

CAS 2024/A/10795 Fodboldalliancen AC Horsens A/S & Tudor-Stefan Cocu v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal

in the arbitration between

1/ Fodboldalliancen AC Horsens A/S, Denmark

2/ Tudor-Stefan Cocu, Romania

Both represented by Brandsmiths, Manchester, United Kingdom

as Appellants

and

Fédération Internationale de Football Association (FIFA), Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation, and Mr Rodrigo Morais, Senior Legal Counsel

as Respondent

I. PARTIES

1. Fodboldalliancen AC Horsens A/S (the “First Appellant”, “AC Horsens”, or the “Club”) is a Danish professional football club competing in the second division for football in Denmark. It is affiliated to the Dansk Boldspil Union, the Danish Football Federation (the “DBU”), which is a member association of *Fédération Internationale de Football Association*.
2. Mr Tudor-Stefan Cocu (the “Second Appellant”, the “Player” or the “Minor”) is a football player of Romanian nationality, born on 9 February 2008, currently registered with the Romanian football club Fotbal Club Players. A. (the “FC Player”).
3. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an international governing body of football. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials, and players belonging to its affiliates. FIFA is an association under Articles 60 *et seq.* of the Swiss Civil Code with headquarters in Zurich, Switzerland.
4. The Club, the Player and FIFA are collectively referred to as the “Parties” and the Club and the Player are collectively referred to as the “Appellants”.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this award (“Award”) only to the submissions and evidence he considers necessary to explain his reasoning.

(A) The object of the dispute

6. This appeal case (the “Appeal”) is related to the challenging of the Decision of the Single Judge of the Player’s Status Chamber (the “PSC”) passed on 22 July 2024 (the “Appealed Decision” or the “PSC Decision”) which denied the application of the DBU, on behalf of the Club, for the approval of the international transfer of the Player, who is a minor, prior to the request for the issuance of the International Transfer Certificate (the “ITC”).

7. The Player is a football player, currently registered with the Romanian football club FC Player. The Player is 16-year-old as of the date of this Award.
8. On 21 June 2024, the Club, the Player and FC Player entered into a transfer agreement, whereby the transfer of the Player to AC Horsens was agreed (the "Transfer Agreement"). The following are the main clauses of the Transfer Agreement:

"(...)

Article 1 – Obligations of the Parties

(...)

1.4. The present Agreement and all the terms and conditions contained herein are subject to the following conditions ("Conditions"):

- (a) the Player entering into a valid and enforceable employment agreement with [AC Horsens] in accordance with the relevant rules of the DBU;*
- (b) the issuance of the Player's International Transfer Certificate by the [the Romanian Football Federation].*

If any of the Conditions are not finalized by 15 August 2024, 12.00 Central European Time, the Agreement and all of its effects shall be considered null and void and the Player will not be transferred to [AC Horsens].

Article 2 – Financial conditions

(...)

2.1.1 In consideration for the permanent transfer of the Player and any and all declarations, warranties and guarantees provided by [FC Player], [AC Horsens] shall pay to [FC Player] a sum of Euro 150,000 (one hundred fifty thousand) (the "Fixed Transfer Fee"), paid on the following dates:

- (i) Euro 150,000 (one hundred fifty thousand) excluding VAT, within 30 business days as from the release of the [ITC];*

(...)

Article 4 – Player consent

4.1. The Player hereby agrees to the transfer in all of its effects, including but not limited to, the suspension and possible future termination of his employment

contract with [FC Player] and the transfer of the Player's federative and economic rights to [AC Horsens] as well as any and all of the express and implied terms of this agreement.

4.2. *The Player hereby declares that he is fully satisfied with the amount of the salaries he will receive from [AC Horsens].*

(...)”

9. On 5 July 2024, the Player and the Club entered into an employment agreement using the standard DBU template (the “Employment Agreement”). The Employment Agreement was subject to the approval of the Administration of the Danish League as per Clause 5, which reads as follows in its relevant part:

“5.1 The validity and commencement of this Contract is subject to approval by the Danish League’s administration. (...)”

10. On 12 July 2024, the DBU submitted, on behalf of AC Horsens, an application for approval to the transfer of the Minor (the “Application”) in the FIFA Transfer Matching System (“TMS”). The Application was to be assessed and approved by the PSC prior to any request for the “ITC”.

11. The Application contained, among other documents, the following:

- a) A copy of the Player’s birth certificate.
- b) A copy of the Player Romanian passport.
- c) A copy of the Transfer Agreement.
- d) A copy of the Employment Agreement.
- e) A copy of a leasing agreement between AC Horsens and a landlord (the “Leasing Agreement”).
- f) A copy of the Player’s “*football education timetable*”.
- g) A copy of a letter signed by the Player’s parents authorizing the transfer to AC Horsens.
- h) A copy of the Player’s weekly training timetables.
- i) An unsigned declaration which covered AC Horsens’s school collaboration programme.
- j) A copy of a report issued by the DBU, indicating AC Horsens’s training facilities score (the “DBU Training Report”).

12. According to the DBU Training Report, it was stated that AC Horsens was classified as 13th in terms of the “overall ranking” and it contained the following mentions:

- a) Strategy – 75%
 - b) Organisation & HR – 78,57 %
 - c) Team Development – 75%
 - d) Individual Development – 65,63 %
 - e) Talent Identification – 62,50 %
 - f) Facilities – 75%
 - g) Productivity – 21,85%
 - h) Total score – 62,39 %
13. The Application was submitted under the specific exception established in Article 19.2(b)(i) of the Regulations on the Status and Transfer of Players (the “RSTP”), related with the possibility to transfer a player if he is aged between 16 and 18, within the territory of the European Union or European Economic Area, when the new club fulfils the minimum obligations set forward in Article 19.2(b)(iii)(iv)(v) and (vi) RSTP.
14. On 22 July 2024, the PSC passed the Appealed Decision, the operative part of which is as follows:
- “The application of the Dansk Boldspil-Union (TMS reference G-0002851) on behalf of its affiliated club, AC Horsens, for the approval prior to the request for the International Transfer Certificate of the minor player, Tudor-Stefan Cocu, is rejected.”*
15. The grounds of the Appealed Decision, which were communicated to the DBU on 25 July 2024, consisted of the following:
- a. The present case concerns the exception listed in Article 19.2 (b) RSTP.
 - b. For the application of such an exception to be justified, a few requirements must be complied with, namely:
 - The club must provide the player with adequate football education or training in line with the highest national standards;
 - The club needs to guarantee an academic education or vocational training to the player enabling him to pursue a career other than football should he cease to play professionally; and
 - The club is required to make necessary arrangements, so the player is properly looked after and accommodated.
 - c. The Player was 16 years old at the time of the Application, therefore he complied with the age requirement.
 - d. The international transfer *in casu* involved clubs affiliated to different football associations (the DBU and the Romanian Football Federation) located within the EEA, as required.

- e. When it comes to the “*adequate football education and/or training in line with the highest national standards*” requirement, the Single Judge stresses that said requirement is to be objectively applied according to Annexe 4, Article 4 RSTP. As a result, and as per FIFA Circular 1853, each national association had to divide its clubs each year into a maximum of four categories, from I (highest) to IV (lowest), in accordance with the club’s declared financial investment in training young players.
- f. The DBU has three training categories for its affiliated clubs, from II to IV, with II being the highest category and IV being the lowest.
- g. According to the information provided by the DBU, AC Horsens was classified as having training costs category III, the second lowest of the DBU’s categories.
- h. As a result, despite the documentation provided by the DBU, the Single Judge is bound to conclude that the Player was not receiving a football education and/or training “*in line with the highest national standards*” and that the requirements stipulated in Article 19.2(b) RSTP were not fulfilled.
- i. The remaining requirements do not require an assessment, since the lack of one is enough to deny the Application.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 16. On 12 August 2024, the Appellants filed with the Court of Arbitration for Sport (the “CAS”) a statement of appeal (the “Statement of Appeal”), in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”), challenging the Appealed Decision. Together with its Statement of Appeal, the Appellants have filed an application for provisional measures (the “APM”) requesting the CAS to order (i) the interim release of the Player’s ITC as well as (ii) allowing the Player to be registered with the AC Horsens. The Appellant also requested that the present case be submitted to a sole arbitrator.
- 17. On 19 August 2024, the Appellants filed a letter of support issued by the DBU confirming how the training category system in Denmark functions (the “DBU Support Letter”).
- 18. On the same date, the CAS Court Office invited the Respondent to comment on the DBU Support Letter in its answer to the APM (the “Answer to the APM”).
- 19. On 23 August 2024, the Appellants, in accordance with Article R51 of the Code and within the time-limit previously extended, filed their appeal brief (the “Appeal Brief”) with the CAS.
- 20. On 28 August 2024, the Respondent filed its Answer to the APM, within the extended deadline and in accordance with Article R37 of the Code.

21. On 30 August 2024, the CAS Court Office communicated to the Parties the operative part of the Order on the Application for Provisional Measures (the “Order on APM”) issued by the Deputy President of the Appeals Arbitration Division of the CAS, the relevant part of which read as follows:

“(…)

1. *The application for provisional measures filed by the Appellants on 9 August 2024 is dismissed.*
2. *The costs of the present Order shall be determined in the final award or any other financial disposition of this arbitration.*

(…)”

22. On 30 September 2024, the CAS Court Office communicated to the Parties the grounds of the Order on APM issued by the Deputy President of the Appeals Arbitration Division of the CAS. These can be summarized as follows:

“(…)”

- 5.13 *(…) the international transfer and then registration of a minor football player must comply with two steps: first, the approval by the [PSC] of the application for international transfer (the “Application”) and, second, the ITC request made by the new association (the “ITC Request”), once the Application has been approved by the [PSC] (...).*
- 5.14 *[It is] undisputed that the core of the Appealed Decision is limited to the assessment by the [PSC] of the Application, which has been (...) rejected. Accordingly, and given the restricted issue at stake, the Deputy Division President could have potentially assessed whether the DBU’s Application for the Player’s international transfer to the Club could be temporarily accepted pending the issuance of a final award by the Sole Arbitrator. However, in their Request, the Appellants are not seeking for the provisional acceptance of the DBU’s Application for the [PSC’s] prior approval for the Player’s international transfer to the Club but, instead, they request the interim release of the Player’s ITC.*
- 5.15 *The Deputy Division President considers that (...) is not in a position to grant such request as the prior Application – whose approval by the [PSC] is a sine qua non condition for the filing of the ITC Request – was rejected by the [PSC]. Granting the interim release of the ITC would circumvent the procedural steps set forth by the [RSTP] and would by-pass the [PSC’s] function to deal with international transfers and registrations of minor football players.*
- 5.16 *Considering the above (...) the Appellants’ Request for Provisional Measures shall be rejected.*

(...)”

23. On 2 October 2024, in light of the Appellants’ request, the CAS Court Office informed the Parties that it would assure that the operative part of the Award would be notified before 1 January 2025 at the latest.
24. On 10 October 2024, the Appellants’ requested the CAS Court Office to be able to supplement their Appeal Brief due to the judgement issued by the European Court of Justice on 4 October 2024, in the matter C650/22 FIFA v. BZ.
25. On 17 October 2024, the Respondent filed its answer (the “Answer”), within the extended time-limit.
26. On the same date, the Respondent also informed that it objected the possibility that the Parties be authorized to supplement or amend their arguments, as requested by the Appellants.
27. On 18 October 2024, the CAS Court Office informed the Parties that it would not admit the supplement or amendments of the Parties’ requests in light of Article R56 of the Code, unless the Parties agreed to it, or the Sole Arbitrator ordered otherwise on the basis of exceptional circumstances.
28. On 21 October 2024, the CAS Court Office informed the Parties regarding the appointment of the Sole Arbitrator by the President of the CAS Appeals Arbitration Division:

Sole Arbitrator: Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal
29. On 31 October 2024, the Sole Arbitrator invited the Appellants to file an English translation of the Annexe 14 to the Application.
30. On 4 November 2024, after consultation of the Parties, the Sole Arbitrator decided to hold an in-person hearing on 22 November 2024 at 09:30 am (Swiss time).
31. On the same date, the CAS Court Office issued the Order of Procedure, which was duly signed by the Parties.
32. On 8 November 2024, the Appellants filed with the CAS the translation of the Annexe 14 to the Application, as well as:
 - a. an amendment to the Transfer Agreement (the “Amendment”);
 - b. a joint letter signed by AC Horsens and FC Player (the “Joint Letter”);
 - c. the signed version of the lease agreement (the “Signed Lease Agreement”); and

- d. the Employment Agreement signed and approved by DBU (the “Approved Employment Agreement”).
33. On 15 November, the Respondent objected to the admissibility of the documents (the “Additional Documents”) filed by the Appellants (see para. 32), for the following reasons:
- New evidence and documents may only be filed with the CAS under Article R56 of the Code and based on “exceptional circumstances”, as per CAS jurisprudence and relevant legal doctrine.
 - The filing of the Amendment shall be rejected, since the Appellants could have easily produced it until 23 August 2023, since the Transfer Agreement became null and void on 15 August 2024.
 - The same reasons apply to the Joint Letter, since it also could have been produced earlier by the Appellants.
 - The Signed Lease Agreement must be rejected, since its filing at this stage does not allow to establish when such signature was placed. In any case, if the document really was signed on 21 March 2024, then the Appellants had more than enough time to produce this document, only doing so now without any proper justification.
 - The Approved Employment Agreement, similarly to the previous documents, was available to the Appellants on 9 July 2024, its date, and therefore it could have been timely filed, there being no justification for the Appellant’s failure to do so.
34. On 22 November 2024, the in-person hearing was held. In addition to the Sole Arbitrator and Mr Fabien Cagneux, as CAS Managing Counsel, the following persons attended the hearing in-person in Lausanne, Switzerland, or by videoconference:
1. For the Appellants
 - Mr Richard Liddell KC – Counsel (in-person)
 - Mr David Seligman – Counsel (in-person)
 - Ms Maxime van den Dijssel – Counsel (in-person)
 - Mr Tudor Stefan Cocu – Second Appellant (by videoconference)
 - Mr Kristian Nielson – CEO of the First Appellant (by videoconference)
 - Mr Adam Binnie – Witness (by videoconference)
 - Mr Martin Bloch – Witness (by videoconference)
 - Mr Claus Thompson – Witness (by videoconference)
 - Mr Daniel Mofid – Witness (by videoconference)
 - Ms Michelle Gregersen – Witness (by videoconference)
 - Mr Marius Cocu – Witness (by videoconference)

2. For the Second Respondent

- Mr Miguel Liétard Fernández-Palacios – Director of Litigation (in-person)
- Mr Rodrigo Morais – Senior Legal Counsel (in-person)

35. At the beginning of the hearing, and as a preliminary remark, the Parties confirmed that they had no objections to the appointment of the Sole Arbitrator and to the manner in which the proceedings had been conducted so far.
36. Also, as a preliminary remark, the Sole Arbitrator gave the floor to the Parties so they could present their arguments in relation to the Additional Documents. After considering their arguments, the Sole Arbitrator decided that they would be accepted, on the basis of Article R56 of the Code, since these were (i) deeply interconnected with the documents / evidence already on file and (ii) their production could not hurt the Respondent, since it had already considered, in its Answer, the potential validity of the Transfer Agreement beyond the date of 15 August 2024, as well as the existence of a valid lease agreement. In addition to this, the Approved Employment Agreement's constituted a mere confirmation of the validity of the alleged unapproved version of said document, which was filed and, as such, it would not constitute a supplement of the Appellants' position.
37. In continuation, and also as a preliminary remark, the Appellants clarified their "requests for relief", specifically noting that the final part of item c. ("*(...) and AC Horsens is permitted to request the ITC of the Second Appellant*") – should be considered unwritten and therefore removed. This clarification is made to address the issue raised by the Respondent, who argued that "*the Appellants' request for relief is out of the Sole Arbitrator's power of review*" and that "*FIFA lacks standing to be sued (alone) in relation to the Appeal*". This issue will be further examined in the preliminary section of the merits.
38. The hearing proceeded normally, and all witnesses were allowed to provide their testimony. The Parties' representatives had the opportunity to examine and cross-examine the witnesses.
39. Before the conclusion of the hearing, the Parties expressly confirmed that they had been afforded a full opportunity to present their case and to make their submissions and arguments. They also expressed no objections regarding the conduct of the proceedings, emphasizing that their rights to equal treatment and to be heard had been duly respected.

IV. THE PARTIES' SUBMISSIONS

40. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Sole Arbitrator, however, has

carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows:

A. The Appellants' Submissions

41. The Appellants sought the following reliefs – considering the clarification held during the hearing – see para. 37 – in their joint Appeal Brief:

“(…)

- a. *The present appeal filed by AC Horsens is admissible and upheld.*
- b. *The Challenge Decision is annulled.*
- c. *The application for the prior approval from the FIFA PSC for the international transfer of the Second Appellant is approved.*
- d. *The Respondent shall pay in full, or in the alternative, a contribution towards the costs and expenses incurred, including the Appellant's legal costs and expenses and the procedural costs of this present appeal.*

(…).”

42. The Appellants advanced the following grounds in support of its appeal:

- a. The legal framework of Article 19 RSTP
 - (i) The object of the dispute is essentially connected to determining if the conditions set forth in Article 19.2(b)(iii) to (vi) RSTP are met, allowing the Appellants to benefit from the exception to the general rule that international transfers of player are only permitted if said player is over the age of 18 (Article 19.1 RSTP).
 - (ii) In the case at hand, the Player is a 16-year-old European Union national (from Romania) that is pursuing a transfer to AC Horsens, a club with headquarters in Denmark, *i.e.* within the European Union.
 - (iii) Article 19.2(b) RSTP must be interpreted in accordance with CAS jurisprudence, which dictates that the intention behind the drafting of this provision cannot be ignored (TAS 2012/A/2862).
- b. The prohibition of international transfers of minors

- (i) It must be recalled that the prohibition of international transfers of minors is an essential rule which aims to protect the safety of minor players and avoid any abuses linked to their juvenile condition (as per CAS 2014/A/3793, CAS 2011/A/2494; CAS 2008/A/1475; CAS/2005/A/955 & 956).
- (ii) As per CAS jurisprudence (namely, CAS 2007/A/1403), the rule from Article 19.1 RSTP aims to combat the social, cultural, commercial or sporting exploitation of minor players. Its strict application is seen as essential for the correct functioning of the system, however, CAS jurisprudence also dictated that a “mechanical approach” is not always suitable (TAS 2015/A/4178).
- (iii) AC Horsens submitted the Application, which specifically outlines its ability to offer football education at the highest national level, provide high-quality academic education, ensure optimal living conditions, and offer psychological support to the Minor.
- (iv) FIFA failed to adequately analyse the documentation provided by AC Horsens and rejected the application submitted based on the training category classification of AC Horsens.

c. The scope of the exception provided for in Article 19.2(b) RSTP

- (i) The Commentary to the RSTP – 2023 Edition (the “Commentary”), provides that the exception foreseen in Article 19.2(b) RSTP was introduced to comply with the right to free movement of workers within the EU, allowing transfers of players between the ages of 16 and 18 within the EU/EEA subject to certain conditions. This is also confirmed in TAS 2012/A/2826.
- (ii) The primary condition relates to the ability to provide the Player with adequate football education and/or training in line with the highest national standards (as set out in Article 19.2(b)(iii) RSTP). As per the Commentary and FIFA Circular 1709, a club is generally deemed to satisfy this requirement only if it belongs to the highest training compensation category for the member association to which it is affiliated.
- (iii) AC Horsens was able to demonstrate that it complies with the conditions set forth in Article 19.2(b)(iii) to (vi) RSTP. The nuances of the DBU Academy Licensing System would require further analysis by the FIFA.
- (iv) Within the DBU, training categories are determined mainly by the men’s club competition where a certain club participates. This, however, does not necessarily involve an assessment of the quality of a club’s academy nor its ability to provide high level football education. The information provided by the DBU to FIFA further confirms this.
- (v) In Denmark there is a football academy system (the “Academy System”) which is distinct from the FIFA classification system. The Academy System is based on independent audits and a separate licencing regime.

- (vi) The U19 League in Denmark is a good example of this system in practice, since only the 14 best ranked teams according to the Academy System are allowed to compete in it. For that reason, it is not uncommon to have first division clubs in Denmark, which have a Category 2 FIFA classification, be deemed ineligible to participate in this U19 competition.
- (vii) AC Horsens has maintained its licence to compete in the U19 League since the 2020/2021 season. It has also submitted to the FIFA a breakdown of its ongoing financial investment into its academy and facilities. It is, therefore, clear that AC Horsens can provide football education at the highest national level.
- (viii) FIFA failed to correctly assess this matter, and the documentation provided.

d. The remaining conditions for the exception have been met

- (i) The Appealed Decision does not contest AC Horsens's ability to satisfy the remaining conditions set forth in Article 19.2(b)(iv) to (vi) RSTP, however, for the sake of completeness, the Appellants also deem the remaining conditions to have been met.
- (ii) In relation to the academic requirements (Article 19.2(b)(iv) RSTP), AC Horsens worked closely with the Player and his parents to create a personalized academic education plan which adhered to the highest standards. It involved an international schooling programme, university accredited classes, personal tutors, career counselling sessions, personal development plans and public speaking training, along with frequent progress reports.
- (iii) As for the living standards requirement, AC Horsens has made all arrangements to provide the Player with high quality accommodation at its campus, located close to the main stadium, benefitting from weekly cleaning. The Player would be provided with his own room, breakfast, lunch and dinner. In addition to this, AC Horsens' player care department would look after the Player's welfare in all moments, also with the help of full-time sports psychologists. All his travels would be arranged and managed by AC Horsens, which would be responsible for providing transportation.
- (iv) Based on the foregoing, AC Horsens was also able to satisfy the remaining requirements foreseen in Article 19.2(b)(iv) to (vi) RSTP.

e. The consequences of the Appealed Decision

- (i) The interpretation of Article 19 RSTP established in the Appealed Decision is contradictory to its spirit and CAS jurisprudence on the topic, which foresees that a mechanical application of the prohibition may, in some cases, be contrary to the best interest of the minor.

- (ii) The Player is a 16-year-old professional football player that devoted his life and sacrificed his childhood to become a top player. With the close help of his parents, the Player chose to pursue his career at AC Horsens, since it considered into to be the best place to satisfy his personal, academic and footballing ambitions. Similar opportunities do not exist in Romania, his home country. It is a crucial time for the Player, since any decision taken now has the power to profoundly impact his future career and his ability to achieve his goals as a professional football player.
- (iii) A decision which, in light of the available evidence, concludes that AC Horsens is unable to provide football education at the highest national level, would therefore be contrary to the Player's right to reside and work in the territory of the European Union, denying him his right to free movement of persons under the Treaty on The Functioning of the European Union (the "TFEU") as well as the spirit of Article 19.2 RSTP.
- (iv) The Appealed Decision has disregarded the Academy System, which creates a competitive disadvantage for AC Horsens when compared to other Danish clubs. In fact, the Appellant has made a significant investment in making sure that its academy complied with the highest national standards – but is now faced with a "blanket" decision which only considered the FIFA classification.
- (v) Based on the Appealed Decision, we are faced with the conclusion that clubs which significantly invest in their academies, but fail to play first division football in Denmark, are unable to register young players from the EU/EEA, while clubs who compete in the first division and don't invest significantly in their academies are granted this opportunity. This situation generates an immediate and irreparable competitive disadvantage to AC Horsens and other clubs in the same position and is even contrary to the position of the DBU.

f. Conclusions

- (i) AC Horsens complies with all the required conditions mentioned in Article 19.2.(b)(iii) to (v) RSTP, namely:
 - Adequate football education and/or training in line with the highest national standards.
 - Academic, school or vocational education that allows the Player to pursue a career other than football will be provided.
 - High-level accommodation and permanent monitoring of the Player is guaranteed.
- (ii) The specific nature and working of the DBU licencing system should be considered by FIFA, since it clearly demonstrates that AC Horsens is able to provide football education at the highest national level, a position which the DBU confirmed.

- (iii) Any decision that is contrary to these conclusions has the immediate effect of unduly restricting the Player's right to reside in the EU and his right to pursue professional sporting activities in a manner that is contrary to both the free movement of persons and the spirit of Article 19.2.(b) RSTP.

B. The Respondent's submissions

43. The Respondent filed its Answer to the Appeal Brief and made the following prayers for relief:

“Based on the foregoing, FIFA respectfully requests the Sole Arbitrator to issue an award on the merits:

a) Rejecting the reliefs sought by the Appellants in their entirety;

b) Confirming the Appealed Decision; and

c) Ordering the Appellants to bear the full costs of this Request for provisional measures.”

44. The submissions of the Respondent, in essence, may be summarised as follows:

a. The Appellants' request is out of the Sole Arbitrator's power of review

- (i) The Appellants request in their Appeal Brief that the “(...) *the First Appellant is permitted to request the ITC of the Second Appellant.*”
- (ii) For the DBU to be able to request the ITC of the Player, both AC Horsens and FC Player (the old club), must create a joint transfer instruction in TMS.
- (iii) Since this instruction has neither been created in the TMS nor is it within the scope of the Appealed Decision, the Sole Arbitrator has no authority to decide on such a request and must therefore reject it.

b. FIFA lacks standing to be sued alone

- (i) In order for the Sole Arbitrator to permit the ITC to be requested, the Player's transfer would have to first be approved and submitted by FC Player in the TMS system, which has not occurred to date.
- (ii) According to the Transfer Agreement, the validity of the transfer was conditioned to the issuance of the Player's ITC until no later than 15 August 2024, 12:00h CET – which never occurred. Therefore, it would be likely that FC Player would reject the transfer instruction in the TMS.

- (iii) Despite that, considering that such transfer would have to be confirmed by FC Player, it is clear that FIFA lacks standing to be sued alone in the present appeal, since there is a lack of passive mandatory joinder, a notion which has been further explored in CAS jurisprudence (CAS 2008/O/1808, paras. 67-70; CAS 2013/A/3228, paras. 8.10 and 8.11; CAS 2018/A/6044, para. 72; CAS 2022/A/9238, paras. 71-76; CAS 2021/A/8225, paras. 111-114, among others).
- (iv) An eventual decision by the Sole Arbitrator that the Player's ITC request is to be permitted, without the participation of FC Player in the present proceedings, would violate that club's right to be heard.
- (v) FIFA lacks standing to be sued alone, considering the passive mandatory *litisconsortium*. This is enough to dismiss the appeal, as confirmed by CAS 2013/A/3228 and CAS 2021/A/8140).

c. The rationale behind Article 19 RSTP

- (i) Prior to the entry into force of the RSTP, edition 2001, trafficking of young players to clubs in Europe, by unscrupulous persons, led to many children being virtually abandoned on the streets of European countries, without even understanding the language and culture of said places. Many were left without means to return home.
- (ii) FIFA decided to adopt strict rules on the international transfer of young players. It did so based on intensive discussions with various bodies of the EU, namely the European Commission, leagues, clubs, FIFPro and member associations and confederations. The current rules are, therefore, a consequence of the agreement concluded between FIFA, UEFA and the European Commission in March 2001.
- (iii) The primary objective of Article 19 RSTP is, therefore, the protection of young player's welfare and against exploitation and mistreatment, as corroborated by CAS jurisprudence (CAS 2020/A/7116, para. 74). While exceptions exist, international transfers of minors are unlikely to benefit a player or, at the very least, creates a risk for their well-being and development (CAS 2016/A/4805, para. 177).
- (iv) Article 19.2 and 19.3 RSTP created exceptions to the main rule (the prohibition of international transfers of minor players) to introduce some flexibility to the system. Such provisions, as expressly stated by the CAS jurisprudence, need to be applied in a very strict, rigorous and consistent manner (CAS 2022/A/8592, para. 1 of the Preamble; CAS 2021/A/7807, para. 87; CAS 2020/A/7503, para. 2 of the Preamble; CAS 2015/A/4312, paras. 78 and 79; CAS 2013/A/3140, para. 8.23).

- (v) The burden of proving that one of the exceptions to Article 19.1 RSTP applies, lies on the one relying on such exception. The standard to prove that such an exception applies, in view of the strictness and rigour needed when handling these matters, should be the *standard of beyond reasonable doubt* (CAS 2017/A/5244, para. 54). If the Sole Arbitrator does not concur with this assessment, the standard to be applied shall be the one of “*comfortable satisfaction*”, as acknowledged by the Appellants in their Appeal Brief.

d. The scope of the DBU’s application and of the Appeal

- (i) DBU requested that the transfer of the Player be authorised on the basis of Article 19.2(b) RSTP.
- (ii) The scope of the Appealed Decision was limited to the analysis of the concrete requirements to determine if the exception invoked by the DBU could be granted.
- (iii) The Sole Arbitrator is limited to considering if the requirements mentioned in Article 19.2(b) RSTP are met or not.
- (iv) Recent CAS jurisprudence is clear in affirming that the exceptions mentioned in Article 19.2 RSTP are exhaustive, to the contrary of what is argued by the Appellants (CAS 2022/A/8592; CAS 2021/A/7807 and CAS 2020/A/7503).

e. The cumulative requirements set out in Article 19.2(b) RSTP

- (i) The Appellants failed to prove that AC Horsens was in compliance with the requirements listed in Article 19.2(b) (iv) and (v) RSTP.

e.1 – Adequate football education at the highest national level

- (ii) The PSC correctly assessed that, as per its training category, AC Horsens was not able to provide the Player a football education in line with the highest national standards. This is because Article 19.2(b)(iii) refers directly to Article 4, Annexe 4 RSTP.
- (iii) Pursuant to the RSTP, the Commentary and the “Guide to Submitting a Minor Application” (the “Guide”), a club pertaining to an association with only three training categories will only be considered to have adequate football education or training in line with the highest national standards if it has been placed in the highest training category of such association.
- (iv) *In casu*, it is not disputed that the DBU placed AC Horsens as a club with training costs of category III, the second lowest of the DBU’s training categories. Therefore, the FIFA PSC’s decision was correct.

- (v) The Appellants' reasoning cannot be accepted, since the internal system used by the DBU to classify clubs is irrelevant in the face of Article 19.2 (b) RSTP's direct reference to the training costs category system (Article 4, Annexe 4 RSTP).
- (vi) The exceptions mentioned in Article 19 RSTP must be applied in a strict and rigorous manner to ensure a high level of protection for children, as well as to provide legal certainty for clubs and associations.
- (vii) The evidence presented by the Appellants does not support the conclusion that AC Horsens provides adequate football education at the highest national level. Within the DBU's system, AC Horsens received a score of 3,5 stars out of 5, being classified as "*medium*" in relevant parameters such as "*individual development and training*".
- (viii) Nothing prevented the DBU, if it truly considered AC Horsens to have a top-level academy, of placing said club in the highest available category, as per FIFA Circular no. 1249.

e.2 – Academic Requirements

- (ix) The Appellants have failed to adequately demonstrate that the Player would be provided with an academic or/and school and/or vocational education and/or training, as per Article 19.2(b)(iv) RSTP.
- (x) As the evidence submitted by the Appellants suggests, there are only statements from AC Horsens on file, which are not substantiated by any concrete evidence proving the Player's effective enrolment in any international school, nor the qualification the Player would receive upon completion of the mentioned course.
- (xi) No mention of when the Player would be graduating, nor any signed weekly academic schedule, has been provided either.

e.3 – Optimal living standards and accommodation

- (xii) There is no evidence on file submitted by the Appellants which demonstrates that AC Horsens has the control of 10 three-bedroom apartments. The provided lease agreement copy is unsigned.
- (xiii) The Appellants also failed to prove that the Player would be accommodated in such bedrooms.
- (xiv) The Appellants failed to demonstrate compliance with the requirement set out in Article 19.2(b)(v) RSTP.

f. The Employment Agreement submitted is invalid

- (i) DBU submitted a copy of the Employment Agreement which stated that it was subject to its approval.
- (ii) The Employment Agreement was not signed, nor approved, by the DBU.
- (iii) The Transfer Agreement became null and void on 15 August 2024, considering its Article 1.4 (see para. 8).
- (iv) The Application would never be approved, since the DBU failed to provide the PSC with the necessary documentation.

g. The Appellants' remaining arguments are of no avail

- (i) The Appealed Decision does not impact the Player's right to move and reside freely in the EU; in fact, he maintains all of his rights to do so. Only his transfer to AC Horsens was affected by said decision. It must be recalled that Article 19 RSTP was expressly accepted and even deemed appropriate by the European Commission, which was the one to suggest the system of prohibition of internal transfers of minors. The Player cannot be considered a worker for the purposes of Article 45 of the TFUE, since he would be a trainee at AC Horsens, with a remuneration below Denmark's minimum wage.
- (ii) AC Horsens is not to be considered at any kind of competitive disadvantage, since the fact it is not placed in the category it considers adequate is not the fault of FIFA. AC Horsens should have requested the DBU to alter its classification, if it considered itself to be incorrectly classified. In addition, the "imbalance" would actually be generated if AC Horsens was allowed to register the Player despite its category, as it would have to pay less training compensation in the future compared to clubs of a higher category.
- (iii) The Appellants have also failed to clarify the reasons why they argue that the Player would not be able to continue his football education in Romania, nor why it would not be able to satisfy his personal, academic and football ambitions.
- (iv) Any inconvenience that the Appealed Decision created for the Player is highly justified in view of the higher principle sought by the relevant rules – the protection of minors, as corroborated by CAS jurisprudence.

h. Conclusions

- (i) The Sole Arbitrator lacks the power of review to consider the Appellants' requests.
- (ii) FIFA lacks standing to be sued (alone), since FC Player should also have been named as respondent in the present proceedings.

- (iii) Without prejudice to the above preliminary issues, the Appellants failed to prove that the necessary requirements for the Application of the exception set out in Article 19.2(b) RSTP, in which they rely on, could apply.
- (iv) The remaining arguments presented by the Appellants, namely those related to the violation of EU Law by the Appealed Decision, are of no avail and deserve no merit, since they are contradictory and unsubstantiated.

V. JURISDICTION OF THE CAS

41. In accordance with Article 186 of the Swiss Private International Law Act (the “PILA”), the CAS has the power to decide upon its own jurisdiction.

42. Article R47 of the Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.”

43. Article 57(1) of the FIFA Statutes reads as follows:

“Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question.”

44. The Appeal is directed against a final decision of the PSC and therefore, the CAS, considering the above provisions, has jurisdiction to rule on the appeal filed by the Appellants. Moreover, the Panel notes that the jurisdiction of the CAS, which is not disputed, is also confirmed by the Order of Procedure duly signed by the Parties.

45. It follows that the CAS has jurisdiction to hear this dispute.

VI. ADMISSIBILITY

46. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit

for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

47. Article 57(1) of the FIFA Statutes reads as follows:

“Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question.”

48. The Sole Arbitrator notes that the admissibility of the Appeal is not contested by the Parties. The grounds of the Appealed Decision were notified to the Appellants on 25 July 2024 and that the joint Statement of Appeal was filed on 12 August 2024, *i.e.* within the 21-day deadline fixed under Article 57(1) of the FIFA Statutes.

49. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

50. Pursuant to Article R58 of the Code, in an appeal arbitration procedure before the CAS:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

51. In addition, Article 56(2) of the FIFA Statutes stipulates the following:

“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.”

52. As such, the Panel is satisfied to primarily apply the various regulations of FIFA, in particular the RSTP (Edition June 2024) and, subsidiarily, Swiss law shall be applied should the need arise to fill a possible gap or *lacuna* in the various regulations of FIFA. The Parties also concur on this matter and did not dispute this conclusion.

VIII. MERITS OF THE APPEAL

(A) Scope of the Appeal

53. The Sole Arbitrator deems it necessary to begin by clearly defining the scope of the Appeal.
54. The Appeal has been filed against the Appealed Decision, through which the PSC rejected the prior approval of the international transfer of the Player to AC Horsens. This rejection was based on the conclusion that the requirement for the exceptions foreseen in Article 19.2(b)(i) was not met.
55. The Application submitted to the PSC by the DBU, on behalf of AC Horsens, sought prior approval for the transfer of the Player to AC Horsens. In its Application, the DBU focused its arguments on demonstrating compliance with the requirements of Article 19.2(b)(i), (iii) to (vi) RSTP, which provides:

“19. Protection of minors

1. International transfers of players are only permitted if the player is over the age of 18.

2. The following five exceptions to this rule apply:

a) (...)

b) The player is aged between 16 and 18 and:

i. the transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA); or

ii. the transfer takes place between two associations within the same country.

The new club must fulfil the following minimum obligations:

iii. It shall provide the player with an adequate football education and/or training in line with the highest national standards (cf. Annexe 4, article 4).

iv. It shall guarantee the player an academic and/or school and/or vocational education and/or training, in addition to his football education and/or

training, which will allow the player to pursue a career other than football should he cease to play professional football.

- v. *It shall make all necessary arrangements to ensure that the player is looked after in the best possible way (optimum living standards with a host family or in club accommodation, appointment of a mentor at the club, etc.).*
- vi. *It shall, on registration of such a player, provide the relevant association with proof that it is complying with the aforementioned obligations.”*

(Emphasis added by the Sole Arbitrator)

- 56. The Sole Arbitrator notes that the core of the Appellants’ request and prayers – after their clarification at the hearing – is for “(...) [t]he application for the prior approval from the FIFA PSC for the international transfer of the Second Appellant is approved” (see paras. 37 and 40).
- 57. The Sole Arbitrator accepted the clarification provided by the Appellants during the hearing regarding item (c) of their requests and prayers. In the Sole Arbitrator’s view, the clarification solely aims to elucidate the intent of the request and does not seek to alter or expand its scope, which would otherwise be inadmissible. Fundamentally, the Appellants are requesting a reassessment of the evidence submitted with the Application to overturn the PSC’s decision and to determine that the requirements of Article 19.2(b) RSTP have been met. The Sole Arbitrator considers that the subject matter of this Appeal is limited to the Application submitted to the PSC and involves the review by the CAS for the purpose of determining whether the evidence presented is sufficient to conclude that the relevant requirements have been satisfied.

(B) The Alleged Lack of Passive *Litisconsortium*

- 58. FIFA asserts that it lacks standing to be sued (alone), arguing that FC Player, the Player’s original club, is not a party to these proceedings. FIFA contends that for the DBU, rather than AC Horsens, to validly request the Player’s ITC, as initially sought by the Appellants, both the new club (AC Horsens) and the former club (FC Player) must first create a transfer instruction in the TMS. Consequently, any decision authorizing AC Horsens to request the ITC would be ineffective, as it would not bind FC Player.
- 59. Furthermore, FIFA highlights that the Transfer Agreement would become null and void if the Player’s ITC was not issued by 15 August 2024, 12:00 Central European Time (see para. 8). This fact, FIFA argues, strongly suggests that FC Player might ultimately deny the transfer, thereby preventing the issuance of the ITC.

60. In response, the Appellants submitted to CAS the Amendment and the Joint Letter, both of which confirm that AC Horsens and FC Player intended to remain bound by the terms of the Transfer Agreement (see para. 32). These documents demonstrate the continued mutual agreement between the parties involved.
61. Procedural objections based on lack of standing to be sued typically arise when a request before a tribunal directly affects the legal rights or obligations of a third party not named as a respondent (see, e.g., CAS 2020/A/6922, paras. 96-101).
62. In this case, the issue of standing only becomes relevant in relation to the original formulation of the Appellants' request to allow the DBU to seek the Player's ITC. FIFA correctly argues that such a procedure requires FC Player, who is not a party to these proceedings, to enter the necessary transfer instructions into the TMS.
63. However, the Appellants' clarification of their requests and prayers for relief (see para. 37) resolves the procedural issue raised by FIFA. The Sole Arbitrator recalls that the scope of the Appeal is limited to verifying whether the conditions of Article 19(2)(b) RSTP are met, so that the Application submitted to the PSC may serve as sufficient evidence to confirm the requirements for the transfer.
64. The Sole Arbitrator's jurisdiction in this Appeal is limited to evaluating the evidence submitted by the DBU on behalf of AC Horsens, solely for the purpose of determining whether the exceptional criteria under Article 19(2)(b) RSTP are satisfied. The relief sought by the Appellants does not constitute a request for an "order" for the issuance of the Player's ITC, nor does it compel FIFA to issue the ITC should procedural obstacles arise. The Appellants' request is limited to a determination that the criteria for an exception to the transfer of a minor are met.
65. Notably, while FC Player is not a party to the present proceedings, it provided the Appellants with the Amendment and Joint Letter confirming its agreement to remain bound by the Transfer Agreement beyond 15 August 2024, 12:00 Central European Time (see para. 37). This demonstrates that FC Player would have no substantive reason to oppose the transfer.
66. Under the requested relief, FIFA would still be required, in accordance with its TMS rules, to determine whether to approve the transfer if FC Player failed to enter the required instructions into the system.
67. In light of the above, even if the Sole Arbitrator were to grant the Appellants' request (as clarified), such a decision would not directly or irreversibly affect FC Player's rights.

Therefore, FIFA does not lack standing to be sued independently in the present proceedings.

(C) The Burden of Proof and the Applicable Standard

68. As confirmed by Article 8 of the Swiss Civil Code (“SCC”), there is no doubt that the Appellants’ carry the burden of proof in establishing that the exception foreseen in Article 19.2(b)(i) RSTP, in which they rely for requesting the prior approval of the Player’s transfer to AC Horsens, applies in the case at hand. The same conclusion applies to the remaining requirements set forth under the exception outlined in Article 19(b) RSTP. This is also in line with established CAS jurisprudence, namely CAS 2021/A/7807, para. 104:

“According to the general legal principle of burden of proof, any party claiming a right on the basis of an alleged fact must carry the burden of proof, establishing that the alleged fact is as claimed. This is in line with Article 8 of the Swiss Civil Code, which reads as follows: “Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact”. As a result, the Sole Arbitrator reaffirms the principle established by CAS jurisprudence that “in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence” (CAS 2014/A/3546, para. 7.3 and references).”

69. Having noted the above the Sole Arbitrator will now assess the applicable standard of proof.
70. The three most common standards of proof which are applied in CAS proceedings are, by hierarchy of degree of requirement, “beyond reasonable doubt”, “comfortable satisfaction” and on the “balance of probabilities”. In the context of this matter, the Sole Arbitrator notes that the FIFA requested the application of the standard of “beyond reasonable doubt”, while the Appellants argue that the standard of “comfortable satisfaction” shall be the one to be applied.
71. In this matter, the Sole Arbitrator notes that there is some divergence between the jurisprudence of the CAS, namely between the reasoning laid out in CAS 2017/A/5244

and CAS 2020/A/7503. However, the Sole Arbitrator concurs with the reasoning of the latter, which reads as follows:

“92. The request for registration of the Player was justified under the terms of Article 19.2 (a) RSTP, which states that: “The player’s parents move to the country in which the new club is located for reasons not linked to football”.

93. The requirements are, if a minor: (i) moves with his parents to the country in which the club wishes to register the minor player; and such move is (ii) for reasons not linked to football.

94. The Sole Arbitrator shares and follows the views expressed in CAS 2011/A/2494 (para. 63) and reinforced by CAS 2013/A/3140 (para. 8.25) that states “Article 19.2 (a) RSTP aims to protect the young players who follows is family moving abroad for personal reasons, and not the parents who follow their child in the view to integrate a club situated abroad. The test is thus, to assess the true intention and motivation of the player’s parents. In that respect, it is not sufficient to establish that the parents do not seek, as primary or main objective, to achieve the footballing activities of their child abroad: for Article 19 para. 2 (a) of the RSTP to apply, the move of the family must not be linked to football”.

*95. The assessment of this exception is not an easy task (CAS 2017/A/5244, para 51), because it implies and requires the investigation of subjective intentions. Subjective intentions that need to be proved by the Player. The burden of proof lies with the Player, who needs to prove that there were no links to football underpinning the family’s decision to move to the new country. **The standard for proving the exception shall be “comfortable satisfaction” and not “beyond a reasonable doubt”, as defended but not justified, in the CAS 2017/A/5244 (cf. para. 542). In the Sole Arbitrator’s views there is no justification to require a higher standard of proof than the one established for doping and corruption matters.**”*

(Emphasis added by the Sole Arbitrator)

72. The Sole Arbitrator concurs with the aforementioned jurisprudence, as it also considers that the highest standard of proof, “*beyond reasonable doubt*”, should be reserved for the most serious of cases where such a rigorous analysis is indispensable. While the protection of minors is undoubtedly of the utmost importance, the specific nature of these proceedings cannot be equated with criminal matters such as doping or corruption, where the defendants' personal freedom may be at stake. Consequently, it would not be appropriate for the Sole Arbitrator to apply a higher standard of proof in the present case, particularly in light of the jurisprudence established in CAS 2020/A/7503.

73. The standard of “*comfortable satisfaction*” is generally defined as a standard of proof that is higher than the civil law standard of “*balance of probability*” but lower than the criminal law standard of proof “*beyond a reasonable doubt*”. In practical terms, the party bearing the burden of proof must establish the facts having in mind the seriousness of the invoked allegations.

(D) The Key Issues to be Decided

74. Having addressed the preliminary issues raised by FIFA, which could have resulted in the dismissal of the Appeal, the Sole Arbitrator now turns to the core issue of the dispute: whether the Application satisfies the cumulative requirements specified under Article 19.2(b)(iii) to (vi) RSTP. Failing to meet these requirements would preclude the transfer of the Player to AC Horsens.
75. The primary contention, as identified by the PSC, pertains to AC Horsens’ alleged inability to provide the Player with adequate football education and/or training in line with the highest national standards.
76. The Sole Arbitrator observes that the Player is a minor, aged between 16 and 18 years, and that the proposed transfer from FC Player to AC Horsens qualifies as an intra-EU/EEA transfer, as set forth in Article 19.2(b)(i) RSTP. Both clubs are located within the EU, a fact that is evident and remains uncontested.
77. Based on the foregoing considerations, the following key issues require determination in this Appeal:
- a. **Does AC Horsens satisfy the requirement set out in Article 19.2(b)(iii) RSTP?**
 - b. **If so, can AC Horsens comply with the additional requirements outlined in Article 19.2(b)(iv) to (vi) RSTP?**
 - c. **If all requirements are met, what are the implications for the proposed transfer?**

D.1 Does AC Horsens satisfy the requirement set out in Article 19.2(b)(iii) RSTP?

78. In the Appealed Decision, the PSC considered that AC Horsens failed to meet the requirement to provide the Player with adequate football education and/or training in line with the highest national standards, as stipulated in Article 19.2(b)(iii) RSTP. This determination was based on the PSC’s interpretation that the assessment of this

requirement must rely exclusively on the training costs categorization of clubs set forth in Article 4 of Annexe 4 RSTP, to which Article 19.2(b)(iii) RSTP expressly refers:

“it shall provide the player with an adequate football education and/or training in line with the highest national standards (cf. Annexe 4, article 4)”.

79. The Appellants contest this decision, arguing that it disregards the material situation in Denmark. They assert that Denmark has two classification systems for evaluating the quality of football club training academies. According to the DBU, all first-division clubs fall into the highest category (Category II), while clubs not participating in the first division are automatically placed in lower categories. In contrast, the DBU's internal classification system, which operates independently of FIFA, conducts a more detailed assessment of football academy standards and should be considered when evaluating whether a club meets the requirement for adequate football education and/or training in line with the highest national standards. Furthermore, the Appellants argue against the mandatory application of Article 4 of Annexe 4 of the RSTP, asserting that the use of the term "cf." serves merely as a reference and does not impose an obligatory requirement.
80. FIFA, however, maintains that this requirement must be assessed in a strictly objective manner. FIFA argues that the provision leaves no room for alternative interpretations: the classification system outlined in Article 4, Annexe 4 RSTP, based on training costs, is the sole method for determining compliance. According to FIFA, this approach ensures consistent and strict application of Article 19.2(b)(i) RSTP, thereby guaranteeing legal certainty.
81. Before resolving the issue, the Sole Arbitrator deems it necessary to provide a brief overview of FIFA's classification system and its training cost categories.
82. FIFA's training compensation system was established to reward clubs for their investment in the development of young players. To facilitate its implementation, FIFA introduced a categorization system based on clubs' financial investment in training, with each category assigned a specific training cost value. This system, enshrined in Article 4, Annexe 4 RSTP, allows national associations to classify clubs into the relevant categories.
83. As stated in FIFA Circular No. 1249, associations were assigned specific numbers of categories, but the responsibility for classifying clubs within these categories rests with the associations. This categorization is guided by FIFA principles outlined in various circulars, including Circular Nos. 799, 1249, 1763, 1853, and most recently, 1892.

84. Although the system is grounded in well-established principles and financial benchmarks, FIFA has allowed a degree of flexibility in its application. Circular No. 1249 explicitly permits associations to categorize lower-division clubs differently if their investments in youth training are comparable to those of higher-division clubs.
85. This classification directly affects each club's financial commitment to player training and determines the training compensation payable when a player signs their first professional contract or transfers internationally before their 23rd birthday, as specified in Article 20 and Annexe 4 RSTP.
86. Returning to the issue at hand, in the Sole Arbitrator's opinion Article 19.2(b)(iii) RSTP explicitly references Article 4, Annexe 4 RSTP, which forms the cornerstone of FIFA's training compensation system.
87. The expression "*cf.*" in the sentence in Article 19.2(b)(iii) RSTP, means "*confer*" (from the Latin "*conferre*") and is equivalent to "*compare*" or "*see*" in English. In legal context, "*cf.*" is often used to reference another relevant provision or rule, indicating that the interpreter should consult the referenced "source" (in this case, Article 4, Annexe 4 of the RSTP) for further details or additional context. In the interpretation of this requirement, the Sole Arbitrator holds the view that "*cf.*" serves as an interpretative support for defining the concept and requirement, and that the reference content is directly applicable. Otherwise, and if that were not the case, it would make no sense to reference Article 4 of Annexe 4 of the RSTP.
88. The Sole Arbitrator finds the reference in Article 19.2(b)(iii) RSTP to Annexe 4, Article 4 of the RSTP neither arbitrary nor ambiguous. It reflects the regulator's clear intent that the adequacy of football education and/or training be evaluated using FIFA's classification system based on training costs. This interpretation is further reinforced by the Circular 1709 introducing the reference, which states:

"(...) Further amendments have also been made to: clarify the assessment of whether a club provides a player with adequate football education and/or training in line with the highest national standard (...)"
89. Not only is the wording of Article 19.2(b)(iii) RSTP unambiguous, but CAS jurisprudence and FIFA's submissions also underscore the importance of a strict and rigorous interpretation of the exceptions in Article 19 RSTP. Such an approach ensures the effective protection of minors as envisaged by these rules (see, among others, CAS 2013/A/3140, CAS 2017/A/5244 and CAS 2020/A/7503).

90. The Commentary further supports this interpretation, explaining that compliance with Article 19.2(b)(iii) RSTP is generally demonstrated when clubs belong to the highest training compensation category in its member associations. This provision aims to enhance transparency and ensure consistency in its application:

“For male players, a club will in principle be deemed to satisfy the requirement to provide the best possible facilities only if it belongs to the highest training compensation category for the member association to which it is affiliated. An explicit reference to this requirement was included in the provision in March 2020 to enhance transparency. This means that, for associations that have four training categories available (categories 1 to 4, with 1 being the highest category and 4 being the lowest), in principle only clubs that are assigned to either category 1 or category 2 will be considered to provide adequate football education and/or training in line with the highest national standards. For those associations that have not four but three training categories available (categories 2, 3 and 4) or two training categories (categories 3 and 4), or one training category (category 4), only clubs that are assigned to the respective highest category are generally considered to have adequate football education and/or training in line with the highest national standard”

91. The documentation submitted by the Appellant, purportedly demonstrating that AC Horsens operates one of the best football academies in Denmark, is based on an internal DBU classification system. However, in light of the explicit wording of Article 19.2(b)(iii) RSTP, this internal system is legally irrelevant in determining whether a club can provide adequate football education and/or training in line with the highest national standards.
92. Allowing clubs to demonstrate compliance using national internal classification systems would undermine legal certainty and the strict application of the exceptions in Article 19 RSTP. Such an approach would introduce subjectivity, given the varying standards of evaluation across FIFA’s member associations, and could jeopardize the integrity of the system.
93. The Sole Arbitrator is unaware of any CAS jurisprudence that contradicts this reasoning.
94. Based on the evidence presented, it is undisputed that AC Horsens is classified by the DBU as a Category III club (in Denmark, only Categories II to IV exist, with Category II being the highest). As such, AC Horsens cannot be deemed to meet the requirements of Article 19.2(b)(iii) RSTP.
95. It should be noted that AC Horsens could potentially be placed in a higher category, despite currently competing in Denmark’s second division. The DBU, as the entity

responsible for national categorization, has the authority to reclassify clubs based on their training costs, but such a decision lies outside the scope of this appeal.

96. While evidence and testimony suggest that AC Horsens has made significant investments in its academy, which could justify its inclusion in Category II, this reclassification has not yet occurred.
97. Moreover, the Sole Arbitrator lacks jurisdiction to determine AC Horsens' reclassification, as this matter falls under the DBU's purview.
98. Consequently, the Sole Arbitrator concludes that AC Horsens does not meet the requirements of Article 19.2(b)(iii) RSTP. Accordingly, the appeal must be rejected and the PSC Decision confirmed.

D.2 Additional Considerations

99. Despite the above considerations already being enough to reject the Appeal in its entirety, the Sole Arbitrator wishes to provide the Parties with some additional comments, based on its observations of the present case.
100. Firstly, it should be noted that, even if the classification of the DBU's Academy System were to be taken into account, AC Horsens would have a difficulty in proving that it could provide the Player with an adequate football education and/or training in accordance with the highest national standards, as it only received a classification of 3.5 stars out of 5. In addition, it received a "medium" rating in key parameters, such as the "individual development and training". As the DBU witnesses confirmed at the hearing, there are clubs in Denmark which hold a higher classification, and it was not clear that AC Horsens was one part of the country's "elite" clubs in this area of young player development.
101. When it comes to the remaining requirements, which AC Horsens would have to comply with if it wanted the exception of Article 19.2(b)(i) RSTP to be granted, the Sole Arbitrator considers useful to underline the following observations.
102. During the hearing, it became clear that the minor was not currently attending any classes, and that AC Horsens had failed to establish a structured, comprehensive and adequate education plan to ensure the Minor's proper academic development.
103. Education is a fundamental element of a minor's personal development, encompassing intellectual, social and cultural dimensions. This is particularly critical in the case of international transfers of young players, where the minor is required to adapt to a new

cultural, linguistic and social environment while maintaining consistent academic progress.

104. What is even more concerning is the fact that, at the stage of the hearing, AC Horsens has only considered solutions involving online education, allegedly due to the Minor's inability to speak the national language, i.e. Danish. While virtual education may serve as a complementary resource in exceptional situations, it is completely inadequate and inappropriate within the strict framework of exceptions for the transfer of minors.
105. Relying solely upon online education deprives the Minor of the crucial benefits associated with in-person learning. Physical attendance at school provides essential developmental opportunities, such as direct interaction with classmates, teachers and members of the wider community. Such experiences are fundamental to the Minor's integration into local society, allowing him to acquire the necessary communication and language skills while being exposed to cultural and social norms. This interaction fosters adaptability, resilience and a sense of belonging - qualities that are essential for his overall well-being.
106. Attending physical education classes fosters a number of important developmental opportunities, including direct interaction with teammates, teachers and other members of local civil society, which allows the minor to cultivate communication and language skills, as well as exposure to cultural and social values. Such experiences are essential for the proper integration of the Minor into local society and for building the resilience and adaptability needed to be successful in life outside of football.
107. The importance of education goes beyond the immediate academic sphere. It is fundamental to the Minor's future prospects, providing a pathway to alternative professional opportunities should their football career fail or be interrupted by injury or other unforeseen circumstances. Similarly, failing to provide the Minor with access to an appropriate education risk jeopardizing his long-term well-being by placing an undue emphasis on football at the expense of his broader personal development. This approach is contrary to the principles underlying article 19 of the RSTP, which prioritizes the best interests and welfare of minors above all else.
108. Furthermore, from a legal and regulatory point of view, it must be emphasized that clubs involved in international transfers of minors have a higher duty of care to ensure the overall development of the young player. In the opinion of the Sole Arbitrator, by accepting to offer virtual lessons as the only educational solution, AC Horsens failed to comply with the requirement laid down in Article 19(2)(b)(iii) RSTP. Isolating the Minor from personal education is not advisable for his mental and physical development. This is especially true when the minor comes from a different culture.

109. Therefore, even if the first requirement in relation to football education has been met or is in the process of being met, the inability of the Club to ensure an adequate academic education for the minor constitutes a fundamental failure to comply with the second requirement. This failure undermines not only the Minor's immediate integration, but also his long-term personal and professional development, which is central to the protective framework established by the RSTP.
110. Finally, regarding the requirement set forth in Article 19(2)(b)(v) RSTP, which pertains to the Player's accommodation, the Sole Arbitrator concludes that the option provided to the Minor met very good, if not excellent, standards. This assessment was based on both the location and the physical space and conditions of the accommodation. This perception was further corroborated by the Minor and his father during their testimony.
111. In light of the foregoing conclusions, the Sole Arbitrator considers it unnecessary to analyze any remaining issues raised by the Parties.

IX. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Fodboldalliancen AC Horsens A/S & Tudor-Stefan Cocu on 9 August 2024 with respect to the decision issued by the Single Judge of the Players' Status Chamber of the FIFA Football Tribunal on 22 July 2024 is dismissed.
2. The decision issued by the Single Judge of the Players' Status Chamber of the FIFA Football Tribunal on 22 July 2024 is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Operative part issued on 18 December 2024
Date: 5 May 2025

THE COURT OF ARBITRATION FOR SPORT

Rui Botica Santos
Sole Arbitrator