

FIFA: “FOR THE GAME. ¿FOR EUROPE?”

FIFA’s statement of mission boldly sets its guiding principle in universal terms: “*For the Game. For the World*”. Given the unparalleled growth of football in the past decades, there can be few doubts that the first part of the statement is true. But what about the second? Here, it will be briefly submitted that after an agreement made between FIFA and the European Commission, FIFA’s mission statement may well turn out to be “*For the Game. For Europe*”.

Why?

To answer this question, we have to focus our attention on the regulations of FIFA for the transfer of minors. There, it is submitted, we will find a rule that only favors European associations in disregard of associations from other regions of the world, thus limiting *de facto* FIFA’s universal pretensions.

In this sense, article 19 of FIFA Regulations on the Status and Transfer of Players (RSTP) states that “*International transfers of players are only permitted if the player is over the age of 18*”.

This is the general rule, and as such is unobjectionable. It establishes no undue discriminations or unequal provisions.

However, the article then goes on and establishes three exceptions to this rule:

- a) That the player’s parents move to the country in which the new club is located for reasons not linked to football;
- b) That the transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between 16 and 18; in this case, the new club has to fulfill certain obligations, such as provision of adequate football education, school education, etc.¹; and,
- c) That the player must live no further than 50km from a national border and the club with which the player wishes to be registered in the neighboring association is also within 50km of that border. The maximum distance between the player’s address and the club’s headquarters must be 100km. In such cases, the player must continue to live at home and the two associations concerned must give their explicit consent.

There is much to commend in this article and its provisions; in particular, it crystallizes FIFA’s efforts to protect minors. As such, it deserves applause.

And yet... the article, especially by establishing the second exception (b), sets FIFA on a dangerous path to discrimination of all associations in favor, in this case, of the European Union.

¹ The full text provides: “i. It shall provide the player with an adequate football education and/or training in line with the highest national standards. ii. 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 playing professional football. iii. 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.). iv. It shall, on registration of such a player, provide the relevant association with proof that it is complying with the aforementioned obligations”.

It is clear that FIFA is not UEFA. Its goal, to recall, is “the world”, not Europe. The question then is inevitable: why does FIFA, the “*world’s*” Football Governing Body, allow transfers of players aged between 16 and 18 only within the European Union or the European Economic Area? Why not allow this same exception for other economic blocks, such as Mercosur (South American countries influential in football, e.g. Brazil, Argentina, Uruguay), Nafta (North American countries are now active in the football player markets), Asean, Apec, AU, and so forth?

Of course, one may say that this is due to the agreement made back in 2001 between FIFA and the European Commission. In this sense, it is not to be doubted that the agreement between FIFA and the European Commission in 2001 forms the basis of these exceptions made by Article 19 of the RSTP. The agreement established that international transfers of players aged under 18 would be allowed to be transferred but subject to certain objective conditions. It is obvious that no ruling can be contrary to an agreement made by a superior hierarchy organism; namely, the European Commission. Article 39 of the EC Treaty deals with the freedom of movement of workers, and prohibits any kind of discrimination based on nationality between workers of the Member States.

As such, the rule’s rationale seems unimpeachable.

However: couldn’t we say the same of other economic and regional agreements – e.g. Mercosur, to name but one example? The same principle of freedom of movement of workers may be found in other regional agreements throughout the world, and thus, Europe’s exceptional standing in FIFA seems unwarranted.

The real problem with this article should by now be clear: it does not consider what American legal philosopher Ronald Dworkin has called the “sovereign virtue” of law: the cherished ideal of “equality”. As the most superficial analysis of justice readily demonstrates, the basis of justice is equality: to each his own, *ius suum*.

Let’s see if this provision of FIFA damages the sovereign virtue of law. A hypothetical example will suffice.

The article, as drafted, allows for a player of 16 years to be transferred from a Portuguese team to a Finish team if the Finish team fulfills all the stated requirements. However, under the same provision, a player of the same age cannot be transferred from a Uruguayan club to and Argentinean club, even if this club provides the same training, education, facilities, etc, as the Finish team. The geographical and cultural facts are the following: Montevideo is separated by less than 200 kilometers from Buenos Aires. Both share the same language, culture, religion, weather, etc. We could say they are “twin brothers”. Nothing could be farther from the truth in the other case. Lisbon and Helsinki are separated by more than 3,200 kilometers. The language, culture and religion are extremely different, the average temperature of Lisbon is 18 degrees; in Helsinki, it is 4 degrees.

Despite these are issues that will certainly affect the minor, this transfer is allowed. However, even in the case the Finish club, if it fulfills the same requirements fulfilled for the Portuguese player, this Uruguayan player could not be transferred to the Finish team. This discrimination cannot be made by an Institution in charge to rule without discrimination to a specific region.

These examples show that the provision of article 19 does not pay full respect to the sovereign virtue of equality; quite the contrary, it establishes a discrimination that is not in principle reasonable and is thus unjustified. *Differences made by legal rules are valid insofar there exists a warranted reason that justifies this break in the equality.*

In this case, in principle at least, this justified reason appears to be missing and, thus, the rule should be changed.

It may be suggested that the reason behind this article 19 –its *ratio juris*–is to be found in the fact that the European Commission and FIFA signed an agreement in the year 2001. However, this is no valid reason, since it could easily be overcome by an agreement with other economic blocks, such as Mercosur or Nafta.

Another reason for justifying this inequality could be found in the fact that European leagues are the most active and intense in the acquisition and transfer of young players and thus they are most likely to be subject to this rule. In this sense, what is normal is that South American and African young talents migrate to European clubs and not the other way around; and thus, what is “feared” is that these youngsters will dissuade European clubs to invest in academies.

However, this reason is also found wanting. Indeed: this issue is dealt by Articles 20 and 21 of RSTP, which establishes that clubs have to pay Training Compensation and Solidarity Contribution.

Once again, there seems to be no valid, justified reason for establishing a different treatment.

If this is even superficially compared with regulations from other sports associations – the cases of basketball (FIBA) and hockey (IIHF)—the difference could not be starker. Both federations foresee the possibility of exceptions for transfer of minors, as does FIFA’s RSTP, but they do not limit these exceptions to the membership of a certain economic block or continent, such as the European Union. For example, art. H.3.4 of FIBA is almost identical to art. 19 of FIFA’s RSTP, but with one minor –albeit crucial– difference: it does not limit itself to transfers within “the European Union”. Article 4 of IIHF’s regulations is pretty much to the same effect.

The conclusion is inevitable: there seems to be no respect, in this case at least, for the sovereign virtue of equality in FIFA’s regulations.

Thus, what is suggested here is that FIFA change this provision of article 19 in the future. This is not only necessary, but what is more important, *fair and equitable*. And it also accords with the spirit of FIFA’s statement that it is “*For the game. For the world*”, and not only Europe. Real equality demands nothing less.