

THE DIARRA CASE

ECJ, 4 October 2024, case C-650/22



THE PAST, THE PRESENT AND THE FUTURE





TELEGRAAF

Transfer rules in violation with free movement

Diarra decision: draconic changes in football



ALGEMEEN DAGBLAD

Diarra ruling: 'This is a gamechanger'



NU.nl

The end of the football transfer system?



RTL

Negative decision for Dutch clubs

Football transfer system could be blown up

THE TRANSFER SHOW

sky sports news



sky news

**PREMIER LEAGUE
TRANSFER
SPENDING HITS
RECORD HIGH**



FIFA

**FIFA REPORTS
RECORD-BREAKING TRANSFER
ACTIVITY, SPENDING IN 2025
MID-YEAR WINDOW**



PRELIMINARY COMMENTS

- Focus on the effects on the FIFA DRC jurisprudence
- What can we expect from the future after Diarra?
- Chairperson FIFA Dispute Resolution Chamber
- Some reluctance is required.....
- I would like to run you through my thinking process
- Process of progressing insights (debates are helpful)

MY TAKE ON THE CASE

- Underlying decisions (DRC & CAS) were not so bad
- Anyway: the Diarra ruling of the CJEU is very clear (!)
- Was it 'the new Bosman'? Effects on the jurisprudence?
- Still possible: sanctions, buy out, compensation, ITC, etc.
- At the end: Articles 9 (8.2.7 Annex 3), 17.1, 17.2 and 17.4
- My first reaction: 3 out of 4 can be 'cured' quite easily

MY TAKE ON THE CASE

- Rationale art. 17.2 (automatic joint and several liability)
- Yes, deterrent effect ... but also there to assist players
- In fact, other side of the coin: there was a co-debtor (!)
- Anyway: automatic application 17.2 did not survive Diarra
- So, was very (very) curious about the next steps
- And there it was (after consultation stakeholders): IRF



FIFA HAS ADOPTED AN INTERIM
REGULATORY FRAMEWORK IN
RESPONSE TO THE DIARRA CASE,
WHICH FOUND PARTS OF ITS
REGULATIONS TO BE UNLAWFUL.

INTERIM REGULATORY FRAMEWORK

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- Just cause, national law, evidentiary requests, etc.
- As expected: amendments as to ITC, 17.2, 17.4
- As to compensation (17.1)? **POSITIVE INTEREST (PI)**
- So: 'old 17.2' removed **and** ... there is positive interest
- I better realised that it was now up to the FIFA DRC
- Compensation by players to clubs **when no just cause**

THE AMOUNT OF COMPENSATION

- Previous Article 17.1 RSTP heavily criticised
- Calculation criteria too vague and unclear
- The compensation cannot be “highly unpredictable”
- Indeed: reference to residual value (Belgian law)
- Point of departure: what is the damage suffered?
- Party claiming compensation must demonstrate

THE AMOUNT OF COMPENSATION

Elements that CANNOT be applied anymore

- Specificity of sport
- Non-amortised transfer fee
- Future remuneration & benefits

THE AMOUNT OF COMPENSATION

Elements that CAN (still) be applied under PI?

- Residual value?
- Replacement costs?
- Loss of transfer value?

THE AMOUNT OF COMPENSATION



ADVOCATEN

Many questions:

- Moment of termination relevant (in first season/year)?
- What about offers made prior to the termination?
- What if 'forbidden' elements included in the contract?
- National law? What if less favourable for players?

ADVOCATEN

THE FUTURE

- Rise of clauses (liquidated damages, buy out, choice of law)
- What will be the new line in FIFA DRC jurisprudence?
- Again: consistency is key for me (references are helpful)
- As much as important: what will CAS say in appeal?
- What about the ongoing negotiations currently pending?

*The future will tell
..... but enough food for discussion!*