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Withholding Performance in Football Employment Contracts:

The limits of exceptio non adimpleti contractus after
Levski-Houbtchev and the 2027 RSTP reform

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ABSTRACT

This article examines whether a party to a football employment contract may suspend its own performance because the counterparty has allegedly failed to perform first.

Its immediate case-study is the FIFA decision in Petar Houbtchev v PFC Levski Sofia.

The decision is not a classical Article 82 Swiss Code of Obligations case, because FIFA did not expressly decide the dispute by applying *exceptio non adimpleti contractus*. It is nevertheless highly relevant because Levski attempted, in substance, to rely on the coach's alleged non-performance after its own prolonged salary default.

The article argues that Houbtchev case is best understood as a negative *exceptio* case: it shows when a club cannot rely on the other party's alleged non-performance as a shield against its own breach. The doctrine remains available in principle, but only as a narrow, temporary, good-faith defense, subject to notice, proportionality, proof and the football *lex specialis*.

Keywords: *exceptio non adimpleti contractus; Article 82 Swiss CO; FIFA RSTP; Article 14bis; contractual stability; coaches; overdue payables; Levski-Houbtchev; abusive conduct; post-Diarra reform.*

The problem: contractual fairness against contractual stability

Imagine a player refusing to train before an important match because his salary has been delayed for several weeks. Imagine, conversely, a club suspending salary and excluding a coach from team activities because it alleges that he no longer performs his duties. In ordinary contract law, both situations invite the same intuitive question: can a party who has not received performance from the other side temporarily withhold its own performance?

In Swiss law, this intuition is expressed in Article 82 of the Swiss Code of Obligations. A party to a bilateral contract may not demand performance until it has performed or offered to perform its own obligation, unless the contract or its nature allows later performance. This is the *exceptio non adimpleti contractus*: a dilatory defense, not a permanent release from the contract.^[1]

Football employment contracts complicate this apparently simple rule. A player or coach is not merely a private service provider. His participation affects training, tactical preparation, match selection, team discipline and sporting integrity. A club, on the other hand, does not merely pay a commercial invoice. Salary payment is the central employment obligation and a cornerstone of contractual stability. For that reason, FIFA and CAS have tended to treat self-help measures with suspicion where they disturb the employment relationship or operate as pressure to renegotiate or leave.

The proper question is therefore not whether *exceptio* exists in football. It does. The more important question is how far it can operate without undermining the specific regulatory structure of football employment law. In my view, the answer is that *exceptio* remains available, but only as a controlled instrument of reciprocity. It should not become a disguised right to stop paying, sideline an employee, ignore disciplinary rules or create leverage for a termination.

Article 82 CO and the special character of football employment

The starting point is that Article 82 CO works most naturally in perfectly bilateral contracts, where performances are exchanged simultaneously. A sale is the obvious example: delivery against payment. Football employment contracts are different. The player or coach normally performs work throughout the month, and the club pays later. This means that employment is not always a clean case of simultaneous exchange. Vandellos correctly notes that in employment relationships the doctrine applies, at most, by analogy, and that it must be adapted to the protective logic of labour law and football regulation.^[2]

That adaptation produces several practical limits. First, the withheld performance must correspond to an obligation arising from the same contractual relationship. A club should not suspend salary under an employment contract because of a dispute under an image-rights agreement, unless the contracts are truly interdependent. Secondly, the breach relied upon must not be secondary or technical. CAS has repeatedly refused to allow Article 82 CO to be used where the alleged breach concerns a merely ancillary obligation, such as the absence of an invoice where the payment obligation is already established. Thirdly, the defense must be invoked while the contract is still in force. It is a temporary shield, not an *ex post* justification after termination. Fourthly, it must be announced clearly, so that the other party has a genuine opportunity to remedy the breach. Fifthly, it must be exercised in good faith and in a proportionate manner. These conditions are not decorative. They are the difference between a legitimate suspension and an abusive unilateral breach.^[3]

In football, an additional layer is necessary. Internal disciplinary rules, collective bargaining agreements, national employment law, FIFA regulations and the RSTP all form a *lex specialis* around the employment relationship. A club confronted with absence or misconduct usually has more precise tools available: warning, disciplinary procedure, proportionate fine, medical control, reporting obligation, or, in the most serious cases, termination for just cause. It should not be able to leap directly to salary suspension or exclusion from work under the label of *exceptio* if specific rules require a fair process.

The jurisprudential trend: from broad reciprocity to disciplined self-help

The modern CAS and FIFA line is not perfectly linear, but a trend can be identified. The earlier cases recognise the basic contractual intuition that a party in default may lose the right to demand strict performance from the other party. Later cases, however, increasingly insist on proof, proportionality, timing, formal notice and the priority of football-specific mechanisms.

In CAS 2006/A/1141, the Panel accepted that non-payment or late payment may in principle constitute just cause, but not if the amount is insubstantial and not if the employee has not warned the employer. The case is important because it already connects non-payment, warning and the reasonableness of continued employment. It does not permit a party to manufacture just cause silently.^[4]

CAS 2013/A/3089, FK Senica v Vukajlovic, is closer to the classic *exceptio* pattern. The club sought to rely on the player's alleged absence, but it had itself failed to pay salary. The Sole Arbitrator held that, in accordance with *exceptio non adimpleti contractus*, a party in breach of its own salary obligations cannot request performance from the player and therefore had no just cause to terminate. This is the cleanest statement of the doctrine in the football employment context.^[5]

The limits appear clearly in CAS 2015/A/4232, Al-Gharafa v Steaua. There, the Sole Arbitrator described Article 82 CO as embodying the *exceptio* principle but held that a party cannot rely on it where the alleged non-performance concerns a secondary obligation, such as issuing an invoice, when the main contractual obligation has already been performed. This is a useful warning for employment cases too: not every breach opens the door to withholding performance.^[6]

Later awards added further restraint. CAS 2020/A/7400, involving a coach, stated that the principle is generally not applicable within employment agreements in the same way as in ordinary bilateral contracts, because Swiss employment law contains specific rules on when employment obligations may be withheld. The award also rejected a force majeure argument that did not explain why salary remained unpaid after the alleged obstacle ended. The lesson is

not that *exceptio* disappears, but that employment law and football regulation narrow its operation.^[7]

TAS 2021/A/7919, *Sfaxien v Bakir*, moved in the other direction but within clear limits. The club's non-payment deprived it of the possibility to require the player to comply with his duties while the club remained in default, and Article 14bis RSTP provided the player with a structured route to termination for overdue salaries. This confirms that players may be protected against continuing to perform indefinitely while salaries remain unpaid, but also that the safer route is written default and compliance with the regulatory notice mechanism.^[8]

Recent decisions show a still more evidence-based approach. In CAS 2025/A/11296, *Maccabi Bnei Reineh v Kostza*, the club could not unilaterally reduce salary merely because accommodation arrangements became more expensive or because the player was absent during a difficult security situation. The Panel paid close attention to whether there was a clear agreement, whether the player had been authorised to be absent, whether he had been recalled, and whether the contract was in fact suspended. In CAS 2025/A/11526, *Al Fayha v Fabio Tepedino*, the club also invoked *exceptio* to resist payment of a coach's salary, but the appeal was dismissed, and the FIFA decision was confirmed. The contemporary trend is therefore practical rather than abstract: the party invoking *exceptio* must prove the breach, the invocation, the proportionality and the legal basis of the response.^[9]

Why Levski-Houbtchev matters

The Houbtchev dispute becomes relevant precisely at this point. It is not important because FIFA expressly used the words *exceptio non adimpleti contractus*. It did not. It is important because the case contains the factual structure in which *exceptio* arguments most often arise in football employment disputes: the employer is in payment default, the employment relationship deteriorates, the club alleges that the coach stopped performing, and the club then seeks to convert that alleged non-performance into a defence or counterclaim.

On 14 May 2019, Petar Houbtchev and PFC Levski Sofia concluded an employment contract valid until 15 June 2021. The coach was entitled to a monthly net salary of BGN 32,000

and BGN 1,000 accommodation costs. During the COVID-19 emergency the parties signed a supplementary agreement reducing the salary to BGN 19,000 until the end of the state of emergency in Bulgaria, after which the original remuneration was to be reinstated.^[10]

The deterioration occurred in June 2020. The coach alleged that the club's owner insisted that the coaching staff resign and waive salaries and housing allowances from February 2020 onwards. On 11 June 2020 the club gave the coach written permission not to lead training and official matches until 19 June 2020. The club's official website and press reports indicated that a new head coach has been appointed. The coach asked to be reinstated if no termination agreement was reached and requested payment of outstanding remuneration.^[11]

Levski's answer was, in substance, an anti-*exceptio* argument turned on its head. The club did not dispute serious financial problems and relied on COVID-19 and force majeure to explain non-payment. It further alleged that the coach did not return to work after the approved absence, missed trainings and one official match, and thereby justified disciplinary proceedings and a counterclaim for compensation. Formally, this was not pleaded as Article 82 CO. Functionally, however, it was the same kind of argument: the club sought to rely on the coach's alleged non-performance to neutralise the consequences of its own prior non-payment.^[12]

FIFA rejected that approach. The Single Judge found no evidence that the coach had been requested to return to work or had refused to do so. FIFA also held that the COVID-19 guidelines did not exempt an employer from paying salary and that the outbreak was not, in itself, a force majeure situation in any specific country or territory. The decisive factual finding was that salaries had remained outstanding as of February 2020 and that Levski had repeatedly and for a significant period breached its contractual obligations.^[13]

The connection with *exceptio* is therefore not doctrinal but functional. Levski-Houbtchev demonstrates what happens when an employer tries to use alleged employee non-performance retrospectively, after a prolonged salary default, without proof of a clear recall, without proof of a genuine willingness to reintegrate the coach, and without a completed disciplinary process. FIFA treated the case as employer breach, not coach misconduct. The coach

was awarded outstanding remuneration and compensation, while the club's counterclaim was rejected.^[14]

This makes Houbtchev central to the article for three reasons. First, it localises the international doctrine in a Bulgarian football dispute and therefore shows how ordinary club-management decisions can become FIFA/CAS problems. Secondly, it illustrates the evidentiary burden on the party alleging non-performance: a club must prove the instruction, the breach, the procedure and the proportionality of its response. Thirdly, it shows that a club already in salary default starts from a legally weak position if it later seeks to demand perfect performance from the coach or player. In this sense, Houbtchev is a negative *exceptio* case: it teaches the limits of the defense by showing a failed attempt to rely on the same underlying logic.

The 2027 RSTP reform and the future of exception

The post-Diarra amendments to the RSTP, coming into force on 1 January 2027, do not codify *exceptio non adimpleti contractus*. They do not state when a player, coach or club may suspend performance under Article 82 CO. The doctrine therefore remains a background principle of Swiss law and general contract law. However, the reform changes the environment in which the doctrine operates.^[15]

First, Article 14 RSTP is now more explicit about abusive conduct. Just cause remains linked to circumstances in which a party can no longer reasonably and in good faith be expected to continue the contractual relationship. However, the new text also provides that abusive conduct aimed at forcing the counterparty to terminate or change the terms of the contract entitles the counterparty to terminate with just cause. It then identifies abusive registration or deregistration, abusive separation from team training, passport withholding and undue eviction from accommodation as prohibited club conduct.^[16]

This is highly relevant to *exceptio*. Many disputes are not presented as formal termination disputes. They begin with pressure: exclusion from training, removal from the squad, deregistration, loss of housing, refusal to pay, or an invitation to accept worse terms. Before 2027, such conduct was already vulnerable under FIFA and CAS jurisprudence, as shown by

sidelining cases. After 2027, the RSTP itself speaks more directly. A club that presents exclusion or deregistration as a neutral suspension of performance may find the same conduct characterised as abusive pressure.

Secondly, Article 14bis remains the specific salary–default rule. Where a club unlawfully fails to pay at least two monthly salaries, the player may terminate with just cause after written default and a deadline of at least 15 days. The rule does not necessarily answer every question about whether the player may train or refuse to train during the cure period. But it does reinforce the practical hierarchy: written notice, preservation of evidence and regulatory cure periods are safer than informal self–help.^[17]

Thirdly, Article 17 becomes more evidence–sensitive. Absent agreed compensation, the injured party is entitled to full compensation for the damage caused by breach. For players, the residual value and other damage are relevant. For clubs, the value of services, lost transfer fee or lost transfer value, replacement costs and other damage may be considered. The revised Article 17 also introduces a penalty payment of up to six monthly salaries in cases of abusive conduct. This will likely make *exceptio* arguments more consequential. A wrongful suspension of performance may no longer be merely a defensive point; it may become part of the compensation analysis.^[18]

Accordingly, the post–Diarra reform does not abolish *exceptio*. It disciplines it. The doctrine may still matter where one party genuinely suspends performance in response to a serious and continuing breach. But where the RSTP provides a specific rule – overdue salaries, abusive conduct, contractual stability, termination for just cause or compensation – the civil–law exception must operate through that rule, not against it.

Practical guidance for clubs, players and coaches

For clubs, the practical lesson is not to treat *exceptio* as a shortcut. If a player or coach is absent, the club should first identify whether the absence is authorised, medically justified, connected to unpaid remuneration, or linked to a pending dispute. It should issue a clear written instruction to resume duties, give a reasonable deadline, record delivery, invite explanations, and

follow the disciplinary procedure provided by internal rules, the employment contract or national regulations. Salary suspension should be a last and carefully reasoned measure, not an automatic reaction. Where the club is already in salary default, it should regularise payment before demanding strict performance.

For players and coaches, the lesson is equally important. *Exceptio* is not a free licence to disappear. The safer route remains a written notice identifying the overdue amounts, the contractual basis, the deadline to cure and the consequence of non-payment. If the player or coach intends to suspend services, this should be stated expressly and proportionately. Continued silence, ambiguous absence or inconsistent conduct may later be used to argue waiver, abuse of right or lack of just cause.

For both sides, the evidence file is decisive. A party relying on *exceptio* should preserve payment records, default notices, training instructions, travel information, medical certificates, disciplinary minutes, messages, squad lists, registration records and any document showing whether the employment relationship was genuinely kept alive. The future trend is not toward broad doctrinal debate but toward granular proof.

Conclusion

Exceptio non adimpleti contractus should remain available in football employment disputes, but it should remain exceptional in method and modest in effect. It is a temporary defence of reciprocity, not a general right of self-help. It can protect a player or coach from being compelled to continue performance while the club is in serious salary default. It can also protect a club from paying for a period in which an employee, without authorisation or valid reason, clearly refuses to work. But in both directions the conditions are strict: the breach must be serious, reciprocal, clearly established and notified; the response must be proportionate; and the party invoking the doctrine must itself act in good faith.

Levski-Houbtchev is central because it shows the danger of using *exceptio* backwards. Levski was not a club that had first paid and then faced a proven refusal to work. It was a club in prolonged salary default, seeking to rely on a later allegation of non-performance without

proving a proper recall, a fair procedure or a valid basis for non-payment. FIFA therefore treated the case as a salary-default and contractual-stability dispute, not as a successful club defense based on the coach's conduct. This is precisely why the case matters: it marks the boundary between legitimate reciprocity and retrospective justification.

After the 2027 RSTP reform, that boundary is likely to become clearer. Abusive separation from training, deregistration, eviction from accommodation and other pressure tactics will be harder to defend as ordinary contractual suspension. Compensation will also be assessed through a more detailed inquiry into actual damage, residual value, lost services, mitigation and abusive conduct. The practical future of *exceptio* in football is therefore not disappearance, but discipline. The doctrine survives where it supports good faith and contractual balance. It fails where it is used to disguise pressure, delay payment or avoid the football-specific procedures designed to protect contractual stability.

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