

# Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 18 May 2020,

## COMPOSITION:

Mr. Yasser Al-Misehal, Saudi Arabia (member)

Mr. Charlie Cuzzetto, Canada (member)

Mr. Carlos Teran, Venezuela (member)

## RESPONDENT:

Club TW Braga FC, Northern Ireland

Regarding registration of an international minor player without the relevant International Transfer Certificate (ITC) and the prior approval of the Sub-Committee appointed by the Players' Status Committee

Articles 5 par.1, 9 par. 1, 19 pars. 1 and 4 and art. 1 par. 3 of Annexe 3 of the FIFA Regulations on the Status and Transfer of Players (hereinafter, "the Regulations" or "RSTP")

## 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 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.
2. The case relates to the registration of the player Hassan Ayari (hereinafter: the *Player*) by the Irish Football Association (hereinafter also referred to as *the IFA*).
3. The Player was born on 8 December 2002 and holds dual citizenship with United States and Lithuania.
4. In 2017, the Player was internationally transferred from a club affiliated to the United States Soccer Federation (hereinafter: the USSF) to the club TW Braga FC (hereinafter: Braga or the Club), a club affiliated to the IFA.
5. In particular, the factual circumstances of the present case can be summarized as follows, including the information that the FIFA Disciplinary Committee has taken into account:
  - i. The Player was registered with a club affiliated to the USSF, prior to his transfer to Braga on 2017.
  - ii. The Player was under 18 when he was transferred on 2017 from the USSF to the IFA.
  - iii. No minor application was submitted in TMS of the Player in relation to his transfer from USSF to IFA.
6. On 23 April 2020, following investigations conducted by FIFA's TMS Global Transfer & Compliance Department (hereinafter: *FIFA TMS*), disciplinary proceedings were opened against the Club with respect to potential violations of arts. 5 par. 1, 9 par. 1, 19 pars. 1 and 4 of the Regulations on the Status and Transfer of Players, (hereinafter: *the Regulations* or *the RSTP*), as well as art. 1 par. 3 of Annexe 3 of the RSTP. In this sense, Braga was invited to provide its position in relation to the potential infringements.
7. After having opened disciplinary proceedings, no correspondence has been received from Braga.

## II. RESPONDENT'S POSITION

1. On 18 November 2019, Braga provided its arguments to the FIFA TMS with respect to the potential infringements of the Regulations. The position of Braga can be summarized as follows:

- TW Braga is a small grassroots club based in Northern Ireland that plays within the local junior league known as Lisburn Junior Invitational League.
- The Player's father claimed that the Player was "unattached"
- When the Player registered on 6 August 2017 with the Club, according to the registration form, the club in which he was previously registered was "New York Soccer Club" in the U.S.A.

### III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

#### A. Jurisdiction of the FIFA Disciplinary Committee

1. First of all, the FIFA Disciplinary Committee (hereinafter also referred to as the Committee) notes that at no point during the present proceedings did the Club challenge its jurisdiction or the applicability of the FIFA Disciplinary Code (FDC).
2. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasise that, on the basis of art. 53 of the FDC as read together with arts. 25 par. 3 and art. 9 par. 2 of Annexe 3 of the RSTP, it is competent to evaluate the present case and to impose sanctions in case of corresponding violations.

#### B. Applicable law

3. With respect to the applicable regulations, the Committee first emphasizes that, in accordance with art. 19 par. 1 of the Regulations "*[i]nternational transfers of players are only permitted if the player is over the age of 18*".
4. In this respect, the Committee recalls that art. 19 par. 4 of the Regulations establishes that "*[e]very international transfer according to paragraph 2 (...) 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 (...)*".
5. In continuation, the Committee refers to art. 1 par. 1 of Annexe 2 of the Regulations, which establishes that "*[a]ll applications for a first registration of a minor according to article 19 paragraph 3, or an international transfer involving a minor according to article 19 paragraph 2, must be submitted and managed through TMS*", as well as to art. 1 par. 3 of Annexe 3 of the Regulations in accordance with which "*TMS helps safeguard the protection of minors. If a minor is being registered as a non-national for the first time or is involved in an international transfer, approval must be given by a sub-committee appointed by the Players' Status Committee for that purpose (cf. article 19 paragraph 4). The request for approval by the*

*association that wishes to register the minor on the basis of article 19 paragraphs 2 and 3 and the subsequent decision-making workflow must be conducted through TMS (cf. Annexe 2)".*

6. In this sense, the Committee recalls that art. 5 par. 1 of the Regulations establishes that “[a] player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of article 2. Only registered players are eligible to participate in organised football (...)”.
7. Notwithstanding the above, the Committee equally recalls that according to art. 9 par. 1 of the Regulations “Players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC) from the former association (...)”.

### **C. Standard and burden of proof**

8. The Committee recalled the basic principle of burden of proof, as stipulated in art. 36 par. 2 of the FDC, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.

### **D. Merits of the dispute**

#### **I. Analysis of the potential violations of the RSTP by the Club**

9. Once having gone through the relevant provisions, the Committee finds it worthwhile to emphasize, as a preliminary remark, that the protection of minors constitutes one of the principles included in the agreement that was concluded between FIFA, UEFA and the European Commission in March 2001 and is one of the essential pillars of the Regulations since then. All of the aforementioned authorities and members of the football community agreed that the measures to ensure the protection of minors and to combat abuses require robust rules which must be implemented in a consistent and strict manner. Such principles were recognized by the Court of Arbitration for Sport (CAS) which by a decision of 6 March 2009 (CAS 2008/A/1485 FC Midtjylland A/S v. FIFA), confirmed the legality of the relevant FIFA regulations, further emphasizing that these provisions do not contravene any rule of public policy or European law.
10. In this respect, the Committee points out that FIFA’s efforts to protect minors have, since then, been recognized by CAS on several occasions (CAS 2005/A/955 Cádiz C.F., SAD v. FIFA and Asociación Paraguaya de Fútbol & 956 Carlos Javier Acuña Caballero v. FIFA and Asociación Paraguaya de Fútbol, CAS 2008/A/1485 FC Midtjylland A/S v. FIFA, CAS 2011/A/2354 Elmir Muhic v. FIFA, CAS 2011/A/2494 FC Girondins de Bordeaux v. FIFA, CAS 2012/A/2787 Villareal CF. FIFA, CAS 2014/A/3611 Real Madrid FC v. FIFA, CAS 2014/A/3793 Fútbol Club Barcelona, CAS 2014/A/3813 Real Federación Española de Fútbol v. FIFA, CAS 2015/A/4312 John Kenneth Hilton v. FIFA, CAS 2016/A/4785 Real Madrid Club de Fútbol v. FIFA, CAS 2016/A/4805 Club

Atlético de Madrid SAD v. FIFA and CAS 2017/A/5244 Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA).

11. This having been established, the Committee subsequently analyses the evidence at its disposal (*i.e.* the documentation and information provided in the scope of the proceedings before FIFA TMS as well as the information provided during the present proceedings) to determine the potential violations of the RSTP committed by the Club.

(1) Art. 19 pars. 1 and 4 of the RSTP in conjunction with art. 1 par. 3 of Annexe 3 of the RSTP

12. First, the Committee turns its attention to the birth date of the Player and acknowledges that, at the time he joined Braga in 2017 and was, therefore, registered with the IFA, he was a minor, in accordance with the definitions section of the Regulations. Furthermore, the Committee observes that at no point during the present proceedings has Braga contested that the Player joined the club in 2017. On the contrary, the Club confirmed the registration and provided the relevant registration form and documents.
13. Being the above clear, the Committee reiterates that, in principle, international transfers of players are only permitted if the player is over the age of 18 (art. 19 par. 1 of the RSTP).
14. Notwithstanding the above, the Committee recognizes that art. 19 par. 2 of the Regulations provides for three exceptions to the general principle of art. 19 par. 1 of the Regulations, under which the international transfer of a minor or the first registration of a non-national minor could be possible.
15. However, the Committee points out that, even in the event that one of the exceptions laid down under art. 19 par. 2 of the Regulations was applicable to the situation of the Player, neither the club nor the association concerned would be authorized to complete their transfer unless the FIFA Players' Status Committee sub-committee (hereinafter, the Sub-Committee) had granted its approval. Indeed, in line with art. 19 par. 4 of the Regulations, such an international transfer "*is subject to the approval of the sub-committee appointed by the Players' Status Committee for that purpose*" and said approval shall be obtained prior to the registration of the minor player concerned.
16. In addition to the above, the Committee emphasizes that, prior to his move to Braga, the Player had been playing for a club affiliated to the USSF. As a result, the Committee highlights that any potential registration of the mentioned players in a country other than their country of origin and/or their international move to such country, would be considered as an international transfer in accordance with the Regulations.
17. As such, the Committee is convinced that, by moving from a club affiliated to an association other than the IFA (*i.e.* the USSF) to a club affiliated to the IFA, whilst being aged below 18, the Player was internationally transferred in contravention of art. 19 par. 1 of the Regulations.

18. As a result of all the above, and considering that “[t]here should be no doubt that the ban on transferring under-aged players is addressed to both “associations” and clubs” (CAS 2014/A/3793 FC Barcelona v. FIFA, par. 9.2), the Committee is of the opinion that, by proceeding to register the Player, the Club breached art. 19 par. 1 of the Regulations.
19. With respect to the case at hand, and for the sake of completeness, the Committee notes that the IFA has never requested and/or been granted a limited exemption from the obligation to refer applications for approval for minor players to the Sub-Committee of the Players’ Status Committee, in accordance with art. 19 par. 4 of the Regulations.
20. Consequently, considering that the Player was previously registered with the USSF, the Committee concludes that the Players’ international transfer to the Club was undoubtedly subject to the prior approval of the Sub-Committee in line with art. 19 par. 4 of the RSTP.
21. With those considerations in mind, the Committee proceeds to analyse as to whether, *in casu*, the international transfer of the Player had been duly approved by the Sub-Committee.
22. In this regard, the Committee observes that no application had been approved by the Sub-Committee (nor even submitted to it) with respect to the Player.
23. The Committee observes, however, that the Club claimed to FIFA TMS that the Player’s father reported that the Player was “unattached”, meaning, to the Committee’s understanding, that he was not registered with any other club.
24. To this respect, the Committee wishes to stress that the clubs have the burden of verifying the previous whereabouts of a minor player before proceeding to the registration. Consequently, even if the Club had been informed by the father of the Player that the latter was or had not been registered with any other club before, it was its responsibility to check if and where the Player had been playing before registering him.
25. At this stage, the Committee is of the opinion that Braga did not act with the requested diligence expected in circumstances such as the ones at hand. These deficiencies led to the current situation in which a minor player was registered without the relevant applicable procedures having been followed.
26. As a result, the Committee deems that it has no other alternative but to conclude that Braga is to be found guilty for the violation of art. 19 par. 4 of the Regulations, read together with art. 1 par. 3 of Annexe 3 of the Regulations, as it failed to obtain the approval of the Sub-Committee prior to the international transfer of the Player.

(2) Art. 5 par. 1 of the Regulations

27. As far as art. 5 par. 1 of the Regulations is concerned, the Committee first wants to recall that a player must be registered at an association to participate in organized football.

28. Having examined the documentation at its disposal as well as the factual circumstances relating to this case, the Committee notes that the Player participated in football matches for Braga. In particular, the Committee acknowledges that Braga stated that the Player participated for 2 seasons in matches within the Lisburn League.
29. In this respect, in order to determine as to whether a potential violation of art. 5 par. 1 of the RSTP exists, the Committee has to define whether the Player took part in what is considered organized football. In other words, the Committee has to assess if the aforementioned matches fall under the definition of organized football, *i.e.* if they are organized under the auspices of FIFA, a confederation or an association, or if they have been authorized by them.
30. In these circumstances, the Committee highlights that neither the Club nor the IFA contested that the matches in which the Player took part fall under the qualification of organized football as defined by the definitions section of the Regulations. Notwithstanding the above, and for the sake of completeness, the Committee observes that the matches were played in the context of the Lisburn Junior invitational League, which is a local league authorized by the IFA. As a result, the Committee deems that it is undisputable that the said matches are to be considered as organized football under the auspices of the IFA.
31. Against such background, it is clear that, by playing the aforementioned matches, the Player participated in organized football.
32. With this in mind, the Committee analyses as to whether the Player was entitled to participate in organized football, and as such, complied with the requirements of art. 5 par. 1 of the RSTP.
33. In particular, the Committee acknowledges that the Player was registered at the IFA. Nevertheless, the Committee recalls that, in any event, such registration is to be considered invalid as the correct procedure had not been followed (*i.e.* the transfer had been conducted without the prior approval of the Sub-Committee).
34. As a result, the Committee concludes that the Player played all aforementioned matches in contravention of the principles of art. 5 par. 1 of the RSTP, as he was not validly registered at the time of his participation.
35. In light of the above, considering that the Player has participated in organized football without being validly registered, the Committee has no other alternative but to conclude that the IFA is liable for the violation of art. 5 par. 1 of the RSTP.

(3) Art. 9 par. 1 of the Regulations

36. As far as article 9 par. 1 of the RSTP is concerned, that rule, in conjunction with art. 9 par. 4, stipulates the procurement of an ITC as a prerequisite for the registration of a player over the

age of 12 (this age being lowered to 10 since 1 March 2015, cf. FIFA Circular no. 1468) with a new association and at a new club.

37. With respect to the Player, the Committee acknowledges, from the file in its possession, that the Player moved from a club affiliated to the USSF to Braga without an ITC having been previously requested.
38. In this context, for the sake of completeness, the Committee refers to CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA (par. 306). During this proceedings the CAS panel clarified that *“(...) both the registration and the ITC are prerequisites for a player to be eligible to participate in organised football. A failure to obtain an ITC must therefore be regarded as a violation separate from the failure to validly register a player. By the same token, a club’s failure to obtain an ITC prior to the participation of the player concerned in organised football must be considered a violation of article 9(1) FIFA RSTP”*.
39. In light of the above, the Committee concludes that the Club is to be found liable for the breach of art. 9 par. 1 of the Regulations.
40. As a result, the Committee considers that the Club is to be sanctioned for the aforementioned violations.

## II. The determination of the sanction

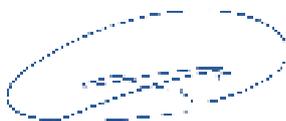
41. Once having defined the violations of the Regulations committed by Braga, the Committee subsequently considers the sanction(s) to be imposed.
42. First of all, the Committee stresses that being the Club a legal person, it can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.
43. For the sake of good order, the Committee underlines 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).
44. As it was established above, the Club is found responsible of having infringed several provisions of the RSTP, namely, arts. 5 par. 1, 9 par. 1, 19 pars. 1 and 4 as well as art. 1 par. 3 of Annexe 3.
45. Taking into account the facts described in the present case – and in particular that this matter involves the improper transfer of an underage player –, the Committee considers that the appropriate sanction to be imposed on the Club in relation to the violation of the abovementioned provisions of the RSTP would be a fine.
46. 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 100 and higher than CHF 1,000,000.

47. Taking into account all the circumstances of the case, while keeping in mind the deterrent effect that the sanction must have on the reprehensible behaviour and that the Club has no previous record with regard of violations of the provisions of the RSTP here at stake, the Committee considers a fine of CHF 10,000 to be adequate and proportionate to the offence.
48. In addition to the fine, a warning is also issued pursuant to art. 6 par. 1 lit. a) of the FDC in relation to the conduct of Braga. In particular, the Club is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations (in particular the FDC as well as the RSTP) 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.

#### **IV. DECISION OF THE DISCIPLINARY COMMITTEE**

1. The FIFA Disciplinary Committee found the club TW Braga FC responsible for the infringement of the relevant provisions of the RSTP related to the registration of players (art. 5 par. 1 and art. 9 par. 1) and the protection of minors (art. 19 together with art. 1 par. 3 of Annexe 3).
2. The FIFA Disciplinary Committee orders the club TW Braga FC 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 TW Braga FC 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



**Carlos Teran**

Member of the Disciplinary Committee

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**NOTE RELATING TO THE PAYMENT OF THE FINE:**

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case number above mentioned.

**NOTE RELATING TO THE LEGAL ACTION:**

This decision can be contested, in accordance with art. 49 together with art. 57 par. 1 of the FIFA Disciplinary Code, 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 the contact details of the CAS are the following:

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