

The unilateral extension option through the eyes of FIFA DRC and CAS

Introduction

The extension option is the right of the player and/or the club to extend the employment contract for a certain period of time which is stipulated by the parties in an employment contract. There are many kinds of extension options. We have the reciprocal extension option in favour of the player and the club in which both parties are entitled to prolong the employment contract for a certain predetermined period and there is the unilateral extension option only in favour of one of the parties. In the daily practice of international professional football, we usually find unilateral extension options solely in favour of the club.

After the Bosman-case of 1995¹, in which the European Court of Justice decided that transfer compensation to be paid by a club for a player who had ended his contractual relationship with his former club was not permitted and was in violation with the free movement of people within the European Union. From that moment on, the clubs had to prevent the situation whereby their professional football player came to the end of their contracts and were able to leave for free. Therefore, the use of the unilateral extension option in favour of the clubs increased substantially.

At international level there is uncertainty regarding the validity of the unilateral extension option. For example, in South-America, where the unilateral extension option was very popular (and in some countries still is), as result of the general disputable validity of this clause, developments can be noticed that the unilateral extension option is disappearing in some countries. One can also notice from a recently published report that in Chili the unilateral extension option is totally banned, in Uruguay the option only still exists because the players' union disagrees with an absolute disappearance of the unilateral extension option and in Argentina the option

¹ Case C-415/93, '*Union royale belge des sociétés de football association ASBL v. Jean-Marc Bosman Royal Club liégeois SA v. Jean-Marc Bosman. SA d'Economic Mixte Sportive de l'Union Sportive du Littoral de Dunkerque, Union Royale Belge des Sociétés de Football Association ASBL, Union des Associations Européennes de Football Union des Association Européennes de Football v. Jean-Marc Bosman*', judgement of 15 December 1995, [1991] ECR I-4837.

can only be inserted in the contracts of players beneath 21 years old and only for the duration of a maximum period of three years.²

The Dispute Resolution Chamber of FIFA (hereinafter DRC) as well as the Court of Arbitration for Sport (hereinafter CAS), as being the authoritative committees at international level in the world of professional football, provided the football world with several decisions related to this subject. With this article we trust to provide the international professional football world with a valuable survey of all relevant international jurisprudence from the DRC and CAS.

Structure article

This article will contain an extensive survey of all relevant decisions of the DRC and CAS related to the unilateral extension option. First the relevant decisions of the DRC will be discussed and analyzed.³ The most important decisions will be discussed in a chronological course of time as from the first published decision in 2004 until now. Since parties have the possibility to appeal against decisions of the DRC before CAS, the decisions of CAS will also be analyzed and discussed.⁴

In the conclusion we summarize the general line the DRC and CAS stand for with respect to the unilateral extension option and will answer two important questions: What conclusions can be drawn from analyzing DRC and CAS jurisprudence and what can be expected from future DRC and CAS decisions?

Please note that this article is meant for anyone interested in this subject. Although this article has a scientific character, it must be emphasized that it is intended to have great value for the daily practice of international professional football. The reason we discuss the unilateral extension option throughout the eyes of DRC and CAS is a result of the increasing internationalization and importance of the decisions of these committees within the international field of professional football, which will also have

² The unilateral extension option provides for employment. If the possibility for a unilateral extension option would not exist, less players would be provided with contracts. See the report '*Contractual Stability in Professional Football*', '*Recommendations for clubs in a context of international mobility*', by Diego F.R. Compaire (Italy/Argentina), Gerardo Planás R.A. (Paraguay) en Stefan-Eric Wildemann (Germany), July 2009.

³ On the website of FIFA all published decisions of the DRC can be find, see: www.fifa.com.

⁴ On the website of CAS all published decisions of the CAS can be find, see: <http://www.tas-cas.org/>.

its impact at national level (certainly at the long run), such as for national arbitral courts. In this article the national laws will be excluded and will not be taken into consideration.

In this article we only discuss the *jurisprudence* related to this subject since the regulations of FIFA do not contain any provisions in respect thereof. However, it needs to be noted that the FIFA Regulations do provide for a provision related to the contracts of minors. In the Regulations of FIFA, the Regulations on the Status and Transfer of Players, is stated that players under the age of 18 cannot conclude contracts for a period longer than three years and that parties are forbidden to insert clauses that refer to longer periods than three years.⁵ This provision leaves no space for any other interpretation in order to assume that unilateral extension options (since they without any doubt refer to longer periods) are not permitted to be inserted in the youth contracts that have a duration of three years. Furthermore, apart from the jurisprudence, Circular 1171 of FIFA of 24 November 2008 is relevant to keep in mind while discussing the decisions of the DRC. This Circular provides the minimum requirements for players' contracts. One of the minimum requirements is remarkably enough the fact that unilateral extensions are not permitted and that extension- and termination rights are only permitted in case the clause is reciprocal and so in favour of both parties. Apart from these matters, the Regulations of FIFA as well as other Circulaires do not provide for any provisions related to this subject as result of which the decisions of DRC and CAS become even more relevant.⁶

Relevant decisions of the DRC

DRC 22 July 2004⁷

The first published decision of the DRC to be discussed is the case of 22 July 2004. In this case a player signed on 30 July 2004 an employment contract for the period

⁵ See article 18 par. 2 of the Regulations on the Status and Transfer of Players, edition 2010.

⁶ In order to understand the decisions in the best possible way, it must be noted that parties following the CAS rules do have a formal say with regards to the composition of the CAS committee. Furthermore it is important to refer to the principle of 'stare decisis'. By not applying the principle of 'stare decisis' to the decisions of CAS, it can be said that CAS in general treats each case one by one. However, this still does not automatically mean that CAS does not adjudicate in line with its earlier decisions.

⁷ No. 74508.

as from 30 July 2003 until 30 June 2004. The contract was provided with a unilateral extension option in favour of the club with the possibility for the club to extend each year with a consecutive total of four years. It was agreed in the contract that the club had to inform the player five days before the beginning of the transfer period in case it wanted to extend the contract. Furthermore the club had the obligation to inform the player about the new conditions of the extended contract. On 24 July 2004 the club informed the player that they wanted to extend the contract as from 1 July 2004 until 30 June 2005 based on the same conditions as stated in the current contract. The player did not agree with the club and disputed on 3 June 2004 before the DRC the validity of the unilateral extension clause.

In this case the DRC is for the first time clear with respect to the validity of the unilateral extension option.⁸ The DRC decided in this case that unilateral extension options are in general problematic, since they limit the freedom of a party who cannot make use of this clause (the player) in an excessive manner. The DRC decided that the option concerned was not reciprocal since the right to extend was exclusively left to the discretion of one party (the club). In this specific case the extension option was solely in favour of the club. The club as the employer was the stronger party in the relationship. By referring to the clause by the club in order to extend the contract the player had no substantial advantage since the conditions remain unaltered. The DRC clearly pointed out in this decision that unilateral options in principle do not match with the general principles of labour law. The DRC did not found the latter consideration, but the DRC did clearly emphasize that unilateral extension option are not permitted. Despite the clear considerations of the DRC in this decision the DRC does create some openings in order to create a valid option. Following this decision one can sincerely wonder what the DRC would have decided in case the conditions in the new contract did alter in such a manner that a substantial increasing of the salary did exist. The club did appeal against the decision before CAS and this case will be discussed in that part of this article.

⁸ Furthermore see an unpublished decision of the DRC of 24 March 2004, in which the unilateral extension option (indirectly) came by. This case concerned the transfer of a player, whereby the old club refused to release the player since the club was of the opinion that the player was still contractually bound to the club. The club pointed out that in case the contract ends, the internal rules of the relevant national association provided for the possibility to unilaterally extend the contract with one more year based on the same conditions in the current contract. This option can be seen as a tacit prolongation in case the club did not inform the player not to start negotiations for a new contract. The DRC could not agree with the club's point of view. Although the decision is not published, the decision can be consulted in the Dutch former magazine (SZ 375) Anton Sportzaken 2004/2 (no. 29) C3.

DRC 13 May 2005⁹

In a decision of the DRC of 13 May 2005 it seems the DRC gives us more handholds in order to decide whether a unilateral extension option is valid or not. In the contract of the player a unilateral extension option was inserted in favour of the club for a period of three years. On 1 February 2005 the player decided to dispute the validity of the clause before the DRC. The player pointed out that he indeed could not agree with the extension as provided for in the contract. However, he was willing to continue negotiations for a new contract. The negotiations finally did not end in a successful way and the club's point of view remained unaltered and stated the option was valid. The club also pointed out that the player had accepted a payment of EUR 1,950 after the extension as result of the new contract and that he had also played in official matches after the extension. The club emphasized that the player with this stance indirectly accepted the unilateral extension option.

The DRC decided that a clause that gives one party the right to unilaterally extend or terminate the contract, without providing the counterparty with that same rights, is a clause with disputable validity. According to the DRC the unilateral extension option concerned had a potestative nature, since the contract was not provided with the new financial conditions and were not accepted after the negotiations between the parties.¹⁰ The DRC did not find it relevant that the player played several matches after the extension, since the player was in the reasonable presumption the negotiations would be ended successfully with regards to the financial conditions. At the moment he realized that the negotiations would not end successfully, according to the DRC, the player left the club. The DRC finally concluded that the contract had ended on 31 December 2004 and that no valid extension of the contract established. Just as with the before mentioned case, it is also justified to wonder in this case what the DRC would have decided in case the new conditions did establish a substantial advantage for the player. It is reasonable to assume that the unilateral extension option in this case might not have been potestative in case the contract provided for the new conditions after both parties had negotiated in respect thereof.

⁹ No. 55161.

¹⁰ A potestative clause can be seen as a condition that for its fulfillment is made subject to the will of one of the parties.

DRC 21 February 2006¹¹

In the following case of 21 February 2006 a player signed on 31 July 2003 a contract for the duration of one year. The contract was provided with a unilateral extension option in favour of the club. The club had the right to unilaterally extend the contract on an annual basis for a total of four consecutive years. It is interesting to note in this case that the contract was extended for a year as from 1 July 2004 until 30 June 2005 and that the player accepted the first extension. For the season 2005/2006 the club again wanted to unilaterally extend the contract. The player did not agree with this second extension, also because he had not received his salaries for over more than two months. The club finally brought the case before the DRC.

With regards to the general validity of the unilateral extension option the DRC referred to its earlier jurisprudence regarding this subject. Also in this case the DRC pointed out that the unilateral extension option is not valid due to its potestative nature, unless the new contract provides for the new financial conditions and that the conditions were accepted after parties had negotiated in respect thereof. That was not the case in this matter. As result of the extension for the period 2005/2006 the player did not have a substantial advantage because the conditions remained unaltered. The DRC decided that the unilateral extension option is in general not valid. However, the DRC emphasized that the player indirectly accepted the extension option due to his stance, amongst other because he continued to take part of training sessions and he even played official matches after the extension. The DRC also pointed out that the player went to FIFA on 22 November 2005, almost five months after the commence of the extended contract (which he disputed). As result of these circumstances the DRC was of the opinion the option was valid.

For several reasons the mentioned case is very interesting. Apart from the fact that it is the first published case in which the DRC decided that a unilateral extension is valid, one can notice that the DRC comes up with more extensive considerations with respect to the unilateral extension option. In this case the DRC further gave us more openings for a valid unilateral extension option. Interesting is that the option

¹¹ No. 261245. See also an earlier published case of the DRC of 24 October 2005, no. 105874 (2).

concerned is to be considered valid, not only because the player had a substantial advantage, but also and foremost because the stance of the player was decisive in respect thereof. Furthermore it was noteworthy for the DRC that the player brought his case before the DRC five months after the commencement of the extended contract he disputed. More-over, the player even played official matches after the extension. Interesting in respect thereof is that in the before mentioned case (of 13 May 2005, no. 55161) the DRC did not take into account a similar argument of the club. In that case the club also pointed out that the player played several official matches and even accepted a payment of EUR 1,950 as result of the new contract. It could have been decisive in the earlier case (of 13 May 2005 no. 55161) that the negotiations were still pending as result of which the player would have been left in the reasonable presumption that these negotiations would end successfully. In the present case negotiations had not taken place. In other words, there are significant differences between both cases as result of which it seems fair to decide that the unilateral extension option in this case is valid. Last but not least, it might be presumed that a decisive argument in this case in order to decide the option is valid is the fact that the player had already accepted the first extension option despite the fact the DRC does not emphasize this as a decisive argument. However, it can be concluded and is therefore interesting to note that the DRC sincerely takes into account all particular circumstances of the case in order to decide regarding the unilateral extension option.

DRC 23 March 2006¹²

One month later, more precisely on 23 March 2006, the DRC again decided with respect to the unilateral extension option. Also in this case the DRC comes up with the same considerations and gives us openings under which circumstances an option can be valid. In earlier cases it was justified to wonder what the DRC would have decided if the contract provided for conditions that could have been seen as a substantial advantage. Now interesting in this case is that even if the conditions bring a substantial advantage for the player, then still the unilateral extension option can be invalid. The DRC decided that it must be a significant gain for the player.

¹² No. 36858.

Furthermore the DRC decided that the player did not sign another document (apart from the employment contract) in which he explicitly agreed with the extension of the contract. It must be noted that the DRC does not refer to this issue in its considerations. However, by making notice of this fact it still can be seen as an important matter. Finally the DRC (for the first time) made reference to the length of the new contract, in this case two years. The DRC had not made reference to this fact earlier. The DRC was of the opinion that the two year period was a seriously long time. The DRC decided that the option concerned curtailed the freedom of the player in an excessive manner and this was a disproportional advantage for the club. As result thereof the DRC decided that the unilateral extension option in favour of the club was not valid. The circumstances that appeared in earlier cases that could make an option valid were not present in this case.

DRC 12 January 2007¹³

In the following case the DRC for the first time gives us complete clarity and even conditions under which the unilateral extension option can be valid. In this case of the DRC of 12 January 2007, the Romanian player Lucian Sanmartean and the Greek club Panathinaikos concluded an employment contract on 14 July 2003. The employment contract commenced on 15 July 2003 and ended on 30 June 2006. At the end of the contractual period the club preserved the right to unilaterally extend the contract each year for a total of two consecutive years. The salary for the first year was USD 180,000, which would increase with the amount of USD 20,000 per year. For the potential fifth year the salary would be USD 260,000. On the same date the player and the club also signed a standard agreement separately from the private employment agreement. On 14 November 2006 the player went to the DRC and asked the DRC to establish that the contract between him and the club was ended. The player referred to a case before CAS (TAS 2005/A/983&984 Club Atlético Peñarol v. Carlos Heber Bueno Suárez, Christian Gabriel Rodríguez Barrotti & Paris

¹³ Unfortunately this case is not published. In the report '*Contractual Stability in Professional Football*', '*Recommendations for clubs in a context of international mobility*', by Diego F.R. Compaire (Italy/Argentina), Gerardo Planás R.A. (Paraguay) en Stefan-Eric Wildemann (Germany), July 2009, reference is made to the case '*Club Atletico Lanus / Javier Alejandro Almiron & Polideportivo Ejido SAD (FIFA 07/00789)*'. However, also this case is not published. As far as we know and based on the report the unilateral extension option in the latter case was not valid because the decisive argument was that the player was absolutely aware of the unilateral extension option. According to the DRC the player therefore explicitly accepted this clause.

Saint-Germain, which case will be extensively discussed later on). The club was of the opinion that the option concerned was valid and referred to another case before CAS (CAS 2005/A/973 Panathinaikos FC v/Sotirius Kyrgiakos, which case will also be extensively discussed later on).

The DRC first of all made notice of the CAS-case the player referred to.¹⁴ This case before CAS could be seen as leading with regards to the unilateral extension option. The DRC decided that the system of the unilateral extension option in general is not compatible with the Regulations of FIFA. However, the DRC also noticed that in consideration 110 of that same case five elements were mentioned in order to establish whether a unilateral extension option can be valid. In its consideration no. 9 the DRC emphasized the following:

“However, the Chamber also acknowledged that in pt. 110 of the said decision of the CAS, five elements were established which were to be analysed in order to decide upon the validity of a club’s option to unilaterally renew an employment contract, if at all.”

The following conditions the DRC referred to:

1. The potential maximal duration of the labour relationship shall not be excessive;
2. The option shall be exercised within an acceptable deadline before the expiry of the current contract;
3. The salary reward deriving from the option right has to be defined in the original contract;
4. One party shall not be at the mercy of the other party with regard to the contents of the employment contract;
5. The option shall be clearly established and emphasized in the original contract so that the player is conscious of it at the moment of signing the contract.¹⁵

¹⁴ TAS 2005/A/983&984 ‘Club Atlético Peñarol v. Carlos Heber Bueno Suárez, Christian Gabriel Rodríguez Barrotti & Paris Saint-Germain’.

¹⁵ The unilateral extension option could also be laid down in a document apart from the employment contract in which the player explicitly agrees to this clause. See DRC 23 March 2006, no. 36858.

In the following considerations the DRC discusses these conditions. With regards to the first condition the DRC points out that the maximum duration can be five years as stated in the Regulations of FIFA.¹⁶ The duration in this case was not excessive, because the total period (original contract including the option years) did not exceed the five years term. With regards to the second condition, the fact that the option must be invoked within an acceptable deadline before the end of the current contract, the DRC decided that five days before the opening of the transfer period was too short. The player was left in uncertainty till the latest moment. This was a huge disadvantage for the player as result of which the short term was not accepted by the DRC. In continuation the DRC puts the third condition to the test and established that the salary reward deriving from the option right was defined in the original contract. The fourth condition contained that one party shall not be at the mercy of the other party with regard to the contents of the employment contract. The DRC in this respect made a match with the question whether a salary increasing existed after the club invoked the option. The DRC referred in this respect to the CAS-case the club referred to.¹⁷ In that matter in case the option would be invoked the salary reward in the first year was 25% and in the second year 100%. In the present case before the DRC the increasing was 9% for the first year and 8,33% for the second year. The DRC concluded that the position with respect to the negotiations was not equal and that there was no apparent gain for the player as result of the extension. For that reason the player was at the mercy of the club with regards to the content of the employment contract. Despite the fact the club does not speak of 'significant', as the DRC did in its case of 23 March 2006 (no. 36858), it becomes more and more clear what the words 'substantial advantage' in substance mean. With regards to the last condition the DRC was of the opinion the clause concerned was established in the original contract. However, the DRC noticed in that respect that the option was mentioned in the middle of both contracts without laying emphasis on it in a different manner. As result thereof the unilateral extension option was not inserted in the contract in a correct manner. The player was not made fully aware of it. At the end the DRC decided on the basis of the five elements that the unilateral extension option in this case was not valid.

¹⁶ See article 18 par. 2 of the Regulations on the Status and Transfer of Players, edition 2009.

¹⁷ CAS 2005/A/973 '*Panathinaikos FC v/Sotirius Kyrgiakos*'.

It must be noticed that the DRC in this matter also pointed out that the player in the relevant CAS-case the club referred to, explicitly accepted the first extension and solely disputed the second extension. According to the DRC this was an important matter for the CAS to decide as it did. Finally, we think it is very important that the DRC emphasized that the option, even if a unilateral extension fit with the five elements, still can be invalid. This can be derived from the words 'If at all' as considered in point 9 of the DRC-decision. In other words, the DRC points out that even if the option can be seen as valid, the five elements are at least of crucial importance. This can be seen as another presumption that the DRC is extremely reluctant with regards to valid unilateral extension options.

DRC 30 November 2007¹⁸

Although it now might be presumed the DRC is absolutely clear with respect to the unilateral extension option and the conditions under which it is valid, the following case brings us more uncertainty again. In the decision of the DRC of 30 November 2007 the DRC does not refer to the five elements of the before mentioned case. In the present case a player and a club signed an employment contract on 1 June 2003 valid until 31 May 2005. The contract was provided with a unilateral extension option in favour of the club. The club had the right to extend the contract for two seasons. The option had to be invoked before 30 April 2005 and the salary reward for the player was substantial. On 8 June 2005 the player informed the club per letter that the agreement was ended per 31 May 2005 and asked the club to pay him his outstanding salaries. On 23 June 2005 the player brought his case before the DRC.

The DRC had to decide whether the unilateral extension option concerned was valid. The DRC outlined that the last years lots of decisions of the DRC and CAS came by with respect to this subject. According to the DRC the general conclusion in these cases was that the unilateral extension option is not valid. The DRC referred in its case to the case of CAS of 2005/A/983 (which will be discussed later on) in which the CAS amongst others decided that the system of the unilateral extension option is not compatible with the system and rules of FIFA. Unfortunately for us the DRC did not

¹⁸ No. 117707.

have to decide any further with regards to the option concerned due to the fact the club had not invoked the option within the contractual term ending on 30 April 2005. The DRC decided that the contract between the player and the club was therefore not valid based on that ground.

As said it is quite remarkable that the DRC in this case does not refer to the earlier mentioned conditions as given in the case of 12 January 2007. It can be derived that the unilateral extension option seems to be in general more invalid as thought at first sight. The DRC refers to a consideration of an earlier CAS-decision and lays emphasis on the fact that the unilateral extension option does not match with the FIFA Regulations. Despite the fact the DRC did not have to decide regarding the content of the option concerned, it does give rise to the suspicion, in particular by referring to considerations of the relevant CAS case in which is mentioned the unilateral extension option does not fit with the rules of FIFA, that the option in general is not valid.¹⁹

DRC 7 May 2008²⁰

Also the following case does not give rise to the suspicion that the DRC is accessible for arguments that the unilateral extension option can be considered as a valid clause. In the case of 7 May 2008 the committee reiterated that in general unilateral extension options, in accordance with its earlier jurisprudence till so far, are clauses with a disputable validity. A clause that gives a party the unilateral right to terminate or lengthen the contract, without providing the counterparty with that same rights, is a clause with a doubtful nature. In this case the DRC decided that the option concerned was exclusively in favour of the club, as being the stronger party in the relationship. The DRC was of the opinion the clause was not valid as result of its unilateral character. According to the DRC the clause was not legally binding to the

¹⁹ In this respect it is remarkable that the DRC explicitly refers to the case before CAS in which the unilateral extension option was invalid (TAS 2005/A/983&984 '*Club Atlético Peñarol v. Carlos Heber Bueno Suárez, Christian Gabriel Rodríguez Barrotti & Paris Saint-Germain*'), while the DRC could also have referred to the other CAS case, in which the CAS decided the unilateral extension option was valid (CAS 2005/A/973 '*Panathinaikos FC v/Sotirius Kyrgiakos*'). In the DRC case it gives an adjust rise to the suspicion that the conclusion would not have been very positive with regards to the validity of the unilateral extension option concerned in case the DRC did have to decide with regards to its content and so validity. Unfortunately this cannot be said due to the fact the DRC did not have to decide with respect the content of the option concerned.

²⁰ No. 58860.

player. Interesting in this case is that the DRC is relatively curt with regards to the unilateral extension option and simply decided the option concerned was not valid. The reason we do discuss this case is that the DRC once again refers to its earlier jurisprudence with regards to the option and remarkably enough does not refer the conditions as mentioned in the case of 12 January 2007. Taking notice of this decision without being aware of the general case history with respect to this subject, one could be in the justified presumption that unilateral extension option in the eyes of the DRC are not valid.²¹

DRC 9 January 2009²²

Perhaps the last published decision of the DRC of 9 January 2009 will give us more clarity. On 22 July 2005 a club and a player signed an official employment contract valid as from 1 July 2005 until 31 May 2009. The contract contained a unilateral extension option for the duration of one season. The financial conditions in the contract did remain unaltered. On 22 January 2008 the club informed the player that they invoked the option concerned for the new season. On 4 February 2008 the DRC received a claim of the club in which the club informed FIFA the player unilaterally breached the contract and that he was absent without a valid reason since December 2007. In this case the DRC had to decide whether a valid termination of the contract existed and what the height of a potential compensation would be.

The DRC noticed that the club had already invoked the option on 22 January 2008 for the season 2009/2010. In other words, 16 months before the ending of the current contract and – even more remarkable – thirteen days before the club inserted a claim with the DRC. According to the DRC this gave an adjust rise to the suspicion that the option concerned was only invoked in order to establish a higher compensation. Once again the DRC referred to its earlier jurisprudence and outlined that a unilateral extension option in general is not valid since it curtails the freedom of the player in an

²¹ Also in a decision of the same date of the DRC of 7 May 2008, no. 58996, reference is not made to the earlier mentioned decision of the DRC of 12 January 2007. In this case the DRC is also very consistent with regards to the option and decides that the option concerned is not valid. Also in a decision of the DRC of 10 august 2007, no. 87875, the DRC decided that the unilateral extension option concerned was not valid. Unfortunately this decision is not available at the moment on the website of FIFA since this particular decision is under construction. Noteworthy is that also in that decision reference was not made to the earlier decision (and the mentioned conditions) of the DRC of 12 January 2007.

²² No. 19174.

excessive manner and as result thereof leads to an unjustified disadvantage of the player's right towards the club, in particular, as was the case in this matter, if the salary reward did not increase.

In this case the DRC once again shows that the particularities of the case play an important (or even a crucial) role in order for the committee to decide whether the option is valid or not. The fact that the option has been invoked only thirteen days before inserting the claim gives a serious rise to the suspicion that the option was invoked only for a higher compensation. The question is what the DRC would have decided in case an increasing substantial salary reward did exist. In an earlier case we have seen that even if a substantial salary reward exists, a unilateral extension option can still be invalid due to the particularities of the case. For example, in the earlier mentioned case of 21 February 2006 (no. 261245), the DRC decided the unilateral extension was valid, not so much because the player had a substantial advantage, but because the player's stance played an important role and gave cause for validity. In other words, it could be presumed that also in this case the unilateral extension option was not valid due to the club's stance, even if a substantial salary reward took place in this case. Once again, the particularities of the case seem to be of crucial importance.

In order to make an even better analysis of the validity of the unilateral extension option, it is of the utmost importance to analyze the decisions of CAS and to see what the opinion of CAS, as being the big brother of the DRC, is with regards to this subject. Perhaps CAS will bring us more clarity and certainty with respect to the unilateral extension clause and its validity (including perhaps any conditions), which decisions also have an important impact on the DRC decisions as we will see.

Relevant decisions of CAS

CAS 2004/A/678 Apollon Kalamarias F.C./Oliveira Morais, 20 May 2005

This first²³ CAS-case is the club's appeal of the DRC's decision of 22 July 2004 that has been mentioned earlier in this article.²⁴ The DRC had decided the option clause at hand was invalid and the player's contract had ended on 30 June 2004. On 6 August 2004 the Greek club appealed this decision, stating that the full length of the player's contract did not exceed the maximum of five years and the financial conditions in the option period had been negotiated. The player maintained that he was not aware of the effect of the unilateral extension option and that the club had not properly informed him.

CAS decided whether the player knew the contents of the signed contract and the consequences of this content, and concluded that the option was mentioned in the signed contract, so the player's statement that he was unaware of the club's option right could not be followed. However, CAS did maintain the option clause at hand was purely unilateral in favor of the club. In addition, CAS concluded that the fact that the club had the right to extend the contract up until only five days before the start of the transfer-period, was unreasonable towards the player. Should the club had decided not to extend the player's contract, the player would not have had enough time to find a new club, according to CAS. For abovementioned reasons, CAS decided that the unilateral extension option at hand was invalid.

This case does not contain particularly interesting considerations about the validity of a unilateral extension option in general, but it should be noted that this decision is perfectly in line with past DRC decisions. CAS is quite clear about their statement that the player should have a clear advantage from the option.²⁵

²³ An earlier decision that in a way covered the unilateral extension option is TAS 2003/O/530 '*A.J. Auxerre Football c/ Valencia CF, SAD & M. Mohamed Lamine Sissoko*', 27 August 2004. In this case the club tried to convert a 'trainee' contract into a professional contract using an extension.

²⁴ No. 74508

²⁵ In addition, this case is to be considered interesting because CAS referred to one of its decisions, stating that national federations should consider principles of cross border competitions. Therefore, CAS gives a possibility to exclude national laws by referring to a Lex Sportiva. In the case at hand, CAS passed on Greek law that allowed unilateral extension options.

TAS 2005/A/983&984 Club Atlético Peñarol v. Carlos Heber Bueno Suárez, Christian Gabriel Rodríguez Barotti & Paris Saint-Germain, 12 July 2006

This case is – because of its impact in Uruguay and other parts of South-America – called the South-American ‘Bosman-case’. In this case CAS decides about two Uruguayan players and an Uruguayan club. Relevant parts of CAS’ considerations in this case cover the question related to the applicable law, which falls outside the scope of this article. Nonetheless, this case can be considered as the landmark CAS-case of unilateral options. The most important elements of this case shall be discussed hereunder.

The Uruguayan ‘Football Player’s Statute’ states – simply put – that the contract of a player can be extended with, in total, two seasons. Hence, Uruguayan Football uses a system that has the same effects as contractual unilateral option clauses. In case a club extends the employment contract, the conditions of the employment contract shall not be automatically increased: the player’s salary only increases with the Consumer Price Index. Bueno and Rodriguez refused to accept the extension of their contracts. After they were suspended and did not play for four months, they both signed an employment contract with the French club Paris Saint-Germain. The Uruguayan club brought the case before the DRC, stating that the players – induced by Paris Saint-Germain – had breached their contract by signing a contract with the French club. The DRC decided the right to extend was purely unilateral and therefore invalid.²⁶ The club appealed before CAS.

CAS started by deciding which law was applicable in this case. CAS refers to a legal opinion of Prof. Portmann.²⁷ In his article, Portmann gives an explicit review of the case at hand. Portmann maintains – simply put – that in this case, in principle, Uruguayan Law should be applicable. After maintaining that applicable law can only be set aside by principle of public policy. He then analyzes the opportunities to set aside Uruguayan Law and therewith set aside the unilateral extension options. Portmann maintains that an ‘excessive commitment’ is a principle of public policy in

²⁶ The DRC decision is not published on the FIFA website.

²⁷ Prof. Wolfgang Portmann, ‘unilateral option clauses in footballers’ contracts of employment: an assessment from the perspective of international sports arbitration’, 7 Sweet & Maxwell International Sports Law Review (2007) no. 1, p. 6-16

both International law and Swiss law and therefore could set aside the relevant Uruguayan law. In other words: should the unilateral extension option in favor of the club be considered as an excessive commitment by the player, the relevant Uruguayan law could be set aside. Portmann then gives five criteria (which have already been mentioned while discussing the unpublished DRC case of 12 January 2007) on the basis of which a specific option right should be judged to answer the question if the extension right is to be considered as an excessive commitment.

The value of Portmann's criteria

The DRC used Portmann's criteria in its decision of 12 January 2007. The criteria are being used in football practice all over the world and are being highly valued. During an earlier research one of the authors wondered whether Portmann's criteria should be considered as leading and as highly valued as the footballing practice has showed.²⁸ The main question in that research was – and remains for this article – had CAS intended Portmann's criteria as leading and decisive?

CAS mentions Portmann's criteria and applies them to the present case in one sentence under point 110 of its decision:

'...in this case, the regulations in the case meet hardly any of the criteria which prof. Portmann mentions in order for a unilateral option system, which prof. Portmann confirms does not comply with material Swiss law, to be considered. (...) These criteria are ...'.

CAS then emphasizes that Portmann's analysis is based on different conclusions on which law should be applicable. Looking at the way the CAS-decision is built and its structure, CAS mentions Portmann's criteria in the part of its decision where the scope of art. 25 sub. 6 of the FIFA RSTP is being assessed. The article reads:

"The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall, when taking their decisions, apply

²⁸ See Thijs Kroese, 'The unilateral extension option in theory and practice: a guideline', July 2008 (written in Dutch).

these regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport”.

Hence, Portmann’s criteria are being mentioned and discussed in the part of the CAS-decision that assesses the question of applicable law. From point 113 of its decision, CAS assesses the validity of a unilateral extension option. In quite clear words, CAS maintains that the system of unilateral extension options in favor of the club are not compatible with FIFA regulations:

‘123. Only the most talented players can hope to escape from this deadlock one day: when a club believes it will be able to obtain a worthwhile transfer fee: It will ask the player to agree to the transfer which the club has negotiated. It will then be very difficult for the player to refuse this offer, the risk being that he will be kept on under the financial conditions which the automatic extension system helps to impose.

124. Albeit in another form, this Uruguayan system does in fact appear to reintroduce transfer rights for clubs which are similar to those abolished by the successive reforms to the FIFA Regulations in 1997, 2001 and 2005. Agreeing to the introduction of systems of this kind and allowing them to continue to be applied would amount to draining the successive reforms which led to the abolition of the previous transfer system of their principal substance.

125. In this respect, normative standards allowing the unilateral extension of contracts and especially those which make this compulsory are, at the very least, contrary to the spirit of the FIFA Regulations. They effectively bypass the basic principles of the new FIFA regulations which very particularly protect the interests of training clubs through training compensation and the solidarity contribution (chapter VI of the 2005 FIFA Regulations), as well as the interests of all clubs, by maintaining contractual stability between clubs and professional players (chapter IV of the 2005 FIFA Regulations).

126. The principle of contractual stability is a value which the FIFA Regulations rightly

recognize and uphold for the purposes of the new regulations. It is not admissible that this protection of the contents of a contract between clubs and players can be bypassed in order to serve only the interests of one party, in this case the club, which does not itself have to make a commitment.

127. So the Court of Arbitration considers that the unilateral contract renewal system is not compatible, in its very principle, with the legal framework which the new FIFA rules were designed to introduce.

128. In any case, the taking into account of any such system is ruled out pursuant to art. 25 paragraph 6 of the Regulations. As we have seen, this provision, does not allow the taking into account of any rules which are, as in this case, incompatible with those of the FIFA Regulations.

129. By redundancy, it clear that in spite of the absence of any provision expressly ruling out the compulsory unilateral option renewal system in the FIFA Regulations, a system of this kind is in any case contrary to the Swiss law which is applicable secondarily in cases where the FIFA rules are not themselves complete.'

When CAS starts assessing whether the unilateral extension at hand is valid, Portmann's criteria are never mentioned. Instead, CAS draws abovementioned clear conclusions. In the case at hand, CAS had to assess the validity of the unilateral extensions based on the Uruguayan system, instead of a unilateral extension option on which the player was contractually bound, and was therefore not bound by the Pacta Sunt Servanda principle. One might state that such a circumstance makes that the considerations in this case cannot be leading when assessing the validity of a unilateral extension option that is controlled by the Pacta Sunt Servanda principle. However, it must be noted that the aforementioned consideration 127 clearly states that the unilateral renewal system in the case at hand – by its very principle – is not compatible with the legal framework which the FIFA rules were designed to introduce. The system's principle (shortly put: unilateral extensions in favor of the club) is to be considered as incompatible with FIFA regulations. Contractual unilateral extension options share this principle. The fact that the basis of this principle now lies

in contractual freedom, rather than regulations, law or collective bargaining agreements, does not alter this.

In our opinion, the DRC therefore seems to overestimate the value of Portmann's criteria in that specific case. Hence, we feel that the case at hand is – from an 'option point of view' – not interesting because it contains Portmann's criteria, but merely because CAS states – quite clearly – that the very principle of a unilateral extension in favour of the club is to be considered as incompatible with FIFA's regulations.

CAS 2005/A/973 Panathinaikos Football Club v/Sotirios Kyrgiakos, 10 October 2006

This is the first and only CAS-decision in which CAS declares the unilateral extension option at hand valid. The player signed a two year contract, that contained to unilateral extension options: one for two more years, and one for another year. Since the extension option was mentioned in the contract, CAS seemed to take the Pacta Sunt Servanda principle as a starting point.²⁹ Secondly, CAS considers of relevance that unilateral extension options are considered valid in applicable national law. CAS also emphasizes in point 59 of its decision, earlier jurisprudence of CAS and DRC clearly state that the unilateral extension clause is one of disputable validity. Because none of the CAS decisions have ever stated unilateral extension options are – under any circumstances – invalid, every case should be analyzed and decided considering all relevant circumstances. In this case, all relevant circumstances pointed towards the validity of the clause. The player had admitted that – albeit indirectly – he had been aware of the fact that he was committed to the club for a period of five years. Further, as a result of every extension, the player received a significant increase of salary and the player had accepted the first extension of two years without protesting against its effects. By accepting the first extension the player had – consciously – accepted the effect of the extension options.

Apart from the fact that this is the first and only CAS-decision in which CAS declares a unilateral extension option valid, it is also an important decision because of the fact that CAS clearly emphasizes that the relevant circumstances of each and every case

²⁹ See also dr. mr. S.F.H. Jellinghaus' annotation in 'Jurisprudentie in Nederland', Arbeidsrecht 194, May 2007, no. 5.

can and will be decisive. The Portmann-report is ignored and none of its criteria are explicitly mentioned. CAS emphasized the value of FIFA's principle of contractual stability by using the Pacta Sunt Servanda principle as a starting point. However, as clearly stated above, the relevant circumstances can, and often will be, decisive.

Immediately, one discovers a link between this CAS-decision and the only DRC-decision that declares a unilateral extension option valid: in both cases, the player had already accepted the first extension, without protesting against its effect!

CAS 2006/A/1157 Club Atlético Boca Juniors v/Genoa Cricket and Football Club S.p.A., 31 January 2007

In this last³⁰ CAS-case, a 15 year old player signed a contract with Boca Juniors. The club had included two unilateral extension options in the contract, giving itself the right to extend the contract twice, for periods of one year each. When the player signed a three-year contract with club Genua, Boca Juniors blocked the transfer because it maintained that the player was still bound by his contract. Boca maintained that it had successfully extended the contract. The Single Judge of the Players' Status Committee now had to decide whether the player should receive a provisional transfer certificate, granting him the right to provisionally transfer to Genua. Referring to DRC and CAS jurisprudence considering the unilateral extension option, the Single Judge granted the player permission to transfer. The Single Judge emphasized that both DRC and CAS had – in general – disputed the validity of the unilateral extension option. The club had presented the Single Judge with the aforementioned Portmann-report. The Single Judge maintained the case at hand did not gratify all of its criteria. The club then appealed this decision before CAS.

³⁰ An earlier CAS-case that dealt with a unilateral extension option was TAS 2006/A/1082-1104 '*Real Valladolid CF SAD v/ Diego Barretto Cáceres & Club Cerre Porteno*', 19 January 2007. In this case the unilateral extension option was considered invalid, because of its incompatibility with FIFA regulations. In this case, CAS referred to its decision in the aforementioned CAS-decision of 12 July 2006, 2005/A/983 & 984, '*Club Atlético Peñarol v. Carlos Heber Bueno Suárez, Christian Gabriel Rodríguez Barrotti & Paris Saint-Germain*'. One last CAS-case that handled some sort of unilateral option clause was the CAS-decision of 2006/O/1055 '*Del Bosque, Grande, Miñano Espín & Jiménez v/ Besiktas*', 9 February 2007. In this case, however, the unilateral option clause referred to the right to terminate the relevant employment contract. Therefore, this decision falls outside the scope of this article.

CAS decided that the Single Judge had clearly stated that the club had been unable to show that the unilateral extension option was valid. Interesting about this case is not so much because CAS agrees with the decision of the Single Judge. Even more interesting is CAS' statement that it did not agree with the way the Single Judge had come to its decision. CAS maintained that the Single Judge had awarded too much weight to the Portmann-report. The CAS-panel maintained that it did not want to award the report such value, and that it has troubles following the way Portmann reaches his conclusions. Any further decisions on the aspect were needless, because CAS wanted to rule this decision in a broader context. Eventually, CAS ruled in favor of the player, based on other arguments than the invalidity of an option clause in general.³¹ CAS explicitly emphasized in this award that nothing that it had stated had to be taken as an indication that CAS had formed any view as to whether the unilateral extension option in the player's contract was valid and enforceable. However, this case can still be seen as an interesting one with respect to the issue of unilateral extension options. More specifically, despite the fact that the aforementioned statements regarding the validity of the option concerned can be entitled as an Obiter Dictum, CAS did lift a corner of the veil regarding its point of view on the opinion of Dr. Portmann. The statements regarding the unilateral extension option show that the international footballing community has been considered Portmann's criteria as leading, while CAS does not seem to share this analysis. In line with our concerns regarding the Portmann-report, CAS is now also reticent on this report's value. CAS' statement in this case, reviewed in conjunction with the fact that in the previously mentioned case of 10 October 2006, CAS has ignored the Portmann-report and its criteria, leads us to the conclusion that meeting the Portmann-criteria alone is not enough and should therefore not be considered leading in the assessment of the validity of unilateral extension options.

CAS 2009/A/1856 – Fenerbahçe Spor Kulübü v/Stephen Appiah & CAS 2009/A/1856 – Stephen Appiah v/ Fenerbahçe Spor Kulübü, 7 June 2010

In this more recent case in 2010, CAS decided on a side note with regards to the unilateral extension option. With regards to its judgment regarding the option, this

³¹ The arguments were mainly based on the fact that the player was a minor, and therefore falls outside the scope of this article.

case can also be considered as an Obiter Dictum, just as the case before CAS of 2007 between Boca Juniors and Genua (CAS 2006/A/1157 Club Atlético Boca Juniors v/Genoa Cricket and Football Club S.p.A., 31 January 2007). CAS referred to the well-established jurisprudence of the DRC and CAS that unilateral extension options are unlawful and as a general rule, will not be binding. CAS decided that the validity and enforceability of the unilateral extension option in the employment contract of the player Stephen Appiah with the Turkish club Fenerbahçe is not accepted under Swiss law (and referred to the before mentioned case of CAS 2005/A/983&984 Penarol c. Bueno, Rodriquez & PSG). Furthermore, CAS observed that when the option in this matter of the player concerned was exercised (i.e. on 22 January 2008) the dispute between the parties was already a matter of fact. In this case the player was injured for a long period as result of which the Panel noted that any reasonable club, with still a long period of time to exercise an option, would wait and execute the option in relation to an injured player only after the full recovery of such player and not while the player's physical health is unclear. Therefore, CAS was satisfied that the execution of the unilateral extension option was artificial and aimed to increase the claim for compensation in the financial dispute that was already launched. Therefore, CAS was of the opinion that Fenerbahçe's right to extend the contract for the 2009/2010 season must be dismissed without further consideration.

Interesting in this case is that Fenerbahçe executed the option during the period player Appiah was injured. CAS noted it was therefore quite remarkable that the club did not wait to execute the option until the player was fully recovered. Just as the DRC decided in its case of 9 January 2009 (in which the club executed the extension option 16 months before the ending of the employment contract concerned; no. 19174), CAS emphasized that the execution of the unilateral extension option also in this case was only invoked by Fenerbahçe in order to establish a higher financial compensation.

Conclusions

What conclusions can be drawn from analyzing DRC and CAS jurisprudence?

After analyzing DRC and CAS jurisprudence, it can be concluded that neither of the committees till so far have found a uniform answer to the question related to the

validity of unilateral extension options. The DRC seems to have a general way of analyzing the validity, maintaining that the clauses in general have a disputable validity and are in general not valid. The DRC constantly refers to its own jurisprudence regarding the unilateral extension option, which means that it has tried to formulate a starting point when assessing the clause's validity.³² CAS does no such thing, dealing with each case individually and making the relevant circumstances decisive in each case. CAS is not bound to earlier jurisprudence due to the absence of the so-called 'Stare Decisis'-principle.³³ As a result thereof, each case will be dealt with individually, making future jurisprudence quite uncertain.

Nonetheless, one general conclusion can be drawn: unilateral extension options are – by their very principle – in general incompatible with FIFA regulations and principles of global labor law. Indeed, both DRC and CAS have only once ruled in favor of a valid option.³⁴ In that respect it cannot be left unmentioned that both cases had the extraordinary circumstance of the player accepting an earlier extension option that was based on the same option clause. Both players in these cases only started protesting when their clubs had already extended their player's contracts for the second time (and even more interesting was that in the DRC case the player even brought his case to FIFA five months after the commence of the extended contract).

After analyzing all relevant jurisprudence of CAS and DRC, we can conclude that both DRC and CAS have not gone so far as to declare unilateral extension options invalid *under any circumstance*. The DRC refers to its jurisprudence in similar cases, but rules every case on the basis of specific relevant circumstances. CAS does not sustain a clear line of reasoning by referring to its own jurisprudence, but bases its decisions solely on the circumstances of the case at hand.³⁵ For example, in a case before CAS of 10 October 2006 all relevant circumstances pointed towards the

³² DRC 22 July 2004, no. 74508, DRC 13 May 2005, no. 55161, DRC 24 October 2005, no. 105874, DRC 21 February 2006, no. 261245, DRC 23 March 2006, no. 36858, DRC 30 November 2007, no. 117707, DRC 7 May 2008, no. 58860, DRC 9 January 2009, no. 19174 and DRC 15 May 2009, no. 59081.

³³ It must also be noted that under CAS rules the parties have a formal say in the composition of the CAS committee. The composition of the CAS panel will change each case.

³⁴ DRC 21 February 2006, no. 261245 and CAS 2005/A/973 '*Panathinaikos Football Club v/Sotirios Kyrgiakos*', 10 October 2006.

³⁵ An earlier decision that in a way covered the unilateral extension option is TAS 2003/O/530 '*A.J. Auxerre Football c/ Valencia CF, SAD & M. Mohamed Lamine Sissoko*', 27 August 2004. In this case the club tried to convert a 'trainee' contract into a professional contract using an extension.

validity of the clause.³⁶ Apart from the fact that this is the first and only CAS-decision in which CAS declared a unilateral extension option valid, it is also an important decision since the CAS panel clearly emphasized that the relevant circumstances of each and every case can and will be decisive.³⁷ CAS emphasized in this case the value of FIFA's principle of contractual stability by using the *Pacta Sunt Servanda* principle as a starting point and decisive factor.³⁸

In an important CAS decision of 12 July 2006³⁹, which can be considered as the landmark CAS-case of unilateral options, CAS refers to the Opinion of Dr. Portmann.⁴⁰ In his article, Portmann gives an explicit review of the case at hand. Portmann gives us five criteria on the basis of which a specific option right should be judged in order to answer the question whether or not the extension right is to be considered as an excessive commitment. In its decision of 12 January 2007, the DRC used Portmann's criteria as leading for valid options. Since then, the criteria are being used in football practice all over the world and are being highly valued.⁴¹

However, it is noteworthy in respect of the validity of unilateral extension options that after the mentioned cases before the DRC of 12 January 2007 and CAS of 12 July 2006, DRC nor CAS in later cases referred directly to the criteria of Portmann. Moreover, in later cases the DRC is extremely reluctant in establishing options valid.⁴² Also CAS is reluctant and states, for example in a more recent case of 7 June 2010 between the player Appiah and the club Fenerbahçe, that the validity and enforceability of a unilateral extension option is not accepted.⁴³ So, a relevant question in that respect is, what will DRC and CAS decide in the future in case they will have to adjudicate whether or not a unilateral extension option is valid?

³⁶ CAS 2005/A/973 *Panathinaikos Football Club v/Sotirios Kyrgiakos*, 10 October 2006.

³⁷ An earlier CAS-case that dealt with a unilateral extension option was TAS 2006/A/1082-1104 *Real Valladolid CF SAD v/ Diego Barretto Cáceres & Club Cerre Porteno*, 19 January 2007. In this case the unilateral extension option was considered invalid, because of its incompatibility with FIFA regulations. In this case, CAS referred to its decision in the aforementioned CAS-decision of 12 July 2006, 2005/A/983 & 984, *Club Atlético Peñarol v. Carlos Heber Bueno Suárez, Christian Gabriel Rodríguez Barrotti & Paris Saint-Germain*. One last CAS-case that handled some sort of unilateral option clause was the CAS-decision of 2006/O/1055 *Del Bosque, Grande, Miñano Espín & Jiménez v/ Besiktas*, 9 February 2007. In this case, however, the unilateral option clause referred to the right to terminate the relevant employment contract.

³⁸ See also dr. mr. S.F.H. Jellinghaus' annotation in *Jurisprudentie in Nederland*, arbeidsrecht 194, May 2007, no. 5.

³⁹ TAS 2005/A/983&984 *Club Atlético Peñarol v. Carlos Heber Bueno Suárez, Christian Gabriel Rodríguez Barrotti & Paris Saint-Germain*.

⁴⁰ Prof. Wolfgang Portmann, *'Unilateral option clauses in footballers' contracts of employment: an assessment from the perspective of international sports arbitration'*, 7 Sweet & Maxwell International Sports Law Review (2007) no. 1, p. 6-16

⁴¹ Unfortunately this decision is not published on the website of FIFA.

⁴² See for example, DRC 30 November 2007, no. 117707, DRC 7 May 2008, no. 58860, DRC 9 January 2009, no. 19174 and DRC 15 May 2009, no. 59081.

⁴³ CAS 2009/A/1856 *Fenerbahçe Spor Kulübü v/Stephen Appiah*, CAS 2009/A/1857 *Stephen Appiah v/ Fenerbahçe Spor Kulübü*, 7 June 2010.

What can be expected from future DRC and CAS decisions?

In order to create and establish a valid unilateral extension option, it seems to be of the utmost importance to meet *at least* the five criteria as mentioned and laid down in the DRC-decision of 12 January 2007 and the CAS-decision in the '*Bueno & Rodriguez-case*'.⁴⁴ However, as mentioned before, these criteria cannot be considered as absolutely leading in assessing the validity of unilateral extensions.

After having read the decisions of the DRC and CAS it can be concluded that the criteria of Dr. Portmann must not be interpreted as absolutely leading by CAS and DRC in future cases. In the case before CAS between Bueno & Rodriguez of 12 July 2006⁴⁵, the CAS panel seems to give us a slight warning that in future cases CAS might be more than skeptical with regards to the validity of unilateral extension options. The message of this case: please be aware, meeting with the five criteria may not be sufficient. The particular circumstances of each case will (now) be (even) more decisive. Please be aware that The DRC does not refer to the criteria anymore in later cases and CAS in its case of 31 January 2007 between Boca Juniors and Genua give us more doubts with regards to the value awarded to the criteria. Also the case before CAS of 7 June 2010, between the player Stephen Appiah and the Turkish club Fenerbahçe Spor Kulübü, shows us that the validity and enforceability of a unilateral extension option cannot be accepted, according to CAS in this case.⁴⁶

Nonetheless, a general declaration of invalidity under any circumstances is not to be expected. The use of unilateral extensions is common in professional football all over the world, and openly declaring such clauses invalid under any circumstances would have serious consequences. In that respect one should take into account that each case shall be decided on the relevant circumstances of that specific case. In our opinion, DRC and CAS will be more inclined to declare an extension option valid, if all five mentioned criteria are met. However, to be sure and to increase chances of validity, we would advise to add a sixth and seventh criterion to the list.

⁴⁴ CAS-decision of 12 July 2006, 2005/A/983 & 984, '*Club Atlético Peñarol v. Carlos Heber Bueno Suárez, Christian Gabriel Rodríguez Barrotti & Paris Saint-Germain*'.

⁴⁵ CAS-decision of 12 July 2006, 2005/A/983 & 984, '*Club Atlético Peñarol v. Carlos Heber Bueno Suárez, Christian Gabriel Rodríguez Barrotti & Paris Saint-Germain*'.

⁴⁶ CAS 2009/A/1856 '*Fenerbahçe Spor Kulübü v/Stephen Appiah*', CAS 2009/A/1857 '*Stephen Appiah v/ Fenerbahçe Spor Kulübü*', 7 June 2010.

Firstly, although this cannot be derived from the decisions of CAS and DRC, it would be advisable that the extension period is proportional to the main contract. For example, a main contract for the period of one year, with an extension option for four years does fall within the five-year maximum that is mentioned in FIFA Regulations. These clauses, however, can be considered as a disguised probation period solely in favor of the club and can therefore in our opinion not be considered as legally valid.

Secondly, it would be advisable to limit the number of extension options to one.⁴⁷ For example: a player's contract is signed for a period of one year. The contract contains a unilateral extension option that gives the club the right to extend the contract twice, for one year each, such as was the case in the matter between Boca and Genua. Again, the total period of 5 years (main contract of three years and two extensions of one year) falls within the FIFA Regulations and matches the five criteria mentioned by the DRC and CAS, but it still bears a substantial risk that this kind of option by the DRC or CAS will eventually be considered as an unreasonable commitment of the player, being the weaker party in the employer-employee relationship.

It should be noted that from the analyzed jurisprudence one main criterion is deemed most important by DRC and CAS: the player should receive a significant increase in salary due to the extension. Furthermore, a club should explicitly mention the extension option in a contract by making the player sign the clause concerned, in addition to the player's contract. In order to avoid any misunderstanding, we would advise to put the extension option in **bold** characters above the player's signature.

In conclusion, it can be said that even if all Portmann's criteria (plus the additional ones laid out in this article) are met, this still does not automatically mean the extension option will be valid. A declaration of validity appears dependent on another requirement, which cannot easily be put into words, but comes down to the fact that the relevant circumstances of a specific case shall always be decisive: has the player accepted an earlier extension? Did the player explicitly agree with the effects of the option (in writing, verbally or can it be drawn from his stance)? How did the player

⁴⁷ See DRC 22 July 2004, no. 74508.

behave after the club's extension? Did the player still play in any official matches and did the player keep training with his team after the extension? Did the club only invoke the option in order to establish that it can then claim higher compensation? In short: apart from the aforementioned criteria, all relevant circumstances of a specific case should point towards validity of the unilateral extension, in order to establish a valid clause.

Following the decisions of CAS and DRC, one can come to the conclusion that the validity of a unilateral extension option increases in case the player accepted an earlier option in his contract or in case acceptance followed due to his stance, for example by continuing taking part of training sessions and official matches after the extension. On the other hand, the DRC will be more inclined to come to an invalid option in case the contract is not provided with conditions that will bring the player a substantial advantage. Also the fact that the extension option is executed by the club solely in order to claim higher compensation, will not speak in favour of the club.

Finally, it is noteworthy to mention, as referred to in the introduction of this article, that in South-America, where the unilateral extension option was (and in some countries still is) extremely popular, the disputable validity of the clause has caused it to fall somewhat into disuse. We will wait and see what happens further.

This article was written by Frans de Weger and Thijs Kroese

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