus in violation of art. 4 par. 2 of Annexe 3 of the RSTP.

## **3. Summary**

31. In view of the foregoing, the Committee concludes that the Club, by its conduct as described above, violated the following provisions of the RSTP:
- Art. 18bis of the RSTP, 2015 edition, for entering into a contract (i.e. the transfer agreement) enabling a third-party to influence the Club;
  - Art. 4 par. 2 of the Annexe 3, 2016 edition; for failing to enter correct information in TMS.
32. Therefore, the Committee considers that the Club is to be sanctioned for the aforementioned violations.

## **D) Determination of the sanction**

33. As far as the sanctions applicable in this case are concerned, the Committee observes in the first place that Ajax is a legal person. According to art. 6 par. 1

of the FDC, both natural and legal persons are punishable by the following sanctions: warning, reprimand, fine, return of awards and/or withdrawal of a title. In addition, according to article 6 par. 3 of the FDC, the sanctions applicable only to legal persons include transfer bans, playing matches without spectators and/or with a limited number of spectators and/or on neutral territory, bans on playing in a particular stadium, the annulment of the result of a match, the deduction of points, relegation to a lower division, expulsion from a competition in progress or from future competitions, forfeits, replaying a match and/or implementation of a prevention plan. Consequently, the FIFA Disciplinary Committee may impose the sanctions provided for under art. 6 of the FDC.

34. For the sake of good order, the Committee underlined that it is responsible to determine the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances (art. 24 par. 1 of the FDC).
35. In this context, the Committee recalled that, as established above, Ajax is guilty of having violated several provisions of the RSTP, namely art. 18bis (2015 ed.) and art. 4 par. 2 of Annexe 3 (2016 ed.).
36. Having said that, the Committee deemed that the violation of art. 18bis of the RSTP should however be mitigated by (1) the fact that the relevant clauses did not foresee any financial consequence in case of non-compliance with said clause, (2) the fact that said clause was limited in time for a short period (*i.e.* between the conclusion of the agreement and the formal transfer of the player to Chelsea) and (3) the fact that it had really limited effects. In addition, the Committee was of the opinion that the financial relationship between the two clubs also needed to be taken into account. As a matter of fact, the Committee held that Ajax was to be considered the “weak” party and that said clause was most likely not imposed by it during the relevant negotiations, but rather to it.
37. Finally, the Committee notes that Ajax does not have any precedents.
38. Taking into account the relevant principles and conclusions set out above, the Committee considers a fine to be the appropriate sanction.
39. With regard to the fine, according to the provisions of art. 6 par. 4 of the FDC, the Committee notes that it may not be lower than CHF 300 and greater than CHF 1,000,000.
40. Taking into account all the circumstances of the case, the Committee considers a fine of CHF 10,000 to be adequate and proportionate to the offence.

41. In addition, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to Ajax' conduct. In particular, Ajax is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations (in particular the FDC as well as the Regulations and its provisions related to third party influence) are strictly complied with. Should such infringements occur again in the future, the Committee would be left with no other option than to impose harsher sanctions on the Club.

### **III. Therefore decided**

1. The FIFA Disciplinary Committee found the club AFC Ajax 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), as well as to the obligations of clubs (art. 4 par. 2 of Annexe 3).
2. The FIFA Disciplinary Committee orders the club AFC Ajax to pay a fine to the amount of CHF 10,000.
3. In application of art. 6 par. 1 lit. a) of the FIFA Disciplinary Code, the club AFC Ajax is warned on its future conduct.
4. The above fine is to be paid within thirty (30) days of notification of the present decision.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



Anin Yeboah  
Chairman of the FIFA Disciplinary Committee

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**Note relating to the legal action:**

This decision cannot be appealed against before the FIFA Appeal Committee (art. 57 par. 1 of the FDC).