



THE ROLE OF WAIVERS IN THE FIFA
CLEARING HOUSE SYSTEM:
LEGAL AND PROCEDURAL CHALLENGES
IN TRAINING COMPENSATION DISPUTES

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ABSTRACT

This thesis examines the legal and procedural complexities surrounding the use of waivers within the FIFA Clearing House (FCH) system, particularly in the context of training compensation disputes. While the FCH was established to modernize and streamline payments between football clubs, its strict procedural framework—especially in the EPP Review Process—has raised challenges when clubs fail to upload waivers on time.

Through a detailed analysis of relevant CAS jurisprudence, this study explores the balance between FIFA's regulatory efficiency and procedural fairness.

It identifies the conditions for a valid waiver, the scope of CAS's *de novo* review, and the necessity of proper party inclusion in disputes.

A proposal is offered to enhance fairness without compromising the FCH's automated nature: a narrowly defined mechanism for extensions under exceptional circumstances. This work shall contribute to both academic and practical understanding of dispute resolution in international football's evolving legal landscape.



CONTENTS

I. GLOSSARY OF TERMS.....	6
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II. INTRODUCTION	7
A. Research Question & Methodology	9
(i) Research Question and Scope of the Thesis	9
(ii) Methodology and Approach	10

III. CAS JURISPRUDENCE ON TRAINING COMPENSATION WAIVERS	12
A. Strict Procedural Compliance in accordance with the FIFA Clearing House Regulations.....	13
(i) Tuzlaspor case	13
B. CAS Flexibility in Late-Submitted Waivers.....	21
(i) Erzeni case.....	21
(ii) Skupi case.....	24
C. Defining a Valid Waiver	26
(i) C.D. Tenerife case.....	27
D. Standing To Be Sued in Training Compensation Disputes and its Connection to Waivers.....	27
(i) FK Liepāja Case	27
(ii) KAA Gent Case.....	29

IV. ANALYSIS OF CAS JURISPRUDENCE ON WAIVERS IN THE FIFA CLEARING HOUSE SYSTEM	29
A. The Requirements for a Valid Waiver in the FIFA Clearing House System.....	30
B. FIFA’s Strict Procedural Framework and the Automation–Based Approach.....	30
C. CAS’s Approach to Late–Submitted Waivers and Procedural Flexibility	31
D. Standing to Be Sued and Procedural Fairness in Training Compensation Disputes.....	32
E. Balancing Regulatory Efficiency with Procedural Fairness: A Refinement Proposal.....	33
F. Key Findings.....	33
<hr/>	
V. CONCLUSION.....	34
<hr/>	
REFERENCES.....	36

I. GLOSSARY OF TERMS

CAS	Court of Arbitration for Sport
EPP	Electronic Player Passport
FCH	FIFA Clearing House
FCHR	FIFA Clearing House Regulations
FIFA	Fédération Internationale de Football
RSTP	Regulations on the Status and Transfer of Players
TMS	Transfer Matching System

II. INTRODUCTION

The training compensation and solidarity contribution system – colloquially referred to as training rewards, is a foundational mechanism within the regulatory framework of international football. It is extensively covered in Article 20 and Annex 4 (Training Compensation) and Article 21 and Annex 5 (Solidarity Mechanism) of the FIFA Regulations on the Status and Transfer of Players (RSTP).¹ From a regulatory standpoint, these measures exist as a reflection of FIFA’s efforts to have a fair redistribution of financial resources within the football ecosystem.² The rules incentivise clubs in making targeted investments in youth development and receive adequate compensation for their efforts.³ This process is particularly significant for smaller clubs which often serve as the starting point in a player’s development pathway. These clubs frequently rely on training rewards as one of their main revenue streams in the pursuit of operational sustainability. The financial recognition of player development reflected in the regulatory framework established by FIFA ultimately leads to a greater competitive balance across leagues and regions.⁴ As such, the system is essential in maintaining both the structural integrity and the financial stability of the global football market.

In order to modernise the processing of training rewards and strengthen the enforcement of the obligations related to these entitlements, FIFA created the FIFA Clearing House that entered into operation on 16 November 2022, in line with the objectives set out in ‘*The Vision 2020–2023*’.⁵ The FIFA Clearing House was established as a separate entity from FIFA, a joint-stock company⁶ (or *société par actions simplifiée*, in accordance with Articles L227–1 to L227–20 of the French Commercial Code) which would operationalise the principles of fairness and efficiency in the global football transfer system. Specifically, it is designed to promote financial transparency and the accurate and timely redistribution of funds by upholding standards of integrity enshrined within the requirements applicable to parties to the transfer system.⁷ The FIFA

Clearing House thus functions as an intermediary for the payment of training rewards when they are triggered pursuant to the RSTP.

The centralisation of the process and its integration with the FIFA Transfer Matching System (TMS) intends to reduce the administrative burden on clubs who previously had to manually monitor the transfer activity of their previous players as well as their signing of first professional contracts and independently assess when an entitlement in the form of training compensation or solidarity contribution might arise. As a result, many training clubs, especially smaller ones, were unable to collect all the amounts of compensation or at the very least, suffered significant delays and legal uncertainty when pursuing claims.⁸ The system led to a high volume of disputes which limited the access to justice for clubs with scarce financial resources.

These structural inefficiencies in the old model are addressed by the FIFA Clearing House that provides an automated mechanism, utilising verified data from the Electronic Player Passport (EPP) to make relevant determinations on the exact entitlements owed to clubs. An Allocation Statement that is subsequently generated informs the clubs of the specific amounts that must be paid. In that regard, the FIFA Clearing House has significantly improved the predictability, and procedural uniformity of the application of Articles 20 and 21, and Annexes 4 and 5 of the RSTP.

While the administration of training rewards through the Clearing House has undoubtedly enhanced operational effectiveness, it has also simultaneously given rise to several procedural and legal challenges. One of them is the treatment of waivers which represent complex documentation that is to be uploaded on TMS during the EPP Review Process by the new club following an agreement concluded with the training club(s).⁹ The validity, timing of upload and admissibility of waivers has become a frequently disputed aspect of the FCH system. It is within this context that the present thesis formulates its research focus.

A. Research Question & Methodology

(i) Research Question and Scope of the Thesis

The FIFA Clearing House was introduced as a centralised regulatory mechanism aiming to automate payments between clubs in connection with Training Rewards. The Electronic Player Passport (EPP) Review Process is a critical step in the system where member associations and clubs supplement and request amendments to a player's registration information based on which FIFA makes the determination of which clubs are entitled to training compensation and/or solidarity payments. CAS jurisprudence has demonstrated that waivers – agreements in which training clubs renounce their right to receive compensation and are supposed to be uploaded during the EPP Review Process, are most often the point of contention leading to disputes.

This thesis examines the legal and procedural framework that governs waivers and their effect on the EPP Review Process. The validity, enforceability and procedural requirements of waivers are addressed in light of the interpretation offered by CAS on these issues. The paper intends to answer the following key questions:

- What constitutes a valid waiver under the FIFA Clearing House Regulations?
- Can clubs rectify their failure to submit a waiver during the EPP Review Process on appeal before CAS?
- What is the interaction between the FIFA's strict procedural approach and the de novo power of review of CAS in disputes concerning waivers?
- What main takeaways may clubs incorporate in their compliance strategy regarding the FIFA Clearing House system in view of the relevant CAS jurisprudence?
- Are there targeted refinements that could improve the procedural fairness of the waiver process without undermining the system's efficiency and predictability?

The transition from training clubs carrying the burden of lodging claims in the event they do not receive training rewards that they were owed by the new club to an automation-based approach has led to greater predictability and efficiency in the

system.¹⁰ Nevertheless, CAS decisions have also introduced a degree of flexibility in interpreting certain aspects of the process such as procedural deadlines and the admissibility of late-submitted waivers. This thesis aims to outline the obligations for clubs making use of waivers in accordance with the FIFA Clearing House Regulations while also proposing refinements to the current system that would balance regulatory efficiency with procedural fairness.

(ii) Methodology and Approach

The thesis uses a case law analysis approach – it examines how CAS has interpreted the FCHR in disputes concerning training compensation waivers. The research is structured in the following manner:

Jurisprudential review – Several CAS awards are extensively covered in an attempt to clarify the appropriate interpretation of all legal particularities surrounding waivers under the FCHR. These cases include: *Tuzlaspor*, *Erzeni*, *Shkupi*, *Tenerife*, *Liepāja*, and *KAA Gent*, each of which offers an important perspective on the enforceability of waivers and procedural compliance.

Comparative Analysis of the FCHR and CAS decisions – The thesis contrasts the strict regulatory approach implemented by FIFA during the EPP Review Process in validating waivers with the more lenient attitude of CAS in the event of some procedural irregularities.

Practical Guidance for Clubs – The thesis also provides useful suggestions for clubs to navigate the FIFA Clearing House system. The recommendations are grounded on the main difficulties faced by clubs in the waiver process, ensuring that procedural errors are avoided.

The primary sources of reference used in the paper include the FCHR as well as CAS jurisprudence. Given that procedural matters such as standing to be sued may be of crucial importance for the outcome of waiver disputes, the thesis considers broader procedural issues that clubs must be aware of when contesting FIFA decisions.

The summarised CAS jurisprudence, FIFA's procedural requirements and compliance strategies represent a practical resource for clubs seeking to understand their obligations and avoid costly arbitration proceedings. The findings of this thesis are relevant for the academic discourse on this topic and may also serve as a reference of legal practitioners and club administrators involved in training compensation disputes.



III. CAS JURISPRUDENCE ON TRAINING COMPENSATION WAIVERS

After the creation of the Clearing House, several notable awards have been published by CAS that have provided a useful interpretation of certain aspects of the FIFA Clearing House Regulations that are of high relevance for the validity of waivers. CAS, which has *de novo* powers to review matters that are brought before the Court¹¹, has appellate jurisdiction over disputes arising out of “*any final decision*” made by FIFA in applying the FIFA Clearing House Regulations as indicated in Article 18.1 of the FCHR.¹² A final decision is considered to be the notification issued by the FIFA General Secretariat with respect to the outcome of the EPP review process.¹³ Within 21 days of the receipt of the decision in question, parties may lodge an appeal before CAS.¹⁴

As of November 2024, only 69 EPPs have been the focus of an appeal before CAS by one of the parties, which represents less than 0.2% of the potential number of claims relating to Training Rewards (given that more than 54,000 appellants were eligible to contest the 9,835 EPP decisions, as new clubs can challenge the entitlements and training clubs can challenge the amounts awarded).¹⁵

The most contentious issues that have been raised before CAS concern the assessment of non-submission/late submission of waivers, documentation that can have significant implications over the EPP Review process and the subsequent trigger of training rewards due.

A. Strict Procedural Compliance in accordance with the FIFA Clearing House Regulations

(i) Tuzlaspor case

The first important award of this kind is *Tuzlaspor A.S. v. FIFA, US Thionville Lusitanos et al.*¹⁶ The case concerned a player who signed his first professional contract with Tuzlaspor A.S (the Appellant club) for free, a club based in a different member association than all the three of his previous clubs (the Respondents clubs) that contributed for the player's development. The Appellant club reached an agreement with the Respondent clubs to waive their rights to training compensation and solidarity contribution as a consequence of the move.

The Appellant club did not intervene in the EPP Review Process at all, including not uploading the signed waiver. FIFA sent a message to the Appellant club through TMS, specifying that if applicable, the club must provide any signed waiver that would effectively nullify the obligation of payment of training rewards and provided the club with an additional deadline to do so. Given that the Appellant club did not act on this request within the prescribed deadline, the FIFA General Secretariat validated the provided information and communicated to the parties a final version of the EPP and the corresponding Allocation Statement that was generated. The Allocation Statement affirmed that all clubs in which the player previously trained are entitled to receive training compensation.

Following this notification, the Appellant club replied that the signed waiver was not uploaded during the EPP Review Process due to circumstances beyond the control of the club. This led to the examination of the two following issues by CAS: firstly, whether the club in fact was prevented from uploading the waiver due to force majeure and secondly, whether in light of the CAS appellate procedure, the Appellant club can compel the FIFA General Secretariat to consider the signed waiver, even though it was not uploaded within the permissible timeframe as set forth in the FCHR.

Although the FCHR does account for a potential force majeure event that may affect the compliance of parties with the regulatory framework¹⁷, the Appellant club did not provide concrete evidence for such an event to have occurred. In regard to the second question, the starting point in the assessment of the Sole Arbitrator was Article 17 of the FCHR, which stipulates that clubs and member associations are obligated to provide accurate and timely information and comply with requests from the FIFA General Secretariat and FIFA Clearing House to ensure the proper functioning of the training rewards process.¹⁸ Failure in doing so can lead to a range of disciplinary sanctions for the respective club or member association.¹⁹

An important observation by the Sole Arbitrator however was that Article 10.5 lit. b) of the FCHR, which specifies that final decision made by the FIFA General Secretariat may be appealed to CAS²⁰, does not explicitly prohibit for a club that has failed to act, whether culpably or not, during the EPP Review Process, from remedying its failure during its appeal, for example by referring to a waiver, which it did not upload on TMS in a timely manner. The Sole Arbitrator did also touch upon several other provisions pertaining to the EPP Review Process, highlighting the ambiguity arising from their interpretation.

Sole Arbitrator's General Criticisms

A key criticism of Article 9.2 of the FCHR raised by the Sole Arbitrator was its ambiguity in relation to whether the time limit for the EPP Review Process is strictly mandatory or merely indicative. Given that no repercussions for failure to meet the deadline are present, this may be seen as the FIFA General Secretariat potentially opting for a more lenient approach in cases where there is a submission filed marginally late, such as one day after the deadline. This uncertainty was said to create an issue for member associations and new clubs from a practical standpoint. Since they are not able to accurately assess their position in the event of certain complications, this could affect their timely submission of all relevant documentation. For instance, if negotiations over waivers between a new club and training clubs extend beyond the expected timeframe, it remains unclear what steps should be taken. Additionally, the exceptional

circumstances which allow for the FIFA General Secretariat to extend the review period are not clearly defined, which amplifies uncertainty and jeopardises the uniform application of the rules.

Another issue that was highlighted was the potential referral of cases to the FIFA DRC under Article 10.1(a) of the FCHR as its current formulation might lead to additional procedural uncertainties. The exact conditions under which the FIFA General Secretariat may decide to refer a case remains unclear. Moreover, there is no indication as to the question of whether member associations or clubs may request for such referral or make an objection to it when initiated by the FIFA General Secretariat. If such a referral were to take place, there is also uncertainty on whether a club can rely on waivers that were not uploaded to TMS within the Article 9.2 of the FCHR deadline when presenting its case before the FIFA DRC.

The broader review process also was called into question in view of the challenge ability of FIFA General Secretariat decisions. Article 10.5(b) of the FCHR was highlighted by the Sole Arbitrator as it does not specify what aspects of the final EPP and Allocation Statement can be appealed to CAS. There is no explicit prohibition for clubs to submit evidence on appeal before CAS such as waivers that were omitted from the initial process. Furthermore, the FCHR does not explicitly prevent clubs from introducing new arguments or submitting evidence such as waivers that were omitted from the initial process at the appeal stage. Whereas the CAS Code grants panels full power of review under Article R57(1), and Article R57(3) allows for the exclusion of evidence that could have been presented earlier, it is not entirely clear whether the FCHR framework imposes such limitations with respect to appeals concerning the EPP process.

Finally, Article 10.1 of the FCHR was categorised as contradictory. The provision states that “*after the completion of the EPP Review Process*”, the FIFA General Secretariat must take specific actions, including referring a case to the FIFA DRC, in which case the review process is paused until a decision is reached. The Sole Arbitrator questioned how can the EPP process be suspended only after it has already been completed and whether if it is not considered complete, clubs can continue uploading waivers in the TMS. This issue is further complicated by Article 9.7 of the FCHR, which does not expressly establish a final deadline for such submissions.

In response to the arbitrator's observations, it's essential to consider the underlying principles and practical implications of the FIFA Clearing House Regulations (FCHR).

The Sole Arbitrator's concerns associated with the nature of the deadline set out in Article 9.2 member associations cover several fundamental aspects. Taking into account the wording of the provision, it appears at the outset that the deadline is mandatory. Adhering to established deadlines is fundamental to ensuring a fair and efficient process. Allowing late submissions could undermine the reliability of the Electronic Player Passport (EPP) and potentially disadvantage compliant parties. Therefore, upholding the deadline strictly is a reasonable measure to maintain procedural integrity.

The repercussions for failure to meet the deadline can be seen as self-explanatory, for example, in cases of a waiver, such waiver can no longer be submitted, meaning it will not be considered with respect to the calculation of the training rewards that are due. FIFA has reiterated that although there is no precise indication for a time limit for submitting a waiver as per Article 9.7, as waivers are part of the relevant documentation that must be submitted during the period of the EPP Review Process, they must be upload prior to the expiry of the standard 15-day deadline set forth in Article 9.2. This approach has been characterised as necessary for ensuring a fair and efficient process that guarantees a high level of predictability for all associated parties. However, as will be seen in other CAS decisions below, certain circumstances outside of the control of the members associations and clubs may in fact prevent them from being in conformity with the relevant deadline.

The current regulatory framework does not provide a method in which these stakeholders can request for an extension of the standard time limit. FIFA may thus consider introducing a way clubs can communicate to FIFA, within an established timeframe prior to the expiry of the standard deadline that particular events that have occurred call for the extension of the deadline for submitting the necessary documentation. A requirement for this request to be well substantiated is a must and may also be present in the provision. If such a possibility is introduced, parties must only be able to invoke it in exceptional circumstances to avoid its potential abuse in situations which do not necessitate an extension. In this way, FIFA will still maintain

its current strict deadline but will also offer an adequate solution in case an issue beyond the control of clubs and member associations arises. Formulation of this kind will preserve the authority of FIFA in ultimately deciding whether there are legitimate grounds for extension but will also not alienate clubs that are facing legitimate concerns in submitting the documentation.

The current FCH regulatory regime does provide for a recourse to CAS and parties that have been unable to upload relevant documentation such as waivers during the EPP Review Process may still appeal the decision taken by FIFA. It must be highlighted that an appeal to CAS requires clubs to dedicate significant financial resources for paying the CAS procedural costs and engage legal professionals to represent the club in the dispute concerning training rewards. In response, FIFA has attempted to alleviate the financial burden from small clubs who face this difficulty by signing an agreement with the International Council for Arbitration for Sport (ICAS) for the period of 2023–2026 which introduced the FLAF – the FIFA–CAS Football Legal Aid Fund.²¹

The FLAF, which is exclusively dedicated to football matters, either at national or international level, is available to any natural persons, free of any Court Office Fee, as well as free of any administrative and procedural costs, including arbitrator fees.²² The service is provided exceptionally and only once per calendar year to football clubs affiliated to a member association of FIFA and belonging to a club category IV of the FIFA table relating to categorisation of clubs for training compensation. The classification table that is published annually separates clubs in 4 categories (with category IV being the lowest) based on their continental association, national federation and league of participation. The most recent categorisation of this kind has been published in the FIFA Circular no. 1892 from 3 July 2024.²³ The dispute is decided by a Sole Arbitrator from the specialised CAS Football List, who carries its work on a pro bono basis. Funds made available from FLAF cover travel and accommodation costs of the applicant party as well as those of pro bono counsel, witnesses, experts and interpreters.

The introduction of FLAF represents a commendable effort by FIFA to support financially constrained clubs in accessing CAS by ensuring their right to justice is not

limited by economic barriers. Some have raised concerns regarding its limited scope, as it applies exclusively to clubs categorised as Category IV, potentially leaving similarly disadvantaged clubs in a higher category without assistance.²⁴ Nevertheless, many clubs that face the most significant financial troubles currently have a potential avenue to challenge a FIFA decision which is a testament to the

Regarding the referral process outlined in Article 10.3, the arbitrator calls for specific criteria to guide when cases should be escalated to the DRC. However, the current approach allows the FIFA General Secretariat to exercise discretion, ensuring that only cases meeting certain thresholds are referred, thereby preventing unnecessary burdens on the DRC. FIFA should not be constrained by referring a case to the DRC only in a set of specific limited circumstances as such approach will unreasonably prevent FIFA from adequately assessing the dispute. The current formulation of the provision grants the FIFA General Secretariat a sufficient room for flexibility in evaluating the circumstances of the matter and is already narrowed to factually and legally complex cases. Furthermore, the suggestion of club or member associations being able to themselves refer or object a referral to the FIFA DRC is a measure which would only cause an influx of cases and respectively, lead to unpredictability in the decision-making process.

Additional complications and delays to the process may arise from giving clubs and member associations this opportunity, since these parties to the process may utilise it as an option even when there is no need for the FIFA DRC to weigh in on the matter.²⁵ The system currently has a mechanism according to which FIFA can make a determination when necessary and it is more than competent to determine on its own whether there is a certain factual or legal complexity. Thus, the current referral process under Article 10.3 is already sufficiently comprehensive and guarantees that the interests of the clubs are protected by the involvement of the FIFA DRC in intricate disputes.

The arbitrator notes a potential contradiction in Article 10.3 lit. b), which states that the EPP process is paused upon referral to the DRC, yet such referral occurs after the process's completion as per Article 10.1 when the FIFA General Secretariat may carry out additional tasks. As established in Article 9.2, the EPP Review Process ordinarily lasts for 15 days. This refers to the deadline for member associations to

confirm registration information and clubs to provide relevant documentation. Following this period, throughout the period of FIFA Determination, which is the final step of the EPP Review Process, a referral to the FIFA DRC may occur and this is in fact not after the completion of the EPP Review process. Consequently, a slight change to article 10.1 would ensure a clearer delineation of the stages within the EPP process. Amending the language in Article 10.1 to specify that the measures that FIFA may undertake do still happen inside the period of the EPP Review Process but outside of the subperiod in which member associations and clubs have their main involvement would prevent misinterpretations and ensure all parties are aware of the procedural timelines. Hence, it would be unequivocal that the standard deadline for providing relevant documentation such as a waiver would be the 15 days from the start of the EPP Review Process as set out in Article 9.2. Nevertheless, it must be emphasized that as will be discussed below, following the line of jurisprudence, FIFA has reiterated the strict nature of the procedural deadlines under the FCHR, and clubs have already been adequately informed of their obligations in that regard.

In summary, while the arbitrator's criticisms highlight areas where the FCHR and more specifically, the EPP Review Process could benefit from increased clarity and specificity, it's important to recognize that certain existing provisions serve to maintain the efficiency and integrity of the process. By addressing these concerns through targeted clarifications and maintaining necessary procedural safeguards, FIFA can enhance the transparency and fairness of its regulations, thereby fostering greater trust and compliance among stakeholders

In answering the second question, the Sole Arbitrator drew attention to the primary objectives of the FCH of processing payments of training rewards and enhancing financial transparency in the football transfer system.²⁶ It reasoned that the achievement of these objectives is contingent upon the effective cooperation of member associations and clubs, namely in regards to respecting the relevant deadlines for each particular step before the final EPP is assembled and the corresponding Allocation Statement is generated.

As a result, it was determined that the deadline set by Article 9.2 FCHR must be regarded as strictly enforceable, particularly for clubs and member associations that

have failed to act diligently, allowing the prescribed time limit to lapse without fulfilling their rights or obligations. A more lenient interpretation could undermine the certainty of the final EPP and its corresponding allocation statement, creating opportunities for negligent clubs to delay proceedings to the detriment of training clubs.

The decision confirmed that the club in fault cannot utilise the CAS Appellate procedure as a mechanism to rectify its failure to comply with the deadline established by the FCHR for uploading valid waivers as part of the EPP Review Process.

An important consideration however is that the Sole Arbitrator outlined that he could not confirm whether the same conclusion would be reached had the club not been negligent and had requested an extension of the relevant deadline for legitimate reasons. It clarified that if the club had been unable to secure the respective waivers on time for reasons beyond its control while exercising utmost caution and objected to the measures taken by the FIFA General Secretariat, there would be uncertainty over whether this can in fact be rectified on appeal before CAS.

The decision of *Tuzlaspor A.S. v. FIFA, US Thionville Lusitanos et al.* thus verified the mandatory nature of the deadlines delineated in the FCHR. This teleological interpretation was deemed as essential for the correct implementation of the EPP Review Process that leaves no room for negligent or uncooperative attitude by clubs and member associations.²⁷ Nonetheless, in the absence of such negligent behaviour displayed by a club during the process, the determination of whether this club may rectify its non-conformity with a given deadline remained unanswered.

B. CAS Flexibility in Late-Submitted Waivers

(i) Erzeni case

A different approach was adopted in the case of *FK Erzeni v. FC 2Korriku & Fédération Internationale de Football Association (FIFA)* in relation to negligence of clubs during the EPP Review Process that have failed to upload a waiver.²⁸

On 26 January 2023, the football player Sheki Aliti signed as a free agent with FK Erzeni. Following the signing of the player, the club uploaded in TMS a statement issued by Mr. Shaban Baholli, Director of FC 2Korriku, a previous club of the player. The statement, which was in Albanian language, contained a waiver of the claim for training compensation, pursuant to Article 9.7 of the FCHR. FIFA then informed the club that for the said document to be considered, it must be provided in one of the three FIFA languages (English, French or Spanish) by no later than the end of the ongoing “completion” phase of the EPP Review Process displayed in TMS. As the association did not receive a response, it sent another message to the club, highlighting once again that if the waiver is not uploaded in the appropriate form, it will be disregarded in the determination of the final EPP. Following another failure of FK Erzeni to respond to the request by FIFA, the FIFA General Secretariat approved the final EPP without considering the waiver in question. Consequently, FC 2Korriku was entitled to training compensation for having registered the player at a period in time between the start of the calendar year of the player’s 12th birthday and the end of the calendar year of the player’s 21st birthday. The generated Allocation Statement signalled the obligation of FK Erzeni to pay these training rewards. After the issuance of the Allocation Statement, the training club issued a further waiver, waiving any amounts payable as training compensation, confirming its initial waiver that was dismissed by FIFA.

FK Erzeni filed an appeal to CAS against the corresponding EPP Determination and Allocation Statement, alleging that the assessment by the Sole Arbitrator is not limited to the facts before FIFA and thus may consider the translation of the 2Korriku Waiver. The club also claimed that the deadline set by FIFA for Erzeni to submit an English translation of the document was too short and the club was unable to find any term or date displayed in TMS. FIFA’s position centred on the power of CAS to review whether the appealed decisions were correct without reintroducing a waiver that was not available before the previous instance, as it was dismissed by FIFA for failure to adhere to the relevant deadlines part of the EPP Review process. With Respect to the additional waiver, FIFA submitted that the document has no impact on the CAS proceedings as it was issued after the notification of the decision of the FIFA General Secretariat and cannot rectify the failure of the club to upload the correct document in TMS.

The Sole Arbitrator first examined the applicability of the de novo effect of CAS proceedings enshrined in Article 57(1) of the Code. In doing so, the Arbitrator considered whether any provisions in the applicable regulations deviated from this principle, either explicitly or implicitly.

First, Article 10(3) of the Procedural Rules Governing the Football Tribunal was analysed.²⁹ The provision primarily imposes an obligation on parties to regularly review TMS and the Legal Portal for FIFA communications and states that any failure to do so may result in procedural disadvantages. The Sole Arbitrator found that this provision does not in any way limit the scope of CAS's review or restrict the application of the de novo principle. Additionally, the Procedural Rules themselves are confined in their scope to governing the Football Tribunal and cannot be extended to proceedings before CAS.

Next, the Arbitrator examined Article 10.5 of the FCHR, covering the notification of final decisions by the FIFA General Secretariat.³⁰ Although the provision does include the possibility for appealing a decision made by FIFA pertaining to the issuance of the final EPP and Allocation Statement, it does not lay out any restrictions on how CAS should conduct its review .

Similarly, Article 18 of the FCHR, which confirms the right to appeal final decisions to CAS under the FIFA Statutes, does not contain any limitation on the scope of CAS's review. The provision also establishes potential disciplinary consequences for failing to provide accurate information but does not condition CAS's ability to assess matters beyond what was previously recorded in the FIFA system.

Further, the Arbitrator reviewed Article 9.7 of the FCHR, that demands for waivers of training compensation rights to be uploaded into TMS. The Sole Arbitrator determined that the formulation of the provision does not translate to any constraint of CAS's review powers and does not prevent CAS from considering the validity of a waiver even if it was not uploaded in TMS.

As a consequence of the absence of express deviation in the FIFA framework from the de novo principle, the Sole Arbitrator found no reason to restrict the scope of the CAS review in the present proceedings. With respect to the potential application of

Article 57(3) of the Code for excluding evidence that could have been discovered before the FIFA decision, the Sole Arbitrator decided to admit the waiver that FK Erzeni acted negligently by not providing a translation of the 2Korriku Waiver even though being invited to do so on two occasions by FIFA.

Despite recognizing that FIFA was correct to not admit the waiver for the purposes of issuing the final EPP and Allocation Statement in view of the strict deadline for such submission according to the FCHR, the Sole Arbitrator nevertheless considered the waiver for the CAS proceedings. This decision was supported by the notion that the relevant date for making the assessment was the date when the hearing took place and not the date in which the appeal decisions were communicated to the clubs.

The case of *Erzeni* introduced a new interpretation over the issue of negligence of clubs in failing to upload waivers within the relevant deadline of the EPP Review Process. Unlike in *Tuzlaspor*, where the Panel focused on the strict interpretation of the procedural requirements part of the FCHR, *Erzeni* demonstrated a more flexible stance, allowing for the possibility of rectifying defects during the CAS appeal process.

(ii) Skupi case

The approach utilised in *Erzeni* has also been reaffirmed in the case of *Club 1927 FK Shkupi v. Fédération Internationale de Football Association (FIFA), FC Aarau & FC Baden*.³¹ The case had a similar factual matrix, in which a player signed its first professional contract with FK Shkupi who secured a waiver of any training and solidarity contribution payable to the training clubs FC Aarau & FC Baden on the condition that in case the Player is sold or loaned to any other club, FC Aarau and FC Baden are entitled to a total amount of 5% from the amount (shared by both clubs) that FC Shkupi would receive following this permanent or loan transfer. As a party to the EPP Review process pursuant to Article 9.1 of the FCHR, FK Shkupi were invited by FIFA on multiple occasions to submit any relevant documentation in relation to the EPP. Despite these messages, the club did not upload any amendments of the registration

information in TMS and consequently, the waiver agreed between the clubs was not taken into account in the issued ‘Determination Statement and Allocation Statement’.

The dispute in question touched upon an important procedural issue associated with the EPP Review Process that has not been addressed in previous awards. In assessing the compliance of the Claimant with the 21-day deadline following the issuance of the FIFA decision for an appeal to CAS as stipulated in Article R49 of the CAS Code, Article 57(1) of the FIFA Statutes and Article 10.5 lit. b) of the FCHR,

The Sole Arbitrator examined the relationship between the Determination Statement and the Allocation Statement in ascertaining the date following which the deadline starts to run. An important observation concerned the difference between the number, contents and notice of legal remedies (although they were issued on different dates, both the Determination Statement and the Allocation Statement referred to the 21-day period for filing an appeal before CAS in relation to the decision) in the two statements. This appeared to be in contrast with the text of Article 10.5 of the FCHR which described the EPP and Allocation Statement as a single decision that provides for only one deadline for an appeal before CAS. The Sole Arbitrator maintained that this discrepancy ultimately cannot be interpreted in a manner which would be to the detriment of FK Shkupi. On this account, it was established that the two statements must be regarded as separate decisions and the deadline for submitting an appeal before CAS should have a start date the day on which the Allocation Statement was communicated to the club.

In relation to the merits of the dispute, an identical approach to the case of *Erzeni* was followed. No provision in the FIFA Regulations that demands for an exception from the de novo principle, characterising the CAS Appellate Procedure, was identified. The Sole Arbitrator specified that Article 57(3) of the CAS Code also cannot be used to deny admissibility of the waiver in question despite that the document could have reasonably been submitted before FIFA since the provision of the Code is primarily applied in cases of abuse.³² Even though the club had acted negligently, there was no indication for any abuse on their part (FIFA did not contest the authenticity of the

document) and the decision confirmed the admission of evidence that was already available to FK Shkupi at the time when the Appealed Decisions were issued.

Although FIFA was deemed to have again taken the correct decision in not considering the waiver during the Determination period, the club rectified its failure of not uploading it on time in their appeal before CAS.

C. Defining a Valid Waiver

(i) C.D. Tenerife case

C.D. Tenerife SAD v. Waa Banjul FC & Banjul Football Academy & FIFA was another important decision that illustrated the prerequisites for a valid waiver in terms of its contents.³³ The dispute revolved around whether C.D. Tenerife was obligated to pay training compensation following a registration of a player as a professional that was previously part of the two clubs WAA Banjul FC and Banjul Football Academy. During the EPP Review Process, the parties in the case uploaded a document on TMS which stated that “no Development Rights will be claimed”. FIFA subsequently refused to accept the waiver on the basis that it lacked clarity and specificity since it did not explicitly reference “training compensation”. In the following appeal before CAS FIFA defended its position by indicating that the term “development rights” has not been defined anywhere in the FIFA Regulations and such unclear formulation does not constitute a valid waiver in light of CAS jurisprudence and Swiss law.

In its evaluation of whether the submitted waiver was valid, the Sole Arbitrator noted that given that FIFA Regulations do not contain any requirements for the form and content of a waiver, attention must be drawn to CAS jurisprudence and Swiss law. CAS awards have clarified that although a waiver does not necessitate any specific form, the conditions for its validity include: “ i) the waiver is not contrary to law, public policy or good morals; ii) the person making the waiver has the capacity/authority to do so;

iii) the waiver is made clearly; and iv) the person has the right that he or she is renouncing”.³⁴

The Sole Arbitrator focused its analysis on the main contested condition, namely the obligation of a waiver to be sufficiently clear. The phrase “development rights” used in the waiver was found to be problematic as no such wording is found in the FCHR or the FIFA RSTP and the text of the waiver also does not offer a definition of the term. Furthermore, a reference was made to Article 9.7 of the FCHR which specifies that a former club may waive its rights to receive “training rewards”. This term according to the RSTP, comprises of “*the mechanisms which compensate training clubs for their role in the training and education of young players, namely training compensation (cf. article 20) and the solidarity mechanism (cf. article 21)*” and is thus not similar enough to “development rights”. On that account, the Sole Arbitrator concluded that the waiver was invalid as it does not unequivocally demonstrate that the right to training compensation was waived.

The *Tenerife* award reinforced the strict formalistic approach regarding the requirements of the FIFA Clearing House system. The precise and unambiguous drafting of a waiver is therefore essential for procedural compliance as clubs cannot rely on informal or implied understandings in formulating the contents of its text.

D. Standing To Be Sued in Training Compensation Disputes and its Connection to Waivers

A key procedural issue that has been reflected in CAS jurisprudence is whether FIFA can be sued alone in CAS proceedings or whether training clubs that are entitled to compensation must also be included as co-respondents in the dispute. This has substantial implications over the enforceability of waivers, considering that their admissibility is contingent upon the correct identification of the respondents. The following two cases, *CAS 2023/A/10010 FK Liepāja v. FIFA* and *CAS 2024/A/10718 KAA Gent v. FIFA*, both discuss this particularity and confirm that an appeal before

CAS does influence the training clubs right to training rewards and therefore cannot proceed without the respective clubs being named as parties to the dispute.

(i) FK Liepāja Case

The case involved FK Liepāja, who signed a player in an international transfer from his training club FC Inhulets Petrove.³⁵ FIFA issued an EPP, and a corresponding Allocation Statement was generated, requesting for FK Liepāja as a result of its obligations under the FCHR. The club filed an appeal before CAS challenging the FIFA decision, arguing that the training club has relinquished its right to training compensation due to the existence of a waiver that was not uploaded within the permissible period of the EPP Review Process.

The main point for consideration by the Sole Arbitrator was whether FIFA had standing to be sued alone or whether FC Inhulets Petrove should have also been named as a co-respondent in the proceedings. The position of FIFA centred on the notion that FC Inhulets Petrove is the direct beneficiary of training compensation and thus had a direct and legitimate interest in being named as a respondent in the case – ultimately, its financial interests would be impacted if the appealed FIFA decision is annulled and set aside.

It was determined that by failing to upload the waiver within the permissible timeframe FK Liepāja had prevented the training club from submitting a potential objection towards the validity of the waiver in accordance with Article 9.8 of the FCHR. Considering that the said club was also not listed as a respondent in the appeal before CAS, it once again was unable to defend itself with regard to the validity and all the specific consequences arising from the waiver. Following this reasoning, CAS upheld the argument of FIFA by ruling that it is essential for a training club to be named as a party in an appeal seeking to invalidate its right to training compensation. The appeal was dismissed on the grounds of FK Liepāja violating procedural fairness.

(ii) KAA Gent Case

A similar issue arose in *KAA Gent v. FIFA*, reinforcing the principle established in *Liepāja*.³⁶ KAA Gent appealed the determination of FIFA in relation to a final EPP, mandating that the club pays training compensation to four different clubs. In challenging the FIFA decision before CAS, KAA Gent only named FIFA as the respondent in the proceedings and excluded the training clubs that were the actual beneficiaries.

In analysing FIFA's standing to be sued alone, the Sole Arbitrator emphasised that FIFA by itself is not best suited to defend the decision being appealed. FIFA was said to merely have acted as a first instance in a horizontal dispute between KAA Gent and the training clubs. Since it did not have a direct interest in the outcome of the proceedings before CAS (besides the general objectives such as maintaining consistent line of jurisprudence and supporting decisions of its adjudicatory bodies) the Sole Arbitrator ruled that naming FIFA was insufficient and represents a violation of the applicable standards for procedural fairness. Without affording the training clubs a right to be heard and addressing the waiver that KAA Gent attempted to introduce before CAS, it was not possible to turn to the merits of the appeal which led to its dismissal.

These two cases demonstrate a critical procedural requirement for training compensation disputes, particularly those involving waivers. If a club wishes to challenge FIFA's refusal to recognize a waiver, it must include the training club(s) as a party to the appeal. Failure to do so will result in a dismissal of the case and confirmation of the initial FIFA decision.

IV. ANALYSIS OF CAS JURISPRUDENCE ON WAIVERS IN THE FIFA CLEARING HOUSE SYSTEM

The creation of the FIFA Clearing House has undoubtedly contributed to faster and more accurate training compensation payments. The EPP Review Process is a key feature of this system that identifies the clubs which are entitled to Training Rewards. However, as elucidated in the relevant CAS jurisprudence, this step encompasses one of the most debated aspects of the FIFA Clearing House process, namely the treatment of waivers and more specifically their validity, procedural requirements and the possibility of clubs to rectify their failure to upload them on time by initiating appellate proceedings before CAS.

This section examines the main legal considerations from the CAS decisions with respect to: (i) the requirements for a valid waiver, (ii) FIFA's strict procedural framework, (iii) CAS's flexibility in reviewing procedural failures, and (iv) procedural fairness considerations regarding standing to be sued. The final subsection focuses on the question of whether FIFA's current regulatory approach strikes the right balance between efficiency and fairness and proposes slight adjustments that could further strengthen the system.

A. The Requirements for a Valid Waiver in the FIFA Clearing House System

CAS jurisprudence has explicitly defined the exact requirements for a valid waiver under the FIFA Clearing House system. The necessity for a waiver to be clear and unequivocal in renouncing the right of the training club(s) to receive compensation is crucial for the evaluation of its validity. In the case of *Tenerife*, the waiver was dismissed because it referred to "development rights" rather than explicitly waiving the entitlement to "training compensation." The reasoning behind this strict requirement is

to maintain the integrity of training compensation enforcement and consequently, vague or imprecise language in waivers will lead to rejection.

As outlined in FIFA's internal guidelines, a valid waiver must:

- Explicitly state that training compensation is waived (not use ambiguous terms).
- Be a direct agreement between the new club and the training club.
- Be uploaded within the EPP Review Process timeframe.
- Exist at the time of the relevant transfer (not created retroactively).³⁷

The principle that can be extrapolated from the findings of the *Tenerife* case and the guidelines provided by FIFA pertains to the requirement for clubs to ensure that waivers are drafted with precision and uploaded correctly in TMS. Failure to uphold these standards will result in an automatic rejection of the waiver.

B. FIFA's Strict Procedural Framework and the Automation-Based Approach

The deadlines set out in the FCHR have been strictly enforced by FIFA on a consistent basis as procedural compliance has been seen as indispensable for guaranteeing the effective operation of the FIFA Clearing House System. The CAS case of *Tulzaspur* is a prime example of the regulatory approach of FIFA, where a waiver that was not uploaded on time as per Article 9.2 of the FCHR during the EPP Review Process was disregarded. The FIFA Determination was upheld by CAS, affirming that exceptions cannot be made without undermining the efficiency of the system. As illustrated in FIFA's position in the case of *Shkupi*, the EPP Review Process is designed to be final – once the deadline for member associations and clubs to submit the relevant documentation passes, FIFA cannot consider new waivers.

As mentioned above, since the establishment of the Clearing House more than 36,000 EPPs have been generated (as of November 2024).³⁸ If late waivers are allowed, this could result in the disruption of the automated nature of the system and pose great

administrative challenges. Furthermore, introducing the possibility of exemption from the applicable deadline also carries an underlying risk of clubs attempting to circumvent their training compensation obligations. Without the imposition of a rigid framework, the likelihood of system manipulation increases, and falsified waivers may become a cause of concern. Hence, from the perspective of FIFA, the procedural deadlines are a necessary mechanism that ensures consistency and fairness in training compensation payments.

C. CAS's Approach to Late-Submitted Waivers and Procedural Flexibility

Despite FIFA's insistence on strict procedural adherence, CAS has, in certain cases, applied a more flexible approach, particularly when considering late-submitted waivers. The *Erzeni* and *Shkupi* cases demonstrate instances where CAS has accepted waivers that were previously dismissed by FIFA at the EPP Review Process stage due to procedural non-compliance.

In *Erzeni*, the Sole Arbitrator found that the *de novo* power of review of CAS under Article R57 of the CAS Code authorises the Court to consider new evidence that has not been part of the FIFA administrative process which produced the appealed decision. Similar stance has also been adopted in *Shkupi*, where it was determined that although the waiver of training compensation was submitted outside the relevant deadline, the club had demonstrated good faith, and it could not be deduced that there was any deliberate evasion of the applicable rules.

FIFA has strongly opposed this approach by emphasising on the risks that may emerge in accepting late waivers such as the potential of document manipulation. The deadlines set out in the FCHR are, after all, an essential element of the compliance expectations from clubs and a necessary feature for the swift and seamless processing of Training Rewards. From a regulatory standpoint, this argument is compelling – without the enforcement of strict deadlines, the integrity of the system becomes compromised. However, CAS decisions have somewhat deviated from this rigid approach that may on occasion be against the interests of substantive justice, particularly in cases where clubs can present valid reasons for their procedural failures.

D. Standing to Be Sued and Procedural Fairness in Training Compensation Disputes

A key procedural issue pertaining to training compensation disputes surrounding waivers is who must be included as a respondent in appeals before CAS. The *Liepāja* and *KAA Gent* cases clarify that when clubs appeal FIFA decisions, the training clubs must always be named.

As the direct financial beneficiaries of Training Rewards, training clubs have a legal interest in defending their entitlement if a waiver is introduced before CAS. They must be given the opportunity to address the validity of the said waiver for the case to not be dismissed on the grounds of lack of standing of FIFA to be sued alone. Before CAS, FIFA merely acts as an independent court of first instance in a horizontal dispute between training clubs and a new club. The determination following the EPP Review Process is based on FIFA's necessary reliance upon the information (now electronically) provided by the concerned national associations (and their affiliated clubs). Therefore, the clubs in question must be part of the CAS proceedings for the appropriate resolution of the case.

E. Balancing Regulatory Efficiency with Procedural Fairness: A Refinement Proposal

The jurisprudence analysed in this thesis presents the ongoing debate between FIFA's strict regulatory model and CAS's more flexible approach in relation to waivers not submitted within the prescribed deadline under the FCHR. While FIFA's automation-based system results in a high level of efficiency for promptly distributing Training Rewards, CAS has occasionally intervened when procedural rigidity conflicts with substantive justice.

A potential refinement that could address those exceptional circumstances based on which authentic waivers have not been submitted on time without undermining FIFA's objectives is the introduction of a Controlled Exception Mechanism for Late

Waivers. This mechanism could allow for clubs to request a short extension for waiver submission in cases such as system errors or force majeure events. It is however essential that if a method of this kind is considered that clubs are granted an extension opportunity only under especially strict conditions, ensuring that it cannot be used as a means of evading the procedural requirements of the FCHR. The advantage of this regulatory modification is that FIFA could further strengthen confidence in the Clearing House system that has already been a great success following its introduction, while minimizing unnecessary recourse to CAS by clubs.

F. Key Findings

The CAS decisions on waivers in the FIFA Clearing House system illustrate the importance of procedural compliance, clear documentation, and strict adherence to FIFA's deadlines. However, they also reveal the challenges clubs face when procedural rules conflict with substantive fairness.

1. Clubs must ensure waivers are clear, precise, and submitted on time—failure to do so will result in rejection.
2. CAS has, in some cases, applied flexibility, but clubs should not assume that late waivers will always be accepted.
3. Standing to be sued is crucial—training clubs must be included in appeals to avoid procedural dismissals.

By following these principles, clubs can ensure compliance with FIFA's regulations while minimizing legal risks in training compensation disputes.

V. CONCLUSION

The creation of the FIFA Clearing House has completely transformed the processing of training and solidarity contributions, promising greater efficiency and transparency. The EPP Review Process is a key step within the method used for the accurate allocation of training rewards through a centralised, data-driven model. Although the system has been a resounding success, as identified in this thesis, there are certain obstacles that have emerged through the interpretation of the FCHR. Waivers represent the most complex and disputed components of the entire process, and their treatment has raised questions not only pertaining to their substantive validity but also their procedural admissibility.

This thesis has relied on CAS jurisprudence in evaluating what are the most important considerations concerning waivers and their application. On one hand, it has been established that the strict deadlines imposed by FIFA in uploading relevant documentation has a legitimate regulatory purpose – the protection of system integrity and preventing potential abuse or attempt for circumvention of the applicable standards. On the other hand, it has also been clarified that CAS does not follow the same rigid approach and instead puts emphasis on a more flexible adjudication of appeals involving waivers. CAS Panels have shown a tendency to admit waivers that were submitted late/not uploaded during the EPP Review process before FIFA where clubs have acted in good face and faced exceptional circumstances.

It has also been discovered that waivers must be clear and unequivocal in renouncing the right of the training club(s) to receive compensation. Clubs must ensure that their waivers describe sufficiently well their true intentions, using unambiguous language in drafting the documents. Moreover, CAS has also underscored the importance of correctly identifying the parties to a dispute, with training clubs being regarded as the primary beneficiaries of the training rewards entitlements. In view of their role and the broader principle according to which decisions that have a financial impact must be made precisely against those who are directly affected, training clubs have been classified as a necessary party to be named in all waiver disputes.

A minor potential refinement to the current regulatory framework has been proposed, namely the introduction of a narrowly defined procedural mechanism that permits clubs that experience genuine unexpected circumstances to at least have the opportunity to request an extension if demanded during the running EPP Review Process. Nevertheless, the proposed change does not call for unrestricted post–deadline submissions that could undermine the current system in place. It merely suggests the implementation of a mechanism that would require clubs to submit a substantiated justification for the delay before the expiry of the standard deadline and ultimately still preserve the final authority of the FIFA General Secretariat in addressing this request. Even if this represents an additional procedural step in a system which has fast processing as a priority, its benefits outweigh this limitation by guaranteeing that clubs would receive a fair opportunity to comply in circumstances beyond their reasonable control and would not need to resort to arbitration entailing significant expenses.

Ultimately, this thesis presents waivers and their implications in the FIFA clearing House system. Both There are certain aspects associated with waivers which suggest a level of legal and procedural uncertainty. CAS jurisprudence has helped clarify the consequences of non–compliance but has also introduced a degree of procedural flexibility that goes beyond the system’s limitations. A future alignment between regulatory application and dispute resolution will offer more procedural consistency and enhance overall functionality of the FIFA Clearing House model.

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