

EDITORIAL

Breaking Boundaries: The Diarra Case and Its Ripple Effects on FIFA Regulations and Player Transfers

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Abstract

The Diarra case is a landmark judgment by the CJEU with potential widespread implications for the transfer market. Originating from a 2014 contract dispute between ex-France player Lassana Diarra and Russian club Lokomotiv Moscow, the CJEU took up Diarra's case and decided in his favour. Here, the Court found some of FIFA's RSTP regulations to be disproportionate and restrictive, prompting the significant regulatory changes discussed in this paper. In response to this ruling, FIFA implemented an interim regulatory framework that provided a more nuanced approach to compensation calculations, the removal of automatic sanctions that hindered players from joining new clubs after dismissal or unilateral contract termination and greater freedom for players to transfer despite contract disputes. This case has been likened to the Bosman ruling, which revolutionised the transfer market by empowering players and loosening the regulatory grip of FIFA. However, while the Bosman ruling increased player mobility, the Diarra case focuses more on ensuring fairness in contractual relationships. The full impact of the Diarra case on the football ecosystem, club-player relationships, and the financial framework still remains to be seen. Scholars like Duvall have warned of potential

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consequences including unilateral terminations, the disappearance of transfer fees and an ever-increasing economic disparity between the wealthy and poorer clubs. Given these implications, it can be concluded that there is a crucial need to review current regulations. By learning from other sports models and addressing existing systemic inefficiencies, football can, thus, aim to move towards a more equitable system that promotes trust, transparency and accountability in football governance.

Keywords

Diarra, FIFA, RSTP, Contract, Freedom, Transfer.

1. Introduction

The football industry has undergone significant environmental changes. Among these, the Diarra case stands out, in how FIFA laws are interpreted and prosecuted. This landmark case was crucial not only for its ground-breaking nature but also because it empowered the football community, particularly players, to address critical contract dispute power dynamics.

1.1 Background: The Origin of the Diarra Case

The Diarra case surfaced in late 2013, when the ex-professional footballer signed a four-year deal with Russian side, Lokomotiv Moscow. In 2014, Lokomotiv rescinded the contract due to alleged offenses committed by Diarra, subsequently claiming €20 million in damages.

The CAS ruled in favour of the club, finding Diarra in breach of contract and ordering him to pay Lokomotiv Moscow €10.5 million.³ This decision set a ground breaking precedent, making Diarra both personally and financially liable due to FIFA's regulations.

Following this ruling, Diarra encountered new obstacles with the RSTP system. RSTP regulations made new clubs signing a player jointly and severally liable for any

³ *Lassana Diarra v. FC Lokomotiv Moscow*, CAS 2015/A/4094.

outstanding obligations the player may have, complicating Diarra's chances of joining another club. Sporting du Pays de Charleroi expressed interest but required assurances that RSTP liability clauses would not apply and that there was no potential debt related to Diarra's previous contract.⁴

When Diarra and Charleroi inquired about the RSTP rules, responses from FIFA and the Belgian FA were ambiguous. Consequently, Diarra pursued legal action against FIFA and URBSFA, seeking €6 million in compensation, arguing that the FIFA Regulating System had ruined his career. The case eventually reached the European Court of Justice (CJEU) for further adjudication.⁵

2. The CJEU Holding: A Bold Criticism of FIFA Regulations

The Diarra affair reached a turning point with its appeal at the Belgian Court of Appeal, which had reservations regarding the FIFA RSTP, subsequently referring these concerns to the CJEU. The 2024 CJEU ruling had significant implications, as it examined various aspects of FIFA's regulatory framework and identified several unreasonable and excessive provisions. The judgment criticized the childlike nature of FIFA policy and addressed issues related to player rights, contract preservation, and the transfer system.

2.1. Regulation Proportionality

The ECJ has provided guidance on one of the key areas, i.e. the proportionality of FIFA rules: in particular, the application of the RSTP regulations for the transfer of players and termination of contracts. The Court held that FIFA's regulations were overly broad, imposing unreasonable restraints on both players and clubs.

In its ruling, the ECJ highlighted the importance of more nuanced and specialised laws, as FIFA constraints were considered too disproportionate to the justification of a legitimate interest in ensuring contractual stability. FIFA's position was seen as overly restrictive because it restricts the player's freedom of movement, particularly in the event of disputes or termination of contracts.⁶

⁴ FIFA (2024).

⁵ *Fédération internationale de football association (FIFA) v BZ ("Diarra")*, C-650/22.

⁶ Ibid.

2.2. Consequences of FIFA Regulations: The Interim Regime

FIFA then implemented two actions subsequent to the CJEU ruling, first reviewing the current RSTP rules applicable to transfers and second implementing an interim structure to balance the court's objective without holding it in violation of rules of integrity intransigently. This was a new era for more balance between player-club relationship and protection of a club rights.

2.2.1 Compensation Calculation

The ambiguity in how FIFA calculated compensation effectively left players found wanting forced to pay excessive financial penalties with no clear explanations as to why, as was the case with Diarra. The Court urged FIFA to implement a fair and transparent system, that would link compensation to actual losses, not speculative amounts.⁷

One of the most notable changes made to FIFA's interim framework was the addition of the way in which compensation would be calculated. "Positive interest" was introduced as a method of calculation for compensation. Now, claims should relate to losses actually incurred as a result of the termination or breach and involve fairness, proportionality and transparency, to the benefit of both players and clubs.⁸

2.2.2 Joint and Several Liability: Proving a Breach

A further consideration from the CJEU ruling that was critical to the case's outcome was the treatment of certain clauses within FIFA's rules which enabled immediate liability for new clubs signing otherwise-contractually-encumbered players. This clause was applied disproportionately and unreasonably, above all when it had not been demonstrated that new clubs had intentionally brought about the breach of contract.

FIFA also amended its framework in order to assuage the concerns of the CJEU. From now on, new clubs are only responsible for previous contractual obligations of the player where there is proof of their direct incitement/participation in the breach. The rule change will protect clubs from being tried on the court of public opinion and will safeguard the

⁷ Ibid.

⁸ FIFA (2024).

financial security of clubs in line with sporting malfeasance, while guaranteeing a fairer process.⁹

2.2.3. You are not allowed to come into contact with any inducements.

Such an interpretation at FIFA, without direct evidence of clubs' involvement, would mean that sporting penalties would no longer be applicable on clubs triggering standard contractual violations under FIFA's updated regulations. To avoid consequence-by-consequence punishment, the system has been changed that allows for punishment by a new club only if there is evidence of inducement or wrongdoing by the new club. The CJEU ruling focused on the application of FIFA's laws in a way that upholds justice and proportionality, encouraging the use of leading thresholds for the imposition of fines.¹⁰

2.2.4. Rules of ITC with regards to facilitation of transfer of player

The Diarra case was also an examination of the practice of withholding International Transfer Certificates (ITCs) in contract disputes. FIFA regulations allowed teams to refuse an ITC in the event a player was involved in a dispute with their former club, thereby stopping the player from joining a new team. On this issue, the Court found that withholding ITCs was an unduly restrictive limitation on a player's professional career. It argued that clubs should not have the unilateral authority to prevent transfers without evidence of wrongdoing by the player.¹¹

In response to the ruling, the interim framework made some heavy changes to the ITC rules. The interim framework, in response to the ruling, introduced significant changes to rules governing ITCs. Under the new regulations, former clubs cannot refuse or deny ITCs in disagreements unless there is just cause. This ensures players can seamlessly transfer to new teams, allowing players to continue their careers despite the existence of pending contractual issues.

⁹ Ibid.

¹⁰ Ibid.

¹¹ *Fédération internationale de football association (FIFA) v BZ ("Diarra")*, C-650/22.

3. Diarra and Bosman: A Comparative Perspective

Some could also consider the Diarra case as a modern extrapolation of the principles defined in the holder of precedent-setting 1995 Bosman ruling. Both lawsuits originated from the fundamental issue of players switching teams and challenged FIFA's transfer rules. But, while the Diarra case and the Bosman ruling both raised similar issues, they dealt with different aspects of player movement in football.

3.1. The Bosman Verdict: Reshaping Players' Mobility in Europe

The landmark Bosman case handed down by the European Court of Justice (ECJ) in December 1995 transformed the football transfer market. Its primary focus was on the freedom of movement of players within the European Union (E.U.) — which meant that they could change clubs as soon as their existing contracts ran out. Prior to this ruling, clubs had held the right to negotiate transfer fees for players with expired contracts, which reduced their ability to negotiate with other teams. The transfer fee system was struck down in Bosman's instance, which ruled that the transfer fee system violated EU non-discrimination and free movement laws.

The ruling freed EU players to maximize their career opportunities and earn higher salaries in a fast-growing European football economy, allowing players to change clubs freely at the end of their contracts without needing to pay a transfer fee. This opened up the transfer market as players had a more competitive market,¹² although it also alarmed over the financial stability of smaller clubs that have relied on transfer fees as a revenue stream.

3.2. The Diarra Saga: Assuming Rights Where There Are None

Diarra was different from Bosman because in the Bosman case the players were close to the end of their contracts, while in Diarra the players concerned were still under contract (but in dispute, notably in regard to termination of their contracts and the financial ramifications). This set off a convoluted legal fight central to FIFA's RSTP, after

¹² *Union Royale Belge des Sociétés de Football Association and others v. Bosman and others*, C-415/93.

Diarra's contract with Lokomotiv Moscow was terminated in an unusual set of circumstances.

If the Diarra case was an effort to find compromise for players who still had active contracts yet were currently being penalized by FIFA's laws, the Bosman ruling lifted restrictions on player movement once their contracts were up. The court appeal reflected the necessity for justice, the importance of transparency in contract terminations, and highlighted the hold of the transfer laws on a player's future. Diarra objected on grounds that sought to ease transfer restrictions and allow the player's "movement" without fear of excessive and disproportionate financial burdens. It questioned FIFA's joint and several liability clauses, which made sure new clubs assumed financial responsibility for a player's prior contractual obligations.¹³

3.3. The Diarra case: an adjustment to the power dynamics: Diarra, Bosman

The Bosman decision and the Diarra affair, while apparently isolated, both have far-reaching implications for the football transfer system. The ruling granted players unprecedented freedom to choose where they played, upending the transfer system by taking power away from clubs that used to impose top-down control over the movement of their players, including payment of large transfer fees.

For comparison, the Diarra matter addressed an appropriate balance of power in contract terminations, placing the burden of proof in such cases on the employer and eliminating automatic penalties for players who are dismissed or have their contracts terminated unilaterally that would prevent them from being signed by new clubs. In that sense, the Diarra case advances Bosman's work: it is not about outlawing contracts per se — it is, in essence, against the rights of out-of-contract players — but rather about trying to create a fairer and more nuanced system that would strike a more equitable balance in the relationship of the dynamics of terminating a contract. If successful, it opens the door to change the balance of power between club and player, providing greater autonomy and protection for players involved in contractual disputes.

¹³ *Lassana Diarra v. FC Lokomotiv Moscow*, CAS 2015/A/4094.

4. Implications for the Football Ecosystem

From the comfort of my armchair the Diarra ruling is going to create a big issue or a major panic inside the football transfer market. While the long-term ramifications of the case are still being played out, it could have a significant impact on how clubs deal with players and the financial architecture of the football business.

4.1. A History of Sudden Removals

One of the potential consequences of the Diarra ruling could be the encouragement of unilateral contract termination. If FIFA loosens its regulations and allows for “signing bonuses” for broke or wrongly ousted players, clubs and players could exploit this loophole to circumvent transfer fees. Clubs may want to end contracts more frequently, giving them mobility, but with cash incentives rather than a straight transfer fee. That could give a measure of freedom to the transfer market, but the end result could be instability, with clubs more willing to tear up contracts for the sake of financial gain.¹⁴

4.2. The Economic Divide Among Leagues: Unpacking the Expanse

The economic gap between the richest and poorest football leagues could also grow in the aftermath of the Diarra decision. The pursuit of a player like Enzo Fernandez, who switched from Benfica to Chelsea for a hefty transfer fee, is an example of this, where clubs reported big transfer fees to acquire a player with great potential. More flexible contract termination rules would allow wealthy European clubs to secure top players without financial repercussions, thereby consolidating their grip on the transfer market.

On the other hand, smaller teams would struggle to compete as wealthier teams offer higher salaries and large sign-on bonuses. This could lead to increasing inequality in European football, with a growing gap between wealthier leagues and smaller, underfunded ones.¹⁵

¹⁴ Duvall, R. (2024).

¹⁵ Duvall, J. (2024).

4.3. Restricted Compensations Provisions

Faced with the risk of predatory unilateral contract terminations, (possibly) to protect financial interests, football clubs might increasingly resort to fixed compensation provisions. These provisions could outline specific financial penalties for early termination of contracts in order to ensure that teams receive adequate compensation for a player with an existing contract and to account for the loss of that player.

Such provisions could become commonplace in player contracts as a preventive measure against circumventing transfer costs and contractual obligations. Drafting robust provisions would protect club interests while maintaining player mobility. This development may lead to a more uniform approach to contract terminations, with precise guidelines governing the monetary repercussions of early terminations.¹⁶

5. Special Report: Is the transfer market in peril?

The transfer market has always been the backbone of football's economic and competitive structure. However, recent landmarks, particularly the Diarra ruling, have raised significant concerns among stakeholders. The verdict is also a win for player mobility, but it has shown vulnerabilities that could make the market volatile. Critics like Duvall argue that long-term effects endanger the balance of the global transfer ecology.¹⁷

5.1. Market Stability and the Right to Unilateral Termination

The Diarra verdict is allegedly liberating for players because it makes it easier for them to terminate unilaterally. However, this freedom poses dangers. Such termination incentives can upend the transfer market by reducing transfer costs, according to Duvall.¹⁸ Lower transfer fees directly affect smaller clubs, which often depend on sell-on clauses and transfer money as their bread and butter. This absence of financial stability could cement the dominance of richer clubs, which have alternative sources of income to mitigate such losses. The potential threat to the solidarity networks, which aim to

¹⁶ Ibid.

¹⁷ Duvall, M. (2024).

¹⁸ Ibid

support smaller and grassroots clubs, could also underpin a wider weakening of the football pyramid.

Smaller teams more often depend on transfer revenue to finance infrastructure and grapevine programs. Without these resources, the gulf between elite clubs and smaller organisations, as well as districts, is set to widen. Such market forces can lead to the monopolisation of talent and resources, the very antithesis of the basic tenet of fair competition as shown through Duvall's research.

5.2. EU Goals and the Role of Proportionality

The concept of proportionality has been set out in the judgments of European Court of Justice (CJEU). The EU's core objectives of promoting balanced competition and worker mobility are consistent with the principle. According to Linklaters, the CJEU's position underscores the importance of FIFA ensuring that its regulations conform to EU law.¹⁹ In the interest of not jeopardizing the integrity of the transfer market and to support the rights and protection of both players and clubs, FIFA's RSTP should be balanced.

White & Case also highlight the tension that exists between international sports governance and local legal standards, arguing that FIFA's governance model, often operating beyond national laws, needs to adapt to EU law.²⁰ These authors call for uniform amendments, emphasizing that FIFA's regulations must comply with the EU's legal framework to guarantee players' rights and maintain the fundamental nature of the transfer system.

5.3. Broadening our understanding of justice and human rights

Diarra case has rekindled debates over justice and human rights in football governance. For example, Parrish claims that international labour rights rules should bind player contracts.²¹ These include freedom of movement, fair treatment and workplace safety.

¹⁹ Linklaters (2024).

²⁰ White & Case (2024).

²¹ Parrish (2023).

Some of these ideas are among FIFA's new RSTP rules, although establishing monitoring systems would still be very difficult.

Human rights issues are not simply about whether you and I disagree on contracts. One of the main groups victims of forced contracts and lack of representation are the players. It explains the need of strong regulatory structures to deal with these issues, and urges FIFA to put players' welfare at the top of its agenda.²² The involvement of independent oversight bodies could enhance the responsiveness and transparency of governance.

5.3.1. The Role of the CAS in FIFA Disputes

Court of Arbitration for Sport (CAS) is the main judge for FIFA disputes. Its independence has come into question, however, because of its apparent coziness with FIFA. According to Miettinen, in order to ensure justice in conflict, CAS should operate as an unbiased organisation.²³ To build that confidence among stakeholders, arbitration proceedings need to be transparent.

Another key recommendation is to involve diverse stakeholders in decision-making, thereby promoting inclusiveness and mitigating biases in arbitral awards. Additionally, promoting more coordination between CAS and national legal systems could reinforce the authority of its decisions.

5.4. Analytical Cross-Sport Views

Football is not the only sport to have the problems revealed by the Diarra case. Other life lessons from sports provide inspiring perspectives on how to approach these challenges.

5.4.1. NBA Collective Bargaining Agreement

The CBA serves as a model for organizing conflict resolution in the basketball industry. The CBA eliminates uncertainties in contract enforcement through mutual negotiations and predetermined pay schemes. As Silverman and Jacobs state, this approach secures

²² Ibid.

²³ Miettinen (2023).

both teams' and players' interests without threatening the survival of the league itself.²⁴ Football should make it harder for unilateral termination of contracts by introducing similar processes.

5.4.2. ICC Member Standardised Player Agreements

Standardised player agreements in cricket have been mandated by the International Cricket Council (ICC) to address issues related to contract enforcement. Such contracts also minimize the chance of miscommunication or conflict between participants and regulating bodies through clear terms that enforce rules for conflict resolution. According to Clarke, the ICC's approach is emblematic of the need to harmonise contractual obligations and larger regulatory regimes.²⁵

5.4.3. Football Holdings the Decentralised Governance

Football has unique problems given its fragmented governing structure, unlike basketball or cricket. FIFA has confusing rule execution as a result of reliance on national organisations. Global regulations, such as those established by FIFA, national federations, and the European Commission, need to be harmonized with escape local laws. According to Linklaters, developing communication across these organisations is critical to the delivery of regulatory consistency.²⁶

5.5. Suggestions for the Future

In the face of the dangers posed by the Diarra verdict and related challenges, stakeholders have no choice but to adopt a multi-pronged approach:

5.5.1. Regulatory reforms: FIFA should reform its RSTP laws to comply with EU law, so that the laws are proportionate and fair.

5.5.2. Developing Independent Oversight: The establishment of independent oversight organisations could enhance the transparency and accountability of governance.

²⁴ Silverman and Jacobs (2023).

²⁵ Clarke (2024).

²⁶ Linklaters (2024).

5.5.3. Collaborative Governance: To be able to unify the legislation, FIFA, CAS and the regional legal systems must obtain higher cooperation.

5.5.4. Lessons from other sports: Football can emerge out of its challenges by borrowing the best from cricket and basketball, agile teams, Kiyosaki would have known.

6. Conclusion: The Need for a Compromise Between Freedom and Stability

The Diarra case, therefore, has been pivotal in creating a contractual system that respects existing labour rights legislation and advances discussions on human rights in football governance. As Parrish correctly observes, player mobility and safety must be core principles of football's regulatory structures.²⁷ To its credit, FIFA has addressed these issues in its revised criteria for the RSTP, reducing the list of criteria for clubs. However, effective monitoring mechanisms are still required to ensure continued protection of these rights.

The case has also prompted a more robust look at FIFA's relationships with CAS. Critics like Miettinen emphasize the importance of CAS operating independently to ensure equitable resolution of FIFA-linked disputes.²⁸ Maintaining transparency in football governance and involving a diverse group of stakeholders in decision-making processes can promote trust and ensure justice.

The Diarra case, thus, illustrates the urgent need for prioritizing justice, transparency, and human rights in football governance. With inspiration from other sports and addressing systemic inefficiencies, football can move towards a more equitable system that balances all stakeholders and engenders trust, accountability, and responsibility.

²⁷ Parrish (2023).

²⁸ Miettinen (2023).

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