

**Arbitration CAS 2005/A/808 Club Hannover 96 v. FC Varteks, award of 22 May 2006**

Panel: Mr Jean-Philippe Rochat (Switzerland), President; Mr Goetz Eilers (Germany); Mr Massimo Coccia (Italy)

*Football**Condition for a transfer**Compensation for training*

- 1. The combination of art. 6 §1 and art. 7 §1 of the 1997 FIFA Transfer Regulations shows that the system of transfers under FIFA regulations is based on the assumption that a transfer only takes place when the player has been actually registered with a national association and admitted to play for one of its clubs. The issuance of an international certificate to a club evidences the transfer of a player to the club.**
- 2. A compensation for the player's training and/or development has to be paid in accordance with Art. 14.1 of the 1997 Transfer Regulations.**

Club Hannover 96 (the "Appellant") is a German football club with its registered office in Hannover, Germany. It is a member of the German football League ("Liga - Fußballverband e. V"), which in turn is a member of the German Football Association. The latter has been affiliated with FIFA since 1904.

FC Varteks Varazdin (the "Respondent") is a Croatian football club with its registered office in Varazdin, Croatia. It is a member of the Croatian Football Federation, which has been affiliated with FIFA since 1992.

On 10 October 1995 the player P. (the "Player") entered into a non-amateur contract with the Respondent valid until 31 July 1999.

Despite the Respondent's offer to the Player to renew his contract, the Player decided to seek for other opportunities. The Player was therefore contract-free as of 31 July 1999.

On 12 June 1999 F.C. Internazionale Milano S.p.A ("Inter") entered into an agreement with a German private company, Finigra GmbH ("Finigra"), in which the Player was presented as a "member" of Finigra. According to this agreement, Finigra agreed to put the Player at disposal of Inter until 20 June 2002 for free. In consideration of this, Inter would train and form the Player.

Pursuant to article 3, Inter was granted the right to sub-loan the Player to a professional European club. It was clearly stated that this manoeuvre was intended to favour the Player's valorisation ("*ai fini della sua valorizzazione*"). The parties reciprocally granted each other compensation rights in case of acquisition of the sports rights on the Player by a third party or by Inter. The agreement was subjected to the condition that Finigra would get the release from all sports rights on the Player from the Respondent, failing which the contract and its related agreements would be void.

The Player simultaneously concluded a contract with Inter, whereby he acknowledged to adhere to the formation and valorisation project entered into by Inter and Finigra and agreed to perform for any European club to be indicated by Inter during the seasons 1999/2000 to 2001/02. On the other hand, Inter committed to pay the Player's board and lodging as well as a yearly fee of ITL 260,000,000 (nowadays EUR 134,279).

According to the Player's deposition, the Respondent sent a letter to Inter on 23 June 1999, requesting a compensation of DM 800,000 (nowadays EUR 409,034) for the Player. Inter never paid such amount and renounced to require a certificate of transfer for the Player from the Croatian Football Federation.

On 11 October 1999 the Player signed an employment agreement with the Appellant. The agreement was valid until 30 June 2000.

The circumstances in which this agreement was signed are unclear. The Appellant has produced a draft loan agreement between Finigra, Inter and itself pursuant to which Inter would loan the Player to the Appellant until 30 June 2000 and grant the Appellant a purchase option on the Player's rights. The draft agreement is dated 5 October 1999 and provides that in the event that the Respondent would be awarded a transfer compensation by FIFA, Finigra and the Player would meet the costs up to an amount of DM 70,000 (nowadays EUR 35,790.40). Should a higher amount be determined, the Player would return to Croatia.

Referring to the text of this agreement, the Appellant argues that the Player was loaned by Inter and that, as a result thereof, all claims of the Respondent should be addressed to Inter.

As soon as it became aware of the German Football Association's request for the issuance of an international transfer certificate, the Respondent sent a letter to the Croatian Football Federation on 21 October 1999 in which it declared not to agree with the Player's transfer and required that negotiations in this respect take place.

On 22 October 1999 the Croatian Football Federation all the same issued an international registration transfer certificate (IRTC) in favour of the German Football Association, as the Player was considered contract-free and had confirmed in a written statement dated 6 October 1999 that he had not been registered with any other club after he had left the Respondent.

The Appellant officially registered the Player for the 1999/2000 season.

On 22 November 1999 the Appellant wrote to the Respondent explaining that it had registered the Player on the condition that no transfer fee must be paid to anyone. It specified that, should there be any claim, this would be paid by the Player.

After various exchange of letters, the Respondent required on 11 February 2000 the Croatian Football Federation to submit the case to FIFA, claiming a compensation of DM 1,200,000 (nowadays EUR 613,550). It specified that the Appellant had offered a maximum transfer fee of DM 60,000 (nowadays EUR 30,677.50).

On request of FIFA, the Player asserted that Inter had transferred him on a loan basis to the Appellant referring to the agreement he had signed with Inter. He however explained that Inter had not paid him any monies and that after expiry of his contract with the Appellant he returned to Croatia as Inter did no longer wish to loan him to another European Club until the question of the amount of transfer compensation would be clarified. On 23 November 2002, the Player complained about the Respondent's attempt to obtain money from the Appellant. He explained how much this was prejudicing his career, since no other club wanted to sign with him a non-amateur contract until the case was solved.

After a very long investigation, the Bureau of the FIFA Player's Status Committee finally passed a decision on 26 April 2002, which was notified to the parties on 3 May 2002.

In this decision, the members of the Bureau expressed their astonishment at the circumstance that the Player had been transferred to the German Club through a private company, in violation of the FIFA Regulations for the Status and Transfer of Players (edition 1997, hereafter the "1997 Transfer Regulations"). In this respect, the members of the Bureau deemed that the Players' Status Committee may only take into consideration contractual obligations entered into by and between the members of the "football family". The Bureau considered that Inter did not play any relevant role in the dynamics of the events and noted that the Player was at no time officially registered with Inter. Taking into account that an employment contract was signed between the Appellant and the Player and that the Player had been registered with the Appellant on the basis of an IRTC issued by the national football association of the club with which the Player was last registered, the Bureau decided that the Appellant had to pay an amount of compensation for the Player's training and/or development to the Respondent according to Art. 14.1 of the 1997 Transfer Regulations. The Bureau further considered that the Appellant was to be officially censured for having violated the interdiction under Art. 18 of FIFA Regulations governing players' agents (edition June 1995) and the basic principles of the 1997 Transfer Regulations.

On 17 May 2002 the German Football Association, on behalf of the Appellant, lodged an appeal with the FIFA Executive Committee against this decision.

The Appellant pointed out that the role played by Inter was – contrary to the opinion of FIFA – indeed relevant and that the Appellant had given written evidence of both the agreements signed by Finigra and Inter and the Player and Inter on 12 June 1999 and of the agreement between Finigra, Inter (represented by Finigra) and the Appellant on 5 October 1999.

Furthermore, the Appellant underlined that it could only loan the Player as the latter had concluded a valid contract with Inter from 1 July 1999 till 30 June 2000. Finally, it argued that the controversial loan agreement had been sent from the fax machine of Inter, indicating: “16.30 SC Internazionale → 006195119566333”.

In consideration of all these circumstances, the Appellant considered that there could be no doubt that a loan agreement had been concluded between the Appellant and Inter. As a result, Inter was the club liable to pay the required compensation to the Respondent, to the entire discharge of the Appellant.

On 25 June 2002 the Respondent indicated that it had already submitted all necessary documents. It stressed once again that Inter had not to be involved in this matter and required that the Appellant comply with the decision of the Bureau of the FIFA Players’ Status Committee.

Inter thus concluded that the Appellant’s appeal had to be rejected and the decision of the Bureau of the FIFA Players’ Status Committee confirmed.

The FIFA Executive Committee passed its decision on the appeal on 18 December 2004. It acknowledged that the Appellant had not provided any new evidence in addition to the one already provided to the Bureau of the FIFA Players’ Status Committee and took note of the complex facts of the case. It considered that the Appellant had not provided enough supporting evidence that Inter had become a party to the agreement dated 5 October 1999. It therefore confirmed the decision passed by the Bureau of the FIFA Player’s Status Committee on 26 April 2002 and dismissed the appeal.

By letter dated 30 December 2004 the Appellant lodged an appeal with the CAS against the decision passed on 18 December 2004 by the FIFA Executive Committee (hereafter the “Appealed Decision”). It filed its appeal brief on 10 January 2005.

The Respondent did not submit its answer within the deadline which was granted by the CAS on 11 January 2005.

By letter dated 27 October 2005, the Appellant stated that since the Respondent had not filed an appeal answer within that deadline, all submissions, facts and evidence had to be regarded as uncontested. It further filed a copy of a decision passed on 22 July 2004 by the FIFA Dispute Resolution Chamber, ruling that training compensation is only owed to a player’s last club, but not to the previous clubs.

The Respondent filed an answer on 7 November 2005, after the expiry of the deadline which was set by CAS in accordance with Art R55 of the Code. By fax dated 9 November 2005, the Appellant objected to the admission of this late submission and claimed that the Respondent did not name any exceptional circumstances that could justify it pursuant to Art. R56 of the Code.

FIFA renounced to its right to intervene in this proceeding.

## LAW

### CAS Jurisdiction

1. The jurisdiction of CAS derives from the combination of Art. 59 ff. 1 of the FIFA Statutes, as well as from Art. R47 of the Code. It is further confirmed by the order of procedure duly signed by the parties.

### Admissibility of the appeal

2. The appeal was filed within the deadline provided by Art. 60 of the FIFA Statutes and indicated in the Single Judge's Decision, i.e. within 10 days after notification of such decision. It follows that the Appeal is admissible, which is also undisputed.

### Applicable material and procedural law

3. Art. R58 of the Code provides the following:  
*"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.
4. Article 59 paragraph 2 of the FIFA Statutes provides as follows:  
*"The CAS Code of Sports-Related Arbitration governs the arbitration proceedings. With regard to substance, CAS applies the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs and, additionally, Swiss law"*.
5. The Parties have indirectly accepted the FIFA Statutes by their affiliation to their national football associations, who are members of the FIFA. The applicable rules to decide in the present case are therefore the FIFA rules, and in particular the 1997 Transfer Regulations, and subsidiarily Swiss law.
6. Pursuant to Art. R.57 of the Code, the Panel shall have full power to review the facts and the law. This shall however be limited to the scope of the appealed decision, unless the parties specifically authorise otherwise. The Appellant has objected to the Panel's examination of the amount of a training and development compensation, if any. The Panel will therefore examine the principle of the payment of a compensation by the Appellant to the Respondent.

### **Preliminary procedural issues and objections**

7. The Appellant objected to the admission of the Respondent's answer dated 7 November 2005. The Panel acknowledges that such answer was lodged after the expiry of the 20-day deadline for the filing of the answer, provided by Art. R55 of the Code. The fact that the Respondent was at the time not legally represented does not constitute an exceptional circumstance in the sense of Art. R56 of the Code. The Respondent's answer dated 7 November 2005, therefore, cannot be admitted. The Respondent was informed of the Panel's decision. This, however, cannot prevent the Respondent to present its legal arguments orally at the hearing, although any fact or any claim which were not addressed within the Decision shall be disregarded.
8. The Panel informed the parties at the beginning of the hearing that – considering his position – the Respondent's legal representative would be heard as a party and not as a witness.
9. The Parties did not raise any further preliminary procedural issues or objections. They did not make any objections either with regard to the composition of the Panel and more generally with regard to the proceedings held until the date of the hearing. At the end of the hearing, they acknowledged that their right to be heard had been respected.

### **The parties' oral presentations at the hearing**

10. At the hearing, both parties were given the opportunity to present their position.
11. At the request of the Appellant, Mr Ilja Kaenzig was heard as a witness. The Appellant moreover entirely confirmed its written submission.
12. The Respondent argued that, according to the FIFA regulations, only the next club to formally register a player is to pay a training and development compensation. The Appellant was the first one to register the Player and has therefore to be condemned to pay such compensation. Further, Inter could not transfer the Player to the Appellant, since Inter had never registered him. Thus, the appeal has to be dismissed and the FIFA Executive Committee decision dated 18 December 2004 confirmed.
13. In answering a question of the Panel, the Appellant's manager, Ilja Kaenzig, confirmed that the Appellant employed other foreign players in 1999 and that the Appellant therefore had expertise with transfers of players.

### **Alleged transfer of the Player from Inter to the Appellant**

14. As previously mentioned above, the Appellant maintains that it was loaned the Player by Inter and that, as a result thereof, all claims of the Respondent should be addressed to Inter. The

Appellant, in support of its position, points to both the agreements signed on 12 June 1999 between Finigra and Inter and Inter and the Player and the draft loan agreement between Finigra, Inter and itself.

15. The Panel, however, remarks that Inter did not sign this draft loan agreement. The Appellant's argument that the formal written agreement was the confirmation of an oral agreement between the parties and/or that Finigra was granted the power to represent Inter so that Inter became a party to such agreement cannot be followed because it was not proven. The Appellant has not provided any clear and convincing evidence thereof. Moreover, the written statement of the Appellant's former manager must be appreciated with utmost caution with regard to the manager's position towards its former employer. In any case, the question does not need to be resolved and can be left open. It is indeed not determining the case at hand, for the reasons stated herein below.
16. The 1997 Transfer Regulations clearly sets forth at paragraphs 1 and 3 of its preamble that:  
*"These regulations deal with the status and eligibility of players whenever they effect a transfer from a national association to another.*  
*Each national association is obliged to provide a system for transfers effected within its own association and for them to be governed by appropriate regulations which should be approved by FIFA".*
17. Articles 6 para. 1 and 7 para. 1 of the 1997 Transfer Regulations read as follows:  
***"Player eligibility***  
*Only a player who is currently registered by a national association to play for one of its clubs shall be admitted to competitions organised by that national association".*  
***"International transfer certificates***  
*An amateur or non-amateur player who has become eligible to play for a club affiliated to a national association may not be registered with a club affiliated to another national association unless the latter has received an international transfer certificate issued by the national association which the player wishes to leave".*
18. The combination of these provisions shows that the system of transfers under FIFA regulations is based on the assumption that a transfer only takes place when the player has been actually registered with a national association and admitted to play for one of its clubs. This is confirmed by the scholars, according to whom the transfer is to be defined as the move of a player from a club to another club *and* his qualification for the new club by the national federation (ZEN-RUFFINEN P., *Droit du Sport*, Zurich 2002, n° 709). Therefore every transfer necessarily requires the player's qualification by the national federation for the new club (ZEN-RUFFINEN, *op. cit.*, n° 712). This definition is applicable not only for football, but for most of team sports (ZEN-RUFFINEN, *op. cit.*, n° 709).
19. In the case at hand, it has been proved that Inter never registered – and therefore never qualified – the Player. Italian Federation of Inter itself, in fact, never requested the issuance of an international certificate. Finally, Inter was thus not in the position to loan the Player to the Appellant. On the other hand, the Appellant signed a formal employment contract with the

Player on the basis of which the German Football Association requested the issuance of an international transfer certificate from the Croatian Football Federation. Such certificate was issued on 22 October 1999.

20. The Panel thus finds that the transfer of the Player – in the meaning of the FIFA regulations – has taken place only between the Croatian Football Federation and the German Football Association, on behalf of the Appellant.
21. Consequently, the Panel dismisses the appeal and confirms, in principle, the Appealed Decision in the sense that the Appellant has to pay to the Respondent a compensation for the Player's training and/or development in accordance with Art. 14.1 of the 1997 Transfer Regulations. The Panel also confirms the Appealed Decision's order that the Appellant contact the Respondent with a view to reaching a mutual agreement on the amount of compensation within a period of thirty days. Accordingly, should the parties fail to reach an agreement on the amount of compensation within thirty days from the notification of this award, the matter may be submitted by either party to the competent body of FIFA, in accordance with Art. 16 of the 1997 FIFA Regulations.

#### **The Court of Arbitration for Sport rules**

1. The appeal filed by Club Hannover 96 on 30 December 2004 against the decision passed on 18 December 2004 by the FIFA Executive Committee is dismissed.
2. The decision passed on 18 December 2004 by the FIFA Executive Committee is entirely confirmed.
3. In the event that no mutual agreement on the amount of compensation is reached within 30 (thirty) days from the notification of the present award, either party may submit this matter to FIFA.
4. Any further claims are denied.
5. (...)