

DISCIPLINARY PROCEDURES IN FOOTBALL

An International and Comparative Analysis

Marc Cavaliero and Michele Colucci (eds.)

Martin Auletta, Mariano Bambaci, Christophe Bertrand, Marc Cavaliero, Salvatore Civale, Martin Cockburn, Michele Colucci, Alexander J. Davani, Lucas Ferrer, Pedro Fida, Emilio García, Víctor Garza Valenzuela, Raymond Hack, Kengo Harima, Bastian Haslinger, S. Kemal Kapulluoğlu, James Kitching, Nicolas Klein, Jan Kleiner, Ninon Kok, João Leal, Stefano Malvestio, Ettore Mazzilli, Marcos Motta, Manfred Nan, Jean Nicolau, Luis de Oleza, Jürgen Paepke, Dev Kumar Parmar, Vanja Smokvina, Johan Van Gaalen, Andrew Visnovsky, Oleg Zadubrovskiy, Konstantinos N. Zemberis, David Wu.

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INTRODUCTION

International and national football associations have autonomy to regulate the activities of their stakeholders, and in particular to create and enforce disciplinary rules to sanction infringements of such regulations.

In such context, it is important to identify what constitutes a disciplinary infringement as well as the relevant judicial process that leads to the imposition of appropriate sanctions.

Traditionally, the judicial bodies of the international and national football associations are competent to investigate and sanction – as the case may be – any infringement that occurs in the frame of a match or a competition which falls within their jurisdiction. However, their bodies may also be competent to sanction violations of the relevant regulatory framework for misconduct which falls outside the scope of a match or competition.

The book has three sections.

The first section reviews the disciplinary framework of FIFA and the regional Confederations (AFC, CAF, CONCACAF, CONMEBOL, OFC, UEFA) and identifies their jurisprudence.

The second section covers disciplinary rules and procedures enacted by the leading national football associations.

The third section undertakes a thorough, comparative analysis of the differences and peculiarities within these various systems. It concludes by highlighting the need for international harmonisation due to the interaction and discrepancies arising within the systems (particularly in relation to different punishments for the same infringements).

This book is unique both in content and the participation of leading international experts in the field. Therefore, we wish to sincerely thank our trusted colleagues and friends who found the time to share with us their knowledge and experience.

Finally, we would like to extend our gratitude to Antonella Frattini for her precious and patient support in the editing process, to our brilliant young colleague Andrew Visnovsky for his linguistic revision and his very pertinent comments, to Arielle and Liesbeth for their patience and devotion during the whole process, and to Durante Rapacciuolo for his always critical and stimulating analysis.

Brussels – Zurich, 18 October 2017

Marc Cavaliero and Michele Colucci

PART I

THE INTERNATIONAL FRAMEWORK

THE JUDICIAL BODIES OF FIFA – DISCIPLINARY PROCEDURES

by *Marc Cavaliero**

I. An Introduction to FIFA

A. FIFA Bodies

1. General remarks

The Fédération Internationale de Football Association (FIFA) is an association registered in Zurich, Switzerland, in accordance with Article 60ff of the Swiss Civil Code.

FIFA's objectives are stipulated in Article 2 of the FIFA Statutes. Among others, FIFA is tasked to improve the game of football constantly in the light of its unifying, educational, cultural and humanitarian values (lit. a); to promote women's football (lit. f), and to promote integrity, ethics, and fair-play with a view to preventing all methods or practices, such as corruption, doping, or match-manipulation, which might jeopardise the integrity of matches, competitions, players, officials and member associations or give rise to abuse of association football (lit. g). FIFA's commitment to promote and protect equally and human rights is expressly enshrined in the FIFA Statutes (Article 3). Non-discrimination, gender equality, and the fight against all forms of racism is part of FIFA's primary pillar and central concern.¹

The FIFA Congress is the supreme legislative body of FIFA in charge of *inter alia* amending and adopting the FIFA Statutes and takes decisions relating to the method by which they are implemented and applied. It also approves the annual report, decides on the acceptance of new national associations and holds elections, most notably for the FIFA presidency. In the spirit of true democracy, each national association has one vote, regardless of its size or footballing strength. Being FIFA Parliament, the Congress bears a particular responsibility for developing the game,

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¹ Cf. Article 4 of the FIFA Statutes.

the nature of which has been subject to increasingly rapid change over the past few years.²

The FIFA Council (which replaced the FIFA Executive Committee following the approval of the current version of the FIFA Statutes) is the strategic and oversight body that sets the vision for FIFA and global football.³ It is composed of 28 members, 8 Vice Presidents who are elected by member associations on the occasion of the respective confederation congresses, and one President elected by the FIFA Congress.⁴ The tasks and duties of the FIFA Council have been redefined in the context of the latest reform process, following which the Council was entrusted with the definition of FIFA's mission, strategic directions, policies and values.

A stronger and clearer separation between political (strategic) and management functions have been implemented, in the context of which the general secretariat executes the day-to-day business and implements the policies and strategies as defined and directed by the Council.⁵

The Council is assisted by nine (9) Standing Committees in their respective field of competencies.⁶ The composition and mode of election or appointment respectively of those Committees will vary.⁷

A fully independent Audit and Compliance Committee, which members are all elected by the Congress for a four-year term, will review and oversee all processes and money flows to ensure the completeness and reliability of the financial accounting. It will review the financial statements and monitor FIFA's financial and compliance matters.⁸ The Audit and Compliance Committee shall also fulfil an advisory role to the Council and bears a supervisory role over the general secretariat.

Next to the aforementioned bodies, FIFA has put in place independent judicial bodies, namely the FIFA Disciplinary, Appeal, and Ethics Committee.

The judiciary bodies of FIFA are capable of imposing a wide range of sanctions in case of breach of the FIFA regulations. These sanctions fulfil a preventive and reprehensive purpose. The scope of action of these judicial bodies is immense and covers a high number of different situations.

The scope of action of the FIFA judicial bodies is necessary for a proper functioning of FIFA and for a correct and uniform application of the diverse regulations by stakeholders. As such, it falls within the prerogatives of the FIFA judicial bodies to impose the appropriate disciplinary measures.

² Cf. Article 25ff of the FIFA Statutes.

³ Article 24 para. 2 and 33ff of the FIFA Statutes.

⁴ Article 33 para. 1 of the FIFA Statutes.

⁵ Cf. Article 36ff of the FIFA Statutes.

⁶ Article 39 of the FIFA Statutes.

⁷ Cf. Article 40ff of the FIFA Statutes.

⁸ Article 51 of the FIFA Statutes.

2. Statutory provisions – Judicial Bodies

The objectives of FIFA are multiple.⁹ Among others, FIFA shall draw up regulations and ensure their enforcement. Prevention of infringements of those Statutes and regulations as well as of the decisions of FIFA is expressly stipulated as one of FIFA's objectives.¹⁰ Equally, the member associations of FIFA have an expressed obligation and duty to ensure that their own members comply with the FIFA Statutes, regulations, directives and decisions of FIFA bodies.¹¹ Confederations are also required to comply with and ensure compliance with the Statutes, regulations and decisions of FIFA.¹²

To support the above-mentioned, FIFA established judicial bodies, i.e. the Disciplinary Committee, the Appeal Committee and the Ethics Committee, whose tasks are to ensure the respect of the FIFA Statutes and regulations and *a fortiori* to impose the relevant disciplinary measures in case of a breach.¹³ In view of their role and competence within the structure of FIFA, those bodies are not part of the Standing Committees.¹⁴ The judicial bodies function and pass their decisions independently.

The disciplinary measures that can be taken by the three judicial bodies are defined in the FIFA Statutes in a non-exhaustive way.¹⁵ They are classified in an order of seriousness, from the least to the most severe, with the exception of *social work*, which is a disciplinary measure introduced for the first time in the exemplary catalogue in the FIFA Statutes, edition 2012 – *sui generis*.

At this stage, it is worth mentioning that associations and federations acting with the legal form of an association (Article 60 ff. of the SCC) such as FIFA, are entitled to sanction persons subject to their jurisdiction in the event that the latter violates governing statutes. The sanctions described as “association sanctions” available to associations are not means of imposing actual sanctions, but rather to define the subordinate relationship through an association body and the “punishment of one private person by another”.

Thus, private associations like FIFA have the right to impose sanctions on (natural or legal) persons subject to their jurisdiction.¹⁶ However, the exercise

⁹ Article 2 of the FIFA Statutes.

¹⁰ Cf. Article 2 lit. c) and d) of the FIFA Statutes.

¹¹ Article 14 para. 1 lit. d) of the FIFA Statutes.

¹² Article 22 para. 3 lit. a) of the FIFA Statutes.

¹³ Cf. chapter VII and VIII of the FIFA Statutes.

¹⁴ Cf. *inter alia* Article 39 para. 2 of the FIFA Statutes in respect of the Standing Committees.

¹⁵ Article 56 of the FIFA Statutes. The disciplinary measures differ whether they shall be imposed against a natural or a legal person.

¹⁶ Decision of the Swiss Federal Tribunal, 4P. 240/2006. The Swiss Federal Tribunal confirmed in its decision that under Swiss association law, to which FIFA is subject, any violation of a member's duties may incur sanctions such as punishments for clubs or associations. Equally, the Court stated that if a private association draws up regulations to which members are subject to achieve its objectives, it is permissible for a governing body to provide for sanctions that safeguard the members' duties. This decision of the Swiss Federal Court has been considered as a landmark decision and has been very well received in the football world to ensure the viability of the system.

of this right does not constitute exercising penal powers like the ones accorded to ordinary national criminal courts. Rather, the respective actions are to be considered as measures of disciplinary nature taken in the context of relations between subjects of civil law. These relations, as well as the disciplinary measures concerned, are not governed by criminal or penal law but by civil law.¹⁷

It is worth taking a moment to look back to the reform process undertaken by FIFA since the 61st FIFA Congress in Zurich in June 2011,¹⁸ which started the process of significant amendments of the rules governing the composition and functioning of the judicial bodies.

To strengthen the judicial bodies, the former FIFA President decided to propose, at the 61st Congress, held in Zurich in 2011, amendments to the FIFA Congress that were accepted by a vast majority.¹⁹ At the occasion of the 62nd FIFA Congress in Budapest in 2012, the proposals elaborated by the Task Forces were approved.²⁰ Among others, Article 52 para. 3 (formerly 61 para. 3) of the FIFA Statutes provides that the judicial bodies are to be composed in such way that the members, together, have the knowledge, abilities and specialist experience that is necessary for the due completion of their tasks. It is specified that the chairman and the deputy chairman of the three judicial bodies shall be qualified to practise law.²¹ It should be pointed out that an even more profound and deeper reform was undertaken as to the composition and functioning of the FIFA Ethics Committee.

Last but not least, in order to strengthen the independence of the judicial bodies and finalise the reform process, at the occasion of the 63rd Congress in Mauritius in 2013, the members of the three judicial bodies were elected for the first time by the FIFA Congress for a mandate of four years.²²

B. The competencies of the judicial bodies and CAS

The judicial bodies of FIFA are the Disciplinary Committee,²³ the Appeal Committee and the Ethics Committee. The responsibilities and function of these bodies are stipulated in the FIFA Disciplinary Code and the FIFA Code of Ethics.

¹⁷ A. HEINI, W. PORTMANN and M. SEEMANN, *Grundriss des Vereinsrechts*, 2009, 85 et ff.; A. HEINI and W. PORTMANN, *Das Schweizerische Vereinsrecht*, *Schweizerisches Privatrecht*, vol. 2, sub-volume 5, 2005, 144-145, N 315-316.

¹⁸ Cf. www.fifa.com/mm/document/affederation/committees/01/53/05/80/proposal_pdt_21102011.pdf.

¹⁹ Cf. www.fifa.com/mm/document/affederation/bodies/01/55/71/31/congressminutes2011_all.pdf (last visited on 3 March 2017).

²⁰ Cf. www.fifa.com/mm/document/affederation/bodies/01/83/98/01/congressminutes_2012.pdf.

²¹ In contrast with legal qualifications as stipulated in the previous editions of the FIFA Statutes.

²² Cf. *inter alia* www.fifa.com/aboutfifa/organisation/footballgovernance/process/structure.html and Article 52 para. 5 of the FIFA Statutes.

²³ For the purpose of the present essay, major attention will be put on the FIFA Disciplinary Committee.

1. The FIFA Disciplinary Committee

The FIFA Disciplinary Committee²⁴ is currently composed of one chairman, one deputy chairman and sixteen members.²⁵ Its jurisdiction is specified in Article 76ff of the FIFA Disciplinary Code (hereinafter: *the FDC*). Generally, the Disciplinary Committee is authorised to sanction any breach of FIFA regulations which does not come under the jurisdiction of another body.

As to its functioning, the Disciplinary Committee can render decisions if at least three of its members are present²⁶ and decides in total independence.²⁷ It is also interesting to note that the FDC provides certain prerogatives for the Chairman of the FIFA Disciplinary Committee to take decisions alone. In this context, Article 78 of the FDC sets an exhaustive list of competencies, such a suspension up to three matches or up to two months, extension of sanctions to have worldwide effect or the pronouncement of provisional measures. Such provisional measures may be imposed if an infringement appears to have been committed and when an emergency exists (“*a decision on the main issue cannot be taken early enough*”).²⁸ Said provisional measures are intrinsically limited in time and may not be valid for longer than 30 days, and can be extended only once for a further 20 days.²⁹ Equally, this provision gives the Chairman the power to rule on extending a sanction to have worldwide effect be it related to doping, match-manipulation or other serious infringement.

The FIFA Disciplinary Committee has a vast scope of competencies, which comprises firstly the sanctioning of infringement to the Laws of the Game within the frame of a match under the jurisdiction of FIFA.³⁰ Typically, this concerns all incidents that can occur during a match, such as a serious foul play, unsporting conduct towards a match official or improper conduct caused by spectators.³¹ As far as matches and competitions are concerned, the FIFA Disciplinary Committee is also competent to sanction a team, should an ineligible player take part in a

²⁴ Article 53 of the FIFA Statutes.

²⁵ Mr. Aleksander Ceferin was an elected member of the FIFA Disciplinary Committee. However, he was elected as UEFA President and thus sits in the FIFA Council as FIFA Vice President. In line with Article 52 para. 5 of the FIFA Statutes, he cannot in the FIFA Disciplinary Committee. The same goes for Mr Raymond Hack, who has been appointed as FIFA Players’ Status Committee Chairman as of 1 February 2017.

²⁶ Article 82 para. 1 of the FDC. According to Article 78 of the FDC, the Chairman of the Disciplinary Committee has jurisdiction to decide alone in certain type of cases. However, he does not have such prerogative in enforcement-type proceedings.

²⁷ Article 85 of the FDC; cf. also art. 86 of the FDC governing the incompatibility of office.

²⁸ Section 5 of the Second Title of the FDC; this prerogative is essentially used in doping cases (cf. Article 39 of the FIFA Anti-Doping Regulations).

²⁹ Article 132 of the FDC.

³⁰ Cf. Article 46ff of the FDC.

³¹ In this context, it is worth highlighting that Article 67 of the FDC foresees the application of strict liability in case of improper conduct of spectator, which has been uniformly confirmed by the CAS in several occasions (cf. CAS 2009/A/1944).

match.³² As per the FDC, the FIFA Disciplinary Committee is also competent to sanction *inter alia* any kind of discrimination,³³ forgery,³⁴ doping offenses,³⁵ match manipulation³⁶ and any breach that would fall under its competence in virtue of another FIFA Regulations.³⁷ In this context, the FIFA Disciplinary Committee is also involved with regard to the implementation – and a proper functioning – of the Transfer Matching System (TMS), as it is the competent body to impose sanctions on any association or club which might violate one of their obligations as set forth in those regulations.³⁸ Last but not least, the FIFA Disciplinary Committee will sanction any breach of the FIFA Statutes.³⁹

In sum, and in light of its expressed and residual competencies, the FIFA Disciplinary Committee plays a key role as guarantor of the respect of the FIFA regulations.

2. *The FIFA Ethics Committee*

As far as the Ethics Committee⁴⁰ is concerned, it is competent to judge conduct that damages the integrity and the reputation of football and in particular to illegal, immoral and unethical behaviour.⁴¹ Following the reform process, the - then - FIFA Executive Committee (now the FIFA Council) approved the current version of the FIFA Code of Ethics (hereinafter: *the FCE*).⁴² Thus, the FIFA Ethics Committee is now composed of two chambers, an *Investigatory Chamber* in charge of conducting investigatory proceedings, and an *Adjudicatory Chamber* competent to adjudicate on the case referred by the investigatory chamber. Both chambers are chaired by independent chairmen – thus strengthening the Ethics Committee. All the procedural and organisational rules are now defined in the FCE and tailor-made for the needs of ethics proceedings,⁴³ while offering a precise

³²Article 55 of the FDC. CAS has recently once again confirmed the well-established principle according to which, the participating team is responsible to field eligible players and this responsibility cannot be shifted to anyone else (cf. www.tas-cas.org/en/infogenerales.asp/4-3-6567-1092-4-1-1/5-0-1092-15-1-1/).

³³ Cf. Article 3 of the FIFA Statutes, Article 58 of the FDC.

³⁴ Article 61 of the FDC.

³⁵ Cf. the FIFA Anti-doping Regulations and Article 63 of the FDC.

³⁶ Article 69 of the FDC.

³⁷ For instance: Article 19bis para. 4 of the Regulations on the Status and Transfer of Players in respect of the protection of minors, Article 19 of the Regulations Governing International Matches

³⁸ Annexe 3 of the Regulations on the Status and Transfer of Players, in particular Article 9 regarding the competence of the FIFA Disciplinary Committee.

³⁹ Article 2 of the FDC mentions cases of forgery, corruption or doping. These are mere examples.

⁴⁰ Article 54 of the FIFA Statutes

⁴¹ Article 1 of the FIFA Code of Ethics, edition 2012.

⁴² On a side note, the FIFA Ethics Committee was active before the reform process and passed several decisions in important cases, cf. www.fifa.com/aboutfifa/organisation/bodies/news/newsid=1336779/index.html.

⁴³ As an example cf. Article 41ff regarding the obligation to cooperate or 47ff regarding anonymous witnesses.

and systematic division of the rules of conduct.⁴⁴ It is worth mentioning that the FCE applies to natural persons only.⁴⁵

Regarding the procedure, it shall be pointed out that the Chairman of the Investigatory Chamber decides on his own to open investigation proceedings, if there is a *prima facie* case.⁴⁶ The investigation is led by a chief of the investigation.⁴⁷ Upon completion of the investigation, the chief of the investigation drafts a final report containing all the facts and evidence, which shall be remitted to the Chairman of the Adjudicatory Chamber.⁴⁸ The latter will, on the basis of the final report, decide to proceed with the adjudicatory proceedings, if it considers the final report to be complete. The Chairman of the Adjudicatory Chamber may also either close the case, if there is insufficient evidence to proceed, or return the final report to the Investigatory Chamber for amendment and completion or undertake further investigations.⁴⁹

The Chairman of the Adjudicatory Chamber may also take provisional measures, at the request of the Chairman of the Investigatory Chamber, if a breach of the FCE appears to have been committed and if a decision on the main issue may not be taken early enough. Provisional measures may also be taken to prevent interference with the establishment of the truth.⁵⁰

3. The FIFA Appeal Committee

The FIFA Appeal Committee,⁵¹ currently composed of one chairman, one deputy chairman and eleven members, is responsible for deciding appeals against any of the Disciplinary Committee's and the Ethics Committee's decisions that FIFA regulations do not declare as final or referable to another body.⁵² The organisation is identical as to the FIFA Disciplinary Committee. The procedure is also detailed in the FDC.

Particular attention shall be drawn to the fact that an appeal may only be lodged against a motivated decision. Effectively, judicial bodies are allowed to communicate the terms (the dispositive part) of the decision in a first step. The parties are granted a deadline of 10 days to request the grounds. In this context, Article 116 para. 2 of the FDC is clear: *“If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full,*

⁴⁴ Examples of rules of conduct: loyalty, conflict of interests, corruption, non-discrimination.

⁴⁵ Article 2 of the FCE.

⁴⁶ Article 63 of the FCE.

⁴⁷ Article 65 of the FCE.

⁴⁸ Article 68 of the FCE.

⁴⁹ Article 69 of the FCE.

⁵⁰ Article 83 of the FCE. The provisional measures may be valid for a maximum of 90 days, which can be extendable, in exceptional circumstances, for an additional period of maximum 45 days (art. 85 of the FCE).

⁵¹ Article 55 of the FIFA Statutes.

⁵² Cf. Article 79 and 118 of the FDC and Article 80 of the FCE.

written form. The time limit to lodge an appeal, where applicable, begins upon receipt of this motivated decision". It is nevertheless important to note that, as per Article 106 of the FDC, decisions come into force as soon as they are communicated. This means that a decision notified in its dispositive part only will already start to deploy its effects.⁵³

The FDC expressly excludes the possibility to appeal to the FIFA Appeal Committee in some cases.⁵⁴ More precisely, decisions imposing a warning, a reprimand, a suspension for fewer than three matches or up to two months, a fine up to CHF 15,000 (association or club) or up to CHF 7,500 (other cases) are not appealable to the FIFA Appeal Committee.

Article 118 of the FDC also stipulates that decision passed in compliance with Article 64 of the FDC are not appealable (lit. e). In this context, it is important to refer to Article 64 para. 5 of the FDC, which stipulates that appeals shall be lodged with CAS directly.

In ethics-related matters, it is important to remark that the chief of investigation is entitled to appeal against a decision of the Adjudicatory Chamber.⁵⁵

As to the effect of an appeal, Article 124 FDC rules that the appeal will result in the case being reviewed by the Appeal Committee, which does not mean that the Committee has an obligation to review all the arguments in fact and in law. Equally, an appeal will not have a suspensive effect except with regard to orders to pay a sum of money.⁵⁶

Like the Chairman of the FIFA Disciplinary Committee, the Chairman of the FIFA Appeal Committee has been granted prerogatives to decide alone on certain topics.⁵⁷

4. *The Court of Arbitration for Sport (CAS)*

The FDC does not expressly foresee which decisions of the FIFA Disciplinary or Appeal Committee may be appealed to the CAS, with the exception of the above recalled Article 64 para. 5 of the FDC. The FDC contends itself to provide that certain decisions passed by the aforementioned judicial bodies may be appealed against to the CAS.⁵⁸

⁵³ It is therefore recommended for the judicial bodies, in case of a suspension on a natural person for instance, to notify the grounds, when requested, within a reasonable time.

⁵⁴ Article 118 of the FDC and Article 80 of the FCE mention the cases in which an appeal before the Appeal Committee is excluded

⁵⁵ Article 80 para. 2 of the FCE.

⁵⁶ In exceptional cases, appeals have been granted suspensive effect due to the fact that the FIFA Appeal Committee was not able to take a decision on the main issue early enough (cf. www.fifa.com/about-fifa/news/y=2013/m=10/news=peru-and-ukraine-appeals-granted-suspensive-effect-2190067.html or www.fifa.com/governance/news/y=2014/m=4/news=fc-barcelona-appeal-granted-suspensive-effect-2322794.html) (last visited on 3 March 2017).

⁵⁷ Article 80 of the FDC.

⁵⁸ Article 74 and 128 of the FDC.

Thus, this matter is settled in the FIFA Statutes, which actually provide for the cases in which the appeal to CAS is excluded.

Article 58 of the FIFA Statutes recalls *inter alia* that appeals against final decisions passed by FIFA's legal bodies shall be lodged with CAS within 21 days of notification of the decision in question. It is imperative that all other internal channels have been exhausted (Article 58 para. 2 of the FIFA Statutes).⁵⁹ Internal channels are not considered as exhausted, in case a party fails to request the grounds of the decision within the regulatory deadline of 10 days of Article 116 of the FDC and lodges an appeal against the terms only. In such a case, the appeal shall be deemed inadmissible.⁶⁰

Moreover, as previously mentioned, Article 58 para. 3 of the FIFA Statutes provides for matters which CAS cannot hear: namely the cases related to the violations of the Laws of the Game, suspensions of up to four matches or up to three months⁶¹ (with the exception of doping decisions) and decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an association or confederation may be made.⁶²

C. Procedure

To remain in the scope of the comparative analysis of the present study, the following description will focus on the procedure to be followed by the FIFA Disciplinary Committee, as set forth in the FDC, in its Second Title "Organisation and Procedure".⁶³

1. Start of the proceedings

First and foremost, disciplinary proceedings are prosecuted *ex officio*, which means that – contrary to the proceedings before the Players' Status Committee or the Dispute Resolution Chamber – no complaint is needed to open these proceedings.⁶⁴ The Chairman of the FIFA Disciplinary Committee can therefore start at his own initiative any investigation he deems relevant. He is assisted by a secretariat, which carries out the necessary investigation under the Chairman's

⁵⁹ CAS 2015/A/4193 Guyana Football Federation (GFF) v. Fédération Internationale de Football Association (FIFA) & St. Vincent and the Grenadines Football Federation (SVGFF).

⁶⁰ TAS 2012/A/2961 Khaled Adenon c. Fédération Internationale de Football Association (FIFA).

⁶¹ CAS 2012/A/2948 Claudio Daniel Borghi Bidos v. Fédération Internationale de Football Association (FIFA).

⁶² Having a look at that provision, one can observe that a fine imposed which would be lower than CHF 15,000 on an association or a club – or CHF 7,500 in other cases – are at first sight not encompassed by the exclusion rule of Article 58 para. 3 FDC.

⁶³ The FDC presents the rules governing procedure and organisation in a comprehensive and thorough way.

⁶⁴ Article 108 para. 1 of the FDC – with the exception of proceedings initiated on the basis of Article 64 of the FDC.

guidance.⁶⁵ The foregoing does not exclude the possibility for any person – subject to FIFA jurisdiction or otherwise – to lodge complaints in order to bring to the Disciplinary Committee’s knowledge the occurrence of possible breaches of the FIFA regulations.⁶⁶ It is not unusual for the secretariat to start a (preliminary) investigation following information found in the media, provided there is sufficient element (*prima facie* case) justifying the opening of proceedings.

FIFA bodies follow a rather restrictive approach, according to which anyone bringing judicial bodies to the attention of the existence of a violation of FIFA regulations will be considered a third party. In other words, such (natural or legal) person – regardless of their relationship with FIFA – would not receive any information as to the evolution of the proceedings nor receive a copy of a possible decision. The only party to the proceedings will remain the person against which the proceedings are launched.⁶⁷ In this respect, Article 3 of the FDC lists the persons and entities subject to the code, such as associations, clubs, players, officials etc.

Disciplinary proceedings are thus, as a general rule, proceedings involving the accused only, and therefore the reason why when a person reporting conduct as outlined under Article 108 para. 2 of the FDC would not appear to be a party to future proceedings conducted against any person or legal entity as a consequence to such report. Moreover, contrary to a person acting as a civil party to criminal proceedings, a complainant would not be entitled to claim compensation for damages in the course of disciplinary proceedings and be considered as a party to such proceedings.⁶⁸

Furthermore, it should be emphasised that, as per the FIFA Disciplinary Committee’s approach, a person submitting a complaint under the terms of Article 108 para. 2 of the FDC has no right to invoke solely an interest in a person being sanctioned. Such claim can by no means be considered as being one worthy of protection – in absence of invocation of any right of his own – in the context of disciplinary proceedings.

2. *Deadlines, statutes of limitation and form of communication*

Section 1 of Chapter II, of the FDC provides for rules on time limits (Article 90ff of the FDC). In line with the general rules of procedure, the FDC mentions that time limits commence the day after the reception of the relevant document.⁶⁹ This provision actually expressly refers to *associations* as recipient of a document. This is due to the general practice of the FIFA administration and secretariat to

⁶⁵ Cf. Article 109 of the FDC.

⁶⁶ There is even an obligation to report any knowledge of infringements for persons bound by the FIFA Code of Ethics, cf. Article 18 of the FCE.

⁶⁷ The so-called *accused person*.

⁶⁸ Cf. Article 105 para. 6 of the FDC.

⁶⁹ Article 90 para. 1 of the FDC.

the judicial bodies contacting parties via the associations, should there be no direct contact details. However, there is no doubt that this principle – also applicable in Swiss civil law⁷⁰ – applies to all stakeholders party to the proceedings. This is confirmed through a reading of Article 90 para. 2 *in fine* of the FDC, which mentions that when a document is sent also or solely to the parties or the legal representatives, the time limit “*commences on the day after receipt of the document*”.

In the context of computing deadlines, and bearing in mind the FIFA practice to communicate via the associations, it is expressly stipulated that, *provided the document is not solely sent to the person concerned or his legal representative*, time limits to which other persons shall adhere commence four days after receipt of the document by the association responsible for forwarding it. In the author’s opinion, this provision shall be understood as a presumption that the association will forward the document to the party concerned four days after having received it at a maximum and was meant to facilitate the administrative burden on FIFA secretariats.⁷¹ However, should the document be transmitted to the concerned party before the expiry of this four-day time period, the deadline in question will thus commence as from that moment, which guarantees an equality of treatment and fairness in proceedings for all the stakeholders.

The same principle is recalled in Article 102 para. 2 of the FDC in respect of the “Notification of decisions”: “*Decisions and other documents intended for players, clubs and officials are addressed to the association concerned on condition that it forwards the documents to the parties concerned. In the event that the documents were not also or solely sent to the party concerned, these documents are considered to have been communicated properly to the ultimate addressee four days after communication of the documents to the association (cf. art. 90)*”.

It is interesting to note that only the deadlines set by the Chairman of the FIFA Disciplinary or Appeal Committee respectively may be extended upon request. A time limit may not be extended more than twice and the second extension the Chairman can only do so in exceptional circumstances.⁷² A request for extension will be analysed on a case-by-case basis, in which the Chairman of the relevant Committee will assess all the relevant circumstances, such as the complexity of the affair, the (collaborative) attitude of the party, the extent of the request, the need for an urgent decision.

The time limits set in the Code may not be extended. Although the provision uses the verb “may”, the judicial bodies always applied this rule very restrictively – and rightly according to the author.

⁷⁰ Cf. Article 142 of the Swiss Civil Code of Procedure.

⁷¹ The Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber go even further by stipulating in its Article 9 para. 5 that failure to transmit the document to the ultimate addressee by the association will result in the opening of disciplinary proceedings.

⁷² Article 93 of the FDC.

As far as the limitation period for prosecution is concerned, infringements committed during a match may no longer be prosecuted after a lapse of two years, whereas, as a general rule, other infringements may not be prosecuted after a lapse of ten years. It has to be remarked that, anti-doping rule violations may not be prosecuted after eight years have elapsed. Prosecution for corruption is not subject to a limitation period.⁷³

As a general rule, disciplinary proceedings are undertaken in writing and decisions are taken on the basis of the file.⁷⁴ Oral hearings can be organised at the request of a party. The practice of the Disciplinary Committee is here also rather restrictive – among others to allow a fast administration of justice – and would allow for oral statements to take place in complex or serious matters.

At the time of writing email is still not permitted and parties are required to communicate by mail or more commonly by fax (cf. Article 91 para. 2, 3 and 4 of the FDC). Nevertheless, the Committees started to be more flexible by allowing parties to communicate with the secretariat via email in the case of urgent matters, or when documents containing a high number of pages were to be sent. As far as the notification of decisions are concerned, while the judicial bodies may have communicated certain decisions by email (without binding effect), those electronic communications were always accompanied by a notification by fax or post. Indeed, in line with the clear text of the FDC (Article 103), only decisions notified by fax or registered mail are legally binding.

3. *Right to be heard*

Private associations, like FIFA, have the right to impose sanctions on persons subject to their jurisdiction. However, the implementation of this right does not constitute an exercise of penal powers like the ones an ordinary national criminal courts are entitled. Rather, the respective actions are to be considered as measures of disciplinary nature taken in the context of relations between subjects of civil law.

With regard to the European Convention of Human Rights (ECHR), the Treaty will not apply directly to disciplinary proceedings of a private association, as international treaties on human rights are meant to protect the individuals' fundamental rights vis-à-vis governmental authorities. Notwithstanding the above, there are certain guarantees afforded in relation to civil law proceedings by Article 6.1 of the ECHR, which are indirectly applicable before an arbitral tribunal, such as the right to be heard, the right to a fair trial within a reasonable time by an independent and impartial arbitral tribunal or the principle of proportionality.⁷⁵

⁷³ Article 42 of the FDC.

⁷⁴ Cf. Article 111 of the FDC.

⁷⁵ CAS 2011/A/2426 Amos Adamu v/ FIFA, consid. 66.

In the CAS 2014/A/3630 *Dirk de Ridder v. ISAF*, the Panel set out certain propositions underlining the essential requirements of fairness and *ensure that “justice is not only done but is seen to be done”*. The author wishes to recall three of those propositions, which clearly define what the right to be heard could entail, among other things:

1. There should be a full disclosure of all material in the possession of the prosecution which may be of assistance to the person charged with a disciplinary offence.
2. The material on which the adjudicator is invited to base its verdict should be clearly defined to the person charged, and, as far as possible, the adjudicator should be shielded from material potentially prejudicial to the person charged but on which the prosecution does not intend to rely.
3. A person charged should be informed of and given access to the procedures to be applied in his or her case.⁷⁶

In this sense, the right to be heard is expressly mentioned in Article 94 of the FDC, para. 2, which lists in a non-exhaustive way some of the components of the principle including, the right to access the whole file, the right to present argument in fact and law, the right to receive a motivated decision. In practice, the Secretariat of the FIFA Disciplinary Committee always ensures that the party is informed in a comprehensive way of all the possible breaches committed in fact and in law and that it receives the complete file and evidence in possession of the judicial body. In this context, it is worth highlighting that the Secretariat will always act in a neutral way and look for all kind of proof, be it of incriminating or exculpatory nature.

Finally, the author deems also relevant to refer to the principles established in the award CAS 2009/A/1920 *FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v/ UEFA* in respect of the possibility to have witnesses testify anonymously, which can find application in the context of disciplinary proceedings before judicial bodies in addition to UEFA's. The right of a party to rely on anonymous witness statements and to prevent the other party from cross examining the witness is recognised, if the personal safety of the witness is at stake. *“The use of anonymous witnesses, although admissible, is subject to strict conditions. The right to be heard and to a fair trial must be ensured through other means, namely by cross examination through “audio-visual protection” and by an in-depth check of the identity and the reputation of the anonymous witness by the court.”* This award was followed by the enactment of Article 47(ff) of the FIFA Code of Ethics expressly providing for the possibility to hear witnesses anonymously provided strict conditions are fulfilled. Although the FIFA Ethics Committee, in view of its core competencies, is more likely to deal with cases, in which the possibility to hear witnesses anonymously would happen, similar provisions should also be inserted in the FDC in the future, which, in its current version, contains a more general article, namely Article 95.

⁷⁶ CAS 2014/A/3630 *Dirk de Ridder v. ISAF*, consid. 109.

4. Rules regarding proof

The rules governing proof are described in Article 96(ff) of the FDC contained into the Second Title, Chapter II, Section 1, Subsection 3 called “Proof”.

It is undisputed that under Swiss law an association with headquarters in Switzerland is entitled to provide for specific rules as to the standard of proof applicable to its disciplinary proceedings. That is what FIFA did by establishing that the members of the Committee decide on the basis of their personal conviction.⁷⁷ CAS considered that the standard of personal conviction was not fundamentally different from the standard of comfortable satisfaction, the important point being that this standard is higher than a mere balance of probabilities applicable in civil proceedings but lower than the beyond any reasonable doubt standard applicable in criminal proceedings.⁷⁸

The separate concept of evaluation of proof is governed in par. 1 of Article 97 of the FDC, which stipulates: “*The [judicial] bodies will have absolute discretion regarding proof*”. This concept refers to the judicial process of weighing and assessing the evidence on record. *La libre appréciation des preuves* does not contradict any principles of Swiss arbitration law. The principle of free evaluation of evidence means that the FIFA judicial bodies are allowed to i) freely decide the evidentiary weight of any evidence on the record without being bound by any pre-defined distinction between the kind of evidence and ii) freely choose between contradictory elements of evidence in their decision-making process. In practice, the principle allows the judicial body not only to rely on any kind of evidence but also to freely decide which part of the contradictory evidence is more convincing.

It is however correct to state that certain type of proof would come along with a stronger “authority”. Indeed, the FDC expressly mentions – in the context of infringements occurred in a match - that *[f]acts contained in match officials’ reports are presumed to be accurate*.⁷⁹ Nevertheless, para. 2 of Article 98 stipulates that proof of the inaccuracy of the contents of these reports may be provided. In practice, this means that although match officials’ reports bear a presumption of veracity, a party to the proceedings will be in a position to demonstrate that the facts reported are inaccurate. For instance, a match commissioner may report that a pitch invasion has been committed by dozens of fans of team X. Team X, in the context of disciplinary proceedings can demonstrate by means of pictures, witness testimonies, police reports (in case of arrest) that some of the fans entering the field of play were actually of Team Y and consequently only a small number of their own fans invaded the pitch.

Finally, while any type of proof may be produced – with the exception of proof that violates human dignity or obviously does not serve to establish relevant

⁷⁷ Article 97 para. 3 of the FDC – this provision governing the standard of proof is inserted into the article called wrongly “Evaluation of proof”.

⁷⁸ Cf. *inter alia* CAS 2011/A/2426, CAS 2014/A/3562 Josip Simunic v. FIFA.

⁷⁹ Article 98 para. 1 of the FDC.

facts⁸⁰ – it is primordial to bear in mind that in disciplinary-related proceeding, the burden of proof rests with FIFA.⁸¹

C.5 Sanctions

The legal basis on which the FIFA judicial bodies are entitled to pronounce disciplinary measures is to be found primarily in Article 56 of the FIFA Statutes, which provides for a non-exhaustive list of measures. Those measures are recalled and further explained in the FDC. To be noted in this respect, that the judicial bodies never pronounced a measure outside the list mentioned in the aforementioned regulations.

Some of the disciplinary measures are applicable to both natural and legal persons: warning, reprimand, fine, and return of awards (Article 10 of the FDC). On the other hand, the caution, expulsion, match suspension, a ban from entering dressing room, and/or substitutes' bench, a ban from entering a stadium or a ban on taking part in any football-related activity can only be imposed on natural person (Article 11 of the FDC). Finally, a transfer ban, playing a match without spectators, on neutral territory, a ban on playing in a particular stadium, the annulment of the result of a match, expulsion from a competition, forfeit, deduction of points, and relegation to a lower division will only be imposed on legal persons (Article 12 of the FDC).

The body pronouncing the sanction will decide on the scope and the duration,⁸² while taking into account all relevant factors, such as the degree of the offender's guilt.⁸³ In this same line of thoughts, the principle of proportionality will play an important role in this context. Following the CAS jurisprudence, we can underline three benchmarks that are common to most legal system, and that need to be kept in mind when imposing a sanction: a) the gravity of the illegal act, b) the power to dissuade the offender from repeating the same illegality in the future, c) the importance of the rule of law that is being protected.⁸⁴

Equally, aggravating circumstances may apply and call for a heavier sanction to be imposed. The FDC, in its art. 40 of the FDC, expressly stipulates for an increase of the sanction in case of repeated infringement.⁸⁵ Equally, in case a person commits several infringements to be sanctioned simultaneously, Article 41 of the FDC provides for an increase up to fifty per cent of the maximum sanction specified for that offence.

⁸⁰ Article 96 of the FDC.

⁸¹ Article 99 para. 1 of the FDC. However, Article 99 para. 2 of the FDC recalls the principle that in anti-doping rule violation, the burden of proof lies with the suspect.

⁸² Cf. Article 39 para. 1 of the FDC.

⁸³ Cf. Article 39 para. 4 of the FDC.

⁸⁴ Cf. among others CAS 2014/A/3793 Fútbol Club Barcelona v. Fédération Internationale de Football Association (FIFA).

⁸⁵ In this respect, it is interesting to bear in mind that it is not necessary for an infringement to be repeated in the context of a competition of same level.

In this context, it is worth noting the possibility for the judicial body to partially suspend the implementation of sanctions. However, as it can be observed from the contents of Article 33 of the FDC, not all the disciplinary measures are concerned by this possibility. Moreover, as per the current wording of this wording, a total suspension of the disciplinary measure is not possible and in any case a suspension may only enter into consideration in case the sanction to be imposed does not exceed a certain threshold.

Finally, as far as sanction and appeal are concerned, the CAS recognised the wide margin of discretion of FIFA disciplinary bodies in the determination of the sanction as well as the fact that the measure of the sanction imposed may only be reviewed when a sanction is evidently and grossly disproportionate to the offence.⁸⁶

D. Rules of conduct

In this section, the author decided to focus and present out of the vast catalogue of violations of the FIFA regulations only the most significant infringements.

1. Introduction

Nulla poena sine lege...

The principle of legality is a core value, a human right but also a fundamental defence in criminal law prosecution according to which no crime or punishment can exist without a legal ground.

In national legal systems, the concept of *nulla poena sine lege* is an emanation of the principle of legality. It is of predominant relevance in the field of criminal law and features three different specific contents. First, in the form of *nulla poena sine lege scripta*, this principle requires a formal legal act as basis for criminal penalties, thereby excluding, in particular, customary law as such basis.⁸⁷ Second, in the form of *nulla poena sine lege stricta*, this principle prohibits extensive and excessive interpretations of criminal law provisions and includes, in particular, a prohibition of filling gaps in criminal laws by way of analogy.⁸⁸ And finally, criminal law provisions must be sufficiently specific in order to be predictable and comparable (*nulla poena sine lege certa*).⁸⁹

Having recalled the above, it is worth mentioning that there is a general consensus that certain contents of the *nulla poena sine lege* principle are also applicable to disciplinary provisions and proceedings in the context of sports

⁸⁶ CAS 2014/A/3562 Josip Simunic v. FIFA.

⁸⁷ Cf. e.g. M. A. Niggli and H. Wiprächtiger (eds.), *Strafrecht I*, Basler Kommentar, 3rd ed., 2013, no. 24 on Article 1.

⁸⁸ Cf. *Ibidem*.

⁸⁹ Cf. *Ibidem*; see also Swiss Federal Tribunal decisions 138 IV 13, consid. 4.1; 119 IV 242, consid. 1c; 117 Ia 472, consid. 3e.

organisations. CAS has adopted certain contents of this principle with regard to disciplinary proceedings and regulations of sports organisations by establishing a so-called “predictability test” with respect to regulations that may affect the careers of athletes.⁹⁰

CAS took the approach that, in order for disciplinary provisions and proceedings of sports organisations to be in line with the principle of *nulla poena sine lege*, the individuals subjected to such provisions and proceedings must know or must be able to know “that what they were doing was wrong”.⁹¹ The certain vagueness inherent to this approach is due to the fact that – as the CAS obviously correctly presupposes – the principle of *nulla poena sine lege* cannot, in all of its specific forms, be applied within the framework of private sports organisations in an identical manner as in the context of criminal provisions and proceedings of states.

Yet, relevant CAS case-law appears to indicate that the CAS considers disciplinary provisions and proceedings of sports organisations to be in line with the principle of *nulla poena sine lege* if:

1. The relevant regulations and provisions emanate from duly authorised bodies;
2. The relevant regulations and provisions have been adopted in constitutionally proper manners;
3. The relevant regulations and provisions are not the product of an obscure process of accretion;
4. The relevant regulations and provisions are not mutually qualifying or contradictory;
5. The relevant regulations and provisions are not able to be understood only on the basis of the *de facto* practice over the course of many years of a small group of insiders;
6. There is a clear connection between the incriminated behaviour and the sanction imposed.⁹²

With regard to the rules of conduct deriving from the FDC, it should be pointed out that the FDC has been adopted by the at the time FIFA Executive Committee (cf. Article 147 of the FDC), which was duly authorised to do so by the FIFA members in the context of the FIFA Congress.⁹³ Therefore, the first three conditions necessary for the relevant provisions of the FDC to be considered as in line with the principle of *nulla poena sine lege* are met.

As to the other conditions for the FDC to be considered in line with the principle of *nulla poena sine lege*, they do not appear to pose any concern. It is therefore safe to say that there should not be any issue in respect of the aforementioned principle while applying the FDC.

⁹⁰ Cf. as to the leading case in this respect CAS 94/129 USA Shooting & Q. vs. International Shooting Union, para. 34.

⁹¹ CAS 96/149 A.C. v. FINA, referenced in CAS 2004/A/725 USOC v. IOC & IAAF, para. 22.

⁹² Cf. CAS 94/129 USA Shooting & Q. vs. International Shooting Union, para. 34; CAS 2007/A/1363 TTF Liebherr Ochsenhausen v. ETTU, para. 16.

⁹³ Today it is the prerogative of the Council in line with Article 53 para. 4 of the FIFA Statutes.

The same reasoning applies to other FIFA regulations, which would provide for a competence of the FIFA Disciplinary Committee to sanction possible breaches.

Having stated that the principle of legality and its emanation *nulla poena sine lege* is respected as far as FIFA disciplinary proceedings are concerned, it is worth pointing out that Swiss association laws and principles grant private associations even considerably wider margins with regard to the requirements they have to comply with when providing for disciplinary measures and sanctions in their regulations. As an association pursuant to articles 60 et seq. of the Swiss Civil Code, FIFA is subject to the laws and principles governing private associations in Switzerland. According to the relevant principles, it is not necessary to specify a sanction precisely in the association's regulations; the association is not even required to set forth a general frame or a maximum limit of sanctions.⁹⁴ In any case, the provisions of the FDC go way beyond the minimum requirements resulting from the aforementioned principles of Swiss association law.

2. *Failure to respect decisions*

Disputes between *inter alia* associations, clubs, players, coaches, agents regarding the payment of salaries or commissions or payments related to transfers are a daily occurrence in international football. If a party does not comply with such a decision taken by a body, committee or instance of FIFA, the FIFA Disciplinary Committee may impose sanctions for failure to respect a decision.

The FIFA Statutes, in its Article 5 para. 2, enabled FIFA to provide the necessary institutional means to resolve any dispute between different stakeholders. Although it has not been expressly mentioned in that provision, the commonly called enforcement proceedings forms an integral part of the dispute resolution system that shall be implemented.

Therefore, an efficient enforcement system is absolutely necessary for the viability of any alternative dispute resolution system implemented within the legal framework of a sports federation, in particular when recourse to ordinary courts of law is prohibited thus forcing football stakeholders to submit their disputes to sports bodies. Although enforcement comes at the end of the dispute's chain, it plays a key role in the success and recognition of the system as a whole. To be efficient, a valuable dispute resolution system shall foresee a sanctioning procedure that will force debtors to comply with the decisions taken.

Failure to respect decisions contained in art. 64 of the FDC constitutes an infringement of the FIFA legal framework and is, as such subject to sanction.

It is worth highlighting the fact that the enforcement system is governed by one single sophisticated provision, which current wording is the result of an

⁹⁴ Cf. H.M. RIEMER, *Berner Kommentar zum Schweizerischen Privatrecht*, Schweizerisches Zivilgesetzbuch, Das Personenrecht, Die Vereine, 3rd ed., 1990, no. 230 on Article 70 (including further references).

evolution of the jurisprudence and responds to the constantly moving needs of football and the FIFA regulations.⁹⁵

In view of the power conferred to the FIFA Disciplinary Committee to pronounce the sanctions stipulated in the FIFA Statutes,⁹⁶ and in light of the express reference in Article 64, the FIFA Disciplinary Committee is competent to ensure the respect and implementation of FIFA decisions.⁹⁷

The decision to be enforced can be a financial or a non-financial nature, which does not present in practice any differentiation as to the proceedings to follow. A financial decision is an order made by the relevant decision-making body of FIFA or CAS to anyone to pay a sum of money (outstanding salary, compensation for breach of contract, amount due in relation to solidarity contribution or training compensation, transfer compensation, sell-on clause etc.) to another person, i.e. a player, a coach, a club or an association etc. A non-financial decision is for instance the order to disclose or provide an information or document to FIFA or the order to serve a match suspension or a ban.

Although disciplinary proceedings are, as a general rule, prosecuted *ex officio* and involve one party only, i.e. the accused, disciplinary proceedings opened due to failure to respect financial decisions are initiated exclusively upon request of the interested party – the creditor party –. Thus, in the absence of a clear and expressed request for intervention of the FIFA Disciplinary Committee, disciplinary proceedings will not start. In this respect, it is worthwhile underlining the practice of the Dispute Resolution Chamber (DRC) and the Players' Status Committee (PSC), and their respective DRC judge and Single Judge, whose decisions will always bear an enforcement clause recalling that should the debtor party fail to comply with the decision within a given deadline, the creditor will have the right and the possibility to ask for the intervention of the FIFA Disciplinary Committee to ensure compliance with the decision at stake. The creditor also has obligations prior to being in a position to request the opening of proceedings, as it will have the obligation to send its banking details to the counter-party, so that the latter can effectively comply with the order to pay.

The first element to take into account for the enforcement authority is that the decision to be enforced shall be final and binding and passed by FIFA or by CAS in a subsequent appeal process.

Following this line of thought, and although some parties to the proceedings invoke arguments as to the merits of the case, the FIFA Disciplinary Committee does not act as an appeal instance of the decisions of other FIFA bodies. This means that the Disciplinary Committee will not review the substance of the decision

⁹⁵ CAS recalled, in application of a previous edition of the FDC, that the enforcement provisions could not be said to be “procedural” in the context of the FIFA Disciplinary Code – CAS 2007/A/1355.

⁹⁶ Cf. Article 53 of the FIFA Statutes.

⁹⁷ See Amendment of Article 78 FDC granting competence to members of the FIFA Disciplinary Committee to act as single judge and to take decision on the basis of Article 64 FDC. FIFA Circular No 1583 dated 26 May 2017.

to be enforced.⁹⁸ This principle has been recognised and applied by CAS, acting as appeal body against decisions of the FIFA Disciplinary Committee in its long-lasting jurisprudence.⁹⁹ As a result, only submissions relating to the sanction(s) imposed by the Disciplinary Committee, such as its legal basis, its quantum or proportionality can be heard. Any request by the Appellant to have its debt towards the creditor club cancelled, postponed, rescheduled, or divided in several deferred portions, is precluded by the *res judicata* implied in the decision subject of the enforcement procedure. Such an issue cannot be re-heard at the stage of enforcement of the obligation to pay.¹⁰⁰

In light of the foregoing, the Disciplinary Committee has as a sole task to analyse if the debtor complied with the final and binding decision rendered by the body, i.e. to verify whether the debt identified in the relevant decision still exists.

In sum, the disciplinary proceedings for failure to respect decisions is based on three conditions: a decision passed by a body, committee or instance of FIFA or CAS (passed in a subsequent appeal procedure), a request from the creditor to start such proceedings and lastly the decision has to be final and binding. Should the Disciplinary Committee reach the conclusion that the final and binding decision has not been complied with accordingly, sanctions will be imposed.

A literal and systematic interpretation of Article 64 of the FDC allows one to see that the system of disciplinary measures is implemented on a three-layers-scales.

Any failure to respect a decision as described above will lead to the imposition of a fine.¹⁰¹ Although it is not expressly stated in art. 64 of the FDC, the fine shall be proportionate to the amount owed or the infringement committed.¹⁰²

The party in breach will be given an additional deadline to comply with the initial decision to be enforced.¹⁰³ Should the debtor party still fail to comply with the decision at stake, despite the additional time granted,¹⁰⁴ a second sanction will be implemented upon request of the creditor party: for clubs, a points deduction¹⁰⁵ and for natural persons, a ban on taking part in any football-related

⁹⁸ The FIFA Disciplinary Committee is to be regarded as acting along the lines of any „enforcement authority” and Article 64 of the FDC to be compared to enforcement proceedings under Swiss law.

⁹⁹ In May 2005, a new opus of FDC entered into force bringing a significant modification in order to streamline the legal procedure and ensure the rapid enforcement of decisions. Thus, appeals against decision of the FIFA Disciplinary Committee in this context were to be submitted directly to the CAS and not anymore to the FIFA Appeal Committee (FIFA Circular No 969 of 19 May 2005).

¹⁰⁰ Cf. CAS 2005/A/957 and other subsequent CAS awards uniformly confirming this principle.

¹⁰¹ Article 64 para. 1 lit. a) of the FDC in connection with Article 15 para. 2 of the FDC.

¹⁰² In this context, Article 64 of the FDC, edition 2009, mentioned that, in any case, the minimum fine was of CHF 5,000. Edition 2011 of the FDC deleted this amount and consequently refers to the general rule regarding the fine. This was a welcomed amendment, as it gives the FIFA Disciplinary Committee more flexibility to impose a proportionate fine.

¹⁰³ Article 64 para. 1 lit. b) of the FDC,

¹⁰⁴ The FIFA Disciplinary Committee usually grants an additional deadline of 30 days, unless the outstanding debt is of a high amount.

¹⁰⁵ Article 64 para. 1 lit. c) of the FDC.

activity.¹⁰⁶ This type of sanctions is an inherent and exclusive prerogative of the sports bodies, which makes the system remarkably efficient.

The FDC explicitly underlines the need for point deductions to be proportionate to the amount owed.¹⁰⁷ It goes without saying and is a well-established principle that the FIFA Disciplinary Committee shall decide and impose sanctions – in any kind of disciplinary proceedings – taking into consideration the principle of proportionality.

More significantly regarding point deductions, it is expressly stipulated that FIFA shall request the relevant association to implement the sanction. Indeed, for enforcement purposes, FIFA must rely on its members, the national football associations, which have an obligation to assist FIFA in implementing these decisions.¹⁰⁸ FIFA's enforcement powers in these cases are limited to sanctioning the national federations that do not provide this assistance.¹⁰⁹

As far as clubs are concerned, point deductions are not the only possible sanction. A relegation to a lower division can be ordered. In practice, relegation will be imposed should the club still not comply with the decision to be enforced, after points have been deducted and after a subsequent request by the creditor party to proceed with the matter. This sanction intervenes after the imposition of a fine, a final deadline has been granted and a deduction of points, all in vain. Therefore, a club will, as a general rule, comply with a decision rather than being imposed a points deduction or being relegated disciplinarily. This type of sanction (relegation) however demonstrates that the enforcement system implemented at FIFA has been given all the tools to reach its purpose, being the execution of a final and binding decision passed by its bodies.

Since associations can also be debtors and condemned to pay a sum of money, it was decided to insert an explicit provision applicable to associations in the latest edition of the FDC.¹¹⁰ However, a system relatively different as the one implemented for the debtor clubs was put in place and is expressed under lit. d) of Article 64. Thus, in case an association fails to pay its debt towards a creditor despite the final deadline granted (Article 64 lit. b), it will be warned that further and harsher sanction, such as an expulsion from a FIFA competition may be

¹⁰⁶ Cf. Article 64 para. 4 of the FDC and Article 22 of the FDC.

¹⁰⁷ Article 64 para. 3 of the FDC.

¹⁰⁸ Cf. Article 64 para. 2 of the FDC and Article 13 para. 1 lit. a) and d) of the FIFA Statutes;

¹⁰⁹ Such obligation lying on the member association has been part of the provision since its introduction in 2002. Cf. also CAS 2005/A/899 which expressly recalls that principle. Furthermore, in this context, it is interesting to refer to FIFA Circular No 981 of 4 August 2005, which has as a sole purpose to clarify and ensure the application of the procedure of points deduction once the request has been made to the association. Indeed, it has been remarked that clubs managed to escape point deductions by clearing their debt before the concrete implementation of the points deduction by the association concerned, as the latter did not act with sufficient celerity. Thus, in order to avoid arbitrary result, the FIFA Disciplinary Committee decided that, once the pertinent request has been made, the deduction of points has to be implemented immediately by the member association concerned.

¹¹⁰ Article 64 para. 1 lit d) of the FDC; cf. also FIFA Circular No. 1270 of 21 July 2011.

imposed. In practice, this means that the matter would be submitted twice to the FIFA Disciplinary Committee before an expulsion may be pronounced.¹¹¹

As it has already been mentioned, should the debtor party be a natural person, a ban on taking part in any football-related activity for a certain period limited in time – which goes further than the mere fact of playing football and embeds any and all football-related activity, be it at sports or administrative level, nationally and internationally – may be imposed should failure to respect the decision persist after the final deadline has elapsed.¹¹² Once again, this sanction could not have been imposed by a non-sports body.

In view of the illustration of the sanctions that are at the disposal of the FIFA Disciplinary Committee in such a context, it is essential to underline that the sanctions pursue a preventive as well as a reprehensive effect in order to ensure that the final and binding decisions are executed and complied with by the concerned party.¹¹³ The sanctioning system so implemented met with great recognition and back-up from both the CAS and the Swiss Federal Court as to the principle as well as to the application of art. 64 of the FDC in concrete cases.

In conclusion, the system proved itself extremely powerful, which is confirmed by a very high percentage of compliance with FIFA decisions.

3. *Match-related incidents*

We are now entering into the core of football, what makes the fans love this sport so much and what make the sports journalists write and speculate from Monday to Sunday.

The types of incidents and misconduct that can occur before, during or after the match, in or in the immediate surroundings of the stadium can be caused by players, officials or supporters.

The structure of the Code is in this context quite systematic and divided in several sections within the *Substantive Law* Title of the FDC. The first provisions would focus more on the conduct of individuals while the last section (Section 9) will focus on the *Responsibilities of clubs and associations*.¹¹⁴

¹¹¹ See www.fifa.com/worldcup/news/y=2015/m=3/news=zimbabwe-expelled-from-the-preliminary-competition-of-the-2018-fifa-wo-2557911.html (last visited on 3 March 2017).

¹¹² See www.fifa.com/governance/news/y=2016/m=3/news=emmanuel-eboue-to-serve-ban-2773541.html (last visited on 3 March 2017).

¹¹³ On 29 March 2012, the Swiss Federal Court annulled a decision of CAS confirming a decision of the Disciplinary Committee in the so-called Matuzalem case. FIFA Disciplinary Committee decided – which was confirmed by the CAS – that a non-compliance by player to pay the amount due to the creditor would lead to a ban on taking part in any football-related activity until the amount is paid in full. Whereas the Swiss Federal Court did not question the principle of the sanction to be imposed on natural person, it considers in this specific case that the threat of an unlimited ban would constitute an obvious and grave infringement in the player's privacy rights (public policy), jeopardising the foundations of his economic existence, unjustified by the interests of FIFA.

¹¹⁴ Whereas most provisions would concern infringements surrounding a match (in a broad sense), art. 64 – unique article of Section 8 – focuses on the non-respect of decisions.

Nevertheless, the FDC will apply in the context of matches and competitions organised by FIFA as per art. 2 of the FDC.

Having introduced the above, the author wishes to underline the proactive work on transparency made by the Disciplinary Committee. Indeed, since the beginning of the year 2016, the Committee publishes in the form of a chart all decisions passed by the first instance in the context of the preliminary competition of the 2018 FIFA World Cup Russia™ together with the type of infringement at stake and the provisions breached. This concerns associations as well as natural persons. This is not all, as a thorough media release underlining the most notable decisions always accompanies the (update) publication of said chapter.¹¹⁵

3.1 *Misconduct caused by players*

It makes sense to start with the main actors in football and what they can be sanctioned for during a match. The Code – rightly – differentiates between misconduct against opponents or persons other than match officials (Article 48) and misconduct against match officials (Article 49), who represent the authority on the pitch. One can expect from a (professional) football player, a role model to many, to show and demonstrate a total respect towards the referees and their assistants. That is why, an infringement towards a match officials, which would be sanctioned with a red card, would incur a heavier penalty, starting with a minimum four matches disciplinary measures for an unsporting conduct against a match official.

As far as misconduct against persons other than match officials, Article 48 para. 1 lit. a) of the FDC – regulating the disciplinary measure following a red card for denying the opposing team a clear goal-scoring opportunity (DOGSO) – leads to an automatic one-match suspension without the need of opening any disciplinary proceedings. However, it is interesting (and necessary) to recall that based on the amendments of the Laws of the Game some DOGSO offences in the penalty area are now punished with a yellow card only. A red card would remain in case of a handball, holding, pulling, pushing, not attempting or no possibility to play the ball.¹¹⁶

Having said that, all other misdeeds committed by a player leading to a red card will provoke an automatic one match suspension,¹¹⁷ as well as the opening of disciplinary proceedings, in which the player and/or his association or club will have the opportunity to state their case and present evidence, such as a written position, a video, witness statements etc. The Committee will then base its decision on the match officials' reports, the video of the match (if available), the

¹¹⁵ Cf. the latest update at the time of writing (3 March 2017): www.fifa.com/governance/news/y=2016/m=12/news=several-member-associations-sanctioned-for-incidents-during-fifa-world-2861299.html.

¹¹⁶ http://static-3eb8.kxcdn.com/documents/80/Presentation%20Law%20Changes_v0.3.pdf.

¹¹⁷ Including the automatic suspension (...) and cf. Article 18 para. 4 of the FDC.

defendant's statement, when given, bearing in mind the minimum threshold provided for in the applicable provision infringed. Each case is analysed and decided by the FIFA Disciplinary Committee based on its own specificities and respecting the principle of proportionality and congruence.

Both Article 48 and Article 49 of the FDC provide in addition to the automatic match suspension as a primary disciplinary measure for the imposition of a monetary fine (see para. 2 of both provisions).

As it can be seen from the disciplinary overview chart published on fifa.com, disciplinary measures may also be imposed on players even in the absence of a red card. A worthwhile example concerns comments made by players in a press conference, to the match officials in the tunnel after a match has ended¹¹⁸ or more contemporaneous comments made on social media.

In this context, based on Article 57 of the FDC, anyone¹¹⁹ who *insults* someone in any way (offensive gestures or words) or *violates the principles of fair play* or whose *behaviour is unsporting in any other way* may be subject to sanction. A literal interpretation allows us to conclude that the legislator kept a broad wording and terminology purposefully to encompass as many situations as possible. This is sound and necessary looking *inter alia* at the existence and use of the social media and new technologies. Thus, post-match interview comments related on the referee or an unsporting conduct towards match official after a red card was given would fall under the scope of this provision.¹²⁰ As a normal consequence of this broad wording, this provision does not provide for a minimum or a maximum disciplinary measure, reason for which the judicial body may impose a sanction that can go from a warning, a fine, a match suspension until a ban from taking part in football/related activity.

Players – or any other natural person – may also be found guilty of act of discrimination. The fight against discrimination and racism has been a fundamental pillar for FIFA for several years, which principle is enshrined in art. 4 of the FIFA Statutes. As far as action to be taken at a disciplinary level, Article 58 of the FDC is the primary relevant provision, which provides for a minimum five-match suspension, the imposition of a stadium ban as well as a fine no lower than CHF 20,000. The legislator therefore demonstrates a zero-tolerance policy towards acts of discrimination. A notable case involving a violation of Article 58 of the FDC concerns the case of the Croatian player Josip Simunic, who was sanctioned for a discriminatory conduct at the completion of the preliminary competition of the 2014 FIFA World Cup Brazil™. The factual circumstances aspects, which

¹¹⁸ Based on Law 5.3 of the Laws of the Game, a referee has the authority to take disciplinary action from entering the field of play for the pre-match inspection until leaving the field of play after the match ends.

¹¹⁹ Most probably intended as a natural person, in view of the infringement at stake.

¹²⁰ See www.fifa.com/governance/news/y=2016/m=12/news=several-member-associations-sanctioned-for-incidents-during-fifa-world-2861299.html (last visited 3 March 2017).

were serious enough to justify *inter alia* a ten-match suspension as confirmed by the CAS.¹²¹

Furthermore, a presentation of this chapter would not be complete without a reference to two components of the specific jurisdiction of the Disciplinary Committee, which are of utmost importance for the preservation of a certain equality and balance: the sanctioning of serious infringements which have escaped the match officials' attention (Article 77 lit. a)) and the rectifying of obvious errors in the referee's disciplinary decisions (Article 77 lit. b)).

In what concerns both topics, it is relevant to bear in mind that the Disciplinary Committee does not want to act as a fifth referee on the field of play and has always acted with care, diligence and cautiousness before intervening.

However, match officials can miss incidents and fail to take a disciplinary action when necessary. This can happen for instance where the eyes of the officials are turned towards the ball, whereas a player in his back simultaneously decides to punch an opponent. Therefore, Article 77 lit. a) of the FDC would allow the FIFA Disciplinary Committee to take action only if two cumulative conditions are fulfilled. First, the Disciplinary committee must determine whether the incident was not seen by any of the match officials – this means that all four match officials shall be asked to confirm whether they saw the infringement or not. The Committee will also analyse the video of the match to evaluate the behaviour of the officials, while the incident in question takes place. In case it is without a doubt and confirmed by all officials that the incident was not seen, can the Committee analyse the second condition: the infringement shall be one of serious gravity. This condition presents a more subjective analysis, in which, in addition to watching the video footage, the opinion of a referee or referee assessor could be of value for the judicial body. They could be asked whether *the infringement, if seen by a referee during the course of the match, would have led to a red card*. Should these two conditions be fulfilled, there will be enough elements justifying the opening of disciplinary proceedings for a possible violation of one of the provisions of the FDC.¹²² Let us recall that in this situation, there will be – obviously – no match report mentioning the incident which would bear a presumption of veracity (cf. Article 97 of the FDC). Having a look at past cases, one can observe from the published chart that the player, Eduardo Vargas, has been sanctioned for a violation of Article 54 of the FDC following application of Article 77 lit. a).¹²³ A leading case in this context concerns the case of the Uruguayan player, Luis Suarez, who was sanctioned for having bitten an opponent during the final competition of the

¹²¹ See www.fifa.com/governance/news/y=2014/m=5/news=cas-upholds-fifa-sanctions-for-discrimination-in-simunic-case-2337586.html and www.tas-cas.org/fileadmin/user_upload/Media20Release20EN203562.pdf (last visited 3 March 2017).

¹²² Cf. para. 3 of both Article 48 and Article 49 of the FDC, which provide for the right of the Committee to sanction an infringement based on Article 77 lit. a).

¹²³ www.fifa.com/governance/news/y=2016/m=12/news=several-member-associations-sanctioned-for-incidents-during-fifa-world-2861299.html: obscene gestures to the stands (incident not mentioned in official match reports).

2014 FIFA World Cup Brazil™. In view of the high interest and urgency of the matter to be decided in a timely manner, the Committee issued a media release confirming the opening of disciplinary proceedings and mentioning the (rather short) deadline for the player and the association to take position.¹²⁴ Upon appeal against the FIFA Appeal Committee decision, which confirmed the first instance decision.¹²⁵ CAS considered that *the sanctions imposed on the player were generally proportionate to the offence committed. It has however considered that the stadium ban and the ban from “any football-related activity” were excessive given that such measures are not appropriate to sanction the offence committed by the player and would still have an impact on his activity after the end of the suspension.*¹²⁶ All other sanctions imposed were confirmed.¹²⁷

Still in the context of specific jurisdiction of the FIFA Disciplinary Committee, the judicial body was faced during the same competition with a sensitive and difficult matter. Indeed, in the course of the quarter final of the 2014 FIFA World Cup Brazil™, the iconic player Neymar got injured following a very hard contact with an opponent while trying to play the ball. Whereas the referee was looking at the action, he decided not whistle any foul nor give any yellow or red card. In other words, the referee decided not to take any disciplinary action. Upon request of the CBF (the Brazilian Football Federation), the FIFA Disciplinary Committee had to analyse whether it could consider the matter and open disciplinary proceedings against the Colombian player based on the rules on the specific jurisdiction. Upon review of the incident, the Chairman of the FIFA Disciplinary Committee considered that in this specific case, FIFA Disciplinary Committee could take no retrospective action, since the incident did not escape the match officials’ attention, which is the first of two cumulative and necessary conditions for Article 77 lit. a) of the FDC to be applicable. In what concerns Article 77 lit. b) of the FDC, it could not be applied in this case because neither a yellow card nor a red card was shown by the referee to the player in question.¹²⁸

Indeed, Article 77 b) of the FDC stipulates that the Disciplinary Committee may rectify obvious errors in the referee’s disciplinary decisions, which occur, as per the current practice of the Committee, in the case of mistaken identity, i.e when a referee shows a yellow or red card to the wrong player. In other words, the FIFA Disciplinary Committee wishes to keep the application of this provision

¹²⁴ www.fifa.com/worldcup/news/y=2014/m=6/news=disciplinary-proceedings-opened-against-luis-suarez-2384766.html (last visited 3 March 2017).

¹²⁵ www.fifa.com/worldcup/news/y=2014/m=7/news=appeals-of-suarez-and-the-uruguyan-fa-rejected-sanctions-upheld-2403024.html and www.fifa.com/worldcup/news/y=2014/m=6/news=luis-suarez-suspended-for-nine-matches-and-banned-for-four-months-from-2386354.html (last visited 3 March 2017).

¹²⁶ www.tas-cas.org/fileadmin/user_upload/Media20Release20366520_English_201420082014.pdf (last visited 3 March 2017).

¹²⁷ For a complete overview of the case, see www.tas-cas.org/fileadmin/user_upload/award_3665-3666-3667_FINAL_internet.pdf (last visited 3 March 2017).

¹²⁸ See www.fifa.com/worldcup/news/y=2014/m=7/news=disciplinary-update-on-matters-relating-to-brazil-colombia-match-2401371.html (last visited 3 February 2017).

to a very limited number of situations to protect the authority of the referee on the pitch.

In addition, players may be sanctioned if they take part in a brawl (Article 50), incites hatred and violence (Article 53), provokes the general public (Article 54) or violates provisions deriving from other regulations, such as the FIFA Equipment Regulations or the Laws of the Game.

3.2 *Misconduct caused by officials (coach, assistant coach, physical trainer, etc.)*

The foregoing considerations are for the major extent valid, should an official be the perpetrator of the misconduct, with the slight difference that an official may be sent off without receiving a red card formally. Equally, looking at the jurisprudence of the Committee and the relatively heavy sanctions imposed, it can be observed that the judicial body expects an irreproachable attitude of the team officials at all times, in particular towards the match officials.

Furthermore, and on a side note, as this may present an issue for sanctioning bodies, CAS highlighted that a sanction imposed on an official (in that specific context, a head coach of a representative team) should be served by the offender for its whole length/extent irrespective of any change of the team. The FDC implicitly establishes a principle that a sanction imposed on «natural person» shall be served by him/her and that the basis such imposition is the responsibility of the offender.

3.3 *Improper conduct of spectators and Organisation of matches*

*The principle of strict liability for supporters' misbehaviour is a fundamental facet of the current football regulatory framework and one of the few legal tools that football authorities have at their disposal to deter hooliganism and, more in general, supporters' improper conduct.*¹²⁹

This sentence originating from a CAS award involving UEFA says it all about the importance of the rule in place to sanction misconduct of spectators.

Therefore, the FDC – as well as most, if not all, the disciplinary codes of confederations and associations – provides for the principle of strict liability of the associations or clubs for the behaviour of its supporters. In other words, an association or club will be held responsible for the improper conduct among spectators, *regardless of the question of culpable conduct or culpable oversight*, i.e. irrespective of a fault committed by the association.

This principle is enshrined in Article 67 of the FDC, which provides for the responsibility of the home association or club for the behaviour of all (and not only for its own group of) spectators present in the stadium. CAS was adamant in

¹²⁹ CAS 2015/A/3875 Football Association of Serbia (FAS) v. Union des Associations Europeennes de Football (UEFA).

confirming this principle by stating that “Article 67 par. 1 FDC contains a strict liability rule according to which the overall responsibility of the hosting federation exists even if the events which constitute a violation of the FDC were caused by the spectators who are considered spectators of the visiting association, and even if for the same events the visiting association may be punished as well under Article 67 para. 2 FDC.”¹³⁰

The purpose of this provision is for associations or clubs to assume strict liability for their supporters’ actions, and therefore has a preventive and deterrent effect. Its objective is not to punish the clubs as such, which may have done nothing wrong, but to ensure that the club assumes responsibility for the offences committed by its supporters.¹³¹ It was held that strict liability is not *per se* unlawful as such and is justified in the context of the need to fight violence in football and safeguarding all persons present in stadiums with law and order maintained therein. Thus, the underlying idea is to influence the behaviour of the fans via the entity which is supported by them in order to ensure that violations of the rules in the context of the participation of this entity in further competitions are excluded. Such type of measures do not require that the addressee of the measure is at fault and the principle of strict liability does not breach Swiss public policy¹³² or the principle *nulla poena sine culpa*.

Following the foregoing consideration and based on the clear text of Article 67 para. 2 of the FDC, the visiting association or club will be held liable of the misconduct caused by its own group spectator.

Para. 3 of Article 67 provides for a non-exhaustive list of improper conduct of spectators, which includes violence, letting off incendiary devices, missiles, political or insulting slogans, insults in whatever form or pitch invasion. The FIFA Stadium Safety and Security Regulations are also of importance in the context of a preliminary competition, as those regulations contain the minimum safety and security measures that an event organiser and stadium authorities must take to ensure safety, security and order at the stadium before, during and after the match.¹³³ In particular, the author wishes to refer to Article 32, which among others recall the principle that the field of play shall be protected from the intrusion of an unauthorised person. In turn, Article 60 of the FIFA Stadium Safety and Security Regulations bear a certain role as it stipulates that the promotion or announcement of political or religious messages, actions is strictly prohibited. Para. 2 of Article 60 goes even further as it requires that the event organiser guarantees that the supporters do not act in a provocative manner, which includes racist behaviour,

¹³⁰ CAS 2013/A/3090 Bulgarian Football Union (BFU) v. Fédération Internationale de Football Association (FIFA).

Cf. also www.fifa.com/governance/news/y=2016/m=12/news=several-member-associations-sanctioned-for-incidents-during-fifa-world-2861299.html.

¹³¹ CAS 2013/A/3139 Fenerbahçe SK v. Union des Associations Européennes de Football (UEFA) equally applicable to FIFA proceedings.

¹³² CAS 2013/A/3094 Hungarian Football Federation v. FIFA.

¹³³ Cf. Preamble of the FIFA Stadium Safety Security Regulations.

banners or flags bearing such a provocative or aggressive slogan. Finally, in this context, it is worth mentioning Article 2 of Annexe C of the aforementioned regulation, as this provision gives a list of the prohibited items in a stadium. Particular attention should be drawn on lit. c) as *items of a racist, xenophobic, charitable or ideological nature or items that could detract from the sporting focus* are prohibited. Thus, in light of the foregoing analysis, one can conclude that the intention of the legislator is to ensure that the stadium remains a-political, a-religious, and does not become the forum for the propagation of any message other than sport.¹³⁴

The basis for such proceedings will be in the first place the reports of the match commissioner or the FIFA Security Officer, which bears a presumption of veracity (cf. Article 98 of the FDC). When available and conclusive, video footage will also play an important role in the proceedings, as they may bring valuable and self-explanatory information. As mentioned, the party to the proceedings will have the opportunity to demonstrate the inaccuracy of the contents of the reports (cf. Article 98 para. 2 of the FDC), provide for additional elements that could not have been in possession of the match officials as well as any element any element in fact or in law it deems relevant.

Nevertheless, as already explained, the responsibility of the host association is objective and does not require any culpable conduct or fault. It will be consequently quite of a challenge for an association or club to depart from its responsibility in this context. As a matter of completeness, CAS, while acknowledging the wide margin of discretion of the disciplinary bodies, also underlined that in very specific circumstances and depending on the action undertaken to eliminate the improper conduct, it is possible not to sanction an association.¹³⁵

In the context of improper conduct of spectators but more specifically in respect of discriminatory and racist incidents committed by spectators, following the recommendation of the FIFA Task Force against Racism and Discrimination, FIFA reinforced its fight against discrimination in football with the introduction of a new anti-discrimination monitoring system for the 2018 FIFA World Cup Russia™ qualifiers. The system includes the deployment of Anti-Discrimination Match Observers to monitor and report issues of discrimination at the games.¹³⁶ This

¹³⁴ It is worth referring to a recent media release issued by FIFA (www.fifa.com/governance/news/y=2016/m=12/news=several-member-associations-sanctioned-for-incidents-during-fifa-world-2861299.html) in the connection with not-yet final decisions involving the display of the *poppy*. The Chairman of the FIFA Disciplinary Committee was quoted saying: “*It is not our decision to judge or question specific commemorations as we fully respect the significance of such moments in the respective countries, each one of them with its own history and background. However, keeping in mind that the rules need to be applied in a neutral and fair manner across FIFA’s 211 member associations, the display, among others, of any political or religious symbol is strictly prohibited. In the stadium and on the pitch, there is only room for sport, nothing else*”.

¹³⁵ CAS 2013/A/3090 Bulgarian Football Union (BFU) v. Fédération Internationale de Football Association (FIFA).

¹³⁶ See www.fifa.com/sustainability/news/y=2015/m=5/news=discrimination-monitoring-to-be-introduced-at-2018-fifa-world-cuptm-qu-2604235.html (last visited 3 March 2017).

means that in addition of the referees' and match commissioners' reports, the FIFA Disciplinary Committee secretariat would be in receipt of a third type of report specifically on discrimination and racism made by experts on the question. However, contrary to the aforementioned reports, the reports filled by the anti-discrimination observers do not bear any kind of presumption of veracity and constitute another evidence submitted to the free discretion of the Committee members. It is thus important that these reports are accompanied by proof of the occurrence of the incidents, such as video footage. In line with any other disciplinary proceedings, the file received from the anti-discrimination observer is analysed and in case it presents *prima facie* sufficient evidence to open proceedings, it will be shared with the accused party for it to take position. The system in place led to several sanctions in the context of the preliminary competition of 2018 FIFA World Cup Russia™ imposed by the Disciplinary Committee, which are comprised between a warning, a fine in the majority of cases until a ban on playing in a certain stadium (imposed *in casu* in situations of recurrence).¹³⁷ One final note on that topic, the author wishes to highlight that cases of discrimination occurred in international friendly matches led the FIFA Disciplinary Committee to impose sanctions to be served in the context of the qualifiers of the 2018 FIFA World Cup Russia™.¹³⁸

Having analysed the application of the objective responsibility of an association or club in case of improper conduct of spectators, it is time to refer to the first provision of this section governing the organisation of the matches and establishing the tasks and duties of a host association. This provision is obviously relevant in the context of a preliminary competition of the FIFA World Cup™. In particular, in light of this provision, the host association has a duty to assess the degree of risk posed by the match (lit. a), comply with and implement all safety rules¹³⁹ (lit. b), ensure the safety of all match officials, players and officials of the visiting team during their stay¹⁴⁰ (lit. c) or ensure that law and order are maintained in the stadiums and immediate surroundings and that matches are organised properly (lit. e). As those elements are in direct relation with the role of an association or club when hosting a match, a sanction would in principle need to follow the occurrence of incidents as well as a culpable conduct or omission from the event organiser. In other words, there is no strict liability in that specific context. A host association may be sanctioned for a violation of both Article 65 and Article 67 of the FDC (in addition to other specific provisions), as it can be observed from the disciplinary overview available on [fifa.com](http://resources.fifa.com/mm/document/tournament/competition/02/86/12/89/fifa_neutral.pdf).¹⁴¹

¹³⁷ See http://resources.fifa.com/mm/document/tournament/competition/02/86/12/89/fifa_neutral.pdf (last visited 3 March 2017).

¹³⁸ See www.fifa.com/governance/news/y=2016/m=5/news=fifa-sanctions-several-football-associations-after-discriminatory-chan-2792733.html (last visited 3 March 2017).

¹³⁹ The FIFA Stadium Safety Security Regulations are particularly relevant in this context.

¹⁴⁰ This means not only in the stadium on Match Day.

¹⁴¹ http://resources.fifa.com/mm/document/tournament/competition/02/86/12/89/fifa_neutral.pdf (last visited 3 March 2017).

4. *Forgery and falsification*

Rules on forgery and falsification present some interesting elements and specificities.

Firstly, one should consider that the FIFA judicial bodies are not state prosecutorial authorities enjoying wide powers of investigations, which could be useful – if not necessary – in the discovery of such relevant infractions.

Secondly, such conduct may fall under the competence of the FIFA Disciplinary Committee (Article 61 of the FDC) and the FIFA Ethics Committee (Article 17 of the FCE), which could create some confusion. To better understand the division of competencies in this context, one can refer to art. 1, 2nd sentence of the FCE, which mentions that the FCE focuses on general conduct within association football that has little or no connection with action on the field of play. Thus, we could deduce from the foregoing that should an infraction of forgery occurs in relation with a football match,¹⁴² the FIFA Disciplinary Committee would have primary be competence.

Having clarified the foregoing, the provision on forgery and falsification in the FDC logically focuses in a first step on a natural person as the perpetrator of such an infringement. Indeed, a natural person only may be in a position to commit an act of forgery. Although par. 1 of Article 61 of the FDC mentions *anyone*, which could include any natural or legal person, the following two paragraphs clarify the issue, as they provide for minimum sanctions should the perpetrator be a player (six match suspension, para. 2), an official or match agent (a ban on taking part in any football-related activity for a period of 12 months, para. 3). In addition to these sanctions, a fine needs to be in any case pronounced as per para. 1 of Article 61 of the FDC. From the wording of this provision and the serious minimum sanctions provided, it is clearly noticeable that such an infringement is considered “very serious” by the legislator.

This is not all, the legislator considered that it was not sufficient to sanction the natural person only due to the fact that an act of forgery or falsification may also profit – if not be instigated by – an association or club. Thus, the association or club may also be held liable, and suffer sanction in case of an act of forgery or falsification committed by one of its player or official. However, it is necessary for the judicial body to establish that an act of forgery or falsification has been committed by a specific natural person to be in a position to further sanction a legal entity. The sanction will incur a fine, which can be coupled with an expulsion from a competition.¹⁴³

As to concrete cases submitted to the judicial bodies, the FIFA Disciplinary Committee sanctioned a player and her national association after the judicial body

¹⁴² For instance, the presentation of a forged birth certificate by a player in order to pretend to be eligible to a competition with age limit.

¹⁴³ Cf. Article 61 paras. 4 and 5 of the FDC.

had found evidence of the use of passports with different dates of birth and of birth certificates containing divergent information regarding the player's parental filiation. This matter occurred in the context of the preliminary competition of the Women's Olympic Football Tournament 2016.¹⁴⁴ As the infraction was in connection with a football tournament, the Disciplinary Committee found itself competent and pronounced a 10-match suspension against the player and expelled the association from the Women's Olympic Football Tournament 2020 in addition to the imposition of fines.

5. *Extension of sanctions to have worldwide effect*

In the pyramidal structure of sports administration, there are cases of infringements of a national nature only without any international implication.¹⁴⁵ Consequently, the competence to deal with such type of cases lies with the member association concerned. However, if the infringement is serious – such as doping, unlawfully influencing match-results, forgery, etc., the member association concerned has an obligation to contact FIFA and request the extension of the sanction to have worldwide effect.¹⁴⁶ Indeed, the sanction taken by the member association concerned will have effect on the territory of that member association only. Thus, the purpose of this rule is to prevent a natural person convicted of a serious violation at national level from playing, should he be internationally transferred.¹⁴⁷ Thus, the Chairman of the FIFA Disciplinary Committee¹⁴⁸ has the competence to extend the sanctions to have worldwide effect provided certain conditions are fulfilled.¹⁴⁹ The Chairman can pass his decision without hearing the parties, *i.e.* only on the basis of the file.¹⁵⁰ Indeed, one shall bear in mind that the foregoing is a procedure of extension, in which FIFA deciding body is not allowed to review the substance of the decision taken by the member association.¹⁵¹ As a consequence of the extension of the sanction to have worldwide effect, a sanction imposed by an association or confederation has the same effect in each member association of FIFA as if the sanction had been imposed by any of them.¹⁵²

¹⁴⁴ www.fifa.com/governance/news/y=2016/m=4/news=equatorial-guinea-expelled-from-women-s-olympic-football-tournament-20-2780643.html (last visited 3 March 2017).

¹⁴⁵ As for example, a Italian player who is guilty of an anti-doping violation within the frame of a match of the Italian national championship.

¹⁴⁶ Article 136ff of the FDC.

¹⁴⁷ In the context of international transfers, art. 12 of the Regulations on the Status and Transfer of Players together with its Annexe 3, in particular Article 8.1 para. 4.

¹⁴⁸ For the jurisdiction, Article 78 para. 1 lit. c) of the FDC.

¹⁴⁹ Article 137 of the FDC, the Chairman has to *inter alia* verify that the sanctioned person has been cited properly and that his right to be heard has been respected.

¹⁵⁰ Article 138 of the FDC.

¹⁵¹ Article 139 para. 1 of the FDC.

¹⁵² Article 140 of the FDC.

Lately, this prerogative has been used in numerous cases of match fixing, in which member associations sanctioned numerous players and officials involved in massive match-fixing scandals.¹⁵³

Finally, all extension decisions pronounced by the Chairman are object of a publication on the FIFA website.

E. Conclusion

The competence and the jurisdiction of the FIFA judicial bodies is extremely vast and this review only described a portion of the prerogatives of the judicial bodies. Other specific violations may fall under the competence of the FIFA disciplinary bodies, such as the rules prohibiting third party-influence, relating to the ban on third-party ownership of players' economic rights or in relation to the transfers of minors. Those are other important topics for which strong rules of compliance are needed to ensure uniform and correct application of the regulations.

Football is fed by the rules of fair play, fairness, and integrity, which is why the role of the judicial bodies is primordial to protect the beautiful game.

The independence and impartiality of the FIFA disciplinary bodies is appraised and valued within all member associations.

FIFA judicial bodies have developed a practice and jurisprudence which is unanimously recognised worldwide while always respecting the procedural rules and taking care to apply the regulations properly. This has been recognised by the CAS in the vast majority of its awards confirming the decisions of FIFA judicial bodies.

Despite the increased level of expectation in terms of quality and quantity, the FIFA judicial bodies succeeded in revealing themselves competent to fulfil the task of ensuring that regulations and decisions are respected and complied with. Thus, FIFA has curved the path for its direct and indirect members so that everyone plays this beautiful game with the same rules.

¹⁵³ Cf. www.fifa.com/governance/news/y=2016/m=12/news=fifa-extends-sanctions-relating-to-match-manipulation-and-betting-acti-2861444.html (last visited 3 March 2017).

DISCIPLINARY PROCEEDINGS BEFORE THE ASIAN FOOTBALL CONFEDERATION

by *James Kitching**

Introduction

Formed in 1954 in Hong Kong on the sideline of the second Asian Games, the Asian Football Confederation (hereafter “AFC”) is domiciled in Kuala Lumpur, Malaysia, and at the time of publication consists of forty-seven Member Associations (hereafter “MAs”).¹ The AFC is a society (association) registered pursuant to Section 7 of the *Societies Act 1966* (Laws of Malaysia)² and is a confederation recognised by FIFA.³ Its statutory objectives encompass the three main functions undertaken by all sports governing bodies: organising competitions; development activities; and regulation of the sport.⁴ This chapter will focus on the third function, and in particular, the manner in which the AFC disciplines its MAs and their affiliates for violating its regulations.

Regulating football, futsal, and beach soccer in a region as diverse as Asia is a significant challenge. The MAs span approximately one-third of the world’s landmass, cross eleven different time-zones, make up approximately two-thirds of the global population, and utilise more than twenty different official languages. They are a mix of developing and developed economies, political systems, religions, ethnicities, and cultures. Many are geographically located in places of global geopolitical importance or in conflict zones, which provide additional matters for consideration.

As such, the AFC has a delicate task when formulating its disciplinary regulations to achieve the statutory objectives of the AFC. The AFC judicial bodies,

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¹ AFC Statutes (2017 Edition) (hereafter “AFC Statutes”), Article 7.

² AFC Statutes, Article 1.

³ FIFA Statutes (2016 Edition) (hereafter “FIFA Statutes”), Article 22.

⁴ AFC Statutes, Article 2.

in particular, must balance many different factors when deciding upon appropriate and proportionate sanctions in the administration of sports justice. In this context, the AFC has constantly sought to modernise and ensure that its disciplinary procedures are not only market-leading in the world of football, but also in the global sports industry. As a result, the AFC disciplinary regulations and judicial bodies have undertaken significant reform in recent years. The first ‘modernised’ AFC Disciplinary Code and AFC Code of Ethics, modelled on the similar FIFA regulations, were both adopted in 2005. They were subsequently updated in 2010 (both), 2013 (both), 2016 (AFC Disciplinary Code), and 2017 (merged into a single regulation).

The AFC Congress (hereafter “Congress”) in May 2017 saw significant amendment to the AFC governance model. This resulted in a number of amendments to the AFC Statutes (hereafter “Statutes”) which have directly impacted upon the AFC judicial bodies. Those amendments were:

- (i) the merger of the AFC Disciplinary Committee and AFC Ethics Committee into the AFC Disciplinary and Ethics Committee (hereafter “DEC”);
- (ii) the codification of the AFC Entry Control Body (hereafter “ECB”), a new judicial body;
- (iii) the codification of new sanctions in the AFC Disciplinary and Ethics Code (hereafter “Code”);
- (iv) clarifications to the arbitration clause in favour of the Court of Arbitration for Sport (hereafter “CAS”); and
- (v) the members of the AFC judicial bodies shall be elected by the Congress on the recommendation of the AFC Executive Committee (hereafter “Exco”).

These statutory amendments consolidated transitory arrangements made in the final quarter of 2016. On 24 November 2016, the Exco approved the formation of the ECB as an Ad-Hoc Committee pursuant to the AFC Organisation Regulations and adopted the Procedural Rules Governing the AFC Entry Control Body (hereafter “Rules”). The transitory provisions set out in the Rules provided for the first appointment and future election of the ECB members.⁵

On 1 December 2016, the Exco approved the merger of the AFC Disciplinary Code and the AFC Code of Ethics into the Code.⁶ The Code entered into force on 1 January 2017. The transitory provisions provided for the appointment of the current members of the DEC and AFC Appeal Committee (hereafter “AC”) until the 2019 Congress, at which time an election will be held for both bodies.⁷

This chapter will discuss the regulatory framework, powers, and recent jurisprudence of the AFC judicial bodies which make disciplinary decisions. It shall also briefly refer to the disciplinary powers of the Congress and Exco. Although not a body practicing a disciplinary jurisdiction, it will provide a brief analysis of

¹ Procedural Rules Governing the AFC Entry Control Body (2016 Edition) (hereafter “ECB Rules”), Transitory Provisions.

² The Code may be downloaded from the AFC website.

³ AFC Disciplinary and Ethics Code (2017 Edition) (hereafter “DE Code”), Transitory Provisions.

the powers and jurisdiction of the ECB, in order to provide a juxtaposition to the AFC disciplinary bodies. All references to AFC and international sporting regulations shall refer to those in force at the time of publication.

1. General Principles

The first section of this chapter shall examine the general legal principles which underpin disciplinary proceedings before the AFC judicial bodies. It will highlight the relevant AFC statutory objectives, as well as the impact of national and international laws and regulations.

1.1 Statutory objectives

The supreme law of the AFC is founded within the Statutes. Every person and organisation directly or indirectly bound by the Statutes is obliged to observe the Statutes, regulations, directives, and decisions of the AFC.⁸

As an international sports governing body, the AFC has three core functions: organisation of international football, futsal, and beach soccer competitions within Asia; facilitating the development of technical knowledge, administrative expertise, and sporting infrastructure within its MAs; and regulation of football, futsal, and beach soccer within Asia. The Statutes set out fourteen objectives which underpin these functions.

Disciplining MAs and their affiliates for violations of AFC regulations falls within the third function. The relevant statutory objectives which provide legal justification for this activity are as follows:

- (i) *“to control all types of football, ensure compliance and prevent infringements of the Statutes, Codes, Rules, Regulations, Standing Orders, Directives, and Decisions of FIFA, the AFC, and the Laws of the Game”;*
- (ii) *“to draw up regulations and provisions governing the game of football and all related matters and ensure their enforcement”;*
- (iii) *“to promote integrity, ethics, and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches, competitions, players, officials, and Member Associations or give rise to the abuse of football”.*⁹

These objectives are reflected in the AFC’s *Vision and Mission*, launched in January 2016. Two of the seven pillars making up the AFC Mission are “*Good Governance*” and “*Integrity*”. Both the objectives and these pillars are regulated through the disciplinary provisions set out in the Statutes and the Code. This is discussed below in further detail in section 2 “Regulatory Framework”.

⁸ AFC Statutes, Article 6.

⁹ AFC Statutes, Article 2.

1.2 Malaysian law

As a society (association) domiciled in Malaysia, the AFC and its judicial bodies are subject to and bound by Malaysian law. Malaysian law applies subsidiarily for any appeal from a final decision of a body of the AFC to the CAS.¹⁰

National sports governing bodies in Malaysia are subject to the *Sports Development Act 1997* (Laws of Malaysia) (hereafter “SDA”). Pursuant to Article 10 of the SDA, the Sports Minister may appoint a Commissioner who shall have the power to register or refuse to register any association, club, society or company as a “sports body”, and to impose such conditions he deems fit on the registration of the sports body. The Commissioner may also revoke or suspend the registration of the sports body.¹¹ The First Schedule of the SDA provides that, *inter alia*, football is an activity “regarded as [sport] for the purposes of [the] Act”.¹²

A “sports body” is defined in the SDA as “an association, club, society, or company which acts as the governing or representative body of a sport in Malaysia whether at district, state, or national level, wither or not such association, club, society or company is only an affiliate of another association club, society, or company”.¹³ As such, as the AFC is not the governing or representative body of a sport in Malaysia (i.e. at national level), the provisions of the SDA do not apply to its operations.

Notwithstanding this, it is worth noting that the SDA provides Malaysian sports bodies with the authority to “resolve any dispute arising amongst its members or with its committee or governing body in accordance with [its] internal procedures”.¹⁴ In this respect, Malaysian sports law expressly provides for and recognises the autonomy of sports bodies to internally discipline their members and affiliates.

This autonomy is reflected in Malaysian association (society) law; as a private body, the AFC has the freedom to internally discipline those bound by the Statutes. At law, the nature of this relationship is contractual: either direct (between the AFC and its MAs; between the AFC and clubs that sign entry agreements; between the AFC and natural persons that sign various entry, candidacy, or participation forms) or indirect (between the AFC and legal and natural persons that agree to be bound by the Statutes through the operation of their MA constitution). At the date of publication, no party in any disciplinary proceeding before the AFC judicial bodies or an appeal to the CAS has raised an issue of Malaysian law.

This autonomy is also reflected in the jurisprudence of the Malaysian courts. Malaysian courts have examined the nature of this contractual relationship

¹⁰ AFC Statutes, Article 61.

¹¹ *Sports Development Act 1997* (Laws of Malaysia) (hereafter “SDA”), Article 10.

¹² SDA, First Schedule.

¹³ SDA, Definitions.

¹⁴ SDA, Article 23.

in many cases involving discipline by Malaysian societies and sports bodies (predominantly horse racing). Societies are free to discipline their members provided that disciplinary measures are compliant with the rules and regulations of the association.¹⁵ In this regard, the High Court has noted that when considering the relationship between an association and its members, upon joining the association the members have consented to being subject to punishment.¹⁶ Challenges to decisions have generally been on grounds akin to judicial review of administrative decisions.¹⁷ In such cases, although the jurisdiction of civil courts is limited in related to decisions by a society, it has nonetheless been held that a court may legitimately set aside a decision of a society where it has acted out of jurisdiction, in bad faith, or contrary to the principles of natural justice.¹⁸

1.3 *International laws, international sport regulations, lex sportiva*

1.3.1 *International laws*

Although the Code does not expressly exclude the possibility of international laws applying to the decisions of the AFC judicial bodies, there is no legal justification for the AFC judicial bodies to apply the law of any jurisdiction besides Malaysia.

Some parties in AFC disciplinary proceedings have creatively attempted to invoke Swiss law or European Union law, arguing that as the arbitration clause in the Statutes favours the CAS, such laws may (or will) ultimately apply. However, no such argument has ever succeeded.¹⁹

1.3.2 *International sport regulations*

The AFC is recognised as a confederation by FIFA within the FIFA Statutes. This juxtaposes to the MAs, all of which (except for the Northern Mariana Islands Football Association, which does not qualify for FIFA membership) retain separate membership of both the AFC and FIFA through a direct contractual relationship (i.e. the payment of a membership levy). Notwithstanding the lack of a direct relationship, the AFC indirectly cedes to FIFA authority through provisions founded in the constitutional documents of both governing bodies.

¹⁵ *Dato' Hj Talaat Hj Husain v Chak Kong Yin* [2005] 5 CLJ 221; *Datuk Pasamanickam & Anor v Agnes Joseph And R. Narayanan Samy v Agnes Joseph* [1980] 1 LNS 15; *Chooa E Pek & Ors v Un Siang Mead & Ors* [1983] CLJ 97 (Rep) [1983] 2 CLJ 61; *Lee v The Showmen's Guild Of Great Britain* [1952] 2 QB 329; *Kamarudin Merican Noordin v Kaka Singh Dhaliwal* [2011] 4 CLJ 286.

¹⁶ *Kamarudin Merican Noordin v Kaka Singh Dhaliwal* [2011] 4 CLJ 286.

¹⁷ See e.g. Hassim, Zaidi. *Does Sport Disciplinary Committee's Decision Amenable to Judicial Review?* Malayan Law Journal (2013), 2 i-xxii.

¹⁸ *Dato' VKK Teagarajan VK Kalyanasundram* [2010] 1 LNS 1330; *Darshan Singh v Farid Kamal Hussain* [2004] 4 CLJ 410; *Edward Poh Chang Sui v Halizae Hussein* [2015] 10 CLJ 245; *V. Govindaraj v President, Malaysian Indian Congress & Anor* [1984] 2 CLJ Rep 42; *Chong Kok Lim & Ors. v Yong Su Hian* [1978] 1 LNS 31.

¹⁹ Decision 20170215DC01, *Vathana Keodouangdeth et al.*

The FIFA Statutes provide that the AFC is obliged to “*comply with and enforce compliance with the Statutes, regulations, and decisions of FIFA*”, require its constitutional documents and regulations of the confederations to be submitted to FIFA for approval, and provide minimum standards of good governance within the Statutes.²⁰ This is reciprocated in the statutory objectives of the AFC.²¹ Similarly, the Statutes also mandate that “*every person and organisation directly or indirectly bound by these Statutes is obliged to observe the Statutes and regulations of FIFA as well as the principles of fair play*”.²² Accordingly, the AFC respects the principle of structural subordination.

In this respect, the AFC is obliged to respect decisions of the FIFA judicial bodies and FIFA Council which discipline its MAs and their affiliates. This includes, *inter alia*, enforcing decisions to discipline players and officials for misconduct undertaken in FIFA competitions at Asian level.

Similarly, although the AFC is not a signatory to the World Anti-Doping Agency (hereafter “WADA”) Code, it constitutionally binds itself to its implementation. The Statutes provide an express entitlement to FIFA and WADA to appeal to CAS against any internally final and binding doping-related decision in accordance with the AFC Anti-Doping Regulations (hereafter “ADRs”).²³ The ADRs, which *inter alia* mirror the WADA Code and expressly recognise the WADA Prohibited List, codify these rights to appeal. As such, the AFC has willingly submitted itself to the legal oversight of WADA with respect to anti-doping matters.

1.3.3 *Lex sportiva*

Although the Statutes make no reference to the so-called *lex sportiva* founded within the decisions of the various global sports justice bodies, the Code sets out that the AFC judicial bodies “*shall draw upon precedents already established by sports doctrine and jurisprudence*”.²⁴

As a body of private nature, the AFC judicial bodies have no obligation to follow such precedents. In practice however they provide a benchmark for sanctions, particularly in novel cases. In this regard, the AFC judicial bodies have drawn upon precedents of, among others, the CAS, American Arbitration Association, FIFA, UEFA, The Football Association Ltd, International Cricket Council, and the International Tennis Federation.

²⁰ FIFA Statutes, Articles 22 and 23.

²¹ AFC Statutes, Article 2.

²² AFC Statutes, Article 3.

²³ AFC Statutes, Article 65.

²⁴ DE Code, Article 143.

2. *Regulatory Framework*

The regulatory framework underpinning AFC disciplinary proceedings is both simple and complex. The Statutes and the Code establish and regulate the AFC judicial bodies, their jurisdiction, powers, and procedures, as well as the various disciplinary offences. They intermingle with several other AFC regulations to form the jurisprudence of disciplinary cases which is now more than a decade old. In order to provide a juxtaposition to the bodies practicing disciplinary jurisdiction, this second section will briefly introduce the jurisdiction and powers of the ECB.

2.1 *Bodies of the AFC*

The Statutes identify the Congress as the supreme and legislative body of the AFC, the Exco as the executive body, the General Secretariat as the administrative body, and the DEC, AC, and ECB as the judicial bodies.²⁵

The Exco is assisted in the performance of its duties by the Standing Committees and Ad-Hoc Committees.²⁶ The AFC Organisation Regulations provide that Standing Committees and Ad-Hoc Committees shall advise and assist the Exco in fulfilling its duties. This shall be an advisory function only; unless any regulations adopted by the Exco grant decision-making powers, all decisions and policies made by the Standing Committees and Ad-Hoc Committees must be subsequently ratified by the Exco in order to have legal effect.²⁷

The responsibilities and functions of the DEC and AC are provided in the Code, and the responsibilities and functions of the ECB are provided in the Rules. Both regulations are promulgated by the Exco.²⁸ Members of the AFC judicial bodies are not permitted to belong to any other AFC body or Standing Committee at the same time as holding office.²⁹

The DEC and AC both consist of a Chairperson, a Deputy Chairperson(s) and the number of members deemed necessary by the Exco to function properly.³⁰ The Chairpersons and Deputies are required to have legal qualifications, while the members shall have legal qualifications or related experience.³¹ The ECB consists of a Chairperson and four Deputies.³² The Chairperson is required to have legal qualifications, whereas the Deputies shall have legal qualifications or related experience.³³

²⁵ AFC Statutes, Articles 18, 56.

²⁶ AFC Statutes, Article 18.

²⁷ AFC Organisation Regulations, Article 9; AFC Statutes, Article 41.

²⁸ AFC Statutes, Article 18.

²⁹ AFC Statutes, Article 56; DE Code, Article 88; ECB Rules, Article 6.

³⁰ AFC Statutes, Articles 57, 58.

³¹ AFC Statutes, Article 57, 58. DE Code, Article 83.

³² AFC Statutes, Article 59; ECB Rules, Article 6.

³³ AFC Statutes, Article 59; ECB Rules, Article 6.

In June 2015, the Exco appointed the Chairpersons, Deputies, and members of the AFC Disciplinary Committee and the AC for the 2015-2019 term. No appointments were made to the AFC Ethics Committee in anticipation of the future merger into the DEC. These individuals include state court judges, private lawyers with experience in football, and senior management and legal staff of MAs. At the completion of this term, the Chairperson, Deputies, and members of the DEC and AC will be elected by the 2019 Congress on the recommendation of the Exco for a term of four years.³⁴

In December 2016, the Exco appointed the ECB until the 2017 AFC Congress.³⁵ The Chairperson and Deputies were elected at the 2017 Congress for a term of two years to align with the terms of office of the Exco, DEC, and AC.³⁶ The members include state court judges and private lawyers with experience in football. At the 2019 Congress, the Chairperson and Deputies shall subsequently be elected on the recommendation of the Exco for a term of four years.³⁷

2.1.1 AFC Entry Control Body

The ECB has the power to make all orders necessary to ensure that only those clubs that meet the eligibility criteria in the Entry Manual for AFC Club Competitions 2017-2020 (hereafter “Entry Manual”) are granted entry to participate in AFC club competitions.³⁸ In this regard, its final decisions are of an administrative nature; they pertain solely to the eligibility of a club to enter and participate in AFC club competitions.³⁹

The ECB has jurisdiction to determine the eligibility of a club to participate in AFC club competitions where:

- (i) a club has been directly or indirectly involved in matters aimed at arranging or influencing the outcome of a match at domestic or national level;
- (ii) there exists a violation of the AFC rules relating to control or influence;
- (iii) an MA has nominated the incorrect club(s) to participate in an AFC club competition;
- (iv) an MA has incorrectly granted a licence to participate in an AFC club competition;
- (v) an Extraordinary Application to participate in an AFC club competition is received.⁴⁰

Decisions of the ECB are appealable directly to the CAS. In January 2017, the ECB made its first decision,⁴¹ which was upheld on appeal.⁴²

³⁴ DE Code, Article 83.

³⁵ ECB Rules, Transitory Provisions.

³⁶ ECB Rules, Transitory Provisions.

³⁷ ECB Rules, Article 6.

³⁸ ECB Rules, Article 2.

³⁹ ECB Rules, Article 2.

⁴⁰ ECB Rules, Article 4.

⁴¹ Decision 20170118ECB01, *Jeonbuk Hyundai Motors (KOR)*.

2.2 *Scope of disciplinary jurisdiction*

2.2.1 *AFC Congress and AFC Executive Committee*

The Statutes provide that the Congress, on the recommendation of the Exco, has the specific disciplinary power to suspend and/or expel an MA from the AFC.⁴³

2.2.1.1 *Suspension*

The Congress, solely at the request of the Exco, may suspend an MA from the AFC. The suspension of an MA requires a three-quarter majority of the MAs present and eligible to vote to be successful.⁴⁴ Only the Congress may lift the suspension of an MA suspended by the Congress. The lifting of the suspension must be recommended by the Exco and requires a three-quarter majority of the MAs present and eligible to vote to be successful.⁴⁵

The Exco, without a vote of the Congress, may temporarily suspend an MA that has seriously violated the fourteen AFC statutory obligations with immediate effect until the next Congress. This may include, without limitation, failing to: comply with the regulations and decisions of FIFA, the AFC, and the CAS; convene its supreme and legislative body at least every two (2) years; ratify statutes in accordance with the FIFA Standard Statutes; adopt a statutory clause providing for independent arbitration to resolve disputes; apply a club licensing system; regulate all leagues and clubs which exist within its geographical territory; and manage its affairs independently and with no influence from any third parties, even if such third party influence was not its fault.⁴⁶ These obligations must be read in conjunction with other mandatory requirements set out in the Statutes, such as: only one football association in each country or territory will be recognised by the AFC;⁴⁷ the MA statutes provide for a democratic election procedure;⁴⁸ or that MAs enforce the principle of structural subordination.⁴⁹

Unless the Exco has revoked the temporary suspension, the next Congress will vote whether to enforce the temporary suspension. Again, a three-quarter majority of the MAs present and eligible to vote is required for the vote to be successful. If the vote is unsuccessful, the temporary suspension is automatically lifted.⁵⁰

⁴² CAS 2017/A/4957 *Jeonbuk Hyundai Motors v. AFC*.

⁴³ AFC Statutes, Article 7.

⁴⁴ AFC Statutes, Article 11.

⁴⁵ AFC Statutes, Article 11.

⁴⁶ AFC Statutes, Articles 10, 11.

⁴⁷ AFC Statutes, Article 7.

⁴⁸ AFC Statutes, Article 14.

⁴⁹ AFC Statutes, Article 15.

⁵⁰ AFC Statutes, Article 11.

MAAs are obliged not to maintain relations of a sporting nature with an MA that has been suspended.⁵¹ A suspended MA loses its membership rights.⁵² Those membership rights include:

- (i) to participate, vote, and propose agenda items at the Congress;
- (ii) to nominate candidates for all AFC bodies subject to election;
- (iii) to be informed of the affairs of the AFC through its official bodies;
- (iv) to take part in AFC competitions or other activities and programmes;
- (v) to benefit from the rights and privileges granted by the Statutes and applicable regulations.

2.2.1.2 *Expulsion*

The Congress may expel an MA, solely at the request of the Exco, if without limitation it:

- (i) fails to fulfil its financial obligations towards the AFC;
- (ii) seriously violates its own statutes, codes, rules, regulations and standing orders, or those of the AFC or FIFA;
- (iii) ceases to have the legal status of a football association in its own country or territory;
- (iv) ceases to be a member of FIFA.⁵³

The motion for expulsion must be adopted by a three-quarter majority of the MAAs present and eligible to vote to be successful.⁵⁴ The loss of membership does not relieve the MA from its due financial obligations, but leads to cancellation of all rights in the relation to the AFC.⁵⁵

2.2.2 *AFC Disciplinary and Ethics Committee*

The principle objective of the Code (and by extension, the DEC and AC) is to ensure that the statutory objectives of the AFC are respected.⁵⁶ In this regard, the scope of the Code is deliberately drafted broadly to provide the DEC with wide-ranging powers and jurisdiction to protect the integrity of Asian football.

2.2.2.1 *Natural and legal persons*

The Code identifies the following natural and legal persons as being bound by its operation:

- (i) MAAs;
- (ii) members of MAAs, and their affiliates;

⁵¹ AFC Statutes, Article 10.

⁵² AFC Statutes, Article 11.

⁵³ AFC Statutes, Article 12.

⁵⁴ AFC Statutes, Article 12.

⁵⁵ AFC Statutes, Article 7.

⁵⁶ DE Code, Article 1.

- (iii) clubs;
- (iv) officials;
- (v) players;
- (vi) match officials;
- (vii) intermediaries;
- (viii) anyone with an authorisation from the AFC, in particular with regard to a Match, competition, function, course, or other event organised by the AFC;
- (ix) any candidate in an AFC election who is not an official, player, match official, intermediary, or has an authorisation from the AFC; and
- (x) spectators.⁵⁷

Categories (viii) and (ix) were added in the 2016 and 2017 amendments to the Code. The inclusion of Category (viii) was made following several cases involving the use of forged or falsified AFC and foreign coaching certificates during the registration process for AFC competitions and coaching courses. Category (ix) was inserted to bind candidates for AFC elections that may not be subject to any of the other classes of natural or legal persons.

Where an individual bound by the Code ‘*ceases to serve in* [their] *function*’ during ongoing disciplinary proceedings (e.g. they have resigned their position or have been terminated), the DEC or AC remains competent to render a decision.⁵⁸

Where an individual bound by the Code “*ceases to serve in* [their] *function*” prior to the opening of disciplinary proceedings, the AFC may investigate and present the case to the DEC. The DEC may suspend the proceedings or make a substantive decision.⁵⁹ This provision was included in the 2016 amendments and was adopted from the FIFA Code of Ethics. The phrase “*bound by the Code*” means bound by the relevant version of the Code (i.e. AFC Disciplinary Code or AFC Code of Ethics) at the time of the infringement and must be read in conjunction with the scope of the Code regarding time (see below section 2.2.2.2). This permits the DEC or AC to sanction individuals that are no longer bound by the Code.

In both cases, any sporting sanction issued by the DEC or AC shall be enforced upon the recommencement of the individual being bound by the Code.

2.2.2.2 Time (*lex mitior*)

The interpretation of “*bound by the Code*” is complemented by the scope of the Code with respect to time. The Code naturally applies to infringements that have occurred after it has come into force. The Code also applies to infringements that have occurred prior to it coming into force if the Code is equally favourable or more favourable to the perpetrator of the facts. In other cases, the version of the

⁵⁷ DE Code, Article 3.

⁵⁸ DE Code, Article 3.

⁵⁹ DE Code, Article 3.

Code in force at the time of the infringement (i.e. the AFC Disciplinary Code or AFC Code of Ethics) is applicable. Rules governing procedure apply immediately upon the Code coming into force, regardless of the time of the infringement.⁶⁰

The Code thus respects the principle of *lex mitior*. The phrase “*equally favourable or more favourable*” has been interpreted broadly to mean that the minimum sanction in the current Code is identical or lesser than the version of the Code in force at the time of the past infringement.⁶¹ The Code also provides clarity that only the ‘*infringements*’ (i.e. offences) set out therein are subject to the *lex mitior* principle; procedural rules apply immediately upon the Code entering into force, including without limitation those governing the scope of persons bound by its operation.

2.2.2.3 Jurisdiction - general

The jurisdictional scope of the Code is equally broad. It extends to every match (including international friendly matches), function or course organised or authorised by the AFC, if a match official is harmed, if the statutory objectives of the AFC are breached, and activities of an individual bound by the Code outside of their official function in football which constitutes unethical behaviour.⁶²

The Code provides that the DEC may sanction any breach of AFC regulations which does not come under the jurisdiction of another body.⁶³ Save for the disciplinary powers of the Congress and Exco described above, the only other authority that may exercise disciplinary power through AFC regulations is the referee during matches (see below section 2.2.2.4). Specifically, the DEC is also responsible for:

- (i) sanctioning serious infringements which have escaped the match officials’ attention;
- (ii) rectifying obvious errors in the referee’s disciplinary decisions;
- (iii) extending the duration of a match suspension incurred automatically by an expulsion;
- (iv) pronouncing additional sanctions, such as a fine.⁶⁴

The phrase “*any breach of AFC regulations which does not come under the jurisdiction of another body*” has been considered in the context of the former AFC Code of Ethics prior to the establishment of the DEC. As the AFC Ethics Committee was not empanelled, any violations of the AFC Code of Ethics could not be considered to “*come under its jurisdiction*”, and as no other AFC regulations expressly provide for any other AFC body to sanction such

⁶⁰ DE Code, Article 4.

⁶¹ Decision 20151204DC02, *Anjan K.C.*; Decision 20151204DC03, *Bikash Singh Chhetri*; Decision 20151204DC04, *Ritesh Thapa*; Decision 20151204DC05, *Sagar Thapa*; Decision 20151204DC06, *Sandip Rai*.

⁶² DE Code, Article 2.

⁶³ DE Code, Article 78.

⁶⁴ DE Code Article 79.

violations in the absence of the AFC Ethics Committee, the general sanctioning power was applicable. Any alternate interpretation would create an absurdity as no AFC body would be empowered to sanction violations of the AFC Code of Ethics, and perpetrators of ethical misconduct would be able to continue their misdeeds without fear or fervour.⁶⁵

Given that the Code respects the principle of *lex mitior* and that its procedural rules apply from 1 January 2017, the DEC applies a similar interpretation to violations of the previous editions of the AFC Code of Ethics.

2.2.2.4 Referee's disciplinary decisions

Disciplinary decisions during matches are made by the referee and are final.⁶⁶ However, two exceptions exist where the jurisdiction of the DEC may be enlivened:

- (i) where there is a serious infringement which has escaped the match officials' attention; and
- (ii) to rectify obvious errors in the referee's disciplinary decisions.⁶⁷

The phrase "*serious infringement*" has been interpreted to mean actions which would normally result in an expulsion;⁶⁸ this interpretation has been upheld by the CAS.⁶⁹ The phrase "*match officials' attention*", with respect to incidents that have occurred on the field of play, requires that all appointed referees (subject to the type of football) did not directly witness the relevant incident.⁷⁰

The concept of "*obvious error in the referee's disciplinary decisions*" has also been judicially clarified. In that matter, the referee issued a caution to a player for a foul committed on the edge of the box; this was his second caution, and he was expelled. However, video evidence demonstrated that although he had swung his leg to perform a tackle, physical contact on the opponent was made by his teammate. After reviewing the instructions of FIFA and the 'field of play doctrine' in CAS jurisprudence, it was held that an "*obvious error*" could only occur where:

- (i) the referee has directly expelled the wrong player, who is completely extraneous to the incident that led to the referee's disciplinary decision (i.e. '*mistaken identity*');
- (ii) the referee has directly expelled a player for a foul play that he obviously did not commit (i.e. '*wrongful dismissal*'); or

⁶⁵ Decision 201611005DC01, *Kim Sang Woo*; Decision 20161109DC01, *Kim Sang Woo*.

⁶⁶ DE Code, Article 75.

⁶⁷ DE Code, Articles 75, 79.

⁶⁸ Decision 20141128DC11, *Nassir Ali N Alshamrani*; Decision 20150227AC01, *Appeal of Nassir Ali N Alshamrani*; Decision VTC 20160310DC01, *Protest of Pohang Steelers (KOR)*; Decision VTC 20150928DC03, *Paulo Silva Rodrigo Junior (Digao)*.

⁶⁹ CAS 2015/A/3975, *Nassir Ali N Alshamrani vs Asian Football Confederation*.

⁷⁰ Decision 20141128DC11, *Nassir Ali N Alshamrani*; Decision 20150227AC01, *Appeal of Nassir Ali N Alshamrani*; Decision VTC 20160310DC01, *Protest of Pohang Steelers (KOR)*; Decision VTC 20150928DC03, *Paulo Silva Rodrigo Junior (Digao)*.

(iii) any other rare case not captured by the above categories (e.g. ‘*bad faith*’).⁷¹

As such, the sanctioning of a player with a caution by the referee could not be considered sufficiently serious to be an “*obvious error in the referee’s disciplinary decision*”, even if such caution was the second caution during the match.

2.2.2.5 *International friendly (non-official) matches and domestic matters*

Generally, the relevant MA or sports organisation is responsible for enforcing sanctions against infringements that are undertaken by its clubs, players, officials, and spectators at non-official matches and competitions (e.g. international friendly matches) or domestic matches and competitions.⁷² However, the AFC may investigate and sanction “*serious infringements of the statutory objectives of the AFC*” if the MA or sports organisation “*fails to prosecute, fails to prosecute in compliance with fundamental principles of law, or an adequate judgment cannot be expected given the specific circumstances*”.⁷³

The AFC judicial bodies have acted in this jurisdiction on several occasions. Cases involving serious spectator misconduct and match manipulation have all been held to fall within the meaning of “*serious infringements of the statutory objectives of the AFC*”.⁷⁴ The failure of an MA to undertake disciplinary action, having opened an investigation into a serious infringement nine months previously, has been found to be a “*failure to prosecute*”.⁷⁵

2.2.2.6 *Protests*

The DEC is also competent to deal with protests arising from matches, subject to the conditions contained in the relevant competition regulations. A protest is defined in AFC regulations as “*an objection of any kind of matter that has a direct effect on matches and any matters related to a breach of these [competition] regulations or the AFC Disciplinary and Ethics Code*”.⁷⁶

The standard protest requirements provide that a protest must be:

- (i) submitted in writing on the Protest Form to the AFC Match Commissioner within two hours of the end of the match;

⁷¹ Decision VTC 20140428DC01, *Protest of Al Ahli (UAE)*.

⁷² DE Code, Article 74.

⁷³ DE Code, Article 74.

⁷⁴ Decision 20141128DC19, *Football Association of Malaysia*; Decision 20150327DC16, *Football Association of Singapore*; Decision 20150327DC12, *Football Association of Malaysia*; Decision 20151204DC02, *Anjan K.C.*; Decision 20151204DC03, *Bikash Singh Chhetri*; Decision 20151204DC04, *Ritesh Thapa*; Decision 20151204DC05, *Sagar Thapa*; Decision 20151204DC06, *Sandip Rai*.

⁷⁵ Decision 20150227AC03, *Appeal of the Football Association of Malaysia*.

⁷⁶ See e.g. AFC Champions League 2017 Regulations, Article 59.

- (ii) followed up with a full written report, including a copy of the original protest, sent to the AFC General Secretariat within twenty-four (futsal and beach soccer) or forty-eight (football) hours of the end of the match; and
- (iii) accompanied by a non-refundable protest fee of USD500 within the same deadline.

The words “*submitted in writing*” mean submission via hand, facsimile, or electronically.⁷⁷ There is no requirement that the initial protest be detailed, given the subsequent requirement to provide a “*full, written report*”; the protesting party is merely required to provide the basic facts of the match (e.g. time, date, location, teams), an indication of protest, and the signature of an authorised official.⁷⁸

The time requirement to submit a protest may be extended only where the protesting team did not have access to the means available to comply.⁷⁹ The non-refundable protest fee must be sent electronically to the AFC bank account; proof of transmission within the relevant deadline will suffice.⁸⁰

The submission of a valid protest ensures that the DEC will decide on the validity and merits of a protest. The DEC may issue a fine against a protesting party if it considers a protest unfounded or irresponsible. For purely operational matters which do not fall within the definition of a protest, the DEC may refer those cases to the AFC Competitions Committee.⁸¹

2.2.2.7 Chairperson or member acting alone

In certain cases, the Chairperson may act alone, or delegate such powers where it is essential for the timeliness or integrity of a competition during the period of the competition.⁸²

This jurisdiction is limited to:

- (i) suspending a person for up to 3 matches or up to 2 months;
- (ii) pronouncing a fine of up to USD5,000;
- (iii) ruling on a request to extend a sanction to have Asia-wide effect;
- (iv) settling disputes arising from objections to members of the DEC;
- (v) pronouncing, altering, and annulling provisional measures;
- (vi) in urgent cases on request, referring a case directly to the AC; and
- (vii) ruling on any protest received pursuant to any competition regulations.

⁷⁷ Decision VTC 20140502DC01, *Protest of El Jaish (Qatar)*; Decision 20140530AC01, *Appeal of El Jaish (QAT)*.

⁷⁸ Decision VTC 20140428DC01, *Protest of Al Ahli (UAE)*.

⁷⁹ Decision VTC 20140502DC01, *Protest of El Jaish (Qatar)*; Decision 20140530AC01, *Appeal of El Jaish (QAT)*.

⁸⁰ Decision VTC 20140428DC01, *Protest of Al Ahli (UAE)*; Decision AC20150127DC47, *Protest of the IR Iran Football Federation*.

⁸¹ Decision 20170324DC18, *Protest of Urawa Reds (JPN)*; see e.g. AFC Champions League 2017 Regulations, Article 59.

⁸² DE Code, Article 80.

Traditionally, the Chairperson or a delegated member acts alone when stationed at a centralised competition taking place in a single country. If that individual considers the appropriate sanction is beyond their jurisdiction, it is necessary for a quorum of three members to be present.⁸³

Category (vi) was included in the 2017 amendments and adopted from the UEFA Disciplinary Regulations. At the time of writing, no request has yet been made by the Chairperson or member acting alone to refer a case directly to the AC.

2.2.3 *AFC Appeal Committee*

2.2.3.1 *Jurisdiction - general*

The AC has jurisdiction to decide appeals arising from decisions of the DEC that the Code or AFC regulations do not declare as final or referable to another body.⁸⁴

All decisions of the DEC are appealable except those decisions where the sanction imposed is:

- (i) a warning;
- (ii) a suspension for less than three matches or of up to two months;
- (iii) a fine of less than USD5,000 imposed on an MA or a club;
- (iv) a fine of less than USD2,5000 imposed on all other parties.⁸⁵

Appeals are also precluded against enforcement decisions passed in compliance with Article 63 of the Code (see below section 2.6) or which the Code sets out as final and binding and not appealable (e.g. a decision of the DEC Chairperson to refuse a request to hold an oral hearing).⁸⁶

2.2.3.2 *Chairperson or member acting alone*

In certain types of appeals, the Chairperson may act alone, or delegate such powers where it is essential for the timeliness or integrity of a competition during the period of the competition.⁸⁷ This jurisdiction is limited to:

- (i) deciding on appeals against final decisions or provisional measure decisions passed by a single judge of the DEC;
- (ii) deciding on appeals against a decision to extend a sanction to have Asia-wide effect;
- (iii) settling disputes arising from objections to members of the AC; and
- (iv) pronouncing, altering, and annulling provisional measures.

⁸³ DE Code, Article 84.

⁸⁴ AFC Statutes, Article 58; DE Code, Article 81.

⁸⁵ DE Code, Article 122.

⁸⁶ DE Code, Article 122.

⁸⁷ DE Code, Article 82.

In practice, this jurisdiction is predominantly exercised when considering requests for provisional measures against decisions of the DEC.

2.2.4 *Court of Arbitration for Sport*

Certain decisions passed by the AC may be appealed before the CAS if such appeal is in accordance with the Statutes and the Code. The relevant competition regulations may contain further stipulations (e.g. the time limit to appeal, location of the hearing, the language, and number of arbitrators).⁸⁸

The Statutes expressly recognise the original and appeal jurisdictions of the CAS.⁸⁹ Final decisions of the AC may be appealed to the CAS within twenty-one days of notification of the motivated decision. The CAS does not have jurisdiction to hear appeals against decisions arising from violations of the Laws of the Game; suspensions of up to four matches or up to three months (with the exception of doping decisions); or decisions which any AFC regulations declare as final and binding and not appealable.⁹⁰

2.3 *Powers*

2.3.1 *Sanctions – general rules*

The Statutes empower the DEC to pronounce the sanctions described in the Statutes and Code on all parties set out in the Statutes and the Code, subject to the disciplinary powers of the Congress and the Exco as described above.⁹¹

Unless otherwise specified within the Code, the principle of “*strict liability*” applies to all infringements, regardless of whether they have been committed intentionally, recklessly, or negligently.⁹² Acts amounting to attempt are punishable, as are those parties that intentionally take part in committing an infringement, either as instigator or accomplice.⁹³

Sanctions may be fully or partially suspended. For match suspensions, the suspension of the sanction is permissible only if the duration of the sanction does not exceed six matches or six months. The full or partial suspension of a sanction shall be for a probationary period of between six months and two years. If the party benefiting from a suspended sanction commits another infringement during the probationary period, the suspension is automatically revoked and the sanction applied; it is added to the sanction pronounced for the new infringement.⁹⁴

⁸⁸ DE Code, Articles 77, 130.

⁸⁹ AFC Statutes, Articles 64, 65.

⁹⁰ AFC Statutes, Article 65.

⁹¹ AFC Statutes, Article 57.

⁹² DE Code, Article 5.

⁹³ DE Code, Articles 6, 7.

⁹⁴ DE Code, Article 34.

This technique is commonly used by the DEC when ordering a match (or matches) to be played without spectators where an MA or club has a sustained record of spectator misconduct built up over time.⁹⁵

Sanctions may be limited to a geographical area or to one or more specific categories of match or competition. The AFC judicial body shall take into account all relevant mitigating and aggravating factors in a case, and the degree of guilt of the party when imposing a sanction. They may, even where a minimum sanction is identified in the Code or relevant AFC regulations, choose to impose a sanction lower than the minimum after having considered all of the relevant circumstances.⁹⁶ This generally occurs where fines are issued against a minor or a non-professional player. In this respect, the Code clearly respects and requires the principle of proportionality to be enforced when sanctions are issued.

Where multiple identical infringements have occurred over an extended period of time, the DEC has also applied the common-law “*totality sentencing*” principle to ensure that the principle of proportionality is respected.⁹⁷

Recidivism is specifically identified as an aggravating circumstance which may permit an AFC judicial body to increase a sanction. Recidivism occurs if an offence is repeated within:

- (i) one year, if that offence was punished with a one match suspension;
- (ii) three years, if that offence was punished with a two match suspension; and
- (iii) five years, in all other cases.⁹⁸

There is no time limit if the previous offence was related to match manipulation or corruption.⁹⁹

The Code also respects the principle of *lex specialis*. Where more than one infringement has been committed due to the same misconduct (e.g. spectator misconduct may result in a violation of AFC regulations relating to spectator misbehaviour as well as security obligations), the sanction shall be based on the “*most serious infringement*” and increased as appropriate depending on the specific circumstances.¹⁰⁰ The AFC judicial bodies have consistently interpreted the “*most serious infringement*” to mean a specific infringement, as opposed to a general infringement; this commonly occurs in cases of spectator misbehaviour,

⁹⁵ Decision 20150519DC48, *Football Association of Indonesia*; Decision 20141128DC28, *Myanmar Football Federation*; Decision 20140807DC04, *Al Ittihad (KSA)*; Decision 20140807DC05, *Al Ittihad (KSA)*; Decision 20140824AC01, *Appeal of Al Ittihad (KSA)*; Decision 20140824AC02, *Appeal of Al Ittihad (KSA)*; Decision 20150612DC03, *Al Hilal (KSA)*; Decision 20150612DC05, *Persepolis (IRN)*; Decision 20170324DC06, *Esteghlal FC (IRN)*.

⁹⁶ DE Code, Article 39.

⁹⁷ Decision 20170119DC01, *Amandio De Araujo Sarmiento; Federacao Futebol Timor Leste; Gelasio Da Silva Carvalho*.

⁹⁸ DE Code, Article 40.

⁹⁹ DE Code Article 40.

¹⁰⁰ DE Code, Article 41.

whereby the same facts may violate Code offences relating to liability for spectator misconduct and failure to comply with security obligations at matches.¹⁰¹

The statute of limitations for prosecuting infringements is subject to the type of infringement. Infringements that occur in matches cannot be prosecuted after two years. Anti-doping rule violations are subject to the rules provided in the ADRs. Match-manipulation and corruption offences are not subject to a limitation period, while all other infringements cannot be prosecuted after ten years.¹⁰² The starting date for the limitation period is the later of: the day on which the infringement was perpetrated; if the infringement is recurrent, the day on which the most recent was committed; or, if the infringement lasted a certain period, the day on which it ended.¹⁰³

Sanctions may be enforced up to five years after a decision comes into force.¹⁰⁴ In practice, sanctions are enforced immediately (e.g. payment of a fine, suspension for a period of time) or in the next match in the same competition (e.g. match suspension, playing a match without spectators). Where a sanction is imposed after a competition has ended or after the relevant team has been eliminated from a competition in progress, the sanction will be carried over to a future (national team or club) competition in the same category of football (i.e. football, futsal, or beach soccer).¹⁰⁵ If after five years that sanction has yet to be enforced, it is annulled.

2.3.2 Types of sanctions

The Code provides for a range of sanctions to punish violations of AFC regulations. The following sanctions may be imposed on individuals: warning; fine; caution; expulsion; match suspension; ban from the team dressing room and/or the team bench; ban from entering a stadium; ban on taking part in any football-related activity; withdrawal of a title or award; confiscation; and social work.¹⁰⁶

The following sanctions may be imposed on MAs and clubs: warning; fine; full or partial stadium closure; order to play a match on neutral territory; ban on playing in a particular stadium; annulment of the result of a match; disqualification from a competition in progress and/or exclusion from a future competition; defeat by forfeit; deduction of points (for a current or future competition); relegation to a lower division; order that a match be replayed; withdrawal of a title or award; confiscation; withholding of revenues from an AFC competition; prohibition on registering new players in AFC competitions; restriction on the number of players

¹⁰¹ See e.g. Decision 20170324DC06, *Esteghlal FC (IRN)*. There are more than one hundred similar cases.

¹⁰² DE Code, Article 42.

¹⁰³ DE Code, Article 43.

¹⁰⁴ DE Code, Article 45.

¹⁰⁵ DE Code, Article 39.

¹⁰⁶ DE Code, Article 8.

that a club may register for participation in AFC competitions; withdrawal of a licence to participate in AFC competition; and social work.¹⁰⁷

Previous editions of the Code also provided for the power to order a transfer ban. However, this was removed in the 2016 amendments given that transfers are regulated at domestic level (by the MA) and international level (by FIFA), and not by the confederations at regional level.

2.4 *Disciplinary procedure*

The procedural rules of the DEC and AC are set out in Chapter 4 of the Code. There are both common and specific rules for the bodies.

2.4.1 *Specific rules for the AFC Disciplinary and Ethics Committee*

2.4.1.1 *Opening disciplinary proceedings*

Disciplinary proceedings may be opened by the AFC administration *ex officio*, upon the receipt of official match reports or from a public authority, where a protest has been lodged in accordance with the relevant competition regulations, or where a request or complaint has been filed.¹⁰⁸

The Secretariat to the AFC judicial bodies, appointed by the AFC General Secretary, is responsible for conducting all investigations and prosecutions on behalf of the AFC.¹⁰⁹ Should any conduct incompatible with AFC regulations be brought to its attention, the Secretariat may conduct a preliminary investigation. If the Secretariat deems that there is no *prima facie* case, it may close the preliminary investigation. If the Secretariat deems that there is a *prima facie* case, it shall open disciplinary proceedings, which must be communicated to the party. The Secretariat has the authority to hire or appoint external resources to assist in any investigation.¹¹⁰

Following the completion of the investigation, if the Secretariat deems that there is a case, it shall forward charges of misconduct and the full case file to the relevant party, and provide it with the opportunity to be heard. The content of the full case file may be restricted in exceptional circumstances by the Chairperson.¹¹¹ Such exceptional circumstances include where witness identities be kept anonymous to ensure the protection of their physical integrity.¹¹² Where the Secretariat deems that there is no case, it shall close disciplinary proceedings.¹¹³

¹⁰⁷ DE Code, Article 9.

¹⁰⁸ DE Code, Article 119.

¹⁰⁹ DE Code, Article 86.

¹¹⁰ DE Code, Article 120.

¹¹¹ DE Code, Article 120.

¹¹² Decision 20160630DC01, *Thanom Borikut*; Decision 20160630DC02, *Chaiya Mahapab*; Decision 20170215DC01, *Vathana Keodouangdeth et al.*

¹¹³ DE Code, Article 120.

It may reopen such proceedings if new facts or evidence are discovered within the statute of limitations for the offence.¹¹⁴

2.4.1.2 *Administrative resolution*

In order to provide an efficient resolution to straightforward disciplinary matters, the AFC introduced a streamlined administrative procedure in the 2016 amendments. Effectively a ‘plea-bargaining’ system, the administrative procedure allows a party to accept a reduced sanction in exchange for a prompt admission of guilt. It has proven to be very successful in its first year of operation.

Subject to the relevant competition regulations, the Secretariat may offer an “*administrative resolution*” to party prior to the opening of disciplinary proceedings.¹¹⁵ For any offence set out in the competition regulations with a listed minimum fine, where it is the first such offence committed by a party, the AFC may offer the party a twenty per cent (20%) discount of the listed fine in exchange for a prompt admission. Should the party reject or fail to reply to the offer, the AFC shall open disciplinary proceedings and the minimum fine as provided is applied.¹¹⁶

The types of offences providing for minimum fines within standard AFC competition regulations include: failure of a team to attend or fully participate in an official event; withdrawal from a competition; failure to provide an official training site to match-condition or at the prescribed time; failure to provide AFC with the match recording; failure of an individual to attend or fully participate in a mandatory media conference or interview; failure to provide a fully equipped medical or doping room; failure to provide the minimum number of medical or anti-doping personnel.¹¹⁷

2.4.1.3 *Specific rules for the AFC Appeal Committee*

As described above, appeals may be lodged to the AC against any decision passed by the DEC except for those in certain categories. In addition, appeals are not admissible if a motivated decision of the DEC is not requested (see below section 2.4.1.4).¹¹⁸ After notification of a motivated decision of the DEC, parties are subject to a ten day appeal period. Within three days of notification, they must submit an ‘*intention to appeal*’ to the AFC. By the tenth day, they must have submitted both their ‘*reasons for appeal*’ and appeal fee of USD1,000 (inclusive of bank charges). Failure to comply with any of these threshold requirements shall result in the appeal not being admitted by the AC.¹¹⁹

¹¹⁴ DE Code, Article 120.

¹¹⁵ DE Code, Article 120.

¹¹⁶ See e.g., AFC Champions League 2017 Regulations, Article 56.

¹¹⁷ See generally, AFC Champions League 2017 Regulations.

¹¹⁸ DE Code, Article 122.

¹¹⁹ DE Code, Articles 124-126.

Appeals are heard *de novo* by the AC.¹²⁰ The AC has interpreted this broadly; parties have the right to produce any and all evidence to justify their legal positions, including new evidence not available before the DEC.¹²¹

Appeals do not have a suspensive affect, except with regard to orders to pay a sum of money.¹²² Parties are required to request for a provisional stay of execution if they wish to suspend the operation of a DEC decision ordering a sporting sanction (see below section 2.5).

Standing to appeal is limited to a party to the proceedings at first instance or to any party which has a legally protected interest justifying amendment or cancellation of the decision.¹²³ This accords with the CAS decision in *Luis Suarez, FC Barcelona and AUF vs. FIFA* which discussed identical provisions in the FIFA Disciplinary Code.¹²⁴ MAs and clubs, with written permission, have the power to appeal decisions on behalf of any of their affiliates.¹²⁵

2.4.1.4 Common rules

Parties have the “*right to be heard*” in disciplinary proceedings; this right may be restricted in exceptional circumstances decided upon by the Chairperson.¹²⁶ Generally, the procedure of the AFC judicial bodies provides a full right to be heard consistent with common and civil law principles.

The AFC judicial bodies are not bound by rules of evidence; all types of evidence are admissible, with the exception of evidence that “*violates human dignity*” or is not duly translated into English.¹²⁷ The AFC judicial bodies have applied the interpretation of the CAS in *Amos Adamu vs FIFA*¹²⁸ when considering whether evidence “*violates human dignity*”. Such evidence is “*obtained as a result of, or connected with, acts of physical or psychological violence, brutality or any other forms of inhuman or degrading treatment*”. Applying this test, the AFC judicial bodies have permitted evidence obtained by police authorities which was inadmissible before the relevant state court (e.g. statements taken without the presence of a public prosecutor), as well as evidence obtained

¹²⁰ DE Code, Article 127.

¹²¹ Decision 20150423AC01, *Appeal of Miroslav Stoich*; Decision 20160824AC01, *Appeal of Anjan K.C.*; Decision 20160824AC02, *Appeal of Bikash Singh Chhetri*; Decision 20160824AC03, *Appeal of Ritesh Thapa*; Decision 20160824AC03, *Appeal of Sagar Thapa*; Decision 20160824AC04, *Appeal of Sandip Rai*.

¹²² DE Code, Article 127.

¹²³ DE Code, 123.

¹²⁴ DE Code, Article 123.

¹²⁵ CAS 2014/A/3665/3666/3667.

¹²⁶ DE Code, Articles 96-97.

¹²⁷ DE Code Article 98.

¹²⁸ CAS 2011/A/2426.

by covert means which may be considered illegally-obtained in certain jurisdictions (e.g. filming and recording of private individuals).¹²⁹

The 2016 amendments to the Code introduced the ability of the Chairperson to anonymise witnesses in cases where their physical integrity may be threatened.¹³⁰ This has been significantly important in the investigation and prosecution of cases relating to match-manipulation.

The Code provides standard and burdens of proof which would be familiar to practitioners of sports law. The standard of proof is the comfortable satisfaction of the AFC judicial body members, bearing in mind the seriousness of the allegation.¹³¹ The AFC has the burden of proving disciplinary infringements. The burden of proof in the case of a protest rests on the protesting party. Any party that asserts a fact in AFC proceedings has the burden of proving it.¹³² All facts contained in match officials' reports are presumed accurate; parties may provide proof to rebut such presumption.¹³³

Parties may be represented or legally represented; they must provide written permission for such representation.¹³⁴ The language in all proceedings is English.¹³⁵ As a general rule, oral hearings are not held and matters are decided on the basis of the written file.¹³⁶ However, parties may request a hearing, upon which the relevant Chairperson will decide. The Chairperson also sets the hearing procedure.¹³⁷ For doping matters, the party has an express right to an oral hearing at first and appeal instances.¹³⁸

The Secretariat may choose to issue solely the terms of any decision made by the relevant judicial body. Parties have the right to request the motivated decision within ten days of notification of the terms; failure to do so shall result in the decision becoming final and binding and not appealable.¹³⁹

Commencement of all relevant time limits occurs upon receipt of the document which sets out the time limit; if the document is not sent directly to the named party (either as primary addressee or copy), it is presumed to have been notified four days after such transmission.¹⁴⁰ Compliance with time limits occurs

¹²⁹ Decision 20160824AC01, *Appeal of Anjan K.C.*; Decision 20160824AC02, *Appeal of Bikash Singh Chhetri*; Decision 20160824AC03, *Appeal of Ritesh Thapa*; Decision 20160824AC03, *Appeal of Sagar Thapa*; Decision 20160824AC04, *Appeal of Sandip Rai*.

¹³⁰ DE Code, Articles 99-100.

¹³¹ DE Code, Article 101.

¹³² DE Code, Article 103.

¹³³ DE Code, Article 102.

¹³⁴ DE Code, Article 114.

¹³⁵ DE Code, Article 115.

¹³⁶ DE Code, Article 105.

¹³⁷ DE Code, Article 106.

¹³⁸ AFC Anti-Doping Regulations (2016 Edition), Article 62.

¹³⁹ DE Code, Article 111.

¹⁴⁰ DE Code, Articles 92 and 112.

if the relevant document is received by the AFC prior to midnight on the last day of the time limit.¹⁴¹

2.5 *Special Procedures*

2.5.1.1 *Provisional Measures*

Upon request, the relevant Chairperson may provisionally pronounce, alter, or revoke a sanction if three (3) cumulative conditions are met:

- (i) an infringement appears to have been committed;
- (ii) a decision on the main issue cannot be taken early enough; and
- (iii) it is an emergency.¹⁴²

2.5.1.2 *General principles*

Parties often fail to address one or all of these conditions in their request. It is extremely common to instead receive submissions regarding the conditions set out in the CAS Code of Sports-related Arbitration (hereafter “CAS Code”), which differ significantly. In such cases, the Chairperson will recognise the failure to refer to the Code conditions, but nonetheless still assess whether the Code conditions are met by the party.

The power to order provisional measures is discretionary; even if the three cumulative conditions are met, the Chairperson or member acting alone may still decide to not grant the request. When exercising the discretion in favour of the AFC, the Chairperson or member acting alone will often refer to the need to ensure the integrity of the disciplinary proceedings and to ensure that a full, proper, and unimpaired investigation is conducted.¹⁴³

The first condition, “*if an infringement appears to have been committed*”, has been consistently interpreted to mean that solely the “*mere appearance*” of an infringement is required.¹⁴⁴ This does not mandate a sophisticated analysis regarding the applicable version of the Code or the AFC regulations. It is enough that there “*seems*” that an infringement has occurred of the version of the Code or AFC regulations in force at the time of the decision, given that such sophisticated analysis may be made when the decision on the merits is deliberated.¹⁴⁵

The second condition, “*a decision on the main issue cannot be taken enough*”, requires that the relevant AFC judicial body be unable to make a decision

¹⁴¹ DE Code, Article 93.

¹⁴² DE Code, Article 131.

¹⁴³ All decisions on provisional measures contain this language in their opening paragraphs.

¹⁴⁴ Decision on Provisional Measures 20120807DC01, *Mohamed Bin Hamman*; Decision on Provisional Measures 20160902DC01, *Santos Junior Monteiro Wanderley*; Decision on Provisional Measures 20160725AC01, *Appeal of Kim Sang Woo*.

¹⁴⁵ Decision on Provisional Measures 20160725AC01, *Appeal of Kim Sang Woo*.

on the merits prior to any football-related activity in which the party is scheduled to partake.¹⁴⁶

In cases where the AFC has requested a provisional sanction, the third condition, “*in emergencys*”, has been interpreted to include scenarios where the involvement of a party in football-related activity would impact upon the integrity of a competition.¹⁴⁷

In cases where a sanctioned party has requested a provisional stay of execution, “*in emergencys*” has been interpreted to mean that a “*prima facie*” case exists to overturn the first-instance decision.¹⁴⁸

Provisional measure decisions are decided *ex parte*¹⁴⁹ and may not be valid for longer than sixty (60) days.¹⁵⁰ This may be extended once by thirty days.¹⁵¹ Similar to the normal disciplinary procedure, the Secretariat may decide to issue solely the terms of provisional measure decisions. However, given that provisional measures decisions are made without hearing the parties concerned, in practice the Secretariat generally issues motivated provisional measure decisions.

2.5.1.3 Appeals against DEC provisional measure decisions

Appeals against provisional measure decisions made by the DEC Chairperson or member acting alone may be lodged with the AC. The time limit for lodgement is two days commencing from the notification of the motivated decision. The “*reasons for appeal*” and appeal fee of USD1,000 must be submitted within the same time limit. Failure to comply with any of the threshold requirements will mean the appeal is not admitted. Appeals against provisional measure decisions do not have a suspensive effect.¹⁵² The shorter time limits recognise, *inter alia*, the urgency of provisional measure appeals vis-à-vis the standard disciplinary procedure.

Appeals against provisional measure decisions made by the AC Chairperson or member acting alone may be lodged with the CAS, within twenty-one days of notification of the motivated decision, subject to any further stipulations set out in the relevant competition regulations.¹⁵³

¹⁴⁶ Decision on Provisional Measures 20161105DC01, *Chintana Souksavath*; Decision on Provisional Measures 20161105DC02, *Phatthana Syvilay*; Decision on Provisional Measures 20161105DC03, *Moukda Souksavath*; Decision on Provisional Measures 20161104DC04, *Saynakhonevieng Phommapanya*; Decision on Provisional Measures 20160707DC01, *Kim Sang Woo*.

¹⁴⁷ Decision on Provisional Measures 20160902DC01, *Santos Junior Monteiro Wanderley*; Decision on Provisional Measures 20161105DC01, *Chintana Souksavath*; Decision on Provisional Measures 20161105DC02, *Phatthana Syvilay*; Decision on Provisional Measures 20161105DC03, *Moukda Souksavath*; Decision on Provisional Measures 20161104DC04, *Saynakhonevieng Phommapanya*.

¹⁴⁸ Order on Provisional Measures 20160229AC01, *Request of Guangzhou Evergrande (CHN)*.

¹⁴⁹ DE Code, Article 132.

¹⁵⁰ DE Code, Article 134.

¹⁵¹ DE Code, Article 134.

¹⁵² DE Code, Article 135.

¹⁵³ DE Code, Article 130; AFC Statutes, Article 65.

2.5.1.4 Appeals which include a request for provisional measures against a DEC decision

Provisional measures may be requested to the AC against a DEC decision only where the motivated DEC decision has been received and simultaneously with a valid “*intention to appeal*” the DEC decision.¹⁵⁴ As such, parties are precluded from requesting provisional measures against a DEC decision without also appealing such decision; this protects the provisional measure procedure from abuse. If the appeal is ultimately withdrawn or fails to be admitted, any provisional measure ordered by the AC Chairperson or member acting alone shall be automatically annulled.¹⁵⁵

This specific provision was inserted in the 2017 amendments to the Code to ensure legal certainty; it mirrors the similar provisions set out in the CAS Code. The Secretariat and AFC judicial bodies practiced the same prior to the amendment being codified.

When issuing such decisions on provisional measures, they are issued as an “Order” as opposed to a “Decision”, as such “Order” ultimately forms part of the appeal procedure itself. Such “Orders” of the Chairperson or member acting alone are accordingly not appealable.¹⁵⁶

2.5.1.5 Extension

Upon request, the DEC Chairperson may extend a sanction imposed at national or regional level to have effect at confederation level.¹⁵⁷

This request will be approved if: the sanctioned party has been cited properly and had an opportunity to state their case; the decision has been communicated properly and complies with AFC regulations; and the decision complies with fundamental legal principles.¹⁵⁸ Decisions are generally made *ex parte*; the role of the Chairperson is to ascertain that the conditions for extension have been met, as opposed to reviewing the substance of the decision.¹⁵⁹

Parties may appeal the extension of a sanction to have effect at confederation level to the AC Chairperson. The same threshold conditions that apply for a standard appeal procedure (i.e. a ten day appeal period) are also applicable. The reasons for appeal may only challenge the conditions for extension; it is inadmissible to question the substance of the decision itself.¹⁶⁰

¹⁵⁴ DE Code, Article 131.

¹⁵⁵ DE Code, Article 131.

¹⁵⁶ Order on Provisional Measures 20160229AC01, *Request of Guangzhou Evergrande (CHN)*; Order on Provisional Measures 20150423AC01, *Request of Miroslav Stoch*.

¹⁵⁷ DE Code, Article 136.

¹⁵⁸ DE Code, Article 137.

¹⁵⁹ DE Code, Articles 138-139.

¹⁶⁰ DE Code, Article 141.

2.5.1.6 Review

Parties may request a review of a legally-binding decision of an AFC judicial body in limited circumstances. A review may only be conducted where a party discovers facts or proof that would have resulted in a “*more favourable decision*” and that “*even with due diligence could not have been produced sooner*”.¹⁶¹

Requests for review must be made within ten days of discovering the reasons for review. The limitation period for making a request for review is one (1) year from notification of the final and binding decision. The Chairperson of the AFC judicial body which made the legally-binding decision shall decide upon the request for review. Such decisions are final and binding and not appealable.¹⁶²

At the time of writing, the AFC judicial bodies had yet to receive any requests for review of legally-binding decisions.

2.6 Enforcement of disciplinary decisions

The failure of a party to comply with AFC decisions (including disciplinary decisions) is regulated within the Code. The DEC is the competent body to enforce any failure to comply. The Code anticipates the following three scenarios where a party may fail to:

- (i) pay a sum of money in full or in part, even though instructed to do so by a body, a committee, or an instance of the AFC or a subsequent CAS appeal decision;
- (ii) comply with a non-financial decision of a body, a committee, or an instance of the AFC or a subsequent CAS appeal decision; or
- (iii) respect the disciplinary decision of a referee to expel them from a match.¹⁶³

The first category regards the failure of a party to comply with an order of the Exco, DEC, or AC to pay a sum of money (i.e. a fine, damages for withdrawal from a competition, or annual levy). This is the most common category enforced by the DEC.

The second category generally arises where a party fails to respect a sporting sanction issued by the DEC or AC (e.g. attending a football match despite being banned from football-related activity).

The third category specifically refers to those instances where an individual has been expelled from a match and fails to respect the terms of the expulsion (e.g. refusal to leave the technical area after being expelled) or automatic suspension from the next match (e.g. provision of instructions to the team via electronic or other means, attendance in the team dressing room before and after the match).

¹⁶¹ DE Code, Article 142.

¹⁶² DE Code, Article 142.

¹⁶³ DE Code, Article 63.

The first offence for failure to comply will result in the DEC ordering a fine of at least USD3,000 and providing a final deadline to comply with the decision that was not respected. Any further failure to comply will result in the imposition of sporting sanctions by the DEC.¹⁶⁴

Appeals against DEC decisions regarding the failure to comply may be lodged with the CAS within twenty-one days of notification of the motivated decision.¹⁶⁵ The logic for bypassing the AC is clear; such decisions only assess the ‘failure to comply’ with the original decision, as opposed to the merits of the original decision. The original decision, which may have been made by the AC or the CAS on appeal, is already final and binding and not appealable. As such, there is no need for any further internal review of the merits.

2.7 Offences

The Code sets out a number of offences for which parties may be sanctioned. Following the 2016 amendments, the vast majority of these offences provide for a minimum penalty for non-aggravated offences. This provides certainty to parties bound by the Code; both when considering the appropriate behaviour to undertake and when preparing a defence to any disciplinary charge. The 2017 amendments saw the inclusion of offences previously contained in the AFC Code of Ethics. To ensure that the principle of *lex metior* is respected, these offences do not have an expressly ascribed minimum or maximum penalty provision.

The following table sets out the Code offences with minimum penalties:

Offence	Minimum Penalty
Expulsion for denying the opposing team an obvious goal-scoring opportunity	(i) one match suspension; and (ii) fine of at least USD1,000.
Expulsion for serious foul play	(i) at least one match suspension; and (ii) fine of at least USD1,000.
Expulsion for using offensive, insulting or abusive language and/or gestures	(i) at least one match suspension; and (ii) fine of at least USD1,000.
Expulsion for using offensive, insulting or abusive language and/or gestures towards a match official	(i) at least four match suspension; and (ii) fine of at least USD5,000.
Expulsion for failing to conduct oneself in a responsible manner (officials only)	(i) at least one match suspension; and (ii) fine of at least USD1,000.
Expulsion for violent conduct	(i) at least two match suspension; and (ii) fine of at least USD1,000.
Expulsion for violent conduct towards a match official	(i) at least six months match suspension; and (ii) fine of at least USD5,000.
Expulsion for spitting at an opponent or person other than a match official	(i) at least six match suspension; and (ii) fine of at least USD1,000.
Expulsion for spitting at a match official	(i) at least twelve months match suspension; and (ii) fine of at least USD5,000.

¹⁶⁴ DE Code, Article 63.

¹⁶⁵ DE Code, Article 130; AFC Statutes, Article 65.

Offence	Minimum Penalty
Bringing the game into disrepute	subject to the gravity of the offence.
Involvement in a brawl	for an individual: at least six match suspension; for an MA or club: fine of at least USD10,000.
Deliberately entering the field of play during a brawl regardless of culpable conduct	at least two match suspension.
Damage to property	for an individual: fine of at least USD1,000 and cost of damage; for an MA or club: fine of at least USD2,000 and cost of damage.
Where at least five individuals are sanctioned by the referee during a match	USD300 fine per caution and USD600 fine per expulsion, unless specified differently within competition regulations or a disciplinary circular.
Where several individuals threaten or harass match officials or other persons during a match	fine of at least USD6,000.
Publicly inciting hatred or violence.	for an individual in a team delegation: (i) at least twelve months match suspension; and (ii) fine of at least USD3,000 (USD15,000 in aggravated cases); for any other individual: (i) at least twelve months ban on football-related activity; and (ii) fine of at least USD3,000 (USD15,000 in aggravated cases); for an MA or club: fine of at least USD15,000 (USD30,000 in aggravated cases).
Provoking the general public	for an individual in a team delegation: (i) two match suspension; and (ii) fine of at least USD3,000; for any other individual: (i) at least thirty day ban on football-related activity; and (ii) fine of at least USD3,000; for an MA or club: fine of at least USD15,000.
Fielding an ineligible player	(i) forfeit of the match; and (ii) fine of at least USD1,000 (per ineligible player). If discovered after the completion of a competition, the AFC judicial body may additionally order: (i) exclusion from a future competition; or (ii) deduction of points from a future competition.
Fielding an ineligible player in an AFC competition subject to an age limit	(i) forfeit of the match; and (ii) fine of at least USD2,500 (per ineligible player); and (iii) if applicable withdrawal of title or award; and (iv) disqualification from a competition in progress or exclusion from a future competition.
Refusing to play or to continue playing a match	(i) forfeit of the match; and (ii) fine of at least USD10,000; and (iii) in serious cases disqualification from a competition in progress or exclusion from a future competition.
Offending the dignity of a person or group of persons through contemptuous, discriminatory, or denigratory words or actions concerning race, skin colour, gender, language, religion, political opinion, wealth, birth, sexual orientation, or ethnic, national, or social origin ('discrimination')	for an individual: (i) at least two month ban on taking part in any football-related activity; and (ii) fine of at least USD10,000; for an MA or club: (i) an order to play at least two future matches without spectators; and (ii) fine of at least USD10,000 (USD15,000 where supporters commit the offence); (iii) in aggravated cases deduction of three points from the current or future competition; or (iv) in the case of a match or competition where no points are awarded, disqualification from a competition in progress and/or exclusion from a future competition.
Intimidating a match official with serious threats	(i) fine of at least USD2,000; and (ii) at least two match suspension.

Offence	Minimum Penalty
Using violence or threats to pressure a match official into taking certain action or hinder him in any other way from acting freely ('coercion')	(i) fine of at least USD2,000; and (ii) at least two match suspension.
Forging a document, falsifying an authentic document or using a forged or falsified document to deceive in legal relations	for a player: (i) fine of at least USD5,000; and (ii) at least six match suspension; for any other individual: (i) fine of at least USD5,000; and (ii) at least twelve month ban on taking part in any football-related activity; for an MA or club (joint liability): (i) fine of at least USD10,000; and (ii) in appropriate circumstances disqualification from a competition in progress and/or exclusion from a future competition; for an MA or club (individual not identifiable): (i) fine of at least USD20,000; and (ii) where appropriate disqualification from a competition in progress and/or exclusion from a future competition.
Doping	in accordance with the ADRs.
Failure to fulfil any security obligations relating to hosting matches	fine of at least USD5,000.
Improper conduct undertaken by spectators	subject to the type and gravity of the offence.
Conspiracy to influence or manipulate the result of matches in a manner contrary to sporting ethics ('Unlawfully influencing match results')	for an individual: (i) fine of at least USD10,000; and (ii) at least two year ban on taking part in any football-related activity (if aggravated, life ban); for an MA or club (joint liability): (i) fine of at least USD25,000; and (ii) disqualification from a competition in progress and/or exclusion from a future competition; and (iii) if applicable withdrawal of a title or award.
Provision of special knowledge or otherwise not publicly available information that may impact upon the integrity of any match or competition	(i) fine of at least USD1,000; and (ii) (for players) at least one match suspension; or (iii) (for non-players) at least one month ban from taking part in any football-related activity.
Association in a professional or sports-related capacity with an individual who has committed conspiracy to influence or manipulate the result of matches or found in a criminal, disciplinary, or professional proceeding to have engaged in similar conduct	for an individual: at least two year ban on taking part in any football-related activity; for an MA or club: (i) fine of at least USD10,000; and (ii) disqualification from a competition in progress and/or exclusion from a future competition.
Offering, promising or granting an unjustified advantage to incite a violation of AFC regulations or obtain any other improper advantage	(i) fine of at least USD10,000; and (ii) at least two year ban on taking part in any football-related activity; and (iii) confiscation of assets involved.
Soliciting or accepting an unjustified advantage from an individual to incite a violation of AFC regulations or obtain any other improper advantage	(i) fine of at least USD10,000; and (ii) at least two year ban on taking part in any football-related activity; and (iii) confiscation of assets involved.
Making bets on any match or competition	(i) fine of at least USD1,000; and (ii) (for players) at least one match suspension; or (iii) (for non-players) at least one month ban from taking part in any football-related activity.
Failure to report any conduct incompatible with the Code	subject to the gravity of the incompatible conduct that was not reported.

The following Code offences have no minimum penalty. They were adopted from the AFC Code of Ethics and International Olympic Committee Code of Ethics in the 2017 amendments:

- (i) failure to use due care and diligence in fulfilling their duties;
- (ii) failure to act with the highest degree of integrity;
- (iii) undertaking any act involving fraud and corruption;
- (iv) undertaking any act likely to tarnish the reputation of Asian football;
- (v) directly or indirectly soliciting, accepting or offering any form of remuneration or commission or concealed benefit or service of any nature when negotiating deals;
- (vi) giving or receiving tokens of consideration or friendship of greater than nominal value;
- (vii) undertaking any act or partaking in any situation that could lead to a conflict of interest;
- (viii) failure to respect the (mental or physical) integrity of others;
- (ix) failure to utilise football resources for non-football or inappropriate purposes;
- (x) failure to, where appropriate in accordance with their official role, ensure that the use of financial resources provided by the AFC is demonstrated in financial accounts;
- (xi) failure to ensure that the promotion of their candidature for office in an Asian football election shall not denigrate the character of any other candidate;
- (xii) failure to remain politically neutral in dealings with government institutions, national and international organisations, associations and groups;
- (xiii) breaching their fiduciary duty to the AFC;
- (xiv) failure to ensure that information of a confidential nature divulged to them while performing their duties is treated as confidential or secret.

Parties subject to the Code may also be sanctioned for violating AFC regulations. Common violations include failing to attend mandated media interviews; not providing an equipped medical and/or doping room; wearing unauthorised equipment during matches; permitting unauthorised persons to enter a team dressing room; and causing the delay of a kick-off.

3. *Jurisprudence*

In recent years, the AFC judicial bodies have developed a rich jurisprudence which has had a major impact on both the interpretation of AFC regulations and protection of the integrity of Asian football. The terms of all AFC disciplinary decisions are available on the AFC website after notification of the decision to the parties. From the second half of 2017, the AFC will begin publishing motivated decisions requested by the parties on the AFC website.

The decisions described below are a selected sample of the most significant jurisprudence in recent years. Any decisions which are detailed in the technical

analysis in others part of this chapter are not included. Decisions relating to spectator misconduct are also deliberately excluded, given their sheer volume.

3.1 Match Manipulation

In January 2014, the AFC successfully prosecuted its first cases of match manipulation. Three Lebanese referees appointed to the match Tampines Rovers vs East Bengal in the AFC Cup in April 2013 were charged by Singaporean authorities with corruptly receiving gratification in the form of free sexual service as an inducement to fix the match. They all pleaded guilty and were sentenced variously to three and six months imprisonment. Based on these facts, they were ultimately banned from football-related activity for life (referee) and ten years (assistant referees).¹⁶⁶

The fourteen months between December 2015 and February 2017 saw the completion of a number of long-term investigations by the AFC Integrity Unit in coordination with the Secretariat to the AFC judicial bodies, and a spate of sanctions issued for offences related to match manipulation. The sanctions issued by the AFC judicial bodies reflect the zero-tolerance approach of the AFC against the biggest threat to the integrity of the sport.

In December 2015, a Tajiki referee was banned from football-related activity for life for attempting to manipulate a match at the AFC U-19 Championship 2016 (Qualifiers) held in Tajikistan in October 2016. The individual, who was acting as a local liaison officer for the appointed referee delegation, directly approached a match referee and requested a certain score be produced in an upcoming match in exchange for a sum of money. That approach was rejected and reported through the appropriate channels to the AFC.¹⁶⁷

In the same month, five Nepali footballers including the (at the time) “A” representative team captain were each banned from football-related activity for life for conspiring to manipulate multiple matches over a period spanning 2010-2012. The evidence utilised to support the sanction included, *inter alia*, Western Union transactions between convicted match-fixers and the players and their family members, reports of betting fraud, whistleblower testimony, and confessions provided to the Nepali authorities.¹⁶⁸ The sanctions were upheld on appeal.¹⁶⁹ The players did not appeal to the CAS.

¹⁶⁶ Decision 060114DC04, *Ali Sabbagh*; Decision 060114DC05, *Ali Eid*; Decision 060114DC06, *Abdallah Taleb*.

¹⁶⁷ Decision 20151204DC01, *Parviz Murtazoev*.

¹⁶⁸ Decision 20151204DC02, *Anjan K.C.*; Decision 20151204DC03, *Bikash Singh Chhetri*; Decision 20151204DC04, *Ritesh Thapa*; Decision 20151204DC05, *Sagar Thapa*; Decision 20151204DC06, *Sandip Rai*.

¹⁶⁹ Decision 20160824AC01, *Appeal of Anjan K.C.*; Decision 20160824AC02, *Appeal of Bikash Singh Chhetri*; Decision 20160824AC03, *Appeal of Ritesh Thapa*; Decision 20160824AC03, *Appeal of Sagar Thapa*; Decision 20160824AC04, *Appeal of Sandip Rai*.

In June 2016, two Thai referees were each banned from football-related activity for life for conspiring to manipulate four matches each over a period spanning 2011-2015. The sanctions were predominantly founded upon whistleblower testimony.¹⁷⁰

In separate decisions in October 2016 and November 2016, a Korean referee was banned for a cumulative period of eighteen months for failing to report two approaches by third-parties relating to the manipulation of matches. He was approached separately by both Thai referees referred to in the previous paragraph; the first in November 2011 and the second in June 2015. Although there was no evidence that he had accepted and conspired to manipulate any matches, the failure to immediately report permitted those individuals that approached him to continue manipulating Asian football matches for several years.¹⁷¹

In November 2016, the DPR Korea Football Association (hereafter “DPRFA”), the Head Coach of its U-16 representative team, and an U-16 player (goalkeeper), were each sanctioned for bringing the game into disrepute after the match Uzbekistan vs DPR Korea at the AFC U-16 Championship India 2016 held in September 2016. In the first half of the match, the Uzbekistan goalkeeper scored a goal from his own penalty area which went viral on the internet within minutes. It was determined that the Head Coach had deliberately selected his side in order to lose the match so as to achieve a favourable Quarter Final matchup, and that the goalkeeper had deliberately conceded the goal. The two individuals were banned from football-related activity for one year and fined, while the DPRFA was also fined.¹⁷²

In February 2017, twenty-two individuals from Laos and Cambodia were banned from football-related activity for life for conspiring to manipulate multiple matches over a significant number of years.¹⁷³ At the time of writing, the case was still subject to appeal.

3.2 *Anti-doping*

The AFC judicial bodies have dealt with several anti-doping matters in recent years, utilising ADRs based on both the 2009 WADA Code and 2015 WADA Code. The following table sets out those cases where individuals were banned following the recording of adverse analytical findings:

¹⁷⁰ Decision 20160630DC01, *Thanom Borikut*; Decision 20160630DC02, *Chaiya Mahapab*.

¹⁷¹ Decision 20161005DC01, *Kim Sang Woo*; Decision 20161109DC01, *Kim Sang Woo*.

¹⁷² Decision 20161103DC02, *DPR Korea Football Association*; Decision 20161103DC03, *Jang Paek Ho*; Decision 20161103DC04, *Yun Jong Su*.

¹⁷³ Decision 20170215DC01, *Vathana Keodouangdeth et al.*

Date	Competition	Substance	Sanction
6 Jan 2014 ¹⁷⁴	AFC Cup 2013	<i>Methylhexanamine</i>	Two year ban from football-related activity.
7 Aug 2014 ¹⁷⁵	AFC Challenge Cup 2014	<i>Norandrosterone</i>	Two year ban from football-related activity.
7 Aug 2014 ¹⁷⁶	AFC Futsal Championship 2014	<i>Levo-methamphetamine</i>	Two year ban from football-related activity.
11 Nov 2014 ¹⁷⁷	Asian Games 2014	<i>Methylhexanamine</i>	Two year ban from football-related activity.
26 Nov 2015 ¹⁷⁸	AFC Women's Futsal Championship 2015	<i>Sibutramine</i>	Two year ban from football-related activity.
14 Dec 2016 ¹⁷⁹	AFC Champions League 2016	<i>Clenbuterol</i>	Three month ban from football-related activity.
15 Dec 2016 ¹⁸⁰	AFC U-16 Championship 2016	<i>Norandrosterone</i>	One year ban from football-related activity.

3.3 Forgery and falsification

There has been a noted increase in the number of cases relating to forgery and falsification in recent years. The submission of forged or falsified documents has included passports, birth certificates, International Transfer Certificates, declarations of fact, and coaching licences.

In 2015, an Indian coach¹⁸¹ and a Nigerian coach practising in Bangladesh¹⁸² were both sanctioned with a fine and one year ban from football-related activity for submitting falsified coaching licences to the AFC. The officials submitted coaching licences purportedly issued by the coach education branch of The Football Association Ltd. In both cases, the English authorities confirmed that the licences were falsified official documents which had never been issued.

In September 2016, Indonesian state authorities issued a statement which provided they had no knowledge or record of the Indonesian passport of a player registered with the club Al Nasr (UAE) as an Indonesian national. The player, born in Brazil, had represented Al Nasr (UAE) in the AFC Champions League 2016 (Quarter Final 1st Leg) match El Jaish (QAT) vs Al Nasr (UAE). That match was ultimately ordered to be forfeited after it was determined that the Indonesian passport submitted to the AFC was either forged or falsified.¹⁸³ The player himself was provisionally suspended.¹⁸⁴ In November 2016, following a

¹⁷⁴ Decision 060114DC01, *Abdullah A. S.S. Aldhafeeri*.

¹⁷⁵ Decision 20140807DC01, *Avchiev Takhir*.

¹⁷⁶ Decision 20140807DC02, *Doan Ngoc Hao*.

¹⁷⁷ Decision VTC 20141111DC01, *Beknazarov Khurshed*.

¹⁷⁸ Decision VTC 20151126DC03, *Suksen Sasipraha*.

¹⁷⁹ Decision 20161103DC01, *Jin Jingdao*. Decision VTC 20161214AC01, *Appeal of Jin Jingdao*.

¹⁸⁰ Decision 20161215DC03, *Ismoilov Abdulkhay*.

¹⁸¹ Decision 20150117DC01, *Faruk Ahmad Gani*.

¹⁸² Decision 20151022DC02, *Chukwuemeka Joseph Afusi*.

¹⁸³ Decision 20160911DC01, *Al Nasr (UAE)*.

¹⁸⁴ Decision PM 20160902DC01, *Santos Monteiro Junior Wanderley*.

thorough investigation which included interviews with multiple parties and collaboration with Interpol and relevant state authorities, it was found that the club had deliberately caused the use of a forged or falsified document and that its officials had been untruthful when providing evidence to the AFC.¹⁸⁵ The player was banned from matches for three months and ordered to pay a fine of USD10,000. His sanction was mitigated in part due to his full cooperation with the AFC. Al Nasr (UAE) was ordered to pay a fine of USD50,000, return the prize money (USD340,000) earned in the AFC Champions League 2016, and excluded from the next two editions of the AFC Champions League, suspended for a probationary period of two years. The total fine of USD390,000 was the highest ever issued by an AFC judicial body at the time of writing. The matter was not appealed.

In January 2017, the General Secretary of the Federacao Futebol Timor Leste (hereafter “FFTL”) was banned from football-related activity for three years and ordered to pay a fine of USD9,000 after being found to have caused the use of forged or falsified Timorese birth certificates to register twelve Brazilian-born individuals as Timorese nationals with the AFC, to demonstrate that they met FIFA sporting nationality requirements.¹⁸⁶ The FFTL was ordered to pay a fine of USD76,000 (the amount of USD56,000 being suspended) and twenty nine (29) official and non-official matches were ordered to be retrospectively forfeited.¹⁸⁷ The long-term investigation included interviews with the majority of the players, various football officials in the region, and FFTL staff. In March 2017, the Democratic Republic of the State of Timor-Leste informed the AFC that nine of the passports linked to those birth certificates had been declared “*null and void*”.

3.4 Club licensing

In June 2016, the Saudi Arabian Football Federation (hereafter “SAFF”) was sanctioned with a fine of USD150,000 (of which USD100,000 was suspended) after being found that it had incorrectly granted licences to two club to compete in the AFC Champions League 2015. Both at first instance¹⁸⁸ and appeal,¹⁸⁹ it was held that both clubs had overdue payables to football creditors which did not meet any of the exceptions in the AFC Club Licensing Regulations. Accordingly, the SAFF erred when granting licences to those clubs, both of which had successful seasons in the AFC Champions League 2015, earning significant amounts of prize money.

¹⁸⁵ Decision 20161109DC14, *Santos Monteiro Junior Wanderley and Al Nasr (UAE)*.

¹⁸⁶ Decision 20170119DC01, *Amandio De Araujo Sarmento; Federacao Futebol Timor Leste; Gelasio Da Silva Carvalho*.

¹⁸⁷ Decision 20170119DC01, *Amandio De Araujo Sarmento; Federacao Futebol Timor Leste; Gelasio Da Silva Carvalho*.

¹⁸⁸ Decision 20160630DC03, *Saudi Arabian Football Federation*.

¹⁸⁹ Decision 20170126AC01, *Appeal of Saudi Arabian Football Federation*.

3.5 Protest (ineligible players)

In recent years, the AFC judicial bodies have been called upon to decide upon protests lodged at crucial stages of the most important AFC competitions.

At the AFC Asian Cup Australia 2015, following its quarter-final loss to Iraq, the IR Iran Football Federation (hereafter “IRIFF”) protested against the eligibility of an Iraqi player that had recorded an adverse analytical finding for *methylhexaneamine* when playing for an Iranian club in the Persian Gulf Pro League in August 2014.¹⁹⁰ The IRIFF submitted that as the player had tested positive he was automatically suspended and thus ineligible for the match. At the time of the protest, the IRIFF had still not commenced results management (this was ultimately completed in June 2015).

The player was never notified of his adverse analytical finding nor was he provided an opportunity to have his B-sample tested. Furthermore, as *methylhexaneamine* was a specified substance, any provisional suspension was optional as opposed to mandatory, and the IRIFF provided no evidence that a decision had been made by any decision-making body to suspend the player. Accordingly, the assertion that the player was automatically suspended and thus ineligible to compete in the AFC Asian Cup Australia 2015 was deemed incorrect in both fact and law. This was upheld on appeal.¹⁹¹

Following the AFC Champions League 2016 (Semi Final 2nd Leg) match Al Ahli (UAE) vs Al Hilal (KSA), the Saudi club protested against the eligibility of a foreign player that was fielded by the Emirati club. AFC regulations required the player to be correctly registered pursuant to both his national association transfer regulations and the FIFA Regulations on the Status and Transfer of Players to be eligible for the competition. The player was registered at the UAE Football Association (hereafter “UAEFA”) pursuant to its transfer rules, but the club had registered him to participate in AFC competitions only, and not domestic competitions. At first instance, the Saudi club argued that this was against the spirit of the regulations, which failed.¹⁹² On appeal¹⁹³ and before the CAS,¹⁹⁴ the Saudi club argued that the UAEFA transfer rules did not comply with mandatory provisions of the FIFA Regulations on the Status and Transfer of Players, and therefore the player could not be considered to have been validly registered pursuant to the UAEFA transfer rules. These arguments were rejected.

These cases highlight the ability of the AFC judicial bodies to answer highly-technical and complex sports legal questions under immense time-pressure and media scrutiny. It also confirmed the necessity to have decision-makers experienced in sports law and sports operations in judicial positions. By way of

¹⁹⁰ Decision AC20150127DC47, *Protest of the IR Iran Football Federation*.

¹⁹¹ Decision 20150227AC04, *Appeal of the IR Iran Football Federation*.

¹⁹² Decision VTC 20151026DC01, *Protest of Al Hilal (KSA)*.

¹⁹³ Decision VTC 20151029AC01, *Appeal of Al Hilal (KSA)*.

¹⁹⁴ CAS 2015/A/4260 *Al Hilal Saudi Club v. Asian Football Confederation & Al Ahli Club*.

example, the second protest was heard by two AFC judicial bodies, both of which produced motivated decisions, and the CAS, which held an oral hearing, within fourteen days.

4. Conclusion

Regulating football in Asia is not merely about the yellow cards and red cards issued by the referee on the field of play. The AFC judicial bodies undertake a broad spectrum of work involving a number of very different areas of football law. The work of the AFC judicial bodies has steadily increased in recent years, following the general trend across the sports industry. In part, this trend has occurred because of the vast number of parties that engage legal counsel specialising in sports law to act in their defence. Not only has the growing professionalisation of Asian football stakeholders led to a realisation that AFC disciplinary charges and decisions can be challenged, but also that adverse disciplinary decisions have overwhelming reputational, commercial, and economic consequences.

Combatting the plague of match manipulation is a priority for the AFC. The AFC Integrity Unit, established in 2014, has worked closely with the Secretariat to the AFC judicial bodies to close many long-term investigations in recent months. In May 2017, the AFC appointed an independent external Head of Integrity to act as the gatekeeper for the simultaneously launched “Do the Right Thing Policy”, a world-leading (particularly in the football industry) whistleblowing policy.

As the sport continues to expand within Asia and the amounts of money invested are likewise increased, the work of the AFC judicial bodies will similarly grow in volume and scope. It is therefore of fundamental importance that the AFC ensures its disciplinary rules and procedures are up to date and in accordance with the latest trends in international sports law.

CONFEDERATION AFRICAINE DE FOOTBALL (CAF) DISCIPLINARY PROCEDURES

by *Raymond Hack**

Introduction

The Confederation Africaine de Football (hereafter “CAF”) is an international non-governmental organization with legal personality and has the status of a Foundation.

With its headquarters in Egypt, CAF is the governing body of African Football and it is responsible for the organization of international Football competitions in the African continent.¹

CAF is the biggest of the six continental confederations of FIFA and is currently composed of 6 zonal unions² of which there are 55 associations, 54 being full members and Réunion Island an Associate Member.

1. General Principles and Objectives of CAF

Pursuant to its Constitution, CAF aims – among others – are to promote and develop the game of Football in Africa; organise its own Continental Competitions and any other intercontinental and/or international competitions assigned by FIFA; preserve the integrity of sport; and promoting a Football culture free from discrimination against country, person or group of persons, be it on the grounds of ethnicity, gender, language, religion, politics or any other reason.

Moreover, CAF respects the fundamental principles of the Olympic Movement as well as to the human rights recognised internationally.

In order to achieve its goals, CAF is entitled to draw up all the relevant regulations and to adopt and implement all necessary and appropriate measures in

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¹ The official languages of CAF are French, English, and Arabic.

² The full list of zones (Northern, Western A, Western B, Central, Central-East, Southern) is available on the CAF website (www.cafonline.com).

order to prevent any infringements of its Statutes, Rules and Regulations as well as of any decisions or directives of either FIFA and/or CAF.

2. *The Confederation's bodies*

As per its statutes,³ the CAF President is the legal representative of the confederation while the main CAF bodies are the Executive Committee and the General Assembly. The General Assembly operates as the main legislative body. The CAF Secretariat is headed by the General Secretary who manages the Administrative arm of CAF.

The Executive Committee is responsible for implementing the policies and decisions of the General Assembly, and for supervising the management and the administration of CAF. It takes decisions on all matters that do not fall within the jurisdiction of the General Assembly or other bodies by virtue of the law or under these Statutes and regulations.

Moreover, there are various Standing and Ad Hoc Committees whose tasks are to advise and assist the Executive Committee in the fulfilment of its duties. The Statutes define the powers of the aforementioned committees, whilst their composition, functions, and additional duties are defined by the Regulations Governing the Application of the Statutes.

In particular, the Committee for Legal Affairs and National Associations plays an important role, as it is responsible for maintaining good relations with and between the National Associations and encouraging fruitful cooperation on all matters relating to Football, its rules and regulations, and its development. The Committee for Legal Affairs and National Associations is also responsible for drafting CAF's Regulations and Statutes. These regulations are subsequently submitted to the Executive Committee for ratification, with the exception of the Statutes.

3. *Disciplinary bodies*

The CAF judicial and compliance bodies are the Disciplinary Board, the Appeal Board, and the Governance Committee, which shall contain an Ethics Sub-Committee in conformity with the CAF Code of Ethics.

They act in accordance with the Statutes and the applicable CAF Regulations.

In particular, the Disciplinary Board is composed of a Chairman, a Vice-President and the number of Members deemed necessary. It may impose all sanctions set forth in the Statutes and in the CAF Disciplinary Code, against members, clubs, officials or players. Finally, the Disciplinary Board is authorised

³ The CAF statutes are available on www.cafonline.com/Portals/0/Regulations%20and%20Official%20Documents/Competitions%20Regulation/CAF%20STATUTES%20-%2029.09.2016-%20ENGLISH.pdf (11 June 2017).

to sanction any breach of CAF Regulations that do not come under the jurisdiction of another body of the Confederation.

The Appeal Board decides any appeals lodged against decisions of the Disciplinary Board or any other Committee, unless the CAF regulations declare such decision to be final or referable to another body.

Decisions of the Appeal Board shall be final and binding on all parties concerned. This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS).

No plea for clemency shall be accepted once the Appeal Board has pronounced its verdict.

The Governance Committee deals with, and advises the Executive on: all CAF Governance matters and shall establish a Review Sub-Committee; which conduct and recommendations the outcome of the independence reviews and eligibility review for a seat by any candidate to CAF's Executive Committee. They shall further establish an Ethics Sub-Committee in conformity with CAF's Ethics Code.

Pursuant to the CAF Statutes, the Chairman or Vice-Chairman of any judicial body, as well as the Audit and Compliant Committee, and the Governance Committee must strictly comply with the principle of the "Independence".

An "Independent Member" is defined as any Member not having a contractual relationship with CAF nor with his National Association, and not being a Member of the CAF Executive Committee nor a Member of his National Association's Executive Committee, during the last four years preceding his election by the General Assembly as Chairman and/or Vice-Chairman of any of the judicial and compliance bodies of CAF.

4. Procedures

The CAF Disciplinary Code⁴ details the main procedures before the relevant disciplinary bodies. In particular, art. 23 specifies the time limits for the parties to act in the context of disciplinary proceeding. In the case of non-compliance, the parties lose their right related thereto within the procedure in question (Art. 27). Pursuant to art. 28, the parties can defend themselves before any decision is passed. In other words, and as a general rule, the right to be heard needs to be granted before a decision is made. They may, in particular: a) refer to the file; b) present their argument in respect of fact and in law; c) request production of proof of matters raised; d) be involved in the production of proof; e) obtain a final decision. As an exception, the right to be heard can be restricted when confidential matters are at stake (art. 29).

⁴ The CAF Disciplinary Code is available at www.cafonline.com/Portals/0/Regulations%20and%20Official%20Documents/Competitions%20Regulation/CAF%20Disciplinary%20Code.pdf (11 June 2017).

The rules provide that any type of proof may be produced. However, proof that violates human dignity or obviously does not serve to establish relevant facts may be rejected. In particular, the following proof is admissible: reports from referees, assistant referees, match commissioners and referee inspectors, general coordinators, security officer or any other person designated by CAF, declarations from the parties and witnesses, the production of documents, expert opinions and audio or video recordings.

The relevant judicial bodies have absolute discretion regarding proof. They can consider the parties' attitudes during proceedings, especially the manner in which they cooperate with the judicial bodies and the secretariat. The judicial bodies decide on the basis of their personal circumstances (art. 31).

Art. 32 deals with facts contained in match officials' reports, which are presumed to be accurate. Should a discrepancy arise in various match officials' reports, the referee's report is considered authoritative in respect of incidents which occurred on the field of play whilst the match commissioner's report is considered authoritative regarding incidents that took place outside the field of play.

In that regard, the CAF code provides that onus of proof regarding disciplinary infringements rests on CAF. In the doping procedure, it is the responsibility of the person who has received an adverse analytical finding to prove their innocence. The onus of proof rests on that person (art. 33).

Parties have the right to be represented before the disciplinary bodies (art. 34) and to be notified with regard all decisions concerning them (art.36).

Decisions are legally binding and are notified by telefax, email, courier and/or registered letter. Other documents are communicated only by telefax or electronic mail. In certain circumstances, the special provisions set out in article 38 may apply, namely a decision may be communicated orally to a party present and shall be subsequently confirmed by fax within 30 days. Orders of provisional measures shall be notified by telefax..

Proceedings may be closed if a) the parties reach an agreement; b) a party declares bankruptcy; c) it becomes baseless (art. 42).

Disciplinary infringements are automatically prosecuted. Any person or authority may report conduct that he or it considers in violation of the Regulations of CAF to the legal bodies. Complaints shall be made in writing. Match officials are obliged to record, in or attached to their official reports, infringements that they have observed (art. 43).

Art. 44 provides that the Secretariat carries out the necessary preliminary investigation ex officio under the Chairman's guidance. The investigation period shall not exceed six (6) months.

During the investigation and the proceedings, the parties are obliged to collaborate to establish the facts. In particular, they shall comply with requests for information from the legal bodies. Parties cannot, under any circumstance, refuse to give information or produce the documents requested by the secretariat or the

legal bodies. Whenever deemed necessary, the secretariat verifies the parties' versions of the facts. If the parties do not comply with a request for information in their response, the Chairman of the legal body may impose a fine of up to five thousand US Dollars (\$5 000) fifteen (15) days after first warning them. If the parties fail to comply and there is no other means of obtaining the information requested, the legal bodies will decide the case, using the file in their possession.

The Disciplinary Board decides on the basis of the file, inclusive of official reports, documents and recordings presented. Decisions are passed by a simple majority of the members present. Every member present shall vote, and shall not be allowed to abstain. If the votes are equal, the Chairman has the casting vote (Art. 50).

An appeal may be lodged to the Appeal Board against any decision passed by the Disciplinary Board or a standing committee, which the CAF Regulations do not deem final, unless the sanction pronounced is: a) a warning; b) a reprimand; c) a suspension for less than three (3) matches or of up to two (2) months within a particular season; d) a fine of less than (\$5.000) five thousand US Dollars (art. 53).

Anyone who is affected by a decision and has direct interest and was party to the decision justifying amendment or cancellation of the decision may submit it to the Appeal Board.

National associations may also appeal against decisions sanctioning their players, officials or members but they need to have the written agreement of the person concerned. Moreover, the appellant may contest any decision with the exception of the Laws of the Game as applied by the referee.

If the contested decision concerns failure to comply with a decision passed by a CAF body ordering someone to pay a certain sum of money to another person, the appellant may not question any financial decision. The appellant has 3 days to file a statement of appeal and further 7 days to submit the appeal brief (art. 55).

The Appeal Board has full power in fact and in law to rule on the appeal (art.59).

An appeal does not have a suspensive effect except with regard to orders to pay a sum of money. Although the Appeal Board decides as a body of last instance (art. 61), the Court of Arbitration for Sport in Lausanne is empowered to adjudicate appeals against any decisions or disciplinary sanctions taken in the last instance by any legal body of CAF, a national association, league, or club. Any appeal must be filed with CAS within ten (10) days following the notification of the decision.

Nevertheless CAS does not hear appeals on:

- violations of the Laws of the Game;
- suspensions of up to four (4) matches or three (3) months;
- decisions taken by an arbitration duly established by an independent association.

5. *Offences and Disciplinary sanctions*

All clubs and players falling within the jurisdiction of CAF must comply with the CAF Disciplinary Code. In that regard it is worth noting that sanctions may be imposed against National Associations, clubs, officials and players in accordance with the provisions set forth in the Statutes, as well as in the CAF Disciplinary Code and CAF Code of Ethics. Such sanctions are applied in case of violations of the CAF Statutes and Regulations, violations of the decisions made by the competent bodies, and in cases involving the exhibition of indecent or unsporting behaviour. In particular, the Disciplinary Committee adjudicates on matters concerning physical assault, infringement of the laws of the Game, offensive behaviour, intimidation, forgery and falsification, corruption, and doping as set out in articles 122 to 137 of the CAF Disciplinary Code.

As a result of the above mentioned offences, pursuant to art. 52 of the CAF Statutes, the Disciplinary Committee may impose the following disciplinary measures against natural and legal persons: warning, reprimand, fine, return of prizes, suspension.

In addition, natural persons can be sanctioned by way of a caution, expulsion, match suspension, ban from the dressing rooms and/or the substitutes' bench, ban from entering the stadium and a ban on taking part in any Football-related activity.

Legal persons can be punished by way of a ban on registering new players, obligation to play a match behind closed doors or on a neutral territory. They can also be punished by the annulment of match results, deduction of points, relegation to a lower division, and even suspension or expulsion.

Members and leagues agree to comply fully with any final decisions taken by the concerned CAF and FIFA bodies, in accordance with the provisions of the CAF Statutes. They agree to take all necessary steps to ensure that their own Members, players, and officials comply with these decisions. This obligation shall also apply to match agents and intermediaries. Any violation of the aforementioned provisions shall be punished in accordance with the Statutes and the Disciplinary Code.

5.1 *Offensive and discriminatory behaviour*

Pursuant to Articles 131 and 132 of the CAF Disciplinary Code, anyone who insults someone in any way, especially by using offensive gestures or language, will be sanctioned with a match suspension. If the perpetrator is a player he will be suspended for at least two matches; if he is an official he will be suspended from at least four matches. If the victim of the offensive behaviour is CAF itself or one of its bodies or officials, the duration of the suspension will be doubled; the sanction applies to all official international matches. A minimum fine of US\$ 5,000 (five thousand US Dollars) shall be pronounced.

If spectators display banners bearing racist slogans at a match, the body will sanction the National Association or the club which these spectators support with a fine of at least US\$ 20,000 (ten thousand US Dollars), and force it to play its next official international match(es) without spectators.

With specific regard to racism, anyone who publicly disparages, discriminates against or denigrates someone in a defamatory manner on account of race, colour, language, religion or ethnic origin, or perpetrates any other racist and/or contemptuous act, will be subject to match suspension for a least five matches at every level. Furthermore, a stadium ban and a fine of at least US\$ 3,000 (three thousand US Dollars) will be imposed on the perpetrator. If the perpetrator is an official, the fine will be at least US\$ 5,000 (five thousand US Dollars).

If spectators display banners bearing racist slogans, or are guilty of any other racist and/or contemptuous behaviour at a match, the appropriate body will impose a sanction of at least US\$ 5,000 (five thousand US Dollars) on the Association or club that the spectators concerned support and force it to play its next official match without spectators. If the spectators cannot be identified as supporters of one or the other Associations or clubs, the host Association or club will be sanctioned accordingly. Any spectator who is guilty of any of the above offences will be banned from entering any stadium for at least two years.

If any player, association, club official, or spectator perpetrates any kind of racist or contemptuous act, three points will automatically be deducted from the team concerned, if identifiable, after the first offence. In the case of a second offence, six points will automatically be deducted. In the event of a subsequent offence, the team will suffer relegation. In the case of matches without points, the team concerned if identifiable, will be disqualified.

Sanctions imposed on the basis of this article may be reduced or even disregarded if the player, team, club or association concerned can prove that it was not or was only minimally responsible for the offences in question or if other major reasons justify it, particularly if the offences were provoked intentionally to cause a player, team, club or association to be sanctioned in accordance with this article. The procedure for assessing mitigating circumstances shall be governed by this code.

5.2 Infractions of personal freedom

Anyone who intimidates a match official with serious threats will be sanctioned with a fine of at least US \$3,000 (three thousand US Dollars) and a match suspension.

Anyone who uses violence or threats to put pressure on a match official into taking certain action or to hinder him in any other way from acting freely, will be sanctioned with a fine of at least US\$ 3,000 (three thousand US Dollars) and a match suspension. (Articles 133 and 134 of the CAF Disciplinary Code).

5.3 *Forgery and falsification*

Anyone who, during any Football related activity, creates a false document, forges a document, makes a false claim in a document with potentially legal repercussions or uses a forged document to deceive others will be sanctioned with a suspension for at least six matches. If the perpetrator is an official, the body will pronounce a ban on performing any Football related activity for a period of at least one year. The legal body may also pronounce a fine of at least US\$ 5,000 (five thousand US Dollars). (Article 135 of the CAF Disciplinary Code).

5.4 *Corruption*

Anyone who offers promises or grants an unjustifiable advantage to a body of CAF, a match official, a player or an official on behalf of himself or a third party in an attempt to incite it or him to violate CAF Regulations, will be sanctioned with:

- (a) a fine of at least US \$10,000 (ten thousand US Dollars);
- (b) a ban on performing any Football related activity;
- (c) a ban on entering any stadium.

Passive corruption (soliciting, being promised or accepting an unjustified advantage) is sanctioned in the same manner.

In serious cases and in the case of repetition of the offence, a life ban can be imposed.

In any case, the legal body will pronounce the confiscation of the assets involved in committing the infringement. These assets will be used for the Football Development Programs (Article 136 of the CAF Disciplinary Code).

5.5 *Doping*

Doping offences are dealt with in line with the provisions of the FIFA Anti-Doping Regulations.

Article 139 of the CAF Disciplinary Code establishes the Sanctions for Doping as follows:

- “a) Any violation of the rules on the presence of a prohibited substance or its metabolites or markers, use or attempted use of a prohibited substance or a prohibited method, Refusing, or failing without compelling justification, to submit to sample collection, Tampering or attempting to tamper with any part of a doping control test Possession of prohibited substances and methods shall incur a two year suspension for the first offence and a lifelong ban in the case of repetition.
- b) If any specified substances contained in the list of prohibited substances and methods (Annex A of the Doping Control Regulations for FIFA Competitions and Out of Competition) are detected, for which proof can be produced that the specified substances were not intended to enhance sporting performance, at least a caution shall be given for the first offence and a two year suspension in the case of repetition. A third offence shall incur a lifelong ban.

c) Any violation of the provision on Trafficking in any prohibited substance or prohibited method or on Administration of a prohibited substance or method shall incur a suspension of at least four years. If any of the players concerned are under the age of 21, and the offence does not involve a specified substance, a lifelong ban shall be imposed on the perpetrator.

d) The failure to provide the required information on the whereabouts of players or their availability for testing) shall be sanctioned with a suspension of at least three months and no more than two years”.

If the suspect can prove in each individual case that he is not guilty either of the serious misconduct or culpable negligence, “both from an objective and subjective point of view”, the sanction may be reduced but only by up to half of the applicable sanction; a lifelong ban may not be reduced to less than eight years.

If the suspect can prove for each individual case that he is not guilty either of serious misconduct or culpable negligence, “both from an objective and subjective point of view”, the applicable sanction will be voided.

If the accused’s assistance leads to the exposure or proof of a doping offence by another person, the sanction may be reduced, but only up to half of the sanction applicable; a lifelong ban may not be reduced to less than eight years.

If more than one player from the same team is sanctioned for doping offences, the team may also be sanctioned. The team may have points deducted, and in a final competition the team’s results may be annulled. The club or the association of the team concerned may also be subject to disciplinary sanctions.

A fine may also be imposed in all cases.

Anyone who is not made to undergo a doping test (either because he is not a player or because he has not been summoned, even though a player) and interferes with the administration of a test, will be sanctioned with a fine of at least US\$ 10,000 (ten thousand US Dollars).

If a player fails to appear for a doping test in compliance with the FIFA regulations, or if he refuses to undergo a test, he will be sanctioned as if he had been tested positive.

The same applies if the player manipulates a test by using masking agents designed to conceal evidence (Article 140).

The legal body may order any player sanctioned for a doping offence to undergo further doping tests while serving a suspension (Article 141).

Every player taking part in a competition or other event organized by CAF, or in training leading up to such a competition or event, shall agree to undergo any tests conducted by the relevant bodies of CAF.

The player shall agree to samples being taken so as to detect the presence of any prohibited substances or to establish the use of any prohibited methods (Article 142).

An official who urges, suggests, authorizes, permits, tolerates or facilitates in any other way the use of prohibited substances or methods will be suspended

from all football related activities for a period of at least two years and fined a minimum of US\$ 10,000 (ten thousand US Dollars).

If any of the players concerned are under the age of 21, the sanction will be doubled (Article 143).

If doping has been organized in such a way as to involved players and/or officials from any team, the club/National Association will be sanctioned with a fine of at least US\$ 20,000 (twenty thousand US Dollars) and, if applicable, the team will immediately be disqualified from the competition in progress. As well, if deemed appropriate the team may also be excluded form one or more future competitions.

If any of the players concerned are under the age of 21, the sanction will be doubled.

This is subject to sanctions imposed on players and officials as a result of the application of other provisions in this section.

Anyone involved in trafficking prohibited substances will be banned from all Football related activities for a period of no less than five years, and be fined a minimum of US\$ 50,000 (fifty thousand US Dollars).

If a player under the age of 21 or an official is affected by the trafficking, the sanction will be doubled (Article 145).

The above sanctions are clearly set out and are dealt with in the CAF Disciplinary Code, adopted by the CAF Executive on 21 day of July and entered into force on 1 December 2014

6. *Enforcement rules*

National Associations, Leagues, clubs or Members of clubs shall not be permitted to bring disputes with CAF or other Associations, clubs or Members of clubs before a court of law. They shall submit any such disputes to an arbitrator appointed by mutual agreement, and fully comply with his decisions.

Should the laws of a country entitle the concerned National Association and its clubs and members to appeal to a Court of Law, the National Association shall insert a clause in its Statutes, by means of which it, along with its clubs and members, freely renounces to that right, and undertakes to accept the decisions of the arbitrators selected.

In the event of a disagreement between two or more associations, and if the associations concerned are unable to agree upon the choice of an arbitrator, the Executive Committee shall have the right to make a decision on the matter. This decision shall be final and binding upon the associations concerned.

National Associations must strictly adhere to the decisions taken by CAF or by CAF-designated arbitrators and where these decisions concern a club, a zonal union or a league, the latter must take the necessary steps to observe such decisions.

Associations violating any of the clauses of this article shall be expelled from the Confederation, in conformity with the provisions of the current Statues.

In disputes referred to the competent bodies of CAF, the National Associations may not, apart from their “bona fide” members, be represented by a person belonging to one of the bodies of CAF.

CAF, through the recent amendments to the CAF Statutes, now provides for the enforcement of its marketing and media regulations as set out in the various rules and regulations of all CAF Competitions. As such, specific disciplinary sanctions may be imposed for teams, players and officials who violate the media marketing regulations i.e. failure to display the correct competition logo, failure to attend post and pre match interviews, failure to use the correct advertising size or brand.

CAF is the registered owners of various trademarks in terms of license agreements, thus protecting its intellectual property, and ensuring that its brand or the brands of the relevant competition sponsor is not brought into disrepute.

CAF is also able to ensure that Organising Committees of the various competitions are at liberty to administer sanctions for violations of the regulations for various competitions by enforcing sanctions in terms of either the competition regulation, or that of the disciplinary code. In this regard, for example, in the Women’s African Cup of Nations, the Organising Committee imposed a sanction in terms of art. 43 of the competition regulation, which provides for fraud/forgery/administrative error. In this particular matter a player, Camila Nobre do Carmo, was found to have falsified documentation relating to her nationality, and was suspended for ten matches. Over and above the sanction imposed, the National Association was further suspended for two future editions of the tournament for the fraud committed by the National Association, bearing in mind the interpretation of strict liability.

Conclusions

In conclusion, CAF as the largest Football Confederation within FIFA, is committed to FIFA’s principles as well as the principles of good corporate governance, as accepted internationally and contained in the CAF Statutes, which was recently amended and approved in Rabat, Morocco, on 17 July 2017.

CAF Disciplinary rules are very similar to FIFA’s and follow in general a similar structure. Like FIFA disciplinary bodies, CAF judicial bodies play a very important role within the confederation. Indeed, they are called to render a high number of decisions within CAF competitions irrespective of whether it be in an off-the-pitch context, which has the aim of guaranteeing that all stakeholders of the Confederation abide by the rules and as such preserve the game of football. Equally, the decisions passed following disciplinary processes provide an important tool to interpret the rules enacted by the legislator and to allow the evolution of the law.

CAF is undeniably a very important actor of football on the pitch as well as outside the confines of stadia, and within, through its rules and its jurisprudence.

CONCACAF DISCIPLINARY PROCEEDINGS & REGULATIONS

by *Andrew Visnovsky**

1. Introduction

The Confederation of North, Central American, and Caribbean Association Football (“CONCACAF”) is tasked with the governance of Association Football (or “Soccer”), futsal, beach soccer, and Paralympic soccer in North America, and Central America, and the Caribbean.¹ The past few years have seen CONCACAF under significant pressure to reform. Investigations into internal corruption, and the release of the subsequent integrity committee report of 18 April 2013, have spurred CONCACAF to make significant changes to its disciplinary and regulatory structures.

2. Background

CONCACAF emerged from a merger of the North American Football Confederation (“NAFC”), and the Condefederación Centroamericana y del Caribe de Fútbol (“CCCF”) on 18 September 1961 in Mexico City. The current iteration of CONCACAF was incorporated in 1994 as a non-profit company under Bahaman Law. Its legal domicile is Nassau, Bahamas, and has offices in Miami, USA.

CONCACAF is a member of FIFA, and consists of 41 member associations who are in turn members of FIFA. The Confederation is further organized into three Regional Unions: The Caribbean Football Union (“CFU”) La Unión Centromericana de Fútbol (“UNCAF”), and The North American Football

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¹ There are three national associations, which govern Soccer in South American jurisdictions who are members of CONCACAF: the Surinamese Football Association, the Guyana Football Federation, and the League de Football de la Guyane. Because of strong cultural ties with the Caribbean, and therefore have joined CONCACAF instead of CONMEBOL. As well, As French Guiana is an overseas department of France, the League de Football de la Guyane itself is a branch of the Fédération Française de Football, which is a member of UEFA.

Union (“NAFU”).² Its stated statutory objective is *inter alia* to Promote, improve, organize, and regulate soccer in North America, Central America, and the Caribbean and to protect the integrity of the sport in the region.³

The CONCACAF Congress is the supreme legislative body of CONCACAF.⁴ The General Secretariat performs executive duties of the confederation.⁵ As well, the CONCACAF Counsel provides oversight over the bodies of the confederation.⁶ There are three judicial bodies of CONCACAF: the Disciplinary Committee; the Appeals Committee; and the Appeals Committee.⁷ There are also a number of standing committees, and ad-hoc committees, who govern, regulate, monitor, and promote various aspects of soccer in North America.

2.1 Statutory Objectives

CONCACAF’s authority to provide disciplinary oversight arises out of its statutory objectives. Specifically, CONCACAF’s statutory objectives provide that the confederation will *inter alia* endeavour to:

- improve the game of Football and promote, regulate and control it in the territories of North America, Central America and the Caribbean in the light of fair play;
- oversee all types of Football within the North American, Central American and Caribbean regions, ensuring compliance with and preventing infringements of the statutes, regulations, and decisions of FIFA, CONCACAF and the Laws of the Game;
- resolve Football matters common to its Member Associations;
- ensure that the bodies and Officials of CONCACAF and its Member Associations observe the statutes, regulations, decisions, disciplinary code and code of ethics of each of FIFA and CONCACAF;
- draw up regulations and provisions governing the game of Football and related matters and to ensure their enforcement;
- protect the interests of its Member Associations.⁸

To effectively perform its disciplinary duties, CONCACAF has passed a number of provisions in its statutes and provided authority for a number of its various bodies to adjudicate disciplinary issues for various stakeholders in the confederation.

² CONCACAF Statutes (2016) Article 9. The disciplinary duties of those organizations is discussed below.

³ CONCACAF Statutes (2016) Article 2.

⁴ CONCACAF Statutes (2016) Article 19, para. 1.

⁵ *Id.* at para. 3.

⁶ *Id.* at para. 2.

⁷ *Id.* at para. 4.

⁸ CONCACAF Statutes (2016) Article 2, (a), (c), (d), (e), (g), (h).

2.2 Integrity Report and Reform.

In 2013, the CONCACAF Independent Integrity Committee (“Integrity Committee”) issued a report (“Integrity Committee Report”) regarding the state of integrity within the confederation.⁹ The CONCACAF Executive Committee commissioned the report, establishing an independent Integrity Committee to investigate significant ethical and integrity threats to CONCACAF at the time.¹⁰ Specifically the Integrity Commission investigated various questionable and corrupt transactions by various CONCACAF executives.¹¹ The investigation, and the following Integrity Committee Report uncovered and outlined a culture of corruption within the upper echelon of the confederation, and the need for reform in its ethics and oversight duties to protect from another possible integrity crisis. In the ensuing years, the CONCACAF Congress adopted a Code of Ethics, and a new edition of CONCACAF Statutes that establish a number of bodies that provide for oversight, investigation, and adjudication of ethical violations, and corrupt practices.¹²

3. Application of Relevant Law

To understand the disciplinary framework of the confederation, we should first grasp the legal framework within which CONCACAF resides. Because of its corporate structure and operation, a web of intersecting local, national, and international laws and policies govern CONCACAF and its operations.

3.1 Bahaman Law

CONCACAF is incorporated as a non-profit company under the 1992 Bahaman Companies Act. As such, CONCACAF must reinvest any profits to further its undertaking.¹³ In this case, the “undertaking” is the CONCACAF’s stated statutory purpose of promoting and organizing soccer in North America, Central America, and the Caribbean.

3.1.1 Arbitration Act of 2009

Because CONCACAF is a Bahaman organization, its disciplinary decisions are therefore subject to the Bahaman Arbitration Act of 2009 (“BAA”). As disciplinary actions are often essentially arbitrations, the arbitration laws of the Bahamas govern the minimum standards of CONCACAF’s disciplinary structure.¹⁴ The BAA was

⁹ See, CONCACAF Integrity Committee Report (2013).

¹⁰ *Id.* Executive Summary.

¹¹ *Id.*

¹² See, CONCACAF Code of Ethics (2014); CONCACAF Statutes (2016).

¹³ See, Bah. Stats. CH.308 (as amended, 2009) § 161.

¹⁴ See, Bah Stat. CH.180 (as amended, 2009).

modelled after the UNCITRAL Model Law on the International Commercial Arbitration of 1985 and its 2006 amendment.¹⁵ The BAA establishes minimum standards for Arbitral proceedings within the Bahamas, and the role of Bahaman courts in arbitral proceedings subject to the law.

3.1.1.1 Court Intervention under the BAA

The BAA allows Bahaman Courts to intervene in certain aspects of arbitrations in certain situations. Under the BAA, Bahaman Courts can appoint arbitrators if the parties cannot agree, terminate arbitrators, compel parties and witnesses to supply evidence to the proceedings, enforce provisional measures, rule on substantive jurisdiction of the tribunal over the dispute, challenge awards in the event of serious irregularities, and enforce awards.¹⁶

The BAA allows for limited review of final and legally binding arbitral awards.¹⁷ Specifically, the BAA empowers courts with the ability to hear challenges of awards that arose out of “serious irregularities”.¹⁸

These irregularities include: failure for the tribunal to act fairly or impartially, adopt suitable procedures, and avoid unnecessary delay;¹⁹ the tribunal exceeding its power; failure by the tribunal to follow the procedure as agreed upon by the parties; failure by the tribunal to dispose of issues presented to it; non-party organizations or individuals exceeding their powers during the course of the arbitration; uncertainty ambiguity of the award; the award arising out of fraud or contrary to public policy; failure to comply with requirements as to the form of the award; or any irregularity in the conduct of proceedings, or in the award, admitted by any arbitrator, institution, or person with powers in relation to the proceedings of the award.²⁰ Should a court find that serious irregularities through the course of an arbitration, a court may send back the arbitration for a rehearing by the same tribunal, set the award aside in whole, or declare the award void.²¹ Bahaman Courts have the discretion limit these actions to certain aspects of the award or the award in whole.²²

Because of the broad scope by which irregularities in proceedings are outlined by the BAA, essentially any attempt by any member or institution to unfairly affect the result of a final disciplinary sanction can lead to a sanction being challenged in Bahaman Court.

¹⁵ See, B. Simmons, QC ‘New Arbitration Legislation Passed,’ Client Briefing July 2010, *viewed at*, www.lennoxpaton.com/news-publications/new-arbitration-legislation-passed.aspx, viewed on 20 June, 2017.

¹⁶ *Id.*

¹⁷ Bah. Stat. Item No. 2009-0043 § 89.

¹⁸ Bah. Stat. Item No. 2009-0043 § 90(2).

¹⁹ See Bah Stat. Item No. 2009-0043 § 44.

²⁰ Bah. Stat. Item No. 2009-43 § 90(2).

²¹ *Id.* at §90(3)

²² *Id.*

3.1.2 Bahaman Sports Act

The Bahaman Ministry for Youth, Sports, and Culture Department of Sport governs sporting organizations within the Bahamas. The Department of Sport generally provides the operation of sports programs, and various sports facilities, and provides grants for various national sporting bodies. The Bahaman Sports Act outlines the duties for the ministry governing sport in the Bahamas.²³ The Sports Act empowers the Department of Sport to operate various sport facilities, provide grant funding, and recognize national associations.²⁴ While the Sport act provides for the recognition of National Associations by the government, which is limited to sport taking place in the Bahamas, or involving sports being practiced inside the Bahamas.²⁵ The Act does not prescribe for minimum standards for sporting organizations within the country, or any specific oversight over sporting organizations, outside of national associations. A definition that CONCACAF does not seem to fit.

3.2 United States Law

Because CONCACAF maintains offices in Miami, there are scenarios where it can be subject to the jurisdiction of United States Courts.²⁶ Moreover because the CONCACAF regulations do not explicitly state the legal seat, or the choice of law applicable to the hearing, A U.S. court may find it has jurisdiction over the proceedings. As a consequence, CONCACAF disciplinary actions are therefore likely governed by the Federal Arbitration Act (“FAA”).²⁷ One should note that review of CONCACAF disciplinary decisions by US courts may only apply to US citizens, and residents as courts may find that it may not have subject matter jurisdiction or be a proper venue to hear disputes between two non-US residents.²⁸

3.2.1 The Federal Arbitration Act

The FAA creates narrow instances where an award can be challenged, specifically when the award was procured by corruption; unreasonably refusing to postpone hearings, failure to hear material evidence, any actions that infringes the rights of any party; or when an arbitrator exceeds their authority as outlined by their governing

²³ See, Bah. Stats. Ch. 385.

²⁴ *Id.*

²⁵ *Id.* at § 7.

²⁶ See, *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014); *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945);

²⁷ See, 9 U.S.C. § 1 et seq. The Federal Arbitration Act establishes a framework to enforce domestic arbitrations, and also codifies the New York Convention and the Panama Convention into U.S. law for the enforcement of international arbitrations.

²⁸ See, 28 U.S.C. §§ 1331 (re: subject matter jurisdiction), 1391 (re: venue).

agreements.²⁹ The U.S. Supreme Court has interpreted the sweeping language of the bill as requiring significant deference to arbitrators and arbitration awards.³⁰

The FAA also requires the issuance of a final award before a Court act to modify or vacate.³¹ U.S. Courts are therefore wary of interposing themselves on arbitral proceedings, and will likely not directly intervene with CONCACAF disciplinary procedures until they have run their course.

3.3 *Swiss Law*

Since CONCACAF is a confederation recognised FIFA, an entity established under Swiss Law, and since many CONCACAF disciplinary actions are appealable to CAS, CONCACAF disciplinary actions could also fall under the scrutiny of Swiss Courts. CAS jurisprudence has established that certain regulatory matters must comply with Swiss Public Policy, regardless of the location or applicable law for the underlying hearings.³² Specifically, CAS Panels have found that while choice of law determines applicable laws to the proceedings, Article 187 of the Swiss Public International Law Act, organizations established under Swiss Law cannot ignore Swiss legal norms.³³ These norms include concepts of Swiss Public Policy, or which would violate fundamental human rights under Swiss Law. Therefore, should CONCACAF disciplinary decisions face appeal up to CAS, they must comport with both Swiss Public Policy, and basic human rights as defined by Swiss Law.

4. *Regulatory Organization of CONCACAF*

CONCACAF operates various organizational bodies to fulfil its statutory objectives and operate its various initiatives and operations. These include Regulatory and Operational bodies, judicial bodies, competition-specific bodies, and other various standing and ad-hoc committees.

4.1 *Regulatory and Operational Bodies and their Disciplinary Duties*

Before the Integrity Committee Report of 2013, the Congress, the General Secretariat, and the Executive Committee operated CONCACAF.³⁴ CONCACAF held the Executive Committee out as akin to a board of directors for the confederation.³⁵

²⁹ See, 9 U.S.C. § 10.

³⁰ See, *Hall Street Associates, L.L.C. v. Mattel, Inc.* 552 U.S. 576 (2008).

³¹ *Id.*

³² See, TAS 2005/A/983 & 984, *Club Atlético Peñarol v. Suarez et al.*

³³ *Id.*; See, Swiss Statute on International Private Law of December 18, 1987, RS 291, Article 187.

³⁴ See, CONCACAF Integrity Committee Report (2012) § 1(B)(1),(2),(3).

³⁵ *Id.* at § 1(B)(2).

The 2016 statutes reorganize CONCACAF's regulatory structure, abolishing the executive committee, and establishing the CONCACAF Council as an oversight body to the rest of the organs of the confederation. The CONCACAF Congress ("Congress") is the legislative arm of CONCACAF, and adopts and amends the CONCACAF Statutes, subject to FIFA oversight.³⁶ The General Secretariat operates as the executive body of CONCACAF, administering the day-to-day workings of the confederation.³⁷ Moreover, the CONCACAF Council ("Council") provides oversight and guidance to the Congress and the General Secretariat.

4.1.1 CONCACAF Congress

The CONCACAF Congress is made up of the confederation's Member Associations.³⁸ The Congress *inter alia* amends the CONCACAF Statutes, elects members of the CONCACAF Council and regulates membership of the confederation.³⁹ The Congress also elects individuals to represent the Confederation at FIFA.⁴⁰ The Congress conducts these duties via member votes. The Congress can only pass decisions if quorum of a majority of the member associations is present at the Congress.⁴¹ However should a quorum not be achieved, a second congress will convene within 24 hours of the quorumless Congress.⁴² This second Congress must have the same agenda as the initial congress.⁴³ At this second Congress, a quorum is not required, unless the agenda includes amendments to the CONCACAF Statutes, elections of members of the CONCACAF and FIFA Councils, the expulsion of a Member Association, or the dissolution of CONCACAF.⁴⁴ Each Member has one vote in the congress, and only Full Members can vote.

4.1.1.1 Dismissal of Persons

The Congress has the authority to dismiss or suspend from activity any person working under CONCACAF's Umbrella (including CONCACAF's representatives to FIFA) via a motion during the course of the Congress.⁴⁵ Procedurally, any Motion for Dismissal must include justifications for that dismissal.⁴⁶ Unlike the

³⁶ CONCACAF Statutes (2016) Article 19, paras. 1, 20, 22.

³⁷ CONCACAF Statutes (2016) Article 19, 41.

³⁸ CONCACAF Statutes (2016) Article 20.

³⁹ CONCACAF Statutes (2016) Article 22.

⁴⁰ *Id.*

⁴¹ CONCACAF Statutes (2016) Article 23.

⁴² *Id.* at para. 2.

⁴³ *Id.*

⁴⁴ *id.* at para. 3.

⁴⁵ CONCACAF Statutes (2016) Article 36.

⁴⁶ *Id.* at para. 2.

procedures outlining the dismissal of a Member Association,⁴⁷ those justifications are not outlined by the CONCACAF Statutes. Likely, these justifications will include non-compliance with the CONCACAF Code of Conduct “Code of Conduct”.

4.1.1.1.1 Code of Conduct

The Code of Conduct “defines the most important values and principles for behaviour and conduct within CONCACAF as well as with the external parties”.⁴⁸ It applies to all CONCACAF officials⁴⁹ who must act in accordance with the “Core principles for behaviour and conduct of the CONCACAF family”.⁵⁰ These core principles are: integrity and ethical behaviour; respect and dignity; zero tolerance of discrimination and harassment; fair play; Compliance with laws, rules and regulations; avoidance of conflicts of interest; transparency and compliance; social and environmental responsibility; fight against drugs and doping; zero tolerance of bribery and corruption; and no betting or manipulation”.⁵¹

4.1.1.1.2 Procedure for Removal

When a motion for dismissal is submitted to the Congress, it must also be sent to the members of the CONCACAF Council, and the Member Associations, along with the agenda for the Congress.⁵² The language of Article 36 para. 2 states that the motion “*shall* be sent to the members of the CONCACAF Council and/or to the Member Associations”.⁵³ This tends to say that a motion to dismiss a person can be validly brought without formally informing the Council, or CONCACAF’s member associations beforehand. However it’s not clear why or when a motion for dismissal should be sent to the Council, when it should be sent to the Member Associations (in addition) and when it should be sent to both.

Those subject to a motion for dismissal have a right to speak in their defence against the dismissal.⁵⁴ However, a vote for dismissal by the Congress can occur before the individual subject to the motion for dismissal has an opportunity to speak.⁵⁵ Such premature vote can only occur if the individual subject to the motion to dismiss is unavailable to appear within two weeks of notice for the motion, or any emergency at the discretion of the CONCACAF Council.

⁴⁷ Discussed later in this chapter.

⁴⁸ See CONCACAF Code of Conduct (2014) § 1.

⁴⁹ *Id.* at §2. The Code of Conduct also applies to Member Associations, members of those associations, match officials, players’ agents, match agents, players, and “paid officials.”

⁵⁰ *Id.* at § 3.

⁵¹ *Id.*

⁵² CONCACAF Statutes (2016) Article 36, para. 2.

⁵³ See, *Id.*

⁵⁴ *Id.* at para. 3.

⁵⁵ *Id.*

Upon submission to the Congress, the motion requires a two-thirds vote of the member associations eligible to vote present at the congress to pass.⁵⁶ Likewise, such a motion can be passed without a quorum, upon a finding that a quorum has not been achieved, and the convening of a second congress within twenty-four hours of the initial Congress, unless the wider agenda of the Congress includes any quorum required action.⁵⁷ Upon Dismissal, the dismissed person must be relieved of his or her functions for CONCACAF immediately.⁵⁸

There is no internal remedy for an appeal of a decision taken by the Congress to remove an individual. However, any final decision taken by CONCACAF is appealable to CAS.⁵⁹ Therefore, should an individual take issue with their expulsion, they must lodge an appeal pursuant to Article 54 of the Statutes.⁶⁰

4.1.2 General Secretariat

The General Secretariat is tasked with the organization of continental competitions, negotiate commercial contracts for the Confederation, provide administrative support for the standing committees, manage the day-to-day operations of CONCACAF, and work on any other administrative matters necessary for the operation and organization of CONCACAF.⁶¹ The Secretariat establishes the agenda for each CONCACAF Council meetings, and takes part in the meetings, without having the power to vote.

4.1.2.1 General Secretary

The General Secretary individually is responsible for executive decision making for the confederation, and heads the General Secretariat. While the General Secretary does not provide disciplinary functions, they are integrally involved in the operations of the Congress, the Council, and various other CONCACAF decision-making bodies.⁶² Because the General Secretary is empowered to take part in all these bodies, and set their agendas, they wield significant influence on the disciplinary process, and operation.

⁵⁶ *Id.*

⁵⁷ CONCACAF Statutes (2016) Article 23, para. 3. *See* discussion on quorum above.

⁵⁸ CONCACAF Statutes (2016) Article 23, para. 5.

⁵⁹ *See*, CONCACAF Statutes (2016) Article 54, para. 54.

⁶⁰ *Id.*

⁶¹ CONCACAF Statutes (2016) Article 41.

⁶² *See*, CONCACAF Statutes (2016) Article 42, para. 3.

4.1.3 CONCACAF Council

The 2016 Statutes establish the Council, which takes the place of the former Executive Committee.⁶³ The 2016 Statutes provide that the Council is “empowered to take decisions on all matters that do not come within the sphere of responsibility of the congress or are not reserved for other bodies by law or under the FIFA or [CONCACAF] Statutes”.⁶⁴ The Statutes also essentially establish a fiduciary obligation to Council members, requiring them to act “honestly and in good faith, with a view to the best interests of CONCACAF, and exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances”.⁶⁵ This is likely criteria that would be considered under the justifications for motion to dismiss a member of the Council under the procedures to dismiss persons within CONCACAF.⁶⁶

The Statutes empower the Council to *inter alia*, enforce the application of the CONCACAF Statutes, promulgate regulations, appoint or dismiss members of the judicial bodies, provisionally suspend member associations until the convening of the next Congress, delegate authority to other CONCACAF bodies, and provide oversight to those bodies.⁶⁷

The Council is composed of 15 members including the CONCACAF President, three vice presidents, three Member Association Members, up to three independent members, four CONCACAF representatives to the FIFA Council, and one Female Member (in addition to any female members that fill the other outlined members).⁶⁸ Likewise, as stated above, the General Secretariat takes part in CONCACAF Council meetings, sets the agenda, but does not have the ability to vote.⁶⁹

4.1.3.1 Suspension of Persons

Any member of the Council can submit a proposal at any time to suspend a person provisionally until the next Congress.⁷⁰ The rights of the individual subject to suspension are the same as those outlined for individuals subject to dismissal.⁷¹

⁶³ See, CONCACAF Integrity Committee Report (2012) §1(B)(2); CONCACAF Statutes (2016) Article 32-35.

⁶⁴ CONCACAF Statutes (2016) Article 33.

⁶⁵ See, *Id.* at para. 1.

⁶⁶ See *Above* Section 4.1.1.1.

⁶⁷ CONCACAF Statutes (2016) Article 33, para. 2.

⁶⁸ CONCACAF Statutes (2016) Article 32.

⁶⁹ See *Above* Section 4.1.2.

⁷⁰ CONCACAF Statutes (2016) Article 36.

⁷¹ *Id.* at para. 3.

4.2 Judicial Bodies

CONCACAF's Judicial Bodies include the Disciplinary, Ethics, and Appeals committees.⁷²

4.2.1 The Disciplinary Committee

The Disciplinary Committee dispenses sanctions as outlined in the Statutes,⁷³ the CONCACAF Disciplinary Code, and the FIFA Disciplinary Code.⁷⁴ The Disciplinary Committee consists of a Chairperson and a deputy Chairperson and as many members as deemed necessary by the CONCACAF Council for the committee to function properly.⁷⁵ As per Article 33 par. 2 lit. i) of the CONCACAF Statutes, members of the Disciplinary Committee and the other judicial bodies are appointed by the CONCACAF Council, which proposal shall be ratified by the Congress. Members shall fulfil the Independence criteria as mentioned under Article 32 par. 6 of the CONCACAF Statutes.

As the Congress has not adopted the CONCACAF Disciplinary Code to date, the Disciplinary Committee is tasked with applying the FIFA Disciplinary Code as outlined on an ad-hoc basis by various competition regulations promulgated by the Congress.⁷⁶

4.2.2 The Ethics Committee

The CONCACAF Code of Ethics governs the Ethics Committee.⁷⁷ The Code of Ethics itself states that its purpose is to “safeguard the integrity and reputation of football in North America, Central America, and the Caribbean”.⁷⁸ It is composed of an investigatory chamber and an adjudicatory chamber.⁷⁹ The Ethics Committee has the discretion to levy any disciplinary sanction as outlined by the CONCACAF Statutes, the Code of Ethics, or the Disciplinary Code, the FIFA Disciplinary code, and any other regulations that may apply to their investigation.⁸⁰

Both chambers of the Ethics Committee chambers are comprised of a chairperson, a deputy chairperson, and nine members.⁸¹ The panel hearing cases before the investigatory or adjudicatory chambers is comprised of the chairperson,

⁷² CONCACAF Statutes (2016) Article 45, para. 1.

⁷³ Discussed *Below* at Section 5.

⁷⁴ CONCACAF Statutes (2016) Article 46, para. 3.

⁷⁵ *Id.* at para. 2.

⁷⁶ *See*, Discussion on the Disciplinary Code *Below*.

⁷⁷ CONCACAF Statutes (2016) Article 47 para. 1.

⁷⁸ CONCACAF Code of Ethics (2014) Preamble.

⁷⁹ CONCACAF Code of Ethics (2014) Article 30, para. 1; CONCACAF Statutes (2016) Article 47, para. 2.

⁸⁰ CONCACAF Statutes (2016) Article 47, para. 7.

⁸¹ CONCACAF Code of Ethics (2014) Article 35, paras. 1, 2.

the deputy chairperson, and three members.⁸² If possible, the three members of the panel should consist of one person from the three unions of CONCACAF (CFU, UNCAF, and the NAFU).⁸³ The Executive Committee determines the actual composition of the ethics panels.⁸⁴

Moreover, the General Secretariat provides both chambers with their own secretariat and staff.⁸⁵ The secretaries of the Chamber the administrative and legal work related to proceedings and provide support to the two chambers e.g. writing the minutes of meetings, drafting final reports, drafting decisions, and filing case files.⁸⁶ These secretaries act under the instruction of the chambers, or the General Secretary, and must report any instructions received by any outside bodies to their respective chambers and the General secretary.⁸⁷

The statutes do not state the extent of (or limits to) the General secretary's authority to instruct the secretaries of the chambers of the Ethics Committee.⁸⁸

4.2.2.1 *Responsibilities and Composition of the Investigatory Chamber*

In investigatory chamber proceedings, the chairperson of the chamber can either lead the investigation themselves as chiefs of the investigation, or appoint a deputy chairperson or member of the investigatory chamber to take part in those duties.⁸⁹ The Code of Ethics tasks the chief of the investigation with the role of spearheading ethics investigations, and building the team (comprised of fellow Investigatory Chamber members, subject to the approval of the chairman of the chamber) to assist in their investigation.⁹⁰ Once the investigation concludes, the chief of the investigation will issue a final report on the investigation, and refer the report to the adjudicatory chamber.⁹¹ After a final hearing body (either the Adjudicatory Chamber, the Appeals Committee, or CAS) has entered a legally binding decision, the Investigatory Chamber may, at its own discretion re-open a case for investigation if it discovers significant new facts or proof that could not have been produced earlier and could result in a "more favourable decision".⁹²

It is not clear from the plain language of the Code of Ethics, whether a "more favourable decision" means favourable in the light of the Investigatory Panel, CONCACAF generally, or the investigated party. This can create issues the finality of the decisions of the Ethics Committee, as even CAS awards can essentially be re-litigated. The Ethics Committee and the Adjudicatory Chamber

⁸² *Id.* at para. 4.

⁸³ *Id.* at para. 2.

⁸⁴ *Id.* at para. 3.

⁸⁵ *See*, CONCACAF Code of Ethics (2014) Article 37.

⁸⁶ *Id.* at 3, 4.

⁸⁷ *Id.* at 5.

⁸⁸ *Id.*

⁸⁹ CONCACAF Code of Ethics (2014) Article 73.

⁹⁰ *See*, CONCACAF Code of Ethics (2014) Articles 74, 75.

⁹¹ CONCACAF Code of Ethics (2014) Article 75.

⁹² CONCACAF Code of Ethics (2014) Article 90, para. 1.

must wield its discretion carefully in re-opening matters where a judicial body or CAS has entered a legally binding decision.

4.2.2.2 *Responsibilities and Composition of the Adjudicatory Chamber*

The Adjudicatory Chamber reviews the Investigatory Chamber's final report, and decide whether to enter into proceedings.⁹³ The Adjudicatory Chamber has its own investigative powers, and has the discretion to undertake further investigatory actions, or refer the matter back to the investigatory chamber to conduct additional investigations.⁹⁴

The chairperson of the Adjudicatory Chamber and the Adjudicatory Chamber's secretary review final report of the investigatory panel.⁹⁵ The chairperson then has the power to decide whether proceedings before the Adjudicatory chamber will commence.⁹⁶ The entire chamber deliberates on matters, with decisions being rendered via majority vote.⁹⁷ The chairperson has the ability to deny motions for the admission of evidence before the chamber, and may on their own order evidence be taken in addition to what was in the investigatory chamber's final report.⁹⁸

The chairperson of the adjudicatory panel has the power to levy certain sanctions upon breaches of the Code of Ethics without the participation of the rest of the panel.⁹⁹ These sanctions include: suspension of a person for up to three matches or up to two months; Impose a fine of up to \$10,000.00; and/or pronounce, alter, or annul provisional measures.¹⁰⁰

4.2.3 *Appeals Committee*

The Appeals Committee is tasked with hearing all appeals arising out of decisions rendered by the Disciplinary and Ethics Committees.¹⁰¹ Essentially, it is the internal appeals body for all disciplinary actions in CONCACAF. The Appeals Committee is made up of a Chairperson, a deputy chairperson, and a number of members.¹⁰² Under the Statutes, the CONCACAF Council has the discretion to determine the number of Appeals Committee members based on what it deems necessary "for the Appeals Committee to function properly".¹⁰³ Appeals Committee proceedings

⁹³ CONCACAF Code of Ethics 2014) Article 33, para. 1.

⁹⁴ *Id.* at paras. 2, 3.

⁹⁵ CONCACAF Code of Ethics (2014) Article 77.

⁹⁶ *Id.*

⁹⁷ CONCACAF Code of Ethics (2014) Article 83.

⁹⁸ CONCACAF Code of Ethics (2014) Article 83.

⁹⁹ *See* CONCACAF Code of Ethics (2014) Article 34.

¹⁰⁰ *Id.* at (a)-(d); *See* Discussion on Provisional Measures under the Code of Ethics *below*.

¹⁰¹ CONCACAF Statutes (2016) Article 48, para. 3.

¹⁰² *Id.* at para. 2.

¹⁰³ *Id.*

are governed by the CONCACAF Disciplinary Code, and the FIFA Disciplinary Code.¹⁰⁴ As well, the Code of Ethics prescribes certain procedures, which the Appeals Committee must follow.¹⁰⁵

4.3 *Disciplinary Code*

To date, the Congress has yet to adopt or vote on the adoption of a CONCACAF Disciplinary Code. Therefore, Various CONCACAF Competition Regulations adopt the FIFA Disciplinary Code on an ad-hoc basis.¹⁰⁶ The provisions that do so generally state that they will apply the FIFA Disciplinary Code and the CONCACAF Disciplinary Code, when entered into force.¹⁰⁷ This indicates that the Confederation has anticipated the passage of The Disciplinary Code since at least 2015. However, It is not clear whether and when said code will be adopted. The Agenda for the XXXII CONCACAF Congress in April 2016 does not indicate a vote for the adoption of a Disciplinary Code.¹⁰⁸ In the most recent extraordinary Conference, held May 10, 2017, press releases also indicated no word on a vote regarding the adoption of a Disciplinary Code.¹⁰⁹

The FIFA Disciplinary Code is mostly fit to regulating discipline at the confederation level. However, the fact that it is written to apply to FIFA competitions, and applied by FIFA bodies creates ambiguities when applied to CONCACAF competitions and CONCACAF bodies. For example, there are instances where the application of the FIFA Disciplinary Code calls for the direct application of Swiss Law.¹¹⁰ As well, the ad-hoc application of the FIFA Disciplinary Code with a summary statement in the competition rulings leads to significant ambiguities as to the adopted applicable law generally, and as various procedural ambiguities that are not explicitly laid out in the FIFA Disciplinary Code or the competition rules applying the code.

Whether CONCACAF will adopt its own Disciplinary Code in the near future, if at all, is an open question. Drafting of the Code could be as simple of an exercise as tweaking the FIFA Disciplinary Code to reflect the code applying to CONCACAF Parties and the laws and localities they are subject to. However, as the FIFA Disciplinary Code has been working without any major issues for the time being, there may be no motivation to make any major changes at the moment.

¹⁰⁴ *Id.* at para. 1, 4; *See*, discussion re: the Disciplinary code at § 3.4 *below*.

¹⁰⁵ *See*, CONCACAF Code of Ethics (2014) Article 88.

¹⁰⁶ *See e.g.* CONCACAF Gold Cup Regulations (2015) Article V. § 2(d); Scociabank CONCACAF Champion's League Regulations (2015) Article IV, para. B § 7(d).

¹⁰⁷ *Id.*

¹⁰⁸ *See*, XXXII CONCACAF Congress Ordinary Congress Agenda, Dated April 8, 2016.

¹⁰⁹ *See*, Media release, CONCACAF XXVI Extraordinary Conference, (10 May 2017) viewed at: www.concacaf.com/article/concacaf-holds-xxiv-extraordinary-congress (viewed on 18 June 2017).

¹¹⁰ *See*, FIFA Disc. Code (2011) Article 90, para. 4.

4.3.1 Proceedings under the Disciplinary Code

As discussed above, CONCACAF has yet to adopt a Disciplinary Code. Therefore, on an ad-hoc basis, CONCACAF has applied the FIFA Disciplinary Code directly for its various competitions via the regulations governing each individual regulation. Therefore, the proceedings under the Disciplinary code follow that of the FIFA Disciplinary code, so long as they apply to the disciplinary regulatory structure of CONCACAF.

4.3.2 Procedural Ambiguities

Due to the ad-hoc application of the FIFA Disciplinary Code by reference in CONCACAF competition regulations, a number of procedural ambiguities arise. As the FIFA Disciplinary Code only contemplates the regulation of disciplinary matters within the context of FIFA competitions, and applied by FIFA bodies, applying its procedural framework to CONCACAF disciplinary procedures is not clear. These ambiguities conflict with CONCACAF's stated objective of transparency in governance, and the right to procedural due process in proceedings.¹¹¹

For example, references to the FIFA Appeals Committee in the FIFA Disciplinary Code when discussed in the context to its application in the CONCACAF is assumed to reference CONCACAF Appeals Committee, not the body at FIFA. However there is no explicit statement as to how to handle conflicts like this, or how to interpret references to FIFA related bodies in the Disciplinary Code when the application of the code relates to internal CONCACAF disciplinary proceedings.

There may be a method that the Disciplinary Committee and the other CONCACAF judicial bodies manage the ambiguities from applying of the FIFA Disciplinary Code. However, because neither the CONCACAF regulations, nor the FIFA Disciplinary Code discuss or contemplate the procedural implications of CONCACAF judicial bodies applying the code, that method is not clear, and therefore does not give proper notice to the adjudicated parties involved in the proceedings as to what the procedures are.

4.3.3 Applicable Law

Since FIFA is a Swiss entity, governed by Swiss Law, the application of the FIFA Disciplinary Code by the CONCACAF bodies who are essentially governed by Bahaman and U.S. law, may need to apply Swiss Law in certain situations. As a matter of example, the FIFA Disciplinary Code requires that in certain instances,

¹¹¹ See, CONCACAF Code of Conduct § 3 (2014); Discussion on the Governance Committee *Above*; See discussion on standard of review under the BAA *Above*; See, Bah Stat. Item No. 2009-0043 § 44; 9 U.S.C. § 10.

the Swiss Code of Obligations apply to the calculation of time limits.¹¹² This creates a microcosm of the web of Bahaman, Swiss, and U.S. laws governing CONCACAF disciplinary regulations overall.

4.4 Code of Ethics

The Integrity Committee Report adopted in 2013 established significant shortfalls in CONCACAF's ability to regulate and monitor issues of ethics and integrity within its operational bodies, and its regional territory.¹¹³ A year later, the CONCACAF Congress adopted the 2014 CONCACAF Code of Ethics to guard against potential future attacks on the integrity of the organization similar to those found in the report. The Code of Ethics therefore is an attempt apply the knowledge gained from the Integrity Committee Report and create procedures to report, investigate, prosecute, and sanction the behaviour found in the report.

As stated above, the preamble of the Code of Ethics states that its purpose is to protect the integrity of soccer in the CONCACAF Region. The Code of Ethics provides specific procedures and disciplinary procedures for ethical violations for those working under the auspice of CONCACAF. These procedures seem to differ from the procedure to expel someone from CONCACAF discussed above, although the regulations do not clearly state how these two procedures interact. Expulsion seems to be, in itself a disciplinary remedy, however, it can stand next to, but separate from disciplinary actions under the Code of Ethics. Moreover, an expulsion does not alleviate an individual from any debts owed to CONCACAF, and therefore will not remove the obligation to pay sanctions (fines) levied by an Ethics Committee Sanction under the Code of Ethics.¹¹⁴

4.4.1 Regulatory Scope

The Code of Ethics applies to all persons under CONCACAF Jurisdiction.¹¹⁵ This includes CONCACAF and national association officials; CONCACAF representatives to FIFA, players, match officials, club personnel, Intermediaries/agents, and anyone else associated with the operation of organized soccer within North America, Central America, and the Caribbean.¹¹⁶ The Code itself focuses mainly on illegal and unethical behaviour.¹¹⁷ This is a general conduct regulation, and applies to the conduct of individuals both during the execution of their duties related to CONCACAF.¹¹⁸

¹¹² FIFA Disc. Code (2011) Article 90, para. 4.

¹¹³¹ See, CONCACAF Integrity Committee Report (2013).

¹¹⁴ See, discussion on the procedural for the removal of officials *above*.

¹¹⁵ CONCACAF Code of Ethics (2014) Article 1.

¹¹⁶ CONCACAF Code of Ethics (2014) Article 2.

¹¹⁷ CONCACAF Code of Ethics (2014) Article 1.

¹¹⁸ CONCACAF Code of Ethics (2014) Article 31, paras. 2, 3.

4.4.1.1 Prohibited Behavior

The Code of Ethics prohibits specific behaviour including: forgery and falsification; offering and accepting gifts and other benefits; conflict of interest; bribery and corruption; discrimination; commissions; harassment and abuse; influencing competitions, and sports betting.

4.4.1.2 Conduct Detrimental to CONCACAF and the Sport

Like many U.S. Sport regulations,¹¹⁹ the CONCACAF code of ethics includes a catch-all ‘conduct detrimental’ provision. Under the Code of Ethics, all persons bound by the code of ethics shall refrain from “any behaviours that damage, or could damage the integrity and reputation of football”.¹²⁰ This language is likely purposefully broad. The scope of this provision allows for the Ethics Committee to prosecute conduct that may not necessarily fit in the above-mentioned categories but still prove problematic for the Confederation.

This provision also requires the full compliance with Ethics Committee investigations.¹²¹ This essentially serves as a subpoena power for the Ethics Committee. If the Committee believes that an individual subject to the code of ethics is not complying with an investigation, they can face their own disciplinary action under this provision of the Code of Ethics.

The Second Circuit of the United States Court of Appeals found that in the context of a collective bargaining agreement, a broad “conduct detrimental” clause by which an arbitrator, under their sole discretion, decides whether a player’s conduct violated that clause, is valid if a product of a collective bargaining agreement, so long as it meets the minimum standard of the Labor Management Relations Act of 1947.¹²² However, as the Code of Ethics was not a product arms-length collective bargaining, and does not involve labour relations a U.S. federal court may not take too kindly to such a vague provision. The question would become one of applicability to the FAA.¹²³ Most likely, U.S. Federal Court would find that because not all internal remedies have been exhausted if an individual challenged a sanction under the Ethics Committee itself.¹²⁴

¹¹⁹ Mainly Collective Bargaining Agreements regulating Player relations and code of conduct.

¹²⁰ See CONCACAF Code of Ethics (2014) Article 13 para. 3

¹²¹ CONCACAF Code of Ethics (2014) Articles 45, 46.

¹²² See, *NFL v. Brady* Nos. 15–2801 (L), 15–2805(CON) (2d. Cir. 2016); 29 U.S.C. §§ 141-197.

¹²³ See above, Discussion on Applicable U.S. Law to CONCACAF regulations.

¹²⁴ See, *Rocket Jewelry Box, Inc. v. Noble Gift Packaging, Inc.*, 157 F.3d 174, 176 (2d Cir. 1998). An award is final, and therefore subject to challenge under the FAA when it resolves the dispute “definitively enough so that the rights and obligations of the two parties, with respect to the issues submitted, do not stand in need of further adjudication”. *Id.* (emphasis removed).

4.4.1.3 Obligation to Report

Like the duty to comply with investigations in the Code of Ethics, the Code also requires all individuals bound by the code to report *any* behaviour prohibited by the Code of Ethics, or any other CONCACAF regulation.¹²⁵ This includes any approach or offer made to them in relation to any prohibited behaviour, even if the individual approached refuses those offers.¹²⁶ Likewise, if the approach involves match manipulation, the approach must report such incident immediately.¹²⁷

4.4.2 Procedures for Disciplinary Actions Under the Code of Ethics

Proceedings before the Ethics Committee involve an investigatory phase and an adjudicatory phase.¹²⁸ The Ethics Committee's remit is limited to any breaches of the Code of Ethics, and has authority to adjudicate conduct of all persons bound by the Code of Ethics.¹²⁹ This extends to both conduct that arises out of official duties that subject someone to Code, and conduct that arises outside of those official duties.¹³⁰ The Committee's Jurisdiction also extends to internal national matters if an association within CONCACAF fails to enter into ethics proceedings of those matters.¹³¹

All parties¹³² in Ethics Committee proceedings under the Code of Ethics have a right to be heard, to present evidence, to inspect opposing evidence, to access the Ethics Committee's files, and to a reasoned decision rendered by the Ethics Committee.¹³³ Parties may also have legal counsel of their own choosing in proceedings under the Code of Ethics.¹³⁴

The Code of Ethics reserves the ability of the Ethics Chamber to limit the right to be heard in "special circumstances".¹³⁵ The code describes these special circumstances (but does not limit the Ethics Committee to those circumstances) as when confidential matters need to be safeguarded, when witnesses need protection, or if the restriction of the right to be heard is required to establish elements of the proceeding.¹³⁶

All proceedings under the Code of Ethics are heard in one of CONCACAF's three official languages: English, French, or Spanish, unless the

¹²⁵ CONCACAF Code of Ethics (2014) Article 27.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ CONCACAF Code of Ethics (2014) Article 30, para. 2.

¹²⁹ CONCACAF Code of Ethics (2014) Article 31, paras. 1, 2.

¹³⁰ *Id.* at para. 4.

¹³¹ *Id.* at para 5.

¹³² The code defines "parties" as only those accused of ethical violations. *See*, CONCACAF Code of Ethics (2014) Article 42.

¹³³ CONCACAF Code of Ethics Article 43, para. 1.

¹³⁴ CONCACAF Code of Ethics Article 44, paras. 1, 3.

¹³⁵ CONCACAF Code of Ethics Article 43, para. 1.

¹³⁶ *Id.* at para. 2.

Ethics Committee and the parties agree on another language to use.¹³⁷ Decisions for disciplinary proceedings under the Code of Ethics should be rendered in the first language of the national association, which the investigated party belongs.¹³⁸

The Code allows for a number of types of proof to prove ethical violations.¹³⁹ Moreover, official CONCACAF reports retain a presumption of accuracy in disciplinary proceedings under the Code of Ethics.¹⁴⁰ However, proof of inaccuracy may be brought.¹⁴¹ The Ethics Committee has absolute discretion regarding the proof provided, judging the proof from their personal convictions.¹⁴²

Costs of the procedure are borne by the party sanctioned.¹⁴³ However, if proceedings are closed, or a party is acquitted, CONCACAF will cover the procedural costs.¹⁴⁴ In the event more than one party is sanctioned, the procedural costs are split to the degree of culpability of the parties, not split evenly.¹⁴⁵ As well, CONCACAF can cover part of the procedural costs even when a party has been sanctioned.¹⁴⁶ The Ethics Committee can also waive or reduce procedural costs in exceptional circumstances, taking into account the sanctioned party's financial constraints.¹⁴⁷ Any modifications to the burden to pay procedural costs, or the splitting of those costs is determined upon the levying and imposition of sanctions for Code of Ethics violations.¹⁴⁸

As stated above, Ethics Committee proceedings involve an investigatory phase and an adjudicatory phase.¹⁴⁹ Likewise, as stated above, each phase involved the adjudication of the matter by two separate chambers: the Investigatory Chamber, and the Adjudicatory chamber.

4.4.2.1 *Investigatory Chamber Procedures*

The investigatory chamber of the Ethics Committee is tasked with investigating potential breaches of the Code of Ethics.¹⁵⁰

Investigatory proceedings are initiated by the filing of a complaint with the General Secretariat, who then refers the complaint to the Ethics Committee.¹⁵¹

¹³⁷ CONCACAF Code of Ethics Article 50, para. 1.

¹³⁸ *Id.* at para. 3.

¹³⁹ CONCACAF Code of Ethics (2014) Article 53.

¹⁴⁰ CONCACAF Code of Ethics (2014) Article 54.

¹⁴¹ *Id.*

¹⁴² CONCACAF Code of Ethics (2014) Articles 57, 58.

¹⁴³ CONCACAF Code of Ethics (2014) Article 67.

¹⁴⁴ CONCACAF Code of Ethics (2014) Article 66.

¹⁴⁵ CONCACAF Code of Ethics (2014) Article 67, para. 2.

¹⁴⁶ *Id.* at para. 3.

¹⁴⁷ *Id.* at para. 4.

¹⁴⁸ *Id.*

¹⁴⁹ CONCACAF Code of Ethics (2014) Article 30, para. 2.

¹⁵⁰ CONCACAF Code of Ethics (2014) Article 32, para. 1.

¹⁵¹ *Id.*

Any person bound by the Code of Ethics has the right to file a complaint regarding potential breaches of the Code.¹⁵²

After a complaint has been filed, the secretariat of the Investigatory Chamber performs an initial investigation.¹⁵³ If the initial investigation indicates a potential breach, the secretariat may, after informing the chairperson of the Investigatory Chamber, begin a preliminary investigation.¹⁵⁴ If the preliminary investigation establishes a prima facie case for a violation of the Code of Ethics, the chairperson of the investigatory chamber will open full investigatory proceedings.¹⁵⁵ Upon the opening of the investigatory proceedings, the parties subject to investigation are notified about the investigation, and the Investigatory Chamber lays out the grounds for the investigation.¹⁵⁶

The chairperson of the Investigatory Proceeding can either lead the investigation, or appoint a deputy to do so.¹⁵⁷ The individual running a specific investigation assumes the role of the chief of the investigation. Throughout the course of the investigation, the chief of the investigation, with the assistance of the secretariat of the Investigatory Chamber, will collect evidence, including interviews, and document collection.¹⁵⁸ While investigating, the chief of the investigation has the power to impose warnings and disciplinary measures should persons bound by the code fail or refuse to cooperate in the investigatory process.¹⁵⁹

Upon the chief of the investigation's determination that the investigation is adequate, the investigation will conclude with a final report.¹⁶⁰ That report, along with all of the investigatory files is then forwarded to the Adjudicatory Chamber.¹⁶¹

4.4.2.2 *Adjudicatory Chamber Procedures*

Upon the receipt of a final report from the Investigatory Chamber, the chairperson and the secretary of the Adjudicatory Chamber examines the report and files.¹⁶² Should the chairperson find that the final report and the files for the investigation contain insufficient evidence to open Adjudicatory Chamber proceedings, the chairperson can close the case, ending the proceedings.¹⁶³ Should the chairperson close the case at this juncture, they will include such reasons in the investigation

¹⁵² CONCACAF Code of Ethics (2014) Article 69.

¹⁵³ CONCACAF Code of Ethics (2014) Article 70.

¹⁵⁴ *Id.* at para. 2, 3.

¹⁵⁵ CONCACAF Code of Ethics (2014) Article 71, para. 1.

¹⁵⁶ *Id.* at para. 2; CONCACAF Code of Ethics (2014) Article 72, para. 2.

¹⁵⁷ CONCACAF Code of Ethics (2014) Article 73.

¹⁵⁸ CONCACAF Code of Ethics (2014) Article 74.

¹⁵⁹ *Id.* at para. 4.

¹⁶⁰ CONCACAF Code of Ethics (2014) Article 75.

¹⁶¹ *Id.*

¹⁶² CONCACAF Code of Ethics (2014) Article 77, para. 1.

¹⁶³ *Id.* at para. 2.

file.¹⁶⁴ However, if the chairperson believes that the investigation is insufficient, in lieu of closing the case, they can send the matter back to the Investigatory Chamber to amend the report, or continue the investigation.¹⁶⁵ If the Chairperson determines the investigation is complete, they will then begin adjudicatory proceedings.¹⁶⁶

Upon the initiation of adjudicatory proceedings, the chairperson of the Adjudicatory Chamber will send the final report and the investigation files to the parties, and set a time limit for parties to submit position statements arguing defences against the allegations and findings in the final report, indicate evidence that their arguments will rely upon, and brief summaries of expected witness testimony.¹⁶⁷ The chairperson of the Adjudicatory Chamber rules on and has the discretion to reject motions for the admission of evidence on the part of the parties under scrutiny.¹⁶⁸ Should the chairperson decide to reject a motion for the admission of evidence, they must provide the party with a brief reasoned decision as to why they rejected the motion.¹⁶⁹

In Adjudicatory proceedings, the chairperson of the Adjudicatory Chamber has the power to order additional evidence be taken *sua sponte*.¹⁷⁰ The Chairperson can also *sua sponte* call and recall witnesses and take testimony in the proceedings.¹⁷¹

The Code of Ethics refers to hearings before the Adjudicatory Chamber as “Oral Statements”.¹⁷² There are generally no live hearings in Adjudicatory Chamber proceedings, and matters are generally decided on the papers.¹⁷³ Parties may request a hearing, but whether oral arguments occur is up to the sole discretion of the adjudicatory chamber.¹⁷⁴ Should the Adjudicatory Chamber grant a hearing, the chairperson of the Adjudicatory Chamber conducts the proceeding, decide on the order of oral arguments and witness testimony.¹⁷⁵ Parties bear the burden to ensure witnesses appear at the hearing, and bear the burden of the costs to produce the witnesses.¹⁷⁶ To compel witnesses, as stated above, those who are regulated by the Code of Ethics must comply with requests to take part in Ethics Committee proceedings, and therefore could face their own disciplinary sanctions under the Code of Ethics if they do not comply.¹⁷⁷

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at para. 3.

¹⁶⁶ *Id.* at para. 4.

¹⁶⁷ CONCACAF Code of Ethics (2014) Article 78.

¹⁶⁸ CONCACAF Code of Ethics (2014) Article 79, para. 1.

¹⁶⁹ *Id.* at para. 2.

¹⁷⁰ CONCACAF Code of Ethics (2014) Article 80.

¹⁷¹ *Id.*

¹⁷² *See*, CONCACAF Code of Ethics (2014) Articles 81, 82.

¹⁷³ CONCACAF Code of Ethics (2014) Article 81.

¹⁷⁴ *Id.* at paras. 2, 3.

¹⁷⁵ CONCACAF Code of Ethics (2014) Article 82.

¹⁷⁶ *Id.* at para. 2

¹⁷⁷ *See above* Section 3.5.1.2.

Once evidence has been presented to the Adjudicatory Chamber, the investigatory chamber will make their arguments and present their case for sanctions.¹⁷⁸ After the investigatory has concluded their arguments, the parties then make their arguments and present their case against the levying of sanctions against them.¹⁷⁹ The hearing closes with the party's closing statements.¹⁸⁰

Moreover, if the Adjudicatory Chamber allows a hearing to commence, the parties subject to the hearings have a right a final opportunity to speak.¹⁸¹

The entire Adjudicatory Chamber deliberates to render a decision and apply the appropriate sanctions.¹⁸² Deliberations take the form of a jury deliberation, and continue until a decision has been made.¹⁸³ Decisions are made via a majority vote, with the chairperson having a deciding vote, should the votes be tied.¹⁸⁴ The Committee then communicates the grounds for the decision and the terms of any sanctions rendered.¹⁸⁵ The timing to appeal then begins upon the receipt of the reasoning for the decision.¹⁸⁶

The decision must be rendered in writing and include: the composition of the adjudicatory panel; the names of the parties; the date of the decision; a summary of the facts; the reasoning for the decision; the provisions of the Code of Ethics that the sanctions (if any) arise out of; the terms of the decision; and notices of the available avenues of appeal.¹⁸⁷ As well, the Ethics Committee can submit the sanction to FIFA in accordance with the FIFA Disciplinary Code in order to extend the sanctions to have an effect globally.¹⁸⁸

4.5 *Anti-Doping Regulations*

All Confederations must comply with the FIFA Anti-Doping Regulations (FIFA ADR), which mirrors the 2015 World Anti-Doping Code.¹⁸⁹ The CONCACAF Code of Conduct also obliges its members to comply with anti-doping rules.¹⁹⁰ Like the FIFA Disciplinary Code, CONCACAF competition regulations also adopt the FIFA ADR on an ad-hoc basis.¹⁹¹

¹⁷⁸ CONCACAF Code of Ethics (2014) Article 82, para 3.

¹⁷⁹ *Id.* at para. 3.

¹⁸⁰ *Id.* at para. 4.

¹⁸¹ *Id.* at para. 6.

¹⁸² *See*, CONCACAF Code of Ethics (2014) Article 83.

¹⁸³ *Id.* at para. 4.

¹⁸⁴ CONCACAF Code of Ethics (2014) Article 84

¹⁸⁵ CONCACAF Code of Ethics (2014) Article 85.

¹⁸⁶ *Id.* at para. 2.

¹⁸⁷ CONCACAF Code of Ethics (2014) Article 86.

¹⁸⁸ CONCACAF Code of Ethics (2014) Article 87; *See*, FIFA Disc. Code (2011) Article 140.

¹⁸⁹ *See*, FIFA Anti-Doping Code (2014) Article 2, para 2.

¹⁹⁰ *See*, CONCACAF Code of Conduct (2014) § 3.

¹⁹¹ *See*, e.g. CONCACAF Women's U17 Championships Regulations (2016-17) Article 12, para 9; Scotiabank CONCACAF Champion's League Competition Regulations (2015/16) Article VIII § A.

There is no explicit assignment of what judicial body, if any, adjudicates FIFA ADR violations. However, the CONCACAF Statutes state that the Disciplinary Code shall govern the Disciplinary Committee's responsibilities.¹⁹² As discussed above, presently CONCACAF has not adopted a Disciplinary Code, and therefore, CONCACAF competitions have applied the FIFA Disciplinary Code on an ad-hoc basis.¹⁹³ Under the FIFA Disciplinary Code, the FIFA Disciplinary Committees "authorized to sanction any breach of FIFA regulations which does not come under the jurisdiction of any other body."¹⁹⁴ Assuming that when applying the FIFA Disciplinary Code to CONCACAF competitions we can substitute FIFA Disciplinary Committee with the CONCACAF Disciplinary Committee,¹⁹⁵ it follows that because no other judicial body is tasked with the adjudicating disputes regarding FIFA ADR violations, the Disciplinary Committee is tasked with that duty.

5. Available Sanctions

The Statutes outline a number of disciplinary sanctions available to its judicial bodies and its regulatory bodies.

Both natural and legal persons can be sanctioned with a warring, reprimand, fine or return of competition awards.¹⁹⁶ Natural persons (individuals) can be sanctioned with a caution, and expulsion, a match suspension, a dressing room and bench ban, a stadium ban, a ban from football-related activity, and forced community service.¹⁹⁷ Legal persons (e.g. clubs, national teams, professional leagues, Member Associations, etc...) can be sanctioned with a transfer ban, ban of spectators for a match, a match on neutral territory, ban from playing in a particular stadium, annulment of a match result, expulsion, a forfeiture, a deduction of competition points, relegation to a lower division, and a match replay.¹⁹⁸

Presumably, the decision-making body in this instance then has wide discretion in determining the appropriate sanction, and its severity under the constraints of Article 49 of the Statutes, limited only by the principles of proportionality and due process. The FIFA Disciplinary code provides that a disciplinary body "shall take account of all relevant factors in the case and the degree of the offender's guilt when imposing the sanction" Which seems to confirm the strong degree of discretion when applying a specific sanction.

¹⁹² See, CONCACAF Statutes (2016) Article 46, para 1.

¹⁹³ See, Discussion of the CONCACAF Disciplinary Code *above*; and discussion of the Proceedings under the Disciplinary Code *below*.

¹⁹⁴ See, FIFA Disc. Code. (2011) Article 76.

¹⁹⁵ We discuss why that forced assumption is problematic in the next section.

¹⁹⁶ CONCACAF Statutes (2016) Article 49, para. 1.

¹⁹⁷ *Id.* at para. 2.

¹⁹⁸ *Id.* at para. 3.

6. Appeals of Disciplinary Sanctions

The Appeals Committee hears all appeals from Disciplinary Committee and the Ethics Committee decisions. Once the Appeals Committee has made a ruling that ruling is “final” pending an appeal to CAS.¹⁹⁹ Likewise, there are a number of sanctions that are not appealable to the Appeals Committee.

6.1 Internal Appeal Remedies

The Appeals Committee is the internal body that hears the appeals for Ethics Committee and Disciplinary Committee decisions. The Disciplinary Code and the Code of Ethics govern its responsibilities.²⁰⁰

6.1.1 Composition and Responsibilities of the Appeals Committee

The Appeals Committee consists of a chairperson, a deputy chairperson, and a staff as determined by the CONCACAF Council.²⁰¹ The Appeals Committee is charged with hearing appeals arising decisions rendered by either the Disciplinary Committee or the Ethics Committee.²⁰²

6.1.2 Appeal of Sanctions for Violations of the Disciplinary Code

Because of the Ad-Hoc Application of the FIFA Disciplinary Code in lieu of a CONCACAF Disciplinary Code, the FIFA Disciplinary Code generally governs Appeals of Disciplinary Committee rulings.

6.1.3 Appeal of Sanctions for Violations Under the Code of Ethics

Most decisions rendered by the Ethics Committee under the Code of Ethics are available for appeal to the Appeals Committee.²⁰³ However, like the FIFA Code of Ethics, the Code of Ethics bars appeals of sanctions consisting of: a warning, a reprimand, a suspension for less than three matches or two months, or a fine less than \$2,000.00.²⁰⁴

¹⁹⁹ See, e.g. CONCACAF Statutes (2016) Article 54, para. 1.; CONCACAF Code of Ethics (2014) Article 89.

²⁰⁰ See, CONCACAF Statutes 2016) Article 48, para 1; CONCAACF Code of Ethics (2014) Article 88.

²⁰¹ CONCACAF Statutes (2016) Article 48, para. 2.

²⁰² *Id.*; See, CONCAACF Code of Ethics (2014) Article 88.

²⁰³ CONCAACF Code of Ethics (2014) Article 88.

²⁰⁴ *Id.*; See FIFA Code of Ethics (2012) Article 80, para. 1.

6.2 CAS Jurisdiction

The CONCACAF Statutes recognizes CAS Jurisdiction.²⁰⁵ Parties may only bring disputes arising under CONCACAF's regulatory umbrella *after* they have exhausted all internal CONCACAF procedures and remedies.²⁰⁶

6.2.1 Original Jurisdiction of CAS for CONCACAF Disputes

Per the Statutes, CAS has jurisdiction at the exclusion of any state court or any other arbitral body to adjudicate disputes between the confederation and its member associations, leagues, clubs, players or officials, or between CONCACAF member associations, leagues, clubs, players or officials.²⁰⁷ However, CAS's ability to intervene in its capacity as an ordinary court of arbitration is limited to disputes that do not fall within the competence of a CONCACAF or FIFA body.

6.2.2 Appeals Jurisdiction of CAS

CAS has jurisdiction to hear appeals to any final decisions passed by CONCACAF.²⁰⁸ Only parties "directly affected" by decisions have the right to appeal those decisions to CAS.²⁰⁹ However, WADA has the right to appeal any doping-related decisions made by CONCACAF bodies, in addition to the parties "directly affected" by the decision.²¹⁰ Parties can appeal any decision within 21 days of receipt of the decision in question.²¹¹ CAS appeals cannot stay disciplinary sanctions pending arbitration (except for orders of payment of a sum of money).²¹² As well, subject to the *de novo* power of CAS, a CAS panel, on appeal from a CONCACAF body's decision cannot take into account facts or evidence which the appellant could have submitted to that body "by acting with the diligence required under the circumstances" but did not.²¹³

6.2.3 Decisions not appealable to CAS

CAS is not competent to hear matters related to sporting rules (e.g. the laws of the game, technical operations of a competition); decisions resulting in the suspension of a natural person for four matches, or three calendar months, or less; or awards

²⁰⁵ CONCACAF Statutes (2016) Article 52, para. 1.

²⁰⁶ *Id.* at para. 2.

²⁰⁷ CONCACAF Statutes (2016) Article 53, para 1.

²⁰⁸ CONCACAF Statutes (2016) Article 54, para 1.

²⁰⁹ *Id.* at para. 2.

²¹⁰ *Id.*

²¹¹ *Id.* at para. 3.

²¹² *Id.* at para. 5.

²¹³ *Id.* at para. 6.

issued by an independent arbitration tribunal for national disputes, arising out of the statutes of a Member Association.²¹⁴ That final category would, for example, include any decisions made through the dispute resolution process under U.S. Soccer Federation's statutes, heard by the American Arbitration Association.

7. Membership

Membership of CONCACAF is open to all national associations located in North America, Central America, and the Caribbean.²¹⁵ Membership is also available to any national association located outside of CONCACAF's if they are not a member of another confederation.²¹⁶ However, any accession to membership of CONCACAF is subject to and must conform to the FIFA Statutes.

There are two types of membership for national associations in CONCACAF: Full, and Associate. Associate Members are entitled to all the rights of Full Membership, save for the ability to vote at any CONCACAF Congress, and not propose candidates for the CONCACAF Council, any standing committees.²¹⁷ As well, Associate Membership is temporary, and expires after two years.²¹⁸

7.1 Termination of Membership

Membership to CONCACAF can be terminated by either expulsion or resignation.²¹⁹ The Congress can vote to expel any Member association upon recommendation of the CONCACAF Council.²²⁰ Upon receiving recommendation from the CONCACAF Council, if the majority of eligible voting Members are present at the Congress, to expel a Member, a Motion to Expel will only pass upon a three-quarter-majority vote.²²¹ A Member can be expelled if it has: failed to fulfil its financial obligations to CONCACAF; Seriously violated any CONCACAF or FIFA statutes, regulations, or decisions; or have lost the status of National Association in its home jurisdiction. A member can resign from CONCACAF upon submitting notice to the General Secretary.²²² Upon submitting notice of resignation, Membership terminates at the end of the calendar year, provided the Member Association submits notice at least six months before the end of the

²¹⁴ CONCACAF Statutes (2016) Article 55.

²¹⁵ CONCACAF Statutes (2016) Article 9, para 1.

²¹⁶ *Id.* at paras. 2, 3.

²¹⁷ *Id.* at para. 5.

²¹⁸ *Id.* at para. 4.

²¹⁹ CONCACAF Statutes (2016) Article 8, para. 3.

²²⁰ CONCACAF Statutes (2016) Article 14, para. 1.

²²¹ *Id.* at para. 2. This is three-quarters is three quarters of all members, not merely three quarters of the members present.

²²² CONCACAF Statutes (2016) Article 15, para. 1.

year.²²³ Membership termination does not alleviate an association from any financial obligations to CONCACAF.²²⁴

7.2 *Suspension of Membership*

The Congress has the power to suspend any Member Association upon the recommendation of the Council.²²⁵ As well, the Council can at its own discretion suspend a Member Association with immediate effect until the next Congress convenes.²²⁶

A Member Association can be suspended if it is no longer considered fully responsible for organizing soccer-related matters within its jurisdiction; it can no longer perform its statutory obligations appropriately; it cannot guarantee the effective operation of competitions under the auspice of the Member Association; it cannot ensure free and fair elections of its executive or supervisory body.²²⁷ A suspension requires a three quarter majority of member associations present and eligible to vote at the Congress.²²⁸

Upon suspension, a Member Association loses all of their membership rights and privileges during the term of the suspension.²²⁹ As well, suspended Member Associations are required to continue paying membership dues and other fees during the term of their suspension.²³⁰ There is also no requirement by the Statutes as to the length of the suspension, or a bar for levying an indefinite suspension.

7.2.1 *Challenges to Membership Suspension*

The CONCACAF Statutes state that any sanction levied against a Member Association is appealable to the Appeals Committee, except suspensions.²³¹ It is also not clear how long the suspension is valid for, or the procedures by which a Member Association may attempt to reinstate full membership. It is also not clear, if suspended by the Council between Congresses, whether there is a procedure by which a Member Association can appeal the Decision.

The Council has the “absolute discretion” to suspend Member Associations between Congresses.²³² The Statutes also allow for the possibility that the Council can lift suspensions before the next congress after their institution

²²³ *Id.*

²²⁴ CONCACAF Statutes (2016) Article 83.

²²⁵ CONCACAF Statutes (2016) Article 13, para 1.

²²⁶ *Id.*

²²⁷ *Id.* at para. 2.

²²⁸ *Id.* at para. 3.

²²⁹ *Id.* at para. 4.

²³⁰ *Id.*

²³¹ *See*, CONCACAF Statutes (2016) Article 13, para. 2.

²³² *See*, CONCACAF Statutes (2016) Article 13, para. 1.

of the Congress.²³³ Therefore, the Council, between Congresses can suspend, and reinstate Member Associations, with no avenue of appeal or challenge by the suspended Member Association. The Statutes do provide for an internal appeal remedy for a suspension by either the Congress or the Council. However, CAS has original jurisdiction for disputes between CONCACAF and Member Associations, and has appeal jurisdiction for any “final decisions” rendered by CONCACAF.²³⁴ Therefore, any decision to suspend a member association is subject to a review by CAS.

8. *Regional Unions Disciplinary Authority And Procedures*

The 42 members of CONCACAF are divided into three Regional Unions, for its three major geographic regions: the Caribbean (CFU), Central America (UNCAF), and North America (NAFU). These regional unions operate their own competitions, and operate their own disciplinary bodies.

8.1 *Caribbean Football Union*

The Caribbean Football Union (CFU) is tasked with regulating soccer competitions between 31 Caribbean Member Associations. There are a number of competitions operating under the auspice of the CFU, and subject to its regulations. Most notably, the CFU operates the CFU Championship (a national team competition whereby the top four teams proceed to the CONCACAF Gold Cup) and the CFU Club Championship (a club competition which feeds its top three finishers to the preliminary round of the Scotiabank CONCACAF Champion’s League). The CFU has its own statutes, which establishes the existence of its own judicial bodies.²³⁵ According to the CFU Statutes, CFU competitions operate under the CFU’s own disciplinary regulations.²³⁶ However, like its parent, CONCACAF, its Disciplinary code either does not exist, or has yet to be published.

Like CONCACAF, the CFU has three judicial bodies: Ethics, Discipline, and Appeals. The CFU Disciplinary Committee consists of a chairperson, and four members, and is subject to the CFU’s disciplinary regulations.²³⁷ The Ethics Committee also consists of a chairperson and four members.²³⁸ Likewise, the Appeals Committee consists of a chairperson and four members.²³⁹ All three bodies are governed by the Disciplinary Regulations of the CFU.²⁴⁰

²³³ *See, Id.*

²³⁴ *See*, CONCACAF Statutes (2016) Article 52, para. 1(a), Article 53, para. 1.

²³⁵ *See*, CFU Statutes (2012).

²³⁶ *See*, CFU Statutes (2012) Article 5.1(c) “The procedures of the Disciplinary Committee shall be governed by the disciplinary regulations, as shall be in force from time to time”.

²³⁷ CFU Statutes (2012) Article 5.7.

²³⁸ CFU Statutes (2012) Article 5.9.

²³⁹ CFU Statutes (2012) Article 5.8.

²⁴⁰ CFU Statutes (2012) Article 5.7-5.9.

The Executive Committee and the CFU General Secretariat of the CFU is tasked with drafting the Disciplinary Regulations for the Union.²⁴¹ However, recent press regarding the Executive Committee's activity does not indicate any action on the drafting or promulgating of any disciplinary regulations.²⁴²

8.2 *Unión Centroamericana de Fútbol*

The Unión Centroamericana de Fútbol (UNCAF) is tasked with governing soccer competitions between Central American Nations: Belize, Costa Rica, El Salvador, Guatemala Honduras, Nicaragua, and Panama. Most notably UNCAF organizes the COPA Centroamericana, a national team competition between its member nations. To date, UNCAF has not published its statutes, or disciplinary regulations. However, its website indicates that it has a Disciplinary Committee, and an Appeals Committee.²⁴³ Therefore, it seems to operate its own disciplinary oversight for its competitions.

8.3 *North American Football Union*

The North American Football Union (NAFU) is tasked with governing competitions between North American Nations: The United States of America, Canada, and Mexico. However there are no current competitions under the auspice of the NAFU, and it seems currently inactive.²⁴⁴

9. *Club Licensing*

Like other confederations, CONCACAF and its regional unions organize a number of club competitions, the capstone of these being the CONCACAF Champions League. The CONCACAF Council is empowered to define a club licensing system for CONCACAF Club Competitions.²⁴⁵ The CONCACAF Statutes state that the Council is tasked with establishing minimum criteria for clubs to compete in club competitions in the Confederation.²⁴⁶ Moreover, Member Associations are required by the Statutes to apply their own club licensing system.²⁴⁷

²⁴¹ See, CFU Statutes Article 6.1(b).

²⁴² See, CFU Executive Committee, viewed at www.cfufootball.org/index.php/the-cfu/executive-committee, viewed on 18 June 2017.

²⁴³ See, UNCAF Organizacion – Comisiones, viewed at <https://www.uncafut.com/index.php/organizacion-uncaf/comisiones>, viewed on 18 June 2017.

²⁴⁴ See, CONCACF Integrity Committee Report (2013) Section I, para. 1.8.

²⁴⁵ CONCACAF Statutes (2016) Article 64.

²⁴⁶ *Id.*

²⁴⁷ CONCACAF Statutes (2016) Article 12(p).

10. Relevant Case Law

While CONCACAF has yet to promulgate a Disciplinary Code, the Disciplinary Committee has been active rendering opinions under the FIFA disciplinary code. The Disciplinary Committee does not publish its reasoned decision. However, it does publish the sanctions imposed. Analysing these publications creates a good understanding of the proportionality the Disciplinary Committee uses when rendering sanctions for disciplinary violations.

10.1 *Cruz Azul FC*

In April 2014, CONCACAF levied a fine for an undisclosed amount against Cruz Azul FC, and extended a suspension for its goalkeeper, Jesus Corona, for an on-field brawl that occurred after a CONCACAF Champion's league semi-final against Club Tijuana.²⁴⁸ In addition to the one-match suspension arising out of the red card Corona received, the Disciplinary Committee found that Corona violated Article 47 para. m of the FIFA Disciplinary code, and therefore, per Article 77 of the FIFA Disciplinary code, was subject to an additional two-match suspension, making the goal keeper ineligible for the two-leg CONCACAF Champion's League Final. Moreover for his involvement in the altercation, the Disciplinary Committee found that Cruz Azul's doctor, Dr. Jimenez Vega violated Article 50 of the FIFA Disciplinary Code and therefore was subject to a two-match suspension for the incident. Finally the Disciplinary found that the Club violated Article 2.3 of the CONCACAF Media Guidelines when the team refused to attend a mandatory post-match press conference, and therefore received sanctions under article 6.2 of the CONCACAF media Regulations, and articles 14, 15, an 40 of the FIFA Disciplinary Code.

10.2 *Club Tijuana*

In April 2014, the Disciplinary Committee fined Club Tijuana, and suspended defender Hernan Pellerano and Coach Cesar Farias for the same brawl that occurred after the semi-final match of the 2014 CONCACAF Champion's League against Cruz Azul.²⁴⁹ The Disciplinary Committee found that Tijuana defender Hernan Pellerano, violated Article 48 of the FIFA Disciplinary Code for his participation in the fight, and therefore received a five match suspension under Article 77 of the FIFA Disciplinary code in addition to the one-match automatic

²⁴⁸ See, CONCACAF Media Release, "CONCACAF Disciplinary Committee Renders Decisions on Cruz Azul Champions League Case," dated 15 April 2015, www.concacaf.com/article/concacaf-disciplinary-committee-renders-decisions-on-cruz-azul-champions-league-case, 28 June, 2017.

²⁴⁹ See, CONCACAF Media Release, "CONCACAF Disciplinary Committee Renders Decisions on Club Tijuana Champions League Case," dated April 17, 2014, www.concacaf.com/article/concacaf-disciplinary-committee-renders-decisions-on-club-tijuana-champions-league-case, viewed on 28 June, 2017.

suspension arising out of the red-card he received for the incident. The Disciplinary committee also handed coach Cesar Farias a two-match ban for his involvement in the brawl pursuant to Article 50 of the FIFA Disciplinary Code. Moreover, like with Cruz Azul, the Disciplinary Committee fined the club an undisclosed amount for failing to attend the mandatory post-match press conferences.

10.3 CF Pachuca

In May 2017, the Disciplinary Committee fined CF Pachuca for an undisclosed amount.²⁵⁰ The fine resulted from a violation of Article 67 of the FIFA Disciplinary Code when spectators threw smoke bombs and projectile at players and match officials.

10.4 Jurgen Klinsmann

In July 2013, the Disciplinary Committee suspended U.S. National Team coach Jurgen Klinsmann for the CONCACAF Gold Cup final.²⁵¹ The Suspension was levied because Klinsmann threw a ball “in a violent fashion” during a semi-final match against Honduras. Klinsmann was frustrated by the violent play by his Honduran opponents. Klinsmann acknowledged his actions were inappropriate at the press conference after the Semi-final.

10.5 Jorge Luis Pinto

In July 2013, the Disciplinary Committee fined The Head Coach of the Costa Rica National Team for \$5,000.00.²⁵² The Disciplinary Committee found that Jorge Luis Pinto had violated Article 57 of the FIFA Disciplinary Code when he criticized CONCACAF during a press conference after a match against Belize during the 2013 Gold Cup. The Committee also imposed a warning on Mr. Pinto with regard to further conduct.

11. Conclusion

CONCACAF has made great strides in the regulation of ethics and integrity since the independent integrity committee report. However, there is still progress to be

²⁵⁰ See, CONCACAF Media Release, “Decision of the CONCACAF Disciplinary Committee Regarding CF Pachuca” dated May 12, 2017, www.aipsmedia.com/2017/05/16/20867/concacaf-disciplinary-committee-cf-pachuca, viewed on, 28 June 2017.

²⁵¹ See, CONCACAF Media Release, “Disciplinary Committee’s Decision on Jurgen Klinsmann,” dated, 27 July, 2013, viewed at, www.concacaf.com/article/disciplinary-committees-decision-on-jurgen-klinsmann, viewed on 1 July, 2017.

²⁵² See, CONCACAF Media Release, “CONCACAF Disciplinary Committee Fines Costa Rica’s Head Coach,” dated 20 July 2013, viewed at www.concacaf.com/article/concacaf-disciplinary-committee-fines-costa-ricas-head-coach, viewed on 1 July, 2017.

had regarding disciplinary regulations within the confederation. While the 2016 Statutes and the 2014 Code of Ethics are comprehensive, CONCACAF's failure to promulgate disciplinary regulations creates ambiguities in applying disciplinary sanctions.

Likewise, while the CONCACAF Code of Ethics calls for transparency in its search to rebuild the organization's integrity, its failure to publish, promulgate, or announce a time-frame for promulgating the likes of the Disciplinary Code may still be considered as not totally satisfactory. While this failure seems to not have affected the running of the disciplinary function of the confederation, without clear regulatory language, or indication of regulatory intent in the application of the FIFA Disciplinary Code, there will always be a potential for a challenge of a decision.

This problem is easily addressed. The adoption of a Disciplinary Code closely following the FIFA Disciplinary Code can alleviate these issues, and solve the issue of transparency. Likewise, the ability of the various CONCACAF bodies to publish the timeline by which new regulations will be promulgated, and explicit regulations regarding the current regulatory state of the confederation's disciplinary mechanisms would be another step towards transparency.

Transparency in governance is crucial to the operation of international sport governing bodies. Having a comprehensive and clear regulatory structure is also imperative when attempting to apply disciplinary sanctions with any enforceable effect. CONCACAF should promulgate or publish those regulations to have fully effective and enforceable disciplinary regulations.

DISCIPLINARY PROCEDURES IN SOUTH AMERICAN FOOTBALL – CONMEBOL’S JUDICIAL BODIES

by *Pedro Fida** and *Jean Nicolau***

After a long wait, at roughly its centennial South American Football Confederation (CONMEBOL) finally created, in December 2012, a disciplinary code providing the rules generally applied to its competitions. The so-called *Reglamento Disciplinario* hereinafter referred to as the Disciplinary Code (DC), describes infringements to the CONMEBOL regulations, defines the applicable sanctions, and regulates the organization and the functions of CONMEBOL judicial bodies, besides the procedures to be followed (article 1.2 DC).

This article aims, at a first step, to provide an overview (I) of CONMEBOL’s disciplinary procedure; and, secondly, (II) of the specific provisions applicable to doping-related cases.

I. CONMEBOL Disciplinary Procedure Overview

A. Disciplinary Bodies

1. Internal disciplinary bodies

Members of Disciplinary Bodies. Presidents, Vice-Presidents and the other members of all disciplinary bodies are appointed for a 4-year renewable term, by CONMEBOL’s President under proposal of its national associations. These members shall not be part of any other CONMEBOL body (Article 48 DC).

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Disciplinary Unit. The Disciplinary Unit is an independent body (Article 52.1 DC) that provides support to the CONMEBOL judicial bodies for the development of their mission, such as the Disciplinary Tribunal and the Chamber of Appeals. In practical terms, the Disciplinary Unit is mainly in charge of (Article 71 DC): initiating, following and conducting proceedings; transferring information to the disciplinary bodies' information procedures; communicating sanctions to the interested parties (i.e. warnings and automatic match suspensions); enforcing and ensuring respect for decisions adopted by disciplinary bodies; deciding on eligibility of players to participate in CONMEBOL's competitions; and appointing a Single Judge to decide on a case according to Article 50 (i.e. evident solution based on case law, urgent cases, requests from accused persons and clearly moot appeals). It is worth mentioning that this last duty conferred to the Disciplinary Unit was just introduced by the 2013-revised version of the Disciplinary Code.

Disciplinary Tribunal. The Disciplinary Tribunal (*Tribunal de Disciplina*) acts as first instance dispute resolution body which has jurisdiction to decide on any case related to a misconduct described either in the Disciplinary Code or in other CONMEBOL's or, occasionally, FIFA's regulations (Article 51.1 DC). It is composed of five members of different nationalities, including a President and a Vice-President (Article 49.1 DC). The Tribunal sits with a panel of at least two judges, including the President. The President shall decide the number of judges in charge of each particular case (Article 49.3 DC).

Single Judge. In practice, some disciplinary cases arising from CONMEBOL competitions are settled not by panels, but by a single decision-maker (*Juez Único*). The President or any member of Disciplinary Tribunal indicated by the President or by the Disciplinary Unit may designate a Single Judge in order to act either in urgent cases or in cases which a sanction or sanctions to be applied are the following: (i) warning; (ii) fine of USD 15,000 or less; (iii) players or officials' suspension for no more than five matches or three months (Article 50.1 DC).

The President of the Chamber of Appeals or any of its members indicated by the President may act as a Single Judge in the following situations: (i) whenever the facts and the legal grounds are evident and there are precedents in substantially similar procedures; (ii) in urgent cases; (iii) by common agreement of interested parties; (iv) whenever the appeal is clearly moot (Article 50.2 DC).

Chamber of Appeals. The Chamber of Appeals (*Cámara de Apelaciones*) is CONMEBOL's higher internal judicial body, which is authorized to review decisions rendered by the Disciplinary Tribunal (Article 51.2 DC). If associations wish to appeal against a decision concerning one of their members (i.e. players, officials, clubs), they shall be expressly empowered by the Disciplinary Tribunal (Article 83.2 DC). In exceptional circumstances, the President of the Chamber of Appeal may suspend enforcement of the decisions being challenged (Article 84.2 DC).

Decisions related to the following matters are final and not subject to appeal (Article 82.1 DC): warning, reprimand, a three-match suspension or less, a two-month suspension or less, a fine not exceeding 15,000 USD (club or association) or 5,000 USD (other cases) and sanctions on misleading of procedural rules according to Article 70 DC.

As well as the first instance court, the Chamber of Appeals is composed of a President, a Vice-President and three other members of different nationalities (Article 49.4 DC). However, the second instance court sits with at least three judges. In order to decide complex matters, the President submits the case to the full chamber (Article 49.6).

2. External disciplinary bodies

The *Tribunal Arbitral del Fútbol Sudamericano (TAFS)* was created in 2014 by the arbitral chamber “Centro de Arbitraje y Mediación de Paraguay”. The South American football’s court of arbitration is a self-proclaimed independent arbitration court located in Asunción, Paraguay, and is expressly recognized by the CONMEBOL in its Statutes and regulations.

Final appeal before the TAFS is possible in all cases that are not related to: violation of the rules of the game; suspensions not exceeding four matches or three months; provisional measures confirmed by the Chamber of Appeals (Article 127.2 DC).

An appeal before the TAFS, which in principle does not stay the effects of the appealed decision (Article 127.6 DC), shall be filed within 10 (ten) days from de communication of the challenged decision (Article 127.5 DC). The proceedings are governed by TAFS’s own rules of arbitration, except for Disciplinary Code’s article 127 (Article 127.3). In non-doping-related procedures, TAFS decisions are final.¹

The Disciplinary Code states that, exclusively in doping-related cases, either the infringing party or FIFA are entitled to file before an appeal *Court of Arbitration for Sport (CAS)* against the Chamber of Appeals’ decision, in principle without suspending its effects (Article 128.1 DC), within 21 (twenty-one) days from the communication of the challenged decision if the appeal is filed by the party (Article 128.2 DC), or within 21 (twenty-one) days from the reception of a copy of the entire proceedings if the appeal is filed by FIFA (Article 128.2.b DC).

However, according to the Disciplinary Code, WADA is not entitled – in principle - to appeal against decisions issued by CONMEBOL’s disciplinary bodies, as its standing to appeal is not expressly foreseen in the applicable regulations. In general, CONMEBOL regulations provide a specific and tailor-made system for appeals to CAS, and assign the right to appeal only to the individuals sanctioned and FIFA.

¹ Except in *additional review* cases foreseen in article 92 (see comments below).

While this issue may be disputed and jurists may diverge, CAS panels shall face this matter in future arbitral awards, since the only case that started discussions in this regard and was brought to the CAS has been settled by means of a consent award.²

B. Rules Governing General Procedures Before Disciplinary Bodies

1. General aspects

Scope. Every natural and legal person that could commit an infraction related to CONMEBOL Statutes and regulations may be a party in proceedings before CONMEBOL's disciplinary bodies (Article 56 DC).

Languages. Even if in theory proceedings may be conducted in the two official languages of CONMEBOL (Spanish and Portuguese), so far Spanish is the predominant language used by disciplinary bodies. Surprisingly, the Disciplinary Code has not even been published, until today, in another version than the Spanish one.

Applicable law. Article 4 DC clearly states that CONMEBOL regulations shall prevail over any other set of rules. Thus, the Disciplinary Code and other CONMEBOL's regulations shall apply in first place by its adjudicatory bodies; secondly, the provisions of FIFA's disciplinary and anti-doping regulations that are not incompatible with the Disciplinary Code, as well as the precedents of CONMEBOL judicial bodies; and, in all cases, the general principles of law. In practice, however, FIFA regulations tend to prevail in case of conflict with either national or continental regulations.³

Rights of the parties. The parties involved in CONMEBOL disciplinary procedures can count on a similar set of rights ensured by judicial procedures, such as rights of defence, right to due process of law and presumption of innocence. In exceptional situations that are not clearly stated in the Disciplinary Code, every accused person has the right to be heard before a decision is taken (Article 58.1 DC). Despite the title of Article 58 ("right of hearing"), not only rights to public hearing are not ensured (Article 58.2.f DC) but actually hearings are clearly exceptional under CONMEBOL's procedure (article 68.1 DC). However, once they are called, parties are obliged to appear before the disciplinary bodies. Those who desire to choose a language other than the official ones during a hearing must, with the approval of CONMEBOL, provide and afford translation services (Article 57).

Communication and Decisions. Without prejudice to the rights of defence, the Disciplinary Code foresees a flexible regime of communication

² CAS 2016/A/4438 WADA v. CONMEBOL & Frederico Rodrigues de Paula Santos.

³ In this sense: CAS 2014/A/3505 *Al Khor SC c. C.*, 19, para. 85; CAS 2010/A/2141 *M. vs. Federação Royale Espanhola de Ciclismo (RFEC)*; and CAS 2010/A/2142 *Union Cycliste Internationale (UCI) vs. M. et Fédération Royale Espanhola de Ciclismo (RFEC)*, 8 June 2011.

between the parties and the disciplinary bodies, in order to comply with the rapidity generally required in sports disciplinary procedures. In this context, electronic communication is explicitly authorized (Article 61.1 DC).

The Disciplinary Unit is the body that notifies decisions in writing to the concerned parties (Article 75.5 DC). Besides that, it shall decide whenever decisions may be made public (Article 69 DC); in practice, very few decisions were made public at this time. On the one hand the Disciplinary Code states that decisions of the disciplinary bodies must be written and reasoned (Article 58.2.g DC); on the other hand it surprisingly authorizes either the Disciplinary Tribunal or the Single Judge to make immediate enforceable unreasoned decisions: unquestionably this provision might pose a problem related to defendants' rights to a due process and a full defence, even if the Disciplinary Code states that parties may at least request subsequently the grounds of these unreasoned decisions (Article 75.7 DC).

Provisional Measures. In urgent cases, such as violations during competitions, disciplinary bodies may issue provisional measures in order to preserve "procedural order, procedural integrity and efficacy of their decisions" (Article 64.1 DC). However, in the famous case concerning the death of a Bolivian boy caused by a supporter of Brazilian club Corinthians in 2013,⁴ the Disciplinary Tribunal has applied a provisional sanction notified without grounds the day after the incident, even if apparently none of the three mentioned conditions were met.⁵ Provisional measures should not exceed a maximum period of 60 days, except in two situations (Article 64.2 DC): by the will of disciplinary body's president or in doping related cases (see further below). These measures can be challenged within the three days following the receipt of a notification by the concerned party (Article 64.3 DC).

Evidence. The parties may produce any type of evidence (Article 65.1 DC), excluding those that violate human dignity or do not serve to establish relevant facts. It should be noted in this regard that, since 2013, declarations from parties and witnesses shall be valid only if they are transcribed (Article 65.2 DC). Every person involved in CONMEBOL competitions is compelled to be a witness or an expert under request of the disciplinary bodies (Article 66.1 DC). As usual, facts described in official match reports are presumed to be accurate (Article 65.1.a DC).

Representation. Associations, clubs, players, officials, agents and all parties under CONMEBOL jurisdiction may arrange to have legal representation during the entire procedure (Article 59.1 DC). The parties may have access to the recording of the cases concerning them (Article 60 DC).

Costs. As a general rule, proceedings before the Disciplinary Tribunal and the Single Judge are exempt of costs. Though, in some cases initiated by a

⁴ Disciplinary Tribunal, *Corinthians / Kevin Spada*, decision of 7 March 2013.

⁵ J. NICOLAU, *Comentários ao novo Código de Disciplina da Confederação Sul-Americana de Futebol*. São Paulo: Quartier Latin, 2014, 114.

party other than the Disciplinary Unit, as those related to ineligibility of a player, the unsuccessful party may be obliged to pay costs and expenses related to the first instance proceedings. An appeal fee of 1,000 USD, refundable in some cases (Article 90.2 DC), shall be paid by the party aiming to seize the Chamber of Appeals (Article 85.5 DC) which decides, taking into account the final result of the proceedings, how costs and expenses shall be allocated (Article 90.1).

Additional review. The Disciplinary Code foresees a last resort remedy (*Recurso de Revisión*) if, after the adoption of a (in principle) definitive decision by judicial bodies, new facts that could have influenced that decision come to light. In this case, interested parties may request a review of the challenged decision within four years of its enforcement date to the concerned judicial body (Article 92 DC).

Referee. In principle, referees' decisions are final and may not be appealed before judicial bodies (Article 46.1 DC), as it relates to the typical cases involving 'field of play' decisions. Though, the Disciplinary Code provides that, solely in cases related to manifest error, such as incorrect identification of the sanctioned player (Article 46.2 DC), legal consequences of the referee's decision may be reconsidered.

Complying with the rule laid down in this article, as an example, the Disciplinary Unit objected against Club Nacional de Paraguay's request for initiating a procedure in order to cancel a yellow card shown during a match, since referees committed no manifest *error in persona*.⁶ Moreover, claims related to match scores are accepted in cases arisen from referees' corruption (Article 46.3 DC).

2. *Disciplinary Measures*

Infringements subject to disciplinary sanctions. The Disciplinary Code obliges persons under CONMEBOL's jurisdiction to comply with the principles of loyalty, integrity and fair play. Any violation of either those principles or of rules of the game, statutes, regulations, decisions, orders and instructions either from FIFA or CONMEBOL, the Court of Arbitration for Sport decisions, and the *Tribunal Arbitral del Fútbol Sudamericano* decisions are subject to disciplinary measures.

Article 5.2 provides concrete (and, at least in theory, not exhaustive) list of examples of infringements that shall be sanctioned by the judicial bodies, from which two should be highlighted.

Article 5.2.i refers to triggering a match interruption or to abandoning a match. This type of conduct has generated one of the first and most relevant decisions since CONMEBOL's judicial bodies have been created.

In the beginning of 2013, the Disciplinary Tribunal decided on the case arising from Argentinian club Tigre abandoning a match during the half-time of 2012 Copa Sudamericana's second-leg final against Brazilian club São Paulo FC,

⁶ Disciplinary Unit, *Club Nacional de Paraguay/Marcos Riveros*, communication of 4 August 2014.

which occurred after a brawl involving Argentinian players and Morumbi stadium stewards.⁷ In the absence of precedents and provisions in terms of sanction quantification, the judges finally decided on imposing a USD 100,000 fine (on both teams), combined with a one-match ban on playing at Morumbi Stadium (for São Paulo FC). At the end, Tigre was declared to have lost the match and the title was awarded to São Paulo FC.

Sanctions applicable to legal persons. Sanctions applicable to clubs and associations are foreseen in Article 22 DC. Besides the ones usually included in disciplinary regulations (i.e. warning, reprimand, return of awards), it is worth mentioning that penalties of fine shall be estimated between USD 100 and USD 400.000 (Article 22.1.c DC). Differently from FIFA regulations, CONMEBOL Disciplinary Code envisages a partial stadium closure sanction, which has often been applied since the judicial bodies started to act.⁸ Even if this sanction has not been imposed yet, CONMEBOL authorities are entitled to transfer a match to a third country (Article 22.k DC) – it may represent an interesting solution to avoid national courts that tend to apply their own law instead of CONMEBOL's regulations.

The annulment of a match automatically grants to the innocent party a 3-0 win, except in the cases where this result is less favourable than the one obtained on the field (Article 23.1 DC). In the particular situations related to improper alignment of a player, the interested party shall request the annulment within the next 24 hours following the end of the match in order to benefit from the 3-0 win. This exception shall not be applied whenever the player's ineligibility stems from a decision made by a disciplinary body (Article 23.3).

Sanctions applicable to natural persons. Besides usual penalties (caution, reprimand, warning, fine – from USD 100 to USD 400.000 –, return of awards), Article 24 states that suspension applied to natural persons may not exceed 24 matches or 24 months and that an infringing party may be compelled by judicial bodies to deliver social services for the “football community” (Article 24.1 DC). Moreover, such as FIFA regulations, the Disciplinary Code foresees a ban not only from dressing rooms and substitutes' bench (Article 24.1.e DC), but also from entering a stadium (Article 24.1.h DC) or taking part in any football-related activity (Article 24.1.g DC).

Stay of Sanctions. Disciplinary bodies are empowered to decide on the stay of all applicable sanctions, except of warning, caution, reprimand or ban on taking part in any football-related activity (Article 25.1 DC). A probationary period between one and five years shall be established (Article 25.2 DC). The party who commits another violation during that period may be sanctioned with basis on both the first and the repeated infringements (Article 25.3 DC).

Clubs and associations objective responsibility. Clubs and associations are objectively liable for the improper conduct of their fans, players,

⁷ Disciplinary Court, *São Paulo FC / Tigre*; decision of 12 December 2012.

⁸ I.e.: *Grêmio – LDU Case*, Decision of 30 January 2013.

officials, members and of every person that may exercise match-related activities on their behalf (Article 6.1 DC). They are also liable for security and order, both inside and outside the stadium as well as in the vicinity of the site where they decide to hold a match (Article 6.2 DC).

Moreover, match officials' reports are deemed to be true and valid and, thus, are sufficient for the Disciplinary Tribunal to initiate proceedings against its members (Article 65.1 DC). Interestingly, CAS jurisprudence⁹ plays an important role in influencing the tribunal's understanding that clubs and national associations are responsible for the conduct of their fans, provided that they can be properly identified.

The main purpose of this objective responsibility rule is far from merely punishing a club or national association, but to assure that it takes responsibility for the acts and violations of its fans, especially because CONMEBOL does not have jurisdiction over fans, but only over associations and clubs. In this sense, CONMEBOL's objective is that clubs be liable for and careful with their fans every time a match is played, either at home or away.

In general, clubs can be subject to harsh sanctions, depending on the seriousness of the disciplinary violations committed by their fans or members (e.g.: players, officials), which could vary from fines of up to USD 400,000, matches being played behind closed doors, suspension from competition and loss of right to host matches. For the athletes sanctions can also reach a maximum amount of USD 400,000 and a suspension from up to 24 matches (Article 22 DC).

Many cases examined by judicial bodies are connected to these dispositions. Two of them are worth mentioning here:

In 2013, Brazilian club Corinthians was sanctioned in first instance with one home match behind closed doors, a USD 200,000 fine and an 18-month ban on the club's supporters for away matches due to a supporter's misconduct (launch of a flare) that caused the death of a Bolivian boy during the Copa Libertadores' match against San José held in the city of Oruro.¹⁰ Corinthians then appealed before the Chamber of Appeals, which rejected the appeal. Finally, the club filed an appeal before the CAS, which partially upheld the appealed decision, and maintained the fine of USD 200,000, the one home match behind closed doors, but ultimately reduced the ban on the club's supporters for away matches to nearly twelve months.

In the same case, the Disciplinary Tribunal considered that club San José Oruro failed to comply with the host club "responsibility to adopt adequate security measures" to prevent the introduction of pyrotechnic devices by the fans who attend football stadiums. So, a penalty fine of USD 10,000 has been imposed

⁹ CAS 2007/A/1217 Feyenoord Rotterdam vs. UEFA; CAS 2013/A/3139 *Fenerbace SK v. UEFA*, paras. 66-67; and CAS 2013/A/3243 *SC Corinthians vs. CONMEBOL*, paras. 80-81.

¹⁰ Disciplinary Tribunal, *Corinthians / Kevin Spada*, decision of March 7, 2013. The case ended before the CAS, under the reference CAS 2013/A/3243 *SC Corinthians vs. CONMEBOL*, which partially upheld the appeal filed by SC Corinthians.

on the club, which has been, in addition, advised that in case of repeat of the same violation, the provisions of Article 43 of the DR (repeated infringement) might be applied.¹¹

In 2015, Argentinian club Boca Juniors was excluded from the same competition after the “tear gas attack” involving their supporters and players of domestic rival River Plate, during the round of 16 first leg. In addition to their elimination, Boca Juniors was compelled to: (i) pay a fine of USD 200,000, (ii) play four continental home-matches behind closed doors (reduced to one match by the Chamber of Appeals), and (iii) have no supporters at four continental away-matches (reduced to one match by the Chamber of Appeals).¹²

More recently, in April 2017, the Brazilian Club Palmeiras and the Uruguayan Club Peñarol played a match during the continental tournament Copa Libertadores Bridgestone, and both were involved in a major brawl and a series of aggressive acts between both clubs and their respective supporters following a provocative act by the Club Palmeiras’ striker Felipe Melo towards the supporters’ stand of Club Peñarol. Following this incident, which resulted in several injured people and destruction in the stadium, the Disciplinary Tribunal initiated proceedings against each club and the main players involved in the brawl¹³ and applied the objective responsibility rule by recognizing that the clubs were liable not only for their players’ violations but for their supporters’. Moreover, the tribunal held that Club Peñarol liable for the security flaws in the stadium that enhanced the aggression and contact between the clubs’ fans.

As a result, the Disciplinary Tribunal obliged Club Palmeiras to: (i) pay a fine of USD 80,000; (ii) have no supporters at three continental away-matches. In relation to Club Peñarol, it was compelled to: (i) pay a fine of USD 150,000; and (ii) play one match behind closed doors. Finally, the tribunal formally warned both clubs that in case of repetition of the disciplinary violations, the sanctions would be aggravated. As for the players, Felipe Melo was sanctioned in the first instance with six matches and a fine of USD 10,000, which was reduced to three matches and USD 5,000 respectively. In relation to Club Peñarol’s players Nahitán Nández, Matías Mier and Lucas Hernández, each of them was sanctioned with three matches.

II. CONMEBOL Anti-Doping Procedure Overview

A. Rules Governing Anti-Doping Procedures

CONMEBOL governs anti-doping procedures through its Disciplinary Code (Articles 93-108) and the CONMEBOL Anti-Doping Regulations (“CONMEBOL

¹¹ Disciplinary Tribunal, *San José de Oruro*, decision of 7 March 2013.

¹² Disciplinary Tribunal, *Boca Juniors/ River Plate*, decision of 16 May 2015.

¹³ Disciplinary Tribunal Decision O-45-17 and O-46-17, *Sociedade Esportiva Palmeiras v/ Club Atlético Peñarol*, decision of 25 May 2017.

ADR”). The South American dispute resolution bodies may, however, apply the FIFA Anti-Doping Regulations (“FIFA ADR”) on a subsidiary basis and only when the CONMEBOL ADR is silent with respect to a specific subject.

Below, we will demonstrate the overall structure of the core rules governing anti-doping in South America.

1. *Jurisdiction for Provisional Measures*

As a threshold matter, the Disciplinary Tribunal shall be competent to rule on a first instance in relation to anti-doping rule violations (ADRVs) committed by athletes, whenever the violations occur during competitions and tournaments organized by CONMEBOL, such as the famous annual editions of the continental competition “Copa Libertadores”, the tournament “Copa América” involving all South American national teams, the “Copa Sudamericana”, amongst others.

The Chamber of Appeals is competent to hear appeals filed against first instance decisions, and shall decide on the applicable sanctions according to Section E of the Disciplinary Code.

2. *Provisional Measures*

In this sense, whenever an ADRV is confirmed, *e.g.*: through the positive result of a B-Sample, the first instance tribunal is also entitled to impose a provisional suspension on the athlete, depending on specific circumstances.

Mandatory Provisional Suspension. As per the usual practice and wording of the WADA Code, the Disciplinary Code establishes that provisional suspensions are mandatory whenever an athlete tests positive in its A-Sample for a prohibited substance that is not a specified substance,¹⁴ such as steroids and anabolic agents. The President of the Disciplinary Tribunal may decide *ex officio* on its application.

Optional Provisional Suspension. On the other hand, provisional suspensions are available whenever an athlete tests positive in its A-Sample for a Specified Substance, *e.g.*: diuretics, stimulants. However, even though the Disciplinary Code provides for this exception (Article 95) and the international jurisprudence, in special the CAS, does not impose the provisional suspension for positive results involving Specified Substances, the Disciplinary Tribunal has not yet established a solid jurisprudence.

In fact, the first instance court has recently issued opposing decisions in the last years involving the same substance, *i.e.* *hydrochlorotiazide*, which is a diuretic and a Specified Substance under Class S5 of the WADA List of Prohibited Substances (“WADA List”). In this regard, the Disciplinary Tribunal did not impose a provisional suspension on an athlete who had tested positive for

¹⁴ Class S5, WADA List of Prohibited Substances (2017 Edition).

hydrochlorotiazide in his A-Sample,¹⁵ whereas in 2017 the same tribunal decided to provisionally suspend two athletes who had allegedly tested positive for this very same diuretic.¹⁶

B-Sample Results. In general, if an A-Sample tests positive for a prohibited substance and the B-Sample does not confirm the A-Sample results, the player shall not be subject to any additional sanctions than the provisional suspension, if applicable. Moreover, if an alleged positive result in an A-Sample occurs during a competition and the player is excluded from the tournament, he and/or his team may be reinstated in the competition, whenever possible. If the reinstatement is not possible and affects the tournament, both the player and his club shall refrain from claiming any compensation for damages (Article 98).

Fair Trial. Whenever a player is provisionally suspended or has accepted a provisional suspension, he will be entitled to be heard by the Disciplinary Tribunal before a final decision is rendered. Usually, hearings are held in Asunción, Paraguay, at the headquarters of CONMEBOL.

In case doping proceedings arise during competitions, the President of the Disciplinary Tribunal may adopt an expedited procedure in order to close the matter swiftly.

Burden of proof. According, to the Disciplinary Code (Article 103) and the CONMEBOL ADR, the Disciplinary Tribunal and the Chamber of Appeals shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether CONMEBOL has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation that is made. As usually observed in the CAS jurisprudence, this standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.

Where the Disciplinary Code places the burden of proof upon the player or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

However, the Disciplinary Code also provides two situations in which the standard of proof shall be higher, namely in its Article 29 (annulment or reduction of suspension period due to specific circumstances) and Article 36 (aggravating circumstances that may increase the suspension period).

As generally seen in anti-doping regulations, CONMEBOL Disciplinary Code provides that facts related to anti-doping rule violations may be established by any reliable means, including admissions.

In general, laboratories accredited by WADA perform the samples' analysis for tested players. Thus, it is presumed that both the testing authority, e.g. CONMEBOL, and the responsible laboratory follow the rules pertaining the

¹⁵ Disciplinary Proceeding D/3/15 (Fred).

¹⁶ Disciplinary Proceeding D/6/17 (River Plate).

International Standards of Testing (IST) and the International Standards for Laboratories (ISL).

In case players wish to challenge this presumption of scientific validity of the analysed samples, he shall do so with sufficient evidence to prove any alleged deviation from the ISL and IST that could possibly cause an adverse analytical finding (ADRV), such as the violation of procedures related to the chain of custody of samples.

As a logical consequence, whenever the player is capable of proving any deviations from the applicable rules, the burden of proof then shifts to CONMEBOL, which must prove that such alleged deviations could not possibly have caused an ADRV.

WADA-Accredited Laboratories. CONMEBOL currently uses the UCLA Olympic Analytical Laboratory (“UCLA Laboratory”) to perform the analysis of all samples collected during its continental competitions. Until February 2017, CONMEBOL used the Colombian laboratory COLDEPORTES (Laboratorio de Control al Dopaje Coldeportes Nacional Bogota); however, on 20 February 2017 it was suspended from conducting anti-doping testing for a period of six months, and following the expiry of this initial suspension period, the COLDEPORTES’ suspension was extended for an additional period of up to six months to address outstanding non-compliances.¹⁷

In general, both laboratories have faced accusations of non-compliance with the ISL in the past, specially the recent partial suspension by WADA of the UCLA Laboratory¹⁸ on 20 June 2017.

Confidentiality. As a logical consequence, whenever the player is capable of proving any deviations from the applicable rules, the burden of proof then shifts to CONMEBOL, which must prove that such alleged deviations could not possibly have caused an ADRV.

General Procedure. Following an ADRV in the A Sample of an athlete, CONMEBOL usually notifies the player, his club and national association about the tests results and initiate a disciplinary investigation. Usually, players request the opening of the B Sample, which shall occur in the presence of the confederation’s and the athlete’s representatives, if he so wishes.

Following the confirmation of the ADRV in the B Sample, the player is provided with the relevant document packages of his urine samples, and a disciplinary procedure is officially initiated by the Disciplinary Unit against the player, who is usually granted a time limit of 20 (twenty) days to file his written defence and supporting evidence, as well as to request a hearing to be held, which is not mandatory.

¹⁷ See <https://www.wada-ama.org/en/what-we-do/science-medical/laboratories/accredited-laboratories>.

¹⁸ See <https://www.wada-ama.org/en/media/news/2017-06/wada-suspends-ucla-laboratory-accreditation-for-specific-prohibited-substances>.

Once the hearing takes place, the Disciplinary Tribunal concludes its ruling on the matter and issues a first instance decision within a couple of months. Subsequently, in case the player disagrees with the outcome the decision, he is entitled to file an appeal before the Chambers of Appeal.

III. Conclusion

As demonstrated above, CONMEBOL judicial bodies have been recently established, along with a new set of disciplinary regulations that innovated in the landscape of South American football. Overall, the structure and concepts present in the Disciplinary Code, which are similar to those found in the FIFA and UEFA disciplinary regulations, finally added credibility to CONMEBOL's dispute resolution system.

Nonetheless, the DC has unfortunately not provided a scale of the sanctions applicable in different situations. In the absence of a consolidated jurisprudence, such a scale could serve as a guideline to be followed by the judicial bodies. In addition, CONMEBOL should publish its decisions more often in order to promote transparency and legal certainty to its members.

The creation of the Disciplinary Unit bound by solid and modern rules has also developed in an attempt to bring justice to victims of serious incidents and accidents, while at the same time balancing the interests of CONMEBOL's members with CONMEBOL's fight for integrity and discipline.

However, as incidents occur and the Disciplinary Tribunal and the Chamber of Appeals adjudicate cases, the judicial bodies do not yet present solid jurisprudence for some matters that are consolidated in the CAS jurisprudence. Even though the judicial bodies sometimes refer to CAS precedents to support their line of reasoning, only time and the diversity of cases will be able to contribute to the development of a more consistent jurisprudence.

DISCIPLINARY PROCEDURES IN FOOTBALL – OCEANIA

by *Alexander J. Davani**

Introduction

The Oceania Football Confederation (“OFC”) is an incorporated society registered in New Zealand. This article outlines the legal and regulatory framework for disciplinary proceedings in football in Oceania. After a brief presentation of the structure of association football in the Oceania region, the article will present the general legal framework under OFC’s regulatory framework including a description of the various disciplinary bodies and their respective competencies. The article then investigates the various infringements of the OFC’s Disciplinary Code and the applicable penalties before finally making general observations about the system which is employed within Oceania.

It should be noted however, that there is little public information available about the disciplinary proceedings conducted by OFC and its decisions are not published. Given such a situation, this paper has focused on an analysis of the OFC Statutes and the various regulations which are relevant to the operation of the OFC’s judicial bodies and the disciplinary proceedings which they administer.

1. The OFC

Discussions about the formation of OFC first took place at the Tokyo Olympic Games following a decision by the Asian Football Confederation (“AFC”) not to allow Australia and New Zealand to affiliate as members.¹ OFC’s first ever congress was held in 1968 with Sir William Walkley and Ian McAndrew, both from Australia, being appointed chairman and secretary/treasurer respectively. It

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¹ See <https://www.oceaniafootball.com/about-ofc/history/> (11 April 2017).

was here that Sir William called on “all nations (to) work together for the development of football in the South Pacific”.²

1.1 *Its objectives*

The OFC’s objectives are multiple and are outlined at Article 2 of its Statutes as follows:

1. To improve the game of football constantly and promote it throughout the Oceania Region in the light of its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes.
2. To promote the game of football in the Oceania Region in a spirit of peace, understanding and fair play without discrimination as to politics, gender, religion or race.
3. To control football in the Oceania Region by taking appropriate steps to prevent infringements of the FIFA Statutes and the OFC Statutes, Regulations and Standing Orders, decisions of FIFA or OFC, or the Laws of the Game and to prevent the introduction of improper methods or practices into the game and to protect it from abuses.
4. To enforce due compliance with the Statutes and Regulations of FIFA and OFC.
5. To provide by Statute, Regulations, By-Laws or otherwise the method of deciding and settling all differences or disputes that may arise between Members, and clubs, leagues, officials and players affiliated to Members.
6. To organise or assist in the organisation of competitions within the Oceania region.
7. To purchase, hold or otherwise acquire any real property or equipment, or any interest in the same, respectively, which shall be for the benefit of OFC or which will assist in the promotion of any of the objectives of OFC.
8. To take all necessary steps to maintain the integrity and credibility of OFC, its Members, Clubs, Leagues officials and players having regard to the position of OFC in the World of Football.
9. To promote and provide charitable activities through Football which shall be beneficial to the community of the Oceania Region and/or to the members of OFC and no benefits to an individual.
10. To use its efforts to ensure that the game of football is available to and resourced for all who wish to participate, regardless of gender or age.
11. To promote the developments of women’s football and the full participation of women at all levels of football governance.

These objectives are not unlike the objects of the other football bodies within the football overall pyramidal structure. As will be pointed out in this paper, there are numerous provisions contained within OFC’s Statutes and regulations

² See <https://www.oceaniafootball.com/about-ofc/history/> (11 April 2017).

which are aligned with FIFA. There are also some distinct similarities between the governance structures of OFC and FIFA such as the OFC's Congress which is its overall legislative body and, relevant to this paper, the adoption of its Judicial Bodies. Overall, these allow OFC to function and operate within the global football movement.

1.2 Membership and competitions

The geographical region of Oceania comprises of thousands of islands located in the Pacific Ocean. It is dominated by the nation of Australia and two other major landmasses which include the nations of New Zealand and Papua New Guinea. Oceania also includes three island regions: Melanesia, Micronesia, and Polynesia (including the U.S. state of Hawaii).³ For the purposes of this paper however, the Oceania region is being defined as the region which encapsulates those Member Associations which are affiliated to OFC.

OFC currently comprises 11 Members, namely, the registered Members Associations of these countries: American Samoa, Cook Islands, Fiji, New Caledonia, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Tahiti, Tonga, and Vanuatu.⁴ Australia left OFC in 2006 after gaining Membership to the AFC.

Prior to the reforms to FIFA's World Cup qualification structure, OFC were the only confederation not to have a direct qualifying spot for the World Cup. Since its creation, OFC have had what has been referred to colloquially as "half a qualification spot" to the FIFA World Cup finals which are held every four years, the last being in Brazil in 2014 and the next being in Russia in 2018. The winner of this qualification spot competes in a two-legged, "home-and-away" playoff with another qualifying team either from the AFC, the Confederacion Sudamericana de Futbol ("CONMEBOL") or the Confederation of North, Central American and Caribbean Association Football ("CONCACAF") for a place at the FIFA World Cup. It should be noted however that this team is not always the champion of the Confederation as this is determined by who wins the OFC Nations Cup. For example, in 2012, Tahiti were winners of the OFC Nations Cup and consequently represented Oceania at the Confederations Cup in Brazil in 2013. New Zealand however, went on to win the OFC World Cup Qualifiers and participated in the play-off matches against Mexico, the fourth-placed team from CONCACAF.

OFC also organises the OFC Champions League which determines OFC's representative at the FIFA Club World Cup. The winner of this competition has usually come out of New Zealand. Auckland City Football Club, from New Zealand, have competed at more FIFA Club World Cups than any other club.⁵ In 2010,

³ See www.nationalgeographic.org/encyclopedia/oceania-physical-geography/ (23 April 2017).

⁴ See <https://www.fifa.com/associations/> (23 April 2017).

⁵ See www.fifa.com/clubworldcup/clubs/club=1903515/index.html (4 June 2017).

Hekari United Football Club from Papua New Guinea became the first club from outside of Australia or New Zealand to represent OFC at a FIFA Club World Cup when they beat Waitekere United Football Club in the Final of the OFC Champions League.

At national level, while most Members Associations run national competitions, there are several within OFC which run national competitions which are referred to and administered as “semi-professional”. For example, the National Soccer League has been running in Papua New Guinea since 2006 and the New Zealand Football Premiership in New Zealand since 2004. Other countries like the Solomon Islands and Fiji also run very popular national competitions.

2. *The regulatory framework*

The OFC Congress (“the Congress”) is the legislative body of the OFC in charge of, amongst other things, amending and adopting the OFC Statutes and takes decisions relating to the method by which they are implemented and applied and is therefore the supreme body of the OFC.⁶

The OFC Executive Committee (“the Executive Committee”) is the Executive Body of the OFC and is the strategic and oversight body that sets the vision for OFC and football within the Oceania Region. It is composed of the President, who is elected at the Congress, and the Presidents representing the 11 member associations of OFC.⁷ The two FIFA council members who are elected in accordance with Article 22 of the OFC Statutes are ex-officio members of the Executive Committee.⁸

The President and the two FIFA Council members shall be elected by the Congress for a period of four years in the year following the FIFA World Cup⁹ while the eleven full member associations of OFC shall be represented on the Executive Committee by their President (or Chairman), also for a term of four years which shall start upon their installation at the Congress immediately following the FIFA World Cup.¹⁰

The powers of the OFC Executive Committee are outlined at Article 28 of the OFC Statutes and include, inter alia, setting up standing or ad hoc committees to deal with particular matters on such terms and with such powers and duties as it considers appropriate;¹¹ at the request of the members, resolving disputes between the members;¹² delegate all or any of its powers to any of its committees or to any national association;¹³ and to approve OFC competitions and tournaments and all

⁶ Article 18 para.1 of the OFC Statutes.

⁷ Article 27 para. 1 of the OFC Statutes.

⁸ Article 27 para. 2 of the OFC Statutes.

⁹ Article 27 para. 5 of the OFC Statutes.

¹⁰ Article 27 para. 6 of the OFC Statutes.

¹¹ Article 28 para. 3 of the OFC Statutes.

¹² Article 28 para. 7 of the OFC Statutes.

¹³ Article 28 para. 11 of the OFC Statutes.

international competitions in the region and the rules and regulations for these competitions.¹⁴ The members of the Standing and Ad Hoc Committees will be appointed by the Executive.¹⁵ Next to the OFC's Standing and Ad Hoc Committees, OFC has put in place independent judicial bodies, which collectively act as its disciplinary body.¹⁶ The Judicial Bodies of OFC are discussed further below.

The Judicial Bodies of OFC are capable of imposing a wide range of sanctions in case of a breach which mirror those of FIFA. Their proper functioning is integral to the successful operation and administration of football within Oceania as disciplinary proceedings and sanctions which they administer serve both a preventive and reprehensive purpose.

3. *The judicial bodies*

The OFC have several overall objectives which have been outlined earlier including, amongst others, to promote the game of football in the Oceania Region in a spirit of peace, understanding and fair play without discrimination as to politics, gender, religion or race;¹⁷ to control football in the Oceania Region by taking appropriate steps to prevent infringements of the FIFA Statutes and the OFC Statutes, Regulations and Standing Orders, decisions of FIFA or OFC, or the Laws of the Game and to prevent the introduction of improper methods or practices into the game and to protect it from abuses;¹⁸ to enforce due compliance with the Statutes and Regulations of FIFA and OFC;¹⁹ to provide by Statute, Regulations, By-Laws or otherwise the method of deciding and settling all differences or disputes that may arise between Members, and clubs, leagues, officials and players affiliated to Members.²⁰

To facilitate the achievement of these objectives, OFC have established its judicial bodies which aim to ensure the respect of the OFC Statutes and regulations and are capable of imposing relevant disciplinary measures in the event there is a breach. General provisions concerning the structure of the judicial bodies of OFC can be found within its Statutes, specifically at Articles 37 to 39. To supplement its Statutes, the OFC Executive Committee has also approved the Disciplinary Code as well as a Code of Ethics.

The judicial bodies of OFC are as follows:²¹

1. Disciplinary Committee;
2. Ethics Committee; and
3. Appeal Committee.

¹⁴ Article 28 para. 12 of the OFC Statutes.

¹⁵ Article 34 of the OFC Statutes.

¹⁶ Article 18 para. 4 of the OFC Statutes.

¹⁷ Article 2 para. 2 of the OFC Statutes.

¹⁸ Article 2 para. 3 of the OFC Statutes.

¹⁹ Article 2 para. 4 of the OFC Statutes.

²⁰ Article 2 para. 5 of the OFC Statutes.

²¹ Article 18 para. 4 of the OFC Statutes.

Each body shall consist of a chairman, a deputy chairman and a specific number of other members who are appointed by the Executive Committee and shall not be members of the Executive Committee or of a standing committee.²² The chair and deputy chairs of these judicial bodies shall be qualified to practice law.²³ The term of office shall be four years with members being eligible to be reappointed or relieved of their duties at any time by the Executive Committee.²⁴

These provisions, which prohibit members of the Executive Committee or a standing or ad hoc committee to be members of the judicial bodies, aim to promote independence of the members of the judicial bodies. In the author's opinion however, any appointments to subordinate bodies of an organization which are made by its Executive Committee, could always be tainted with the perception that they are not independent from Executive Power. The methods by which an organization, like OFC, can maintain independence of its judicial bodies however, is not the subject of this paper although the author wishes to note its importance.

3.1 *The Disciplinary Committee*

The first of OFC's judicial bodies which this paper will discuss is the Disciplinary Committee. The function of this body is governed by the OFC Disciplinary Code.²⁵ Generally, the Disciplinary Committee is authorised to sanction any breach of OFC regulations, which does not come under the jurisdiction of another body.²⁶

The Disciplinary Committee is responsible for:

1. sanction serious infringements which have escaped the match officials' attention;
2. rectifying obvious errors in the referee's disciplinary decisions;
3. extending the duration of a match suspension incurred automatically by an expulsion (cf. Article 18, para. 5 and Article 19, para. 4); and
4. pronouncing additional sanctions, such as a fine, to those imposed by the referee.²⁷

While the quorum for this body is three (3) and it is required by the OFC Statutes to pass decisions only when this number is present, in certain cases, the chair may rule alone.²⁸ The Committee may pronounce the sanctions described in OFC's Statutes and the OFC Disciplinary Code on Members, clubs, Officials, Players and match and players' agents.²⁹ It is important to note that the provisions

²² Article 36 para. 2 of the OFC Statutes.

²³ Article 36 para. 3 of the OFC Statutes.

²⁴ Article 36 para. 4 of the OFC Statutes.

²⁵ Article 37 para. 1 of the OFC Statutes.

²⁶ Article 85 of the OFC Disciplinary Code.

²⁷ Article 86 of the OFC Disciplinary Code.

²⁸ Article 37 para. 1 of the OFC Statutes.

²⁹ Article 37 para. 2 of the OFC Statutes; Note that currently, the term "match and players agents" is still being utilised by the OFC in its Statutes and regulations despite FIFA's Regulations on Working with Intermediaries currently being in force since April 2015 and the abolishment of the previous licensing system for player agents.

outlined in the Article 37 of the OFC Statutes, which establish the Disciplinary Committee, are subject to the disciplinary powers of the OFC Congress and Executive Committee with regard to the suspension and expulsion of Members. In this context, the concept of “independence” is highlighted once again.

3.2 *The Ethics Committee*

The function of the Ethics Committee is outlined within and governed by the OFC’s Code of Ethics. Similar to the Disciplinary Committee, the quorum of the Ethics Committee is three (3) and it shall take decisions if quorum is present. There are however, specific cases where the chair may take decisions alone.³⁰ The Ethics Committee may pronounce the sanctions described within the OFC Statutes, the OFC Code of Ethics and OFC Disciplinary Code on Officials, Players and match and players’ agents.³¹ It should be noted that the Executive Committee shall issue the OFC Code of Ethics.³²

3.3 *The Appeal Committee*

The functions of OFC’s Appeal Committee are governed by the OFC Disciplinary Code and OFC Code of Ethics.³³ Like OFC’s other judicial bodies, the Appeal Committee shall pass decisions only when at least three (3) members are present, however, in certain cases, the chair may rule alone.³⁴ Specifically, the Appeal Committee is responsible for hearing appeals against decisions from the OFC Disciplinary Committee and the OFC Ethics Committee that are not declared final by the relevant OFC regulations.³⁵ Decisions pronounced by the Appeal Committee shall be irrevocable and binding on all the parties concerned. This provision however, is subject to appeals lodged with the Court of Arbitration for Sport (CAS).³⁶

4. *Disputes within Oceania*

It is important to note that Article 40 of the OFC Statutes expressly excludes any Members, and Clubs, Players, Officials and Match and Player’s Agents affiliated to Members within OFC to take before any national court of law any dispute relating to the FIFA Statutes or the OFC Statutes or Regulations or the administration of football, unless specifically provided for in the OFC Statutes or the FIFA regulations.³⁷ Essentially, if an individual or group is involved in Association

³⁰ Article 38 para. 1 of the OFC Statutes.

³¹ Article 38 para. 1 of the OFC Statutes.

³² Article 38 para. 3 of the OFC Statutes.

³³ Article 39 para. 1 of the OFC Statutes.

³⁴ Article 39 para. 1 of the OFC Statutes.

³⁵ Article 39 para. 2 of the OFC Statutes.

³⁶ Article 39 para. 3 of the OFC Statutes.

³⁷ Article 40 of the OFC Statutes.

Football within OFC's jurisdiction, they are not able to take their grievance before a national court of law in the country to which they are registered to participate.

Through this provision, OFC wish to ensure that any football-related disputes are resolved within the framework of association football. This provision is also found in the Statutes of the other Confederations as a means to ensure consistency in the resolution of disputes with association football globally.

Within OFC, to the authors' best knowledge, the validity of this provision has not been tested within any of its Member Associations. Presumably, each member association is a duly registered body in accordance with the relevant legislation appropriate for footballing organisations in their respective countries. This would in turn subject them to the laws of the country within which they would operate. While this paper will not go into this in any detail, the author wishes to point out that it would be a curious result were this provision to be challenged within a jurisdiction where access to justice and the ability to bring a dispute to the Civil Courts was a guaranteed or was legislated for. How would this provision operate in this context?

A recent development relevant to this concept is the creation of National Sports Dispute Tribunals. To the authors' best knowledge, New Zealand currently operate such a body and Papua New Guinea has made steps to establish a similar body within its own jurisdiction. These bodies are set up to hear sporting disputes within their jurisdiction and presumably, football-related disputes will be captured by the scope of the legislation establishing these bodies. While FIFA has regulated for National Dispute Resolution Committees to play a similar role, in the absence of such a body established by the Member Association, the role of a body similar to those already established in New Zealand and being proposed in Papua New Guinea will need to be considered.

5. *The Court of Arbitration for Sport (CAS)*

The OFC Statutes allow recourse for Members of the Confederation, their clubs, members of their club and any players, officials and licensed match agents and players' agents to the Court of Arbitration for Sport ("CAS"), to resolve any disputes between FIFA, the Confederations, Members, Leagues, clubs, Players, Officials and licensed match agents and players' agents.³⁸ The Statutes empower the CAS to deal with appeals against decisions and disciplinary sanctions of the last instance. Recourse to CAS however is not automatic and may only be made after all other internal channels have been exhausted.³⁹

The appeal shall be made to CAS within 21 days of notification of the decision.⁴⁰ In relation to Leagues, the OFC Statutes requires Members and Leagues to agree to recognize CAS as an independent judicial authority and to ensure that

³⁸ Article 41 para. 1 of the OFC Statutes.

³⁹ Article 42 para. 2 of the OFC Statutes.

⁴⁰ Article 42 para. 1 of the OFC Statutes.

their members, affiliated Players and Officials comply with the decisions passed by CAS. The same obligation also applies to licensed match and players' agents.⁴¹ Once again, it should be considered how National Sports Dispute Resolutions bodies established by National Legislation will be factored into this process.

The OFC Disciplinary Code states that certain decisions passed by the OFC Appeals Committee may be appealed before the CAS.⁴² Under OFC's Statutes, CAS shall not hear appeals on:

1. violations of the Laws of the Game;
2. suspensions of up to four matches or up to three months (with the exception of doping decisions);
3. decisions passed by an independent and duly constituted arbitration tribunal of a member or Confederation; and
4. decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of a member or Confederation may be made.

It should also be noted that where an arbitration agreements exists between a third party and those entities or persons mentioned in Article 42(1)⁴³ of OFC's Statutes, the OFC Statutes empower CAS to deal with all disputes that may arise between the parties.⁴⁴

6. *Disciplinary Procedures*

This section will now focus on the procedure which is followed by the OFC's Disciplinary Committee as set forth in Chapter II of OFC's Disciplinary Code.

a. *Commencement of proceedings and investigations*

The Disciplinary Committee is authorised to sanction any breach of OFC regulations, which does not come under the jurisdiction of another body.⁴⁵ The Disciplinary Committee is responsible for:

1. sanctioning serious infringements which have escaped the match officials' attention;
2. rectifying obvious errors in the referee's disciplinary decisions;
3. extending the duration of a match suspension incurred automatically;
4. by an expulsion (cf. Article 18, para. 5 and Article 19, para. 4);
5. pronouncing additional sanctions, such as a fine, to those imposed by the referee.⁴⁶

⁴¹ Article 40 para. 3 of the OFC Statutes.

⁴² Article 83 of the OFC Disciplinary Code.

⁴³ These entities include FIFA, OFC, Member or League.

⁴⁴ Article 41 para. 4 of the OFC Statutes.

⁴⁵ Article 85 of the OFC Disciplinary Code.

⁴⁶ Article 86 of the OFC Disciplinary Code.

Under the OFC's Disciplinary Code, disciplinary infringements are prosecuted automatically⁴⁷ and it should be noted that any person or authority may report conduct they consider is incompatible with the regulations of OFC, only in writing, to the judicial bodies via the OFC Secretariat.⁴⁸ The necessary investigations are carried out by the Secretariat, *ex officio*, under the guidance of the Chair.⁴⁹

b. Time limits, right to be heard, proof and representation and assistance

Time limits to which member associations shall adhere to, commence the day after they have received the relevant legal document.⁵⁰ When persons or entities other than a Member Association are involved, the time limit commences four (4) days after receipt of the document by the Member Association.⁵¹ Under this article, there is a direct responsibility on the part of the Member Association to forward the legal document onto a party of the proceedings, if it is not the Member Association itself, unless it has also been sent to the other party in question or their legal representative by OFC.⁵² Where the document has also been sent to the other party or their legal representative, then the time limit will commence the day after receipt of the document in question.⁵³

The parties to the proceedings have a right to be heard and shall be heard before any decision is passed.⁵⁴ They may, in particular:

1. refer to the file;
2. present their argument in fact and in law;
3. be involved in the production of proof; or
4. obtain a reasoned decision.⁵⁵

In exceptional circumstances, such as when confidential matters need to be safeguarded for the proceedings to be conducted properly, a party's right to be heard may be restricted.⁵⁶

The OFC's Disciplinary Committee is entitled to accept all types of proof when considering matters before it however, proof that violates human dignity or does not establish relevant facts may be dismissed.⁵⁷ The burden of proof rests with OFC except for proceedings related to a doping procedure when the onus shifts to the person who has been tested to prove their innocence.⁵⁸

⁴⁷ Article 117 para. 1 of the OFC Disciplinary Code.

⁴⁸ Article 117 para. 2 of the OFC Disciplinary Code.

⁴⁹ Article 118 of the OFC Disciplinary Code.

⁵⁰ Article 98 para. 1 of the OFC Disciplinary Code.

⁵¹ Article 98 para. 2 of the OFC Disciplinary Code.

⁵² Article 98 para. 2 of the OFC Disciplinary Code.

⁵³ Article 98 para. 2 of the OFC Disciplinary Code.

⁵⁴ Article 102 para. 1 of the OFC Disciplinary Code.

⁵⁵ Article 102 para. 2 of the OFC Disciplinary Code.

⁵⁶ Article 103 para. 1 of the OFC Disciplinary Code.

⁵⁷ Article 104 para. 1 and 2 of the OFC Disciplinary Code.

⁵⁸ Article 107 para. 1 and 2 of the OFC Disciplinary Code.

Parties may choose to be assisted by a third party and represented during a proceeding, even when they are not required to appear personally.⁵⁹ The parties are free to choose their own assistance and representation.⁶⁰

c. Oral statements, deliberations and decisions

As a general rule, there are no oral statements and the Disciplinary Committee decides on the basis of the contents of the file.⁶¹ There is however, a possibility for a party to request an oral statement to be made.⁶² In the event that arrangements are made for oral statements to be heard, they will always be heard behind “closed doors”.⁶³ Once the preliminary proceedings have ended, the chairman allows the person against whom proceedings are being conducted a final opportunity to speak.⁶⁴

Given the geographical challenges and associated cost implications faced by Member Associations in the Oceania region, such as cost, while the possibility of oral statements is available, it is envisaged that oral hearings may only be heard in exceptional circumstances. While OFC’s procedures allows for procedural fairness, the opportunity for oral hearings may be few.

Deliberations by the Disciplinary Committee are conducted “behind closed doors”⁶⁵ without interruption unless there are exceptional circumstances.⁶⁶ It is the chair’s responsibility to determine the sequencing of deliberations and the order in which various questions are submitted for deliberation.⁶⁷ The chair, who always speaks last, determines the order in which members will express their opinions with the Committee Secretary having consultative powers.⁶⁸

Decisions are passed by a simple majority of the members present, who shall each have one vote each.⁶⁹ In the event that votes are equal, the chair has a casting vote.⁷⁰ The decisions are signed by the General Secretary of the OFC and shall contain:

1. the composition of the committee;
2. the designation of the parties;
3. the summary of the facts;
4. the legal reasons for the decision
5. the provisions on which the decision was made

⁵⁹ Article 108 para. 1 and 2 of the OFC Disciplinary Code.

⁶⁰ Article 108 para. 3 of the OFC Disciplinary Code.

⁶¹ Article 120 para. 1 of the OFC Disciplinary Code.

⁶² Article 120 para. 2 of the OFC Disciplinary Code.

⁶³ Article 120 para. 3 of the OFC Disciplinary Code.

⁶⁴ Article 121 para. 2 of the OFC Disciplinary Code.

⁶⁵ Article 122 para. 1 of the OFC Disciplinary Code.

⁶⁶ Article 122 para. 3 of the OFC Disciplinary Code.

⁶⁷ Article 122 para. 4 of the OFC Disciplinary Code.

⁶⁸ Article 122 paras. 5 and 6 of the OFC Disciplinary Code.

⁶⁹ Article 123 para. 1 and 2 of the OFC Disciplinary Code.

⁷⁰ Article 123 para. 3 of the OFC Disciplinary Code.

6. the terms of the decision;
7. notice of the channels for appeal.⁷¹

It is possible for the judicial bodies not to communicate the grounds of a decision and instead communicate only the terms of the decision. At this moment, the parties will be informed that they have ten (10) days from the receipt of the terms to request, in writing, the grounds for the decision and that failure to do so will result in the decision becoming final and binding.⁷² If a party does request the grounds for a decision, these will be communicated to the parties in full, written form at which point they will also be notified of the time to lodge an appeal which begins upon the receipt of the full decision.⁷³

7. *Sanctions*

The legal basis on which OFC's judicial bodies are entitled to pronounce sanctions is articulated at Article 44 of the OFC Statutes. Article 35 of the Statutes provides for a non-exhaustive list of measures which are further recalled and explained in the OFC's Disciplinary Code.

Similar to FIFA, the OFC has sanctions which may apply to both natural and legal persons⁷⁴ and include warnings, reprimanding, fining and return of awards.⁷⁵ Cautioning, expulsion, match suspension, a ban from entering dressing room and/or substitutes' bench, a ban from entering a stadium or a ban on taking part in any football-related activity can only be imposed on natural person,⁷⁶ while, playing a match without spectators, playing a match on neutral territory, a ban on playing in a particular stadium, the annulment of the result of a match, exclusion, deduction of points, forfeiture, a transfer ban and demotion and/or relegation to a lower division can only be imposed on legal persons.⁷⁷

When determining the sanction, the body pronouncing the sanction decides its duration and scope⁷⁸ taking into account of all of the circumstances of the case, in particular the age of the person sanctioned, their record, personal situation, culpability (intentional or negligent), the reasons prompting them to commit the infringement and the degree of seriousness of the infringement.⁷⁹ Additional circumstances to be considered and which are catered for by the OFC's Disciplinary Code allow for the increase of a sanction if the infringement is repeated,⁸⁰ the

⁷¹ Article 124 paras. 1 and 2 of the OFC Disciplinary Code.

⁷² Article 125 para. 1 of the OFC Disciplinary Code.

⁷³ Article 125 para. 2 of the OFC Disciplinary Code.

⁷⁴ Article 11 of the OFC Disciplinary Code.

⁷⁵ Article 11 para. a) to d) of the OFC Disciplinary Code.

⁷⁶ Article 12 of the OFC Disciplinary Code.

⁷⁷ Article 13 of the OFC Disciplinary Code.

⁷⁸ Article 41 para. 1 of the OFC Disciplinary Code.

⁷⁹ Article 41 para. 4 of the OFC Disciplinary Code.

⁸⁰ Article 42 para. 1 of the OFC Disciplinary Code.

infringement is against a match official⁸¹ or if someone is incurs several fines concurrently as a result of one of several deeds.⁸²

When imposing sanctions against a body or a person, the OFC's Disciplinary Code allows for the possibility for sanctions to be combined.⁸³ Provision is also made for the body that pronounces a match suspension, a ban on access to dressing rooms and/or the substitutes' bench or a ban on playing in a certain stadium to examine whether it is possible to suspend the implementation of the sanction partially.⁸⁴ A partial suspension is permissible only if the duration of the sanction does not exceed six (6) matches or six (6) months and if the circumstances generally allow it, in particular the previous record of the person sanctioned.⁸⁵

8. *Appeals and failure to comply*

An appeal may be lodged to the Appeals Committee against any decision passed by the Disciplinary Committee and Ethics Committee, unless the sanction pronounced is:

1. a warning;
2. a reprimand;
3. a suspension for less than three (3) matches or of up to two (2) months;
4. a fine of less than NZD1,000 imposed on a Member Association or a club and of less than NZD500 in other cases.⁸⁶

Anyone who is affected by a decision and has an interest justifying amendment or cancellation of the decision may submit it to the Appeals Committee.⁸⁷ Member Associations may appeal against decisions sanctioning their players, officials or members. They shall have written agreement of the person concerned.⁸⁸ The party intending to appeal shall announce their decision in writing within fifteen (15) days of the communication of the decision.⁸⁹ The grounds of an appeal available are that there was an insufficient representation of the facts and wrong application of the law.⁹⁰

9. *Infringements*

The next part of this paper will look at the various infringements outlined within the OFC's Disciplinary Code. It should be noted for the benefit of the reader that

⁸¹ Article 43 para. 1 of the OFC Disciplinary Code.

⁸² Article 44 para. 1 of the OFC Disciplinary Code.

⁸³ Article 33 para. 1 of the OFC Disciplinary Code.

⁸⁴ Article 34 para. 1 of the OFC Disciplinary Code.

⁸⁵ Article 34 para. 2 of the OFC Disciplinary Code.

⁸⁶ Article 127 of the OFC Disciplinary Code.

⁸⁷ Article 128 para. 1 of the OFC Disciplinary Code.

⁸⁸ Article 128 para. 2 of the OFC Disciplinary Code.

⁸⁹ Article 129 para. 1 of the OFC Disciplinary Code.

⁹⁰ Article 130 of the OFC Disciplinary Code.

because OFC does not publish its decisions publicly, this discussion is limited to an analysis of the regulations only. Where possible however, the author has included examples of infringements of the OFC's Disciplinary Code which were widely publicized.

One such example of an infringement of the OFC's Disciplinary Code was the disqualification of New Zealand from the OFC Men's Olympic Qualifying Tournament in 2015. In this case, following its defeat to New Zealand in the semi-finals of the competition, Vanuatu lodged a protest with the Disciplinary Committee of the OFC who found that New Zealand had fielded an ineligible player. Consequently, New Zealand were deemed to have forfeited the match, presumably in accordance with article 73 of the OFC Disciplinary Code which says that "if a player takes part in an official match despite being ineligible, his team will be sanctioned by forfeiting the match and paying a minimum fine of NZD500",⁹¹ and Vanuatu were able to progress to the final against eventual winners Fiji. OFC's reasons for its finding of ineligibility were based on the failure of the player in question to meet the requisite criteria set out in the FIFA Regulations Governing the Application of the Statutes.⁹²

9.1 *Rules of the game*

Provision is made for both "Minor"⁹³ and "Serious"⁹⁴ infringements of Rules of the Game by a player as well as for infringements committed by teams.⁹⁵ Minor infringements include infringements such as unsporting behavior such as foul play, dangerous play or holding on to an opponent's shirt or any part of his body; showing disapproval of match officials by word or action (criticizing decisions, protesting); violation of the Laws of the Game; delaying the restart of play; failing to comply with the required distance during corner kicks or free kicks; entering or re-entering the field of play without prior permission from the referee; leaving the field of play without prior permission from the referee; play acting (diving, feigning injury, etc.).⁹⁶ Serious infringements are those infringements where a player is sent off for committing infringements such as serious foul play such as excessive or brute force; brutal action such as violent or aggressive conduct; spitting at an opponent or anyone else; denying the opposing team a goal or an obvious goal scoring opportunity by deliberately handling the ball; denying an obvious goal-scoring opportunity to an opponent moving towards the opposing goal by committing an infringement punishable by a free kick or a penalty kick; making offensive, insulting or abusive remarks and a second caution during the same match.⁹⁷

⁹¹ Article 73 para. 1 of the OFC Disciplinary Code.

⁹² www.oceaniafootball.com/archives-5971 (23 May 2017)

⁹³ Article 52 of the OFC Disciplinary Code.

⁹⁴ Article 53 of the OFC Disciplinary Code.

⁹⁵ Article 54 of the OFC Disciplinary Code.

⁹⁶ Article 52(a) to (h) of the OFC Disciplinary Code.

⁹⁷ Article 53(a) to (g) of the OFC Disciplinary Code.

9.2 Disorderliness at matches and competitions

Under this general heading, there are three major infringements including inciting hatred and violence,⁹⁸ provoking the general public⁹⁹ and abandonment.¹⁰⁰

Where a player or official openly incites others to hatred or violence during a match, they will be sanctioned with a match suspension for not less than twelve (12) months and with a minimum fine of NZD5,000.¹⁰¹ In serious cases, in particular when the infringement is committed using the mass media (such as the press, radio or television) or if it takes place on a match day in or around a stadium, the minimum fine will be NZD10,000.¹⁰² Furthermore, anyone who provokes the general public during a match will be suspended for two (2) matches and sanctioned with a minimum fine of NZD1,000.¹⁰³

When dealing with abandonment, if a club or representative team of a Member Association refuses to play a match or to continue playing one which it has begun, it will be sanctioned with a minimum fine of NZD10,000 and will, in principle, forfeit the match.¹⁰⁴ In serious cases, the team will also be disqualified from the competition in progress and may be barred from future competitions.¹⁰⁵ If a Member Association condones such an action of a club or representative team, the Member Association shall be liable for sanctions which may include suspension.¹⁰⁶

Papua New Guinea's Women's team infringed upon these provisions when it forfeited its second leg match of the OFC Olympic Qualifiers against New Zealand in January 2016. After losing the first leg 7-1 to New Zealand in Papua New Guinea, the team did not travel to Auckland because some of its players did not have passports and valid visas to enter New Zealand.¹⁰⁷ As a result, the match was forfeited and New Zealand qualified for the 2016 Olympic Games in Rio de Janeiro.

The OFC's Disciplinary Code also accounts for the disorderly conduct of spectators. When a Member Association is a "host association", they are liable for improper conduct among spectators, regardless of the question of culpable conduct or culpable oversight, and depending on the situation, may be fined. Further sanctions may be imposed in the case of serious disturbances.¹⁰⁸ The same degree

⁹⁸ Article 69 of the OFC Disciplinary Code.

⁹⁹ Article 70 of the OFC Disciplinary Code.

¹⁰⁰ Article 71 of the OFC Disciplinary Code.

¹⁰¹ Article 69 para. 1 of the OFC Disciplinary Code.

¹⁰² Article 69 para. 2 of the OFC Disciplinary Code.

¹⁰³ Article 70 of the OFC Disciplinary Code.

¹⁰⁴ Article 71 para. 1 of the OFC Disciplinary Code.

¹⁰⁵ Article 71 para. 2 of the OFC Disciplinary Code.

¹⁰⁶ Article 71 para. 3 of the OFC Disciplinary Code.

¹⁰⁷ <https://www.theguardian.com/football/2016/jan/26/new-zealand-women-qualify-for-olympics-after-png-fail-to-show> (27 May 2017).

¹⁰⁸ Article 75 para. 1 of the OFC Disciplinary Code.

of liability applies to a “guest Member Association”. It should be noted that supporters occupying the guest sector of a stadium are regarded as the guest association’s supporters, unless proven to the contrary.¹⁰⁹ A Member Association’s liability as described above also includes matches played on neutral ground, especially at final competitions.¹¹⁰ Improper conduct includes violence towards persons or objects, letting off incendiary devices, throwing missiles, displaying racist or insulting slogans in any form, or uttering racist or insulting sounds, or invading the pitch.¹¹¹

Racist conduct of spectators at matches is also covered.¹¹² The relevant article, 56, is discussed in further detail in the next section. If a spectator is found to infringe this article, they will be subject to a stadium ban for two (2) years. Furthermore, if spectators display banners bearing racist slogans at a match, the body will sanction the Member Association or club, which these spectators support with a fine of at least NZD5,000 and force it to play its next official international match without spectators. To the authors best knowledge, there have not been any cases of this within Oceania however, similar provisions have been utilized by UEFA in recent times such as the ban against CSKA Moscow for the racist behavior of its fans in a Champions League match against AS Roma in 2014.

9.3 *Offensive and discriminatory behaviour*

The two main offences which are covered by OFC’s Disciplinary Code under this sub-heading of offences are “Offensive Behaviour” and “Racism”.¹¹³ It should be noted here that in addition to covering this offence under its Disciplinary Code, the OFC also states its position in respect to discriminatory behavior and racism at article 5 of its Statutes.

When regulating against discrimination and racism, the OFC Statutes takes a broad approach and strictly prohibits “discrimination of any kind against a country, private person or groups of people on account of ethnic origin, gender, disability, language, religion, politics or any other reason”,¹¹⁴ while a more narrow approach is outlined under the OFC’s Disciplinary Code which states that “anyone who publicly disparages, discriminates against or denigrates someone in a defamatory manner on account of race, colour, language, religion or ethnic origin”,¹¹⁵ will be in breach of this provision. In addition to the narrower approach containing a requirement for an act to be “public”, the character of the act is quite specific and makes reference only to “race, colour, language, religion or ethnic

¹⁰⁹ Article 75 para. 2 of the OFC Disciplinary Code.

¹¹⁰ Article 75 para. 4 of the OFC Disciplinary Code.

¹¹¹ Article 75 para. 3 of the OFC Disciplinary Code.

¹¹² Article 56 paras. 2 and 3 of the OFC Disciplinary Code.

¹¹³ Articles 55 and 56 of the OFC Disciplinary Code.

¹¹⁴ Article 5 of the OFC Statutes.

¹¹⁵ Article 56 para. 1 of the OFC Disciplinary Code.

origin” while the Statutes contain are more general statement and refer to discrimination of “any kind... or for any other reason”.

The sanctions which apply for breach of each provision also differ, with a breach of the provision contained in the Statutes warranting “suspension or expulsion” and infringement under the Disciplinary code being subject to match suspension for at least five (5) matches at every level against the person, a ban on their entering the confines of any stadia and a fine of at least NZD5,000.¹¹⁶

As outlined earlier, spectators who infringe this provision are also subject to sanctions and fines and the Member Association or Clubs which they represent may be forced to play its next international match without spectators. As alluded to earlier, sanctions against clubs for the behavior of its fans have been used in some of the world’s most important competitions, like the UEFA Champions League.

In relation to “Offensive behaviour” under the OFC’s Disciplinary Code, a player or official who insults someone in any way, especially by using offensive gestures or language, will be sanctioned with a match suspension. If the perpetrator is a player, they will be suspended from at least two (2) matches; if they are an official, they will be suspended from at least four (4) matches.¹¹⁷ Where the offensive behaviour is directed towards OFC or one of its bodies, the duration of the suspension will be doubled (+100%); the sanction applies to all official matches at OFC level. A minimum fine of at least NZD500 shall be imposed.¹¹⁸

9.4 *Physical Assault*

Physical Assault is dealt with extensively under the OFC’s Disciplinary Code and accounts for infringements made by both players and officials. It accounts for “physical injury”,¹¹⁹ “violence”¹²⁰ and “brawl”.¹²¹

In the case of “physical injury”, a player who deliberately assaults someone physically or damages his health will be suspended for at least four (4) matches. When an official commits a similar infringement, they will be suspended for at least eight (8) matches.¹²² Suspensions made under this provision shall be imposed at every level (local, national and international).¹²³ A minimum fine of NZD\$500 will apply in both cases but may be reduced in tournaments with an age limit.¹²⁴

¹¹⁶ Article 56 para. 1 of the OFC Disciplinary Code.

¹¹⁷ Article 55 para. 1 of the OFC Disciplinary Code.

¹¹⁸ Article 55 para. 2 of the OFC Disciplinary Code.

¹¹⁹ Article 48 of the OFC Disciplinary Code.

¹²⁰ Article 49 of the OFC Disciplinary Code.

¹²¹ Article 50 of the OFC Disciplinary Code.

¹²² Article 48 para. 1 of the OFC Disciplinary Code.

¹²³ Article 48 para. 2 of the OFC Disciplinary Code.

¹²⁴ Article 48 para. 3 of the OFC Disciplinary Code.

The downgraded offence following physical injury is “violence”. This infringement involves the same factors of physical injury but without harming the other person or damaging their health. In the event that a player deliberately assaults someone, but without harming them physically or damaging their health, they will be suspended for at least two (2) matches. An official who commits such an infringement will be suspended for at least four (4) matches.¹²⁵ The OFC’s Disciplinary Code treats assault by spitting more severely with a suspension of six (6) matches applicable.¹²⁶ A minimum fine of NZD250.00 will always be imposed on someone that infringes this provision although in the case of tournaments with an age limit, the fine can be reduced appropriately.¹²⁷

Involvement in a brawl is sanctioned with a suspension for at least six (6) matches which also includes all official international matches.¹²⁸ Anyone who has tried to prevent a fight, shield others or separate those involved in a brawl is not subject to punishment.¹²⁹

The OFC Disciplinary Code also makes it possible, in the case of group violence, to sanction those individuals involved. Where it is not possible to identify exactly who the instigator(s) might be, the body will be able to sanction the captain of the team, the club or Member Association to which the aggressors belong.¹³⁰ In the case where it is impossible to establish each participant’s exact share of guilt, the Disciplinary Committee shall consider every participant identified as a perpetrator of the infringements committed.¹³¹ It is possible that technology, particularly the review of video evidence, has a significant role to play here when identifying instigators and also determining culpability. This would seem to be the most accurate way of establishing the involvement of any individuals concerned and also their share of guilt.

9.5 Corruption

The provisions contained with the OFC’s Disciplinary Code in relation to “Corruption” mirror those which appear in FIFA’s Disciplinary Code, but for the amount and currency of the fines. The provisions capture both “active” and “passive” corruption although neither of these terms are specifically defined within the regulations.

Where “active” corruption is concerned, a player or official who offers, promises or grants an unjustified advantage to a body of OFC, a match official, a player or an official on behalf of himself or a third party in an attempt to incite it or him to violate OFC regulations will be sanctioned:

¹²⁵ Article 49 para. 1 of the OFC Disciplinary Code.

¹²⁶ Article 49 para. 2 of the OFC Disciplinary Code.

¹²⁷ Article 49 para. 3 of the OFC Disciplinary Code.

¹²⁸ Article 50 para. 1 and 2 of the OFC Disciplinary Code.

¹²⁹ Article 50 para. 3 of the OFC Disciplinary Code.

¹³⁰ Article 51 para. 1 of the OFC Disciplinary Code.

¹³¹ Article 51 para. 2 of the OFC Disciplinary Code.

1. with a minimum fine of NZD 5,000;
2. with a ban on performing any football related activity; and
3. with a ban on entering any stadium.¹³²

Passive corruption (soliciting, being promised or accepting an unjustified advantage) will be sanctioned in the same manner as active corruption.¹³³ For serious cases and in the case of repetition, anyone who infringes this provision may be banned from performing any football related activity for life.¹³⁴ The sanctioning of both “active” and “passive” corruption in the same fashion provides a clear indication of how OFC perceive any act of corruption, whether an individual or body is involved directly or not.

9.6 Doping

Doping under the OFC’s Disciplinary Code adopts its meaning from the Doping Regulations for OFC Competitions and out of Competition. Acts contained within the definition outlined within those regulations constitute doping¹³⁵ whether they are detected during or out of a competition.¹³⁶

The doping provisions under the OFC’s Disciplinary Code are drafted to also adopt the procedures and methods contained in other relevant regulations including their own and FIFA’s Doping Control Regulations. This is particularly relevant when discussing the sanctioning of doping offences which adopt and apply the sanctions outlined in the Doping Control Regulations for FIFA Competitions and Out of Competitions.¹³⁷ Notably, the possibility of cautions, suspensions in the range of three (3) months up to two (2) years and a lifelong ban in the case of repeat offenders are all possible sanctions adopted from the FIFA regulations depending on the offence.¹³⁸

Players are under strict obligations if they take part in a competition or event organized by OFC, or in training leading up to such a competition or event, to undergo tests conducted by the relevant bodies of OFC¹³⁹ and also agree to samples being taken to detect the presence of any prohibited substances or to establish the use of any prohibited methods.¹⁴⁰

Where a State body imposes a legal sanction for a doping offence, the legal bodies of OFC shall still review the case and decide whether to impose a sanction in line with its own regulations.¹⁴¹ Once again, are the procedures of a

¹³² Article 60 para. 1 of the OFC Disciplinary Code.

¹³³ Article 60 para. 2 of the OFC Disciplinary Code.

¹³⁴ Article 60 para. 3 of the OFC Disciplinary Code.

¹³⁵ Article 61 para. 1 of the OFC Disciplinary Code.

¹³⁶ Article 61 para. 2 of the OFC Disciplinary Code.

¹³⁷ Article 63 of the OFC Disciplinary Code.

¹³⁸ Article 63 para. 1 of the OFC Disciplinary Code.

¹³⁹ Article 66 para. 1 of the OFC Disciplinary Code.

¹⁴⁰ Article 66 para. 2 of the OFC Disciplinary Code.

¹⁴¹ Article 67 of the OFC Disciplinary Code.

National Sports Dispute Resolution body within a country relevant here? The OFC will also adopt any legally binding sanctions imposed by another international sports federation or national doping organization that comply with fundamental legal principles.¹⁴²

Conclusions

There are numerous provisions within OFC's Statutes and regulations which mirror those contained within FIFA's Statutes and regulations. This has likely come about out of both necessity and also convenience. Where it is necessary to adopt provisions contained in FIFA's Statutes and regulations, at least in the context where OFC's regulations have expressly stated, like perhaps those related to doping control and procedure, OFC has done so. This ensures consistency of definition and regulation of these important aspects.

OFC has also adopted a similar structure of its judicial bodies to that of its "parent" body, FIFA. The requirement that no member of a judicial body can also be a member of the OFC Executive or the any standing or ad hoc committee is one example of this. This particular adoption means that the decisions of OFC's judicial bodies are passed independently of its Executive Committee.

Once of the significant differences between Oceania and many of the other confederations is the absence of a "professional" game. While, similar to FIFA, the competence of OFC's judicial bodies is wide and extensive, because the competitions in Oceania are run at a semi-professional level at best, consequently, the judicial bodies may not have to deal with the myriad of issues which are thrown up at FIFA's or even UEFA's judicial bodies like the transfer of minors or the sanctioning of racist behavior by clubs.

Unfortunately, it is difficult to base some of these observations on empirical data because a proper analysis was not able to be conducted as the decisions of OFC's judicial bodies are not published. Should OFC follow the suit of bodies like CAS and FIFA however and publish its decisions, where appropriate, further in depth analysis can be made. It would be interesting to analyse whether, despite the mirroring of numerous provisions to those contained in FIFA's Statutes and regulations, if OFC's jurisprudence has departed in any way from FIFA or the other Confederations because of difference in circumstances.

The game within the Oceania region is played with just as much enthusiasm and joy as it is around the world and we look forward to its continued development and growth.

¹⁴² Article 68 of the OFC Disciplinary Code.

UEFA DISCIPLINARY ORGANS AND PROCEDURES

by *Emilio García**

I. Uefa's Organs for the Administration of Justice: history and development

1. The first step: Establishment of disciplinary bodies at UEFA

Although, as is well known, UEFA was founded on 15 June 1954, its disciplinary structure, in the form of the Control and Disciplinary Body and the Appeals Body, did not emerge as legal authorities until the statutory amendment of 1976. Article 10.2 of this version of the Statutes named the UEFA Executive Committee as the body responsible for preparing a list of sanctions to be applied by the Control and Disciplinary Body, and for establishing the procedural rules of the Appeals Body. The Control and Disciplinary Body imposed sanctions and penalties in the first instance, while the Appeals Body heard appeals against those decisions.

Despite the fact that the UEFA Statutes of 1976 provided for these disciplinary bodies, and the creation and approval by the UEFA Executive Committee of regulations governing their operation and the sanctions they could impose, the first specific UEFA Disciplinary Regulations (hereafter “DR”) were not approved until 1992.

2. Current structure and functions

In accordance with the terms of Article 32 of the UEFA Statutes, the UEFA Organs for the Administration of Justice are the Control, Ethics and Disciplinary Body (hereafter “CEDB”), the Appeals Body (“AB”), the Ethics and Disciplinary Inspectors, and the Club Financial Control Body. Members of these bodies are appointed by the UEFA Executive Committee for four-year terms, with the appointments ratified by Congress.¹ Members are independent and cannot belong

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¹ Article 32.2 UEFA Statutes.

to other UEFA bodies, or adopt measures or exert influence in matters where there is a conflict of interest.²

a) *Control, Ethics and Disciplinary Body*

The CEDB comprises a chairman, two vice-chairmen and seven members. Decisions are normally taken in the presence of all members. The body can proceed, however, if at least three of its members are present or, in exceptional circumstances, if only one member is present, acting as a judge sitting alone.³ The CEDB is competent to resolve all disciplinary matters and other issues which fall within its jurisdiction according to the Statutes and other UEFA regulations; nevertheless, in urgent cases, the chairman of the CEDB can refer a case directly to the AB, which can act as a first instance body to resolve the case.

UEFA's administration initiates proceedings before the CEDB based on official reports that are presumed to be accurate unless evidence is presented to the contrary. Proceedings are also based on documents from the parties presenting their case, or on knowledge – obtained by any means – that an offence has been committed. Proceedings can be initiated at the express request of the UEFA Executive Committee, UEFA President or UEFA General Secretary, at the request of an Ethics and Disciplinary Inspector, on the basis of information sent by a public authority, or as a result of a complaint filed.⁴ On top of that, members associations and clubs are entitled to lodge protests, subject to the conditions laid down in Article 50 DR.

As a general rule, the CEDB establishes the facts in each case from official reports, although it can ask for additional evidence provided that proceedings will not be unduly delayed as a result. Proceedings before the CEDB are conducted mainly in writing. The body can agree to a hearing if this is justified by exceptional circumstances.

Once disciplinary proceedings are initiated, the parties and the Ethics and Disciplinary Inspectors have the right to examine the file and to make any written claims that they consider relevant.

All persons subject to UEFA regulations must comply with requests to appear as witnesses.⁵ According to the DR, some witnesses may give evidence anonymously if their testimony is likely to endanger their life, or threaten their physical integrity or that of family members or close friends. Guidelines on anonymous witnesses giving evidence are set out in the DR.⁶

The disciplinary bodies come to their decisions via teleconferencing, video conferencing or any similar method if no hearing is involved. As a general rule,

² Article 26 DR.

³ Article 23 DR.

⁴ Article 48 DR.

⁵ Cfr. Article 3 DR.

⁶ Articles 40 and 41 DR.

the CEDB issues its judgments without a reasoned decision, providing the interested party with only the operative part of the decision. The interested party has five days from the date of the judgment to request the grounds for the decision; failure to make such a request in this period will result in the judgment becoming final and binding and the parties being deemed to have waived their right to appeal.⁷

b) *The Appeals Body*

The AB comprises a chairman, two vice-chairmen and nine members. Decisions are normally taken when at least three members are present. If the chairman of the AB considers it appropriate, the quorum of the body can be increased to resolve a specific issue. One member can even act as a judge sitting alone in the situations specified in the regulations.

Without prejudice to the competency of the AB to resolve cases as a body of first instance on referral from the CEDB,⁸ appeal proceedings before the AB are initiated by an appeal brought by any party directly affected by a decision of first instance, or by a decision made by an Ethics and Disciplinary Inspector.⁹ Any party intending to lodge an appeal must announce their intention to do so within three days of the notification of the legal basis for the ruling from the first instance body, and provide the grounds for appeal within five days of the expiry of the time limit for the declaration of intention to appeal.¹⁰

Once an appeal is received from a party and subject to the provisions laid down in Article 56.2 DR, it is sent to the Ethics and Disciplinary Inspector, who is granted a period in which to respond to the appeal by the chairman of the AB.¹¹

While until recently the appeal procedures entailed a hearing, for the last few years these have only been held at the request of one of the parties or when the AB chairman deems it appropriate. The AB chairman decides the order in which the parties present their arguments at the hearing, with each entitled to two oral pleadings.¹²

The AB examines the case *de novo*, i.e. it re-assesses the relevant facts and the applicable law in order to issue its decision. The AB cannot increase any penalty imposed by the CEDB unless the Ethics and Disciplinary Inspector has so requested in an appeal.¹³

⁷ Article 52 DR.

⁸ Cfr. 23.3 DR.

⁹ Article 25.1.3.c) DR.

¹⁰ Article 53 DR. According to Article 55.2 DR, the chairman of the AB may, on receipt of a reasoned request, award a stay of execution.

¹¹ Article 56 DR. See CAS 2015/A/3944.

¹² Article 57 DR.

¹³ Article 58 DR.

All of the AB's decisions are issued without a reasoned decision, although parties are obviously entitled to request the motivation of the decision in accordance with Article 45 DR. The AB's decisions are final, subject to the provisions in the UEFA Statutes regarding appeals to the Court of Arbitration for Sport (CAS).

c) *Ethics and Disciplinary Inspectors*

A distinctive feature of UEFA's disciplinary structure is the role of the Ethics and Disciplinary Inspectors, who are responsible for representing the confederation in legal proceedings held before the CEDB and the AB.¹⁴ These inspectors are appointed by UEFA's Executive Committee for four-year terms, with their appointments subsequently ratified by Congress. Like the members of UEFA's disciplinary bodies, the Ethics and Disciplinary Inspectors are independent and cannot belong to other UEFA bodies or committees, nor can they introduce measures or influence matters in areas where there could be a conflict of interest.

In this capacity, and in accordance with the provisions of Article 25.3 of the DR, the Ethics and Disciplinary Inspectors may initiate disciplinary investigations, lodge appeals against decisions of the CEDB and support UEFA in the event that a party lodges an appeal with CAS against a decision by the AB. Disciplinary investigations carried out by the Ethics and Disciplinary Inspectors may be initiated at the request of UEFA's Executive Committee, the UEFA President, the UEFA General Secretary or the disciplinary bodies.

d) *Club Financial Control Body*

The introduction of provisions in UEFA's regulatory system relating to the economic monitoring of clubs participating in its competitions gave rise to the formation of a specific disciplinary body to deal with breaches of UEFA's Club Licensing and Financial Fair Play Regulations.

Initially, such infringements were addressed by the traditional disciplinary bodies, but the complexity of the topic and its move towards a highly professionalised system resulted in the reform of the UEFA Statutes in 2012 and the establishment of the Club Financial Control Body (hereafter "CFCB") as a UEFA Organ for the Administration of Justice, with its own specific rules governing proceedings before it.¹⁵

The CFCB has the important task of supervising the application of the UEFA Club Licensing and Financial Fair Play Regulations.

The CFCB operates via an Investigatory Chamber, run by the CFCB Chief Investigator, which deals with the monitoring and investigation stage of

¹⁴ Article 25 DR.

¹⁵ Procedural rules governing the UEFA Club Financial Control Body (hereafter "CFCBPR").

proceedings, and an Adjudicatory Chamber, overseen by the CFCB chairman, which actually decides on cases.¹⁶

The Investigatory Chamber is made up of the aforementioned CFCB Chief Investigator, who leads investigations and takes the measures necessary to guarantee its proper functioning, and seven other members.

The body can open an investigation *ex officio* or upon request. The CFCB Chief Investigator establishes the facts and gathers the relevant evidence, leading the proceedings himself or allocating this role to another member of the chamber.¹⁷

At the end of the investigation, and after consulting with the chamber's other members, the CFCB Chief Investigator, may decide to dismiss the case, conclude (with the consent of the defendant) a settlement agreement, apply (with the consent of the defendant) disciplinary measures restricted to a warning, a reprimand or a fine up to a maximum amount of EUR 100,000, or refer the case to the Adjudicatory Chamber.¹⁸

The CFCB Adjudicatory Chamber, meanwhile, decides on cases referred to it by the CFCB Chief Investigator.¹⁹

It consists of the CFCB chairman, who heads the chamber and supervises the functioning of the CFCB together with its four other members, two of whom are the CFCB vice-chairmen.

The proceedings are conducted by the CFCB chairman, who informs the defendant that the judgment stage has begun.

The Adjudicatory Chamber makes its final decision by simple majority in the presence of at least three members. It may make the following final decisions: dismiss the case, accept or reject the club's admittance into UEFA club competitions, impose disciplinary measures, or uphold, reject or amend a decision made by the CFCB Chief Investigator.²⁰

The disciplinary measures that may be imposed include, among others, a warning, a reprimand, a fine, a points deduction, the withholding of revenues from a UEFA competition, a ban on registering new players for UEFA competitions, a restriction on the number of players that a club may register for UEFA competitions (including a financial limit on the overall aggregate cost of the employee benefits expenses of players registered on the A-list for the purposes of UEFA club competitions), disqualification from on going and/or future competitions, and the withdrawal of a title or award.²¹

¹⁶ Article 4 *et seqq* CFCBPR.

¹⁷ Articles 12 and 13 CFCBPR.

¹⁸ Article 14 CFCBPR.

¹⁹ Article 19 CFCBPR.

²⁰ Articles. 25 and 27 CFCBPR.

²¹ Article 29 CFCBPR.

II. *UEFA Disciplinary Regulations*

As noted, it was not until 1992 that the Executive Committee approved the first DR, which established a list of offences and penalties, as well as the rules that would govern the proceedings held before the disciplinary bodies.

The first edition of the DR introduced some basic principles the breach of which would incur penalties from UEFA's disciplinary bodies. At first, these were limited to a generic list of principles such as loyalty, integrity and sportsmanship, which were developed in greater depth in later versions of the DR.²² The 1992 regulations also established, from the outset, a clear distinction between sanctions against individuals and against legal persons, such as member associations and clubs.²³

Also initially added to the principles of integrity and loyalty was the principle of strict liability, i.e. the idea that member associations and clubs are responsible for the behaviour of their directors, officials, players and supporters. The DR included, by way of example, fan behaviour for which clubs would be considered strictly responsible, even where there is no fault or negligence on their part, such as a pitch invasion or the use of fireworks. In 1996, a ban on demonstrations unrelated to sport held during matches, including those of a political nature, was added.²⁴

The 1998 version of the DR brought in the general principle of "sportsmanship", combining integrity and loyalty, as well as the first provisions against doping. In addition, the principle of strict liability of member associations and clubs was strengthened by means of clearer wording, which remains virtually identical today. Also introduced at the same time was the concept of the Disciplinary Inspector and a more in-depth explanation of proceedings before the CEDB and AB.

In 2006, further amendments were made to the DR, such as the inclusion of specific provisions against discrimination, xenophobia and racism, prohibiting any behaviour that insults the dignity of a person or group of persons in any way, including on the basis of their skin colour, race, religion or ethnicity.²⁵

This DR also restated UEFA's determination to combat doping in football, adapting its articles to the rules of the World Anti-Doping Agency, specifically the current World Anti-Doping Code.²⁶

The 2008 version of the DR complemented the principle of the integrity of competitions, which included, as of 2004, a ban on bribery or any action that could influence the outcome of a match, and introduced a ban on taking part –

²² Article 2 DR (1992 edition).

²³ Article 6 and 7 DR (1992 edition).

²⁴ Article 2 DR (1996 edition).

²⁵ Article 11bis DR (2006 edition).

²⁶ Article 12bis and 12ter DR (2006 edition).

either directly or indirectly – in sport betting related to matches in UEFA-run competitions, as well as having a direct or indirect financial interest in such activities.

This general principle of conduct was reinforced in 2011 with the introduction of Article 5bis of the DR, which specifically regulates banned behaviour that could affect the integrity of matches, and added an obligation for all individuals subject to the DR to immediately report to UEFA any attempted passive bribery or similar activity designed to influence or determine the outcome of a match or competition.

In 2012, following the adoption of the UEFA Anti-Doping Regulations, the majority of the provisions in this domain were removed from the DR, which only retained the burden and standard of proof of doping and referred to the specific rules regarding the regulation of applicable punishments.

In 2013, the DR underwent major restructuring, with the aim of creating a more efficient division between substantive law and the procedural rules before disciplinary bodies. Likewise, UEFA made some important changes to strengthen its ‘zero tolerance’ policy against discrimination and racism, introducing tougher minimum penalties to punish such behaviour. Thus, any person who insults the human dignity of a person or group of persons on the basis of their skin colour, race or religion incurs a suspension lasting at least ten matches.²⁷ If the culprit is a supporter of a member association or a club, these entities are punished with a minimum of a partial stadium closure for a first offence, with one match behind closed doors and a fine of EUR50,000 for a second offence, and at least two matches behind closed doors for a third or subsequent offence.²⁸ Finally and for the first time, UEFA declared its obligation to make public its disciplinary decisions.²⁹

III. Some examples of disciplinary and financial fair play matters

1. Misconduct of supporters

UEFA’s disciplinary bodies apply, as one of the organisation’s fundamental pillars, the principle of strict liability to clubs and national associations for any supporter misconduct. This principal, enshrined in Article 8 of the current DR, holds clubs and associations responsible for the behaviour of their supporters, even where there is no fault or negligence on their Article.

As has been established by the jurisprudence of CAS, this is the only way to punish misconduct by a team’s supporters, over whom UEFA has no direct disciplinary authority, and thus prevent and deter similar occurrences in the future.³⁰

²⁷ Article 14 DR.

²⁸ Article 14 DR.

²⁹ Article 45 DR. See: www.uefa.org/disciplinary/index.html (5 May 2017).

³⁰ Among others, see CAS 2013/A/3139, Fenerbahçe SK v. UEFA, available at www.tas-cas.org/fileadmin/user_upload/Award201313920FINAL.pdf (5 May 2017).

It is worth highlighting some of the decisions made in accordance with this principle, due to their particular relevance and their recognition by CAS, which has enabled the consistent jurisprudence of these bodies to be confirmed in that regard.

a) *Feyenoord Rotterdam*

On 7 December 2006, the CEDB imposed a fine of CHF 200,000 on Feyenoord Rotterdam and ordered the club to play two European home matches behind closed doors, following disturbances caused by their supporters during a match with AS Nancy-Lorraine in France.

In a group match of the 2006/07 UEFA Cup, followers of the Dutch club broke the glass panes that separated the home and away supporters and caused serious disorder, by destroying a number of seats and throwing them onto the pitch and at stadium stewards. To disperse the visiting supporters, French police were forced to use tear gas, which also affected the players and officials. Consequently, the match was halted for approximately half an hour.

The sentence was suspended for a probationary period of two years. Following appeals by both the UEFA Disciplinary Inspector and Feyenoord, the AB decided to exclude the club from that season's UEFA Cup, reducing the fine to CHF 100,000 and ordering Feyenoord to compensate AS Nancy-Lorraine for the damage caused to their stadium.

CAS ultimately upheld the AB's decision, confirming the validity of applying the principle of strict liability for the behaviour of supporters.³¹

b) *Fenerbahçe Spor Kulübü*

During the 2012/13 season, Fenerbahçe SK were penalised on numerous occasions by UEFA's disciplinary bodies due to the misconduct of their supporters.

On 18 October 2012, following the use of flares by Fenerbahçe supporters during a UEFA Champions League match versus FC Spartak Moscow, the CEDB warned the club that it would be ordered to play a game behind closed doors in the event of a reoccurrence. In a later fixture in the same competition, supporters of Fenerbahçe set off 37 flares, which led to the club being automatically ordered to play its next match, on 24 January 2013, behind closed doors. The latter decision was upheld by the AB on 14 February 2013.

On 21 February that same year, the match between Fenerbahçe and BATE Borisov duly took place behind closed doors. During said match, supporters of the Turkish club launched flares carried by small parachutes from outside the stadium. Some of these fell onto the pitch and into the stands, causing a fire and delaying the match for one minute. The CEDB penalised the club with a second

³¹ Cf. CAS 2007/A/1217, *Feyenoord Rotterdam v/ UEFA*, available at www.archiefheesakker.nl/CMS/pdfs/onderzoeken/cas2007-A-1217_feyenoord.pdf (5 May 2017).

order to close its stadium and threatened it with expulsion from upcoming UEFA competitions in the event of repeat offences. This decision was upheld by the AB and CAS.³²

It is worth noting that this case focused on the identity of those responsible for throwing the flares into the stadium. Fenerbahçe denied that the culprits were supporters of the team, noting that the individuals in question were part of a group that was at loggerheads with the president of the club. However, the AB ruled that, as these people, who were clearly affiliated with Fenerbahçe, were in the vicinity of the club's stadium during a match held behind closed doors, they should be considered supporters of the club.

c) *Serbian Football Association and Albanian Football Association*

On 23 October 2014, the CEDB penalised the Serbian Football Association with a three-point deduction from their UEFA European Championship qualifying group points total, as well as with two home matches behind closed doors and a fine of EUR 100,000 following various incidents that occurred during Serbia's match against Albania. The Albanian Football Association, meanwhile, was punished with a 3-0 forfeit and a fine of EUR 100,000. All sanctions were upheld by the AB after appeals from both FAs.

The CEDB was able to determine that, during the match in question, Serbian supporters set off and launched flares onto the field of play, burned a NATO flag and used laser pointers to distract the opposing players. It was also established that, after the appearance in the stadium of a drone carrying a flag with a message of a political nature, numerous Serbian supporters invaded the pitch and assaulted various Albanian players, punching them and throwing chairs at them. The match had to be abandoned after the Albanian players refused to return to the pitch, citing fears for their safety and physical integrity.

In imposing the aforementioned sanctions on the Serbian FA, the CEDB considered the fact they had already penalised the same association for a similar incident in a match against Italy four years previously, after which the team had to play two home matches behind closed doors.

The Albanian FA was deemed responsible for the abandonment of the match, due to the Albanian players' refusal to continue playing, as well as for the appearance of the drone and its provocative message, which resulted in the pitch invasion by Serbian supporters.

CAS overturned the main sanction, awarding Albania the victory over Serbia, but maintained the fine imposed on the Albanian FA.³³

³² Cf. CAS 2013/A/3139, mentioned above.

³³ CAS 2015/A/3874 and CAS 2015/A/3875, *Football Association of Albania v. UEFA & Football Association of Serbia*, available at https://www.uefa.org/MultimediaFiles/Download/OfficialDocument/uefaorg/CASdecisions/02/44/19/38/2441938_DOWNLOAD.pdf (5 May 2017).

2. Match-fixing

One of the greatest scourges of the game, against which UEFA maintains a constant fight, particularly in the last decade, is activity aimed at affecting the integrity of football matches. Precedents set by UEFA's disciplinary bodies in this area concern not only match-fixing in UEFA competitions, but also domestic club matches.

Match-fixing is now legally defined as “an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others”.³⁴ It has been said that there has always been match-fixing in sport.³⁵ From the ancient Olympic Games to the most important global sports competitions of today, manipulation of results has always been an all-too-frequent occurrence.

We have seen a number of very prominent instances of this kind of issue over the years. One of the most remarkable examples, which was even the subject of a film,³⁶ was the match-fixing episode during the 1919 World Series, where several players from the Chicago White Sox were found guilty of accepting bribes and deliberately losing matches against the Cincinnati Reds.³⁷

The situation has changed considerably since then. In particular, the globalisation of the sports betting industry has had a massive impact, with recent studies estimating that between EUR 200bn and EUR 500bn is betted on sport every year.³⁸ Match-fixing does not just affect football either;³⁹ it is also affecting other sports, notably tennis.⁴⁰

In addition to these impressive figures, it is well recognised that match-fixing has become a global issue because it allows organised criminal gangs to expand their illegal and violent activities – which include murder, extortion and assault – worldwide. It also results in the loss of billions of dollars of tax revenue and public income every year. Indeed, match-fixing is now one of the most profitable forms of money laundering.⁴¹

³⁴ Article 3(4) of the Council of Europe, Convention on the Manipulation of Sports Competitions.

³⁵ See D. HILL, *Why sport is losing the war to match-fixers. Global Corruption Report: Sport*, Transparency International, 2016, 231.

³⁶ *Eight Men Out*, directed by John Sayles, which was released in 1988.

³⁷ See K. Carpenter, *Global Match-Fixing and the United States' Role in Upholding Sporting Integrity. Berkeley Journal of Entertainment and Sports Law*, 2013, Vol. 2, Issue 1.

³⁸ See Sorbonne-ICSS, *Protecting the Integrity of Sport Competition: The Last Bet for Modern Sport* (2014).

³⁹ See FIFPro, *2016 FIFPro Global Employment Report*, available at www.fifpro.org (5 May 2017).

⁴⁰ See ESSA Q3 2016 Integrity Report. (Available at: www.eu-ssa.org/wp-content/uploads/ESSA_Q3-2016-Integrity-Report.pdf).

⁴¹ See J. ANDERSON, *Match Fixing and Money Laundering. The International Sports Law Journal*, 2014.

In light of the growth of this phenomenon, both international sports federations and public authorities are now engaged in a continuous battle against this scourge. More sports federations are establishing specific programmes regarding match-fixing, which are having a major impact at the national level.⁴² As well, public authorities have also stepped in to combat match fixing: the European Union has adopted various resolutions,⁴³ INTERPOL⁴⁴ and EUROPOL have launched several initiatives, and, as well, the Council of Europe has adopted the first ever international treaty aimed at combating the manipulation of sports competitions.⁴⁵ These are all good examples of cooperation between public authorities and the world of sport, but we are still a long way from winning this particular battle.

a) *UEFA's rules and integrity-related cases*

In May 2006, a match-fixing scandal – christened the ‘Calciopoli’ – was unearthed in Italian football. Investigations led by the Italian police revealed that a network of club managers, officials responsible for referees and other individuals had sought to influence the outcome of various matches in Serie A. Several clubs were punished by the Italian Football Federation (FIGC). One of those clubs was AC Milan, which was given a deduction of points penalty. However, despite the deduction of those points, AC Milan still managed to qualify for the 2006/07 UEFA Champions League.

Thus, the admissions process for the 2006/07 UEFA Champions League presented UEFA with a real legal conundrum: could UEFA allow a club that had been punished for its involvement in the Calciopoli to take part in a European competition? On 2 August 2006, the UEFA Emergency Panel decided to allow AC Milan to participate in UEFA's flagship competition on the basis of the following considerations:⁴⁶

“The UEFA Emergency Panel, being competent to decide on the matter, came

⁴² Among others, the Tennis Integrity Unit (Info available at: www.tennisintegrityunit.com/) or the Cricket Anti Corruption Unit (Info available at: www.icc-cricket.com/about/46/anti-corruption/overview) (5 May 2017).

⁴³ European Parliament resolution of 2 February 2017 on an integrated approach to Sport Policy: good governance, accessibility and integrity (2016/2143(INI)) available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0012+0+DOC+XML+V0//EN> (5 May 2017).

European Parliament resolution of 14 March 2013 on match-fixing and corruption in sport (2013/2567(RSP)), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013IP0098> (5 May 2017).

⁴⁴ For a complete overview of the Interpol in the field of match-fixing see <https://www.interpol.int/Crime-areas/Crimes-in-sport/Match-fixing-and-illegal-gambling> (5 May 2017).

⁴⁵ The Convention on the Manipulation of Sports Competitions available at <https://www.interpol.int/Crime-areas/Crimes-in-sport/Match-fixing-and-illegal-gambling> (5 May 2017).

⁴⁶ The full official UEFA statement is accessible at the following link: www.telegraph.co.uk/sport/2342180/Milan-restored-to-Champions-League.html (5 May 2017).

to the conclusion that it had no choice but to admit AC Milan for the UEFA club competitions 2006-07 for formal reasons because of an insufficient legal basis in the regulations which would allow not admitting AC Milan under specific circumstances”.

This situation was highly frustrating for UEFA, which felt that it was unable to prevent AC Milan from participating in its competition, despite the club's involvement in match-fixing. It should also be noted that AC Milan went on to win that competition, beating English side Liverpool FC in the final on 23 May 2007.

UEFA's response to the *AC Milan* case was a swift one. At the very next UEFA Congress, which took place in Dusseldorf on 25 and 26 January 2007, representatives of the various member associations approved a new paragraph 3 for Article 50 of the UEFA Statutes.⁴⁷

That amendment, which remains in force today, established a two-stage process aimed at guaranteeing the integrity of UEFA's competitions. The first stage involves an administrative measure, whereby the offending club is excluded from European competitions for one season. The second stage involves disciplinary measures, which may be imposed subsequent to the administrative measure and do not have a maximum duration.⁴⁸

Article 50(3) of the UEFA Statutes reads as follows:

“The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures”.

That provision has also been incorporated in the regulations governing the UEFA Champions League and the UEFA Europa League, which currently feature the following wording:⁴⁹

“If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court”.

UEFA's disciplinary bodies have been unequivocal in applying the principle of 'zero tolerance' to any act that could directly or indirectly influence the result of a domestic or international match. Therefore, both the CEDB and the AB have

⁴⁷ See www.uefa.org/documentlibrary/aboutuefa (5 May 2017).

⁴⁸ CAS 2013/A/3256, *Fenerbahçe SK v UEFA*, para. 160 *et seqq.*

⁴⁹ Article 4.02 of both the Regulations of the UEFA Champions League 2016/17 and the Regulations of the UEFA Europa League 2016/17 (www.uefa.org/documentlibrary/regulations/index.html) (5 May 2017).

imposed the toughest possible sanctions in most cases, excluding clubs from UEFA competitions and banning the individuals involved in such activities for life.

b) FK Pobeda

The first significant case involving a breach of the principles of integrity was that of FK Pobeda. Both the president and captain of the Macedonian club were accused of accepting a bribe to lose a match against the Armenian club FC Pyunik in the qualifying round of the 2004/05 UEFA Champions League. The match ended in a 3-1 win for the Armenian side.

During the match, an unusually high number of bets for a game of this type were noted, leading to the launch of a UEFA investigation. Various individuals, including anonymous witnesses, stated that the match had been fixed by the president of FK Pobeda, in collusion with the team's captain.

Following the disciplinary investigation, the CEDB concluded that the individuals in question had violated the general principles of integrity, loyalty and sportsmanship by accepting monetary compensation to lose the match. Both the club official and player received lifetime bans from engaging in any football-related activity. The ruling also stipulated that, under the principle of strict liability that holds clubs responsible for the conduct of their officials and players, FK Pobeda were excluded from UEFA club competitions for eight years.

The AB upheld the initial penalties, but CA lifted the ban on the team's captain, citing a lack of evidence that he participated in fixing the match.⁵⁰

c) Oleg Oriekhov

On 18 March 2010, Ukrainian referee Oleg Oriekhov was banned for life by the CEDB from any football-related activity, following his failure to report to UEFA an attempted bribe aimed at influencing the outcome of the match between FC Basel 1893 and PFC CSKA Sofia in the group stage of the 2009/10 UEFA Europa League.

Oriekhov had been contacted by a German criminal organisation specialising in match-fixing, led by Ante Sapina, to ensure that a predetermined number of goals would be scored so that fraudulent bets could then be placed on the game.

Although the referee rejected the offer made to him, as was later confirmed by Sapina, UEFA's disciplinary bodies considered that he had failed in his duty to immediately inform the confederation of any attempt to manipulate matches. Consequently, the match official was handed the toughest possible sanction, namely life ban.

⁵⁰ CAS 2009/A/1920, FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v/ UEFA, available at https://arbitrationlaw.com/sites/default/files/free_pdfs/CAS%202009-A-1920%20FKP%20et%20al%20v%20UEFA%20Award.pdf (5 May 2017).

The case eventually made its way to CAS, which rejected Oriekhov's appeal and upheld the initial ruling.⁵¹

d) *Kevin Sammut*

Maltese international footballer Kevin Sammut was accused of having participated in the alleged fixing of a match between Norway and Malta. As a result, the player was banned by the CEDB from exercising any football-related activity for ten years, effective as of 17 August 2012.

Sammut had been contacted by representatives of Ante Sapina to ensure that his team lost by a score of 4-0. Although the player denied any contact with the German criminal organisation, the testimony of the representative with whom he met enabled UEFA's disciplinary bodies to come to the conclusion that Sammut had received an offer in exchange for his national team losing, and that several of his team-mates were aware of the situation.

The CEDB originally handed out a ten-year ban, but the AB upheld the appeal from the UEFA Disciplinary Inspector and extended the sentence to a life ban. However, CAS reduced the sanction on appeal, considering that the original penalty was more appropriate for the seriousness of the offence.⁵²

e) *Fenerbahçe Spor Kulübü*

Turkish club Fenerbahçe SK was penalised by the AB on 15 July 2013 with an exclusion from the next two UEFA club competitions for which they might qualify. The AB made the decision following the involvement of many of the club's officials in a domestic match-fixing scheme.

After an extensive police investigation into match-fixing during the 2010/11 domestic season in Turkey, a number of officials and players were arrested. Among those detained were the president of Fenerbahçe and several members of the club's board of directors.

An initial investigation resulted in the Turkish Football Association withdrawing the club from the 2011/12 UEFA Champions League and opening disciplinary proceedings against the team and officials. In turn, UEFA launched its own investigation into the involvement of Fenerbahçe and their officials in activities that ran contrary to the principle of the integrity of matches.

As part of the investigation and the case against Fenerbahçe, UEFA's disciplinary bodies considered that it was an undisputed fact that Fenerbahçe had fixed, through the club's officials and intermediaries, the results of several Turkish

⁵¹ CAS 2010/A/2172, Mr Oleg Oriekhov v/ UEFA, <http://arbitration.kiev.ua/uploads/kucher/2172.pdf> (5 May 2017).

⁵² CAS 2013/A/3062, Kevin Sammut v. UEFA, available at www.tas-cas.org/fileadmin/user_upload/Award_3062_FINAL_2014.05.28_.pdf (5 May 2017).

League matches during the 2010/11 in order to become champions and thereby qualify for the subsequent UEFA Champions League.

The penalty imposed on Fenerbahçe, which was finally confirmed by CAS and the *Tribunal Fédéral*, served to strengthen UEFA's battle against match-fixing in both European competitions and national tournaments featuring its member associations.⁵³

f) *FK Skënderbeu*

UEFA's betting fraud detection system (BFDS) was established in 2009 in response to the growing threat of match manipulation in both UEFA and domestic competitions.

The BFDS highlights irregular betting patterns, both before and during matches, in the core betting markets, monitoring all major European and Asian bookmakers. The core betting markets are: the Asian handicap market; the totals market (number of goals in a match); and the 1X2 market (home win, draw or away win). The BFDS covers all UEFA competition matches (approximately 2,000 per season) and all matches in member associations' top two divisions and cup competitions (approximately 30,000 matches per season).

The BFDS uses sophisticated algorithms and mathematical models to compare calculated odds with actual bookmakers' odds, in order to determine whether the odds at a specific point in time or over a specific period are irregular.⁵⁴

If a match displays irregular betting patterns, the matter is escalated and a report is generated. These reports include detailed information on the betting operators being monitored, together with match-specific data – e.g. regarding the current form of the teams involved, on-field action, players, match officials and motivational factors (such as the potential for promotion, relegation or qualification for a UEFA competition). Reports contain textual analysis and expert assessments, as well as graphical representations of movements in the relevant betting market.⁵⁵

UEFA's primary BFDS partner and information provider is Swiss-based company Sportradar. Founded in 2001, this company employs a team of highly trained sports betting analysts dealing exclusively with European football.

On the basis of analysis of BFDS reports, it was concluded that Albanian football club KS Skënderbeu had been involved in a very large number of matches

⁵³ CAS 2013/A/3256, *Fenerbahçe Spor Kulübü v. UEFA*, available at www.tas-cas.org/fileadmin/user_upload/Award_3256_FINAL_internet.pdf and Judgement of 16 October 2014 (4A_324/2014), www.swissarbitrationdecisions.com/sites/default/files/16%20octobre%202014%204A%20324%202014.pdf respectively.

⁵⁴ Calculated odds are a mathematical representation of the true probability of an occurrence, without the external effects of money and subjective opinions. In effect, they show what should be happening to the odds, instead of what is actually happening.

⁵⁵ See D. FORREST, & I. MCHALE, (2015). *An evaluation of Sportradar's fraud detection system*. (Available at: https://integrity.sportradar.com/wp-content/uploads/sites/15/2016/03/Sportradar-Security-Services_Universsity-of-Liverpool_An-Evaluation-of-the-FDS.pdf) (5 May 2017).

with inexplicable betting patterns. These included matches in Albania's domestic league, the Albanian Cup and UEFA competitions, as well as several friendlies against foreign clubs. On the basis of UEFA's experience in the areas of betting and match-fixing, it was concluded that the activities relating to Skënderbeu were of a highly organised nature.

While the vast majority of clubs will never feature in BFDS reports, it should be noted that Skënderbeu has appeared in more than 50. If we look at all the clubs that have been the subject of BFDS reports since 2010, Skënderbeu has been flagged far more times than any other club in Europe.

Against this background, charges were brought against Skënderbeu before UEFA's disciplinary bodies with a view to imposing an administrative measure preventing the club from taking part in the 2016/17 UEFA Champions League.⁵⁶ A hearing took place before the UEFA Appeals Body, which acted as the first and final instance in this case.⁵⁷ The Appeals Body upheld the charges against the club – i.e. it deemed that Skënderbeu had indeed been involved in domestic and international activities aimed at arranging or influencing the outcome of matches. Consequently, the club was declared ineligible to participate in the 2016/17 UEFA Champions League.

Skënderbeu then lodged an appeal against this decision before CAS.

The dispute between UEFA and Skënderbeu before CAS essentially revolved around the interpretation of the BFDS reports and the legal value that should be attributed to the reports. UEFA, for its part, relied on those betting reports in concluding that the Albanian club had been involved in activities aimed at arranging or influencing the outcome of matches at domestic and international level. Skënderbeu, on the other hand, maintained that the BFDS reports (i) were not sufficient to prove match-fixing, (ii) were not capable of attributing specific responsibility regarding involvement in match-fixing, and (iii) were simply objective alarm mechanisms, which needed to be supported by other external evidence pointing in the same direction.

CAS limited itself to an analysis of four Skënderbeu matches in UEFA competitions (namely, the club's matches against Crusaders FC on 21 July 2015, against GNK Dinamo Zagreb on 25 August 2015, against Sporting Clube de Portugal on 22 October 2015 and against FC Lokomotiv Moskva on 10 December 2015) and refrained from analysing domestic matches and other pieces of evidence submitted by UEFA. It did so in order to avoid prejudicing any disciplinary measures that UEFA might potentially impose on the club.⁵⁸

The starting point for the legal analysis conducted by the CAS Panel tallied with UEFA's approach to this case and the question of whether BFDS reports could be used as the sole piece of evidence when prosecuting cases of match-fixing. The CAS Panel agreed with UEFA that there were potential analogies

⁵⁶ See E. GARCÍA, (2015). *UEFA's Judicial Bodies. Football Legal*, Issue 4.

⁵⁷ See Article 24(4) of the UEFA Disciplinary Regulations.

⁵⁸ See Article 4.03 of the Regulations of the UEFA Champions League 2016/17.

between athletes' biological passports and BFDS reports: "The Panel notes the similarities between the procedures followed in respect of the BFDS and the athlete blood passport (the 'ABP') in doping matters. Both rely initially on analytical data which is subsequently interpreted by experts/analysts before conclusions are drawn as to whether a violation is presumed to be committed or not".⁵⁹

Using this analogy, the Panel explained how analytical information was processed within the BFDS, highlighting the fact that the BFDS – like the ABP – indicates the likelihood of a violation having occurred, rather than providing absolute proof one way or the other: "*The BFDS analyses whether the analytical information regarding betting on football matches can be explained by 'normal' circumstances. The conclusion that the statistical information cannot be explained by 'normal' circumstances does not necessarily entail that it must hence be concluded that the results are to be explained by match-fixing*".⁶⁰ The Panel went on to say that "[i]n order to come to the conclusion that a match is fixed [...] the analytical information needs to be supported by other, different and external elements pointing in the same direction".⁶¹ With this in mind, the Panel noted that "*the final conclusions drawn are not only based on analytical data and the absence of any 'normal' explanation, but indeed take into account several external factors corroborating the theory that the abnormal betting behaviour was likely to be explained by match-fixing: suspicious actions of players that took place on the field of play, suspicions raised by an opponent after the match, the emergence of a betting pattern in respect of the Club whereby it would concede late goals when the tie was no longer competitive and the fact that the Hong Kong Jockey Club, a prominent Asian bookmaker, removed the Club from live markets before the end of a game*".⁶²

The Panel also attributed considerable weight to the betting patterns surrounding the four European matches under examination: "*The Panel particularly considers the emergence of a betting pattern [...] to be convincing evidence that the Club is at least indirectly involved in match-fixing activities. This betting pattern consists of the fact that it was observed in four different matches of the Club in either the UEFA Champions League or the UEFA Europa League in the first half of the 2015/2016 sporting season, that the actual bookmakers' odds started to divert considerably from the calculated odds at the end of the match when the tie was no longer competitive (i.e. when it was clear that the Club would lose the tie on the basis of the aggregate score or that it would win the tie)*".⁶³

⁵⁹ CAS 2016/A/4650 *Klubi Sportiv Skënderbeu v UEFA*, para. 82, available at www.uefa.org/MultimediaFiles/Download/OfficialDocument/uefaorg/CASdecisions/02/43/75/41/2437541_DOWNLOAD.PDF (5 May 2017).

⁶⁰ *Ibidem*, para. 85.

⁶¹ *Ibidem*, para. 86.

⁶² *Ibidem*, para. 87.

⁶³ *Ibidem*, para. 97.

All in all, the Panel concluded that the “*analytical information derived from the BFDS is valuable evidence that, particularly if corroborated by further evidence, can be used in order to conclude that a club was directly or indirectly involved in match-fixing*”.⁶⁴

3. *Racism, xenophobia and discrimination*

UEFA has incorporated specific regulations against discrimination, xenophobia and racism in its 2006 revisions to the DR. At the time, any person subject to the confederation’s regulations who insulted the human dignity of a person or group of persons based on their skin colour, race, religion or ethnicity would incur a suspension of up to five matches. If the offence was committed by one or more supporters of a member association or club, these entities would be penalised with a minimum fine of CHF 30,000.

As part of the changes introduced in 2013, the minimum sanctions were increased to a suspension of at least ten matches for individuals and at least a partial stadium closure for association members and clubs, with more severe penalties for repeat offences. These new special provisions, which complement the principle of strict liability as far as clubs are concerned, have served to strengthen UEFA’s ‘zero tolerance’ policy as regards this type of behaviour.⁶⁵

a) *PSV Eindhoven*

In a match between PSV Eindhoven and English club Arsenal FC on 25 September 2002, Eindhoven supporters threw lighters at one of the opposing team’s players, Thierry Henry, while he was preparing to take a corner. At the same time, as happened at other points during the match, PSV supporters directed racial abuse (so-called monkey chants) towards Henry.

On 10 October 2002, the CEDB imposed a fine of EUR 30,000 on PSV Eindhoven for racist abuse by their supporters during a UEFA Champions League match in season 2002/03, holding the Dutch club responsible for such misconduct. Subsequently, the AB partially upheld an appeal filed by the UEFA Disciplinary Inspector and agreed to increase the fine to EUR 50,000.

Following the sanction imposed by UEFA’s disciplinary bodies, CAS heard an appeal filed by the club and reduced the fine to its initial amount of EUR 30,000.

The CAS decision was one of the first to specifically recognise the validity of the principle of strict liability, holding clubs responsible for the behaviour of their supporters.⁶⁶

⁶⁴ Ibidem, para. 79.

⁶⁵ Article 14 DR.

⁶⁶ CAS 2002/A/423, PSV Eindhoven v. UEFA. For a detailed analysis of this case see I. CHERPILLOD, PETER T. M. COENEN, J. DE DIOS CRESPO PÉREZ, *Hooliganism, CAS and Football: Landmark Cases*, ASSER International Sports Law Series, 2011, 181-208.

b) *FC Dynamo Kyiv*

In two separate matches, one a UEFA Champions League match against Paris Saint-Germain and two, a UEFA Europa League game versus FC Girondins de Bordeaux, FC Dynamo Kyiv supporters unfurled a banner featuring a neo-Nazi symbol (the so-called Celtic Cross) and performed numerous Nazi salutes while shouting “Sieg Heil”. UEFA’s disciplinary bodies determined that these actions violated the regulatory provisions against racism and discrimination, and should therefore be subject to the corresponding sanctions.

On 21 March 2013, the CEDB ordered FC Dynamo Kyiv to play their next two home matches in UEFA competitions behind closed doors and imposed a substantial fine, following discriminatory conduct by their supporters in two matches in UEFA competitions. After an appeal, the AB reduced the penalty to just one match behind closed doors.

4. *Financial Fair Play cases*

Various CAS awards have recognised and highlighted the importance of UEFA’s approach to financial fair play.

By way of example, in paragraph 113 of the Award in case CAS 2012/A/2824 *Besiktas v UEFA*, the Panel stated:

“[T]he principal objectives behind the UEFA CL&FFP Regulations are, inter alia, to protect the integrity of UEFA club Competitions, to improve the financial capabilities of the clubs, to protect creditors (players, tax authorities and other clubs) and to introduce more discipline in clubs’ football finances. All of these objectives exist to protect the long-term viability and sustainability of European football”.

CAS has also confirmed UEFA’s interpretation and application of the monitoring requirements through issuing positive judgments in cases CAS 2013/A/3453 *FC Petrolul Ploiesti v. UEFA*, CAS 2013/A/3533 *Football Club Metallurg v UEFA* and CAS 2014/A/3870 *Bursaspor Kulübü Dernegi v UEFA*.

On top of that, in a very recent case CAS 2016/A/4492 *Galatasaray v. UEFA*, the compatibility of the financial fair play system vis-à-vis the EU Law has been endorsed.

IV. *Conclusions*

By looking at the above description of the internal organization and proceedings before the CAS relating to the activity of the UEFA disciplinary bodies, we can conclude that the system implemented almost 20 years ago at the confederation level must be considered credible and fully in line with the highest standards of transparency and efficiency.

Nowadays, the disciplinary aspects of football include more than just decisions on yellow and red cards. It covers different areas, from racism to doping, from match fixing to violence in stadiums. In this constantly changing context, the sport's governing bodies have to be ready to adapt their disciplinary system to reality.

PART II

NATIONAL RULES

DISCIPLINARY PROCEDURES IN ARGENTINE FOOTBALL

by *Mariano Bambaci** and *Martin Auletta***

1. Introduction

At the moment of writing these lines, Argentine football in general and the Argentine Football Association (hereafter “AFA”) in particular are trying to leave behind one of the biggest (if not the biggest) crises they have ever crossed.

This crisis, which began on 30 July 2014 with the unexpected death of Julio Grondona (the AFA’s president for 35 consecutive years, since 1979)¹ included, among other things, a grotesque presidential election tied at 38 votes,² the end of the program “Football for everyone”,³ a players’ strike⁴ and the intervention of FIFA, which appointed a “Normalisation Committee” to replace the AFA Executive Committee.⁵ The main objective of this Commission was to reform the AFA Statute

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¹ “Julio Grondona, Argentine Power in World Soccer, Dies at 82”, *The New York Times*, 01/08/2014, available at https://www.nytimes.com/2014/08/01/sports/soccer/julio-grondona-argentine-soccer-chief-dies-at-82.html?_r=0 (3 May 2017).

² “Argentina football association election ends in farce over mysterious extra vote”, *The Guardian*, 04/12/2015, available at <https://www.theguardian.com/football/2015/dec/04/argentina-football-association-election-farce>.

³ “Argentina – The End of Football For Everyone”, *Futebolcidade.com*, 27/07/2016, available at <http://futebolcidade.com/argentina-end-football-everyone/> (3 May 2017).

⁴ “Why did Argentina’s players go on strike? And how did it get resolved?”, *ESPNFC.com*, 10 March 2017, available at www.espnfc.com/blog/espn-fc-united-blog/68/post/3074116/argentina-season-missed-restart-date-due-to-players-strike-and-here-is-what-you-need-to-know.

⁵ “Normalisation committee appointed for the Argentine FA”, *FIFA*, 24/06/2016, available at www.fifa.com/governance/news/y=2016/m=6/news=normalisation-committee-appointed-for-the-argentine-fa-2803547.html (3 May 2017).

in order to bring it in line with the FIFA Standard Statutes, and then to call for election of authorities.

Thus, the approval of the new Statute of the AFA, on 24 February 2017 and the election of a new president, on 29 March 2017,⁶ marked the beginning of a new stage for the AFA,⁷ with numerous changes in the organization and the government of Argentine football.

The new AFA Statute⁸ was drafted with the assistance of FIFA and CONMEBOL officials, in order to bring it in line with the current FIFA Standard Statutes. Its text introduced many changes, whose analysis would exceed the scope of this chapter. However, among the most significant changes, we can find the following:

- Incorporation of new members:⁹ the women's football association, the futsal association, the beach football association, the association of former football players, the association of former referees, the association of former technical directors and the Argentine Professional Football Super League (*Superliga de Fútbol Profesional*) (with voice but without vote).
- Creation of a professional football league, in replacement of the current the first division championship.¹⁰ The Argentine Professional Football Super League has legal capacity and full autonomy for its internal organization and operation, but must sign a coordination agreement with the AFA which will determine, among other matters, the composition and functioning of the disciplinary bodies of its competitions.¹¹
- Creation of the General Secretariat (*Dirección General Ejecutiva*) as the administrative body of the AFA,¹² run by the General Secretary (*Director General Ejecutivo*) and also integrated by the Finance Director.¹³ These new officials are the only remunerated officials provided for in the AFA Statute.¹⁴
- Creation of an Ethics Committee (*Tribunal de Ética*) as a new jurisdictional body of the AFA, which adds to the existing Disciplinary Court (*Tribunal*

⁶ "New AFA president vows to get Messi ban reduced", *Reuters*, 30/03/2017, available at <http://in.reuters.com/article/soccer-argentina-afa-elections-idINKBN1710B0> (3 May 2017).

⁷ For more information, see A. Reck, "An overview of the restructure of Argentine football following its years of uncertainty", *LawinSport.com*, available at <https://www.lawinsport.com/articles/item/an-overview-of-the-restructure-of-argentine-football-following-its-years-of-uncertainty> (3 May 2017).

⁸ Available at <https://www.afa.org.ar/upload/reglamento/Estatuto AFA - Desde 24.02.2017.pdf> (3 May 2017).

⁹ Article 10, paras. g) to m) of the AFA Statute.

¹⁰ Article 18, para. 2 of the AFA Statute.

¹¹ Article 81 of the AFA Statute.

¹² Article 20, para. 4 of the AFA Statute.

¹³ Article 58 of the AFA Statute.

¹⁴ Articles 59 and 60 of the AFA Statute.

- de Disciplina*) and Court of Appeals (*Tribunal de Apelaciones*).¹⁵ Later, the Code of Ethics was also approved.¹⁶
- Creation of a Club Licensing Committee (*Órgano de Concesión de Licencias a los Clubes*),¹⁷ responsible for the club licensing regulations, which will be composed of two instances: first instance body and appeals body.¹⁸ However, by the closing date of this work, the AFA has not approved the club licensing regulations for clubs participating in national and international competitions.¹⁹
 - Creation of an Electoral Committee (*Comisión Electoral*), in charge of the organization and the supervision of the electoral processes,²⁰ in accordance with the new Electoral Code, approved in the same Assembly in which the new Statute was approved.²¹
 - Creation of an Internal Audit Committee (*Comisión Fiscalizadora*), as the auditing body of the AFA.²² Although the AFA Statute establishes its competences, its operation will be governed by the new General Regulations of the AFA, which the Executive Committee should approve,²³ but which at the closing date of this work, has not been drafted.
 - Incorporation of arbitration as a dispute resolution mechanism, before an independent arbitration court recognized by the AFA or CONMEBOL, or before the Court of Arbitration for Sport (TAS/CAS) of Lausanne,²⁴ provided all legal channels have been exhausted before the AFA.²⁵

This new structure, at the closing date of this work, is not fully operational. There are bodies that have not yet been created, positions that have not been designated and regulations that have not yet been approved.

With regard to the subject of this book, there are two fundamental regulations pending approval: the new General Regulations of the AFA (adapted to the AFA's new structure) and the new Disciplinary Code.

Accordingly, we will develop this chapter on the basis of existing regulations, warning the reader that in some cases, they may not fully conform to the text of the new Statute of the AFA.

¹⁵ Article 20, para. 5 of the AFA Statute.

¹⁶ Published in AFA's Bulletin N° 5314. Available at: www.afa.org.ar/upload/boletines/5314.pdf.

¹⁷ Article 20, para. 6 of the AFA Statute.

¹⁸ Article 56 of the AFA Statute.

¹⁹ Article 78 of the AFA Statute.

²⁰ Article 20, para. 7 of the AFA Statute.

²¹ Published in AFA's Bulletin N° 5296. Available at: www.afa.org.ar/upload/boletines/5296%20Asamblea%20Extraordinaria.pdf (3 May 2017).

²² Article 20, para. 8 of the AFA Statute.

²³ Article 61 of the AFA Statute.

²⁴ Article 67 of the AFA Statute.

²⁵ Article 68 of the AFA Statute.

2. General principles

Until the AFA approves its new Disciplinary Code, disciplinary infringements will be judged by disciplinary bodies applying the Regulations of Violations and Punishment (*Reglamento de Transgresiones y Penas*, hereafter “RVP”), whose last version was approved in January 2011.²⁶

The general principles are established in Chapter IV of the RVP, provides that both the Disciplinary Court (*Tribunal de Disciplina Deportiva*, first instance body) and the Appeals Court (*Tribunal de Apelaciones*, appeals body) of the AFA must decide according to the letter and spirit of the AFA Statute, the AFA’s regulations and resolutions and, in matters not provided by the RVP, according to the general principles of the sport, equity and the Law.²⁷

The assessment of the facts is entrusted to the discretion of the Disciplinary Court and the Appeals Court, which will decide on the basis of the evidence they consider sufficient.²⁸

The Disciplinary Court’s decision shall be rendered without any specific forms and shall contain:

- a) the offence committed and the violated provision;
- b) the corresponding penalty with reference to the applicable provision to the case;
- c) the reasons that lead to investigate a complaint or which exempt the accused person from sanction.²⁹

In order to determine the duration of a sanction, the previous infringement record of the accused person is examined, considering as mitigating his “previous sport correction” and as aggravating any repeated sport misconduct. This, without prejudice to the application of the provisions relating to recidivism.³⁰

The RVP considers “previous sports correction” (“*corrección deportiva anterior*”) when the accused person does not record any suspension during the two years prior to the date of the offense under investigation, as well as when recording a single suspension, either for having committed any violation of the RVP or for having reached the limit of five reprimands. In the latter case, the Disciplinary Committee will not take in consideration this single suspension for the purposes of misconduct but for the purpose of recidivism.³¹

Whoever acts in self-defence will not be punishable. In case of doubt, the most favourable rule to the accused person should be applied.³²

²⁶ Available at: www.afa.org.ar/upload/reglamento/Reglamento_Transgresiones_y_Penas_AFA.pdf (3 May 2017).

²⁷ Article 32 of the RVP.

²⁸ Article 33 of the RVP.

²⁹ Article 34 of the RVP.

³⁰ Article 35 of the RVP.

³¹ Article 36 of the RVP.

³² Article 39 of the RVP.

3. *The legal framework: relevant national sports rules*

The Argentine National Constitution does not even mention the word “sport” in its 129 articles, despite having undergone a major reform in 1994. Hence, Argentine law does not expressly enshrine the right to practice sports nor does it contemplate any state obligation to promote sport.

Since Article 121 of the National Constitution establishes that the provinces retain all the powers not delegated to the federal government, the regulatory power in sports matters falls, therefore, to the provincial legislatures.

This is the main reason why Argentina does not have a “Sports National Law”. The closest attempt dates back to 1974, when the National Congress passed Law 20.655, called “Law of promotion of sports activities throughout the country” (*“Ley de promoción de las actividades deportivas en todo el país”*) and invited the provincial legislatures to ratify its provisions.

In 2016 the National Congress passed Law 27.202, which reformed Law 20.655, establishing a new organization chart for sport in the whole country. However, this new chart has not been implemented yet.

In contrast, the National Congress is authorized to pass laws related to sport, when it does so in the capacity established by article 75, paragraph 12, which empowers it to issue the substantive codes and its complementary laws. Thus, the National Congress has passed, for instance, many laws punishing acts of violence committed in sports spectacles, or Law 25.284, which establishes a “Special regime of administration of sports organizations with economic difficulties”, among many others.

In the labour field, Argentina does not have any general law related to the employment recruitment of athletes. Football is the only professional sport expressly recognized as a work activity, since the approval of the “Professional Football Player Law” (Law 20.160, *“Estatuto del Jugador de Fútbol Profesional”*) in 1976.

All other sports are considered, from legal point of view, amateurs disciplines. In case of a claim before the ordinary labor courts, the judge shall analyze the facts of the case at hand, in order to determine if the characteristic notes that the existence of an employment relationship are met. If the answer is affirmative, he shall apply the provisions of Law 20.744 of Labor Contract and the rest of the ordinary labor regulations.

Sports federations are private civil associations, which must have state authorization to operate.³³ Their object cannot be contrary to the general interest or to the common good. They cannot pursue economic benefits as their primary purpose, nor can they pursue benefit for their members or third parties.³⁴

³³ Article 169 of the Civil and Commercial Code.

³⁴ Article 168 of the Civil and Commercial Code.

State control is mainly formal, since there is no law that specifically regulates the activities of sports federations and their disciplinary legal framework.

4. *Relationship between ordinary and sports rules*

Sports federations, which as we said in Argentina are private civil associations, do not have any legislative power or regulatory authority delegated by the State. As a consequence, their regulations can only produce effects between people who are part of the sport and/or voluntarily adhere to its rules.

Sports regulations, therefore, must comply with state regulations, which have a superior hierarchy. In case of conflict between a sports regulation and a state law, the second prevails.

Notwithstanding the foregoing, a few judgments delivered more than a decade ago, did not comply with this constitutional principle and put the provisions of FIFA regulations over state law. In particular, three judgments³⁵ concerned claims from agents who did not have the license required under the relevant FIFA Players' Agents Regulations. Precisely because they failed to comply with this requirement, the judges rejected their claims, even though from the State law point of view, they could have succeeded.

These decisions generated many discussions for a long time. However, more recently, the Supreme Court of the Buenos Aires province has rendered this doctrine ineffective by clearly establishing that a provision contained in the AFA General Regulations does not constitute a State rule nor can it be considered as a State law.³⁶

5. *Disciplinary bodies*

According to the new AFA Statute, there are three disciplinary bodies (*órganos jurisdiccionales*): i) the Disciplinary Committee (*Tribunal de Disciplina*); ii) the Ethics Committee (*Tribunal de Ética*); and iii) the Appeal Committee (*Tribunal de Apelación*).³⁷

However, by the closing date of this work, these new bodies have not been created, and the previous bodies continue in operation: the Disciplinary Court (*Tribunal de Disciplina Deportiva de la AFA*) as the first instance body and the Court of Appeals (*Tribunal de Apelaciones de la AFA*) as appeal body.

³⁵ *Cámara Nacional de Apelaciones en lo Civil, Sala A*: "Interplayers SA. c/ Sosa, Roberto Carlos s/ Ordinario" (06/12/02); *Cámara Nacional de Apelaciones en lo Comercial, Sala B*: "Nannis, Gonzalo María c/ Caniggia, Claudio Paul s/ Ordinario I" (14/02/2005); *Cámara Nacional de Apelaciones en lo Comercial, Sala A* "Global Foot Sports SA. c/ Rodríguez, Clemente Juan s/ Ordinario" (CNCom, Sala A, 18/11/2008).

³⁶ *Suprema Corte de Justicia de la Provincia de Buenos Aires*: "Morales Hugo Alberto c/ C.A. Independiente s/ Incidente de revision" (27/08/2014).

³⁷ Article 62, para. 1 of the AFA Statute.

Returning to the bodies designated by the new AFA Statute, its members must be qualified to carry out their work and the presidents and vice-presidents of each body must be lawyers. All members must undergo an integrity examination, which will be carried out by the Ethics Committee – for members of the Disciplinary and the Appeals Courts – or by the Internal Audit Committee (*Comisión Fiscalizadora*) – for members of the Ethics Committee.³⁸

The disciplinary bodies' members' term of office shall be four years and they may be re-elected for three terms (consecutive or not).³⁹ They are appointed by the Assembly (which also has the power to dismiss them in advance⁴⁰), on the proposal of the Executive Committee.⁴¹ The members of the disciplinary bodies must be independent⁴² and present an affidavit every year, during their term of office.⁴³

The Disciplinary Committee, whose powers will be determined by AFA's new Disciplinary Code⁴⁴ (not yet approved), will be composed by a president, a vice president and between three and nine members. The Disciplinary Committee is allowed to take decisions in the presence of at least three members.⁴⁵

The Ethics Committee will have identical composition.⁴⁶ Its powers are established by the AFA Ethics Code.⁴⁷

Finally, the Appeal Committee (whose powers will also be determined by the Disciplinary Code⁴⁸) will be composed by a president, a vice president and three members. It will only take decisions in the presence of at least three of its members.⁴⁹

³⁸ Article 62, para. 2 of the AFA Statute.

³⁹ Article 62, para. 3 of the AFA Statute.

⁴⁰ *Ibidem*.

⁴¹ Article 62, para. 4 of the AFA Statute.

⁴² This requirement is not fulfilled if they themselves or any of their relatives (spouse, children, stepchildren, parents, siblings, concubine, parents of the spouse or the concubine or brothers or children of the concubine) at any time during the four years prior to the beginning their term of office:

a) have held a remunerated position or have entered into a contract (directly or indirectly) with the AFA or any of its members, a league or a club (including related companies or associations);
b) have worked for an external legal adviser or an AFA auditor (and have participated in the audit of the AFA);
c) have held a remunerated or ad honored position in any charitable organization to which the AFA or any of its members, a league or a club has made any payment (Article 62, para. 5 and Article 61, para. 5 of the AFA Statute).

⁴³ Article 62, para. 6 of the AFA Statute.

⁴⁴ Article 63, para. 1 of the AFA Statute.

⁴⁵ Article 63, para. 2 of the AFA Statute.

⁴⁶ Article 64, para. 2 of the AFA Statute.

⁴⁷ Published in AFA's Bulletin N° 5314. Available at: www.afa.org.ar/upload/boletines/5314.pdf (Article 64, para. 1 of the AFA Statute). (3 May 2017).

⁴⁸ Article 65, para. 1 of the AFA Statute.

⁴⁹ Article 65, para. 2 of the AFA Statute.

The Appeal Committee is competent to deal with any appeals filed against the decisions of the Disciplinary Committee and the Ethics Committee.⁵⁰ Its decisions may be appealed to the arbitration tribunal of the AFA (not created yet) or to the Court of Arbitration for Sport (CAS) of Lausanne, Switzerland.⁵¹

6. *Infringements*

After analysing the introductory questions related to disciplinary procedures in Argentine football, we now focus on the offences regulated in the RVP. While the regulation has, in our opinion, a poor legislative technique, it contains though quite an extensive detailed list of infringements.

Thus, Chapter XIV of the RVP lays out 62 articles concerning punishable behaviours and their relevant sanctions. There are a variety of different sanctions ranging from a mere warning to disqualification, with others in between such as fines, suspensions or even exclusions from the national team.

This regulation will find procedural aspects for the categorization of infractions – reports, defences, preventive measures, ruling of the Court, appeals, computation of sentences, prescription, etc. –, details of the actions or omissions that constitute an infringement – both by players, teams, sports organizations, managers, referees, etc. –, as well as the sanctions corresponding to each type of infringement.

As a matter of fact, the RVP occupies the role of a Criminal Code within sport, as it establishes the fundamental principles for all disciplinary procedures and explains the different behaviours constituting an infringement – action or omission – by football participants – whether they are players, clubs, managers, referees, etc. –, as well as how to prosecute them, the defence mechanisms and the sanctions against breaches of its provisions (procedural aspects). It also contains provisions related to the type of imposed sanctions – sentences of conditional compliance, prescription, computation of time limits, etc.).

Article 1 of the RVP establishes the starting point for the AFA's disciplinary system. This article states the necessity of having a complaint lodged by any person or entity, regardless of whether they are obliged – or not – to report the facts that constitute a violation of any of the provisions contained therein worthy of a sanction. As a general rule, these allegations must be submitted to AFA's Disciplinary Court within three days of the infraction, although this period may be extended for 15 days when there are special causes or distance reasons that impede to submit the complaint within the time limit.⁵²

These allegations made by a referee – or by any third party – through the presentation of a report after the end of the match set off the procedure

⁵⁰ Article 65, para. 3 of the AFA Statute.

⁵¹ Article 65, para. 4 of the AFA Statute.

⁵² It must be taken into account that the geographical area of the country exceeds the 4000 km in length; which equals the distance between Portugal and the border of Russia.

before the Disciplinary Court (and eventually the Court of Appeals). Notwithstanding this, the Court of Appeals may initiate investigations *ex officio* or based on news or information which came to their knowledge in order to enforce the regulation as well as suppress its breach by any means.⁵³

6.1 *Violations of the rules of the match*

6.1.1 *Introduction*

Starting with the study and analysis of the violations of the rules of the match, it is important to note that as a general principle guiding the members of the Disciplinary Court, Article 154 of the RVP establishes that “*a player who infringes the provisions contained in the rules of the match – rules of AFA – or commits acts of indiscipline, and is expelled from the play field, will be automatically suspended until the Sports Disciplinary decision is issued*”.

In other words, the player who is expelled by the referee shall comply with a provisional suspension until the Disciplinary Court decides the appropriate sanction.

This principle has its counterweight at the end of article 27 where it is expressly stipulated that “*...the penalty will be deducted from the final decision as a result of this automatic suspension*”.⁵⁴

So that, as a general principle, the player who commits an infraction and is expelled by the referee may not play the following match.

6.1.2 *Infractions*

The RVP contains detailed provisions on infractions.⁵⁵

In accordance with the Disciplinary Court, a description of the behaviours that deserve to be punished along with the setting of a minimum and maximum penalty for each case can be seen in articles 198 and following. These sanctions includes the suspension for the player causing an injury to three or more players, throughout the same season because of his of violent conduct. The suspension varies from 10 to 30 matches.

⁵³ Article 5 of the RVP: “*EX-OFFICIO ACTION - The Afa’s Disciplinary Court can initiate ex officio or on the basis of news or information from any means of dissemination, all research and summary information, aimed to suppress breaches of the rules of procedure, through a founded resolution that it will dictate in this respect. But such initiation will be compulsory in the case of facts of gravity or founded complaints carried out by the enforcement authority*”.

⁵⁴ So, if the player was finally suspended for 4 matches as a result of an act of aggression to a rival and the final judgment which established such punishment was handed down after 2 matches of interim suspension by the Disciplinary Court, the player shall meet only 2 more matches.

⁵⁵ For the detailed analysis of each of the infractions and their form of interpretation, we recommend reading Articles 198 to 211 of the RVP.

In the same sense, Article 199 of the RVP establishes a suspension – 5 to 30 matches – of the player who leaves another player in disadvantage or unable to continue the dispute of the match, or prevented him from playing indefinitely, because of a violent action, the breaking of the rules of the match or an aggression.

These two provisions are intended to punish the player who continuously plays in a rough way. Regardless the penalty applied by the referee – either a yellow or a red card – during the match, additional sanctions can be given depending on the player's records and the severity of the injury suffered by the opponents. In the same sense, and even if there are no injuries or impossibilities of continuing the matches, the RVP punishes with a suspension of 1 to 6 matches all players who play in a strong or violent way.⁵⁶

On the other hand, article 200 establishes a series of typical behaviours that deserve serious sanctions (from 3 to 15 matches), including aggressions such as punches, slaps, kicks, head-butts intentionally stepping on the adversary, throwing the ball with their hands or kicking it deliberately against the opponent, hitting him in the body or the face, as well as the player who deliberately spits out another player. It is important to know that the minimum penalty will rise to 4 matches if the aggression is carried out from behind without the possibility of predicting the aggression.

The penalty for these same behaviours applies to players that respond to the assault with the same methods but will suffer one slightly lower suspension from 2 to 12 matches.

The RVP also punishes the player who committed excesses in self-defence using excessive force to reject the aggression. In these cases, the suspension imposed to this player will vary from 1 to 10 matches. The same sanction will apply to a player whose aggression is frustrated, for attempt of aggression, or threat of aggression. Also when behaviours stipulated in Article 200 (mentioned above) are committed with less violence.⁵⁷

Article 207 of the RVP is quite interesting, since it enables to increase the suspension penalty when a player receives two yellow cards in the same match – being consequently expelled by this double strike.⁵⁸

⁵⁶ Article 204 of the RVP.

⁵⁷ Article 202 of the RVP.

⁵⁸ Article 207: “...a) using your hands or arms holding an opponent grasping the body, shirt, pants, legs or arms, preventing him from continuing its action.” RVP 46 b) deliberately throwing the ball off the field with the purpose of allowing the medical attention of the player from the same team that is supposedly injured, or throwing it deliberately out of the court, whatever his purpose is. (c) deliberately retaining the ball with his hands or feet for the purpose of delaying the match or with any other intention. (d) playing the ball with his hands repeatedly, intentionally delaying the match. (e) using forbidden objects (rings, chains, watches, etc.); or entering the match displaying a so-called “pet”, irrespective of the its nature. (f) incorrectly using his uniform (t-shirt outside the pants), except that in the case of the t-shirt, the fact is attributable to the club, by providing short t-shirts for their players. (g) when the ball is not being disputed, intentionally delaying the resumption of the match, whatever the action or omission incurred. (h) leading tumults or massive protests.

Moreover, Article 208 establishes another accessory suspension for the accumulation of cautions (yellow cards) within the same season, whatever the reasons are for them. For the purposes of the calculation, double warnings received by a player in a same match will not be counted.

Finally, Article 210 provides that all these sanctions may be applied even if the player has not been expelled by the referee.

6.2 *Disorderliness at matches and competitions*

In this chapter, we will analyse some behaviours that represent acts punished by AFA's RPV. We envision that these actions and omissions cover a large swath of assumptions that, if committed by any representative of any sports institution affiliated to the AFA (whether they are players, coaches, managers or fans), may be sanctioned by its disciplinary bodies.

Firstly, the regulation establishes a series of behaviours that are considered infractions. These regulations have the particularity that the subjects whose conducts will be analysed are not players or managers of the club, but fans or public located in the sectors determined on the occasion of a match.

This means that if fans commit some of the following violations, clubs will be sanctioned for their behaviour.

If the public located in the sector assigned for that particular club provokes disorder, throws any kind of projectiles, attacks the referee, the referee's assistant, the coach's staff, players, or the general public, intentionally causes damage, invades the play field, tries to break or climb the perimeter fences, the club shall be sanctioned with a fine equivalent to the value of 500 tickets during two to six matches, depending on the gravity of the infringement committed by the public.⁵⁹

These assumptions contain also various accessory penalties. In the event that some of these behaviours should prevent the initiation or continuation of the match, the club may suffer a deduction of 9 to 30 points, to which the loss of its category or even the termination of its membership for a period of one year can be added. Also, their stadium may be closed down for 1 to 4 matches and, in the case of extreme gravity; this sanction can soar from 6 to 10 matches.

It is important to emphasize that sanctions may be imposed following the public's misbehaviour before, during or after the match, both inside and outside the stadium.

(i) entering or leaving the field without the referee's permission. (j) discussing violently with a partner of his team or adversary. (k) leaving his place on the field to intervene in other incidents elsewhere. (l) not keeping the regulatory distance required by the rules to run a throw-in, corner kick, goal, free kick, penalty or any other move. (m) committing other offences or minor violent actions, not covered by the regulation or provided for, does not deserve sanctions referred to in the relevant provisions".

⁵⁹ Article 80 of the RPV.

Besides the fines and the administrative sanctions that may be applied to the Club by the Courts of the Federation, Article 99 of the RVP establishes the club's obligation to compensate the damages caused its supporters.⁶⁰

A fine of up to 300 tickets for 2 to 6 dates is foreseen⁶¹ in the case where the public commits other reprehensible acts; such as entering the field after the match, bothering the authorities of the match, the coach's staff, the players or the spectators, as well as spiting someone inside the field.

The use of pyrotechnic elements is also prohibited in the RVP of AFA. In this case, the fine that the club must pay if its supporters use them equals 200 tickets for 2 to 6 matches. This offence contains the aggravating fact that if injuries are caused by the use of these elements, in addition to the above, a deduction of 3 to 6 points can be made to the club.

On the other hand, Article 90 punishes a club with fines ranging between 42 to 510 tickets when a member of the body of referees of the match is assaulted or threatened by authorized people in the stadium.

Having analysed breaches committed by assault, damage, use of pyrotechnics, among other unwanted behaviours by third parties, we will focus now our attention to issues related to the practice of sport.

Starting from Article 106 of the RVP and onwards, there are various circumstances which are liable to be punished, among which leaving the field without justifiable causes, facilitating the actions of the opposing team, not showing up after halftime, quitting the match before its ending, as well as other assumptions. We refer to the reading of the relevant RVP articles for its detailed analysis.

Finally, it is important to emphasize that the behaviour of players, coaching staff and managers of sports clubs are also liable under the RVP. This is why Article 205 of the RVP establishes a suspension of 2 to 20 matches in the case that a player commits acts of insubordination against the public.⁶² Also, the regulation establishes grounds for suspension and expulsion should managers or members of the coaching staff violate the provision.

⁶⁰ Article 99: "When partners, fans, leaders, players, coaches, etc., of a club, cause damage to other stadium on the occasion of any match, the responsible club will be obliged to repair the damages and prejudices that they had caused".

⁶¹ Article 83 of the RPV.

⁶² Article 205: "A suspension of two to twenty matches is given to the player who commits acts of insubordination against the public such as: (a) obscene gestures. (b) insults, grievances or offenses. (c) threatens, attempts to attack or injure. (d) performs rude gestures or incorrect externalizations to the fans. (e) spits someone deliberately. (f) throws any object or projectile. (g) performs any other act that means indiscipline or lack of respect to the public. article 206:-Suspension of a match for the player who commits any act of indiscipline referred to in the previous article 205, that deemed the lack of gravity do not deserve the sanctions provided for in this rule".

6.3 *Offensive and discriminatory behaviour*

Continuing with the analysis of the AFA's RVP, we will now dive into the offensive behaviours and discrimination provisions. As we will see below the RVP dedicates several articles to the description of unwanted behaviours and their prosecution, including the injuries given by players, coaches, managers, as well as the discriminatory statements made by the public.

In reference to these issues, Article 75 provides that in the case of a club that damages or seriously offends the AFA in any way – its leaders or collegiate bodies – this club will get a suspension ranging from 3 days to 2 years depending on the severity of the foul. This article sets also a procedure for the so-called offender who can retract when statements have been spread by a journalistic medium.⁶³

On the other hand, Article 93 establishes a principle of fixing of fines on the occasion of repeated behaviours by managers or clubs' representatives before the AFA. The value of the fine will be equivalent to 210 tickets in the case of a first offense, which may be doubled for each time they repeat the offence within the same year.

Violations mentioned in this article include expressions that are offensive, malicious or biased against foreign associations, clubs, coaches, referees, players and staff, whether it is for Argentine clubs or foreigner clubs who have disputed a match in the country, or expressed opinions adverse to the performance of the referee, among other aspects. It is worth mentioning that in the event of extreme gravity cases, the club may be suspended.

Regarding the players, the RVP establishes penalties of suspension from 2 months to 3 years to those who used "*insulting, offensive or malicious expressions against the AFA, its authorities and associated bodies or identical foreign entities*"⁶⁴ as well as "*against clubs, their managers, referees, players and coaching staff*".

A player will receive the same punishment if they commit the above when playing abroad as part of a delegation of the AFA or a club affiliated to it.⁶⁵

Suspensions will get worse in the event of a player "*doing something severe enough to affect the sporting culture of the country or manifestly harmful to the reputation of the national sport*".⁶⁶

Should a player "*insult, wrong or severely lack respect to the AFA or their bodies*" or "*insult, wrong, or attempt to attack the AFA leader for acts related to the his function*" he shall be expelled from the AFA.⁶⁷

⁶³ We refer to the reading of article 75 since their detailed analysis exceeds the objective of this book.

⁶⁴ Article 157, paras. a) and b) of the RVP.

⁶⁵ Article 157, para. c) of the RVP.

⁶⁶ Article 156 of the RVP.

⁶⁷ Article 155, paras. a) and b) of the RVP.

Both injuries, grievances and facts that affect the sporting culture of the country and threaten the prestige of the national sport are not expressly defined in the Regulations. This is why the members of the Disciplinary Court and eventually the Court of Appeals will judge which behaviours can rise to the level of a violation.

Continuing with the analysis of the behaviour of the players who can be subject of sanctions through a punitive procedure by the relevant AFA bodies, it is important to note that from articles 183 to 197 the RVP enumerate undesirable conduct against referees along with their corresponding penalties for each case.

A particularly striking case in the regulation is foreseen in article 209 which empowers the Disciplinary Court to impose a penalty of 1 to 8 matches to a player who “*is provocative, threatens, insults, wrongs, makes obscene gestures or rude gestures, offends or lacks respect for his partners*”.

It is interesting to see how the same Federation takes action on the matter and punishes the player who performs an unwanted conduct against a player from his own team, when actually the punishment should come from his own club. However, we consider that these penalties can be accumulated on each performance and the subsequent punishment of the AFA does not interfere with the internal sanction.

Also, it is important to highlight the provisions of article 88bis, which set out a number of issues related to discriminatory, obscene or threatening demonstrations by the public in stadiums.

The sanctions contained in this article, range from reprimand to fines equivalent to 300 tickets – from 2 to 6 matches – to the club whose bias or partisan public “*display discriminatory banners or symbols, threatening, obscene, insulting and offensive to the moral and good manners, or sing songs with equal content*”.

Again, the treatment and the decision of what constitutes a discriminatory, obscene or offensive message is exclusively the competence of the AFA’s disciplinary bodies.

Finally, it is worth mentioning that according to the new AFA Statute, discrimination of any kind against a country, an individual or a group of people because of race, skin color, ethnic, national or social origin, sex, disability, language, religion, political position or of any other nature, place of birth or origin, sexual orientation or any other reason is strictly prohibited and is subjected to disciplinary measures.⁶⁸

6.4 Corruption

The RVP also deals with corruption in sport. The regulation sets out two specific behaviours that constitute sports corruption: bribery and illegitimate reward.

⁶⁸ Article 3, para. 2 of the AFA Statute.

Bribery is defined as the action of someone – by itself or through a third party – attempting to, by any means, induce a player to “*play unfavourably for his team... or play in a way that ensures or facilitate the defeat, a draw or the triumph of a certain team*”.⁶⁹

The RVP establishes severe penalties both for the player who does not play according to his full ability to achieve the proposed objective, which can be punished with expulsion from the AFA,⁷⁰ while the club that is responsible for bribery may be suspended for 4 months to 2 years depending on the seriousness of the case. And in case of recidivism, it can be expelled from the AFA within the next 6 years.⁷¹

Moreover the illegitimate reward is given when a person – whether by itself or through a third party – “*offers a reward to a player whose team ties or defeats the opponent; provided that the offer is intended to stimulate his commitment to the match, and to make the outcome of the match a benefit for a third team in the ranking*”.⁷²

In these cases, it is necessary for various conditions to occur simultaneously. First, there is a person who, on his/her own behalf or through the use of another person, offers a reward to a player. The purpose of this offer is that these players try to, beyond normal means, tie or defeat the adversary in order make a third team the beneficiary.

The penalties that could be imposed on clubs that offer this illegitimate reward vary between suspensions of 4 months to 2 years. As in the case of bribery,

⁶⁹ Chapter XXII: Penalties for sport corruption. Bribery. Article 283. RVP AFA: “*The penalty of expulsion corresponds to the person who, per se, or by any means, induces or attempts to induce player to play disadvantageously for the team he is part of, And the same penalty will take place when the action is performed with officials or referees, inducing him or trying to induce him to act in a way that secures or facilitates the defeat, the tie or the triumph of a certain team. The accomplice or participating party in the offence, shall be responsible for the same punishment as the perpetrator; and if it is not officially linked to the AfA or its affiliated clubs, directly or indirectly, it should disable it permanently to act in the above-mentioned entities. The referee’s assistant or official referee who accepts the proposal will also be banned from the AFA. The offending Player shall be punished according to article 179 of this regulation. The Club responsible for bribery or attempt of it, should be suspended for four months to two years and its expulsion will take place if the Club does it again within the following six years (article 73 of the RVP)*”.

⁷⁰ Article 179 of the RVP.

⁷¹ Article 73 of the RVP.

⁷² Chapter XXII Penalties for sports corruption. Illegitimate reward. Article 284. “*A player shall be suspended for one to five years if, by any intermediary or by any means, gives or offers rewards, subject to the condition that the team he is part of, ties or defeats the opponent, provided that the offer is intended to stimulate its commitment in the match so that the outcome of the match will benefit a third team in the ranking. Accomplice or people who facilitate infringement, suffer the same punishment as the author and, if they are not officially linked to the AFA affiliated institutions directly or indirectly, they are disabled permanently to act in the above-mentioned entities. The proposal corresponds to the player that accepts the penalty specified in article 181 of RVP. The club responsible for this fact shall be punished in accordance with the provisions in article 74 of this regulation*”.

the possibility of expelling the club from the AFA is also possible, should the club commit the same offence within a period of 6 years.⁷³

Meanwhile, a player who receives or accepts a promise of a reward for tying or defeating an opponent with the objective of favouring a third team, may receive a penalty of suspension which, according to the circumstances of the case, will vary from 6 months to 3 years.⁷⁴ In the event that a player “*does not observe the player’s obligation with will, making the most of his energy and all his skill as a football player... in order to benefit or harm the outcome of the match in favour to a third team...*” he will be suspended for 5 to 20 matches.⁷⁵

The regulations also has provisions relating to penalties that would apply to clubs’ representative who have committed any of the acts presented in the chapter “Sports Corruption”. So, Articles 243, 244, 283 and 284 of the RVP lay out the penalty of expulsion for anyone who bribes referees, referees assistant, players or any other person, while a penalty of 1 to 5 years of suspension shall be imposed for the official granting illegitimate reward.

The club responsible for inducing or attempting to induce a player to act against his own team or a referee or an assistant referee to ensure or facilitate a result will be sanctioned with a suspension from four months to two years. If the club repeats the offense within the next six years, it will be expelled from the AFA.⁷⁶

The club giving or offering a player a reward subject to the condition that his team draw or defeat its opponent, provided that the purpose of the offer is to stimulate his performance so that the result of the match benefits a third team in the table of positions, will be sanctioned with a suspension of four months to two years. If the club repeats the offense within the next six years, the club will be expelled from the AFA.⁷⁷

In all these cases of bribery or illegitimate reward the AFA will instruct a sports summary and refer the complaint to the actions of criminal justice to determine and eventually judge the existence of a crime.

It is important to note that according to the new AFA Statute, one of its objectives is “*to promote the integrity, ethics and fair play in order to prevent certain methods or practices, such as corruption, doping and deceits, which can jeopardize fair play in matches and competitions and threaten the integrity of players officers and members, or allow them to take profit illicitly out of football...*”.⁷⁸

⁷³ Article 74 of the RVP.

⁷⁴ Article 181 of the RVP.

⁷⁵ Article 182 of the RVP.

⁷⁶ Article 73 of the RVP.

⁷⁷ Article 74 of the RVP.

⁷⁸ Article 2, para. f) of the AFA Statute.

In accordance with this objective, articles 20 to 23 of the AFA Ethics Code contain provisions related to this subject, in its subsection 2, entitled “Undue benefits”.

Thus, the Ethics Code provides that individuals subject to its jurisdiction:⁷⁹

- shall disclose any interest that may be related to the functions they perform, when exercising functions for the AFA or prior to their designation;⁸⁰
- should avoid situations that may create a conflict of interest, which may arise when they have or give the impression of having, private or personal interests that may impair the fulfillment of their obligations in an independent way. It is understood by private or personal interests any possible advantage that could benefit them or their relatives, friends or acquaintances;⁸¹
- shall not exercise their functions in cases where a conflict of interests exists or may exist. In these cases, they shall immediately disclose said conflict and notify the organization for which the person Code performs its functions.⁸²

The Ethics Code also provides that individuals subject to its jurisdiction:

- may only offer or accept gifts or other benefits from of persons from the AFA or outside the AFA, or in relation to intermediaries or other parties related to the latter, that: i) have a symbolic or irrelevant value; ii) exclude any influence on the execution or omission of an act related to its official activities or that is at its discretion; iii) do not contravene their obligations; iv) do not result in improper economic or other benefits; and v) do not cause a conflict of interest. Any gift or benefit that does not meet all these criteria is prohibited.⁸³ in case of doubt, no gifts will be offered or accepted;⁸⁴
- may not be reimbursed by the AFA for the costs of relatives or associates who accompany them to official events, unless expressly permitted by the corresponding organization. Such permits must be made in writing;⁸⁵
- shall not offer or promise or give or accept any undue personal or financial gain or any other kind of gain in order to obtain or maintain a business or any other dishonest benefit of any person of the AFA or outside the AFA. Such acts are prohibited, regardless of whether they are carried out directly or indirectly through intermediaries or in collaboration with them;⁸⁶
- shall not offer or promise or give or accept any undue financial or other advantage for the execution or omission of an act related to their official

⁷⁹ Article 2 of the AFA Ethics Code: “*Personnel This code shall apply to players, employees, intermediaries, legal entities, officials, matches officers and other persons and/or parties relating thereto who belong or who are subject to the AFA and/or its direct or indirect affiliated clubs.*”

⁸⁰ Article 20, para. 1 of the AFA Ethics Code.

⁸¹ Article 20, para. 2 of the AFA Ethics Code.

⁸² Article 20, para. 3 of the AFA Ethics Code.

⁸³ Article 21, para. 1 of the AFA Ethics Code.

⁸⁴ Article 21, para. 2 of the AFA Ethics Code.

⁸⁵ Article 21, para. 3 of the AFA Ethics Code.

⁸⁶ Article 22, para. 1 of the AFA Ethics Code.

activities and contrary to their obligations. Any such offer must be notified to the Ethics Committee, under penalty of disciplinary sanction.⁸⁷

It is prohibited by the Ethics Code to misappropriate AFA funds, whether they do so directly or indirectly through or in collaboration with intermediaries or parties linked to the latter.⁸⁸

It is also prohibited to accept commissions or promises to receive commissions, either for their own benefit, from intermediaries or related parties, when doing any type of business in the exercise of their functions, unless expressly authorized by the competent body.⁸⁹

6.5 Doping

The doping control system and the possibility of imposing sanctions in cases of non-compliance are established both in the Anti-Doping Control Regulations and Law 26.912.⁹⁰

This law, which dates back to the year 2016, modified the whole doping control system in Argentina. Perhaps the most characteristic note of the law 26.912 is the creation of the Anti-Doping National Organization (ADNO), thus completing the fulfilment of all the obligations under the Worldwide Anti-Doping Code from the World's Anti-Doping Agency (WADA).

It is important to mention that Article 74bis of the RVP, which establishes the obligation to facilitate the work of the anti-doping control officers. The impediment to the development of these tasks can be sanctioned with major fines for clubs and staff, while players, doctors and managers may be suspended by such breaches.⁹¹

Similarly, there is a fine set for the club whose team has a physically stimulated player with any prohibited substance aimed to improve or abnormally

⁸⁷ *Ibidem*.

⁸⁸ Article 22, para. 2 of the AFA Ethics Code.

⁸⁹ Article 23 of the AFA Ethics Code.

⁹⁰ Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/220000-224999/224421/norma.htm>.

⁹¹ Article 74 bis of the RVP: “*ANTI-DOPING CONTROL. Clubs, officials, doctors, players, coaches, auxiliary staff, partners or people who, somehow, are linked to the institution, will be required to facilitate the task of the persons responsible for the anti-doping control, subject to the requirements of these specified in terms of its mission. The obstruction to those tasks from those mentioned in the preceding paragraph, shall incur the penalties following: 1) Clubs: (ticket value) 67 to t.v. 670 fine. 2) Leaders: Suspension for one month to two years. 3) Doctors: Suspension for one month to two years. 4) Players: Suspension for 3 to 20 matches. 5) Coaches: fine of v.e. 52 to 520. 6) Auxiliary staff: fine of t.v. 52 to 520. RVP 15 7) partners or persons working with the institution: the club should be liable, applying the established fine on the 1st paragraph - in cases that previously concerned obstruction in preventing anti-doping control, the Disciplinary Court sanctioned the Club responsible for a fine of t.v. 100 to t.v. 1,000, depending on the seriousness of the facts. Leaders and doctors: a suspension for one to five years. Technicians and staff assistants: a suspension for three months to one year. In manifestly mild cases, the sports Disciplinary Tribunal shall be entitled to admonish those responsible on the first occasion in which they incurred in failure*”.

decreased athletic performance. This same sanction will be imposed to the club when the player refuses to provide a urine sample or to attend the realization of the control, without a justifying cause.⁹²

On the other hand, rule violations and penalties in Article 80 establish harsh sanctions for a player who “*uses narcotics or stimulant substances aimed to increase or decrease his performance abnormally*”.⁹³ In these cases the Court of discipline may be imposed a suspension of between 1 to 5 years.

The same penalty applies to the player who refuses to provide a sample or does not attend the doping control exams, being duly notified.

7. *Responsibilities of clubs and players*

Being within the scope of powers enshrined by the FIFA to the AFA, both clubs and players have rights and obligations in relation to the second.

Clubs of all categories are those participating in the AFA’s competitions, as established by article 10 of its Statute.

Article 13 of the Statute establishes the obligations that members have with the AFA, among which: “*observe the statutes, regulations, directives and decisions of FIFA, CONMEBOL and the AFA at all times and ensure that these are respected by their members*”, stands out.

On the other hand Article 18 establishes that “*all matters related to arbitration, disciplinary matters, anti-doping, club licensing and registration of players (CTI) are sole and exclusive competence of the AFA*”.

In relation to the players, it is worth mentioning that they are also under the scope of the AFA and as such, must comply with regulations and submit to its jurisdiction in disciplinary matters.

Players must meet a number of obligations that are contained in the Collective Agreement of Labour 557/09. Specifically in Article 17 are detailed, among others, the following: “*to play with will and efficiency, putting in action the most of your energies and all your skill as a player; (...) to attend every call made by the entity or the AFA authorities; (...) to comply all international sports rules that govern the practice of professional football and the sporting regulations of the entity and the AFA; (...) to behave with correction and discipline during matches, following the indications of the club, having due respect for the public, sports authorities, teammates and opponents; (...) To avoid incurring into fouls...*”.

⁹² Article 75 bis of the RVP.

⁹³ Article 180 of the RVP.

8. *Procedures*

As previously mentioned, the AFA disciplinary procedures are carried out by the Disciplinary Court, who has the authority to apply different sanctions contained in the RVP.

However, for a disciplinary procedure to exist, first there must be a breach of the regulations that comes to the knowledge of the Court. This can happen through various mechanisms: through a complaint made by those who were forced by law to expose violations,⁹⁴ by using the referee's report or sports assistant presentation,⁹⁵ or through an ex officio action when the Disciplinary Court acknowledges breaches committed by any person or entity under its jurisdiction.⁹⁶

Once the disciplinary process starts, they will notify the interested parties and invite them to exercise their right to a defence, and they can provide evidence.⁹⁷

The parties can also ask for preventive measures, such as temporary suspensions, until the Disciplinary Court takes the final decision on the matter.⁹⁸

The Disciplinary Court's decision shall be rendered without any specific forms and shall contain: i) the offence committed and the violated provision; ii) the corresponding penalty with reference to the applicable provision to the case; and iii) the reasons that lead to investigate a complaint or which exempt the accused person from sanction.⁹⁹

The Appeals Court's decision shall be duly motivated and shall be delivered within a period of ten days (an extension of twenty days is possible), and shall uphold or revoke the appealed decision. Article 34 of the RVP contains a very questionable provision stating that if the Appeals Court has not pronounce upon the expiration of the aforementioned period, it shall be understood that the appeal has been dismissed.

9. *Sanctions*

The RVP contains various sanctions which can be imposed on players, clubs, officials, referees, etc. All of them are laid down in article 66 of the Statute of the AFA.

Article 66 mentions the sanctions that they may apply to both natural and legal persons namely: (a) warning; (b) reprimand; c) fine; (d) return of awards.

Secondly, Article 66 provides a variety of sanctions that may be imposed only on natural persons, such as: (a) caution; (b) expulsion; (c) match suspension; (d) ban from dressing rooms and/or substitutes' bench; (e) ban from entering a

⁹⁴ Article 1 of the RVP.

⁹⁵ Articles 2 and 3 of the RVP.

⁹⁶ Article 5 of the RVP.

⁹⁷ Article 6 and following of the RVP.

⁹⁸ Article 22 of the RVP.

⁹⁹ Article 34 of the RVP.

stadium; (f) ban on taking part in any football-related activity; (g) community services.

Finally the Statute establishes exclusive sanctions for clubs: (a) transfer ban; (b) playing a match without spectators; (c) playing a match on neutral territory; (d) ban on playing in a particular stadium; (e) annulment of the result of a match; (f) exclusion from a competition; (g) defeat by forfeit; (h) deduction of points; (i) demotion to a lower division; (j) repetition of the match; (k) suspension; (l) expulsion

10. *Enforcement rules*

As general rule, we can see in different articles of the AFA Statute the rules for execution of the decisions made by the Disciplinary Court; among which the one contained in the final part of article 13 stands out: “*obligations of members: (...) the failure of the members to comply the above-mentioned obligations can lead to sanctions, as referred to in this Statute*”.

On the other hand, article 14 establishes the procedure for the suspension of any of the members of the AFA; while article 15 establishes the same in the case of expulsion: “*The Assembly may expel those members who: a) failed their financial obligations with the AFA, in accordance with the provisions of the relevant regulation; b) that should repeatedly violate the statutes, regulations, directives or decisions of FIFA, CONMEBOL or the AFA*”.

This is why if a member of the AFA does not comply with a decision issued by any of the courts (Disciplinary Court or Court of Appeals), he may be suspended in the exercise of his rights and, eventually, be expelled.

11. *Conclusions*

As we have observed through this chapter and compared with other national associations, the Argentine Football Association disciplinary system has much to improve and is far from being satisfactory. We come to this conclusion not only from the formal regulatory aspect, but also from the point of view of how the AFA's disciplinary bodies have used their powers, even if this analysis goes beyond the framework of this book.

In addition, the closing date of this work came in the midst of AFA's restructuring process, which includes its disciplinary procedures and has not been concluded. This particular situation has generated a significant amount of regulatory disagreements, due to differences between the old and the new regulations.

We sincerely hope these issues will be overcome in the near future so that we will be able to analyse the characteristics of an exemplary disciplinary system.

DISCIPLINARY PROCEDURES IN BRAZILIAN FOOTBALL

by *Stefano Malvestio** and *Marcos Motta***

1. *Introduction*¹

Brazil! You already know that football plays a vital role in this country.

The football story of Brazil is unique, both in its triumphs – the *Seleção* is the only 5 times FIFA World Cup winner, boosting the like of talents like Pelé, Garrincha, Zico, Ronaldo, Ronaldinho Gaucho – as well as in its epic downfalls – from the infamous *Maracanazo* in 1950 to the recent *Mineiraço* during the 2014 FIFA World Cup Brazil.

Whereas a national passion for sports is a feature that is common to other countries, football in Brazil means more, as it also represents a means of social affirmation and redemption, especially for those coming from disadvantaged economic situations.

For these reasons, amongst others, the Constitution of the Federal Republic of Brazil, issued in 1988 (“CF/88”) grants constitutional recognition to “sports”, which it recognizes as a duty of the State towards its citizens, together with education and culture.²

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¹ The authors wish to thank Udo Seckelmann, legal intern at Bichara e Motta Advogados, for his valuable contribution to the present article.

² Article 217 of the CF/88. “*It is the duty of the State to foster the practice of formal and informal sports, as a right of each individual, with due regard for:*

I – the autonomy of the directing sports entities and associations, as to their organization and operation;

II – the allocation of public funds with a view to promoting, on a priority basis, educational sports and, in specific cases, high performance sports;

III – differentiated treatment for professional and non-professional sports;

IV – the protection and fostering of sports created in the country.

The CF/88 also addresses the structure of sports governing bodies and clubs, granting them autonomy as to their organization and functioning and, more relevantly for this article, it grants constitutional recognition to the competence of sports justice in matters of sports discipline and competition.³

Brazil is a vast and complex Federal State, where competences (also on sports matters) are split at different levels between the Federal Government, States and Municipalities. This is reflected at football association level by the fact that the *Confederação Brasileira de Futebol* (“CBF”) is a confederation of several “State” associations. The interplay becomes even more complicated when recognition is given, by national law⁴ to international rules issued by the respective international governing body (such as, in the case of football, FIFA).

The result is a complex and intricate system of sports justice. As we will see, competence on disciplinary matters (in broad terms) is split between countless *Comissões Disciplinares* (“CD”) and *Tribunais de Justiça Desportiva* (“TJD”) at the “State” association level, other *Comissões Disciplinares* and *Superior Tribunal de Justiça Desportiva* (“STJD”) at the national association level, the newly created *Justiça Desportiva Anti-Dopagem* (“JAD”) with competence on anti-doping matter; the CBF *Câmara Nacional de Resolução de Disputas* (“CBF CNRD”); the Court of Arbitration for Sport in Lausanne (“CAS”) (with a possible appeal to the Swiss Federal Tribunal⁵); the *Centro Brasileiro de Mediação e Arbitragem* (“CBMA”); and, last, but not least, ordinary courts.

Thanks to such complexity, certain national Brazilian disputes turned into leading CAS cases, which are often quoted in CAS arbitration and jurisprudence, particularly when addressing the matter of CAS jurisdiction over purely internal national disputes.

This short review will initially address the general principles applicable in the Brazilian disciplinary system, and then will briefly analyse the structure of the CBF (including the legal discussion of whether the *STJD* is part of it or not), disciplinary legal framework and sources of law, as well as the relationship between such sports rules and ordinary law. At that point, the *Justiça Desportiva* and the respective procedures will be presented, followed by a general overview of the infringements stipulated in the relevant disciplinary code. Finally, particular attention will be given to the recently created *Justiça*

Paragraph 1. The Judicial Power shall only accept legal actions related to sports discipline and competitions after the instances of the sports courts, as regulated by law, have been exhausted.

Paragraph 2. The sports courts shall render final judgement within sixty days, at the most, counted from the date of the filing of the action.

Paragraph 3. The Government shall encourage leisure, as a form of social promotion”.

³ See *infra* in Section 5 “Relationship Between Ordinary And Sports Rules”.

⁴ Article 1 para. 1 of Law 9.615/98 - See *infra* in Section 5 “Relationship Between Ordinary And Sports Rules”.

⁵ See, for instance, decision of the Swiss Federal Tribunal, 4A_460/2008 (the “Dodô case”), available at www.polyreg.ch/d/informationen/bgeunpubliziert/Jahr_2008/Entscheide_4A_2008/4A.460__2008.html (23 March 2017).

With English translation at: www.swissarbitrationdecisions.com/sites/default/files/9%20Janvier%202009%204A%20460%202008.pdf. (23 March 2017).

Desportiva Antidopagem, with competence over anti-doping rule violations, and the national DRC also recently instituted by the CBF (*Câmara Nacional de Resolução de Disputas*), which, besides having jurisdiction on a number of contractual matters, also enjoys the power to sanction certain (para) disciplinary violations, amongst which, significantly, the failure to comply with its decisions (or CBMA's decisions in appeal) and with decisions issued by bodies of other national associations.

Within this context, the authors wish to clarify that they will mainly focus their attention on what is defined in Brazil as *justiça desportiva*, meaning the set of bodies (*CDs*, *TJDs* and *STJD*) that sanction disciplinary violations in accordance with the “Brazilian Code of Sports” (*Código Brasileiro de Justiça Desportiva – CBJD*). *Justiça Desportiva Anti-Dopagem* and the *CBF CNRD* will be treated separately and, given the scope of the present contribution, shortly.

2. General Principles

The principles governing Brazilian sports justice are listed in Article 2 of the CBJD. Violation of any such general principles of law may result in the whole proceedings being subsequently declared null and void (even by an ordinary court, once competent in accordance with Article 217 CF/88).⁶

Disciplinary proceedings shall thus always be conducted while respecting i) the right to be heard; ii) rapidity; iii) the adversarial system; iv) procedural economy; v) equal treatment; vi) independency; vii) legality; viii) morality; ix) duty to state the reasons; x) “*ex-officio*” power; xi) orality; xii) proportionality; xiii) publicity; xiv) reasonability; xv) due process; xvi) “sports typicality”; xvii) prevalence, continuity and stability of the competitions (*pro competitione*); xviii) fair play.

Most of these principles are common legal principles inherent to the proper functioning of any fair and just disciplinary system. Indeed, principles such as that of the right to be heard, due process, economy of proceedings and proportionality, constitute the basis of disciplinary systems such as that of FIFA, UEFA and a number of national associations.

This is required, as is known, in order for a sanction imposed by a national association to be extended to have worldwide effect by FIFA in accordance with Article 136 FIFA Disciplinary Code (“FDC”). Thus, the person should have been properly called up and had the opportunity to state his case (“right to be heard”), the decision should have been communicated properly and it should not conflict with public order, which, in accordance with the Swiss Federal Tribunal and conceptions prevalent in Switzerland, comprises “essential and widely recognized values which must constitute the foundation of any legal order”.⁷

⁶ See *infra* in Section 5 “Relationship Between Ordinary And Sports Rules”.

⁷ See also Judgment of March 27, 2012 of the Swiss Federal Tribunal in the case 4A_558/2011: “The substantive adjudication of a dispute violates public policy only when it disregards some

Other principles are specific to the Brazilian disciplinary system and characterize it as a particular system of its own. Amongst all, special relevance was given to the principles of publicity and orality. This means that, contrary, for instance to FIFA proceedings and CAS arbitration, proceedings before Brazilian sports judicial bodies are, as a general rule, and unless otherwise determined for particular reasons of confidentiality, public. This grants, in an area of public relevance such as sports, a certain degree of transparency of the work conducted by the courts, allowing a sort of legitimacy control overview conducted by general society. This is also partly facilitated by the fact that, as said, proceedings tend to favour oral evidence (collected at a public hearing) to written one and, even though it is possible, and also recommendable, for the parties to present written pleadings (“*memorial*”), the hearing is at the core of disciplinary proceedings in Brazil.

The principle of “independence” reflects the provision of Federal Law (Article 52 of Law 9.615/98 – “Pelé Law”) which demands that sport judicial bodies remain independent and autonomous from the sports governing bodies.

However, such an independence is, at least, limited by what the CAS, quoting Paulo Marcos Schmitt,⁸ already found to be a “*dependência fisco-financeira*”, or the fact that, in the words of the Panel in *Dodô* case, “the STJD has been instituted by (and thus owes its legal birth and existence to) the CBF Statutes and is financially and administratively dependent on the CBF”.⁹

Certain principles, finally, deal more specifically with the merits of disciplinary matters. As such, the principles of legality (*nulla poena sine legis*) finds a specific sports application in the principle of “sports typicality”, in that a specific conduct by a certain individual may only be sanctioned if a provision exists in the CBJD forbidding such conduct and correlating a corresponding sanction thereto.

The principle of continuity and stability of the competitions is a well – known principle of *lex sportiva* – one the pillars of the FIFA Regulations on the Status and Transfer of Players’ (“FIFA RSTP”). However, the reference in the provision to the “prevalence” of the competition (*pro competitione*) suggests that, in doubtful situations, preference shall be given to solutions that favour the result of the football field.

3. The Federation (*Structure and Competencies*)

The structure of the *Confederação Brasileira de Futebol* (“CBF”) reflects that of Brazil: a country of continental dimensions, which is organized as a democratic

fundamental legal principles and consequently becomes completely inconsistent with the important, generally recognized values, which according to dominant opinions in Switzerland should be the basis of any legal order”.

⁸ P. M. SCHMITT. *Organização e Competência da Justiça Desportiva*, in *Código Brasileiro de Justiça Desportiva – Comentários e Legislação*: Ministério do Esporte, ass. Comunicação Social, Brasília/DF, 2004, 23-44.

⁹ CAS 2007/A/1370 & 1376, *FIFA & WADA v. STJD & CFB & Dodô*, available at <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1370,%201376.pdf>.

federal republic composed of a Federal District (where the capital Brasília is located) and 26 States.

Direct members of the CBF are thus the associations which govern football in each of the Brazilian states (*Federações*, for instance *Federação de Futebol do Estado do Rio de Janeiro – FERJ* is the association for the Rio de Janeiro State). In addition, the clubs participating in the First Division of the *Campeonato Brasileiro de Futebol Profissional* are also, subject to certain criteria, admitted as special and transitional members for the football seasons in which they qualify to such national championship.

As such, contrary to most of the National Associations members of FIFA, the CBF is already, in itself, an association of associations (the name *Confederação* reflects this fact).

The CBF is therefore a private law association with its own legal personality. Under Brazilian constitutional law, it enjoys a wide degree of autonomy, as Article 217 of the CF/88 protects “the autonomy of the sports governing entities and associations, as to their organization and functioning”.

Regulating such aspects is therefore a prerogative of the association, which it exercises through its Statutes. State intervention would be unconstitutional in this respect.

More broadly, each and every *Federação*, which is placed under the umbrella of the CBF, enjoys its own freedom of association and autonomy and has therefore its proper structure and functioning. However, they all have to respect the obligations set forth by the CBF Statutes, including compliance and enforcement of the Statutes, regulations, directives, decisions and Code of Ethics of FIFA and those of the *Confederación Sudamericana de Fútbol – CONMEBOL*.¹⁰

In its capacity of football governing body in Brazil, the CBF coordinates football competitions at the national level, and is responsible for maintaining the “sporting order” and ensuring respect of the Statutes and Regulations of FIFA and CONMEBOL. It is also responsible for the fight against doping and for impeding practices that attempt to infringe upon the integrity of the competitions.

The main bodies of the CBF are its General Assembly (*Assembleia Geral*), the Fiscal Council (*Conselho Fiscal*), the Presidency (*Presidência*), the General Secretariat (*Secretaria Geral*) and the Board of Directors (*Diretoria*).¹¹

The *Assembleia Geral* consists of the general meeting of all affiliates (both Federations and Clubs in the manner described supra), which meet, ordinarily once a year and, extraordinarily whenever the interests of the CBF, the Statute or the legislation in force so require.

The role of controlling the CBF's financial management is attributed to the *Conselho Fiscal*, whereas the *Presidência*, composed of the President and 5 Vice-Presidents, who elected by the Electoral General Assembly, exercises the

¹⁰ Article 12 – CBF Statutes.

¹¹ Article 20 – CBF Statutes.

administrative and executive functions of the entity, advised by the *Secretaria Geral* and the *Diretoria*.

In particular, the *Secretaria Geral* carries out all the administrative work of the CBF, under the direction of a Secretary General (*Secretário Geral*), and the *Diretoria*, composed by a maximum of 15 *Diretores*, each of whom may be assigned by the President to supervise a sector or a set of activities. Both the *Secretário Geral* and the *Diretoria* are appointed by the CBF President.

The structure of the CBF is further integrated by some bodies with auxiliary and cooperative functions, such as the Advisory Council (*Conselho Consultivo*), the Technical Council (*Conselho Técnico*), the Referee Commission (*Comissão de Arbitragem*), the Doping Control Committee (*Comissão de Controle de Doping*), the National Dispute Resolution Chamber (*Câmara Nacional de Resolução de Disputas*), the Football Ombudsman (*Ouvidoria do Futebol*), the National Club Commission (*Comissão Nacional de Clubes*), the Ethics Commission (*Comissão de Ética*), the Corporate Governance and Compliance Committee (*Comitê de Governança Corporativa e Conformidade*). The *Presidência* is also authorized to create, whenever necessary, additional commission or committees.

The CBF Statutes therefore foresee the existence of an ethics body (*Comissão de Ética*) and a classic national dispute resolution chamber (*Câmara Nacional de Resolução de Disputas*).

However, even though through Articles 69 to 72 of its Statutes the CBF “wholly entrusted its vested disciplinary power to the STJD and the Disciplinary Commissions”,¹² the question of whether the *Justiça Desportiva* was or not part of the structure of the CBF was (and still is) long debated and at the core of some leading cases decided by the Court of Arbitration for Sports such as the quoted *Dodô* case.

The traditional understanding from a Brazilian viewpoint was that the STJD was a body autonomous and independent from the CBF¹³ (and, as such, separated). This was, indeed, the position of the CBF in *Dodô*, where FIFA and WADA were appealing an anti-doping decision issued by the STJD to the CAS. If welcomed, the STJD decision would have not been a CBF decision (as an affiliated member of FIFA) and CAS would have thus lacked jurisdiction.

However, the Panel in *Dodô* disagreed and arrived to the conclusion that the STJD “... is a justice body which, although independent in its adjudicating activity, must be considered part of the organisational structure of the CBF”.

The Panel came to this conclusion by analysing several provisions of the CBF Statutes and of Brazilian law and applying the so-called “stand-alone test”, by means of which it arrived to the conclusion that “If the CBF did not exist, the STJD would not exist and would not perform any function”.

¹² Para. 9, pag. 8 of CAS 2007/A/1370 & 1376, FIFA & WADA v. STJD & CFB & Dodô, available at <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1370,%201376.pdf> (23 March 2017).

¹³ A. MELO FILHO, “*Nova Lei Pelé: Avanços e Impactos*”, Maquinária Editora, 2011, 233/236.

Notably, the decision of the Panel in *Dodô* had far-reaching consequences: besides having notoriously become a leading case and point of reference for the determination of the jurisdiction of the CAS in appeals against decisions issued by national associations in purely internal matters, it was also relied upon by a subsequent significant CAS decision for the Brazilian disciplinary proceedings,¹⁴ in which the CAS affirmed its jurisdiction to rule in appeal of STJD's *Pleno* decisions, not only in anti-doping matters, but also in connection with disciplinary matters in general.¹⁵

4. *Legal Framework and Sources*

The highest source of law for disciplinary matters in Brazil is the CF/88 itself. Its Article 217 indeed sets forth a few basic principles that cannot be overridden by any other law or regulations.

The first is that ordinary courts may only be addressed, in matters related to sports discipline and competitions, after sports courts instances, as regulated by law, have been exhausted.¹⁶ The *Justiça Desportiva* therefore receives constitutional recognition in Brazil and a law providing otherwise would be unconstitutional.

The second is that sports courts shall render a final judgement within sixty days, counted from the date when proceedings are opened.¹⁷

At statutory level, the main legislative instrument regulating sports in Brazil is the Law n. 9815/98, known as the Pelé Law ("*Lei Pelé*") from the name of the then Ministry of Sports in Brazil. The Pelé Law, published in 1998, is a federal law issued by the Brazilian Parliament, which establishes general principles governing sport, as well as rules on the sports practice, sports justice and the applicable sanctions.

Below the *Lei Pelé*, the main legislative instrument dedicated to regulating disciplinary procedures in Brazil is the Brazilian Code of Sports Justice ("*Código Brasileiro de Justiça Desportiva*" or "*CBJD*"), issued by the *Conselho Nacional do Esporte* (National Sports Council, or "*CNE*"), belonging to the executive branch of the Brazilian government).

The CBJD provides for the organization, functioning and competence of sports justice in Brazil, dividing it into (i) *Tribunais de Justiça Desportiva* ("*TJD*"), competent to judge, in particular, disciplinary violations related to state competitions, and (ii) *Superior Tribunal de Justiça Desportiva* ("*STJD*"), competent to deal, in particular, with violations at the federal or interstate level.

Notably, the CBJD also lists sports disciplinary infringements, with more than a hundred articles on the types of punishable offenses and the respective disciplinary measures that may be imposed by sports courts.

¹⁴ CAS 2014/A/3474, *Clube de Regatas do Flamengo v. CBF & STJD*.

¹⁵ See *infra* in Sub-Section 8.6 "Appeals to the Court of Arbitration for Sports (CAS)".

¹⁶ Article 217 para. 1 of the CF/88, see *supra* footnote 3.

¹⁷ A. MELO FILHO, "*Nova Lei Pelé: Avanços e Impactos*", Maquinária Editora, 2011, 238.

5. Relationship between Ordinary and Sports Rules

In this section, the authors will separately address, first, the relationship between ordinary courts and sports justice in Brazil and, second, the relationship between statutory law and sports regulations in Brazil.

As to the first, and as briefly pointed out earlier, sports justice enjoys constitutional recognition in Brazil. Article 217 of the Brazilian Federal Constitution guarantees indeed that claims related to sports competitions and discipline may only be filed before ordinary courts after all sport judicial instances have been exhausted. On the other hand, the latter was granted an overall time limit of 60 (sixty) days to render a final decision.

The dispute may thus only be submitted to ordinary courts, after exhaustion of all sports justice instances (including the CAS, as the case may be). At this point, however, the question arises as to whether ordinary courts would be entitled to overrule the sports justice decisions in matters of sports discipline and competitions, or if their competence would rather be limited to the “civil” consequences of allegedly wrong decisions.

The answer is only apparent in Article 52 para. 2 of the Pelé Law, which determines that “recourse to ordinary courts shall not affect the validly produced sports effects as a result of the decision rendered by the Courts of Sports Justice”. Apparently, because the term “validly produced” leaves the question open as to whether, if the sports justice decision is subsequently declared null and void by a court decision, the production of the sports effect may then no longer be deemed as “valid”.

The question is of paramount importance in the moment when if, from one side, the constitutional rule is of the highest rank in the degree of sources of law and shall therefore be always respected, and the FIFA Statutes also impose the prohibition to make recourse to ordinary courts of law.¹⁸

This is all the more relevant when – as we will see *infra* in this section – Brazilian federal law calls for the application of the international sports rules issued by the respective international associations: conciliating both provisions may imply in interpreting the constitutional provision in the sense that the subsequent jurisdictional control should be limited to examining whether sports courts respected the principles inherent to sports justice and due process of law.

Consequences of an eventual breach thereof would not be of sporting nature (meaning that the merits of the decision taken by the sports justice would not be reviewed), but rather of a civil one, meaning that the injured party may seek to obtain compensation.

¹⁸ Article 68 para. 2 FIFA Statutes – 2015 Edition.

The prohibition implies in a positive obligation for members associations, in that they shall “insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the Association or disputes affecting Leagues, members of Leagues, Clubs, members of Clubs, Players, Officials and other Association Officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law”, as well as “impose sanctions on any party that fails to respect this obligation”.

This would grant the maintenance, from one side, of the autonomy and decision-making independence of sports justice, as well as a judicial review, on the other side. In this way, both the intention of the constituents, as well as CBF's obligations under the FIFA Statutes would be respected.

A separate question is, as anticipated *supra*, that of the inter-play between statutory law, where the source of law is the State, and sports regulations issued by associations such as the CBF and FIFA, which, for their private legal nature, do not, at least by themselves, have force of law.

Here, again, the Brazilian legislative system is peculiar, as it has been understood to introduce the applicability of private sports regulations into its law by reference. Article 1, para. 1 of Pelé Law reads as follows:

“The formal sporting practice is regulated by national and international norms and by the specific regulations of each sport, accepted by the respective national entities of administration of the sport”.

In the *Dodô* case, where the applicability of international anti-doping rules within the Brazilian legal system was at stake, the CAS Panel interpreted this provision as stating that the “official sports practice in Brazil is governed by national and *international* rules and by specific regulations of each sport, accepted by the respective national federations”.¹⁹ Looking to Article 3, para. 3 of the Pelé Law, which specifically imposes on athletes practicing professional sport the duty to abide by international sports rules, the Panel in *Dodô* concluded that “international sports rules are directly applicable to Brazilian sport”. Therefore, the Panel found that “any athlete registered with a Brazilian federation is directly bound by the international rules accepted by that federation”, also including “any provision therein giving jurisdiction to the CAS”. The Panel's conclusion was that such provisions of Pelé Law were “particularly wise, insofar as international disciplinary rules are concerned” as they strengthened by law the application of international rules, removing the temptation to “assist national competitors by over-indulgence”.²⁰

As a consequence of the above, sports rules and regulations – issued by national and international private entities – shall be applicable by reference through the Pelé Law, both by sports courts as well as by ordinary ones.

6. *Disciplinary Bodies*

The organization, structure and competence of Brazilian sports justice are regulated by law, particularly by the Pelé Law, and by the CBJD.²¹

¹⁹ CAS 2007/A/1370 & 1376, FIFA & WADA v. STJD & CFB & Dodô, available at <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1370,%201376.pdf> (23 March 2017).

²⁰ ‘The objective is to subject all athletes to a regime of equal treatment, which means that national federations must be overruled if they look the other way when their athletes breach international rules’ (CAS 2006/A/1149 & 2007/A/1211, WADA v. FMF & Js. Carmona, para. 27”).

²¹ Article 1 of the CBJD – “The organization, operation, attributions of the Sport Justice and the sports proceedings, as well as the disposal of disciplinary infractions and their respective sanctions, regarding the sport formal practice, shall be governed by law and this Code”.

The Brazilian Constitution grants the exclusive competence to rule on sports competition and disciplinary infractions to the bodies of the Brazilian *Justiça Desportiva*.²² Conversely, such bodies lack jurisdiction to hear disputes over any other subject.²³

Article 23 para. 1 of the Pelé Law determines that the statutes of Brazilian sports federations (“*entidades de administração do esporte*”) shall provide for the institution of sports justice bodies in accordance with the requirements of the same law.

The *Justiça Desportiva* is formed by the following bodies, which, as said, shall be autonomous and independent from the respective sports governing bodies (with the limitations seen *supra*, particularly in regard to their “*dependência físico-financeira*”):

I – the Superior Court of Sports Justice (“*Superior Tribunal de Justiça Desportiva*” – STJD), with jurisdiction to rule on infractions in the context of competitions organized by the national sports governing body (e.g. CBF) and on appeal of decisions by TJJs;

II – the Courts of Sports Justice (“*Tribunais de Justiça Desportiva*” – TJJs), with jurisdiction to rule on infractions in the context of competitions organized by the regional sports governing body (ex. *Federação de Futebol do Estado do Rio de Janeiro – FERJ*);

III – Disciplinary Commissions (“*Comissões Disciplinares*” – CDs), which are the first instance bodies for both STJDs (when not in appeal of TJJs decisions) and TJJs.²⁴

In sum, in a regional competition organized by the FERJ (ex. *Campeonato Carioca*), the first instance is the *Comissão Disciplinar* (of the TJJ), the second instance is the *Tribunal de Justiça Desportiva*, the third instance is the *Pleno* of the *Superior Tribunal de Justiça Desportiva*, and with the CAS as a possible fourth instance.

Conversely, disciplinary infractions in a competition organized by the CBF (such as the *Campeonato Brasileiro* or the *Copa do Brasil*), *Comissão Disciplinar* (of the STJD) would be the first instance, the *Pleno* of the *Superior*

²² Article 217 of the CF/88.

²³ A. MELO FILHO, “*Nova Lei Pelé: Avanços e Impactos*”, Maquinária Editora, 2011, 245.

²⁴ Article 3 of the CBJD – “The Sports Justice bodies, autonomous and independent from the sports administration entities, with the functioning cost provided by law, are:

I – the Superior Sports Justice Court (STJD), with the same sports jurisdiction that corresponds to the territorial scope of the national sports administration entity;

II – the Sports Justice Courts (TJJs), with the same sports jurisdiction that corresponds to the territorial scope of the regional sports administration entity;

III – Disciplinary Commissions (CDs) are the first instance bodies of the judicial bodies mentioned in items I and II of this article”.

Tribunal de Justiça Desportiva would be the second one and the CAS, possibly, the third.

STJDs and TJDs shall institute “as many CDs as necessary” and each of such CD is composed by 5 (five) members nominated by the respective STJD and TJDs (members of STJD and TJD may not be appointed as members of a CD).

The *Tribunal Pleno* of the STJD and of the TJD is composed by 9 (nine) members each, appointed as follows:

- 2 (two) indicated by the national sports administration entity (STJD) or by the regional sports administration entity (TJD);
- 2 (two) indicated by the sports practice entities (clubs) that participate in the competition organized by the national sports administration entity (STJD) or by the sports practice entities (clubs) that participate in the main competition of the regional sports administration entity (TJD);
- 2 (two) attorneys indicated by the Federal Counsel of the Brazilian Bar Association (STJD) or by the Sectional of the Brazilian Bar Association corresponding to the territory concerned (TJD);
- 1 (one) referees’ representative, indicated by its relevant union; and
- 2 (two) players’ representatives, indicated by its relevant union.

All members of CDs, TJDs and STJDs are “*auditor*” who shall be persons of renown sports legal knowledge, hold an impeccable reputation and are appointed for a term of 4 years – renewable just once. Special rules apply in order to guarantee their impartiality and independence: the *auditor* shall not belong to any sports governing body or clubs and shall remain absolutely free from any external influence.²⁵

Each of the CDs, TJDs and STJDs shall appoint, by majority of the votes of its members, a President and a Vice-President. Presidents of the sports judicial bodies are, in essence, responsible for guaranteeing the proper functioning of disciplinary proceedings and, therefore, for the administration of sports justice.²⁶ Vice-Presidents mainly replace Presidents in the event of their absence, death, impediment or vacancy.

Secretaries are constituted within each STJD and TJD, mainly with attributions of administrative nature.

A key-figure in the Brazilian *Justiça Desportiva* is that of the *Procuradoria* (“office of the prosecutor”) with its respective *Procurador* (“prosecutor”). The *Procurador* is the exclusive holder of the power to prosecute disciplinary infringements in Brazil. The system designed is, therefore, a quasi-criminal one, in the sense that disciplinary infringements in Brazil mainly do not oppose one party to the other, but rather a prosecutor (which decides whether to take action or not) against an accused party (even though participation of interested third-parties is possible and governed by the CBJD).

²⁵ M. A. TAVARES, “*O Auditor no Direito Desportivo*”, in R. Approbato Machado, “*Curso de Direito Desportivo Sistêmico*”, Quartier Latin, vol. II, 2010, 1052.

²⁶ P. M. SCHMITT, “*Código Brasileiro de Justiça Desportiva Comentado*”, Quartier, Latin, 2006, 57/58.

The *Procuradoria* has therefore two essential functions: (i) to promote the liability of persons that violate the dispositions of the CBJD by lodging a complaint in order to sanction the offender and (ii) supervise and guarantee the compliance and enforcement of sports rules.²⁷

A *Procurador-Geral* shall be in charge of governing the *Procuradoria*, being elected by the vote of the majority of the respective *Tribunal Pleno* within three persons indicated by the respective sports governing body. The mandate of the *Procurador-Geral* shall be the same as that of the President of the respective court and the same rules applying to *Auditor* apply to *Procurador* in order to guarantee his independence and impartiality.

The CBF Statutes grant to the STJD and to Disciplinary Commissions of the STJD competence to hear disputes concerning disciplinary violations committed by anyone directly or indirectly affiliated to the CBF.²⁸

7. *Responsibilities of clubs and players and those registered with the Association*

Article 1 para. 2 of the CBF Statutes imposes the obligation for “all members, bodies and components of CBF, as well as clubs, athletes, referees, coaches, fitness coaches, and other officers belonging to clubs or leagues of the affiliated federations to comply with - and enforce in Brazil - the Statutes, regulations, guidelines, decisions and the Code of Ethics of the Fédération Internationale de Football Association – FIFA and the Confederación Sudamericana de Fútbol – CONMEBOL”.

Furthermore, in accordance with Article 11 of CBF Statutes, all State Federations, clubs and leagues, as well as all other persons affiliated to the CBF agree to refrain from resorting to ordinary courts, by themselves or by making use of third party or interposed individual or legal entities, to settle any disputes of a sporting nature, undertaking to accept and abide by, as final and not subject to appeal, the decisions taken by the competent organs and authorities of FIFA, aware of the sanctions that may result from the application of the FIFA disciplinary code.

Federations, clubs and leagues also undertake to comply with the decisions of sports justice bodies related to sports discipline and competitions.

Finally, as per Article. 77 of the Statutes, the obligations of the state associations affiliated to the CBF include, from one side, observing at all times the statutes, regulations, directives and decisions of FIFA and CONMEBOL, ensuring that these regulations are respected by its members, and, on the other side, complying with any other obligation resulting from the statutes or from regulations and other acts of FIFA, CONMEBOL and CBF.

²⁷ P. M. SCHMITT, “*Código Brasileiro de Justiça Desportiva Comentado*”, Quartier Latin, 2006, 50.

²⁸ Articles 69 and 70 (1) and (2) of the CBF Statutes.

8. Procedures

Two are the different kinds of procedures under the CBJD.

The “Summary procedure” applies to disciplinary proceedings, whereas the “Special procedure” applies for: i) *inquérito* (inquiry); ii) *impugnação de partida, prova ou equivalente* (challenge of a match, competition or equivalent); iii) *mandado de garantia* (warranty injunction); iv) *reabilitação* (rehabilitation); v) doping (in the absence of sports-specific procedural legislation); vi) *suspensão, desfiliação ou desvinculação imposta pelas entidades de administração ou de prática desportiva* (suspension, disaffiliation or deregistration imposed by the sports governing bodies or clubs); viii) *revisão* (review); ix) *medidas inominadas do Article 119* (generic reliefs of Article 119); x) *transação disciplinar desportiva* (sports disciplinary transaction).

8.1. “Procedimento Sumário”

It is always the *Procuradoria* that starts a *procedimento sumário*, which is the procedure generally applicable for disciplinary measures.²⁹

The claim lodged by the *Procurador* shall contain a description of the relevant facts, together with the indication of the alleged perpetrator as well as the legal basis for the infringement.

What may cause the *Procurador* to file a claim is either a notice of infringement lodged with him by an interested third-party or receipt of an indication of irregularity from the relevant sports governing body. However, different rules apply to both instances.

In the first case, the *Procurador* has the exclusive power to evaluate the notice of infringement received and decide whether to proceed or not. In the negative case, the interested third-party may, within three days, report the matter to the *Procurador-Geral*, whom shall have the final word on the matter.³⁰

The second case mostly arises from facts described by the referee in the match report, which, contrary to a third-party notice of infringement, is presumed to be accurate. Such report, which is forwarded to the sports governing body responsible for the organization of the concerned competition, is

²⁹ Article 73 of the CBJD. “The summary procedure shall be initiated privately through a complaint from the Prosecutor and aims the application of disciplinary measures”.

³⁰ Article 74 of the CBJD. “Any natural or legal person may submit in writing a notice of disciplinary infraction to the Prosecutor’s Office, provided that there is legitimate interest, accompanied with legitimate evidence.

§1 – The Prosecutor’s Office will be incumbent to evaluate the convenience to lodge a complaint on the basis of the notice of violation referred to in this article, not applying to the hypothesis the procedure of Article 78.

§2 – If the Prosecutor that was designated to evaluate the infraction notice argues for its closure, the interested party may request a statement from the General Prosecutor within three days for review of the matter.

§3 – Maintained by the General Prosecutor, the manifestation contrary to the complaint, the infraction notice will be closed”.

then analysed by such federation that proceeds to submit it to the competent sports justice body in case of detecting any irregularity.³¹

Here, contrary to the above in relation to notices of infringements lodged by a third-party, in the event that the *Procuradoria* requests that the file be closed, the relevant President (of STJD or TJD) shall then either i) agree with the *Procuradoria* and issue a motivated decision requesting closure of the file; ii) disagree with the *Procuradoria* and thus forward the file to a different *Procurador* for a second analyses. In the event that such second *Procurador* agrees with the first one, the file shall then be closed with definitive effect, which confirms that – despite the intervention of the President in case of proceedings arising from irregularities based on the match report – the exclusive power to prosecute disciplinary infringements rests with the *Procuradoria*.

Once received the denounce filed by the *Procuradoria*, the relevant President shall, within two days, proceed to: (i) appoint, through a draw, the *relator* (“judge rapporteur”) for the case, (ii) decide whether to impose a preventive suspension, (iii) choose a date for a hearing to be held; and iv) determine further procedural measures.³²

8.2. “*Procedimentos Especiais*”

The special proceedings were listed above. Here, we will briefly define those which the authors consider most relevant.

8.2.1. *Sports Disciplinary Transaction*

The *transação disciplinar desportiva* is an alternative way of dispute resolution which aims to settle certain disciplinary infringements³³ by imposing sanctions

³¹ Article 75 of the CBJD. “The report of the competition will be elaborated and delivered by the referee and his assistants within the time limit stipulated by law or, in case of omission, by the regulation.

§1 – Failure to comply with the time limit provided for in the caput shall not prevent the procedure by the Prosecutor, without prejudice to the eventual punishment of those responsible for the delay.

§2 – The entity responsible for organizing the competition shall publicize the documents provided for in the caput, in accordance to the law”.

Article 76 of the CBJD. “The sports administration entity, when it verifies existence of any irregularity noted in the documents mentioned in Article 75, shall submit them to the respective Court (STJD or TJD), within three days after receipt”.

³² Article 78-A of the CBJD. “Once the complaint has been received, the case shall be forwarded to the respective Court (STJD or TJD) that, within two days of receipt:

I – appoint, through a draw, the judge rapporteur;

II – analyze the incidence of the preventive suspension, if it has not already been determined;

III – appoint the day and time of a hearing;

IV – will determine compliance of procedural communication acts and other appropriate measures.

Sole paragraph: The Disciplinary Committee is responsible for the processing of the complaint, and shall be forwarded to it, having the President of the Disciplinary Committee to proceed in accordance to items I, III and IV of this article.”

³³ Namely those from Article 206 (except § 1º) CBJD, those from articles 250 to 258-C CBJD and

proposed by the *Procuradoria*, agreed by the defendant, and ratified by the *Relator* or, in appeal, by the *Tribunal Pleno*.

Such a “settlement”, which may be reached at any stage of the procedure, is only admitted for a determined number of infringements and under certain circumstance, being excluded, for instance, if the offender was granted, within the previous three hundred and sixty days, another transaction for a previous infringement.³⁴

It implies in the imposition of an agreed sanction, which, however, will not subsequently be taken into account for the purposes of establishing repeated offenses.

8.2.2. *Inquiry*

The *inquérito* is an investigative procedure that aims at verifying the existence of a disciplinary violation and the author thereof. It may be opened *ex officio* by the relevant President, at the request of the *Procuradoria* or of an interested party.

It is mainly conducted by an *Auditor* (which collects relevant evidence and investigates the matter), who then decides whether to close the file (through a motivated decision) or to proceed, in which case he sends the file to the *Procuradoria* for the initiation of the relevant disciplinary proceedings.

8.2.3. *Challenge of a Match, Race or Equivalent*

The *impugnação de partida, prova ou equivalente* is a claim lodged by an interested party seeking to modify a result or annul a match, race or equivalent.³⁵

The CBJD defines as interested parties those who participated to the challenged match or race, or those who participate to the same competition, provided they have an “immediate and proven” interest in its result.

The requirements for filing such a special request are i) legitimacy of the requesting party (legitimate and proven interest); ii) be filed within 2 (two) days since registration of the match report with the relevant sports governing body; iii) founded reasons (the request is generally based on an error of law); iv) payment of fees or charges.

8.2.4. *Warranty Injunction*

The *mandado de garantia* is a procedural remedy that seeks to protect the rights of participants from possible abuses committed by the relevant sports authority.

those from Article 259 to 273 CBJD.

³⁴ S.A. DECAT, “*Transação Disciplinar Desportiva*”, in R. Approbato Machado, “*Curso de Direito Desportivo Sistêmico*”, Quartier Latin, vol. II, 2010, 1030/1035.

³⁵ The circumstances under which such a special proceeding is admissible do not include the event of participation to the match of an athlete in an irregular condition, which is considered by the CBJD as a specific disciplinary infringement governed by Article 214 CBJD (thus subject to the common *Procedimento Sumário*).

Indeed, *mandado de garantia* shall be granted when someone's rights are affected, or when someone has a reasonable fear that his rights might be affected, by an illegal act, or an abuse of power, committed by a sports authority.

It is subject to a short twenty-days time limit of prescription and, when filed, it enjoys priority in respect of all other proceedings.

8.2.5. *Rehabilitation*

Through the special proceedings of rehabilitation, a natural person that had been banned with definitive effect may request to the sports justice body that sanctioned him to be re-admitted to sports activities.

It may be filed only two years after the matter became *res judicata* and the banned person shall prove his entitlement to such an exceptional measure by attesting the exercise of a dignified profession or scholar activities, together with the declarations of at least three sports people guaranteeing on his suitability to be readmitted.

8.2.6. *Suspension, Disaffiliation or Deregistration imposed by the Sports Governing Bodies or Clubs*

Whenever a sports governing body or a club imposes a sanction such as a suspension, disaffiliation or deregistration, such a sanction is then transmitted to the relevant TJD or STJD for homologation and only becomes applicable after it has become final and binding.

Here, however, it is to be noted that Article 22, para. 3-VII, of the CBF Statutes provides that the CBF General Assembly has the power to decide on appeals against the final rulings of the sports justice bodies concerning the loss of affiliation or exclusion of affiliated entities (such as clubs).

8.2.7. *Review*

The *revisão* is a special procedure that allows "re-opening" a final and binding judgment that imposed a sanction. This is only admissible under exceptional and limited circumstances, namely i) when the decision resulted from an evident error of fact or from false evidence; ii) or when it was rendered against a literal provision of law or against the clear results of the evidence; iii) or when, after the decision, new evidence is found that proves the innocence of the punished person or other mitigating factors.³⁶

The *revisão* may only be requested by the aggrieved party within three years of the challenged decision becoming final and binding (*res judicata*) and is subject to a mandatory participation of the *Procuradoria*.

³⁶ Article 112 of the CBJD – "The Revision of closed proceedings shall be admissible: I – when the decision has resulted from an evident error of fact or of false proof;

8.2.8. *Generic Relief*

Article 119 is a residual provision that grants the President of the respective STJD or TJD power to grant “any measure not established by the CBJD” in exceptional cases and in the interest of sports, when requested within 3 (three) days starting to count from the relevant fact or decision.

This includes granting preliminary measures, or suspensive effect, when usual requirements such as *fumus boni iuris* and *periculum in mora* are met.³⁷

8.3. *The Hearing*

Two of the main principles of the disciplinary system in Brazil are orality and publicity. It is therefore no surprise that the core of such proceedings is the hearing, which shall be public unless specific reasons of public order so demand. This is also consistent with the need for rapidity and economy of proceedings in sports.

Evidence is presented to the court in a specific order (written, cinematographic, audio, personal statements, witness and others), after which, the *Procurador*, each of the parties and, as the case may be, third-party intervenients have 10 (ten) minutes to present their oral pleadings.

After the oral submissions, the President will ask the other auditors (judges) if they intend to request any clarification or other measure. In the event that an auditor asks to analyse more carefully the file, the decision might even be postponed to a next hearing.

Finally, the court proceeds to voting, with the *Relator* being first, followed by the Vice-President, all the auditors by order of seniority and, last, the President, whom, in certain conditions of parity of votes, shall have the decisive vote.

The final decision becomes immediately effective as soon as pronounced or, if condemnatory, from the following day.

8.4. *Appeals*

All decisions rendered by the *Justica Desportiva* are appealable to the body of higher instance, except for i) decisions of the *Tribunal Pleno* of the STJD which

II – when the decision has been rendered in discordance of literal provision of law or evidence of proof;

III – when, after the decision, evidence of the punished person’s innocence or of relevant mitigating factors”.

³⁷ Article 119 of the CBJD. “The President of the Court (STJD or TJD), before its judicial body and inside its jurisdiction, in exceptional cases and in the sports interest, through a justified act, may allow the filing of any measure not contemplated in this Code, provided that it is requested within three days of the decision, of the act, order or unequivocal knowledge of the fact, and may grant suspensive effect, or when there is a possibility of irreparable damage, provided the verisimilitude of the claim. [...]”.

are final and binding, unless otherwise provided in the CBJD or in the specific international regulations of the respective sport;³⁸ ii) TJD decisions imposing a fine up to BRL1,000.00 (one thousand Brazilian Reais)”³⁹

The *Tribunais de Justiça Desportiva* (TJD) will rule on appeals filed against the decisions of their own *Comissões Disciplinares* (CD.) Conversely, the *Superior Tribunal de Justiça Desportiva* (STJD) will rule on appeals against decisions of its own CDs or of decisions of the TJDs (here therefore possibly being the third instance).⁴⁰

Parties entitled to lodge an appeal are the claimant, the defendant, the third-party intervenient, the *Procurador*, the sports governing body and, in the case of anti-doping rule violations, also the Brazilian NADO (*Autoridade Brasileira de Controle de Dopagem/ABCD*) and WADA.

Appeals shall be filed, with reasons, within 3 (three) days from the issuance of the appealed decision with the body that rendered it, the President of which then, within 3 (three) days, proceeds to forward the file to the hierarchically superior court.⁴¹

The President of the latter verifies that the appeal is *prima facie* admissible and then opens the appeal proceedings, by drawing a *Relator*, determining a date for the hearing and notifying the interested parties.

In general, appeals do not automatically suspend the aggrieved sanction (“*efeito devolutivo*”),⁴² unless the sanction imposed is a fine or a suspension longer than 2 (two) consecutive matches or 15 (fifteen) days⁴³ – cases in which the suspension is limited to the exceeding part.⁴⁴ Additionally, the appellant may request suspensive effect, which may be granted by the appointed *Relator*, once verified the existence of irreparable harm and the likelihood of success in the merits, through a motivated decision.⁴⁵

³⁸ See CAS 2014/A/3474 *Clube de Regatas do Flamengo v. Confederação Brasileira de Futebol (CBF) & Superior Tribunal de Justiça Desportiva (STJD)*.

³⁹ Article 136 of the CBJD – “The decisions of the judicial bodies shall be subject to appeal in the hypotheses provided for in this Code.

Paragraph 1 – The decisions of the ‘Tribunal Pleno’ of the STJD are unappealable, unless otherwise provided in this Code or in the specific international regulation to the respective modality.

Paragraph 2 – Are equally unappealable the decisions of the TJD which exclusively impose a fine up to BRL1,000.00 (one thousand Brazilian Reais).”

⁴⁰ Article 148 of the CBJD establishes that “[T]he recurses will be processed by the superior body, according to the jurisdiction established in this Code”.

⁴¹ Article 138-A of the CBJD. “Once the appeal has been filed, the President of the judicial body that rendered the decision shall forward the file to the higher court within three days, under penalty of Article 223, for proper processing.”

⁴² Specific exceptions are determined by Article 147-B of CBJD in cases such as when: i) the sanction imposed exceeds the number of matches of the duration established by law; ii) fines.

⁴³ Article 52, para. 4 of the Pelé Law.

⁴⁴ F. ZVEITER, “*Alterações Trazidas com a Resolução nº 29 em Relação aos Recursos no CBJD*”, in R. Approbato Machado, “*Curso de Direito Desportivo Sistemico*”, Quartier Latin, vol. II, 2010, 988/990.

⁴⁵ “Article 147-A of the CBJD – The judge rapporteur can grant suspensive effect to the voluntary recourse, through a reasoned decision, provided that he gets convinced by the verisimilitude of the

New evidence that was not required or presented before the first instance will not be admitted in appeal proceedings.⁴⁶

Finally, an important rule in the merits of the appeal is that, unless the appeal was lodged by the *Procuradoria*, the *reformatio in pejus* is not admitted in disciplinary proceedings, *i.e.* the appellant cannot have his sanction increased and/or replaced with a more severe sanction.⁴⁷

Conversely, the sanction may be reduced even if the sanctioned party failed to challenge it and the appeal was lodged by the *Procuradoria*, another defendant or a third-party intervenient.

8.5. *Embargos de Declaração*

The *embargos de declaração* are requests filed to the court that issued the decision under three different circumstances: i) clarification of obscure points; ii) adjustment of existing contradictions; iii) failure by the court to analyse part of the matter (omission).

The first case is that of “obscurity” of the decision, meaning that the decision is unclear or ambiguous. The second one is a “contradictory” decision, containing irreconcilable propositions, such as a decision which grounds do not sustain the findings or vice-versa. Thirdly, there is an omission when the court fails to analyse arguments or requests by a party, deciding the matter in an incomplete manner (*infra petita*).

Embargos shall be filed within two days of receipt of the obscure, contradictory or omitted decision and are decided by the *Relator* (judge rapporteur) of the opposed decision who shall rule on the *embargos* on its own or, in exceptional cases or in the event that the decision might be modified (“*efeitos infringentes*”), submit them to the court.

Once filed, the *embargos de declaração* suspend other time limits for appeal.

8.6. *Appeals to the Court of Arbitration for Sport (CAS)*

The question of whether decisions issued by the Brazilian *Justiça Desportiva* may be subject to an appeal to the CAS was long debated and then decided by the CAS in the *Dodô*⁴⁸ case (then confirmed by the Swiss Federal

appellant allegations, where the mere return of the matter may cause irreparable damage or difficult repair”.

⁴⁶ “Article 150 of the CBJD. The production of new evidence shall not be admissible in the appeal proceedings.”

⁴⁷ F. ZVEITER, “*Alterações Trazidas com a Resolução nº 29 em Relação aos Recursos no CBJD*”, in R. Approbato Machado, “*Curso de Direito Desportivo Sistemico*”, Quartier Latin, vol. II, 2010, 989/990.

⁴⁸ CAS 2007/A/1370 & 1376, FIFA & WADA v. STJD & CFB & Dodô, available at <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1370,%201376.pdf> (23 March 2017).

Tribunal⁴⁹) in anti-doping matters and in the *Flamengo* case⁵⁰ for other decisions of the STJD *Pleno* in disciplinary matters.

In fact – contrary to the practice of most governing bodies that provide for the jurisdiction of CAS in appeal of their decisions – one cannot find any provision, either in the Pelé Law, or in the CBJD, or in the CBF Statutes, explicitly providing for recourse to the CAS after exhaustion of all national sports justice instances.

This is the essential reason why CAS jurisdiction in appeal of purely national Brazilian matters (at least not-doping related) is still widely debated and criticized. On one hand, one may question the opportunity of a three-degree sports justice instances (or even four in the event of appeals from regional competitions that followed the *CD*, *TJD*, *STJD* path), especially when the CF/88 imposes the requirement for sports justice to issue a final decision within the term of 60 (sixty) days.⁵¹

Then, the question remains open as to the compatibility and functioning of an appeal to the Swiss Federal Tribunal (after exhaustion of CAS proceedings as third or fourth degree of jurisdiction), with the constitutional rule that ordinary courts may be addressed once sports disciplinary proceedings are terminated.

One cannot ignore, additionally, the relatively high-costs for an international arbitration such as the CAS proceedings, normally conducted in a foreign language (English – with related translation costs) if not by foreign lawyers, and with a hearing normally held in Lausanne, Switzerland (with related travel and arrangements costs). It is undeniable that this might, in a sense, create disparities when restricting access to (the higher) court to parties who do not dispose of enough resources.

Lastly, one may question the opportunity of submitting disputes of a purely national dimension, subject to national law, after two or three instances of national disciplinary proceedings, to arbitrators who, although highly competent, normally have a different legal background, speak a different language and may not be so acquainted with STJD practice and jurisprudence.

On the other hand, submitting certain disputes of particular national relevance to a foreign arbitral institution, may, in a certain sense and given the highly recognized competence of CAS arbitrators, be a wise solution as the tribunal would likely be able to analyse such disputes more coldly, without being subject to the inevitable pressure present at national level.

Pros and *cons* of CAS jurisdiction in appeal of decisions issued by *Justiça Desportiva* are significant. As of today, and as said *above*, Article 136 para. 11 of the CBJD determines that the decisions rendered by the *Tribunal*

⁴⁹ Swiss Federal Tribunal, 4A_460/2008 (the “Dodô case”), available at www.polyreg.ch/d/informationen/bgeunpubliziert/Jahr_2008/Entscheide_4A_2008/4A.460_2008.html.

With English translation at: www.swissarbitrationdecisions.com/sites/default/files/9%20Janvier%202009%204A%20460%202008.pdf (23 March 2017).

⁵⁰ See CAS 2014/A/3474 *Clube de Regatas do Flamengo v. Confederação Brasileira de Futebol (CBF) & Superior Tribunal de Justiça Desportiva (STJD)*.

⁵¹ See *supra* in Section 5 “Relationship Between Ordinary And Sports Rules”.

Pleno of the STJD are unappealable, except if otherwise provided in the specific international regulation.

The *renvoi* is therefore rather clear to provisions such as, in football, Article 58 of the FIFA Statutes (2016 edition) in accordance with which appeals may be filed with CAS, provided all internal channels have been exhausted, against final decisions passed by member associations within 21 days of notification of the decision in question.

9. Sanctions

The sanctions applicable in the context of disciplinary proceedings in Brazil are established by the Pelé Law (and recalled by the CBJD⁵²).

It is essential to underline, in this respect, that a strict principle of legality applies in the Brazilian disciplinary system in the sense that, for each and every violation, consequences are clearly listed and detailed.⁵³

This is an appraisable feature, which distinguishes the Brazilian system from other jurisdictions. Within the FIFA rules, for instance, it is not rare to find provisions determining that a certain violation may “be sanctioned in accordance with the Disciplinary Code”, which, even if possibly facilitating the role of the governing body, surely does not play in favour of legal certainty and predictability.

This correlation between a specific violation and the respective sanction will be analysed in detail below, where specific infringements will be addressed. Here, it suffices to say that Article 50 para. 1 of the Pelé Law (similarly to Article 170 of the CBJD) establishes that infractions related to sports discipline and competitions may be sanctioned with: I – A warning; II – elimination; III – exclusion from championship or tournament; IV – compensation; V – ban from entering a stadium; VI – fine; VII – loss of the right to play at a home venue; VIII – loss of points; IX – loss of income; X – suspension for a number of matches (maximum of 24, except in the case of doping); XI – suspension for a period of time (maximum 720 days except in the case of doping).

However, two reasonable limitations are introduced, in that disciplinary sanctions may not be applied to athletes younger than 14 (fourteen) years old, whereas non-professional athletes may not be sanctioned with pecuniary sanctions.

Suspensions for a certain number of matches shall be served in the same competition where the violation took place or, if this is impossible, in the next match of another competition organized by the same sports governing body, or, when requested by the offender, through social measures.

Additionally, a recent amendment introduced to the Pelé Law by Law n. 13.322/2016 clarified, in line with the WADA Code and the FIFA Anti-Doping Regulations, how additional specific sanctions may be imposed in the

⁵² Articles 170 and ff. – CBJD.

⁵³ See *infra* in Section 10 “Infringements”.

event of anti-doping rules violations, such as: I – nullity of titles, prizes, scores, records and sports results obtained by the offender; II – return of prizes, trophies, medals and other advantages obtained by the offender that are related to the sport practice.

Furthermore, in the event that a suspension is imposed as a consequence of an anti-doping rule violation, the competent court⁵⁴ shall inform the public administration that may claim restitution of public sources eventually invested in the athlete (such as scholarship, prizes, etc.).

When determining the sanction between the minimum and the maximum limits determined by the relevant article, the deciding body shall take into account i) the seriousness of the violation; ii) its extent; iii) the means adopted; iv) the motives; v) the offender's sports background; vi) aggravating and mitigating circumstances, respectively listed by Article 179 and 180 CBJD; and viii) the economic capacity of the parties (for pecuniary sanctions).

The burden of proving infringements rests with the *Procuradoria* (Article 58-A CBJD) and the match report and other information provided by the referee and other officials are presumed (*iuris tantum*) to be correct, unless proven to the contrary

Finally, the fine line between the finality of on-field decisions and the power of disciplinary bodies to review referee's wrong decisions is traced by Article 58-B CBJD. Thus, disciplinary decisions taken by the referee during a match are, as a general rule, final and may not be amended by sports justice.

However, the latter may, exceptionally, sanction severe infringements if either they escaped the referee's attention or if they were not sanctioned because of an evident error by the referee.⁵⁵

10. Infringements

Rules applicable to disciplinary infringements in Brazil are of a quasi-criminal nature. The system is governed as, said by principles such as those of legality and of "sports typicality", embodied by Article 153 CBJD pursuant to which "any disciplinary infraction typified in this Code may be sanctioned" – implying, *a contrario*, that factual conducts not ascribable to any abstract provision shall remain exempt.⁵⁶

The principle of *lex mitior* (also applicable in the context of FIFA disciplinary proceedings – cfr. Article 3 FIFA Disciplinary Code) implies that nobody might be sanctioned for a conduct that a subsequent law does not prohibit and that, in the event of successive laws, the more favourable shall apply.

⁵⁴ For the determination of the competent court in anti-doping matters, see *infra* in Section 11 "Doping And The Justiça Desportiva Antidopagem".

⁵⁵ V. BUTRUCE, "Anotações sobre o Artigo 58-B do CBJD: Limites da Justiça Desportiva perante a Autoridade Disciplinar do Árbitro no Futebol Brasileiro", in R. Approbato Machado, "Curso de Direito Desportivo Sistemico", Quartier Latin, vol. II, 2010, 998/1005.

⁵⁶ F.A.M. MÜSSNICH AND V. BUTRUCE, "Ato Desleal, Ato Hostil, Jogada Violenta e Agressão Física no Futebol Brasileiro: As Infrações Relativas à Disputa de Partidas na Reforma do CBJD",

Disciplinary violation is defined as “any anti-sportive, typical and faulty action or omission” – where the omission is sanctioned when the defendant should and could have acted to avoid a certain harmful event.

The infraction might be i) realized; ii) attempted (sanction, in general, reduced by the half); iii) wilful (*dolo*); or iv) by fault (*culpa*).

There is no violation when, under the given circumstances, the conduct of the defendant was unavoidable; when it is the result of the (not evidently illegal) order of a person of higher hierarchy or of force, only the author of the order or coercion may be sanctioned.

As a general rule, Disciplinary violations become time-barred within sixty-days, unless differently provided by the Code (such as, for instance, in the case of doping or other serious violations where longer time-limits apply).

Because of the strict application of the principle of legality, countless specific disciplinary violations exist. Listing all of them would be, besides extremely boring for the reader, impossible in this context. The authors therefore opted for discussing some of the most interesting ones, reminding that infringements are divided into the following categories: i) sports administration, competitions and sports justice; ii) sports justice; iii) sports ethics; iv) dispute of matches, competitions of equivalent; and v) refereeing.

10.1. *Violations against the sports administration, competitions and sports justice*

This vast category covers several violations (Articles 191 to 219 of the CBJD), amongst which some aim to guarantee the smooth realization of sports competitions and others relate to disorderliness at matches and competitions.

As to sports competitions, Articles 203 and 204 of the CBJD sanction respectively i) the failure, without a just cause, to take part in a match (or to cause its non-realization or suspension), even if caused by the supporters,⁵⁷ and ii) the abandonment of a championship or tournament after its start.⁵⁸

Article 214 – the subject of the *Flamengo* CAS award⁵⁹ – sanctions with a three points deduction, a fine⁶⁰ and the deduction of any points obtained in the match, the club including in the team, or causing to be included in the match report, a player in an irregular situation (such as a suspended player).

in R. Approbato Machado, “*Curso de Direito Desportivo Sistemico*”, vol II, Quartier Latin, 2010, 959/966.

⁵⁷ Sanction is, pursuant to Article 203 CBJD, a fine between BRL100.00 (one hundred Brazilian Reais) and BRL100,000.00 (one hundred thousand Brazilian Reais), together with a loss of points in favour of the opponent.

In the event of repeated offence, or if the infraction results in sports harm or benefit to a third-party, the club may be excluded from the championship.

⁵⁸ Sanction is, pursuant to Article 204 CBJD a fine between BRL100.00 (one hundred Brazilian Reais) and BRL100,000.00 (one hundred thousand Brazilian Reais).

⁵⁹ See CAS 2014/A/3474 *Clube de Regatas do Flamengo v. Confederação Brasileira de Futebol (CBF) & Superior Tribunal de Justiça Desportiva (STJD)*.

⁶⁰ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

Failure to comply, or impeding compliance with i) a legal obligation, ii) a deliberation, resolution, determination, requirement, requisition or any other normative or administrative act of the *Conselho Nacional do Esporte* (CNE) or of a sports governing body to which he is affiliated, iii) competition regulations, is sanctioned with a fine,⁶¹ together with the imposition of a final deadline to comply.

The maintenance of contractual stability is also at the core of this section, as Article 216 sanctions with a suspension from thirty to one hundred days and a possible fine⁶² the following conducts: i) entering into and registering two or more employment contracts with different clubs; ii) requesting registration for more than a club at a time or omitting to be registered with another club; iii) the club signs at the same moment, two or more consecutive employment contracts with an athlete for subsequent periods (so-called “*contrato de gaveta*” practice).

As to violations related to disorderliness at matches and competitions, Article 211 CBJD is a preventive measure that sanctions the failure to guarantee the necessary infrastructure for the safe organisation of the event with a fine⁶³ and, as the case may be, a stadium ban until the proper corrections are made.

Article 213 of the CBJD sanctions the sports practice entity (club) that fails to take measures to prevent or repress the disorderliness, field invasion or object throwing during its home match with a fine.⁶⁴

However, if the disorderliness, field invasion or object throwing is of extreme seriousness or if it threatens the continuation of the match, the sports practice entity (club) may be sanctioned with the loss of the right to play at home for a minimum of 1 (one) and a maximum of 10 (ten) matches.

The responsibility to maintain the order at its home stadium lies with the club hosting the match. When visiting fans commit acts of vandalism and disorderliness, both home and visiting clubs may be sanctioned, however, only when it is proven that they both contributed to the disorder. The latter part of the disposition, requiring that clubs may be sanctioned only when (somehow) responsible for the incidents, seems to exclude the applicability of the principle of strict liability. The rule is questionable, particularly when it may result rather difficult to prove any liability of visiting clubs, whom are not directly in control of the event organization.

Finally, an interesting (though debatable) provision establishes that, in order to favour control over fans by the respective clubs, when the individuals

⁶¹ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁶² Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁶³ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁶⁴ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

responsible for the disorderliness are identified and presented to the competent police authority, the club might result exempt from liability.⁶⁵

10.2. *Violations related to sports justice*

Articles 220 to 233 CBJD deal with violations related to sports justice, including, from one side, certain infringements concerning forgery and falsification and, on the other, provisions that seek to grant the effective functioning and respect of the sports justice system.

As to the first, pursuant to Article 220 of the CBJD, if a sports authority fails to report to the competent sports justice body an act of falsification of which it has become aware, it shall be sanctioned with a suspension from 30 (thirty) to 90 (ninety) days and, in case of repeated offense, elimination.⁶⁶

Similarly, a person that provides false testimony before sports courts shall be suspended for 90 (ninety) to 360 (three hundred and sixty) days and, in case of repeated offense, elimination;⁶⁷ harsher sanctions, such as a suspension from 360 (three hundred and sixty) to 720 (seven hundred and twenty) days and, in case of repeated offense, elimination, apply for active and passive corruption of witnesses, experts, translators or interpreters before sports justice.

The effectiveness of the sports justice system is granted by Articles such as 223 CBJD, which reprimands the failure to comply or delay compliance with a decision, resolution, determination or sports disciplinary transaction of *Justiça Desportiva* with a fine⁶⁸ and, for natural persons, suspension until when

⁶⁵ “Article 213 of the CBJD. Failure to take measures capable to prevent and repress:

I - disorders in your sports plaza;

II - invasion of the field or place of dispute of the sport event;

III - throwing objects in the field or place of dispute of the sport event.

SANCTION: a fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

§ 1. When the disorder, invasion or object throwing is of elevated gravity or causes damage to the continuation of the sport event, the sports practice entity may be punished with the loss of the right to play at home from one to ten matches, competition or equivalent, when participant of the official competition.

§ 2. In case the disorder, invasion or object throwing is committed by the opposing entity, both home and the opposing entity will be punishable, but only when it is proved that they also contributed to the fact.

§ 3. The proof of the identification and detention of the perpetrators of the disorder, invasion or launching of objects, with presentation to the competent police authority and record of the event occurring contemporaneously to the event, exempts the entity from responsibility, and other means of proof sufficient to Demonstrate the lack of responsibility”.

⁶⁶ “Article 220. Sport authority that became aware of a falsified document refrains to communicate the infraction to the competent judicial body.

SANCTION: suspension from thirty to ninety days, and, in case of repeated offense, elimination”.

⁶⁷ “Article 222. Provide false testimony before the sports court.

SANCTION: suspension of ninety to three hundred and sixty days and, in case of repeated offense, elimination”.

⁶⁸ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

the decision is complied with; in its turn, Article 226 CBJD imposes the suspension of the President of the sports governing body that fails to provide sports justice with necessary resources.

Finally, Article 231 vests a fundamental role in granting order to sports competitions, when punishing with the harsh sanction of the exclusion from the championship, coupled with a fine,⁶⁹ those who address ordinary courts before having exhausted all sports courts instances in matters of sports discipline and competition, or even merely gets advantage from any such measures obtained by a third-party.

10.3. *Violations against the ethics of sports*

Ethics is a vast concept. The chapter including Article 234 to 249 of the CBJD therefore sanctions a variety of ethics and immoral conducts, which go from acts of forgery and falsification, to corruption and racism.⁷⁰

Articles 234 to 236 of the CBJD sanction conducts such as falsifying a document with the purpose of using it before sports courts or sports governing bodies; making use of such a document while aware of its false origin; falsely attest certain conditions of an athlete in order to allow him to transfer, play or be registered; make use of another athlete's document in a sports activity or, conversely, allowing such a use to another athlete.

Sanctions include a fine,⁷¹ suspension from 180 (one hundred and eighty) to 720 (seven hundred and twenty) days and elimination in case of repeated offense.

The Brazilian disciplinary system also seeks to fight corruption, in the measure that the proper functioning and development of sport depends on a transparent and efficient conduct by the relevant authorities, such as the officials of sports governing bodies, clubs and the bodies of sports justice.⁷²

Active and passive corruption of a member of a sports governing body or of sports justice are respectively sanctioned by Articles 237 and 238 of the CBJD,⁷³ where the characterizing element is the "undue advantage". Sanctions

⁶⁹ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁷⁰ It is to be noted that these conducts may also constitute crimes, such as those typified by articles 41-C, 41-D and 41-E introduced by Lei n. 12.299/10, that altered Lei n. 10.671/03 (Estatuto do Torcedor).

⁷¹ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁷² P. M. SCHMITT, "*Código Brasileiro de Justiça Desportiva Comentado*", Quartier Latin, 2006. 290.

⁷³ Article 237: To give or promise an undue advantage to those who hold a position or function, remunerated or not, in any sports entity or sports justice bodies, to commit, omit or delay an ex officio act or, yet, to do against express disposition of the sports norm.

include a fine,⁷⁴ suspension from three hundred and sixty to seven hundred and twenty days and elimination in case of repeated offense.

Sanctions for referees' corruption are outlined by Article 241 of the CBJD.⁷⁵ Under Article 241, the conduct sanctioned is giving or promising "any advantage" (a difference between "due" and "undue" would make no sense for referees). However, a subjective element of intention is added in the sense that the advantage shall be given or promised, "in order to influence the result of the match". This seems to be a bad choice from the legislator, since it would imply in having to prove not only the factual circumstance of the "advantage", but even the intention beyond it. The authors believe that it would be recommendable to simply prohibit members of football family giving any advantage to referees, irrespective of whether related to a specific match or not.

Sanctions include a fine⁷⁶ and elimination. The referee is subject to the same sanction when he "accepts the advantage".

Conducts related to, broadly speaking, match fixing are sanctioned by Articles 242,⁷⁷ 243 and 243-A of the CBJD. The first Article sanctions whom gives or promises an "undue advantage" to anyone within a club in order to "influence" the result of a match. Sanctions include a fine⁷⁸ and elimination.

Doctrine disagrees⁷⁹ as to whether such provisions includes the much discussed practice of "*mala branca*", where a club having a specific interest in the result of a match between other clubs, promises to one of those an advantage as an incentive for a certain result. The wide scope of the provision seems to

SANCTION: a fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais), suspension from three hundred and sixty to seven hundred and twenty days and elimination in case of repeated offense".

⁷⁴ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁷⁵ Article 241: Give or promise any advantage to a referee or an assistant referee squad to influence the result of the match, competition or equivalent.

SANCTION: a fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais), and elimination.

Sole paragraph: The same penalty shall be incurred by: I - the intermediary; II - the referee or assistant referee who accept the advantage".

⁷⁶ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁷⁷ Article 242 of the CBJD: "To give or promise an undue advantage to a member of a sports entity, manager, coach, player or any natural person mentioned in Article 1, §1, VI, in order to, in any way, influence the result of the match, competition or equivalent.

SANCTION: a fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais), and elimination.

Sole para.: To the intermediary shall be imposed the same sanction".

⁷⁸ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁷⁹ In favor of the inclusion, PAULO BRACKS in "*A mala branca vem ai*", published in Globo Esporte on 11 November 2015, available at <http://globoesporte.globo.com/blogs/especial-blog/tabelando-com-a-lei/post/mala-branca-vem-ai.html> (23 March 2017). Against, in the sense that the practice shall be allowed SÉRGIO SANTOS RODRIGUES in "*Mala branca e mala preta no futebol*", published on 2 December 2008, available at <http://domtotal.com/colunas/detalhes.php?artId=335> (23 March 2017).

include such an “offer”, even though the key question is the interpretation of the wording “undue advantage”, since, in the case of “*mala branca*”, the advantage is promised for a conduct that is, not only legitimate, but even required (playing at its own best).

The STJD jurisprudence seems to confirm the prohibition of such practice. For instance, in 2014 Mr. Elizeu Aguiar, president of River-PI, offered to the players of Interporto-TO the amount of BRL 20,000 for a win against Moto Club-MA and thus directly help his club in the 2014 Brazilian Serie D. Then, even though Interporto-TO failed to obtain the desired result, and the promised money was therefore not paid, the STJD sanctioned him with a suspension of 6 months and a fine of BRL 30,000.00 (thirty thousand Brazilian Reais).

Article 243 sanctions players who deliberately act against their own team with a fine⁸⁰ and a suspension from one hundred and eighty to three hundred and sixty days; when the action is proved to have been committed in exchange for “any advantage”, the suspension goes from three hundred and sixty to seven hundred and twenty days, with elimination in the case of recidivism.

Article 243-A sanctions who acts against sports ethics in order to influence the result of the match with fines and suspensions; for athletes and coaches from six to twelve matches and, in the case that the result is obtained, from twelve to twenty-four, with elimination in the case of repeated offence, and the possible annulment of the match.

Here, considering the seriousness of the conduct, the extent of the problem of match-fixing, the objective difficulty to fight it at a worldwide level, the resources at disposal of the “fixers” and the harsh economic conditions in which the majority of Brazilian professional footballers find themselves, sanctions seems outrageously low. As a comparative tool, sanctions imposed by Article 69 para. 1 FIFA Disciplinary Code for anyone who conspires to influence the result of a match in a manner contrary to sporting ethics, can include a ban on taking part in any football-related activity as well as, in serious cases, a lifetime ban.

Publicly inciting violence and hatred is sanctioned with a fine⁸¹ and a suspension from three hundred and sixty to seven hundred and twenty days, increased when transmitted through the medias.

Offensive and discriminatory behaviours, such as racism, are sanctioned by Article 243-G of the CBJD,⁸² with a suspension from 5 (five) to 10 (ten) matches when committed by a player, coach, doctor, or member of the

⁸⁰ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁸¹ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁸² Article 243-G: of the CBJD. “Commit a discriminatory, contemptuous or outrageous act, related to prejudice on the basis of ethnic origin, race, sex, colour, age, condition of elderly person or person with disability:

SANCTION: suspension of five up to ten matches, if committed by a player, even if a substitute, coach, doctor or member of the staff, and suspension for a term of one hundred twenty up to three

staff and with a suspension for a term of 120 (one hundred and twenty) days up to 360 (three hundred and sixty) days when committed by other persons subject to the CBJD, together with a fine.⁸³

When a considerable number of people within a club contributes to the discriminatory act, the latter will also be sanctioned with a three points deduction and, in case of repeated offense, with a six points deduction.

Discriminatory and racist acts committed by fans trigger the imposition of fines to the respective club and a stadium ban for those identified for at least 720 (seven hundred and twenty) days.

10.4. Violations related to dispute of matches, competitions or equivalent

This group of violations (Articles 249-A to 258-D of the CBJD) mostly includes those related to the rules of the game, such as acts of violence or actions intended to harm or offend other players.

According to Article 250 of the CBJD⁸⁴ a disloyal or hostile act committed during a match (such as impeding a clear goal opportunity or pushing a player while far from the play) is sanctioned with a suspension between one and three matches if committed by a player, coach, doctor or member of the staff and between fifteen and sixty days if made by another person subject to the code. The suspension may be replaced with a warning if the infraction is deemed not so serious.

addition to a fine, from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

⁸³ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL100,000.00 (one hundred thousand Brazilian Reais).

§1 - If the infraction foreseen in this article is committed simultaneously by a considerable number of people linked to the same sports practice entity, it will also be punished with a deduction of the number of points attributed to a victory in the rules of the competition, regardless of the result of the match, competition or equivalent, and, in case of repeated offense, with a deduction of double of points attributed to a victory in the regulation of the competition, regardless of the result of the match, competition or equivalent; If there are no points attributed by the competition regulations, the sports practice shall be excluded from the competition, tournament or equivalent.

§2 - The fine provided for in this article may apply to the sports practice entity whose fan commits a discriminatory act described therein, and identified fans will be prohibited from entering in the respective stadium for at least seven hundred and twenty days.

§3 - When the infraction is considered extremely serious, the judicial body may apply the sanctions described in items V, VII and XI of Article 170”.

⁸⁴ Article 250 of the CBJD: “Commit unfair or hostile act during the match, competition or equivalent.

SANCTION: suspension from one up to three matches, competition or equivalent, if committed by a player, coach, doctor or member of the staff, and suspension for a period of fifteen to sixty days, if committed by any other natural person subject to this Code.

§1 - Examples of the infraction provided for in this article, without prejudice to others:

I - prevent in any way, contrary to the rules of the game, a clear scoring opportunity, or equivalent;
II - to push a teammate or opponent out of the play.

§2 - It is possible for the judicial body to replace the suspension for a warning if the infraction is deemed not so serious”.

Violent plays are sanctioned by Article 254 of the CBJD⁸⁵ with a suspension from one to six matches, whereas the physical aggression is sanctioned by Article 254-A of the CBJD with a suspension between four and twelve matches if committed by a player, coach, doctor, or member of the staff and between thirty to one hundred and eighty days if by another person subject to the code. If the latter infraction results in a serious injury, the suspension goes from eight to twenty four matches and, if committed against a referee, the minimum suspension is of one hundred and eighty days.

The difference between the violent play and the physical aggression is exemplified by the legislator. The first, for instance, includes actions where the force used is disproportional in comparison to the reasonably expected standard, or any reckless act during the dispute for the ball, even if without the intention to cause damage to the opponent. The second includes acts such as punches, elbows, head-butts, kicks out of the play.

Interestingly enough, both provisions determine that, in the event that the injured player remains unable to practice football as a consequence of the offence, the offender may remain suspended until the injured player is able to return to train, with the maximum term of 180 (one hundred and eighty days).

Spitting is, although not violent, an extremely disrespectful act for the opponent that flies in the face of the principle of fair play. Article 254-B of the CBJD⁸⁶ thus imposes a suspension from 6 (six) to 12 (twelve) matches to players, coaches, doctor, and other members of the staff, and for a term between 30 (thirty) and 180 (one hundred and eighty) days to other persons subject to the code. Spitting against the referees or his assistants is sanctioned with a minimum suspension of 360 (three hundred and sixty) days.

⁸⁵ Article 254: Commit a violent play:

SANCTION: suspension of one to six games, or equivalent.

§ 1 - Examples of the infraction provided for in this article, without exclusion of others:

I - any action in which the use of force is incompatible with the standard reasonably expected for the respective modality;

II - the reckless act in the dispute for the ball, even if without the intention to cause damage to the opponent.

§ 2 - It is possible for the judicial body to replace the suspension for a warning if the infraction is deemed not so serious.

§ 3 - In the event the affected person remains unable to practice the modality as a consequence of a serious violent play, the offender may remain suspended until the affected person is able to return to the training sessions, respecting the maximum term of one hundred and eighty days.

§ 4 - The information that the injured player returned to the training sessions will be given through a communication to the judicial body (STJD or TJD) by the sports practice entity to which the injured is bound.

⁸⁶ Article 254-B of CBJD. "Spitting on others:

SANCTION: suspension of six to twelve matches, competition or equivalent, if practiced by a player, even if a coach, a doctor or member of the staff, and suspension for a term of 30 (thirty) to 180 (one hundred and eighty) days, if practiced by any other natural person subject to this Code.

Sole paragraph. If the act is committed against referees, assistants or other members of the referee squad, the minimum suspension shall be of 360 (three hundred and sixty) days, regardless of the offender".

Finally, Article 257 of the CBJD sanctions brawls, Article 258 any conduct against sports ethics and discipline not otherwise typified in the Code (such as abandoning a match, pretending an injury, disrespecting referees), Article 258-A provoking the public and Article 258-B invading the referee zone.

10.5. *Violations related to refereeing*

Proper refereeing is extremely important in football. The referee plays a vital role, being vested with significant power and having to make instant choices which may result in vast economic and social consequences. The general society, and, together with it, sports justice, has a duty to watch how such power is exercised (always with the due respect and within the boundaries of what is socially acceptable).

The referee is a human being and therefore, not only may unintentionally make mistakes, but is also subject to secular temptations such as corruption. The last chapter of the CBJD section related to infringements therefore sanctions improper conducts by the referees, such as, amongst others, failing to prevent violence amongst athletes in the course of a competition (Article 260 of the CBJD); failing to fulfil the obligations related to his function (Article 261-A CBJD); failing to properly report disciplinary occurrences at a match (Article 266 of the CBJD); failing to request to the competent authorities the necessary measures to grant the safety of athletes, or fail to interrupt a match when such measures are not present (Article 267 of the CBJD); refusing without a reason to start a match or abandoning it (Article 269 of the CBJD); and abusing his authority (Article 273 of the CBJD).

The most interesting provision is, however, Article 259 of the CBJD,⁸⁷ which sanctions referees that fail to observe the rules of the game with a suspension of 15 (fifteen) to 120 (one hundred and twenty) days, and, in case of repeated offence, a suspension of 60 (sixty) to 240 (two hundred and forty) days, together with a possible fine.⁸⁸

Interestingly enough, the match might be declared null in the event that an error of law by the referee directly affected its result.

11. *Doping and the Justiça Desportiva Antidopagem*

⁸⁷ “Article 259. Failure to observe the rules of the modality.

SANCTION: suspension of fifteen up to one hundred and twenty days and, in case of repeated offense, sixty up to two hundred and forty days, cumulated or not with a fine, of BRL 100.00 (one hundred Brazilian Reais) to BRL1,000.00 (one thousand Brazilian Reais).

Paragraph 1 - The match, competition or equivalent can be cancelled if proven that occurred a relevant mistake capable to change its result.

Paragraph 2 - It is possible for the judicial body to replace the suspension for a warning if the infraction is deemed not so serious”.

⁸⁸ Fine from BRL100.00 (one hundred Brazilian Reais) to BRL1,000.00 (one thousand Brazilian Reais).

Doping is a matter of such an extent, importance and complexity that it would deserve an article (or many) of its own. In the present context, which addresses disciplinary proceedings as a whole, only the necessary general remarks will be made, without entering into the matter of the specific violations.

Until March 2016, the competence to rule on anti-doping matters in Brazil was vested with the respective STJDs, TJDs and Disciplinary Commissions of the relevant sports governing body, with a possibility, as seen⁸⁹, of an appeal to the CAS according to the FIFA rules (such as in CAS Awards *Dodô*⁹⁰ and *Jobson*⁹¹).⁹²

However, a *Medida Provisória* issued by the Brazilian government on 16 March 2016,⁹³ subsequently transformed into Federal Law on 28 July 2016,⁹⁴ introduced Article 55-A of Pelé Law, shifting the competence on anti-doping rules violations from *Justiça Desportiva* to *Justiça Desportiva Antidopagem* (“*JAD*”) – a newly created body instituted by the same law under the umbrella of the National Sports Council (*Conselho Nacional do Esporte*) and funded by the Brazilian Sports Ministry.

The *JAD*, composed by a court and a *Procuradoria*, was also created as an autonomous and independent body, with competence to:

- I – rule on anti-doping rules violations and apply related sanctions;
- II – homologate anti-doping related decisions issued by international organizations.

Members of the *JAD* shall be appointed, in equal proportions, by the athletes’ unions, by sports governing bodies, and by the executive branch of the Brazilian government. A new *Código Brasileiro Anti-Dopagem* was issued by the *Conselho Nacional do Esporte*, determining procedures and violations, with a possible appeal to the CAS.

A transitional rule in Article 55-B of Pelé Law establishes that, until when the *JAD* is fully constituted, anti-doping rule violations shall continue to be judged by the relevant STJD, TJD and Disciplinary Commission; it is to be noted, in this regard, that, at the moment the authors are writing, transitional phase was still not completely in place.

⁸⁹ For a wider discussion on this issue, see Sections 3 “The Federation (Structure and Competencies)” and 8.6 “Appeals to the Court of Arbitration for Sport (CAS)”.

⁹⁰ CAS 2007/A/1370 & 1376, *FIFA & WADA v. STJD & CFB & Dodô*, available at <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1370,%201376.pdf> (23 March 2017).

⁹¹ CAS 2010/A/2307 *WADA v. Jobson Leandro Pereira de Oliveira, CBF and STJD*.

⁹² Indeed, Article 244-A of the CBJD establishes that doping infractions will be regulated by international regulations of the respective modality:

“Article 244-A. The doping infractions are regulated by the law, by the pertinent international norms and, in a complementary way, by the international legislation regarding the respective sport modality”.

⁹³ *Medida provisória* n. 718, de 16 de março de 2016, available at www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/mpv/mpv718.htm (23 March 2017).

⁹⁴ Lei n. 13.322, de 28 de julho de 2016, available at www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Lei/L13322.htm#art1 (23 March 2017).

Relevant recent developments in Brazilian anti-doping matter include the fact that, weeks before the Rio 2016 Olympic Games started, Rio WADA-accredited laboratory lost its accreditation for not being compliant with the applicable regulations and standards of WADA, being subsequently reinstated on 20 July 2016, in time for the Rio Games.

However, following the Games, WADA Independent Observers issued a report identifying several flaws and non-compliant procedures adopted during and before the Rio Games. In October 2016, the WADA Compliance Review Committee declared Brazil non-compliant with the 2015 WADA Code.

12. *The CBF National Dispute Resolution Chamber*

As explained at length in the course of the present chapter, the competence and jurisdiction to rule on most of disciplinary violations in Brazil are vested with *Justiça Desportiva*, composed by the STJDs, TJDs and the respective Disciplinary Commissions.

However, certain “para-disciplinary” violations, related to breaches of the regulations issued by the CBF (such as, for instance, the CBF’s National Regulations on the Registration and Transfer of Football Players and the CBF Intermediary Regulations), fall under the competence of a specific committee created under the umbrella of the CBF, the *Câmara Nacional de Resolução de Disputas* (CNRD or CBF National Dispute Resolution Chamber).

In accordance with Article 2 of the CNRD Regulations, those subject to the jurisdiction of the CNRD are: i) the regional governing bodies; ii) the football leagues if and when affiliated with CBF; iii) sports entities (the “clubs”); iv) professional and non-professional athletes; v) the intermediaries registered with the CBF; vi) the football coaches having an employment contract registered with the CBF; and vii) technical assistants of clubs affiliated to the CBF.

Similarly to other national DRCs, the Brazilian CNRD has competence to hear several “contractual” matters⁹⁵ which do not fall within the subject of the present analysis.

⁹⁵ Article 3 of the CNRD Regulations “Without prejudice to the right of any athlete, coach (football coach or technical assistant) or club to resort to labour states court to settle disputes of labour nature, “CNRD” has competence to hear the following:

I. Disputes between clubs and athletes regarding the maintenance of contractual stability whenever requested a domestic transfer and there is a complaint from interested parties regarding this request, namely related to registration of the athlete or the payment of compensation for the contractual termination;

II. Disputes between a club and an athlete, of labour nature, as long as there is mutual agreement between the parties, with a guarantee of a fair trial that respects the principle of equal representation of athletes and clubs;

III. Disputes between a club and an athlete, related to the application of Article 67 RNRTAF;

IV. Disputes between clubs related to national training compensation and solidarity mechanism, in accordance with Articles 29 and 29-A of law n. 9615/98, respectively;

V. Disputes between Brazilian clubs related to FIFA training compensation and solidarity mechanism, in accordance with Articles 20 and 21 of law the FIFA RSTP, respectively;

However, para. VI of Article 3 of the CNRD Regulations contains a residual jurisdiction clause, which assigns to the CNRD competence over disputes arising from the breach of CBF Regulations on the Status and Transfer of Players (“CBF RSTP”).

Similarly, Articles 67⁹⁶ and 69⁹⁷ of the CBF RSTP and Articles 31⁹⁸ and 34⁹⁹ of the CBF Regulations on Working with Intermediaries entrust the CNRD with competence to rule upon disputes and sanctions related to violations of the respective provisions.

Such a vast competence includes violations of a (para) disciplinary nature, such as the imposition of sanctions under Article 64 CBF RSTP (the Brazilian correspondent of Article 12bis FIFA RSTP), as well as those related to the innovative ban introduced by the CBF in respect of the so-called “bridge transfers”.

Finally, a specific chapter included in the CNRD Regulations gives the CNRD competence to apply sanctions to parties that fail to comply with i) CNRD decisions or arbitral awards issued by the CBMA (arbitral tribunal competent in appeal of CNRD decisions); ii) CRL decisions (the body that the CNRD replaced) or arbitral awards issued by the CAS (which was competent on appeal of CRL decisions); or iii) decisions issued by national DRCs of other national associations members of FIFA pursuant to Article 64 of the FIFA Disciplinary Code.

12.1. *Overdue Payables*

Article 64 CBF RSTP (previously Article 67) introduces into the Brazilian system the principles established by Article 12bis of FIFA RSTP, pursuant to

VI. Disputes involving intermediaries registered before the CBF, or between these and clubs, football coaches and/or players;

VII. Disputes involving coaches or assistant coaches and clubs, of labor nature;

(...)

IX. Disputes arising from decisions of regional sport administration entities and/or leagues affiliated to the CBF, provided that the statutes of these entities do not expressly provide otherwise;

X. Disputes of original competence of the Dispute Resolution Committee (Comitê de Resolução de Litígios)”.

⁹⁶ Article 67 of the CBF National Regulations on the Registration and Transfer of Football Players - The parties in breach of these Regulations are subject to the sanctions provided for in the CNRD Regulations, to be applied separately or in cumulative form.

⁹⁷ Article 69 of the CBF National Regulations on the Registration and Transfer of Football Players - The National Dispute Resolution Chamber (CNRD) of the Brazilian Football Confederation (CBF) shall have competence over any issues arising from these Regulations, as well as judging and sanctioning infractions of these Regulations, as well as other provisions of Regulations or statutes of the CBF or FIFA, related to the matters covered by these Regulations.

⁹⁸ Article 31 CBF Regulations on Working with Intermediaries - The National Dispute Resolution Chamber (CNRD) of the Brazilian Football Confederation (CBF) shall have competence over any issues arising from these Regulations, in the form of its Rules of Procedure.

⁹⁹ Article 34 CBF Regulations on Working with Intermediaries - The Intermediary, player, football coach and/or club that violates these Regulation shall be subject to the sanctions provided for in the CNRD Regulations, to be applied separately or in cumulative form.

which clubs are required to comply with their financial obligations towards players and other clubs as per terms and conditions stipulated in the contracts entered between the parties.

The provision involves disciplinary aspects as any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis or just cause may be sanctioned accordingly.

Sanctions, which include a ban on registering new athletes (which may be conditionally suspended) for a period between six (6) months to two (2) years, may be applied cumulatively and a repeated financial default by the debtor shall be considered an aggravating factor, resulting in more severe sanctions.

12.2. Bridge Clubs

On 2016, in the aftermath of the CAS case involving the Argentinian club Racing Club,¹⁰⁰ the CBF took action and banned the well-known “bridge club” practice, which Article 34, para. 1, of the CBF RSTP defines as:

“[E]very transfer that involves the registration of the athlete with an intermediary club, without sporting purpose and with the aim of obtaining a direct or indirect advantage to any of the clubs concerned (assignor, intermediary or assignee), the player and/or third parties”.

The provision presumes certain patterns of transfers to be bridge transfers. This presumption is relative (*iuris tantum*) and the concerned party may thus prove that transfers are legitimate ones. Thus, pursuant to Article 34 para. 2 of CBF RSTP, it is presumed unless established to the contrary that a transfer has *no* sporting purpose in the following (not exhaustive) circumstances:

- i. two definitive transfers of the athlete within a time lapse equal or inferior to 3 (three) months;
- ii. a definitive transferred followed by a temporary transfer, where the athlete does not take part in official competitions by the intermediary club;
- iii. fraud against or violation of financial, labour and/or sport norms;
- iv. fraud against or violation of the regulations of national or international sport governing bodies;
- v. concealment of the real amount of a transaction.

The CBF also provides guidance for clubs and disciplinary bodies when examining whether a bridge transfer is to be considered unlawful, listing the following criteria as those to be taken into account to assess the nature of the transfer: i) the age of the player concerned; ii) the number of matches played by the player for each of the clubs concerned; iii) the length of time elapsed between each transfer; iv) the remuneration agreed for the player in each of the clubs concerned; v) the amounts involved in the transfers; vi) the estimated market value of the player in the moment of each transfer; vii) the proportion between the amounts involved in each transfer of the “chain”; viii) the category of the clubs concerned for the purposes of training compensation; ix) the

¹⁰⁰ CAS 2014/A/3536 Racing Club Asociación Civil v. FIFA (not published).

occurrence of fraud against or violation of the regulations of national and/or international governing bodies for football; and x) any other objective criteria deemed applicable.

When the accused party fails to explain the “unusual pattern” of movement of the player, and therefore does not revert the presumption, the CNRD may impose sanctions, such as warnings, fines, transfer bans and suspensions.

12.3. *Appeals to the CBMA*

The competence to rule on appeals against decisions of the Brazilian CNRD does not lie with the CAS, but rather with the *Centro Brasileiro de Mediação e Arbitragem* (“CBMA”- Brazilian Center of Mediation and Arbitration), an independent and impartial arbitral institution, based in the city of Rio de Janeiro.

Proceedings are conducted in accordance with a specific “*Regulamento de Arbitragem Esportiva*” and CBMA decisions are final, binding and not subject to an appeal.

12.4. *Failure to Comply*

An efficient system of enforcement is the key to sports justice. Dispute resolution bodies of sports associations are not courts of justice and their decisions in dispute between affiliates do not therefore have the legal force of a court decision.

With this in mind, the CBF introduced mechanisms to enforce the effectiveness of decisions issued by the CNRD (and by its predecessor CRL) as well as appeal decisions issued by the CBMA (or by the CAS in appeal of CRL decisions). Furthermore, the CBF also seeks to grant effectiveness to decisions issued under the umbrella of other associations, provided certain fundamental principles of law are respected.

Proceedings start with a notification issued by the CNRD Secretariat, demanding compliance with the relevant decision within 10 (ten) days. Failure to do so results in the CNRD imposing, directly or at the request of the interested party, one or more sanctions established by Article 40 of the CNRD Regulations.

If, however, the failure to comply persists, a system of escalating sanctions was introduced that allows the CNRD to impose stronger and more effective sanctions while the sanctioned party, despite the repeated orders received, maintains its disrespect for the decision enforced.

As a first step, then, the CNRD may impose the following sanctions, cumulative among themselves and with those established by Article 40 CNRD Regulations:

- i. temporary freezing of income or economic benefits that the party is entitled to receive from CBF or any Federation;
- ii. return of award or title won in any competition organized by CBF;

- iii. prohibition of registering new players for a fixed period between 6 (six) months and 2 (two) years (only for clubs);
- iv. prohibition of registering new players for 1 (one) or 2 (two) complete and, if applicable, consecutive, international registration periods (only for clubs);
- v. temporary prohibition of registration of new representation contracts;
- vi. withholding of remuneration to which an intermediary would be entitled by a club, for payment to another club, player or intermediary, until the full satisfaction of the limit of any existing debt (only for Intermediaries);
- vii. withholding of a maximum of 10% (ten per cent) of the salary to a party registered with a club, for payment to another interested party, until satisfaction of any credit, while respecting the economic capacity of the party (only for players, coaches and technical assistants);

Subsequently, in case of persistent failure to comply, the CNRD may determine, as a final measure, the imposition of the following sanctions, cumulatively or not:

- i. disaffiliation or deregistration, respecting federal law;
- ii. a ban from any football-related activity, in accordance with FIFA Regulations, respecting federal law;
- iii. cancellation of registration and prohibition of new registrations for a term of up to 24 (twenty four) months;
- iv. a ban from exercise of the intermediary activity within the CBF jurisdiction.

Additional provisions introduce a certain degree of flexibility into the system, allowing a conditional suspension of the sanction for a period between six (6) months to two (2) years – revoked in case of a new breach – and the possibility for the CNRD to establish a payment plan in order to facilitate compliance by the debtor.

As anticipated above, enforcement is also granted to decisions of a dispute resolution body or of an arbitral tribunal established within a national association and duly recognized by FIFA, in the event that the debtor was subsequently registered with the CBF or signed a contract with a club registered with CBF. In this regard, and in accordance with the requirements of Article 64 FIFA Disciplinary Code, the decision is executed only if equal representation and equal treatment between the parties had been granted by the legal body or court who issued the same.

Finally, it is to be noted that all such CNRD decisions imposing sanctions for failure to comply are subject to appeal to the CBMA.

13. *The Projeto de Lei Geral do Desporto Brasileiro*

A *Projeto de Lei* is currently being discussed at the Brazilian Senate.¹⁰¹ It is a new law (*Lei Geral do Desporto Brasileiro*), drafted by twelve Brazilian sports

¹⁰¹ The *Projeto de Lei* was approved on 27 June 2017 by the responsible rapporteur, missing therefore only the vote of the Senators to be sanctioned (by majority).

law experts¹⁰² that would replace and coordinate all existing sports-related laws in the Brazilian jurisdiction, with welcomed reforms in matters of sports justice.

First, the law aims at facilitating the settlement of disputes related to sports disciplinary matters and competitions through arbitration, with the inclusion of a provision specifically providing for such an opportunity.

Second, simplification would be rendered possible by Article 237 para. 3, introducing the possibility for different sports governing bodies to make use of the same body for disciplinary justice, which, as far as football is concerned, could prove helpful for minor State associations, who could thus organize and establish a sole disciplinary body competent to rule on several competitions organized by different entities.

Finally, the law would clarify the limits of ordinary courts intervention following exhaustion of sports justice instances. Indeed, Article 237 paras. 5 and 6 clarify that, after exhaustion of sports justice instances, parties may seek annulment of such a decision for breach of fundamental principles of due process or for lack of jurisdiction of the body issuing the decision within a time-limit of 90 (ninety) days. However, even in the event of such annulment, sports effects would remain untouched and the claim would be limited to loss and damages.

14. *Conclusions*

Complexity is inherent to the Brazilian sports law system and the authors employed their best efforts to give an overview of what they deemed more worth of attention for a foreign reader.

As the reader may have noted, the Brazilian disciplinary system is a very sophisticated and “guarantistic” one. While this plays in favour of an effective exercise of the parties’ right to be heard, it might not be the most effective system when the needs and specificities of modern football are concerned. Indeed, the whole procedure as described in this chapter applies to each and every disciplinary violation, so that, for instance, when a player is given a red card, the possibility exists of a complex procedure before different instances, with hearings and other associated procedural matters.

In addition, and as said, the interplay with rules issued by international sports governing bodies, the applicability of which is mandated by the Pelé Law, has historically resulted in complex legal situations, which had to be clarified by the Court of Arbitration for Sport.

The Brazilian disciplinary system is thus an extremely interesting one for the lawyers dedicated to the practice of sports law, both under a theoretical as well as under a practical point of view.

¹⁰² Including the co-author of this contribution Marcos Motta.

DISCIPLINARY PROCEDURES IN CHINESE FOOTBALL

by *David Wu**

Introduction

The present report will be mainly focused on the disciplinary legal system implemented by the Chinese Football Association (hereinafter referred to as “CFA”) and regulated by the CFA Disciplinary Code¹ (“CFA DC”) together with further supplementary regulations that will be discussed thereafter.² In addition, in order to have a better understanding of its peculiarities, the present report will also go through specific aspects such as:

- a. the procedure through which the Chinese Football Association gained autonomy from the government and developed into an independent football system,
- b. the comparison between the CFA regulations and the ordinary laws and regulations of the People’s Republic of China, and
- c. the co-existence of the Chinese football disciplinary system implemented by the CFA (which is more inclined and obliged to follow FIFA’s guidelines), and the restrictions to which is subject due to the fact that it needs to comply with Chinese law.

1. Development of the Chinese Football Association

1.1 Introduction

Firstly, it is important to keep in mind that the People’s Republic of China is a unitary country due to its communist ideology and its unique political system. This, together with the fact that football was developed in China much later than in other parts of the world, explains the difference between the CFA and other well-established football systems around the world.

In the last few years and despite stiff resistance, the Chinese government started to lift its restrictions imposed on the sporting institutions in general and on

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¹ CFA Disciplinary Code (2015).

² The CFA Disciplinary Code and other relevant rules are available at www.fa.org.cn/bulletin/zcfg/index.html (13 March 2017).

the CFA in particular. This initiated a policy aimed at developing the sporting culture within China, with special emphasis on youth. The idea was to inculcate younger generations in the benefits of practising team sports as opposed to individual sports, which had been the country's preference up to this point. As a matter of fact, football is the sport that has experienced the most expansion in this respect.

In order to achieve its objectives, and in spite of the risk involved in changing its seventy-year ideology, the CFA gradually started to gain its own independence and autonomy as it is needed in every sporting institution taking into account the so-called "specificity of sport".

1.2 Progress for its Autonomy

Until 2004, the CFA was one of the departments of the General Administration of Sports of China (hereinafter "the General Administration"), being therefore directly administered by the Chinese government. As a result, the CFA not only had to implement and comply with the General Administration's policies but also had its office-bearers appointed by the political officers of the General Administration.

The first reform of the CFA took place in 2004, when seven clubs of the Chinese Super League ("CSL") established a "G7" association for the promotion of "separating politics and business, for the separation of the administrative supervision and operation of the league" which was mainly focused on the domination of the CFA over the CSL. Reforms partly achieved this goal and although there were still some connections with the General Administration, a company named CSL Co. Ltd was established in 2004 to assume administrative functions of the CSL.

In 2011, the former chairman of the Football Administration Centre (department of the General Administration), offered a plan to minimize the administrative functions of the Football Administration Centre and maximize the autonomy of the CFA in order to separate the political functions from the administrative ones in the field of football. Nevertheless, the General Administration eventually rejected this idea.

Finally, in 2015, the football industry witnessed a major breakthrough, as after several reforms, the sports industry was open to investment from the public. It eliminated unnecessary bureaucratic procedures and created an opportunity for private capital to be invested in sporting activities, creating a much improved and a vibrant sporting culture in the Territory of China.

1.3 Current State of Affairs of the CFA

1.3.1 Achievements of the Reforms in the CFA

Under the aforementioned plans, the General Administration finally published its "Reforming Plan of the CFA",³ under which the CFA was officially separated from the General Administration effectively as of the beginning of 2017.

The Reforming Plan of the CFA made some very important changes in the working and structure of the CFA. As mentioned earlier, one of main reforms implemented was the General Administration being not only separated from CFA but its powers were drastically reduced to only making suggestions to the CFA on behalf of the government.

Other important reforms were implemented: for instance, more professionals and experts in football joined the CFA. The number of government officials working as office-bearers of the CFA were drastically reduced. The main standard, which has been implemented, is that government officials with no substantial duties at their regional football association, if still willing to officially pertain to the CFA, have then to resign from his official position at the government. Furthermore, CFA's budget is allocated by the government separately and is audited independently. All CFA decisions are approved by the associated members rather than by the government institutions, as it was done previously.

2. *General principles*

2.1 *Scope of the CFA DC*

Unlike FIFA Disciplinary Code⁴ ("FIFA DC"), the CFA DC defines its scope in broad terms. Article 1 states that the code "*regulates any infringement that is committed within any football-related activity that it is under the administration of CFA in order to protect the development of football, the integrity of competitions, fair play, prevention of unethical and violent conducts, protect the rights of professional footballers as well as the improve the technical level of players and quality of games*".

Thus, it can be clearly appreciated that the CFA disciplinary bodies have a wide range of powers deriving from the CFA DC, being able to impose the pertinent sanctions to all those parties that put in danger any of the elements *supra* stated.

2.2 *Personal scope: natural and legal persons*

Like the FIFA Disciplinary Code ("FIFA DC"), the CFA DC defines in its article 4 the parties that are subject to its regulations:

- a) associations;
- b) members of associations, in particular clubs;
- c) officials;
- d) players;
- e) match officials;
- f) agents;

³ The State Council, "Reforming Plan of the CFA" (2015).

⁴ FIFA Disciplinary Code (2011).

- g) Anyone authorized by FIFA, particularly regarding any match, competition or other event organized by FIFA.

Nevertheless, contrary to the text of the FIFA DC, spectators are not subject to the scope of the disciplinary bodies under the umbrella of the CFA, since the clubs and associations are responsible for any infringement that might arise from them.

2.3 *Timeframe*

As per the scope of application of the CFA DC in time, the provisions of the code can only be applied to those disputes which arose after it has come into force as established in its article 5.

However, there are certain cases, left at the discretion of the CFA, in which the provisions of the CFA DC might be retrospectively applied to disputes prior to its enactment, which can be justified by the disciplinary bodies in order to guarantee the protection of the principles of Article 1 of the DC.

2.4 *Culpability, acts amounting to attempt and involvement*

The CFA DC has made attempts or negligent violations of CFA regulations punishable by bringing such actions under its scope and ambit under Article 9 of CFA DC, which states “*Infringements are punishable regardless of whether they have been committed deliberately or negligently*”.

Equally, when there is no violation of the regulations, but when there is an issue of public order, CFA disciplinary bodies can order clubs to play behind closed doors without spectators.

It is established that not only infringements committed but also attempted infringements are punishable under the CFA DC (Article 10 CFA DC).

Lastly, the disciplinary bodies, by means of Article 11.2 CFA DC have the right to determine the sanctions to be imposed, depending on the involvement of the sanctioned party.

3. *The state legal framework relevant to national sports rules*

In the present section, we will briefly but sufficiently explain the main national laws and regulations of the People’s Republic of China that sports associations must respect.

3.1 *Sports Law of the People’s Republic of China*

The Sports Law of the People’s Republic of China⁵ is the supreme law that establishes and regulates the sports industry, defines the administration, duties and responsibilities related to the development of Chinese sports industry. Therefore,

all specific laws and regulations that relate to or affect any aspect of sports, shall follow the guidelines required under the Sports Law of PRC.

3.2 *National Administrative Regulation on Athletes' Registration and Exchange*⁶

This is a specific regulation mainly focused on the registration and transfer of professional athletes. In essence, it gives detailed guidelines that are required for the registration of athletes, establishing the process that all sports in China must follow, and the pertinent procedures that are required in exchanges and sporting progress of the athletes.⁷

3.3 *Regulations Concerning Strict Prohibition of the Use of Stimulants in Sports Activities, National Anti-Doping Code, and Administration Measures for Anti-Doping*⁸

Regarding anti-doping regulations, the General Administration enacted in 1999 the first anti-doping regulations for China, which could be translated as the "Regulations Concerning the Strict Prohibition of the Use of Stimulants in Sports Activities". It defined the process of examination and sanctions against doping.

In 2004, the State Council⁹ established the "National Anti-Doping Code"¹⁰ which was based on the provisions of the WADA Code. The implementation of such code, made China one of the few countries in the world which had a specific anti-doping regulations. Years later, in 2015, when the "Administration Measures for Doping" were published by the General Administration, the detailed process, standard measures and sanctions were finally confirmed and comprehensively standardized, complementing the code of 2004 in the People's Republic of China, being the one applied nowadays in the country.

4. *Relationship between ordinary law and sporting regulations*

When drafting any applicable regulation, the CFA has to comply with the minimum standards imposed under Chinese law. Thus, the CFA has to comply with the conditions or limitations inherent to China and which are set by the Chinese law and considered routine in other countries. In the following discussion, although not

⁵ Sports Law of People's Republic of China (1995, amended in 2016).

⁶ National Administrative Regulation on Athletes (1999).

⁷ Exchange and gaming progress of the athletes: In China, athletes from different sports (football not included) are required to temporarily move to other areas in order to "improve" the integration of the athletes (e.g. 5 basketball players from each team China are put on the "exchange list", and managers of other teams may check the list of each team and pick the ones they are interested).

⁸ Administration Measures for Anti-Doping (2014).

⁹ Highest Administrative body at National level in China.

¹⁰ National Anti-Doping Code (2004, amended in 2014).

specifically related to CFA DC, there are some different examples that are interesting to read in order to get a general idea and understanding how Chinese Laws affect certain rules of the CFA.

4.1 Calculation of loss

The first suitable example in this respect is the calculation of loss. As it is a common practice in the field of football, the compensation agreed upon between the parties in the buy-out clauses, penalty clauses or in any other different clauses mentioned in a contract, unless the amount is considered as grossly disproportionate, such amount would be normally paid in full. However, due to the restrictions imposed under Chinese Law, various limitations are made in the name of fairness and which could differ from the interpretation of the rules of CFA.

As in Contract Law in the People's Republic of China,¹¹ namely in its Article 114, “[...] *Where the agreed penalty for breach of contract is excessively high (when the liquidated damages agreed by the relevant parties exceeds the actual losses by 30%) compared with the losses sustained, a party may request the People's court or an arbitration body to reduce the said amount to an appropriate and fair amount. This issue was further explained in one Interpretation of the Supreme People's Court on several issues concerning the application of the “Contract Law of the People's Republic of China”.*¹² Moreover, for instance, Article 29, states that in case “[...] *a relevant party asserts that liquidated damages agreed are too high and requests for a reasonable adjustment, the People's Courts shall rule on the basis of the actual losses, taking into consideration comprehensive factors such as the performance of the contract, the extent of culpability of the relevant party, and the anticipated profits, etc., and therefore, adjust such amount in accordance with the principles of justice, integrity and good faith [...]*”.

As a consequence of the fact that Chinese Laws have to be respected and followed, in case of breach, it cannot be assured that the agreed compensation would be paid in full. Since the need for compensation in football-related issues is to prevent the violation of the agreements reached by the different parties and to avoid the violation of the rules and regulations the sport's governing bodies apply.

When laws of a country mitigate the amount of compensation, it increases the possibility of a breach of such an agreement. When situations like these occur, parties which are expected to pay large compensations tend to violate their obligations since they are aware of the fact that most likely their compensation will be reduced on appeal.

¹¹ In Chinese: 中华人民共和国合同法

¹² Interpretation of the Supreme People's Court on Several Issues Concerning Application of the “Contract Law of the People's Republic of China” (2) (2009), Article 29.

4.2 *Permission for provisional registration*

The provisional registration of players is a sensitive topic in the People's Republic of China which evokes great controversy.

It must be primarily stated that when referring to provisional registration in China, we point to internal transfers involving Chinese parties and thus between Chinese regional associations since, in the international ambit, FIFA will evidently be the competent body to deal with such kind of registrations.

The reason is mainly due to the restriction stipulated in article 18.3 of the CFA Regulations on the Status and Transfer of Players,¹³ as it is a provision which basically states that Players involved in disputes which are still pending will not be permitted to be transferred to a new club:

“Players with any condition listed supra will not be permitted to transfer: Having disputes with his previous club over his contract and such disputes are related to the players' transfer” .

This provision aims to make the CFA Regulations comply with Chinese Ordinary Laws. When there is a dispute between a player and his former club, under no circumstances such provisional registration can be approved due to the principle of mutual agreement under Chinese Contract Law. Therefore, when the former club and/or former association denies to deliver the ITC, it would be deemed as the clubs' dissent on the whole contract, and thus the player would not be allowed to be registered with the new club until there is a final decision over such dispute.

Such prohibition is contrary to the relevant FIFA regulations related to provisional registration, since FIFA establishes that when there is a transfer of a player between different national associations and there is an issue regarding the issuance of the ITC, either because there is no response from the former association, or because there is a dispute between the former club and the player, the latter may be provisionally registered with the new association.

However, following the CFA regulations, the only option that exist for a player to be provisionally registered in the new regional association is regulated by Article 22 of CFA Regulations on the Status and Transfer of Players. According to the latter, a player can only be provisionally registered in the exhaustive case where there is no response from the former regional association within 15 days from the day the transfer request was made by the new regional association. As it occurs in FIFA, such provisional registration can be made permanent after the lapse of one year. For the sake of clarity, a player will be registered (including the provisional one) if there is an agreement between regional associations or in case the former regional association remains silent to an ITC request. However, if there is a negative response in that regard, meaning there is an employment-related dispute, the CFA will not complete the registration until such dispute is officially resolved:

¹³ CFA Rules of Status and Transfer of Players (2015).

“If the new association does not receive a response to the Transfer Certificate request within 15 days of the Transfer Certificate request being made, it shall immediately register the professional with the new club on a provisional basis upon the affirmation of the CFA. A provisional registration shall become permanent and official one year after the Transfer Certificate request. The provisional registration may be withdrawn, if, during this one-year period, the former regional association presents valid reasons explaining why it did not respond to the Transfer Certificate request and such explanations are finally accepted by the CFA”.

Therefore, provisional registration of a player may be only allowed under Article 22 of Status and Transfer of Players provided the conditions under the above-mentioned Article 22 of Status and Transfer of Players are fulfilled (i.e. transfer request without any subsequent response) .

5. *Disciplinary Bodies*

5.1 *Referees*

As it happens in FIFA and in the great majority of national and continental football jurisdictions, in the CFA competitions, the referees are the authority who may impose the relevant sanctions via the decisions they take during the games. Their reports are crucial for any further proceedings that may commence before the CFA Disciplinary Committee. Their decisions are final and binding and cannot be modified (Article 88 CFA DC).

5.2 *Judicial bodies*

On the other hand, CFA DC, in its article 94 clearly defines the judicial bodies that are in charge of rendering the disciplinary decisions within the CFA and their respective area of jurisdiction. The judicial bodies can be divided attending on their instance, being the Disciplinary Committee, as CFA first instance disciplinary body and the CFA Arbitration Committee, which has the function of an appellate body when it comes to disciplinary matters.¹⁴

In addition to them, a third disciplinary body, the Ethics Committee was established in 2015 and shall become operational in the near future.

¹⁴ The CFA Arbitration Committee not only has competences within the disciplinary system but it is also the body in charge of acting as an internal dispute resolution body in those matters concerning employment disputes, registrations, transfers, qualification for games and/or competitions and disputes regarding intermediaries, among others, having also therefore, similar functions to the FIFA DRC, but at a national level.

5.2.1 *Disciplinary Committee (First Instance)*

The Disciplinary Committee, as first instance hearing body in disciplinary matters. Its jurisdiction is defined in article 3 of the CFA DC. As such, it was given a lot of discretionary powers regarding the imposition of pertinent sanctions depending on the circumstances. As per the rules established in the CFA DC, the Disciplinary Committee is authorised to sanction any breach of the CFA Regulations which does not come under the jurisdiction of any other body.

In order to facilitate the work of the CFA Disciplinary Committee, the CFA DC additionally authorises the regional associations to establish their own disciplinary committees to handle the violations occurred during regional matches, while the Disciplinary Committee reserves the right to be informed and record any and all regional cases.

5.2.2 *CFA Arbitration Committee (Appeals body)*

As a disciplinary appeals body, the CFA Arbitration Committee is the body responsible for deciding appeals against any of the decisions rendered by the Disciplinary Committee that are not considered by the CFA Regulations as final and binding or referable to another body (Article 94.2 CFA DC). Although the CFA Arbitration Committee has its own regulations, they do not specify the powers and functions of the CFA Arbitration Committee.

6. *Infringements*

The infringements and violations regulated by the CFA DC, although quite similar to the ones regulated under FIFA DC, have some differences. They can be categorised as follows:

6.1 *Rules of the game*

6.1.1 *Minor infringements*

When a player commits one of the following actions, the referee has the obligation to caution such player by means of a yellow card:

- a) unsporting behaviour;
- b) dissent by word or action;
- c) persistent infringement of the Laws of the Game;
- d) delaying the restart of play;
- e) failure to retreat the required distance when play is restarted with a
- f) corner kick, free kick or throw-in;
- g) entering or re-entering the field of play without the referee's permission;
and
- h) deliberately leaving the field of play without the referee's permission.

6.1.2 *Serious infringements*

On the other hand, in cases where a player commits a more severe offence during the game, he is subject to the likely possibility of being sent off by means of a red card if he commits any of the following offences:

- a) serious foul play;
- b) violent conduct;
- c) spitting at an opponent or any other person;
- d) denying the opposing team a goal or an obvious goal-scoring opportunity by deliberately handling the ball (this does not apply to a goalkeeper within his own penalty area);
- e) denying an obvious goal-scoring opportunity to an opponent moving towards the player's goal by an offence punishable by a free kick or a penalty kick;
- f) using offensive, insulting or abusive language and/or gestures.

6.2 *Disorderliness at matches and competitions*

6.2.1 *Misconduct against opponents, officials or persons other than match*

In this line, when a player or official member of CFA commits a disorderly conduct during a match against any of the opponents, officials or other persons, may be automatically suspended for the subsequent match. In addition to that, any person receiving a red card shall be automatically suspended for:

- a) at least one match for serious foul play;
- b) at least two matches and a minimum fine of at least 10,000 Renminbis (RMB) for unsporting conduct towards an opponent or a person other than a match official;
- c) at least three matches and a minimum fine of at least 15,000 RMB for assaulting an opponent or person other than a match official. In case there is any special harm, the sanction will be of at least five matches and a minimum fine of 25,000 RMB.
- d) at least four games and a minimum fine of 20,000 RMB for spitting at an opponent or a person other than a match official.

6.2.2 *Brawl and unidentified aggressors*

Sometimes, during football matches, there are situations where numerous players, officials, etc. are involved in a brawl or a similar situation that put not only the physical integrity of its participants, but also prejudices the image and reputation of the CFA competitions in danger.

Thus, the CFA Disciplinary Committee has discretion to impose a suspension of six matches and a fine of at least 30,000 RMB on any player or official involved in a brawl. The CFA Disciplinary Committee will sanction such

infringements whether it has been committed prior, during or after the conclusion of the match.

In connection to that, in situations where there are several people involved, the club and/or association will be subject to potential sanctions such as fines, deduction of points or any other sanction that the Disciplinary Committee may find appropriate depending on the circumstances.

If, in case of violence, it is impossible to identify the perpetrator(s), the body will sanction the hosting club or association. However, in the final event the aggressors are finally identified, the sanction may be reduced or even cancelled.

If it is eventually impossible to identify the perpetrator(s), the Disciplinary Committee will sanction all people that were involved without evaluating the degree of fault.

6.2.3 Team misconduct and inciting hatred and violence

When several players or officials from the same team threaten or harass match officials or other persons either before, during or after the game, they may be subject to a fine of at least 10,000 RMB. Furthermore, additional and harsher sanctions may be imposed in the case of serious offences.

On the other hand, when it comes to cases where a player or club official publicly incites others to hatred or violence, it is likely that the Disciplinary Committee will apply punishment, sanctioning the concerning party with match suspension for no less than twelve months and with a minimum fine of at least 100,000 RMB.

In serious cases, in particular when committed using mass media or if it takes place on a match day in or around the stadium, the match suspension will be of eighteen months and a fine of at least 100,000 RMB. Likewise, anyone who provokes the general public during a match will be suspended for two matches and a minimum fine of 10,000 RMB.

6.2.4 Ineligibility, unplayed match and abandonment

There have been given different incidents throughout the history of the CFA competitions, where clubs and associations have committed certain errors or have used different strategies in order to obtain advantage over other clubs or undertaken with other objectives.

In situations where a player takes part in a match despite being declared ineligible, his team will be sanctioned by forfeiting the match and paying a minimum fine of 30,000 RMB.

The CFA extensively regulates the delay and abandonment of matches, since both are common practices that tend to occur regularly in CFA competitions.¹⁵ Article 62 CFA DC defines a delay as when a game starts at least five minutes

¹⁵ ZHENG LU, 'Study on China Football Association Disciplinary Punishment System', vol.27, 2010.

after the supposed kick-off and abandonment, when such delay surpasses five minutes. The sanctions can be: fines, forfeit of the game, deduction of points, transfer ban or any other sanction the Disciplinary Committee may deem appropriate.

In addition, Article 63 CFA DC sanctions those situations in which a club terminates the match prior the official ending of the match. Such behaviours have been practiced by some clubs as a protest or complaint against the CFA under different circumstances. The sanctions may vary from fines, forfeit the match to transfer ban. Finally, Article 64 CFA DC regulates those situations where a club abandons a competition. The consequences are the same as the ones established in article 63 CFA DC.

6.3 *Offensive and discriminatory behaviour and infringements of personal freedom*

The CFA DC does not provide a specific rule regarding offensive behaviour of discrimination. In case an action related to such sort of violent or offensive behaviour is considered to be sanctioned, it would fall under the scope of the “Rules of the game” discussed *above*. As a matter of fact, discriminatory behaviour is not common in Chinese stadiums, but when these situations have occurred, no sanctions have been imposed so far.

As an example, in 2015, the professional player Gao Lin, after having been provoked by spectators during the entire match, made a bad gesture by means of which he was pretending to “slap the face” of the said spectators after scoring a goal. As a result, the CFA in order to demonstrate the strict regulation over players conduct on the pitch, imposed a suspension of five games in the Chinese Super League and a fine of 25,000 RMB on the player according to Article 60 and 55 CFA DC.¹⁶

Likewise, the Disciplinary Committee will impose the corresponding sanctions with a minimum fine of RMB 6,000 and a match suspension on those who undertake any act of violence, threatens to use violence or puts pressure on a match official to take certain actions or impedes him from freely carry out his duties and responsibilities.

In case of a criminal offence, the offender will be additionally subject to the jurisdiction of Chinese national laws.

6.4 *Liability for declarations*

In line with the above, players, officials and any member of a club or regional association will also be sanctioned for any improper comment that might harm the

¹⁶ Disciplinary Committee Decision Concerning the Sanction on the Infringement of Gao Lin from Guangzhou Evergrande (2015), www.fa.org.cn/bulletin/punish/2015-07-24/480214.html.

image or reputation of any competition held by CFA, as well as any comment that might cause a risky situation.

The sanctions may go from mere warnings or fines to tougher and more severe sanctions such as suspensions or stadium bans. The Disciplinary Committee is entitled to impose further penalties on clubs if they consider such comments were made on behalf of the club.

6.5 *Forgery and falsification*

In the past, the CFA faced several cases related to forgery and falsification, specifically involving players or clubs officials, submitting false documentation in respect of the age of players. For that reason, nowadays the CFA has implemented in its CFA DC new regulations focusing on issues regarding false documentation.

For example, the most notorious events happened in CFA competitions in this regard are those in which clubs or third parties have attempted to lie about the age of some players in order to be able to field older and more experienced players during the games. Equally, clubs have also occasionally fielded players, who were not registered with their clubs, in order to obtain better results in certain matches and/or competitions.

Concerning breaches of such nature, the CFA Disciplinary Committee may impose sanctions according to the seriousness of the offence:

- a) Players will be subject to: (i) a public reprimand (such as announcing on the public media a negative statement of the infraction committed), (ii) suspension, (iii) a limitation on his transfer, (iv) prohibited to be transferred or (v) even have cancelled his registration within the CFA or regional association;
- b) Clubs will be fined with at least 5,000 RMB for each forgery and if the fine reaches 15,000 RMB, then the club will be banned from taking part in any match for that season.
- c) For other categories of forgery, individuals would be subject to different sanctions such as public reprimands, warnings, fines, suspensions, transfer limitations/prohibitions, or even registration cancellation within the CFA or regional association. In the most serious cases, the sanctions would be a ban from any football related activity;
- d) Clubs will receive similar sanctions and additionally, deduction of points and relegation.

The CFA further indicates that all the *above* sanctions could be imposed both separately or combined. Therefore, the Disciplinary Committee has the discretion to impose the more serious penalty on any club or individual that attempt to commit any of those infringements, especially due to the fact the whole country is striving for the healthy development at the grassroots level and forgery has been a perennial problem in the Chinese sports industry.

6.6 Corruption

Another problematic issue to which the CFA pays special attention is corruption. Following the high number of match-fixing cases and corruption that took place around 2003, the CFA subsequently introduced within its regulations provisions to sportingly and economically sanction parties, involved in match-fixing.

The CFA DC, for instance, sanctions anyone who offers, promises or grants an unjustified advantage to a body of CFA, a match official, a player or an official, on behalf of himself or a third party in an attempt to instigate such a body or individual to violate the regulations of CFA, or FIFA. These sanctions can include fines, deduction of points, relegation to a lower division, cancellation of registration of players and clubs, as the case maybe, for a temporary or permanent basis depending on the circumstances. Furthermore, other sanctions such as transfer bans, ban on any football related activity can be imposed.

In cases related to passive corruption (soliciting, being promised or accepting an unjustified advantage), the parties involved will be sanctioned in similar manner. In serious cases and in presence of repeated offenders, lifetime bans may be imposed on taking part in any football-related activities.

Important to mention, that those cases in which corruption takes place, criminal proceedings may be also be initiated and applied on those parties.

6.7 Doping

As in every sport, doping is strictly prohibited. Any violation of anti-doping rules are defined and sanctioned in the relevant regulations of the General Administration which follow provisions established by the FIFA Anti-Doping Regulations. Like the FIFA Anti-Doping Regulations, the General Administration has separate rules to regulate the infringements related to doping and which non-compliance would lead to the imposition of sanctions in accordance with the CFA DC. The regulations applied are PRC Sports Law,¹⁷ National Administrative Regulation on Athletes and Regulations Concerning Strict Prohibition of the Use of Stimulants in Sports Activities¹⁸ which follow the same standards applied by WADA.

6.8 Fair Play

Violations of fair play are considered a serious offence by the CFA. Unethical practices and serious violation of the principle of fair play are sanctioned under Article 71 of the CFA DC. In China, the so-called “multi-ownership of clubs” are of grave concern as one person or entity may entirely or partially own more than one club creating a conflict of interest and creating a dangerous situation in the concerning competition.

In this respect, the Disciplinary Committee has discretionary power to sanction violators of principle of fair play and conflict of interests due to ownership

of more than one club. Sanctions can vary from case to case. They might be cancellation of the match results, de-registration of the clubs and any other sanction considered as appropriate by the Disciplinary Committee.

For unethical practices¹⁹ against fair play in order to achieve unlawful advantages in the matches among other aspects, natural persons may be fined or banned from any football-related activities, while legal persons will be imposed deduction of points, relegation or cancellation of registration. All these sanctions can be combined and offenders may also suffer criminal charges before the ordinary courts.

7. *Responsibility of associations, clubs and players*

7.1 *Responsibility of Regional Associations*

In general, regional associations are responsible for the organization of football activities at their level.

At national level, the so-called “National Regulations over Safety and Order in Game Areas”, establish the minimum safety standards that have to be fulfilled for every sporting event, the infringements and the corresponding sanctions.

In this context, when a club or a regional association has the intention of organising a game, it has to comply with minimum requirements as per article 82 CFA DC. First of all, as it is common in football, prior to hosting a match, it is necessary to request the regional authorities for the approval and support during the event so as to ensure the safety of all clubs, players, officers, or spectators for example, including the arrangements made for training and transportations.

Moreover, the safety of the parties involved needs to be secured also before and after the games, including not only the security in the stadium but also of its surroundings. In case there might be any potential risk, it is mandatory to immediately report to CFA since otherwise, CFA would impose the pertinent sanctions.

7.2 *Liability for Spectator Conduct and Other Obligations*

Spectators are difficult to manage, and consequently, and, as a consequence, many clubs and associations struggle to control them. Sanctions may be imposed pursuant

¹⁷ Sports Law of People’s Republic of China (1995, amended in 2016).

¹⁸ Regulations Concerning Strict Prohibition of the Use of Stimulants in Sports Activities (1998).

¹⁹ As unethical behaviour would be categorized certain infringements that have occurred in the last few years, such as when the general manager (special position in Chinese national team) of the national team offered some clubs to have some of their players in the national team in exchange of money, so those clubs could increase the value of those players. Such person, Wei Shaohui was sent to prison as a consequence thereof. Another unethical behaviour is when the president or member of a club influences the movement of players within his club in order to gain economic benefits for his own.

to articles 83 and 84 of the CFA DC for certain spectator conduct. In particular, clubs and regional associations are responsible for imposing the corresponding sanctions over clubs and spectators in those cases where the spectators commit an infringement of the regulations, regardless of the degree of fault or negligence.

Regarding clubs, they are considered responsible for the conduct of their own supporters. Punishable conducts includes violations by spectators using illegal objects such as the use of flares, pointer lights, unlawful banners, as well as any other act that may interrupt or affect the normal running of the games.

The CFA establishes a specific limitation to the fines that may be imposed by the Disciplinary Committee in the CSL and CFA Cup. For instance, such fines cannot surpass the profit that the club or regional association may make from the relevant CSL match or CFA Cup match, unless the infraction reaches a degree of severe nature. If regional associations cannot guarantee the order and security of the games under Articles 82.3 and 82.4 of the CFA DC, the Disciplinary Committee may impose extra sanctions such as matches behind closed doors or matches held in neutral stadiums. This Committee may, at its discretion, impose any further sanction deemed appropriate in order to grant of security.

8. *Procedures*

In respect to the procedures carried out by the disciplinary bodies of the CFA, they follow a quite similar path as the ones of FIFA. The following provisions can be highlighted:

8.1 *General provisions regarding disciplinary procedures of CFA*

8.1.1 *Right to be heard*

The CFA Disciplinary Committee consists of one chairman, several deputy chairmen and other members. Decisions for ordinary violations will be decided by the members of the Disciplinary Committee. The Chairman has the right to hold hearings for the purpose of making decisions for severe violations. All parties shall file written reports, including game supervisors, referee or referee supervisors, game division committees, member associations and clubs within 24 hours after disciplinary violation was committed. According to Article 71 of the CFA DC, the Disciplinary Committee has to issue a decision within 24 to 72 hours from the alleged violation. The Disciplinary Committee may still proceed to impose the pertinent disciplinary violations with the information at hand if the parties fail to submit their reports in a timely manner. For complicated cases or under special circumstances, decisions can be delayed under the condition that a provisional measure may be taken and reasons for such delay must be notified to the parties.

8.1.2 *Proof and evaluation of proof*

When it comes to the production of proofs before the CFA disciplinary bodies, as it happens in FIFA, the parties are not be subject to limitation. Thus, any type of evidence may be produced. However, any evidence that violates human dignity or does not serve to establish relevant facts will be rejected by the concerning body.

Regarding the reports submitted by the referees after matches, CFA bodies will always consider its content accurate. Nevertheless, if a party demonstrates, by means of photos or videos for example, that there was an error committed by the referee during the game, the CFA disciplinary bodies will take such evidence as valid and thus, will reduce or cancel the potential sanction derived from such supposed infringement. However, in accordance with FIFA rules, the decisions taken by the referees will be never altered during the games.

In this line, the Disciplinary Committee, following the principle of preponderance of the evidence, has total discretion with regard to the admission of evidence and regarding the evidence itself as per Article 87 and 88 CFA DC, respectively.

8.1.3 *Representation in proceedings and miscellaneous*

In every disciplinary proceeding, the CFA DC provides the parties with the possibility of representation by one or two legal representatives, giving discretion to the parties to choose their own representation.

In some occasions, it might happen that a body commits an error, for example when calculating the time of sanction or a fine imposed to a party. In such cases the disciplinary bodies, according to CFA DC, are able to rectify any mistake or any other obvious error at any time.

The decisions passed by the disciplinary bodies, come into force as from the moment they are notified to the parties following article 93 of the CFA DC. Consequently, the parties have to comply with the decisions imposed by the disciplinary bodies.

8.2 *Procedures of the CFA Disciplinary Committee*

The procedural guidelines regarding the CFA Disciplinary Committee are regulated in Article 89 of the CFA DC and its main provisions can be divided as follows:

8.2.1 *Commencement of proceedings, investigation and decision*

The disciplinary infringements, as a general rule, are prosecuted *ex officio* by the CFA bodies, being mandatory for the match officials to report any infringement that might be categorised as such by the CFA DC. However, if a party becomes aware of the commission of an action that might be categorised as an infringement

under the CFA regulations, the CFA DC provides the right to any person or body to report in writing any of those conducts.

The secretariat carries out the necessary investigation *ex officio* and the parties are obliged to cooperate to determine the facts. If the parties fail to cooperate, sanctions may be aggravated.

The decisions of the Disciplinary Committee are passed with brief grounds, merely explaining the reasons of the sanctions imposed. As contrary to FIFA proceedings, there is not possibility to request the grounds of such decision, but only to appeal against it before the CFA Arbitration Committee.

8.3 *Procedures before the CFA Arbitration Committee (Appeals body)*

The CFA DC clearly states that any appeal against a decision of the Disciplinary Committee shall be made before the CFA Arbitration Committee. The provisions applicable in this respect are established in Articles 94 of the CFA DC, together with the concerning articles established in a separate regulation called “Working Regulations of CFA Arbitration Committee”.

The decision of the CFA Arbitration Commission will be final and consequently there is no possibility to appeal such decision to CAS or any other similar body.

8.3.1 *Contestable decisions*

In order to avoid the abuse of the right to appeal, the CFA DC specifically defines which matters are subject to appeal before the CFA Arbitration Committee, and are limited to the following ones:

- a) Decisions of the Disciplinary Committee that are allowed by the CFA DC to be appealed to the CFA Arbitration Committee.
- b) Disputes between regional associations, clubs, players, coaches and agents with regard to registration matters, transfers or employment related-disputes or any other matter that falls under the scope of the CFA.
- c) Other disputes accepted by the CFA Arbitration Committee.

8.3.2 *Time limit for appeal and effects of appeal and continuation of the proceedings*

When a party has been notified of a disciplinary decision by the CFA Disciplinary Committee and has the intention to file an appeal in order to challenge such decision, the appeal has to be filed before the CFA Arbitration Committee within seven days upon the notification of the decision by the Disciplinary Committee. Reasons for the appeal shall be given together with the application for appeal.

An appeal will consist of a review of the decisions imposed by the Disciplinary Committee and cannot be made to prohibit any person or body to pay a sum of money.

9. *Sanctions*

9.1 *Sanctions imposed by CFA Disciplinary Committee*

Similar to Section 2 Chapter 1 of the FIFA DC, CFA DC sanctions are also divided into 3 categories ranging from Article 9 to 37 of Section 2 Chapter 2. Sanctions vary depending on whether they are applicable to natural or legal persons or to both. Nevertheless, while both FIFA and CFA has the authority to impose warning, reprimand, fines, return of awards on both natural and legal persons, CFA DC regulated more measures in the category of sanctions against legal entities and sanctions impossible on both natural/legal persons. Also, it should be noted that CFA DC mentions “other sanctions that the Disciplinary Committee may find appropriate” in the last paragraph in each category as miscellaneous provisions.

9.2 *Sanctions applicable to natural and legal persons*

To be more specific, as FIFA only listed four sanctions applicable to both natural and legal persons, there are two extra optional sanctions as set out in the CFA DC, namely transfer ban, expulsion and ban on taking part in any football-related activity. For example, transfer ban may be imposed if a player attempts to bribe CFA officers, commit match-fixing or fakes his/her age (sometimes player forges his/her I.D certificate to a younger age in order to participate lower-age match).

Furthermore, unlike the rules in FIFA DC, ban on taking part in part in any football-related activity can also be imposed on legal persons from activities involving but not limited to investment, management, gaming or others (see Article 24). However, the CFA DC did not make a clear definition about the circumstances under which such sanctions may be imposed.

9.3 *Sanctions applicable to legal persons*

Since CFA limits quota for both Chinese and foreign players of Super League and China League every year, restrictions on the quota is listed as one of the sanctions applicable to legal persons.

9.4 *Nature of sanction*

Sanctions awarded by the Disciplinary Committee may be applicable to either one single competition or to different competitions organised by the CFA. For example, a sanction on a player could be either limited to the league only (e.g. CSL, China League One, etc.), or imposed to all competitions administrated by the CFA. All relevant factors of the sanctioned party, including age, disciplinary record, intention, the nature of the violation, the degree of violation as well as admission of wrongdoing, shall be considered when the sanction is decided and subsequently imposed.

9.4.1 *Combined sanction and suspension of the sanction*

The sanctions provided in the general part and in the special part, unless otherwise specified, may be combined according to article 38 CFA DC.

CFA has the option, under Article 39 CFA DC, to partially suspend some of the sanctions under certain circumstances. The only sanctions that may be partially suspended are: stadium ban, match without spectators, match played on neutral territory or match played in another stadium. Additionally, such partial suspension may only be granted if:

- (1) The potential period of sanction is no longer than six games or six months;
- (2) The suspension has to be practical according to the given circumstances of each case;
- (3) In those cases where such party has not been previously sanctioned.

Under no circumstances can the Disciplinary Committee entirely suspend a sanction. When half or more of the sanction has been served, the sanction can be partially suspended. When a sanction is partially suspended, a probationary period will be imposed on that party for a period between two matches to two years, during which time any subsequent violation of the rules will mean the probation period to be automatically cancelled and the sanctions to be jointly implemented along with new sanctions. Nonetheless, those partial suspensions do not apply to doping sanctions.

During the time periods in which there are no competitions (e.g. transfer windows) the sanctions may be interrupted, according to article 49 CFA DC.

9.4.2 *Mitigation/Aggravation of sanction*

CFA DC recognises certain factors that might be considered as mitigating or aggravating factors before issuing a final decision.

Factors such as the immediate behaviour of the sanctioned party after the violation has been committed would be indispensable in deciding the sanction. For example, it is generally taken into consideration if the sanctioned party publicly expresses its regret for the action committed, and subsequently, endeavour to remedy such misbehavior, if possible, in order to avoid more severe consequences. While, on the contrary, when a violation takes place in the following situations, the sanction may be aggravated:

- (1) it is a repeated violation;
- (2) the violation is of a severe nature;
- (3) the sanctioned party retaliates on the witness or any of the parties that have imposed the sanction;
- (4) the sanctioned party provides false or erroneous information in purpose under the investigation phase so as to prevent the imposition of the sanction;
- (5) if due to the nature of the concerning sanction, the sanctioned party is also punished by non-sporting courts.

9.4.3 Limitation period

As per Article 50 CFA DC, infringements committed during a match may no longer be prosecuted after a lapse of two years commencing from the commission of the said violation. However, when forgery, threats, corruption, doping, or other severe violations of fair play take place that may harm the integrity of the competition, the Disciplinary Committee has the right to initiate investigations and impose the appropriate sanctions at any time in order to prevent any violation of the integrity of the competition with no limits in time.

Article 51 CFA DC, regulate the duration of such limits. Generally, the time frame starts from the day on which the offender committed the violation.

However, if the violation is recurrent, the date on which the last offense was committed is relevant and in those cases where the violation was committed during a certain period of time, it starts counting from the day it ended.

Furthermore, certain severe infractions, such as bribery and match-fixing, will not only be sanctioned as per the sporting and economic punishments established in the CFA DC for those infringements, but, if required, will also be judged by the national courts. Indeed, criminal charges may be brought and resulting sanctions, such as administrative fines or prison, depending on the severity of the infringement, may be imposed.

The limitation period for the enforcement of sanctions is five years, starting on the day when the decision comes into force (Article 41 CFA DC).

As an example of the *above*, in the 2000s there was a national scandal, which was reported and investigated after 2010, involving several famous Chinese clubs. The former vice-president of CFA, the Chairman and the Department Directors of the Football Administration Centre, and other officers, professionals, and clubs were reported to have been involved in match-fixing.

With the arrest of the leading instigators from within CFA and other supervising institutions, more similar cases of fraud were found and exposed. All officers, referees, players and other professional involved were sentenced and sent to prison.

10. *Enforcement rules and failure to comply with CFA decisions*

When there is a failure to comply with one its decisions, the CFA can impose certain measures on its members, with the main purpose to request the parties to comply with decisions of authorities with the highest efficiency. The measures set out by the CFA DC, are simpler than the ones regulated by FIFA.

As stated in article 75 of the CFA DC and following the standards of FIFA, anyone who fails to comply with a decision passed by the CFA, even though instructed to do so by a body, a committee or an instance of FIFA, AFC or a subsequent CAS appeal decision, or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA, AFC or by CAS (subsequent appeal decision) will be:

- a) fined for failing to comply with a decision;
- b) suspended from competition or league;
- c) subject to a deduction of transfer quotas,²⁰
- d) subject to a deduction of points or even cancellation of registration from a competition,
- e) other sanction that the Disciplinary Committee may find appropriate.

Moreover, before being registered for a CFA competition, clubs are obliged to give to the CFA a deposit to anticipate possible sanctions imposed on them by the Disciplinary Committee and which would not be complied with. The CFA will consequently take the corresponding part of that deposit to pay the fine.

The CFA DC defines specific measures that apply as well to the regional associations when they fail to comply with their obligations, and which are set out in its Article 85.

In the event an association fails to fulfil its obligations, the Disciplinary Committee will impose, as minimum sanction, a fine according to the circumstances of the infringement. In case the infringement is of a severe nature, specifically, infringing the safety measures that need to be respected so as to guarantee the safety of the games, there might be imposed further sanctions such as stadium ban or ordering a club to play on a neutral ground.

The CFA may reserve its right to pronounce certain measures for safety reasons, even if no infringement has been committed. For instance, the CFA may order to play certain games in a different venue if it may consider there is a potential risk for holding the game.

By means of such mechanism, the CFA assures to solve such situations efficiently and rapidly since the fine would be paid in a short period of time, not incurring further complexity which may harm the efficiency of the process of sanction.

11. Conclusions

The CFA DC attempts to harmonize the domestic regulations with the FIFA ones. Certain aspects of the CFA DC had to accommodate the specificities of Sports law of China and other domestic laws in order to avoid any conflict of laws in order to avoid any conflict of laws.

However, certain key issues still need to be addressed and rectified, especially with regard to the calculation of compensation, which needs to be aligned to the international standards. The domestic lawmakers have to recognise that compensation is a way of deterring offenders to repeat their offences. If any

²⁰ In China, there is a foreign quota with regard to the number of foreign players that can be registered within a football club. For example, within the China Super League, after the new amendment carried out by the CFA in beginning of 2017, clubs are allowed to have four foreign players registered but only field three of them at the same time during a game. Thus, according to the sanction of article 75. c) CFA DC, a club may face a deduction on its foreign quota during one season or half season, depending on the severity of the infringement.

leniency is shown then the offenders will not hesitate to violate the rules repeatedly, which will be harmful for the development and management of football.

As a result of a separate budget being allocated for CFA by the government, it makes it financially independent. Allowing investment from the public in terms of ownership of football clubs and sponsoring competitions allows revenue generation and investment into the sport by the public enabling development of football from grassroots level upwards to the top tier professional level.

Another issue which needs to be addressed is regarding transfer certificates for domestic transfers. Under Article 18.3 of the CFA Status and transfers of Players regulations a transfer certificate cannot be issued until and unless the former club agrees to issue it. This is in order to comply with Chinese laws which requires mutual consent of both parties for a player to be registered with a new club. New provisions on provisional transfers should be introduced so as to allow professional footballers to request their trade.

CFA DC for the first time provides for a level playing field as far as regulations are concerned. They are applicable to affiliated clubs, regional bodies, players, and so on.

There are many positive aspects to be taken from the CFA DC. The DC has incorporated most of the guidelines given by FIFA for a national association into the DC. It has followed the guidelines regarding the rules and as well as the sanctions given in case of breach of any of the regulations. It is a step in the right direction for managing football in an efficient, effective, well-structured and professionally manner whereas previously it was completely managed by bureaucrats with little or no experience in running a sporting body.

The CFA has made significant progress in making the organisation and management of football in China more professional. Measures taken to depoliticize the CFA, to reduce the interference of the government and making the CFA an independent sporting governing body has been well received as it will improve the management and governance of football in China.

The CFA DC may have its shortcomings but it is definitely a positive start to regulate football in China where sport has a spill over effect on other economic fields. The CFA regulations will definitely help and ensure better management of the football activity sport. The CFA has done commendable work in implementing many of the FIFA guidelines and regulations and tried to incorporate international best practice methods to its domestic regulations.

DISCIPLINARY PROCEDURES IN CROATIAN FOOTBALL

by *Vanja Smokvina**

1. *Introduction*

Sport is by far the best known Croatian product worldwide.¹ It was, and still is a part of the national pride, while sports activities are defined as activities of paramount importance to the State.²

As it also the case in other parts of Europe, sport is an integrated part of the society. Furthermore, since the Republic of Croatia (hereinafter “Croatia”) is a rather ‘young state’, sport and athletes (sports persons) play an important role in representing and promoting Croatia worldwide.³

In this paper there is given a short description of the disciplinary proceedings in Croatian Football, with all its specificities.

2. *The Croatian Football Federation*

The *Croatian Football Federation* (hereinafter: “CFF” or “Federation”), according to Articles 1 and 2 of its Statute, derives its existence from the Croatian sports federation in Zagreb founded in 1912 as the only national sports federation with the aim of encouraging, supporting and protecting Croatian football and its national teams, and representing Croatian football

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Website of the relevant disciplinary regulations of the Croatian Football Federation (in Croatian), available at: <http://hns-cff.hr/hns/propisi-i-dokumenti/> and http://hns-cff.hr/files/documents/8316/Disciplinski%20pravilnik%202016_20052016.pdf.

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¹ H. KAČER, ‘Uvod i osobe u športu’, in (*Uvod u) športsko pravo*, Crnić Ivica et al., Zagreb, Inženjerski biro, 2009, 4-5.

² Sports Act (*Zakon o sportu*), Official Gazette of the Republic of Croatia No. 71/06, 150/08, 124/10, 124/11, 86/12, 94/13, 85/15, 19/16.

³ V. SMOKVINA, *Sports Law in Croatia*, Alphen aan den Rijn, Wolters Kluwer, 2017, 15.

internationally.⁴ The CFF is a non-profit legal entity, registered with the Register of Associations of the Republic of Croatia maintained by the City of Zagreb Office for General Administration, the Register of Sports Activities maintained by the City Office for Education, Culture and Sports, and the Register of Non-Profit Organizations maintained by the Ministry of Finance of the Republic of Croatia (CFF Statute, Article 3). The Federation is represented by its President and Executive Director. In case of the Federation's President and Executive Director being absent or prevented, the Federation shall be represented also by the Federation's Secretary (CFF Statute, Article 7).

Regarding its objectives and activities, it should be highlighted that the activities through which the CFF accomplishes its objectives, according to the CFF Statute Article 12(2-3) are:

- a) *organizing and implementing competitions' system,*
- b) *making arrangements concerning the registration of players and clubs, status of football players and other official persons, disciplinary accountability of players and other football officials,*
- c) *making arrangements concerning the determination of conditions which football clubs should fulfil for conducting football activities,*
- d) *fostering professional work and training professional staff, fostering sport achievements and taking care of top sportsmen,*
- e) *organizing football matches for national teams of the Republic of Croatia,*
- f) *continuously improving football and promoting it in conformity with the principles of Fair Play,*
- g) *maintaining international sporting relations associated with football in all its aspects,*
- h) *providing sources of funds for financing of football,*
- i) *performing tasks from the National sports programme and participating in planning and implementation of the Annual programme of the implementation thereof,*
- j) *participating in planning and implementing of annual programmes of public necessities in sports,*
- k) *developing grassroots football and coordinating all activities and subjects related to the football program,*
- l) *promoting and enforcing anti-doping control and activities related to prevention of doping and substances abuse, and prohibited procedures in sports activities and competitions of the Federation, in accordance with the World Anti-Doping Code,*
- m) *managing sports facilities,*
- n) *performing other jobs and activities stipulated by law, Statutes and regulations of the Federation.*

In order to accomplish the objectives stated herein, the Federation co-operates with national administrative bodies, regional and local

⁴ CFF Statute, http://hns-cff.hr/files/documents/2384/HNS%20Statutes%202016_eng.pdf (28 May 2017).

self-government bodies, higher education institutions, schools and other educational institutions, and with corresponding scientific institutions.

The Federation shall encourage friendly relations among its members, clubs, players, coaches, referees and other members of football. Each person and organization involved in football is obliged to respect these Statutes, regulations and principles of Fair Play (CFF Statutes, Article 15).

According to the Articles 17 and 18 of the CFF Statutes, Members of the Federation are 20 football associations in counties, the football association of the City of Zagreb and football clubs. Members of the Federation may be football-related professional players' associations and the same sport-related athletes' associations, and other sports associations organized in accordance with the provisions of the Sports Act, provided that the Federation takes a decision thereof. Football clubs and football associations of cities are indirect members of the Federation through membership in county football associations and football association of the City of Zagreb. Football clubs and other legal entities, players, coaches, referees and other football officials act in county football associations according to their registered domicile or residence.

The bodies of the CFF (Article 35 of the CFF Statute) are the Assembly, the Executive Committee, the President and the legal bodies. The Federation's Assembly is the supreme controlling body of the Federation which passes the Federation's Statutes and other by-laws within its power in compliance with these Statutes. The Executive Committee is the Federation's supreme executive body. The President of the Federation represents the Federation and chairs the Assembly and meetings of the Executive Committee. The legal bodies are: Appeals Committee, Disciplinary Committee, and Committee for Verification of Clubs and Players Registration, Licensing Committee and Club Licensing Appeals Body. The Executive Director is responsible for the organisation and management of the Federation's affairs, and other activities of the Federation, which do not fall within the powers of any other Federation's body. Standing and ad-hoc committees are the Executive Committee's working bodies advising and assisting the Executive Committee in performing its duties. The rules of procedure of the Executive Committee and its bodies lay down the responsibilities of individual committees, the number of members and their decision-making processes. The Federation's Office is a professional service responsible for the Federation's administrative and support affairs. The Federation's Office is headed by the Federation's Secretary. The Federation's bodies and persons elected to offices referred to in this Article are elected or appointed by the Federation itself, without external influences, and in compliance with the procedures described in these Statutes and implementing regulations.

According to the Article 47 of the CFF Statutes, there is also the Emergency Committee which consists of the Federation's Executive Committee's President, all Vice-Presidents of the Federation, and Executive Director. The Federation's Secretary participates in the work of the Emergency Committee but has no right to make decisions. Other persons responsible for a

particular field of the Federation's activities may also participate in the work of the Emergency Committee. In the event of a tied vote, the President of the Executive Committee shall have a casting vote. The Emergency Committee convenes meetings and makes decisions between two meetings of the Executive Committee and deals with all matters falling within the powers of the Executive Committee, with the exception of those specified in paragraph 3 of Article 45 of the Statutes. By way of exception, if necessary, the Emergency Committee may amend regulations falling within the powers of the Executive Committee, such amendments to be ratified by the Executive Committee at its next meeting.

The Executive Committee may establish standing and interim working bodies. The Executive Committee may establish bodies that will operate in the area of several County football associations. The decision establishing working bodies for several football associations in Counties prescribes their tasks and place of operation. The Standing working bodies of the Executive Committee are: the Experts Committee, the Competitions Committee, the Finance Committee, the Internal Audit Committee the Marketing Committee, the International Committee, the Youth Committee, the Futsal and Beach Football Committee, the Publishing Committee, the Medical Committee, the Women's Football Committee, the Stadium Committee, the Regulations Committee, the Football Referees Committee, the Football Coaches Committee, the Veterans' Football Committee and the Committee for Fair Play. The presidents and members of standing working bodies shall be nominated by the Executive Committee, taking care of professional skills of the candidates and equal and even presence of the representatives of all members of the Federation. Members of the Executive Committee may not be members of Internal Audit Committee. The standing working bodies are elected for a period of four years. If the term of office of the Executive Committee ends at an earlier date, so ends the term of office of the standing working bodies. In such a case, standing working bodies will continue to act until new members are elected (CFF Statutes, Articles 48 and 49).

Judicial bodies of the CFF defined by Article 57 are the Disciplinary Committee, the Appeals Committee, Committee for Verification of The Clubs and Players Registrations, Licensing Committee and Licensing Appeals Body. The members of the judicial bodies are appointed by the Executive Committee for a term of office of four years. They may not be members of any other body of the Federation. The President and at least one member of the Appeals Committee and the Disciplinary Committee should have a Bachelor of Laws degree. Legal bodies make decisions by a majority of votes of all their members.

3. *General principles*

According to the CFF Statute Article 11 the 'CFF [is]affiliated to the *Fédération Internationale de Football Association (FIFA)* and the *Union of European Football Associations (UEFA)*'. Its bodies and official persons, members of the

Federation, leagues, clubs, players, coaches, referees, official persons, licensed match agents, licensed players' agents and other football members undertake to:

- a) *comply with the Laws of the Game as laid down by the International Football Association BOARD (IFAB);*
- b) *observe the principles of loyalty, integrity and sportsmanship as an expression of fair play;*
- c) *respect at all times the Statutes, regulations and decisions of FIFA and UEFA;*
- d) *recognize the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland), as specified in the relevant provisions of the FIFA and UEFA Statutes;*
- e) *recognize the jurisdiction of the Federation's Arbitration and the Federation's Court of Arbitration and accordingly refer in the last instance any dispute of national dimension arising from or related to the application of the Statutes or CFF's regulations only to these arbitrations which will settle all disputes to the exclusion of any ordinary court, unless expressly prohibited by the legislation in force in the Republic of Croatia. The Federation shall ensure that these obligations are recognized and accepted.*

The Federation undertakes to participate in competitions organized by FIFA and UEFA and shall pay membership fee as a member of FIFA and UEFA.

The Federation shall not operate for the purpose of gaining profit. If the Federation gains profit through its operation, such profit shall be used exclusively for the implementation and improvement of activities through which the Federation fulfils objectives, as defined herein, in compliance with the law (CFF Statutes, Article 16).

4. *The legal framework*

The Croatian Constitution⁵ is the highest legal act in the legal hierarchy. It entails no provisions on sport, except that it provides in its Article 69(5) that the State shall encourage and support care for physical culture and sports, while Article 135 states that sport lies within the competence of the local administration (municipalities and cities). On the other hand, it should be stressed that the freedom of association is guaranteed to every person as a fundamental right by Article 43 of the Croatian Constitution. On the other hand, although the Croatian Constitution does not entail a specific provision on sport, except the aforementioned two, it should be highlighted that almost every

⁵ Constitution of the Republic of Croatia (Ustav Republike Hrvatske), Official Gazette of the Republic of Croatia No. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014.

provision of the Croatian Constitution indirectly has some impact on sport⁶ (i.e. the right to work, presumption of innocence, etc.).⁷

Sport in Croatia is governed by the Sports Act, which has had three revisions since 1990 (in 1992, 1997, and 2006). The latest 2006 Sports Act, currently in force, was amended six times. The Croatian Sports Act in its Article 1(2) defines sports activities as activities of special interest to the Republic of Croatia.

The Sports Act is a *lex specialis* in relation to other regulations, such as the Labour Act,⁸ Obligations Act,⁹ Company Act,¹⁰ Criminal Code,¹¹ etc. The law most closely linked to this act is the Associations Act,¹² applicable pursuant to the provisions of Article 14(3) of the Sports Act. It establishes that the provisions of the Associations Act are applicable in the founding, structure, legal status, registration and termination of associations, unless otherwise provided for by the Sports Act. In practice, there is a strong sense of need to also address the areas of founding, activity, registration, liquidation and termination of sports associations within the frame of the Sports Act, as sports association are truly specific in their activity, and with regard to contributions for sports from the State and/or regional and local self-governments. In Croatian football, almost all football clubs, with the exception of some clubs playing in the first and second division as companies, are associations.

Then, according to the *Act on Sports Inspection*,¹³ sports inspectors of the Central State office for Sport and other state officials authorised to do so by the State Secretary supervise the correct implementation of the Sport Act and related regulations.

In this legal framework, sports rules, namely those created by the sports stakeholders (sports federations, unions of employers (clubs), or by social partners in a social dialogue) play also an important role. In fact, the State accepts some sports and recognises their special social importance. In Croatia, these are the ones recognised by the Nomenclature of Sports and Sports Branches of the National Olympic Committee of Croatia (hereinafter: NOC of Croatia). The autonomous rules derived by authorised entities are to be applied on individuals of that sport although those individuals did not directly participate in the creations of those rules nor have they specifically accepted to be bound by

⁶ J. CRNIĆ & B. IVANČIĆ-KAČER, 'Ustav i šport, in (*Uvod u športsko pravo*)', Cmić Ivica et al., Zagreb, Inženjerski biro, 2009, 47.

⁷ V. SMOKVINA, *Sports Law in Croatia*, 18-19.

⁸ Labour Act (*Zakon o radu*), Official Gazette of the Republic of Croatia No. 93/14.

⁹ Obligations Act (*Zakon o obveznim odnosima*), Official Gazette of the Republic of Croatia No. 35/05, 41/08, 125/11, 78/15.

¹⁰ Company Act (*Zakon o trgovačkim društvima*), Official Gazette of the Republic of Croatia No. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15.

¹¹ Criminal Code (*Kazneni zakon*), Official Gazette of the Republic of Croatia No. 125/11, 144/12, 56/15, 61/15.

¹² Act on Associations (*Zakon o udrugama*), Official Gazette of the Republic of Croatia No. 74/14.

¹³ Act on Sports Inspection (*Zakon o sportsko inspekciji*), Official Gazette of the Republic of Croatia No. 86/12.

such rules, by the sole participation in a certain sport, and the State even gives them the power to derogate some rules given by the State.¹⁴

Those autonomous rules created by sports associations are for instance the regulations and rules given by the CFF as a national sports federation in charge of football. In this paper, mostly will be elaborated the rules and regulations of the CFF.

5. *Relationship between ordinary and sports rules*

The legal framework that is generally applied in Croatia should be applied also to sports and, as any other activity, sports activities should also be under control of national law.¹⁵ Sport has numerous specificities compared to other fields of economic sectors and its specific nature should be acknowledged and protected, which is also prescribed by the Lisbon Treaty,¹⁶ or Article 165 of the Treaty on the Functioning of the EU and the case law of the Court of Justice of the EU.

One of the characteristics of sport is its autonomy of organisation. This means that sports organisations and associations in Croatia are autonomous regarding the regulation of rules which regulate a single sport. The consequence thereof is not the complete isolation of sport from the national legal order. Autonomy in sport primarily encompasses only three elements, i.e. the rules of competition in a sport, rules of the game (sports rules) and the rules of autonomous organisation and organisation of sports clubs. In a way it could be said that the Sports Act presents a compromise between what the legislator would like to regulate by its laws and what might be regulated, according to the rules enacted by the administrative bodies of national or international sports associations of a certain sport.¹⁷ Regulating sports, from the State point of view, is a subsidiary activity, because often the State gives the power to sports organisations to regulate its sport, and subsidiary general rules of the legal order are applied.¹⁸ That is one very important element of the specificity of sport.

As it is the case with other countries, the specificity of sport and its autonomy regarding the issue of internal organisation with its pyramidal structure in line with the European Model of Sport is obviously present in Croatia. The NOC of Croatia, with its legal framework, is of extreme importance

¹⁴ I. GLIHA, 'Izvanugovorna odgovornost za štetu nastalu u sportu', in (Uvod u) športsko pravo, Crnić Ivica et al., Zagreb, Inženjerski biro, 2009, 190-191.

¹⁵ A. BAČIĆ & P. BAČIĆ, 'Στάδιον i ustavno pravo: treba li sport i sportska prava shvaćati ozbiljno', Zbornik radova Pravnog fakulteta u Splitu, vol. 47, no. 2, 2010, 254.

¹⁶ V. SMOKVINA & T. RUBEŠA, 'Gospodarska sloboda kretanja profesionalnih sportaša kao radnika u europskoj uniji s naglaskom na pravne izvore i odluku Bernard', Zbornik Pravnog fakulteta u Zagrebu, vol. 64, no. 3, 2014, 421.

¹⁷ S. PETROVIĆ, 'Professional sports clubs and their legal form, autonomy and State intervention' in *Social Dialogue in Professional Sports, On some topics about European Sports Law*, Siekmann Robert C. R. et al., Aachen: Shaker Verlag, 2013, 156-157.

¹⁸ I. GLIHA, 'Izvanugovorna odgovornost za štetu nastalu u sportu', 187.

in the creation of sports law in Croatia.¹⁹ Together with the NOC of Croatia, national sports federations with their autonomous acts are also creators of sports law. The CFF should be taken as a model federation because of the most complex and complete (autonomous) legal system which could be applied in other sports and by other federations. The social dialogue, the solidarity mechanism, the training compensation, status regulations, arbitral system etc. are all issues which detect the specificity of sports but also serve as guidelines for other sports.²⁰

In respect to sports justice, there are specific bodies for dispute settlement before the NOC of Croatia or national sports federations with international and national general acts of sports associations determining the obligations for athletes, coaches, clubs etc. to present their cases before sports arbitration instead to ordinary State tribunals. The specificity of sports, and here we must unfortunately note, is also present in the legal status of professional athletes in team sports, where, with a few exceptions, they are defined as self-employed persons regardless of the fact that they fulfil the characteristics of the labour law status. Specific criminal and misdemeanours offences specific just for the sports sector only confirm the specific nature of sport. All said helps us in determining that sport enjoys a (deserved) place in the social and legal system with its specificity, even though sometimes not appropriately recognised.

6. *The association disciplinary bodies*

As a general rule, all statutes of national sports federations provide obligations for all participants in sports activities to accept as binding and final all decisions adopted by sports courts and bodies. This obligation, that reflects the principle of independence of sports, prevents (or prohibits) in effect the challenging of decisions of sports bodies before state courts.

6.1 *CFF Disciplinary bodies*

As previously said, according to the Article 57 of the CFF Statutes the Disciplinary Committee and the Appeals Committee are some of the Legal bodies of the CFF.

The powers and modus operandi of the Disciplinary Committee shall be elaborated and prescribed in the Federation's Disciplinary Regulations and Rules of Procedure of the Executive Committee, its bodies and CFF's legal bodies (CFF Statutes, Article 61).

The Disciplinary committee of the CFF in the first instance have five members appointed by the Executive committee of the CFF of which at least the president and one member should be lawyers. In exceptional cases, the President

¹⁹ B. VRBEK, 'The role of the Croatian Olympic Committee in creating Sports Law' in Siekmann Robert C. R. et al. (eds.), *Social Dialogue in Professional Sports, On some topics about European Sports Law*, Aachen, Shaker Verlag, 2013, 185-208.

²⁰ V. SMOKVINA, *Sports Law in Croatia*, 18.

of the Disciplinary Committee can give his own judgments. (CFF Disciplinary Regulations, Article 113-114).

The Appeals Committee, with five members, is the appellate body of the second instance deciding on the appeals made in disciplinary proceedings, procedure of match registration and procedure of club and player registration verification process. The jurisdiction of the Appeals Committee is stipulated in more details by Disciplinary Regulations, Regulations of Football Competitions, Regulations of Clubs and Players Registrations and rules of a certain competition. The modus operandi of the Committee is prescribed in details by the Rules of Procedure of the CFF's Executive Committee, its bodies and legal bodies. The Appeals Committee consists of one President and four members (CFF Statutes, Article 58). The President and at least one member shall be lawyers.

6.2 Arbitration before the CFF

Two very important bodies for the dispute settlement in football are *the Court of Arbitration of the CFF* and *the CFF Arbitration*.

The *Court of Arbitration of the CFF*, as an autonomous and permanent tribunal which is competent to rule on status questions of coaches and players and, connected to that, the material questions originating between two single subjects of the CFF (club-club, player-club, coach-club, club-single county football federation) in conformity with the provisions of the acts of CFF; FIFA and UEFA regulations and Croatian laws. The *CFF Court of Arbitration*²¹ in its work uses as sources of law: the Statute and the regulations of the CFF and FIFA; along with the Act on obligations, the Arbitration Act²² and the Civil procedure Act,²³ as well as other legislation. There are no ordinary legal remedies against the Arbitration tribunal of the CFF's decisions since its decisions are final. There is the possibility for a reopening of a case within two months from the date of the decision if there is new evidence and new facts which were unknown at the date of the decision.²⁴ On the other hand, according to Article 36 of the Arbitration Act, it is a possible to take action against an arbitration decision and call for its annulment before ordinary state courts.

From the legal point of view, there is an opinion that we cannot recognise the character of the chosen tribunal (arbitration) because it does not fulfil the elementary principles of the arbitration procedure: freewill in concluding the contract on arbitration (or arbitration clause), the independence and autonomy of arbitrators, and compliance with the elementary principles of

²¹ The author of this paper is one of the 11 arbitrators of the CFF Court of Arbitration.

²² Arbitration Act (*Zakon o arbitraži*), Official Gazette of the Republic of Croatia No. 88/01.

²³ Civil procedure Act (*Zakon o parničnom postupku*), Official Gazette of the Republic of Croatia No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14.

²⁴ Regulations on the Work of the CFF Arbitration Tribunal, Art. 48, <http://hns-cff.hr/files/documents/1339/Pravilnik%20o%20radu%20Arbitraznog%20suda%202017.pdf>, 10 May 2017.

the arbitration procedure.²⁵ On the other hand, with the implementation of the Autonomous Agreement with the social dialogue going on in UEFA Member States, a lot has been done also in this regard. Now all contracts which use the CFF Standard Contract form have such a clause. Furthermore, some of the players contract also have a clause determining the competence of Court of Arbitration for Sport (CAS) in the second grade.

Another arbitral body of the CFF is the *CFF Arbitration*. The CFF's Arbitration, determined in Article 62 of the CFF Statutes, is a permanent one-stage court having jurisdiction to resolve disputes arising between individual members of the CFF, players, coaches and other members of a football organisation arising in connection with football on the territory of the Republic of Croatia, and it assesses the legality of final decisions referring to the rights, obligations and responsibilities arising in connection with the relations established within the CFF.

The CFF Arbitration cannot decide on the disputes arising under or in connection with relations among entities within football organisation referring to the application of the Laws of the Game and other discretionary powers deriving from the nature of football, or on the disputes arising in connection with compensation for formation and development of players, fees for 'principles of solidarity', and on disputes referring to competitions (disputes deriving from the application of Competitions Regulations). Such Arbitration may neither decide on disputes in which all legal expedients within the Federation have not been applied, nor on the deliberations of the CFF's Assembly, the Election Appeals Committee and the decisions rendered in the clubs licensing procedures.²⁶

6.3 *NOC Croatia Sports Arbitration Council (CSAC)*

Although it is not a CFF body, it is important to mention that the Sports Act establishes the competence and activity of Croatia Sports Arbitration Council (hereinafter "CSAC"), as an arbitration body before the NOC of Croatia, based on the Arbitration Act.

The CSAC is in particular authorised to resolve disputes and issues pertaining to the execution of the tasks of the NOC of Croatia. Particularly significant among these are decisions on disciplinary measures and decisions regarding doping, decisions on disciplinary and other procedures that involve or imply long-term bans or prohibition from participation in sports competitions, decisions that pertain to Olympic candidates or top athletes (category I to III), the principles and conditions of sports competitions and other issues regulated by the NOC of Croatia Statute.

Members of the CSAC are elected by the assembly from eminent attorney-athletes and former athletes, officers and professionals. It is

²⁵ M. IVKOŠIĆ, 'Pravni okvir transfera profesionalnih sportaša', in *(Uvod u) športsko pravo*, Crnić Ivica et al., Zagreb, Inženjerski biro, 2009, 124.

²⁶ See <http://hns-cff.hr/files/documents/6894/Pravilnik%20o%20Arbitrazi%20HNS-a.doc> (11 May 2017).

compounded from a president, vice-president and eleven members for a mandate of five years. Between the two sessions of the CSAC, the decision out of the CSAC competencies are given by Permanent Committees of the CSAC composed of three members of the CSAC and one substituted member.

Since its establishment, the CSAC has ruled in numerous cases²⁷ and has deliberated on various sports disputes pertaining to requests to review decisions by bodies of sports associations where other means of legal remedy have been exhausted in these associations; bans against individual members in these associations, i.e. sport; the expulsion of a club or person from membership in a federation or the rejection of an application for membership; the amounts of compensation for damages or the non-payment of damages for a player transfer; the issue of licences to play in the Croatian Football 2nd League and many other issues; and requests that have been submitted for legal opinions on issues of contention in the application of the Sports Act and other laws connected to its.

All NOC of Croatia members, with the exception of the CFF which has its own Court of Arbitration, have provisions in their statutes concerning the competence of the CSAC for disputes related to their respective sport.

A CSAC decision may be appealed before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, if the case is related to the Olympic Games, which then renders a final decision on the dispute pursuant to the Sports Arbitration Code.

7. *Responsibilities of clubs and players and those registered with the association*

The CFF Statutes provides for the general obligations of all persons and entities operating within the CFF to abide by the sports rules set forth by the CFF, FIFA and UEFA (CFF Statutes, Article 11); while the CFF Codex on Behaviour of Football Participants (Chapter 4)²⁸ contains a code of conduct that must be followed by all those who are subject to the sports rules of the CFF. They must conduct themselves according to the principles of loyalty, integrity and sportsmanship as an expression of fair play.

These standards of conduct, like in other states, represent the pillars on which the CFF's sports justice is based. Not only do all sports offences described by the CFF's acts or other sports rules and regulations represent a specification of, and can be related to, these principles, but any other behaviour not in keeping with the general principle of sportsmanship, even if not expressly codified, can be sanctioned by relevant sports justice bodies of the CFF.

The CFF Standard Contract of Professional Play, mostly used in Croatia, or the CFF Standard Employment Contract, in Croatian football

²⁷ H. KAČER, A. PERKUŠIĆ & B. IVANČIĆ-KAČER, 'Postoji li u Republici Hrvatskoj (kvalitetno) sportsko pravo?', *Zbornik radova Pravnog fakulteta u Splitu*, vol. 49, no. 4, 2012, 731.

²⁸ Codex on Behaviour of Football Participants (*Kodeks ponašanja nogometnih djelatnika*), www.hns-cff.hr/file/document/file/817-Kodeks%20pona%C5%A1anja%20nogometnih%20djelatnika.pdf, 23 May 2017.

regulates the rights and obligations of players and clubs. Professional football contracts in Croatia, like the usual professional football contracts in most countries that have contracts of employment, entail some of the standard terms, especially the rights and duties of the parties. In the CFF Standard Contract of Professional Play and the CFF Standard Employment Contract in comparison to the club's obligations, the obligations of the player are more precisely regulated in 18 points, or 16 points in the employment contract (while the club's obligations are regulated in 9 points). To mention players obligations, player are since self-employed, obliged to take out an insurance policy against professional illness and accidents at work for the duration of the contract on their own and to pay the total contributions for mandatory health and pension insurance. Furthermore, they have the obligation to make efforts to play and train at best of his/her ability and to avoid anything that could damage the image of the club or have effect on the club's results and club's functioning; to behave in a sporting and fair manner towards all participants of a football match including the spectators; not to take part in other football activities which do not derive from the contract and which are potentially dangerous without the club's approval (national team matches are an exception); not to take part alone or with other persons in sport betting on matches form the competition in which the club is taking part; to take part in club's merchandising (the player's participation in any media must be approved by the club); to treat as a business secret any information prescribed as such by the club's acts; to present themselves before the club's medical staff immediately in case of illness or injury and to inform its coach about what happened; and to appoint an accountant, since players are mostly self-employed. By concluding the standard contract, the player and the club agree that player's image rights are to be determined in a special agreement.

Professional football players in Croatia do not enjoy the labour and social security law protection that they deserve. According to the current legal status, it is very difficult, although prescribed by club's disciplinary regulations, for a football player to challenge an autonomous decision of the club's board regarding the player's disciplinary responsibility or for employers (clubs) to subject themselves to the requirements of the relevant provisions of labour law and notably to the rules on unfair dismissal.

Clubs' obligations, on the other hand, derived from the CFF Standard Contract of Professional Play and the CFF Standard Employment Contract are: to fulfil economic and other obligations towards the player; to provide professional vocational training to the player; to allow the player to join their national team for preparation and games; to provide adequate sports equipment; to allow a player attending mandatory schooling or university to fulfil his educational obligations. Furthermore, it is important to highlight that the primary duty of the club is to pay the player the remuneration (salary) agreed throughout the duration of the contractual engagement between the parties. Because of high level of non-payment on time, the CFF Regulations on the Status and Registrations in the Article 68 determine that clubs are obliged to fulfil their financial obligations towards players and clubs as stipulated in the contracts with

players or clubs in a case of a transfer fee. A club found to have delayed a due payment for more than 30 days may be sanctioned in line with the CFF Disciplinary regulations. The club or the player must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).

There have also been cases in Croatia in which sport clubs prevented their professional players from taking part in the training process and excluded them from the first team simply because they have not wanted to conclude a new contract or to agree to a decrease in salary, but this was strongly contested by the Players association.²⁹ In the (labour) relationship between the player and the club, there are rights but also obligations on both sides. The sport clubs are required to fulfil their obligations deriving from individual contracts with the players, and their obligations arising from the collective agreement, as is the case for example in Italy, Spain etc. In Croatia, since players are not workers, but self-employed persons, there is neither a collective agreement in Croatian sport in general, nor in football in particular.

8. *Procedures*

According to the CFF Statutes and the CFF Disciplinary Regulation, there are disciplinary sanctions applicable to clubs, players, officials, agents, coaches, staff and other persons registered with the CFF (see *infra*).

The Article 60 of the CFF Statutes provide that the Disciplinary Committee and other competent disciplinary bodies of a football organisation may impose disciplinary measures (in line with the Article 9 of the CFF Disciplinary Regulations) on players, clubs, referees, referee instructors and observers and delegates at matches, licensed match agents and players transfer agents (intermediaries), on other football professionals.

The offences, types of offences, disciplinary measures by types of offences, and rules governing disciplinary proceedings are governed by the CFF Disciplinary Regulations.

Upon finding that sports offences have been committed, the disciplinary bodies of the CFF impose on the persons and/or entities found guilty the sanctions provided for by the relevant acts or other applicable sports rules and regulations. The disciplinary bodies of the CFF determine the type and extent of sanction according to the nature and gravity of the offence, while taking into account the applicable mitigating and aggravating circumstances, if any. Furthermore, the sanction may be reduced due to the collaboration of the party, and increased in the case of recidivism.

²⁹ Hrvatska udruga 'Nogometni sindikat' (Croatian Association 'Football Union') is a FIFPro member whose president is a former AC Milan, FC Internazionale and Monaco player and National team captain Dario Šimić while the secretary is Mario Jurić former Dinamo Zagreb player. Their strong attempts to change the legal status of football players has made a huge impact not just on football but on sport in general.

The disciplinary bodies are: the Disciplinary Committee of the CFF in the first instance and the Appeals Committee of the CFF in the second instance, with both having five members appointed by the Executive committee of the CFF of which at least the president and one member should be lawyers. In exceptional cases, the President of the Disciplinary Committee can give his own judgments. The procedure should be urgent and economical and, in the first instance, it should not last more than three months. The procedure in the second instance should also last not more than three months. We must point out that in CFF Regulations that is not defined that those decisions could be appealable to CAS.

However, for a disciplinary procedure to exist, first there must be a breach of the regulations that comes to the knowledge of the CFF Disciplinary Committee. The procedure may be initiated by a complaint made by any member of the football organization (this means any registered player, any club, any association nevermind if it connected to the case in question), by a complaint written on a report before a body of the football organization or by a note written by a referee or delegate on a match report (CFF Disciplinary Regulations Article, 121). The previously said means that the CFF Disciplinary Committee may not start a procedure *ex officio* without a complaint.

Once the disciplinary process starts, they will notify the accused and invite him to exercise his right to a defense, and he can provide evidence indicating his defense. The accused person may give its defense orally before the disciplinary body or by a written statement (CFF Disciplinary Regulations Article 126-127). The testimonies of witnesses, the oral examination of the parties, or use of other evidences is completely in the competence of the CFF Disciplinary Committee (CFF Disciplinary Regulations Article 130-131).

The decision shall be made public by an official statement with a date when it comes into force. The decision shall contain who compounded the disciplinary body, who was accused, description of the offence, the type of the offence, the sanction, the motivation and the instruction for a legal remedy (CFF Disciplinary Regulations Article 147).

Against a decision or a suspension there is a possibility of an appeal to the CFF Appeals Committee in a term of 8 days since the decision has been given (CFF Disciplinary Regulations Article 149). The appeal has not the power to suspend the first grade decision (CFF Disciplinary Regulations Article 152).

None of the persons or entities subject to disciplinary proceedings can be exempted from responsibility because they were not aware of the sports provision they have breached, however in claiming this defence they may be charged with a milder sanction. All sports rules are immediately binding and are presumed to be fully known by all persons and entities operating within the CFF.

Speaking about the club's disciplinary regulations the CFF Disciplinary Regulations in Article 46 determines that the club may sanction a player, an employee or other member of a club only based on a club's regulations and after a procedure run in conformity with such a regulation. The club's disciplinary regulations should not be contrary to the provisions of the

CFF Disciplinary Regulations. The club may not sanction a player with a ban of playing more matches or paying a higher fine than those provided by the CFF Disciplinary Regulations. A fine in money towards a player or a coach may not be given in a proportion higher than those regulated by the decision of the CFF Executive board.³⁰

9. Sanctions

The members of the Federation, players, coaches, referees and other members of staff of a football organization may be sanctioned for breach of the Statutes, rules and other regulations of the Federation in accordance with the provisions of the Federation's Disciplinary Regulations establishing offences, types and rates of fines and other disciplinary sanctions (CFF Statutes, Article 85).

According to the CFF Statutes Article 60 the Disciplinary Committee and other competent disciplinary bodies of a football organization may impose the following disciplinary measures:

- on players:
 - a) *warning*,
 - b) *reprimand*,
 - c) *fine for players under contract with a club*,
 - d) *suspension for a specified number of matches*,
 - e) *suspension for a specified period*,
 - f) *exclusion from a club*,
 - g) *exclusion from a football organization*,
- on clubs
 - a) *warning*,
 - b) *reprimand*,
 - c) *fine*,
 - d) *suspension from playing matches at a certain playing field or at all playing fields of a specified area*,
 - e) *suspension from playing matches abroad*,
 - f) *playing of matches at its own playing field behind closed doors or partial stadium closure*,
 - g) *prohibition on registering (transfers) players*,
 - h) *deduction of points or award of negative points*,
 - i) *relegation to a lower level of competition*,

³⁰ In the past there were some other examples: Former Dinamo Zagreb defender Domagoj Vida fined £ 80,000 for opening a can of beer and Dinamo midfielder Sammir was fined Euro 270,000 for partying in night clubs, available at: www.dailymail.co.uk/sport/football/article-2208590/Dinamo-defender-Vida-fined-80-000-openingbeer.html, 12 May 2017, or Dinamo Zagreb midfielder Paulo Machado fined with Euro 100.000 after he responded to his own fans booing at him by flicking them his middle finger www.mirror.co.uk/sport/football/news/5-players-arsenal-fear-champions-6454360, 10 Jun 2017. See also V. SMOKVINA, 'Croatia', in M. Colucci and F. Frederickx (eds.), *Regulating Employment relationships in professional football, a comparative analysis*, Salerno, Sports Law and Policy Centre, 2014, 84.

- on referees, referee instructors and observers and delegates at matches
 - a) *warning,*
 - b) *reprimand,*
 - c) *fine,*
 - d) *suspension for a specified time or specified number of matches from exercising functions of referees, instructors, observers or delegates,*
 - e) *deletion from the list of referees, referee observers or delegates,*
 - f) *exclusion from a football organization,*
- on intermediaries (in the Statute named licensed match agents and players transfer agents)
 - a) *warning,*
 - b) *reprimand,*
 - c) *fine,*
 - d) *exclusion from a football organization,*
- on other football professionals
 - a) *warning,*
 - b) *reprimand,*
 - c) *fine, if they receive any compensation for their work in football,*
 - d) *suspension from exercising their functions for a specified number of matches,*
 - e) *suspension from exercising their functions for a specified period,*
 - f) *exclusion from a football organization.*

Offences, disciplinary measures, and rules governing disciplinary proceedings are determined and governed by the Disciplinary Regulations of the Federation. In addition to a disciplinary measure, a withdrawal of an award (financial awards, medal, cup) may be imposed on parties committing offences if it has been established that such award has been won by committing an offence. The powers and modus operandi of the Disciplinary Committee shall be elaborated and prescribed in the Federation's Disciplinary Regulations and Rules of Procedure of the Executive Committee, its bodies and CFF's legal bodies (CFF Statutes, Article 61).

10. *Failure to comply and enforcement rules*

When to the issue of the enforcement of rules, it is important to highlight that there is a strong mechanism of enactment for the decisions of the Court of Arbitration of the CFF, *inter alia* in the question of due payment of contract obligations. Even though, according to Article 47 of Arbitration Act, the recognition and enactment of an arbitrary decision is made before ordinary state courts. In the event that a football club does not fulfil its obligations derived from the decision of the Court of Arbitration of the CFF and upon the proponents demand, the Court of Arbitration of the CFF will make a request to the Disciplinary committee of the CFF for suspension (the club may not play official and friendly matches) and the initiation of the disciplinary procedure

against the football club which did not fulfil its obligations (CFF Disciplinary Regulations, Article 139) derived from the Arbitration decision.³¹

Here we give two cases which were before the CFF Arbitration Tribunal. First is the case A-2671/05: *Stjepan Čordaš (coach) v NK Osijek (club)*, before the Court of Arbitration of the CFF, the club had not paid its due obligations derived from the contract to its coach. The coach made a claim before the Court of Arbitration of the CFF seeking the payment. After that, the parties reached an agreement before the tribunal and the case was closed. In another interesting case A-42/08: *Ante Vitaić (player) v NK Osijek (club)*, the club had not fulfilled its contract obligation for payment, and the player made a claim. The Court of Arbitration of the CFF made a decision and obligated the club to pay its debt. Since the club had not paid in the stipulated period and had not respected the Court's decision, the claimant (player) made a demand to the Disciplinary committee to institute disciplinary proceeding against the club. The Disciplinary committee made a decision No. 129/09 and suspended the club. 30 days passed from the CFF Court of Arbitration's decision to the Disciplinary committee's decision. In the end, the club paid all debts.³²

11. *Infringements*

The CFF Disciplinary Regulations describes infringements, procedure and sanctions for players (men and women) of football, futsal, beach football, referees, coaches, clubs, associations, clubs and associations officials, who infringe the CFF Statutes provisions, CFF regulations or other CFF acts (CFF Disciplinary Regulations, Article 1).

In the CFF Disciplinary Regulations there are described more than 40 infringements. In the next part of the paper, some of the infringements will be elaborated.

11.1 *Rules of the Game*

In respect to infringements of the Rules of the Game we should point out that, of course, in the very first instance, this issue is in the hands of the referee and his team. In case a club has serious complains against referees decision, a club may contest them and then the Disciplinary Committee gives its decision which could be appealed to the Appeals Committee.

Every player, coach, clubs official according to the Statute (see *supra*) is obliged to respect the Rules of the Game by being a member of the football community (CFF Statute) or by signing a contract, for players or coaches.

On the other hand, the CFF Disciplinary Regulations also have the provisions for infringements such as caution (Article 49) with sanction up to a fine or in cases of or sending off (Article 50) with the sanctions of a fine or suspension up to four matches.

³¹ V. PULJKO, 'Arbitražno rješavanje sporova u nogometu', *Pravni vjesnik*, vol. 26, no. 2, 2010, 62.

³² *Ibid*, 62.

11.2 Disorderliness at matches and competitions

The CFF has an autonomous regulation of the protection of public safety; it is the CFF Regulation on Security on Football Games.³³ This Regulation with its fifty six articles was enacted after the entry into force of the amendments in 2009 of the Act on Prevention of Disorder at Sport Events.³⁴ Since this paper deals just with Federations regulations, there will not be analysed the statutory regulations, namely Act on Prevention of Disorder at Sport Events.³⁵

To sum up, the Regulation sets rules and standards for stadiums infrastructure and measures for technical protection, safety staff (commissioner for security, officer for security, stewards etc.), rules on tickets policy, measures for match organising, racism and other form of unlawful behaviour prevention etc.

According to the CFF Disciplinary Regulations the infringements are: Misconduct against opponents or persons other than match; Misconduct against spectators, Misconduct against match officials, Team misconduct, Brawl and fight, Inciting hatred and violence, Provoking the general public, Unplayed match and abandonment, Ineligibility, Non appearance at the national team sessions, training sessions and competitions (CFF Disciplinary Regulations Articles 51-74).

11.3 Offensive and discriminatory behaviour

According to the CFF Disciplinary Regulations offensive and discriminatory behaviour are also regulated. For offensive behaviour and fair play (Articles 86-87) the sanctions are from a fine till a suspension up to two years for the most serious infringements.

In case of racism or other forms of discrimination (Article 88) the sanctions are: for a player – a fine, a ban of at least ten matches with a prohibition to visit the stadium in that period; for a football official – a fine, a suspension lasting three to six months; for clubs (for their supporters behaviour) – a fine, partial closure of a stadium or full closure of a stadium for a number of matches, deduction of points up to six points or relegation to a lower division or expulsion from a cup competition. In case the match is being suspended because of racist or discriminatory behaviour of supporters, the club whose supporters caused the suspension will lose the match without competing. In the match is suspended because of behaviour of supporters of both teams, the match will be played again but the clubs will be deducted one point. In respect to supporters' behaviour it is important to note that the principle of strict liability is applied for the improper conduct of spectators. The club will be responsible for the

³³ CFF Regulation on security on football games, http://hns-cff.hr/files/documents/old/164-Pravilnik_o_sigurnosti_na_nogometnim_utakmicama.pdf (10 Jun. 2017).

³⁴ Act on Prevention of Disorder at Sport Events (*Zakon o sprječavanju nereda na športskim natjecanjima*), Official Gazette of the Republic of Croatia No. 117/03, 71/06, 43/09, 34/11.

³⁵ See, V. SMOKVINA, *Sports Law in Croatia*, 99-104.

behaviour of spectators wearing shirts, scarfs or other things with clubs or clubs' supporters emblems, although it was not the club that have sold them tickets (spectators on their own bought the tickets) or arranger the trip of its supporters. On the other hand there will also be liability of the club that is organising a match.

11.4 Infringements of personal freedom

Anyone who intimidates a referee, a referee observer or a delegate will be sanctioned with a fine, a ban of two to ten matches or suspension lasting one to six months. In case the infringement is committed again or in a more serious way, the person will be banned or suspended up to one year (CFF Disciplinary Regulations, Article 59).

11.5 Forgery and falsification

A player, football official or a club who, in football-related activities, forges a document, falsifies an authentic document or uses a forged or falsified document to deceive in legal relations etc. will be sanctioned. A player will be sanctioned with a suspension lasting three months up to one year months or with a ban of four to ten matched. A football official will be sanctioned with a suspension lasting three months up to two years. A referee, referee observer or a delegate will be sanctioned with a suspension lasting six months up to two years while a club will be sanctioned with a deduction of six points (CFF Disciplinary Regulations, Article 92).

11.6 Corruption

According to the CFF Code of Conduct of Participants in Football, all participants in the football sector in Croatia (players, referees, club and federation officials, medical staff, etc.), according to Article 4, should restrain in receiving gifts or money or benefits of any kind which could be deemed inappropriate; should not receive or give bribe and are obliged to immediately inform the CFF if there was an attempt in someone giving them bribe; should not take part personally or directly or indirectly with the help of a third person in gambling or similar games of chance on matches organised by the CFF and should not have any direct or indirect financial benefit regarding such activities.

According to Article 5 of the Code, breaching the Code provisions is an offence regulated and sanctioned (if not specifically regulated by the CFF Disciplinary Regulations) in conformity with Article 84 of the CFF Disciplinary Regulations. A player shall be sanctioned with a fine or a ban up to six matches while an official shall be sanctioned with fine or a suspension up to six months. In case of an repeated breach of a Code or of a serious breach, a player shall be sanctioned with a suspension lasting three months to two years or with the exclusion for the football organisation, while an official with a ban of

performing any activity from three months to two years or with the exclusion for the football organisation.

According to Article 80 of the CFF Disciplinary Regulations, persuasion, bribing, agreeing or fixing a match is strongly forbidden and shall be sanctioned: for the player with a suspension lasting six months to two years or with the exclusion for the football organisation, for an official with a ban of performing any activity from six months to two years or with the exclusion for the football organisation, while the club may be sanctioned with subtracting up to six points or with a sanction up to six negative points or sending to the lower division. The perpetrators may be also sanctioned with a fine and perpetrators should be sanctioned also for an attempt.

Article 81 of the CFF Disciplinary Regulations regulates the offence of taking part in irregularities. The player, football official, club, referee or any other participant in a match or in a competition who in any form takes part in irregularities of a match or competition in a way to makes himself on a disposal or harms his or one other club or in any form breach the football federation regulations or rules of the football game or competition, together with just an attempt of taking part in the irregularities shall be sanctioned. The player shall be sanctioned with a suspension lasting six months to two years or with the exclusion for the football organisation. A football official, referee or any other participant in a match or in a competition shall be sanctioned with a ban of performing any activity from six months to two years or with the exclusion for the football organisation. Finally, the club may be sanctioned with subtracting up to six points or with a sanction up to six negative points or sending to the lower division.

Article 82 of the CFF Disciplinary Regulations regulates offences against the integrity of the game, and is specifically focused on gambling and playing games of chance. A player, coach, an official, an official on a match or any other football official which gambles or plays the games on chance in any form, alone or with a help of some other person, on any segment of the game of a competition in which in any form he/she takes part or has any connection with such a competition shall be sanctioned. A player shall be sanctioned with suspension lasting three months to one year, while a football official, a referee or a coach shall be sanctioned ban of performing any activity from three months to one year. They all may be cumulatively be sanctioned with a fine.

According to Article 83 of the CFF Disciplinary Regulations, anyone who has had any information that there was committed an offence regulated by Articles 80-82 of the CFF Disciplinary Regulations, and does not inform the CFF or competent state organs, shall be sanctioned. A player shall be sanctioned with a suspension lasting from two till six months, while an official shall be sanctioned with a ban of performing any activity from two till six months.

In the CFF formulary contract,³⁶ i.e. the Contract of professional play, mostly used in Croatia, the Employment contract or the Scholarship contract, nevertheless the provision that the player and the club commit themselves to the

³⁶ See <http://hns-cff.hr/hns/propisi-i-dokumenti/> (22 Aug. 2016).

FIFA, UEFA, CFF regulations, there is a specific provision for the gambling and match-fixing prevention.

In Article 5(8) of the Contract of professional play, Article 8(8) of the Employment contract and in Article 4(8) of the Scholarship contract, there is an unique provision stating 'that the player is obliged that he will not personally or with help of some other person bet in sports betting pools in any form. Breaching such an obligation constitutes a heavy breach of contractual obligations and the club has the right to unilaterally terminate the contract'.

11.7 Doping

The CFF Statute in Article 12 determines that the objectives of the CFF are to encourage and promote football in the Republic of Croatia, and to represent the Croatian football abroad. One of the activities through which the CFF accomplishes its objectives is promoting and enforcing anti-doping control and activities related to prevention of doping and substances abuse, and prohibited procedures in sports activities and competitions of the CFF, in accordance with the World Anti-Doping Code.

In the CFF Disciplinary Code anti-doping rules are prescribed in Articles 76-78. Doping is forbidden and doping and offences defined as such by FIFA Anti-doping Regulations, Rules of Fight Against Doping of CITA or other state institutions competent to fight doping and list of forbidden substances made public by WADA. Such behaviour represents doping regardless if it happened or was discovered during or outside the competition.

The FIFA Anti-doping Regulations provisions on the procedure and sanctions shall be applied directly for doping offences. The decisions in the procedure run in conformity with the Rules of fight against doping of CITA or other state institutions competent to fight doping have the same power as it would be in case the decision would be made inside the football organisation.

Every player who takes part in a competition or happening organised by the CFF or the county football association or at the preparatory sessions before such a competition or a happening, is willing to be tested by the CFF competent authorities. Furthermore, the player is willing to give samples in the procedure to be tested against presence of forbidden substances or the use of forbidden methods. All legally obligatory sanctions of other international sports federations or national doping organisations which are in line with the basic legal principles, CFF would in general automatically recognise.

In the CFF formulary contracts,³⁷ i.e. the Contract of professional play, mostly used in Croatia, the Employment contract or the Scholarship contract, there is a specific provision on the anti-doping. In Article 8 of the Contract of professional play, Article 11 of the Employment contract and Article 7 of the Scholarship contract, the club and the player commit themselves to the anti-doping rules of FIFA, UEFA and CFF regulations. Doping is defined as the use of substances which are on the list of prohibited substances and the use of

³⁷ <http://hns-cff.hr/hns/propisi-i-dokumenti/> (11 May 2017.).

forbidden methods mentioned in the doping lists included with the regulations as well as in other relevant doping lists. The player commits himself not to use doping while the club takes the obligation that it will not order the player to use doping. Furthermore, the club takes the obligation to use all preventive measures in line to prevent the use of doping, together with the obligation of education of the player on the prevention of the use of doping.

11.8 *Intermediaries Regulations*

In light of the fact that Intermediaries registration fall under the jurisdiction of the CFF,³⁸ any breach of the regulations will amount to misconduct under the CFF Disciplinary regulations, according to Article 25 of the CFF Regulations on Working with Intermediaries. The aforementioned regulations set out in detail the procedure for dealing with a charge of misconduct.

A supervision body was founded by the CFF, the *CFF Committee for Working with Intermediaries*. The Committee has the competence to run a registry for Intermediary and contracts registration. It is a body composed of a president and two other members, all nominated by the CFF Executive Board for a period of four years. The Committee gives their decisions in sessions, but the president may decide to give decisions in writing (post, fax or e-mail). The decisions are held by a majority of votes.

In case the Intermediary was involved in negotiation for a contract of employment, in conformity with the CFF Regulations on the status of players and registration, competent bodies for registration in the County football associations are obliged to collect the contract of employment and all other relevant documents listed in Annex 1 of the CFF Regulations. Then the competent County football associations send to the CFF Committee for Verification of Clubs and Players Registration, which after validating the contract of employment and the collected document send all materials to the CFF Committee for Working with Intermediaries. If any relevant document is lacking, the contract of employment will not be validated and the player will not be registered before the CFF (Article 24 of the CFF Regulations on Working with Intermediaries).

Any dispute rising out in the process of working with Intermediaries that is not regulated by the CFF Regulations, may be in the competence of the *CFF Committee for Working with Intermediaries*.

12. *Conclusions*

Like in most countries, football is not only the most popular sport in Croatia, but also the most influential with a huge impact in the social and economic life of

³⁸ <http://hns-cff.hr/files/documents/8872/Pravilnik%20o%20radu%20s%20posrednicima%20HNS%20prosinac%202016%20.pdf>, 12 May 2017. V. SMOKVINA & V. IVETA, 'Croatia', in M. Colucci (ed.) *The FIFA Regulations on working with Intermediaries, 2nd Edition*, Salerno, Sports Law and Policy Centre, 2016, 167-181.

the country. This means that its popularity and importance make it a powerful tool, ideal and appropriate for political and economic exploitation.

As for the legal framework and football regulations we may conclude that the disciplinary framework of the CFF is in line with the FIFA regulations, namely the FIFA Disciplinary Code. Although the CFF Disciplinary Regulations lacks to be more systematic and precise, the disciplinary system of the CFF is one of the best regulated part of the Croatian football family. On the paper everything looks perfect, but sports in general, and football in particular, taking into consideration how many people are involved, including supporters, demands to have a continuous analysis of the system with a need to a quick development and change of regulations when needed. The rule of FIFA and UEFA are from this point of view of extreme importance for giving guidelines and helping to make the framework working properly.

DISCIPLINARY PROCEDURES IN ENGLISH FOOTBALL

by *Dev Kumar Parmar** and *Luis de Oleza***

1. *Preamble*

This chapter will endeavour to outline the framework for disciplinary proceedings within football in England. The structure of football in England will be presented, as well as an overview of the association and its subsidiaries, after which the route for disciplinary proceedings organised by private associations will be addressed. Subsequently, the differing disciplinary bodies and their various remits and competencies will be described. Finally, this chapter will endeavour to provide some insight into other matters that are prevalent in England, such as disciplinary processes in relation to participants off the field, as well as those for match-fixing and gambling.

It is a safe presumption that the good people reading this book and even this chapter will understand the differences between the common law and inquisitorial legal systems, and more specifically between the English and Welsh legal system, and others. However, it is still important to emphasise how this wider legal background underpins the intricate manner in which football is regulated in the country.

Unlike in many other jurisdictions, England does not codify the regulation of sport. England has no legislation in relation to the governance of sports; there is a collection of rules and principles enshrined within private agreements that have evolved over time. There is a purist simplicity to this principle, but one that invariably can give rise to complexity.

This chapter will focus primarily on disciplinary instances within the English Football Association (“FA”) itself, and will not cover matters that are dealt

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with locally at the County FAs. Specifically, the focus will be on first team matches, however it should be noted that there are delineations for non-first team matches and friendly matches within the FA Rules.¹ All applicable regulations to which references are made are available in the public domain and can be accessed and downloaded via the FA website.²

Finally, this chapter is in existence to provide an overview of the functions and results of the FA disciplinary system. Some interesting and relevant jurisprudence will be used, as well as some key examples and discussion points across differing segments. Invariably, it is true to say that not every matter will be covered in finite detail. For this, references will be made to the relevant sources for you as the reader to undertake your own wider research.

2. Introduction

*“In many cases it may be a good thing for the proceedings of a domestic tribunal to be conducted informally without legal representation. Justice can often be done in them better by a good layman than by a bad lawyer. This is especially so in activities like football and other sports, where no points of law are likely to arise, and it is all part of the proper regulation of the game”.*³

Disciplinary procedures within football in England can be tricky to describe. There is no formal definition of sport in the United Kingdom, let alone a delineation of *sports law*. It follows that, with such fluidity amongst and within these concepts, the subsequent concept of discipline within football; something that would arise from the governance, regulation and legislating of football, is also generally difficult to navigate.

3. The English Football System

England is often seen as the panacea of global football for numerous reasons, including products such as the English Premier League (“EPL”),⁴ within which some of the most reputed managers and players worldwide currently practice.

It would be reasonably expected that a nation widely credited with the birth of the professional game, has a strongly developed internal system. The English system is regarded as a leading example for other federations across the globe, in addition to being a point of reference in the governing body⁵ itself when imposing governing body rulings and decisions on other member states.

¹ Disciplinary Procedures, 389 – 400 inclusive, in the FA Handbook.

² See www.thefa.com.

³ Enderby Town FC vs The Football Association [1971] Ch 591 at 605.

⁴ See <https://www.premierleague.com/>.

⁵ See www.fifa.com/.

In order to fully understand how the disciplinary proceedings work in this country, it is essential to have a clear picture of the structure, and hierarchy that exists, in English football.

Having a well-developed system, as with everything in life and football, brings benefits and challenges. The immediate and evident benefit arising from the establishment in English football is that there is a structure in place; one which provides routes and process flows for the administration of football to progress smoothly, as well as for any subsequent disputes that arise to be micro-managed and dispensed with accordingly.

The challenges from having a well-developed system can arise in relation to its evolution. The system in England is steeped in history, with a number of committees and sub-committees birthed to be able to deal with an innumerate amount of varying situations. The sheer number of panels and processes within the sprawling world of English football can pose a problem to stakeholders that wish to be able to manage a dispute. Furthermore, whilst England has only one NGB for football in The FA, it has many different competition organisers that are independent from one another, yet interrelated nonetheless.

We have to differentiate between The FA, which is the National Governing Body (“NGB”) for football in England and the competition organisers, which are the EPL and the English Football League (“EFL”)⁶ and the National League. For the purposes of this chapter we will focus primarily on EPL and EFL.

The competition organisers are private bodies that adhere to, but are not members of the FA. The different organisers decide how a competition must be run by agreement of its members, the clubs.

The FA and the County FAs organise certain competitions, of which the most well known is The FA Cup. For these competitions, The FA acts in a double facet: governing body and organiser. Furthermore, the EFL also runs tournaments such as the EFL Cup and EFL Trophy; though these are frequently run under ‘brand’ names for commercial purposes.⁷ For a visual indication of the league structure, please see figure 1, below:

⁶ See <https://www.efl.com/>.

⁷ See www.telegraph.co.uk/football/2016/11/04/efl-trophy-to-be-known-as-carabao-cup-after-sponsorship-deal-wit/.

Figure 1:⁸

Level	League(s)/Division(s)	
1	Premier League 20 clubs – 3 relegations	
2	EFL Championship 24 clubs – 3 promotions, 3 relegations	
3	EFL League One 24 clubs – 3 promotions, 4 relegations	
4	EFL League Two 24 clubs – 4 promotions, 2 relegations	
5	National League 24 clubs – 2 promotions, 4 relegations	
6	National League North 22 clubs – 2 promotions, 3 relegations	National League South 22 clubs – 2 promotions, 3 relegations

The different governing bodies and The FA have their own sets of rules and regulations. The applicability of the relevant rules to the Participant (player, club, coach, club official) (“P”), via the way of jurisdiction, is what will determine which is the relevant body, and how it might take action.

For instance, all on-field offences fall under the jurisdiction of the FA but a breach of the Premier League Financial Fair Play rule is going to be dealt by the EPL and not by the FA. Even though it looks pretty obvious at first glance, in practice may cause different problems. This chapter will endeavour to shed light on various challenges that can arise in disciplinary practice within English football.

3.1 *Football Pyramid in England*

The English football pyramid is vast and sprawling beast. Before one can discuss disciplinary matters, it is important to provide some context in relation to how the English football pyramid is set up and governed.

The FA governs football across England, and has within its ambit all of the professional clubs within the country.⁹ However, the FA has subsidiary football associations in each county within the country.¹⁰ Each of these counties will govern and administrate football at a local level, and will also hold countywide competitions, within which professional clubs that are affiliated would also be invited to take

⁸ It is worth noting that the top 5 tiers in England are fully national, and the top 4 tiers in England are considered fully professional, with the 5th tier a mix of professional, and semi-professional teams. This status not only includes players and coaches, but also directive and managerial staff.

⁹ As well as affiliate clubs, as is the case of Cardiff City, Swansea City and Newport County.

¹⁰ See www.thefa.com/about-football-association/who-we-are/county-fas.

part.¹¹ Furthermore, there are other bodies that have their own football associations, such as the Army and the Royal Air Force.¹²

The purpose of these subsidiaries is not to devolve, but to merely assist in the administrative burden brought about by 1,000s of clubs and 10,000s of stakeholders being involved on a weekly basis. Without the delegation to County Football Associations (“County FAs”), the responsibility would fall solely on the FA itself.

The County FAs have the power to govern, administrate and organise competitions within their jurisdiction, however they are primarily present in order to manage non-professional football. County FAs do not have powers to legislate, and whilst there is a need for their existence and continued smooth running, any major issues arising from these non-professional football circles would still be escalated to the FA.

3.2 *The FA and the Premier League*

The EPL is a huge commercial property worldwide, recently valued at over £8,000,000,000,¹³ however it is to be clearly understood that the EPL is a competition organiser, one that is independent from the FA, whilst nevertheless working within its auspices.

Until 1991, football in England was governed by the FA and had a 4 division structure, simply known as the Football League. The increase in revenue generation led to the clubs in the then top-tier; the first division, to form an alliance to break away from the Football League and take control over their own broadcasting and sponsorship destinies.

This agreement was formed and finalised in time for the 1992/1993 season, which was the first of the EPL. In essence, the structure of English football remained almost the same for organisational matters, with four divisions; each with promotion and relegation in between. However, rather than all four being branded as the Football League, we now had the EPL (top-tier) and the EFL (the subsequent three tiers).

The EPL reaps revenues from the commercial deals that its representatives secure on its behalf, however in principle, the FA relies on other income streams to continue functioning. Furthermore, the competencies are not equally divided between the two entities. The FA is the governor and disciplinarian,

¹¹ For instance, Manchester United Football Club will partake, in some guise, in Manchester FA competitions or events, as would Gillingham Town Football Club in Kent FA competitions or events. It is more likely that Manchester United would field weaker or younger teams in such competitions, whereas clubs in lower divisions sometimes field fairly strong teams as winning the local county cup is a trophy of importance to them.

¹² See www.thefa.com/about-football-association/who-we-are/county-fas.

¹³ See www.telegraph.co.uk/sport/football/12141415/Premier-League-clubs-to-share-8.3-billion-TV-windfall.html.

having composed the Football Regulatory Authority (“FRA”)¹⁴ to oversee, charge and sanction disciplinary matters in English football. The EPL has no burden in this respect, with the only panels under its control being one that is composed ad-hoc for ‘any serious breaches of the (EPL) Rulebook,¹⁵ or are peripheral to the integrity and safeguarding of the sport such as the ‘dubious goals panel’, a concept also shared by the EFL.¹⁶

Whilst the commercial income generated by the EPL is reaped by the 20 clubs that are partaking within the division, with further ‘parachute’ payments to the 3 clubs that drop out of the division every season, the EPL has no actual requirement to assist or support the FA financially. This creates an environment where it could be argued that the NGB has inferiority next to the main competition organiser.

3.3 *The FA and Sport England*

Further, the FA is in charge of the cultivation of the famed English national team; universally derided for its sporting failures on the international stage since 1966, yet still a huge attraction, as well as being under the direct command of FIFA.¹⁷

With the position that the FA is in with the EPL, as well as the reliance the FA has on Sport England, it becomes evident that the FA, whilst not legislated for by the government, is in a position where it is still *indirectly* regulated.

The FA has within its remit the development of football throughout the country, yet the political power that Sport England holds over the FA,¹⁸ effectively becomes quasi-legal in that the FA is in danger of losing its funding; ergo its ability to function, should it not comply with certain requirements. Furthermore, the fact that the EFL itself, having grown more powerful as a competition organiser, means that the FA is in an interesting, and somewhat isolated position.

The governance within the FA is an altogether different story,¹⁹ and with the FA having just submitted plans for a new governance structure at time of writing,²⁰ it remains to be seen what, or even how, any of these proposals are implemented. FA governance is a huge and complex area, particularly due to the

¹⁴ FA Handbook, 43, available to download at www.thefa.com/-/media/files/pdf/the-fa-2016-17/fa-handbook-2016-17.ashx.

¹⁵ See breach of Rulebook, where an independent three-person panel is composed to ascertain guilt and set sanctions. The sanctions can range from financial to sporting - <https://www.premierleague.com/about>.

¹⁶ See <https://www.efl.com/clubs-and-competitions/match-officials/dubious-goals-committee/>, where a panel convenes from time-to-time in order to determine which player a ‘dubious’ goal should be credited to. These goals are goals scored, that may have taken a deflection on route to passing the goal-line, thus making unclear whom the goal should be awarded to.

¹⁷ See www.fifa.com/.

¹⁸ See www.bbc.co.uk/sport/football/38920489 - Sports Minister Tracey Crouch suggesting that the FA must not play ‘Russian Roulette’ with public money.

¹⁹ *Ibid.*

²⁰ See www.thefa.com/news/2017/may/18/fa-governance-reforms-180517.

precarious and unlegislated world within which we walk. It falls outside the remit of this chapter, and will not be discussed in huge detail, however it is important to understand the context of how football is run in England and how this has evolved over time, in order to fully appreciate the way in which disciplinary matters in football are administered.

3.4 *Regulatory Framework in English Football*

Each component in the English football pyramid is tied in to another by agreements and codes of conduct, and whilst being governed overall by the FA, it is also influenced by various pieces of legislation and common law; some of which arose from over a century ago.²¹

The majority of the regulatory framework used in order to govern football is comprised of private law. Invariably, there is overlap with respect to public law/legislation in certain cases; specifically in criminal legislation, amongst others.

The general inclination however, is that whilst the regulation of football is effectively private, disciplinary matters and subsequent sanctions should be dealt with and administered privately within the ‘football family’.

Despite this, there are still some delineations within, particularly when referencing regulations on anti-doping, as well as when referencing violence and discrimination.

The key legal sources will be analysed in subsequent sections and will endeavour to describe both the functions and the practical application of disciplinary procedures within the sport.

With football in England largely being privatised, the direct influence and specific authority of government is limited. Nonetheless it should be pointed out that football governance, as well as industry practice, have both been influenced by legislation and common law over a period of time. This stands true, despite there being little specific governmental legislation in place to govern football. This makes the identification of governance and subsequently disciplinary procedures in England more difficult, and in order to fully understand how football is run in England, we must have an overview of the football pyramid itself.

²¹ One of the earlier cases is *R v Bradshaw* (1878) 14 Cox CC 83, at 85, in which it was stated by Cox CC 83, at 85, “*if a man is playing according to the rules and practices of the game and not going beyond it, it may be reasonable to infer that he is not actuated by any malicious motive or intention, and that he is not acting in a manner which he knows will be likely to be productive of death or injury*” – this case is suggestive of the reluctant approach of the English courts to become involved in matters that should fall within the rules and regulations of the sport. The principle of the ‘manly diversion’ from Foster’s 1792 treatise, to which early references of an ‘exemption for sports’ can also be referred to, in Foster’s Crown Law (Oxford, Clarendon Press 1792). In addition, *R v Brown* [1993] UKHL 19, 1 AC 212 (11 March 1993), House of Lords (UK) is a case of importance in sports law, as it refers to risk and voluntary consent when engaging in potentially harmful activity. These are simply three notable instances amongst dozens.

4. *Disciplinary Procedures in English Football*

Having undertaken a whistle-stop historical tour of English football, it safely follows, that the FA also handles disciplinary matters in the professional game.

The FA governs the process from start to finish, assessing situations when they arise, and deciding whether and when to charge with an offence, prior to taking the offence through the disciplinary process, administering a decision and applying a sanction where necessary. This process would take into account whether the FA rules²² have been breached and whether there is a case to answer. Where there is a case to answer, and a case proven, the FA has a wide range of sanctioning powers that all stakeholders in the game both actively and tacitly comply with. These powers can be financial and sporting both, as well as theoretically leading to expulsion from membership. In order for the FA to take matters forward in respect of a breach of the rules, practice directions are stipulated.²³

This chapter will narrow its focus on the practice directions that relate to rule breaches in the FA Handbook, in order to assist the reader with practical points, as well as including some debate on certain rules themselves. Where there are appeal processes, these will be discussed.

The EPL also has its own rules in respect of arbitral matters, covered within the Premier League handbook. The majority of dispute matters are taken through the FA Arbitral route, although there have been significant cases taken through the EPL, which will be covered in further detail.

4.1 *Incidents Arising On-Field*

In recent years, football has faced increasing calls for reform, usually in respect of governance, but there have also been developments in regarding the actual rules of the game. The International Football Association Board²⁴ (“IFAB”) consists of the four home nations and FIFA, with the aim of maintaining the rules of the game as well as necessary evolutions with time. These evolutions would include the Video Assisted Referee (“VAR”) system,²⁵ which is being trialed at different football competitions worldwide at the time of writing.²⁶

With considerable English involvement within the development and enforcement of the laws of the game, it is safe presumption that England would have a strong internal system for situations arising on the pitch. Those making such a presumption will not be left disappointed.

²² See Rules of the Association, 89 – 135 inclusive, in the FA Handbook.

²³ Ibid, 345 – 374 inclusive.

²⁴ See www.theifab.com/overview.

²⁵ See www.fifa.com/about-fifa/videos/y=2017/m=5/video=video-assistant-referee-var-explained-2884217.html.

²⁶ See www.theifab.com/projects/video-assistant-referees-vars-experiment.

Referees are professionalised in England. As always, football is a sport of opinions and not every referee will make a correct decision in every instance. However, this development is a driver for what is a quick and refined process; one that not only retains the referees' ability to make decisions on the field, but also provides the opportunity for retroactive decisions to be made in certain incidents that the referee may not have witnessed during the game.²⁷ The process is one that ensures decisions affecting players' eligibility to partake in the subsequent games are made quickly, thus ensuring that the integrity of the game is upheld.

4.1.1 The Process

Taking the hypothetical example of a player that has been shown the red card by the referee during the course of a match.²⁸

As per the rules of football, the player will invariably miss the remainder of the game s/he is sent off in, as well as being subject to suspension from subsequent games. The length of the suspension can vary based on the incident and/or the referee's perception thereof.

The brandishing of a red card by the referee will arise as a consequence to the player in question breaching one, or more, of the rules of the game. When a player has been sent off during a match, and wishes to appeal the dismissal, the FA has a set process in place.²⁹

Prior to an appeal, the club that the player represents would receive a report containing the offence that has been reported by the referee, including the rule that has been allegedly breached, as well as the punishment that is attached to this offence. The report is subject to a small fee,³⁰ after which the club is in a position to appeal. Appeals can be brought forth for wrongful dismissal; which is designed to absolve liability, as well as claims that punishment for a dismissal is clearly excessive or clearly insufficient, which are usually based on mitigating the offence. Finally, there is a route of appeal for mistaken identity, which can be made both for a dismissal as well as a caution.³¹ This is currently the only route to appeal a caution.

In a more recent development, more specifically from 2013, the advent of stronger technology and television broadcasting has given rise to another rule already frequently used in English football; that of retrospective action.³² For incidents that are 'not seen' by officials during the match, but have become prevalent by way of footage of the match thereafter, or those incidents that have only partially been seen leading the referee unable to make a clear decision, the FA has the

²⁷ See www.thefa.com/news/2013/nov/06/not-Seen-incidents-extension-retrospective-action.

²⁸ The example of a player being sent off is used as appeals are only available for sending offs, with the exception of 'mistaken identity', within which there is an appeal process for cautions.

²⁹ The detailed regulations can be found the Disciplinary Procedures section in the FA Handbook.

³⁰ See Section A, 3.b. of the FA Handbook in respect of the £10.00 administration fee.

³¹ See 4.1.1.4 below for further details on mistaken identity.

³² See Disciplinary Procedures – Standard Directions, Schedule A (a) of the FA Handbook.

ability to charge a player retrospectively. Finally, there is a process for successful deception of a match-official; a new addition as of July 2017.³³

4.1.1.1 *Wrongful Dismissal*

The process for wrongful dismissal may be lodged only where an on-field incident has led to a player being sent off.³⁴ The crux of the matter is focused only on whether the player in question should be subject to a suspension for subsequent game (s), based on the facts of that particular case, in addition to the fact the player has already missed part of the match from which s/he was dismissed. The dismissal itself remains on both the player's and the club's record, so this process does not usurp the role of the referee in any way.³⁵

In order for the claim to be processed, the club must pay a fee, which differs in correspondence with the division in which the club plays at the time.³⁶ Any claim made must be submitted by 13:00 on the second working day following the incident in question, and the claim will only be considered on video/DVD evidence and written submissions.³⁷ Further to this, there is a deterrent point in that a late withdrawal can lead to any fees the club has paid being retained.³⁸ How this deterrent works in practice is difficult to see, particularly as the amount of money in English football is so high that it is unlikely that clubs would be overtly concerned about the potential loss of the figures stipulated in the handbook.

There is no process for oral hearings in respect of wrongful dismissal, and as aforementioned, the Regulatory Commission ("RC") will come to a decision based on video footage and written evidence. The RC will follow a set procedure unless it wishes to amend it, however the procedure is based on the Commission Secretary ("CS") producing the referee's match report and reports from other match officials, as well as any other evidence that could support the referee's action, before producing all evidence provided in support of the claim. The RC will decide upon the success or failure of a claim after considering the evidence, with the standard of the proof being that the RC is '*satisfied*' that the referee made an '*obvious*' error in dismissing the player. Where a claim is successful, the suspension will be lifted.³⁹

³³ See 4.1.1.6 below for further details on successful deception of a match official.

³⁴ See Disciplinary Procedures, Section A, 5.b of the FA Handbook.

³⁵ See Disciplinary Procedures, Section A, 5.c. of the FA Handbook.

³⁶ See Disciplinary Procedures, Section A, 5.d of the FA Handbook, in respect of the fees for claims that are paid by clubs in different divisions.

³⁷ See Disciplinary Procedures, Section A, 5.e. of the FA Handbook.

³⁸ See Disciplinary Procedures, Section A, 5.d of the FA Handbook, withdrawals made prior to 17:00 on the next working day after the game in which the incident occurred will result in the fee paid being refunded, however any withdrawal made after 17:00 will result in the fee paid being retained.

³⁹ See case of former Newcastle United player Fabricio Collocini - www.thefa.com/news/2015/oct/27/fabricio-coloccini-suspension-lifted.

Where the RC feels that it is not satisfied, and it decides to reject the claim, there is still another process for the RC to follow. The rejection of the claim will mean that the standard punishment applied to the offence will be administered, and the claim fee will be retained.⁴⁰ The next stage in the process is to determine whether this standard punishment should be increased.

The RC can increase the punishment if it considers that the rejected claim either had no prospect of success, and/or could have amounted to an abuse of process. In such instances, the RC has the discretionary ability to increase the penalty by up to twice the standard punishment that would have been administered. This is the major deterrent factor that has been built into the process in order to ensure that clubs do not simply *'take a gamble'* by making an appeal, as it is not simply a case of sharing the potential benefit of a successful claim, but also of bearing the potential extra burden of a failed claim that never had realistic prospects of success in the first instance.

The decisions made by the RC in all points of dismissal mentioned herewith are final, and are not subject to any further appeals, with the exception of instances of a suspension being clearly insufficient, which will be dealt with further in 4.1.1.3, below.

4.1.1.2 *Punishment is Clearly Excessive (Exceptional Circumstances)*

All players dismissed from the field of play will be subject to a suspension of at least one match, save for instances in which a successful claim for wrongful dismissal is brought by the club.⁴¹ Claims for excessive punishment are limited to a few instances only, with the claimant club only being able to claim for offences that result in a sending off for offensive/abusive language or gesticulation,⁴² serious foul play,⁴³ violent conduct⁴⁴ or spitting.⁴⁵

The provision for such is deemed to be an exceptional circumstance, and the RC is guided as such, on the premise that in the vast majority of instances the standard punishment will be sufficient. The provision for exceptional circumstances is present in order for *'truly exceptional cases'*.

As in wrongful dismissal, above in 4.1.1.1, the role of the regulator is not to usurp or impinge upon the referee at all. The decision to remove the player from the field of play will be retained, however the question is whether there is still the imposition of the standard punishment, in light of what may be *'truly exceptional'* facts of the case at hand.

⁴⁰ See instance of Jamie Vardy, Leicester City player in season 2016–2017 www.thefa.com/news/2016/dec/20/jamie-vardy-suspended-201216.

⁴¹ See Disciplinary Procedures, Section A, 6.b of the FA Handbook.

⁴² See Disciplinary Procedures, Section A, 6.c of the FA Handbook, in reference to Law 12 (6).

⁴³ See Disciplinary Procedures, Section A, 6.c of the FA Handbook, in reference to Law 12 (1).

⁴⁴ See Disciplinary Procedures, Section A, 6.c of the FA Handbook, in reference to Law 12 (2).

⁴⁵ See Disciplinary Procedures, Section A, 6.c of the FA Handbook, in reference to Law 12 (3).

Therefore, the only question that the RC has to satisfy is whether the standard punishment, when applied, would be sufficient in such instances or whether it should not be imposed because of the specific nature of the case. However, in order to satisfy this question, the RC has to be sure that the circumstances of the case are truly exceptional so as that the standard punishment should be not applied, and that as a result of these circumstances, the standard punishment would be clearly excessive. The standard of proof for exceptional circumstances is '*so as to be sure*', as opposed to '*satisfaction*'.

The process for the claim is the same as referred above, and the determination of the case by the RC will again only be made on video footage and written submissions.

Should the RC decide to reject the claim, the RC will consider whether the punishment should be increased based on whether the rejected claim had no prospect of success and/or amounted to an abuse of process. The deterrent of a potential penalty increase of up to twice the standard punishment can be applied. Where no further sanction is applied, the standard punishment remains in any case, with the exception of a successful claim against wrongful dismissal, as previously mentioned.

4.1.1.3 Punishment is Clearly Insufficient (Exceptional Circumstances)

Whereas claims for wrongful dismissal and excessive punishment are made by the club/player, the provision for punishment being insufficient is in place to enable the association to bring further action against the player in question, thus effectively reversing the burden of proof. The FA may seek to increase the disciplinary consequences of a dismissal, where it is satisfied that the standard punishment is clearly insufficient.⁴⁶

The FA can only bring forth further action in this respect for on-field offences relating to serious foul play, violent conduct and/or spitting.⁴⁷ Where a dismissal has taken place for one of the three aforementioned instances, the FA then has the ability to assess the dismissal and bring a further charge. In the case of Leandro Bacuna, it was deemed that his dismissal from the match, and the standard punishment of 3 (three) further matches for violent conduct, was still clearly insufficient when balanced with the offence of violent conduct by way of pushing an assistant referee.⁴⁸ In such instances where there are exceptional circumstances, the FA is in a position to use this gateway and potentially increase the punishment accordingly.

⁴⁶ See Disciplinary Procedures, Section A, 7.b of the FA Handbook.

⁴⁷ See Disciplinary Procedures, Section A, 7.c of the FA Handbook.

⁴⁸ See instance of Leandro Bacuna at Aston Villa Football Club in March 2017 - www.thefa.com/news/2017/mar/03/leandro-bacuna-aston-villa-030317 - for another recent example, see case of Sadio Mane at Liverpool FC - <http://www.thefa.com/news/2017/sep/12/sadio-mane-claim-rejected-120917>.

In such instances, the RC is charged with considering one question alone: whether the standard punishment should not be imposed in view of the *'truly exceptional'* facts of the case. A claim under this provision can only be successful if the RC determines that the circumstances of the dismissal are truly exceptional, such to the extent that the standard punishment applicable should not be applied, and, that this standard punishment would be clearly insufficient. The RC has to be satisfied that it is sure; meaning that again the standard of proof is different for exceptional circumstances than it is for claims against wrongful dismissal.

Unlike the other instances mentioned in 4.1.1.1 and 4.1.1.2 above, instances in relation to a punishment being clearly insufficient do have appeal rights, enabling the clubs and the players in question one final opportunity to challenge a decision administered by the RC. The appeal rights are very narrow and are limited only to certain instances.⁴⁹

A decision can only be subject to appeal in the event that the penalty imposed in addition to the standard punishment itself, is:

- a. in excess of three matches,
- b. on the single ground that the additional suspension is excessive, and
- c. in respect of that part of the additional suspension in excess of the additional three matches (not accounting for any additional matches included in the penalty as a result of a player having served a suspension earlier in the same season).

The FA provides an example in the handbook as to how this right of appeal can be applied.⁵⁰ In order to clarify how this appeal right works in practice, the instance of Calvin Andrew from an incident arising in a League One match in October 2016 is of great assistance.⁵¹

Mr Andrew had partaken in an offence constituting violent conduct, which was not seen by the match officials but was dealt with retrospectively after the match had been completed (see 4.1.1.5 below for more details on retrospective action). Not only was Mr Andrew subject to the standard 3 (three) match suspension for violent conduct, but his offence was deemed to be so strong that the FA brought a claim forth that the standard punishment was clearly insufficient. The RC in this case, determined that the case was truly exceptional, that the standard punishment should not be applied and was clearly insufficient. It was determined by the RC that Mr Andrew would be subject to a 12 (twelve) match ban; comprising the 3 (three) match standard punishment, and a further 9 (nine) matches.

⁴⁹ See Disciplinary Procedures, Section A, 7.k of the FA Handbook.

⁵⁰ See Ibid, *'where a player is suspended for eight matches following a dismissal for violent conduct, he may appeal only in respect for the two matches in excess of the three standard and three additional match suspension'*.

⁵¹ See instance of Calvin Andrew at AFC Rochdale in November 2016 - www.thefa.com/news/2016/nov/04/calvin-andrew-banned-for-12-games-041116.

In accordance with the practice directions proved in Schedule C of the FA Handbook,⁵² Mr Andrew and his club appealed the decision, and were successful in reducing the overall ban to 9 (nine) matches. The final suspension comprised of the 3 (three) match standard punishment and a further 6 (six) matches thereafter. However it must be noted that was never a prospect of the total ban falling below 6 (six) matches.

The first 3 (three) matches are '*protected*' as they comprise the standard punishment. The next 3 (three) matches are also '*protected*' because they comprise the additional punishment due to the fact that it has been found by the RC that the punishment was clearly insufficient for the offence. In effect, Mr Andrew was only appealing the length of the ban administered unto above the first 6 (six) matches. In essence, Mr Andrew's total ban was of twelve matches, and he was able to appeal in relation to matches 6 to 12 (six to twelve) inclusive, of which he successfully ensured that matches 10, 11 and 12 (ten, eleven and twelve) were knocked off of his suspension.

4.1.1.4 *Mistaken Identity*

Where a player has been cautioned or sent off for mistaken identity, the player and the club may appeal to the FA accordingly. The club must notify the FA of its *intention* to submit a claim by 13:00 on the next working day after the match. The claim itself should be submitted by 13:00 on the following working day (i.e the second working day after the match), including the grounds upon which the player deems his/her innocence, and where possible, a written statement from the player responsible for the offence.

The specific points of claim must include a signed statement by the player that was mistakenly sanctioned, stating that s/he was not responsible for the offence reported, as well as highlighting specifically the name of the person that was responsible, with video footage/DVD of the incident.

As per the other offences referred to above in 4.1.1.1 through to 4.1.1.3 inclusive, the claim will be determined on video evidence and written submissions alone, and there is no right of representation for either party before the RC.

The RC will make a simple assessment as to whether the claim is to be successful or not; there is no clear expression as to the standard of proof required for such instances, and thus far this has not caused any problems in practice.⁵³ Recent examples of Gareth McAuley at West Bromwich Albion,⁵⁴ and Kieran

⁵² See Schedule C, Standard Directions for Appeals against decisions of Regulatory Commissions, in the FA Handbook.

⁵³ Insofar as known to the writers at the time of writing, with the additional consideration of research in the area.

⁵⁴ See incident involving Gareth McAuley of West Bromwich Albion, where red card attributed to him was later transferred to his teammate Craig Dawson - www.thefa.com/news/2015/mar/23/gareth-mcauley-230315.

Gibbs at Arsenal,⁵⁵ demonstrate that incidents have generally been clear, although it is notable that the FA may wish to consider clarification on standard of proof in preparation of any incidents arising that are less clear; perhaps one arising from a mass brawl on field.

With such presumed clarity in the decision-making process, it also stands to reason that the FA has entered provisions to be able to increase the punishment in instances of failed claims. A failed claim for mistaken identity could, when seeing some of the aforementioned examples, be deemed a blatant abuse of process. Where evident that there was no prospect of success in a claim of mistaken identity, the FA has the ability to use its discretion in increasing the penalty up to twice the standard punishment set out in the Handbook.

Where a claim is successful, however, the standard punishment will be conferred unto the person appropriately identified as the correct perpetrator, who will then be liable for this punishment subject to his or her own appeal (see Alex Oxlade-Chamberlain).⁵⁶

4.1.1.5 Retrospective Action

The FA has incorporated a fairly recent provision that enables it to charge players with misconduct for incidents on or around the field of play that were not seen and dealt with by the match officials at the time. This is commonly referred to as retrospective action from the FA.

The premise of retrospective action is to ensure that incidents that have been unseen and are therefore un-policed, should also undergo the requisite scrutiny and be governed accordingly. Invariably the increased broadcasting of football matches increased the need for such a mechanism, with dozens of cameras following almost every game in the EPL and EFL, and many of these games being broadcast on live television.

It follows, that incidents which may not necessarily be seen or ruled on by the match officials at the time, would certainly be seen by viewers and pundits alike, before then being replayed on numerous occasions. This is increasingly more prominent as we are now in an age where television broadcasting is not the only, nor even the widest platform for viewership. Replays of incidents within matches are being viewed hundreds of thousands, or even millions of times on video-sharing platforms on the Internet.

Schedule A⁵⁷ is drafted into the FA Handbook on this premise; to capture situations that had otherwise fallen through the net. It is the nature of the situations themselves that suggest that incidents which remained unseen are the often the

⁵⁵ See incident involving Kieran Gibbs of Arsenal, where red card attributed to him was later transferred to his teammate Alex Oxlade-Chamberlain, and was notable as the red card transferred to Alex Oxlade-Chamberlain was itself successfully appealed on the basis of wrongful dismissal - www.thefa.com/news/2014/mar/24/alex-oxlade-chamberlain-kieran-gibbs-appeal.

⁵⁶ See *Ibid*.

⁵⁷ See Schedule A (a), Disciplinary Procedures – Standard Directions in the FA Handbook.

most vicious. On this basis alone, the argument for incorporating such a rule stands strong.

4.1.1.5.1 Procedure for Retrospective Action

The FA would receive the match report from the match officials, and would first address whether the contentious incident is one that has been seen by the match officials and dealt with accordingly. If this is the case and it has been seen, the FA has no further requirement to continue the process. The FA does not wish to, nor is it given room to impinge upon the role of the match officials and their overseeing of the fixture.

Where an incident has not been seen (or is only partially seen, not enabling the officials to have made a sound judgment) by match officials, the FA will receive the opinion of the match referee at the time to suggest what the referee would have done were s/he to have seen the incident. This is evidence that is used in written decisions made by the RC, further reference to which will be made in 4.1.1.5.2, below.

The FA will have the opportunity to charge the individual (s) involved in the incident and this charge shall be issued within a period of two working days of the incident. In effect, the charge will be administered in a similar manner to a charge placed upon an individual for a seen incident. There is one key difference, however, in that the charge sheet may or may not include the offer of standard punishment. Where the FA does not believe that the standard punishment is sufficient, the FA will clearly set the basis out for this claim.⁵⁸

Subsequent to receiving the charge, the player is required to respond in writing by 18:00 on the first working day following receipt.⁵⁹ If the FA has made an offer of a standard punishment, the player is able to accept or deny the charge. The player has the ability to accept both the charge and the punishment as suggested, or the player can accept the charge and claim in reverse that the punishment is excessive. In denying the charge, the player may also claim that the standard punishment would be clearly excessive (in the instance that the denial of the charge is not successful).

Where there is no offer from the FA whatsoever, the player is simply required to simply accept or deny the charge, and in any case may also claim that the standard punishment would be clearly insufficient, as an alternative argument on the basis that the charge will not be dismissed.⁶⁰

The RC will be convened in the same way as it would for a regular dismissal, however the decision making process is unsophisticated, and much like for mistaken identity in 4.1.1.4 above, the FA Handbook merely states that the RC

⁵⁸ Schedule A (b) (i), Disciplinary Procedures – Standard Directions in the FA Handbook, 357.

⁵⁹ Submissions can be made via fax and/or email, in the experience of this writer, using both options contemporaneously would be best advised.

⁶⁰ Schedule A (b) (ii), Disciplinary Procedures – Standard Directions in the FA Handbook, 357.

will decide whether the charge is proved or not proved.⁶¹ There is no description of the standard of proof required, thus suggesting that such disciplinary matters are either '*black or white*', or that the FA Handbook affords the RC the opportunity to decide entirely on a case by case basis with no set structure of what standard of proof should apply. It may be deemed that such fluidity could lead to disparity in respect of decisions from the RC, some of which will be further addressed in 4.1.1.5.2 below.

Where a charge is not proven, it is dismissed, however, where a charge is proven or admitted, the RC will then decide upon the punishment. The RC can retain the standard punishment attributable to the offence, but it also has the ability to increase or decrease the standard punishment, based on '*exceptional circumstances*', and using the principles of exceptional circumstances already discussed in 4.1.1.2 and 4.1.1.3 above. The standard of proof in these circumstances is denoted, and the RC must be '*satisfied so that it is sure*' that the standard punishment is either excessive or insufficient, accordingly.⁶²

Further, the same principles in relation to right of appeal apply in these instances, as in 4.1.1.3, where the RC deems the punishment to be clearly insufficient.⁶³

4.1.1.5.2 *Decisions based on Retrospective Action*

Since the introduction of retrospective action in English football, there have been numerous instances where a player has been charged and subsequently sanctioned for incidents that remained unseen and/or were not dealt with by the match officials. In fact, such occurrences have become increasingly common, to the extent that a game week seldom passes without at least the suggestion that retrospective action could be taken against a player.

The RC is given discretionary powers in order to make independent decisions, being able to take into consideration every unique and relevant factor in each case. The FA also applies certain structures to the powers of the RC, in order to be able to ensure that a form of consistency is retained; particularly now retrospective action is becoming so frequent.

Whilst there are such mechanisms in place to ensure judicial consistency, the notion of consistency in decision-making is one that is simpler to suggest than it is to realise. The dynamic nature of the sport means that the vast majority of incidents policed will be different to each other. The differing burdens and standards to be met by the parties in such situations applies further complexity to an already fluid situation.

⁶¹ Schedule A (d), Disciplinary Procedures – Standard Directions in the FA Handbook, 358.

⁶² Schedule A (d) (i) and (ii), Ibid, 358.

⁶³ See instance of Calvin Andrew at AFC Rochdale in November 2016 - www.thefa.com/news/2016/nov/04/calvin-andrew-banned-for-12-games-041116.

Decisions that are made retrospectively have proved controversial, with a recent high profile example arising from an EPL match between Manchester United and Bournemouth on 4th March 2017.⁶⁴ Zlatan Ibrahimovic, representing Manchester United, was involved both as the alleged victim and as the alleged perpetrator in two separate incidents with Tyrone Mings, representing Bournemouth.

The referee in the match did not sanction Ibrahimovic or Mings for either incident, however both incidents were replayed an innumerate amount on television broadcasts, as well as on video sharing platforms. The fact that the match involved Manchester United at a pivotal period in the EPL calendar meant that millions of viewers from across the globe were privy to close-action footage facilitated the ability for the FA to consider both instances and place retrospective charges in each instance.

This situation proved particularly controversial. Both participants were charged and were provided with the standard punishment. Ibrahimovic and Manchester United decided against an appeal,⁶⁵ however Tyrone Mings and Bournemouth appealed both the charge and the length of the suspension to the FA.⁶⁶

Ibrahimovic suffered the standard punishment of missing 3 (three) first team matches. Mings was unsuccessful in his appeal, and in addition to the standard 3 (three) match ban, he suffered an additional 2 (two) match ban, based on the standard punishment being '*clearly insufficient*'. Opinions will differ, however it is arguable that the incident involving Ibrahimovic was actually more '*obvious*', and had Manchester United appealed, it is arguable that the club may not have gotten away with a ban of 3 (three) matches alone.

Mings' situation was more debatable. The intention to commit the act is not clearly evident from video footage; nonetheless Mings' decision to appeal backfired horribly, as he ended up with a 5 (five) match ban. Mings' suspension was still within the '*protected*' first 6 (six) matches, as the 2 (two) matches in addition to the standard 3 (three) were added on for insufficiency of punishment. This meant that Mings also had no route for appeal within the FA disciplinary rules.

What made the application of the retrospective action rules more interesting was an incident that occurred a short while thereafter, again involving Manchester United.⁶⁷ Playing against Chelsea, Marcos Rojo appeared to use his foot to stamp on Chelsea player Eden Hazard, whilst Hazard was on the floor. The incident occurred with less speed than that of the Mings incident from the week beforehand. Marcos Rojo was not dismissed from the field, however the replays of the incident played frequently worldwide.

⁶⁴ See www.bbc.co.uk/sport/football/39086674.

⁶⁵ See www.thefa.com/news/2017/mar/07/zlatan-ibrahimovic-to-serve-three-match-suspension-070317.

⁶⁶ See www.thefa.com/news/2017/mar/08/tyrone-mings-suspended-080317.

⁶⁷ See www.bbc.co.uk/sport/football/39176050.

The FA was not in a position to retrospectively charge Marcos Rojo despite the overwhelming evidence because the referee had seen the incident occur during the match. The FA is keen to ensure that it does not give itself room to usurp the power of the referee, however it could be that such incidents question whether the FA should reconsider its stance on this, as whilst retrospective action ensures that more incidents ‘*off the ball*’ are policed, there are still some that can bizarrely, and possibly unjustly, fall through the cracks.

4.1.1.6 *Successful Deception of a Match Official*

From the commencement of the 2017/2018 season, the FA has approved the introduction of Schedule D of the Disciplinary Regulations⁶⁸ in order to be able to act against players in the event of the successful deception of a match official or as is more colloquially known as ‘*simulation*’ or ‘*diving*’.

The FA has limited the application of this new regulation to two particular scenarios arising from the direct action of simulation: when a penalty is awarded in favour of the offending player, and/or when an opponent is dismissed from the field of play (either via a second caution, or a straight red card).

Where a charge is denied, the RC will decide whether the charge is proven or not proven. In the event that a charge is admitted or proven, the standard punishment of a 2 (two) match suspension shall be applied with immediate effect.

The RC shall consist of a panel of 3 (three), which will review cases of simulation: consisting of a former match official, a former manager and a former player. Each will review the evidence independently⁶⁹ from each other before advising the FA of their respective opinions. The FA will be in a position to charge only where all 3 (three) panelists are in unanimity that the incident in question involves deception.

The player receiving a suspension has no route of appeal, and notably, where a player is found to have committed a deceptive act as per the regulations, the RC will have in its absolute discretion the ability to rescind any associated caution or red card that was administered unto any opposing player involved in the incident in question.

The decision taken by the FA in introducing this piece of legislation is a welcome one, and further strengthens, in principle at least, the regulation in place for matters arising on-field. The introduction is a welcome one from an English perspective, and it is a practical solution for both organisational and reputational purposes. The main objective will be to eradicate such practices from football,

⁶⁸ The new regulations shall be incorporated at pgs. 344 – 346 inclusive in the FA Handbook for 2017/2018.

⁶⁹ 5 key questions should be considered: i. is there contact between the players involved; ii. Is there fair contact between the players; iii. Is a player legitimately avoiding contact with his opponent to prevent injury; iv. Has the player initiated the contact between his opponent and himself in order to deceive the referee; and v. does the player exaggerate the effect of a normal contact challenge in order to deceive the referee?

and it will be hoped that the introduction of this new regulation will assist in providing a positive example within England, as well as jurisdictions outside of England, too.

4.2 *Incidents Arising Off-field*

Incidents are always taking place within the sport and industry of football. The game is one of the fastest flowing sports in the world, alongside hockey (ice or field) and basketball. The play is action packed and the match officials have to take dozens of factors into consideration at any given time when making decisions. In order for them to be able to do their jobs effectively, they are given clear rules and remits, enabling them to effectively manage their '*workspace*' in a way that is conducive to football being played in the best way possible.

It follows that where match officials have a remit, the officials would only have jurisdiction to manage or resolve situations arising within these parameters. The remit of the match official is wide, however it does not, cannot and should not cover every single incident that can occur at football stadia before, during or after a match, which can give rise to disciplinary proceedings. This is where Schedule B of the FA Handbook comes in, in order to bridge the gap, so to speak.

Schedule B⁷⁰ aims to cover incidents of misconduct that appear on or off the field, which fall outside the jurisdiction of the match officials but are reported to the FA. The element that states '*outside the jurisdiction of the match officials*' clearly provides Schedule B with a delineating step from Schedule A on '*not seen*' incidents, which has been covered in detail above. The directions under the schedule will apply where the FA charges a participant with misconduct.

This charge can be applied for an incident occurring before, during, after a game, on or around the field of play including the tunnel area, so long as it is for an incident outside of the match officials jurisdiction and is reported to the FA. Further, these directions also apply in respect of media comments; something that is invariably more prevalent in the modern day with frequent use of social media websites and platforms.⁷¹

4.2.1 *The Process*

Where an allegation of misconduct is received by the FA, a charge shall be issued upon the alleged perpetrator of the misconduct within a period of three working days of the incident, or in relation to media comments, within three working days of any media comments being brought to the attention of the FA. Additionally, if observations on any media comments made by a participant are requested, the deadline to apply a charge will be within three working days of the deadline of the

⁷⁰ See Schedule B, Disciplinary Procedures – Standard Directions in the FA Handbook.

⁷¹ See *The Football Association vs Mr Andre Gray*, on www.thefa.com/football-rules-governance/discipline/written-reasons - search 'Andre Gray'.

provision of these observations by the participant in question.⁷² The charge, when applied, will provide the alleged P in question with the ability to accept or deny this charge.

The notion of standard mitigation and reduction of penalty is present in Schedule B,⁷³ with the potential for those admitting offences in ‘*standard cases*’ to have their punishments reduced by up to one-third. The idea of reduced penalties and accelerated justice is one that is adopted by legislative systems around the globe, and works on the premise that an admission of an offence shows remorse. It therefore follows that the punishment for the offence should be less severe than in instances where there is a vehement denial of wrongdoing, later leading to guilt being found. In many jurisdictions, matters of a criminal nature are dealt with in this way, with a tariff, or grid, explaining the punishments attributable for each type of crime, with some possible leeway for the tribunal in each to adjudicate whether the case at hand is more or less severe than what is written on paper before it. This leads to consistency in decision-making and therefore confidence in the justice that is applied.

The challenge within football disciplinary proceedings in England is that the standards and burdens between different instances can vary. Ultimately, the panels making their determinations have the ability to apply their discretion with wide ranging powers, thus leading to less consistency in the decision-making process and a diluted confidence in the perception of proceedings.

In a strictly procedural sense, ensuring that an ‘*early plea*’⁷⁴ is achieved also means that less time, money and resources will be spent on having to address the matter, thus enabling the disciplinary body to relieve itself of some of its case burden. It is true that the FA will not be as case burdened as a national judicial system would, however it is also true that disciplinary work is not the FA’s sole remit, and it will have numerous other tasks that a judiciary may not necessarily have to deal with. Proportionately, any assistance that the FA can receive by way of ‘early pleas’ and time saving in such processes would be beneficial.

4.2.1.1 *Standard Cases*

The FA Handbook refers to ‘*standard cases*’,⁷⁵ which begs the question; what is a standard case, and how can one be defined, or at the least, narrowed down? The Handbook assists in this by attempting to clarify how a standard case is designated; by whom; and what cannot be a standard case, further alluded to below.

⁷² See Schedule B (b) (i), *Ibid.*

⁷³ See Schedule B (b) (ii), *Ibid.*

⁷⁴ Industry reference in criminal law practice to those admitting their guilt early in order to ensure a more/the most lenient sentencing possible.

⁷⁵ See Schedule B (b) (ii), *Ibid.*

4.2.1.2 *Standard Case Designation; By Whom and How?*

The FA is in the position to award a designation of a case as standard, and in accordance with Schedule B, it can do so at its own discretion. The FA has the discretion to award this designation and must do so accordingly when the charge is issued to the P.

The designation of a standard case is primarily in relation to the administration of a punishment reduction as per the principle of '*early pleas*' referred to above in 4.2.1. Where the FA receives an early plea and is bound to consider a potential reduction of penalty by up to one-third, it can only make such considerations where the case is designated as a standard case.

Furthermore, the FA will determine a tariff of penalties that can be applied to standard cases. Where the FA determines a case to be standard, the charge letter shall include two penalties, referred to in The FA Handbook as Standard Penalty 1 and Standard Penalty 2.⁷⁶

Standard Penalty 1 is the penalty that shall be offered in the charge letter on the basis that this penalty will be applied in the instance that the P is to accept the charge.

Standard Penalty 2 is the penalty that shall be informed in the charge letter, on the basis that this is the penalty that will be applied if the P does not accept guilt, continues through the process and is subsequently found to have committed the offence.

The difference between these two penalties should be '*approximately one-third*', corroborating the aforementioned point on '*early pleas*', however there is no guidance in respect of how high or low each penalty can be; merely that the two should be connected by a proportional difference of 33%.

Where a case is not designated as a standard case, no penalty will be offered or referred to in the charge letter. In these instances, if a charge is found to be proven, the RC administering the matter will have the discretion to impose any such penalty as it considers appropriate; thus giving total freedom to decide upon the facts of each case, but also departing from any form of consistency that would lead to a body of helpful football jurisprudence for future incidents.

4.2.1.3 *What Cannot be a Standard Case?*

The FA Handbook itemises the instances in which a case cannot be determined to be standard. The FA has the discretion to determine the allocation of each case, but in doing so, it must take into account the facts of each instance and address whether the case has elements of any of the following:

- a. where the facts of an (alleged) offence are of a serious/unusual nature
- b. where the participant charged has been charged and found guilty previously for misconduct for a similar matter, taking place in the preceding 12 months

⁷⁶ See Schedule B (b) (ii), Ibid.

- c. where the charge is based on media comments made
- d. where the charge is for incidents outside the jurisdiction of the match officials but is still reported to the FA.

4.2.2 Reply, Submissions and Evidence

The P will be required to respond to any charge received in writing. When responding, the P should provide the FA and the RC with copies of any relevant evidence upon which s/he intends to rely, along with a fee £100. The FA and the RC must receive this response by 18:00 on the third working day after receipt of the charge.

4.2.2.1 Standard Cases - Options for Participant

In instances where a case is designated as a standard case, the P has four options:

- a. admit the charge and accept Standard Penalty 1. The penalty would come into effect immediately
- b. admit the charge and submit mitigation and/or an application for Standard Penalty 1 to be reassessed (due to the income of the P) for the RC to consider at a hearing. The hearing would not be attended nor would either party have representation rights, it would merely be a private attendance, which would take place within three working days of receipt of reply
- c. deny the charge and contest the charge at a personal hearing, in which both parties would have representation rights. This should take place within ten working days of receipt of reply
- d. deny the charge and submit written material for the RC to consider at a '*paper hearing*', where neither party would have representation rights. This hearing would take place within three working days of receipt of reply.

For the assessment of the final penalty in standard cases, the RC has an established process, which it will follow in either of the instances below:

- i. where a charge is accepted but an application for mitigation or reassessment of Standard Penalty 1 is made, or;
- ii. where a charge is denied but it is subsequently found by the RC that the charge was proven, the RC can consider any general mitigation or an application for reassessment of Standard Penalty 2 based on financial grounds, prior to determining the penalty.

In instances for general mitigation, the RC shall consider the general mitigation, and subsequently impose any penalty, which it deems appropriate in its discretion. The RC can also increase the penalty above that which was offered initially, however it shall only decrease the penalty that would have otherwise applied if the RC feels that the mitigation put forth is truly exceptional.

Where the RC feels that the mitigation put forth is truly exceptional, it may impose any penalty that it considers to be appropriate, within its general powers, including the administration of a suspended penalty.

In instances for reassessment of the Standard Penalty, the P may make an application to have the financial element of a penalty reassessed where s/he can demonstrate that the financial element applied would be disproportionately harsh due to the level of their income. Where such an application is made, and accepted by the RC, the Standard Penalty will not apply and the RC may impose any penalty that it considers to be appropriate in accordance with its general powers.

4.2.2.2 Non-Standard Cases – Options for Participant

In instances where cases are not designated as standard cases, the P has four options:

- a. admit the charge and submit written mitigation for the RC to consider at a non-attended paper hearing. This hearing will take place within three working days of receipt of reply.
- b. admit the charge but request a personal hearing before the RC in order to present mitigation, with the hearing scheduled to take place within three working days of receipt of reply.
- c. deny the charge and contest it at a personal hearing before the RC, with the hearing to take place within ten working days of receipt of reply by the FA, or any response to that reply by the FA being received by the P.
- d. deny the charge and submit written evidence and representations for the RC to consider at a paper hearing, which will take place within three working days of receipt of reply from the FA, or any response to the reply from the FA being received by the P.

If the P fails to reply or pay the appropriate fee within the applicable time limit, the matter will be dealt with at the next available RC. Further to this, submissions made by the P may not be admitted.

Where a P denies the charge, the FA will have three working days to provide its responses, if any, to the reply, submissions, evidence and any other relevant material provided to it by the P. The FA must provide its responses both to P and the RC. Should material not be submitted within the time limit, the RC may not consider it. Where a P admits a charge, but then submits mitigation or any other material that the FA considers as a whole or partial denial of the charge, the FA reserves the right to respond. Again, any such response must be provided to both P and the RC within three working days of the P's response.

4.2.2.3 Personal Hearings⁷⁷

In the instance a P denies the charge and requests a personal hearing, the RC will conduct these hearings at the earliest available opportunity, and in any event no later than ten working days.

⁷⁷ See Schedule B (b) (v), Disciplinary Procedures – Standard Directions, of the FA Handbook.

If no response is to be provided by the FA to the P's reply, the personal hearing shall take place no later than 10 (ten) working days from the date of notification by to the P that the FA does not intend to provide a response.⁷⁸

In the event that the FA does provide a response to the reply, the personal hearing shall take place no later than 10 (ten) working days from the date of the receipt by the P of that response.⁷⁹

Finally, in the instance of a case concerning incidents outside the jurisdiction of match officials, but nonetheless reported to the FA, wherever possible the hearing will take place prior to the next match in which the player would be eligible to play.⁸⁰

In respect of the procedure in personal hearings, the RC has to follow certain protocol.⁸¹ The charge will be read to the P by the chairperson of the RC, with the invitation for the P to admit or deny each offence. The FA, being the '*claimant*' in such matters, would be invited to open the case against the P by summarising the case and calling its evidence. At the conclusion of the FA's case, the P will be given the opportunity to summarise his/her case and call evidence based on what was contained in P's reply.⁸²

The RC process does make proviso for questioning of witnesses, and each party can question those called as witnesses in turn, with the RC reserving the right to ask queries of any of the witnesses when they are present, at any time during the witness' testimony.⁸³

At the closure of the P's evidence, both parties may make closing submissions.⁸⁴

In order to facilitate, and in some instances expedite proceedings, the RC may dispense with hearing evidence in situations where the P admits the charge (s) against him/her. In such cases, the parties would simply be invited to make submissions.

If there is an instance where the P denies part of a charge, or admits the charge but there is a factual dispute, the RC will consider all evidence and submissions in order to determine where a charge is proven as well as the factual basis upon which the charge is proven. Furthermore, where the subject matter, or the facts of charges against more than one P are linked, the RC will also hear these charges at the same hearing. Much like in general litigious proceedings, the FA has made provision for expedition of a trial and narrowing down key points of contention, in order to elicit the most just result, as well as save time and costs.

⁷⁸ See Schedule B (b) (v) (a), Ibid.

⁷⁹ See Schedule B (b) (v) (b), Ibid.

⁸⁰ See Schedule B (b) (v) (c), Ibid.

⁸¹ See Schedule B (c), Ibid.

⁸² See Schedule B (c) (i), (ii), (iii), Ibid.

⁸³ See Schedule B (c) (iv), Ibid.

⁸⁴ See Schedule B (c) (v), Ibid.

Further, there is the ability for the RC to consider *'joinder'*⁸⁵ of charges, which will be particularly sensible in incidents relating to multiple individuals, and/or may arise out of situations such as mass brawls, and/or where there are co-conspirators with P.⁸⁶

4.2.2.4 Penalties for Non-Standard Cases⁸⁷

Where a case is not a standard case, and the charge is admitted, or found proven by the RC, the RC will have discretion to impose any penalty, as it considers appropriate.

Should the RC deliver a decision that either party wishes to appeal, the parties will have the ability to do so. The appeal can be against both the decision and/or the penalty ordered.⁸⁸ Should parties wish for written reasons, they must make the request for such to the RC during the verbal notification of the decision. Where requested, written reasons will be made available to the parties by 18:00 on the third working day after the hearing.⁸⁹

The P has the ability and the right to be represented at personal hearings, and if a P wishes for this, P must notify of its intention to have representation as well as providing the identity of the representative that will be present, at the same time as the reply by the P. If P does not submit this information via the specified route, P will forfeit his / her right to representation.⁹⁰

In respect of the costs of personal hearings, the costs for the convening of the RC may have to be paid by either party. The RC has the ability to make this order. However costs in respect of bringing, or responding to a charge shall be borne by the party that incurs the expense.⁹¹ Thus the general legal principle of *'he who brings the claim bears the (financial) burden'*, however the RC has the discretion to order its own costs to be borne by either the claimant and/or the respondent.

The decision to award costs could be based on various considerations, such as; the facts of the case; whether the RC determined that it should or should not have been brought; or based on procedural failures from either side.

4.3 Incidents Involving Spectators

In discussing the players in their actions both on and around the pitch, as well as their activity on social media, it can be easy to think that football revolves around

⁸⁵ Industry terminology for the joining together of two or more lawsuits, providing that the legal issues and the facts are the same for the connected parties.

⁸⁶ See Schedule B (c) (vi), Ibid.

⁸⁷ See Schedule B (e) B, (f), (g), (h), (i), Ibid.

⁸⁸ See Schedule B (f), Ibid.

⁸⁹ See Schedule B (g), Ibid.

⁹⁰ See Schedule B (h), Ibid.

⁹¹ See Schedule B (i).

the players (and coaches) alone. The profile and celebrity of a football player is so large in the modern day that their lives can quite feasibly consume both the front and back pages of the newspapers, with some space in between for a referee that may or may not have made a contentious decision.

However, it must not be forgotten that whilst football is played by the players, it is not driven by them. Football is driven by the fan: the consumer. The one that wants to attend a football match; that wants to buy the team jersey; that wishes to own the completed Panini sticker album;⁹² that is all consumed by the escapism that comes with the sport. The spectator.

The spectators, too, fall within the remit of the FA, and are not immune to action. Malpractice by a spectator or spectators could lead to regulatory activity from the FA, but the main process would be that of criminal activity, under the Football Spectators Act 1989 (“FSA”).⁹³ The FSA was specifically created with the rise of football violence and hooliganism in England in the 1980s, meaning that there was a pathway for the authorities to investigate, charge and sanction individuals or groups with both monetary fines as well as ‘*banning orders*’ restricting these persons from attending a certain number of matches, attending certain stadia, or both.

There is an overriding principle in the FA Handbook, Rule L; which relates to fair play.⁹⁴ The principle of fair play is simple yet wide reaching, and aims to provide a blanket approach in respect of all persons involved in the game at any level.

Whilst it is debatable whether some of the players and coaches fully comply with the principles of respecting the laws of the game;⁹⁵ and of the game being played in an entertaining and positive manner;⁹⁶ the principle that the behaviour of all should be ‘*sporting*’ regardless of result is ultimate.⁹⁷

The principle of fair play is a honourable one, with a hope that everyone involved in the game is compliant in safeguarding the best interests of the game. The national legislation that is enforceable in England falls outside of the remit of this chapter and therefore will not be focused upon in great detail. Whilst Rule L has limited governing power, it is subject to the practice directions in the FA Handbook, and it still emphasises the notion that everyone should work together in the best interests of the sport.

In more recent times there have been high profile incidents involving spectators linked to clubs, that have been identified and have been criminally prosecuted, such as the Chelsea fans that became instantly famous globally when

⁹² See <http://collectibles.panini.co.uk/home.html> – historically one of the key brands known for producing stickers and trading cards in respect of football players worldwide.

⁹³ See Football Spectators Act 1989 – www.legislation.gov.uk/ukpga/1989/37.

⁹⁴ Rule L, The FA Handbook, 134.

⁹⁵ See L.a. Ibid.

⁹⁶ See L.b. Ibid.

⁹⁷ See L.c. Ibid.

singing racist songs and forcefully pushing a male of African descent off of a carriage in the Paris Metro.⁹⁸

Where there is activity of this type, which is in contravention of statute, it will be controlled and regulated by the government and the police force. Where there is activity contrary to the FA Rules and it is not governed by statutes such as FSA or the Football (Offences) Act 1991;⁹⁹ it is governed, as in previously mentioned instances, by the FA Rules.¹⁰⁰

4.4 *Incidents Involving Clubs (Charged due to Spectator Conduct)*

As discussed briefly in 4.3, above, there are times when spectators commit offences that can lead to punishment, and concurrently tarnish the reputation of the club to which they attach or affiliate themselves with. In the instances aforementioned involving Chelsea Football Club, these individuals were isolated and dealt with by the prosecutorial authorities; both in France and England, to differing extents.

These situations happened outside of the stadium context, and whilst the individuals concerned were traveling to/from matches, these incidents fell just outside of the ambit within which the FA itself could operate. This begs the following questions; in what types of situation would the FA most likely operate, and when would the FA step in and administer a situation itself? This is not to suggest that the statutory authorities would merely step aside were a situation to fall within the FA's remit.

There is the possibility of there being combined action, such as a regulatory procedure by the FA, as well as a criminal procedure against certain individuals by the prosecutorial body.¹⁰¹ There is no set sanction grid provided for instances where clubs are charged for failing to control their fans, and the range of sanctioning could include monetary fines through to parts of a stand being closed for a certain period, as well as the stadium being closed to fans and matches being played 'behind closed doors'.

A strong example in this respect is that of West Ham United v Millwall on 25th August 2009.¹⁰² This case has led to one of the largest fines handed to a club for failure to control its fans.¹⁰³

⁹⁸ See <https://www.theguardian.com/world/2017/jan/03/chelsea-football-fans-convicted-of-racist-violence-in-paris> – although this situation was criminally prosecuted in France. Chelsea also separately banned each of those involved from purchased tickets and attending games. Further allegations against Chelsea fans were made, see www.bbc.co.uk/news/uk-england-stoke-staffordshire-31696936 – in this England based incident, the police were called.

⁹⁹ See www.legislation.gov.uk/ukpga/1991/19/contents.

¹⁰⁰ Rules of the Association, The FA Handbook, 89 – 134 inclusive.

¹⁰¹ See instance of Chesterfield vs Preston North End – www.bbc.co.uk/sport/football/33024580. The FA took regulatory action against Preston for failure to control its fans, whilst the police charged an individual who encroached the pitch and assaulted one of the players.

¹⁰² See http://news.bbc.co.uk/sport1/hi/football/teams/w/west_ham_utd/8221590.stm.

¹⁰³ See www.thefa.com/football-rules-governance/discipline/written-reasons – the case can be found in the 'key cases' section.

West Ham United was charged with “*failing to ensure that its spectators and all persons purporting to be its supporters or followers conducted themselves in an orderly fashion and refrained from violent, threatening, abusive, obscene or provocative behaviour, conduct or language whilst attending at the Carling Cup fixture against Millwall on 25 August 2009 in breach of FA Rule E.20 (a)*”. There were also charges under Rule E.20 (b) against West Ham United, as well as charges under both Rule E.20 (a) & (b) against Millwall.

In such instances, the standard directions in Schedule B of the FA Handbook¹⁰⁴ will apply, much in the same way as it applies for other incidents that occur which are outside of the remit of the match officials.

4.5 *Eligibility of Players*

The FA and the different competition organisers have agreed a dual registration system; therefore players must be registered with The FA and the different league either EPL, EFL or National League. This is the driving reason as to why eligibility of players in England can be quite a particular issue.

If for instance a player is registered with the EPL, but for whatever reason is not registered with The FA, the latter will take disciplinary action against the Club for fielding an ineligible player, whether that player has only been taking part in the EPL, or even other competitions within England.

If the Club is found to guilty of fielding an ineligible player, The FA will decide the appropriate sanction from the ones available (points deduction for instance) and depending on which action is taken, might request the PL to apply the sanction.

In practice, if any club commits an offence in respect of player ineligibility, it is most likely to be an administrative error; either human or technological. However, the consequence of such errors could be severe, and there clubs must act proactively to avoid them at all costs.

5. *Dispute Resolution within English Football*

The FA rules outline processes for parties to administer and respond to charges, as well as the routes which each should undertake in order to facilitate the processes in order to lead to a just resolution. In some instances appellate powers are incorporated into the regulations.

These powers are all in respect of disciplinary matters, with the FA acting as the governing body, regulating and disciplining Ps that fall within the FA's remit. The charged Ps have the ability to dispute these charges and/or mitigate these charges, by way of written submissions or a personal hearing. Such instances are based on matters that arise on or off-field, as has been discussed previously.

¹⁰⁴ Schedule B, Disciplinary Procedures – Standard Directions, of the FA Handbook, 360.

This does not necessarily include extra-football matters however, such as contractual disputes amongst Ps, as well as disputes with the FA and/or against the FA rules themselves.

In such instances, where a dispute arises, the FA has built in an alternative dispute resolution method that enables parties to contest and resolve disputes that arise from within the football sphere, as well as ensuring a quick and just conclusion. The main proponent of this is Rule K Arbitration, in addition to EPL and EFL arbitration systems. As always, the challenge with arbitral bodies is that cases are confidential unless otherwise agreed for publication, and therefore this section will endeavour to focus on practical examples where possible, in addition to explaining the core functions available through the rules.

5.1 Rule K Arbitration

Where a dispute arises within English football, the FA has built in a mechanism for an internal dispute resolution process. The system is an arbitral system, and is colloquially referred to as a 'Rule K' arbitration;¹⁰⁵ the name stemming from the fact that the point surrounding the tribunal is chronologically placed as 'K' in the rules of the association within the FA Handbook.¹⁰⁶

Rule K arbitrations will be governed by the laws of England and Wales;¹⁰⁷ and consequently, the tribunal shall be held in the English language and shall apply English law in determination of any dispute that is referred to it.¹⁰⁸

In principle, subject to a few exceptions;¹⁰⁹ any dispute or difference between two or more Ps in respect of the rules and regulations of the FA;¹¹⁰ the rules and regulations of an affiliated association or competition,¹¹¹ the statutes of FIFA and UEFA¹¹² and the laws of the game¹¹³ can be dealt with by an arbitral procedure.

The exceptions to this principle are that parties must exhaust all options within the rules prior to proceeding with Rule K;¹¹⁴ where such a dispute can be resolved by rules of an affiliated association or competition,¹¹⁵ where a party wishes to appeal against an RC decision unless the challenge is based on the validity thereof.¹¹⁶ The FA adopts the Arbitration Act 1996¹¹⁷ in its entirety, with

¹⁰⁵ Rule K, Rules of the Association, of the FA Handbook, 126.

¹⁰⁶ Rules of the Association, of the FA Handbook, 89 – 134 inclusive.

¹⁰⁷ Rule K 14 (a), *Ibid*, 134.

¹⁰⁸ Rule K 14 (a) and (b), *Ibid*.

¹⁰⁹ Rule K 1 (b), (c) and (d), Rules of the Association, of the FA Handbook, 126.

¹¹⁰ See K 1 (a) (i), *Ibid*.

¹¹¹ See K 1 (a) (ii), *Ibid*.

¹¹² See K 1 (a) (iii), *Ibid*.

¹¹³ See K 1 (a) (iv), *Ibid*.

¹¹⁴ See K 1 (b), *Ibid*.

¹¹⁵ See K 1 (c), *Ibid*.

¹¹⁶ See K 1 (d), *Ibid*.

¹¹⁷ See www.legislation.gov.uk/ukpga/1996/23/contents.

the exception of sections 44;¹¹⁸ 45¹¹⁹ and 69¹²⁰ in order for its procession of Rule K. In theory, the removal of express clauses that state parties must obtain leave from the tribunal should they wish to appeal, opens the opportunity for parties to appeal unfavourable or undesirable decisions to the state courts.

However, the decisions in the cases of *Tony Pulis vs Crystal Palace*¹²¹ as well as that of *Stretford vs The FA*¹²² demonstrate that even if matters are taken ‘outside’ of football and into the state courts, there is a reluctance by the state courts to go against the decision of the arbitral body, unless as stated in *Pulis*, ‘in extreme cases where the Tribunal has gone so wrong in its conduct of the arbitration that justice calls out for it to be corrected’.¹²³ This premise of ‘serious irregularity’, so to speak, provides the Rule K tribunal with much room within which to manoeuvre, and whilst the theoretical position of being able to appeal to the state courts lies present, the reality is that there is little prospect of a decision being overturned unless it was in truly exceptional circumstances. The case of *Pulis* itself has another dimension in that it was initially heard in an EPL Manager’s Arbitration, which will be further discussed in 5.2, below.

5.1.1 The Commencement of Arbitration

For a party to commence arbitral proceedings, the claimant must serve a notice¹²⁴ including the names and addresses of the parties;¹²⁵ a brief statement describing the nature of the dispute;¹²⁶ any proposals suggested in respect of the arbitration;¹²⁷ and whether there is a proposal for a single arbitrator.¹²⁸ If not, and the claimant wishes for more than one, the claimant must supply the name and address of its appointed arbitrator (who must have accepted their willingness and availability to accept this appointment).¹²⁹

The respondent must respond within 14 days of the service of the notice;¹³⁰ setting out whether there is an admission or denial of all or part of the claim;¹³¹ a brief statement of the denial (if any) and the nature of any counterclaim;¹³² a response to any proposals made by the claimant about the

¹¹⁸ See s.44, *Ibid.* Court powers exercisable in support of arbitral proceedings.

¹¹⁹ See s.45, *Ibid.* Determination of preliminary point of law.

¹²⁰ See s.69, *Ibid.* Appeal on point of law.

¹²¹ *Pulis vs Crystal Palace (CPFC Limited)*, [2016] EWHC 2999 (Comm).

¹²² *Stretford vs The Football Association Ltd & Another*, [2006] EWHC 479 (Ch).

¹²³ Para. 53 of judgment by Sir Michael Burton, in *Pulis vs Crystal Palace (CPFC Limited)*, [2016] EWHC 2999 (Comm).

¹²⁴ Rule K 2 (a), Rules of the Association, of the FA Handbook, 127.

¹²⁵ See K 2 (a) (i), *Ibid.*

¹²⁶ See K 2 (a) (ii), *Ibid.*

¹²⁷ See K 2 (a) (iii), *Ibid.*

¹²⁸ See K 2 (a) (iv), *Ibid.*

¹²⁹ See K 2 (a) (v), *Ibid.*

¹³⁰ See K 2 (b), *Ibid.*

¹³¹ See K 2 (b) (i), *Ibid.*

¹³² See K 2 (b) (ii), *Ibid.*

arbitral process;¹³³ a response to any proposal made by the claimant about the single arbitrator;¹³⁴ and the name and address of their own nomination for arbitrator where there is a dispute on the sole arbitrator proposed, or if there has been no mention of an arbitrator by the claimant.¹³⁵

The appointment of the sole arbitrator can be done by agreement of both parties, however where there is no agreement, in the instance that the FA is not a party, the Chairman of the Football Regulatory Authority (“FRA”) (under the auspices of the FA) shall appoint the sole arbitrator.¹³⁶ Where the FA is a party, the President of the Chartered Institute of Arbitrators (“CiARB”) shall appoint the sole arbitrator.¹³⁷

5.1.2 *The Tribunal and its Powers*

Where the tribunal is composed of a sole arbitrator, the sole arbitrator shall act in the combined role of arbitrator and panel chair. In instances where there are to be three arbitrators, both parties have 14 days from the service of response to agree the appointment of the third arbitrator, who shall also act as the chair. There are further stipulations in respect of the selection and appointment of arbitrators based on whether the FA is a party or not;¹³⁸ however what is unanimous is that each arbitrator must remain impartial and independent of the parties at all times.¹³⁹

In football there is generally a presumption within practice that the selection of an arbitrator by a party gives ‘*an advantage*’ as such. This presumption is a dangerous one to make; not only in respect of the merit of the case put forth by either party, but also as it casts an aversion that the arbitrator can be swayed, thus calling into question their impartiality and the objectiveness of the process itself.

As with proceedings in general, should the partiality of an arbitrator be called into question, there are routes for the parties to assess and address this.¹⁴⁰ In any case, where the appointment of an arbitrator fails, the Chairman of the FRA or the President of CiARB, where appropriate, shall make the appointments as necessary.¹⁴¹ If, for whatever reason an arbitrator is unable to (or refuses to) act after appointment, the replacement shall be appointed in the same manner as was originally done for the now ineligible arbitrator.¹⁴²

¹³³ See K 2 (b) (iii), *Ibid.*

¹³⁴ See K 2 (b) (iv), *Ibid.*

¹³⁵ See K 2 (b) (v), *Ibid.*

¹³⁶ See K 2 (d) (i), *Ibid.*

¹³⁷ See K 2 (d) (ii), *Ibid.*

¹³⁸ See K 3, (c) (i), (ii) and (iii), *Ibid.*

¹³⁹ See K 3 (d), *Ibid.*

¹⁴⁰ See K 3 (d) (i) and (ii).

¹⁴¹ See K 3 (e), *Ibid.*

¹⁴² See K 3 (f), *Ibid.*

Once the tribunal has been empanelled, the tribunal has a number of powers within its remit. These powers are listed comprehensively¹⁴³ within the FA Handbook, however the most important to note is that the tribunal has the power to determine any question of law or fact arising in the course of the arbitration. In this essence, and as touched upon briefly above, the role of the tribunal is to act under the auspices of English law, and to act as would be done within an English courtroom. The arbitral body is a supervisory body that is accommodated within the FA Handbook, but is not a disciplinary body in itself. The disciplinary issues are dealt with by the FA, whereas disputes peripheral to those arising directly from ‘football activity’, such as those surrounding contracts, as well as improperly executed processes and errors in law, leading to a submission for a tribunal to set aside FA RC decisions.¹⁴⁴

5.1.3 The Process

The procedural rules are carefully stipulated¹⁴⁵ in the FA Handbook, and the entire process is devised in a way to deliver an expedited procedure, resulting in quick, effective and just conclusion. In all instances, the hearing must take place within 119 days of the empanelment of the tribunal.¹⁴⁶ There is a route for interim applications also;¹⁴⁷ which aims to begin the processes and direct upon all procedural and evidential matters within 2 business days.¹⁴⁸ In order to avoid disputes in respect of the appointment of arbitrators, as well as to speed up the process itself, an application for interim relief will enlist the assistance of Sporting Resolutions¹⁴⁹ who will appoint a single arbitrator to hear the application accordingly. In addition to the time limits and deadlines set out for each action or activity, there is also an overriding duty that the parties involved are bound to comply with.

Both parties must do ‘*all things necessary*’ for the proper and expeditious conduct of arbitration.¹⁵⁰ Further, the parties must comply with any directions without delay to ensure the smooth running of the process. Any unnecessary or undue delay in proceedings could in itself defeat the purpose of the expedited process that Rule K aims to serve.

¹⁴³ Rule K 5 (i) through to (xvii) inclusive, Rules of the Association, The FA Handbook, 131.

¹⁴⁴ See *West Ham vs The Football Association*, written reasons for dismissal of application by Nicholas Stewart QC.

¹⁴⁵ Rule K 4 (b) (i) through to (v) inclusive, Rules of the Association, The FA Handbook, 130.

¹⁴⁶ See K 4 (b) (v), *Ibid.*

¹⁴⁷ See K 8, *Ibid.*

¹⁴⁸ See K 8 (c) (ii) and (iii), *Ibid.*

¹⁴⁹ Sporting Resolutions (UK) is an independent dispute resolution service for sport in the UK – See <https://www.sportresolutions.co.uk/about-us/visions-aims-and-missions>.

¹⁵⁰ Rule K 6, Rules of the Association, The FA Handbook, 131.

5.1.4 Remedies, Awards and Costs

The tribunal will have a range of remedial action to administer unto a case within its remit. It can make declarations as to matters that shall be determined within proceedings;¹⁵¹ as well as make monetary orders; both for payments of sums of money¹⁵² as well as for simple or compound interest thereon.¹⁵³

Further, the tribunal has the power to make orders for action or injunctive relief;¹⁵⁴ as well as specific performance;¹⁵⁵ amendment, setting aside or cancellation of deeds or other documents.¹⁵⁶

When considering awards, the tribunal can make provisional awards in addition to final awards. Where a provisional award has been made, the tribunal would be bound to take this award into account when the final award is made, in order to ensure that an award does not unfairly or disproportionately affect a party that may have been subject to an interim order prior to the final award being delivered.¹⁵⁷

Awards, when delivered, are deemed to be final and binding on the parties from the date upon which the decision is made. Whilst this is subject to sections 67 and 68 of the Arbitration Act 1996, it is important to note the case of *Pulis*, above mentioned, in this respect.¹⁵⁸ Awards shall be made in writing and must state the reasons for decision, unless all parties agree otherwise. The awards will be dated and signed, before being submitted to the FA.¹⁵⁹

When considering the award, the tribunal has within its power, although it is not obliged, to make a costs order against either party in respect of the costs of the arbitral process.¹⁶⁰ Points of consideration in this respect could include fees and expenses of the arbitrators;¹⁶¹ the parties' legal (and other) and administrative costs;¹⁶² and the parties' legal (and other) costs incurred in any cost assessment or determination.¹⁶³

5.1.5 Does it Work?

The challenge of assessing Rule K situations is that, as arbitral matters are private, there is often little publication or information in respect of awards. Furthermore,

¹⁵¹ See K 7 (i), *Ibid.*

¹⁵² See K 7 (ii), *Ibid.*

¹⁵³ See K 7 (iii), *Ibid.*

¹⁵⁴ See K 7 (iv), *Ibid.*

¹⁵⁵ See K 7 (v), *Ibid.*

¹⁵⁶ See K 7 (vi), *Ibid.*

¹⁵⁷ See K 9, *Ibid.*

¹⁵⁸ See K 10 (b), *Ibid.*

¹⁵⁹ See K 10 (a), *Ibid.*

¹⁶⁰ See K 12 (a), *Ibid.*

¹⁶¹ See K 12 (a) (i), *Ibid.*

¹⁶² See K 12 (a) (ii), *Ibid.*

¹⁶³ See K 12 (a) (iii), *Ibid.*

the fact that the awards will not set precedent, and the wide range of powers given to the tribunal can mean that whilst the tribunal has the ability to take each case as it arises, and entirely on its own merit, this freedom can also lead to a lack of consistency when building up a body of jurisprudence, much like one of the criticisms attached to CAS¹⁶⁴ jurisprudence.

However, Rule K is one of the pioneering national dispute resolution systems, and particularly in light of the Regulations on Working with Intermediaries coming into force on 1st April 2015, which contracts each intermediary into abiding by FA Rules (and thus contracting into using Rule K to deal with disputes), means that Rule K is of increasing importance. It is frequently in use and has become the go to method for various disputes, not just for those involving intermediaries.

5.2 Premier League Arbitration

In addition to Rule K arbitration, and the principles outlined above arising from the FA Handbook, the EPL has its own handbook. The EPL handbook mirrors that of the FA Handbook in respect of many salient points. The rules of the game do not vary between the FA and the EPL as the governing body and one of the competition organisers respectively therein, however the EPL handbook has its own version of arbitration too, which is legislated for accordingly.

Teams that enter into the EPL (this is inclusive of a team that has been relegated, so long as the cause of action in the tribunal arises from a time when said team was still part of the EPL) effectively contract an agreement that any disputes arising between them and/or the EPL, arising out of the rules or otherwise, can be dealt with by arbitration.

Whilst the arbitration rules of the EPL in essence, are the same as Rule K, this arbitration is not referring to Rule K itself, and delineates from Rule K, providing a separate service altogether, exclusive for EPL members alone. This is expressed in the *'agreement to arbitrate'*, where it stipulates that *'no other system or mode of arbitration will be invoked to resolve any such dispute'*.¹⁶⁵

The most significant example of the EPL arbitral system being used, is in actual fact, one of the more significant examples of sporting arbitral use in England overall; the case of Sheffield United and the EPL.¹⁶⁶

West Ham United had signed two players, Carlos Tevez and Javier Mascherano, but in entering into contracts with these players, the club also gave third parties the ability to materially influence club policies and performance, thus breaching the regulations that the club was bound by. West Ham's fielding of these players, particularly in the case of Carlos Tevez, led to the club saving itself from being relegated from the EPL that season, at the expense of Sheffield United. The EPL appointed a Disciplinary Commission to address this instance, however

¹⁶⁴ Court of Arbitration for Sport / Tribunal Arbitral du Sport – See www.tas-cas.org/en/index.html.

¹⁶⁵ See section X.2.4 of Arbitration, the English Premier League Handbook, 245.

¹⁶⁶ Sheffield United vs Football Association Premier League Limited, [2007] ISLR, SLR-77.

the commission found West Ham in breach and administered a monetary, rather than sporting sanction.

Sheffield United Football Club invoked the arbitral procedure on the basis that it felt the disciplinary commission had administered a decision that was '*flawed and unlawful*'. Despite Sheffield United having some strong arguments in its favour, the EPL arbitration panel was only able to act in a supervisory capacity, and not as an appeal body per se. Therefore, it would only be able to determine whether the decision was irrational or perverse, or otherwise outside of the margins of discretion that would be open to the disciplinary commission. It was held by the tribunal that this was not the case.

The importance of this matter is not only due to the use, and the reinforced veracity of the EPL arbitration tribunal, but also due to the creative manner in which Sheffield United pursued this matter to mitigate its own losses. In absence of being able to achieve sporting justice, the club brought a private action against West Ham in a Rule K matter,¹⁶⁷ in which Sheffield United was successful. This was possible because it was established that EPL rules constituted contracts between the clubs themselves as well as between each club and the competition organiser.

Further, West Ham's breach of the relevant rule had directly led to Sheffield United's losses. West Ham's '*success*' was that the club was saved from relegation due to its breach of the rules, and but for West Ham's breach, Sheffield United would still be in the EPL. The final compensation amount was agreed outside of court and whilst not disclosed, it is understood to be in the millions. West Ham's ability (which it chose not to use) to appeal the matter to CAS, or even to challenge further in the commercial court, attributed an underlining of the power, respect and enforceability that Rule K carries.

5.2.1 *The Premier League Manager's Arbitration*

Furthermore, the EPL has a specific arbitral system for managers of clubs.¹⁶⁸ The Pulis case is an example of this, whereby the EPL managers' tribunal was used, and the undesirable decision for Pulis arising from this was then contested in the state courts, still leading to a loss for Pulis.

The case of Pulis revolved around a loyalty payment that Tony Pulis, then manager of Crystal Palace Football Club, was seeking to receive as per his contract. After successfully pushing for the early payment of the loyalty bonus, Tony Pulis left the role as Crystal Palace manager and proceeded to move to another club, West Bromwich Albion.

¹⁶⁷ Sheffield United v West Ham FA Rule K arbitration, Lord Griffiths, Sir Anthony Colman, Robert Englehart QC, 18 April 2008 and 18 September 2008; and See [2008] EWHC 2855 (Comm), [2009] 1 Lloyd's Rep. 167, [2008] 2 CLC 741, (2008) Sport and the Law Journal vol 16 iss 2 SLJR 4, 10 November 2008 Teare J 25 – See www.nadr.co.uk/articles/published/Arbitration/Sheffield%20v%20West%20Ham%202008.pdf.

¹⁶⁸ Section Y, Disciplinary and Dispute Resolution, The English Premier League Handbook, 253.

It was clear from the facts of this case that the evidence in this matter was clearly unfavourable towards Pulis, however in light of this, the case also demonstrates that the tribunals are not always ‘*individual friendly*’ and/or ‘*anti-organisation*’ as the soft presumption tends to be in general legal practice. The emphasis is that the tribunal would be inclined to assess each situation on its merits, as is the rightful and objective way. Pulis is not the only manager to have gone through this particular arbitral process, with other high profile individuals such as Martin O’Neill and Kevin Keegan also having been through the process, too.

5.3 *English Football League Arbitration*

Finally, further to arbitral systems put in place by way of the FA Handbook and the EPL Handbook respectively, there is also an arbitral system put in place by the EFL.

The EPL has successfully incubated certain matters by ensuring that they are dealt with by way of the EPL tribunal, or the EPL manager’s tribunal, rather than these matters necessarily filtering through to Rule K. The EFL has built in such a mechanism too, with the express provision that no other system shall be invoked to resolve any such dispute.¹⁶⁹ The system is uncanny in its similarity and functioning to both the EPL tribunals and Rule K, with the drafting of the rules between the three systems all clearly modeled on each other.

6. *Gambling in English Football*

Gambling and sport have been hand in hand for many a year. This is even more apparent in English football. Betting on matches is, and has been a casual pastime for thousands of people, as well as a more serious habit, with sometimes dire consequences, for a smaller but still significant number. Whilst it is synonymous with sports, it also raises a number of wider integrity issues.

Controversy with gambling in English football is not a new phenomenon with high-profile incidents across the 20th century from the Billy Meredith bribery scandal¹⁷⁰ to the rigged match between Liverpool and Manchester United in 1915¹⁷¹ (both of which involved Billy Meredith as a participant, although he was not found guilty in the latter), amongst others. However, such incidents were largely the exception rather than the rule.

There was almost a wider presumption in the late 20th and early 21st century, with aggressive expansion of betting companies in Southeast Asia that

¹⁶⁹ See section 9, 91.1.4 of Arbitration, English Football League Handbook, 75.

¹⁷⁰ See www.bbc.co.uk/blogs/wales/entries/5c1f57b7-167c-362f-aa30-59310d24fdc3.

¹⁷¹ See www.bbc.co.uk/news/uk-england-manchester-32152534 and www.manutd.com/en/News-And-Features/Features/2015/Mar/A-century-on-from-the-Manchester-United-vs-Liverpool-match-fixing-scandal.aspx?pageNo=1.

whilst such corruption was present in sports, English football was honourable and sanct in comparison.

Whoever held such beliefs would have had been tested with the 2008 match-fixing situation between Accrington Stanley and Bury,¹⁷² and would have had them well and truly shattered when the 2013 match-fixing investigation by The Telegraph lead to the National Crime Agency arrested a number of persons, including a former EPL player.¹⁷³

6.1 *The FA Rules on Gambling*

The FA Rules had previously stated that a P must not on any match or competition in which they are participating or on which they have *'direct or indirect influence'*. The case of Robert Heys¹⁷⁴ incident heard submissions of how much influence Mr Heys may have had on team matters, whilst working in an *'off-field'* role in direction. However, the ambiguity was soon eradicated. The rules on betting within the FA soon changed,¹⁷⁵ and the Handbook now provides for a blanket ban on betting.¹⁷⁶

The updated ruling provides that a P shall not bet *'either directly or indirectly, or instruct, permit, cause or enable any person to bet on the result, progress, conduct, or any other aspect or occurrence in a football match'*.¹⁷⁷ Further, this also extends to any matter concerning football anywhere in the world including the transfer of players, employment of managers, team selection and/or disciplinary matters.¹⁷⁸

The blanket banning by the FA on any footballing bet by Ps, anywhere in the world, seemed to catch a number of players unawares.¹⁷⁹

The majority of these situations have been dealt with by way of monetary sanction applied by the FA. The most prominent example where a sanction has been applied with both sporting and financial impact is that of Joey Barton.

6.2 *Joey Barton*

Joey Barton ("JB") is a well-known football player and personality within England, and Europe. Having developed as a young player for Manchester City, JB has had

¹⁷² See <https://www.theguardian.com/football/2009/jul/22/accrington-stanley-bury-betting-scandal>.

¹⁷³ See www.telegraph.co.uk/sport/football/10479667/Football-match-fixing-six-arrested-by-police-investigating-betting-syndicate-as-rigging-hits-British-game.html.

¹⁷⁴ See www.thefa.com/football-rules-governance/discipline/written-reasons - search Robert Heys for written reasons.

¹⁷⁵ See www.thefa.com/football-rules-governance/policies/betting/betting-rules.

¹⁷⁶ Rule 8 (1), Rules of the Association, The FA Handbook, 115.

¹⁷⁷ See Rule 8 (1) (a) (i), Ibid.

¹⁷⁸ See Rule 8 (1) (a) (ii), Ibid.

¹⁷⁹ See instances of James Demetriou (www.bbc.co.uk/sport/football/33337677), Martin Demichelis (www.bbc.co.uk/sport/football/36323842), and Jack Colback (www.bbc.co.uk/sport/football/38133632) as just a few examples.

a career taking in a number of EPL clubs, as well as representing the English national team. JB has been involved in controversy throughout his career, having served time in prison for an offence of affray,¹⁸⁰ as well as having been involved in a violent training ground altercation with former teammate Ousmane Dabo.¹⁸¹ In 2017, JB was charged with betting offences contrary to the FA Rules, which led to a huge amount of publicity, leading to a sanction applied that was both monetary and sporting in nature.

The fine was £30,000, and the sporting sanction was a ban from football activity for a period of 18 months,¹⁸² although he was successful in reducing the sporting sanction by just below 5 months on appeal, with the financial sanction remaining.¹⁸³ JB was charged with having breached Rule E8¹⁸⁴ of the FA Handbook, no less than 1,260 bets on matches, some involving his own team.

As aforementioned, JB is not the only player to be caught up in such a situation, nor is he the only high profile player to have done so. However, JB's situation is by far the most flagrant that has been subject to regulatory action, with regard to the sheer number of games that bets have been placed on.

One of the common denominators throughout the majority of charges against players is that the players often suggest that they weren't *'aware of the rules'*. The FA clearly informed of the change on its website,¹⁸⁵ as well as now having ended its own sponsorship (for which it was accused of hypocrisy by JB) with leading bookmaker Ladbrookes.¹⁸⁶ Various workshops set up by the FA and clubs denote that there have been changes to the rules on betting, and that at time of writing, three years on from the changes, there can simply be no excuse for not knowing this.

Yet still, the arguments used in mitigation have generally leaned towards 'not knowing about the rule change'. The system mentioned previously in 4.2, above, is what would be used for such cases, and the lack of consistency, as well as the lack of available written reasoning from the FA for many of these decisions (written reasons are only available upon express request from the respondent), there is little clarity in relation to precisely how such sanctions are applied. The mitigation in JB's case included JB highlighting that he suffers from a gambling problem, yet this, and the fact that it was expressly determined that JB was not in suspicion of any match-fixing or major integrity matters, did not save him from a potentially career-ending ban.

¹⁸⁰ See <http://news.bbc.co.uk/1/hi/england/7409943.stm>.

¹⁸¹ See <http://news.bbc.co.uk/1/hi/england/7482620.stm>.

¹⁸² See www.bbc.co.uk/sport/football/39720232.

¹⁸³ See www.thefa.com/news/2017/jul/27/joseph-barton-appeal-upheld-270717 - appealed under Rules of the Association of the FA Handbook, 121.

¹⁸⁴ Rule 8 (1), Rules of the Association, The FA Handbook, 115.

¹⁸⁵ See www.thefa.com/football-rules-governance/policies/betting-rules.

¹⁸⁶ See www.telegraph.co.uk/football/2017/06/22/football-association-ends-ladbrokes-sponsorship-amid-criticism/.

Whilst it was agreed on appeal that the RC should have taken the expert evidence of the doctor that spoke of JB's gambling issue more seriously, it is reiterated that this point was one of mitigation alone, and is not a complete defence, as is seen in the reduction of JB's sanction rather than the quashing thereof.

What is abundantly clear, however, is that sanctions can be applied even where there is a net loss, as seen in Robert Heys, and where the FA deems that a financial sanction alone is not sufficient, a sporting sanction, even in the duration of 18 months, can be applied.

6.3 *Wayne Shaw*

One of the more intriguing situations to arise out of English football in recent times is the case of Wayne Shaw ("WS"). Whilst WS was not charged for having placed any bets on football himself, he has been charged with a alleged breach of an integrity matter, contrary to Rule E5.¹⁸⁷ The facts of the case are of note, particularly as this case does not revolve around an incident on the pitch itself. It is of further interest due to the aura of '*innocence*', or naivety around the situation, moreso than the on-field attempt by former teammate, and England international, Matthew Le Tissier in 1995.¹⁸⁸

WS was representing Sutton United; a team in the National League, division 5 of English football. At the time of the incident on 20th February 2017,¹⁸⁹ WS was 45 years of age, and was the reserve goalkeeper in a FA Cup 5th round knockout match against Arsenal FC. With Sutton United losing the match 2-0, and all of the Sutton United substitutions having been made, WS, knowing there was no chance of him making an appearance, proceeded to eat a pastry and drink a bottle of water whilst in the dugout area. WS is passionately referred to by his club's fans as the '*Roly Poly Goalie*',¹⁹⁰ and prior to the match; one of the biggest in Sutton United's recent history, various bookmakers had offered gamblers odds of 8/1 if WS was to '*eat a pie during the match*'.

With WS chance of taking any part in the game finished, as well as Sutton United's chances of clawing something back from the match itself, WS decided to eat a pastry which was then noticed by the BBC cameraperson and subsequently aired live on free-to-air national television.

WS had initially suggested that his actions were a '*bit of fun*', but having seen the fall out from the event amongst the authorities, as well as the commencement of an investigatory process by both the FA and the Gambling Commission, WS resigned from his position at the club.¹⁹¹

¹⁸⁷ Rule E 5, Rules of the Association, The FA Handbook, 114.

¹⁸⁸ See <http://news.bbc.co.uk/sport1/hi/football/teams/s/southampton/8236108.stm>.

¹⁸⁹ See www.bbc.co.uk/sport/football/39037401.

¹⁹⁰ See www.standard.co.uk/sport/football/why-sutton-uniteds-roly-poly-goalie-wayne-shaw-is-not-your-stereotypical-goalkeeper-a3471551.html.

¹⁹¹ See www.bbc.co.uk/sport/football/39045017.

On 14th July 2017, WS was charged with intentionally influencing a betting market¹⁹² and bringing the game into disrepute.¹⁹³ The process undertaken in this matter will again be the same as discussed previously in 4.2, above. At a personal hearing taking place on 6th September 2017, the charge against WS was proven before the RC.

Both financial and sporting sanctions were applied, with WS being suspended from football for 2 (two) months, as well as being fined a sum of £375.¹⁹⁴ In mitigation, WS had proffered evidence to demonstrate that he had not received any financial gain from the bet. Furthermore, a grand total of £2,667 was won across 72 people betting on the instance; providing an average winning of just over £37. Three of these winners had a connection to WS' Facebook page.¹⁹⁵ This evidence suggested that the link between the incident, the betting and the winnings was arguably not indecent, however the conclusion of the case also demonstrates the stringency of the regulations and the seriousness with which the FA applies them.

7. *Anti-Doping in English Football*

The FA has its own Anti-Doping Regulations¹⁹⁶ (“ADR”), which are compliant with and fall under the jurisdiction of the World Anti-Doping Agency (“WADA”) Code and United Kingdom Anti-Doping (“UKAD”). The scope of this section will be limited to ADR matters within the FA alone, and will not delve deeply into explaining the WADA code; merely sticking to shining a light as to where there are relevant considerations from a English footballing perspective.

The ADR is applicable to all Ps of the FA, including players, clubs, leagues, club officials and/or county associations, among others. Whilst the ADR has a wide range in terms of the constituents it has within its remit, evidently some Anti-Doping Rule Violations (ADRVs) such as “*Using, or attempting to use, a banned substance or method*” or “*Evading, refusing, or failing to provide a sample when requested*” are applicable to players only.

In addition to the above ADRVs, Ps can also be sanctioned if they are found to have committed any act of misconduct relating to anti-doping. In general terms, the ADRVs are a transposition of the WADA and UKAD Code and do not differ from them.

The FA has set up its own whereabouts system, via the “*Whereabouts and Missed Test Regulations*” (“The Whereabouts Regulations”), which also form part of the FA ADR. Despite being part of the ADR, the Whereabouts

¹⁹² Rule E 5, Rules of the Association, The FA Handbook, 114.

¹⁹³ Rule E 3, Ibid, 112.

¹⁹⁴ See www.bbc.co.uk/sport/football/41181979.

¹⁹⁵ See www.skysports.com/football/news/11095/11035877/former-sutton-goalkeeper-wayne-shaw-admits-he-was-naive-over-pie-gate-incident.

¹⁹⁶ See www.thefa.com/football-rules-governance/anti-doping.

Regulations themselves constitute an independent set of rules with its own structure and sanctions.

The Whereabouts Regulations has two different policies; one applicable to Club and one applicable to individual players.

The FA Policy for Clubs requires them to lodge the personal information of the players belonging to their first team, reserve team and youth team. The FA Policy for Players however, requires them to provide their own personal whereabouts information.

The whereabouts of the players has to be provided daily, including for instance any change in the training/playing schedule, transportation, injuries, days off and suchlike. In the event the information is not updated, Clubs will be charged and most likely, sanctioned.¹⁹⁷

7.1 'Strikes' for Clubs

The disciplinary mechanism in the Whereabouts Regulations ("WRD") works with a system of warnings and strikes. The FA operates a '3-strike' policy before charging clubs and players for breaches of the Whereabouts Regulation. A Club will be charged with a doping offence if it receives 3 strikes within a period of 2 years.

Clubs will be charged with a strike if it receives 3 warnings in the term of 2 years.

The decision to issue a warning, instead of a strike, will always be at the absolute discretion of the FA.

The circumstances whereby a Club may receive a whereabouts *warning* include:

- Late submission of the Whereabouts Form.
- Late submission of the training schedule.

The circumstances whereby a Club may receive a whereabouts *strike* include:

- The whereabouts information supplied by the Club is inaccurate.
- A Club fails to provide whereabouts information.
- Repeated late submission of whereabouts information.

Prior to issuing a Club with a whereabouts strike, the FA will seek the Club's observations and will consider the explanation provided before deciding on the matter. The Club will need to prove that there were truly exceptional circumstances for them not to be issued a strike. From the information available in the public domain, a few clubs have already been sanctioned and no exceptional circumstances have been recognised so far by the FA.

¹⁹⁷ See www.bbc.co.uk/sport/football/38588913.

¹⁹⁸ Social Drugs Policy Regulations, in the FA Handbook, 310.

In theory, the system also means that a club can have up to 9 indiscretions resulting in warnings, which in turn lead to 3 strikes (one strike after three warnings each), and a subsequent charge with a doping offence. On the other hand, another club could be charged with a doping offence for indiscretions that directly led to strikes. Furthermore, the fact that the decision of allocating strikes and/or warnings is solely in the discretion of the FA does lead to the possibility of there being disparity in the charging of Ps with offences.

7.2 *Sanctions for Clubs*

In the event of a Club been charged and found guilty of a breach of the Whereabouts Regulations, the RC shall be allowed to impose any of the penalties set out in Regulation 8.1 of the Regulations for Football Association Disciplinary Action.¹⁹⁸

In the majority of cases, any penalty will be financial and scaled to the category within which the Club is currently playing:

EPL Club: £25,000.

EFL Championship Club: £5,000.

EFL League One Club: £2,500.

EFL League Two Club: £1,000.

In addition, in the event the planned test has to be aborted for instance, on the basis of there being an insufficient number of players present at the time of training, the costs of test will be charged to the club.¹⁹⁹

7.3 *Strikes/Warning for Players*

Even though the submission of this information is the obligation of each individual player, it is not uncommon in practice for players to discharge this duty onto another person, usually a club official.

It is important to note that even when the Club is the one providing the information, the player is the one who will receive the warning or strike in the event of a breach. The player in effect discharges his/her responsibility, without discharging the liability therein.

The circumstances where a Player may incur a whereabouts *warning* include:

- Provision of incomplete whereabouts information.
- Late submission of information on a non-test day.
- Not allowing a 2 (two) hour gap between notification and time slot.

The circumstances where a Player will incur a whereabouts *strike* include:

¹⁹⁹ Whereabouts and Missed Test Supplemental Guidance.

- No advance notification of absence.
- Failure to be present and available for drug testing.
- Provision of incomplete whereabouts information having already received 3 (three) warnings.
- Late submission of information on a drug test day.
- Late submission of information on a non drug test day having already received 3 (three) warnings.
- Not allowing a 2 (two) hour gap between notification and time slot having already received a warning.

7.4 *Sanctions for Players*

If a player receives 3 (three) strikes, he will be charged with a breach of the Whereabouts Regulations. If the breach is found proven, the player shall be sanctioned with a suspension for a minimum of 1 (one) year and a maximum of 2 (two) years.²⁰⁰

In order to determine the specific sanction, the FA shall take into account the *'degree of fault'* of the player. Even though it is not specifically outlined in the Whereabouts Regulations, it is the opinion of the author the evaluation of the degree of fault should be assessed individually for each strike, instead of assessing the breach as a whole. It may be that there are some instances where a strike comprises of 3 (three) warnings, and one or more of these warnings have occurred with considerable vitiating factors.

The minimum sanction of 1 (one) year could be considered particularly harsh when we take into account that, in most occasions, players trust their clubs to provide The FA with some of the information required and therefore, players could find themselves banned for a year with no fault of their own. The alternative argument would suggest that the player should be responsible for such matters, however with the deferral of this activity so commonly done within clubs, it could mean that the FA would consider taking a different approach to addressing this issue.

The FA could approach things in a way where each warning is considered in detail for any aggravating or mitigating factors, thus ensuring that the most just result is reached, whilst compromising both time and resources with the lengthy deliberations. Alternatively, the FA could set a *'hardline'* approach as a deterrent to such activity in the future, thus compelling players to take the responsibility accordingly.

²⁰⁰ Regulation 53 of Doping Regulations, 265.

²⁰¹ Rules of the Association, in the FA Handbook, 118.

²⁰² See *The Football Association vs Chelsea FC and Tottenham Hotspur FC*, on www.thefa.com/football-rules-governance/discipline/written-reasons and search 'Chelsea'.

8. Other Conduct

As with any set of regulations, best endeavours ensure that almost, if not every single situation or instance can be captured. Whilst some of these instances may be less prevalent, it is still important to touch upon such matters that have relevance to disciplinary proceedings within English football.

8.1 Failure to Ensure Its Players Conduct Themselves in an Orderly Fashion

Rule E20 makes the Clubs responsible for ensuring its “*directors, players, official, employees, servants, representatives, spectators, supporters or followers*” conduct themselves in an orderly fashion and “*refrain from any one or combination of the following: improper, violent, threatening, abusive, indecent, insulting or provocative words or behaviour, whilst attending at or taking part in a Match in which it is involved*”.²⁰¹

As we see, Clubs are responsible for the actions of a very wide spectrum of people, on some of which the Club has none or very little control. Even though it is not mentioned in the Rule, the FA has structured this breach as a strict liability offence, as the Club shall be liable for the conduct of all the aforementioned.

In relation to players and managers, The FA charges with a breach of this Rule when there is a massive confrontation or brawl during or after a match.²⁰²

However, it should be remembered that it is the Club which is charged in this scenario; in addition, individual players or coaches can still be charged according to other rules, for their own actions.

The only exception to this strict liability we can find is towards the actions of spectators or followers. The Club has the burden of proof that in relation to a particular incident that ‘*was the result of circumstances over which it had no control*’ and ‘*[Club’s] officers or agents had used all due diligence*’ (Rule E21).²⁰³

If discharged successfully to the satisfaction of the tribunal, the Club can absolve itself of liability in such instances. This exception is even narrowed even more, in that it shall not apply if the conduct includes a reference to one or more individual protected characteristics (ethnic origin, race, nationality, religion or belief, and suchlike).

8.2 Discriminatory Behaviour

Rule E4²⁰⁴ forbids a participant from carrying out any act of victimisation (as defined by the Equality Act 2010) or discrimination by reason of ethnic origin,

²⁰³ Rules of the Association, 119, in the FA Handbook.

²⁰⁴ Rules of the Association, 113, in the FA Handbook.

colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation, disability, age, pregnancy, maternity, marital status or civil partnership. All the aforementioned, even though deviate slightly from the national legislation; can be classed as “Protected Characteristics” under the Equality Act 2010.²⁰⁵

This Rule is not generally applied for any one particular reason. Even though certain conduct might be classed as a breach of Rule E4,²⁰⁶ we find that other Rules consider a discriminatory behaviour an aggravating factor for other breaches. For instance, Rule E3(2)²⁰⁷ recognises as an ‘*Aggravated Breach*’ any breach of Rule E3(1),²⁰⁸ if it includes a discriminatory factor. Also, Rule E21, paragraph 2²⁰⁹ doesn’t allow the club’s defence of ‘*actions beyond its control*’ in cases of discriminatory conducts of spectators or supporters.

For the above-mentioned reasons, it is found that participants are generally charged for according to Rule E1 and E2, than for Rule E4.

This also has its reasoning on the very broad spectrum of Rule E1, which in the way it’s drafted it covers almost any reproachable or intolerable action according to present social standards, or social standards that would be relevant at the material time.

9. *In Conclusion*

It is often suggested that England is the land of regulation. It follows that England’s football system would follow suit in accordance. In this respect, the FA does not disappoint. Having been at the forefront of regulation of the sport worldwide for many a year, England has one of the most developed working regulatory systems within global football; something that will be evident from the paragraphs contained above. The sanctioning bodies in place undertake due process, have the competence to assess a situation, apply a sanction, and enforce accordingly, leaving the English system the envy of many a member state. However, with such huge systems can come problems, and the simple point that the English system is well developed, in *itself*, does not mean that it is infallible.

There are complexities within the system, particularly in dispute resolution, and the number of different arbitral panels in place which will, in effect, run in exactly the same way and often with some of the same persons involved in the tribunal. It is convolutions such as these that enable the purveyor to understand that the English system is not perfect. Nevertheless, it doesn’t have to be perfect to be a leading example, and the sheer number of matters managed with such speed and regularity demonstrates that the FA does continue to progress as well as leading the way for other federations to follow.

²⁰⁵ See s.4 of the Equality Act 2010 - www.legislation.gov.uk/ukpga/2010/15/contents.

²⁰⁶ Rules of the Association, 114, of the FA Handbook.

²⁰⁷ *Ibid*, 112.

²⁰⁸ *Ibid*, 112.

²⁰⁹ *Ibid*, 119.

DISCIPLINARY PROCEDURES IN FRENCH FOOTBALL

by *Christophe Bertrand**

Introduction

In France, the first official football competition took place in 1894, however, we had to wait until 1919 to have a single legal entity in charge of managing and organizing French football.

Indeed, on April 7 1919,¹ the two opposing organizations governing French football at the time (CFI² – *affiliated to FIFA in 1908* – and USFSA³) joined together and created the “Fédération Française de Football Association” (FFSA), which then became the “Fédération Française de Football” (hereafter “FFF”).

On October 4 1919, Henri Delaunay wrote in the first official newspaper of FFF, *Le Football Association*: “*We realized the dream of the players: football to footballers. It was not without difficulties unfortunately, but struggling pulling on the cart it was finally racked. Our great family is ultimately constituted. We will well understand each other because we’ll speak the same language*”.

In 1922, the FFF was declared by Decree a “*public utility*”.

Article 1.2 of its Statutes⁴ defines that FFF has for purposes, among others, to:

- “ (...) *organize, develop and monitor the teaching and practice of football, in all its forms, by players of different statuses, in France (...);*
- *establish technical rules;*
- *issue titles and conduct national selections;*
- *issue licenses;*
- *define and implement a comprehensive training project;*

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¹ See [https://www.fff.fr/articles/la-fff/histoire-du-football-francais/details-articles/211-544081-1919-la-federation-est-nee-\(1 June 2017\)](https://www.fff.fr/articles/la-fff/histoire-du-football-francais/details-articles/211-544081-1919-la-federation-est-nee-(1%20June%202017)).

² Comité Français Interfédéral

³ Union des Sociétés Françaises de Sports Athlétiques (see for more information: <http://thenextbaseballcountrywillbefrance.blogspot.fr/2013/01/lusfsa-premiere-structure-federale.html>).

⁴ See https://www.fff.fr/common/bib_res/ressources/450000/5500/161128155426_statuts_de_la_fff_saison_2016-2017.docx.pdf

- *create and maintain a link between its individual members, affiliated Clubs, its Districts, its Regional Leagues, the Executive Board of the Amateur Football League and the Board of Directors of the Professional Football League;*
- *defend the moral and material interests of French football;*
- *maintain all useful relations with foreign associations affiliated to the Federation International Association of Football (FIFA), national sports organizations and authorities. (...)*".

The FFF, soon to be a hundred years old, has therefore never ceased to develop or increase its number of licensees (2,106,972 in 2016).⁵

Of course, this increase of licensees, alongside with the development of sports, and more ever of professional competitions and media coverage, required the professionalization of its federal structure.

In parallel, and after the second world war, the French state monitored the development and organization of sports in France.

In 1945 (August 28), a first Ordinance was issued on "*activities of the associations, leagues, federations and sports associations*".⁶

In 1975 (October 29), a first Law was enacted on "*Development of Physical Education and Sport*".⁷

And on July 16 1984⁸ what is considered to be the first major sport's law in France that fixed the rules for all the actors of sports (athletes, clubs, federations,) was adopted.⁹

Article 16 of this law provided that:

"The sports federations, constituted in accordance with the law of 1 July 1901,¹⁰ include sports associations, sporting companies, (...), licensees. (...) They operate independently.

The sports federations approved by the Minister of sports participate in the execution of a public service mission provided that they have adopted statutes in conformity with standard statutes defined by decree of the Conseil d'Etat. In this capacity, they are responsible in particular for promoting education through physical and sports activities, developing and organizing the practice of physical and sports activities. They provide training and development for their volunteer executives. They issue licenses and federal securities. A Conseil d'Etat decree determines the conditions for the granting and withdrawal of authorization.

They shall have disciplinary powers, respecting the general principles of law, with regard to the sports associations which are affiliated and their licensees and shall uphold the technical and ethical rules of their disciplines. They may

⁵ In 2016, the French Football Federation had 2.106,972 licensed, including 1,794,627 practitioners, and organized more than 1,000,000 games - source: www.fff.fr.

⁶ http://franceolympique.com/art/1723-historique_.html.

⁷ www.insep.fr/sites/default/files/loimazeaud.pdf.

⁸ See <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000693187&categorieLien=id>.

⁹ Also called "AVICE" law.

¹⁰ I.e. French federations have necessarily to be constituted as associations.

delegate part of their functions to internal bodies within the territorial jurisdiction of the latter.

(...) The sports federations are placed under the supervision of the minister in charge of sports, (...). The responsible ministers shall ensure, as far as he is concerned, that the federations respect the laws and regulations in force. (...)”.

This 1984 law was modified many times until 2006 when the State considered there were enough laws, decrees, ordinances, jurisprudence, . . . that it could be codified in a French Sports Code.¹¹

Among the modifications of the 1984 law, one introduced the obligation for the “*Sports federations participating in the performance of a public service mission*” to “*adopt disciplinary regulations in conformity with a standard regulations defined by decree of the Conseil d’Etat after consultation with the French National Olympic and Sports Committee*” (art. 8 of the Law of July 13 1992¹²).

Since then, disciplinary procedures in French Football are governed both by FFF regulations and by the mandatory standard regulations established by law which the federation regulations must respect.

While FFF regulations and disciplinary decisions regarding FIFA regulations raise many other very interesting legal issues, this study is limited to the disciplinary power granted to FFF, as it relates to the national sphere.

1. *General principles*

1.1 *Legal basis of the disciplinary authority granted to French Football Federation: the notion of public service mission delegation*

According to the provisions of the Sport’s Code, sports federations are constituted as associations whose object is the organization of the practice of one or more sports’ disciplines.¹³

In France, there are two types of recognized federations:

- a) federations which are (only) approved by the public authorities, called “Approved Federations”, and
- b) approved federations which have also been given a public service mission delegation by the Sports’ Minister, called the “Delegated Federations”.

The difference between approved and delegated federation is that the latter is the only federation authorized to organize and control competitions in its sport’s discipline.¹⁴

¹¹ See <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071318> (1 June 2017).

¹² See https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=5021D8192326901AE933557BFE5188AD.tpdila14v_2?cidTexte=JORFTEXT000000711624&idArticle=&categorieLien=id (1 June 2017).

¹³ Articles L. 131-1 and L.131-2 of the Sport’s Code.

¹⁴ See http://crdla-sport.franceolympique.com/cnar/fichiers/File/ressources/070514fiche_pres_gen_fede.pdf (1 June 2017).

In others words, delegated federations are approved federations which have been awarded a legal monopoly in order to “*organize the sports competitions at the end of which the international, national and departmental titles are issued and to make the corresponding selections*” and “*to define the technical rules specific to the discipline*”.¹⁵

Only one federation by discipline can receive such a delegation.

By this ministerial delegation, the federation is not only allowed to participate in the execution of a public service mission, but is also in charge of that public service mission: the organization of the competitions, for which disciplinary power appears as an essential instrument.

In all cases; article L.131-8 of Sport’s Code¹⁶ provides that the Sports’ Minister may issue an authorization only to federations “*which, in order to participate in the performance of a public service mission, have adopted statutes containing certain mandatory provisions and a disciplinary regulations in conformity with model regulations*”.

Pursuant to this article, every recognized federation must enact disciplinary regulations, and these disciplinary regulations must comply with the terms of model disciplinary regulations issued by the public authorities, which contains minimum standards requirements.

These disciplinary “*model regulations*” have been included in the Sport’s Code since its creation in 2006, in Annex 1-6 and are common to every sports discipline.

The FFF is a delegated federation.¹⁷

Therefore, it has the prerogative of a public authority to carry out the task of organizing football competitions, which entails the enactment of numerous standards and regulations, in particular on the disciplinary level.

As an authorized federation, the disciplinary regulations of FFF have to respect the terms of the model disciplinary regulations.

As noted above, these “*model regulations*” were first released after the law of July 13, 1992 and was last modified by the Ministerial Decree n°2016-1054 of August 1, 2016.¹⁸

In accordance with this decree, the FFF has adopted its new Disciplinary Regulations during its General Assembly on 17 March 2017, which entered into force on 1 July 2017, i.e. for the season 2017/2018.¹⁹

The FFF has attached its Disciplinary Regulations in the Annex 2 of its “General Regulations” which refer to disciplinary sanctions outlined in the General Regulations at article 200 and following.²⁰

¹⁵ Articles L. 131-14, L. 131-15 and L.131-16 of the Sport’s Code.

¹⁶ See <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071318&idArticle=LEGIARTI000030930203> (1 June 2017).

¹⁷ See <https://www.legifrance.gouv.fr/eli/arrete/2016/12/31/VJSV1700226A/jo> (1 June 2017).

¹⁸ See <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032963271&categorieLien=id> (1 June 2017).

¹⁹ See https://www.fff.fr/static/uploads/media/cms_pdf/0003/41/badffdb80ce11e96f954196a809fa01c4_a2a9933.pdf (1 June 2017).

²⁰ See <https://www.fff.fr/la-fff/tous-les-statuts-et-reglements/statuts> (1 June 2017).

1.2 Legal status of disciplinary decisions

Because they are associations, federations are legal persons governed by private law.

Thus, we could have thought that federal disciplinary power is exercised in a private law context and therefore possesses the same characteristics than the disciplinary power that can be found in any private association.

This is not the case. As stated above, the FFF is a delegated federation and has thus been entrusted with a public service mission related to the organization of competitions.

On the basis of this mission, which is of “general interest”, and the recognized monopoly arising out of the FFF’s status as a delegated federation, the Conseil d’Etat²¹ considered as early as 1974 (*i.e. much before the advent of the Sport’s Code and before the Law of July 16 1984*) that the State had entrusted the federation with “*the execution of an administrative public service*”, and therefore, “*in the event that those federations, in application of the delegation thus granted, take decisions which are binding on the persons concerned and constitute the use made by them of the prerogatives conferred on them by the public authorities, the said decisions shall have the character of administrative acts ...*”²²

By classifying as administrative acts the sanctions pronounced by the delegated federations, the administrative courts have subjected them to the legal rules governing such acts, whether in their elaboration, their loss of legal effects, the constraints on their content, or their judicial review.

The same analysis applies to the disciplinary regulations adopted by the delegated federations, because of their direct relationship with the public service mission and the implementation of prerogatives of public authority.²³

The exercise of the disciplinary power exercised by a delegated federation such as FFF (regulations and proceedings) with regards to their licensees is subject to the rules and principles arising from laws and sports regulations as well as from administrative law and jurisprudence governing the enactment of individual administrative or regulatory acts.

²¹ The Conseil d’État is the Supreme court of the administrative jurisdictions.

²² Conseil d’État, 22 November 1974 «FIFAS”.

²³ Conseil d’État 13 June 1984; Conseil d’État 5 December 1986 “Morra”.

2. *French Football Federation: structure and competence*

2.1 *The federal structure*

2.1.1 *FFF and its decentralization bodies*

The FFF (as all delegated federations) has a pyramidal structure.

In addition to a Professional Football League (hereafter “PFL”), which, as its name suggests, is responsible for the management of professional football (and to which we shall refer later), the FFF is constituted of the regional (Regional leagues) or departmental (Districts) federations, organs of the Federation with their own legal personality (*as the federation, Regional leagues and Districts are also constituted as associations*).²⁴

Decentralization at the federal level *de facto* increases the levels of disciplinary power.

Naturally, in order to ensure uniformity, the regulations of the various local federal authorities must comply with the FFF disciplinary regulations and the standard disciplinary regulations issued from the State decree.

2.1.2 *The particular situation of the French Professional Football League*

According to article L.132-1 paragraph 1 of the Sport’s Code “*the delegated sports federations can establish a professional league for the representation, management and coordination of professional sports activities of their affiliated associations and sports companies*”.

The administrative judge as well as legislative and regulatory texts allow the federations to delegate the management of professional sport to bodies with legal personality.²⁵

Thus, professional leagues have been delegated to manage the professional championships.

Leagues have thus set up competent internal committees to draw up the necessary disciplinary rules and also to exercise disciplinary power indispensable for the smooth running of professional competitions.

Article 32 of FFF Statutes provides that “*In accordance with the provisions of the Sport’s Code, it can be established within FFF a body responsible for directing professional football and called the Professional Football League (PFL) (...) It organizes, on behalf of FFF, the Championship of Ligue 1, the Championship of Ligue 2 and any other competition of its jurisdiction concerning the professional clubs*”.

²⁴ Title 3 of the FFF Statutes available at https://www.fff.fr/common/bib_res/ressources/450000/5500/161128155426_statuts_de_la_fff_saison_2016-2017.docx.pdf (1 June 2017).

²⁵ This delegation is made through an Agreement (“Convention”) and must be guaranteed that the Federation’s appeal bodies will act as final instance of the decision taken by the Professional League commissions.

As stated in article 1 of FFF General Regulations “*the Federation governs amateur football and controls professional football*”.²⁶

It should be noted that a conflict arose between the FFF and the French PFL in 2015, when PFL decided on its own to amend the number of Clubs’ relegation and promotions between “Ligue 1” and “Ligue 2” (two up and down instead of three).²⁷

The FFF opposed to this amendment, and its Executive Committee decided to maintain the number of promotions and relegation between “Ligue 1” and “Ligue 2” for 2015/2016 season to three.

The PFL and 18 “Ligue 1” clubs introduced an action before the French administrative Supreme Court (Conseil d’Etat) to cancel the decision of the FFF Executive Committee.

On 9 July 2015,²⁸ the Conseil d’Etat stated that in setting up a professional league, the French Football Federation must ensure that the professional league uses its delegated powers in accordance with the federal statutes and in the general interest of football.

It is therefore up to the FFF to overturn PFL decisions which are contrary to FFF Regulations or which would undermine the general interests of football.

By this decision, the supremacy of FFF upon PFL was underlined.

2.2 *The federal competence: regulations and sanctions*

According to article 1.2 of its Statutes, the FFF “*aims to: organize, develop and control the teaching and practice of football in all its forms by players of different status in France, (...);[and] - establish technical rules; (...)*”.

As mentioned above, the FFF, as a delegated federation, is entrusted with a public service mission in regards of the organization of football competitions in France.

To enforce it, the FFF has the disciplinary power. It therefore has the power to regulate, and enforce the general rules that will be imposed on their members and to everyone who is affiliated to the federation.²⁹

These rules concern sanctions and proceedings.

It is important to mention that the FFF, exercising its disciplinary power on physical or legal person, punishes in different ways and procedures, faults related to the so-called “general” discipline and faults related to doping.

²⁶ See https://www.fff.fr/common/bib_res/ressources/450000/5000/160901095232_reglements_generaux_de_la_fff2017.pdf (1 June 2017).

²⁷ See www.leparisien.fr/flash-actualite-sports/conflit-fff-lfp-la-guerre-des-instances-devant-la-justice-12-08-2015-5006875.php(1 June 2017).

²⁸ See www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/SASP-Red-Star-et-autres-vs-Ligue-de-football-professionnel-et-autres (1 June 2017).

²⁹ See https://www.fff.fr/common/bib_res/ressources/450000/5000/160719140417_annexe_2_-_reglement_disciplinaire_et_bareme_des_sanctions_saison_2016-2017.pdf (1 June 2017).

In matters of general discipline, the FFF Disciplinary Regulations constitute the legal basis.

Article 11 of FFF Statutes provides that power is given to the FFF Federal Assembly to adopt and amend the Disciplinary Regulations.

The French PFL, acting upon a public service mission delegation from the FFF for the management and organization of professional football competitions (Ligue 1 and 2). Therefore, the PFL disciplinary regulations are necessarily in compliance with the FFF Disciplinary Regulations.

In fact, the preamble of PFL Disciplinary Regulations³⁰ states:

“These Regulations are drawn up in accordance with the Agreement between FFF and PFL and Article 5 of the Statutes of PFL.

It is made in accordance with the provisions of articles L.131-8 and R.131-3 et seq. of the Sports Code, in compliance with the disciplinary regulations of French Football Federation.

It applies to all competitions run by the professional football league”.

In addition to these disciplinary regulations, anti-doping regulations are included in Annex 4 of FFF General Regulations.³¹

According to Article 1 of the anti-doping regulations, these anti-doping regulations substitute *“all the provisions of the regulations on the exercise of disciplinary powers in the matter of the fight against doping”.*

Furthermore, the FFF has the power to sanction violations committed by its licensees. This disciplinary power thus aims a preventive virtue, dissuading from disregarding the rules, and a repressive end, by punishing the one who has not respected these rules.

The question is then, how to implement disciplinary sanctions that will specifically target one or more identified persons (physical or legal) in a respectful disciplinary proceedings.

As stated above, those disciplinary sanctions are considered as individual administrative acts when pronounced by the organs of a French delegated federation.

Understandably, each of the federal bodies (the FFF’s or one of its decentralised bodies) has set up disciplinary bodies to ensure compliance with these disciplinary regulations and, where appropriate, to impose sanctions on the ones who are affiliated with the FFF.

3. *The legal framework of disciplinary procedure*

3.1 *The principle of independence*

Following the provisions stated by article L.131-1 paragraph 2 of the Sport’s Code, the sports federations shall act in complete independence in exercising the functions entrusted to them.

³⁰ See www.lfp.fr/reglements/reglements/2016_2017/reglDisciplinaire.pdf (1 June 2017).

³¹ See https://www.fff.fr/common/bib_res/ressources/450000/5000/160719140454_annexe_4_-_reglement_federal_de_lutte_contre_le_dopage,_saison_2016-2017.pdf (1 June 2017).

The Federation and its bodies draw up disciplinary regulations and determine the various codes of conduct, the sanctions, which may go as far as excluding competitions, as well as the disciplinary internal procedures.

For the FFF in particular, you shall refer to article 200 (and seq.) of its General Regulations that enumerates the list of possible sanctions to be pronounced and of course its Disciplinary Regulations compiled in the Annex 2 of the General Regulations.

Many disciplinary regulations also coexist because of the diversity and the competence, material or territorial, of each body under the umbrella of the FFF.

Indeed, in addition to the FFF Disciplinary Regulations, provisions related to disciplinary proceedings can be found in the Disciplinary Regulations of PFL, the PFL professional football bargaining agreement, the FFF regulations for sports agents, the FFF ethics charter, or the Federal anti-doping Regulations enacted by FFF.

Of course, at the top of these regulations are the Disciplinary regulations of the French Football Federation, which complies with the standard disciplinary regulations, issued by the public authorities.

For a long time, the sports federations were allowed to freely determine the content of their own disciplinary regulations. This free determination was also recognized by the Conseil d'Etat (the highest administrative court in France) as part of their prerogatives: "*it belongs to the federations to determine by their regulations the conditions for the exercise of disciplinary power*".³²

Each federation has thus established its own regulations, its own procedures, so that disciplinary proceedings in sports matters gave rise to an infinite variety of rules, which were not necessarily coherent, and far from satisfying the guarantees required in this respect.

In fact, the disciplinary power, while being legitimate in view of its purposes, is not without any impact nor any risk on licensees' rights, in particular when they are fined or suspended for a long period of time.

That being said, it became necessary to fix this disciplinary power within strict legal limits, in its implementation and its use.

3.2 *The limits of the principle of independence*

Initially, it was for the *Conseil d'Etat*, seized with many disputes, to require the federations to comply with the guarantees issued by the main principles of disciplinary procedures.

The legislature then relayed the action of the judge by requiring the approved federations, and therefore the delegated federations, the conformity of their disciplinary regulations with a Model regulations enacted by a State [governmental] decree.³³

³² CE, 13 June 1984 "Association Handball Club de Cysoing".

³³ Article L. 131-8 of the Sport's Code.

This way, the exercise of federal disciplinary power was subject to a specific legislative and regulatory framework that the approved and delegated sports federations must respect and apply.

Thus, this disciplinary power is largely regulated by the public authorities, by the necessary compliance with a standard disciplinary Regulations, a *sine qua non* condition for obtaining the federal authorization, and therefore the delegation and the resulting monopole of organizing competitions.

By doing so, the aim of the public authorities was to ensure the respect of the basic guarantees for every affiliated persons and licensees.

Article L.131-20 of Sport's Code³⁴ provides a ministerial procedure which can be initiated every time the Minister of Sports considers that a federation's acts are contrary to the law, and more specifically contrary to the standard disciplinary regulations.

Disciplinary regulations and disciplinary sanctions fall within the scope of this procedure.

Besides this framework, through sporting legislation and standard regulations, the common law also appears as a powerful instrument to frame the disciplinary procedure implemented by FFF.

4. *Relations between Common Law and Football Disciplinary Regulations*

As stated above, the disciplinary regulations and sanctions issued and imposed by the FFF legally constitute unilateral administrative acts.

Consequently, these regulations and sanctions are subject, except when otherwise stated the law, to the provisions relating to the ordinary legal regime of administrative acts.

Legislation relating to administrative acts will thus serve as a framework for the exercise of the FFF's disciplinary power.

Law No. 78-753 of 17 July 1978 provides various measures to improve relations between the administration and the public.

The delegated federations constitute private bodies responsible for the management of a public service and therefore fall within the scope of this text, at least for documents having a direct relationship with their public service missions.

Thus, the FFF has to communicate to its licensees, under the conditions provided for by law, non-nominative administrative documents which played a role in drawing up the disciplinary regulations or in the enactment of a sanction.³⁵

³⁴ See https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=47BE111E6CE0EDF17927E92D499B3A0C.tpdila14v_2?idArticle=LEGIARTI000006547551&cidTexte=LEGITEXT00006071318&dateTexte=20170520&categorieLien=id&oldAction= (1 June 2017).

³⁵ See <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000339241> (1 June 2017).

The Law No 79-587 of 11 July 1979 requires that the statement of reasons for administrative acts and the improvement of relations between the administration and the public upon imposing a sanction.

This requirement is reflected in the articles of the standard disciplinary regulations of sports federations.

The omission of this requirement is sufficient on its own to justify the cancellation of the sanction for illegality.³⁶

Moreover each of the acts constituting the disciplinary proceedings must respect the general principles of law.

These general principles of law must be respected by every authority empowered to issue unilateral administrative acts.

The disciplinary regulations and sanctions imposed and pronounced by the FFF must therefore, except as expressed by law, respect these principles.

The FFF disciplinary bodies must not disregard these principles, either in the drafting of the sanctions or in their contents, after respectful disciplinary proceedings.

These principles are binding even if the disciplinary regulations do not expressly refer to them.

The Standard Disciplinary Regulations provides general principles imposed on the disciplinary bodies, such as respect of the rights of the defence and the obligation of impartiality.³⁷

5. *Structure and competence of FFF disciplinary bodies*

Following the pyramidal organization of the FFF, each of its decentralized bodies has set up a disciplinary body to carry out disciplinary proceedings against those affiliated with the Federation and participate in the competitions they organize.

To understand, one can refer to article 4 of the FFF Disciplinary Regulations³⁸ set out for season 2016/2017 (*transposed in article 3.1.1 of the Disciplinary Regulations for 2017/2018*):³⁹

“Apart from the disciplinary powers granted expressly by another text, the distribution of powers is thus fixed:

1) Competitions and areas of competence of the Federation:

³⁶ See <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000518372> (1 June 2017).

³⁷ Even in the silence of the disciplinary regulation, other general principles must be taken into account in the exercise of disciplinary power: the principle of equality of licensees with regard to that power, a «non bis in idem» principle which prevents a person to be punished twice for the same acts, the principle of non-retroactivity of the sanction, the lack of an automatic nature of the sanction, which must therefore be preceded by an examination of the file and the situation of the person prosecuted (which in principle makes the system of flat-rate sanctions illegal), proportionality between the penalty and the fault committed ...

³⁸ See https://www.fff.fr/common/bib_res/ressources/450000/5000/160719140417_annexe_2_-_reglement_disciplinaire_et_bareme_des_sanctions,_saison_2016-2017.pdf (1 June 2017).

³⁹ See https://www.fff.fr/static/uploads/media/cms_pdf/0003/41/badffdb80ce11e96f954196a809fa01c4a2a9933.pdf (1 June 2017).

- *First instance: Federal Disciplinary Commission;*
- *Appeal and last resort: Superior Commission of Appeal.*
- 2) *Competitions and areas under the jurisdiction of the Professional Football League:*
 - *First instance: PFL Disciplinary Commission. or Judicial Committee and Committee for the Organization of Competitions in Disciplinary Matters;*
 - *Appeal and last resort: Superior Commission of Appeal [of FFF].*
- 3) *Competitions and fields of competence of the regional leagues:*
 - *First instance: regional League Disciplinary Committee;*
 - *Appeal and last resort: regional League Appeals Commission.*

or

Superior Commission of Appeal [of FFF]

 - *for individual sanctions equal to or greater than one year,*
 - *for clubs, field suspension (or closed doors), firm point withdrawal, demotion, exclusion from competition, exclusion, refusal of entry or cancellation.*

Once a set of disciplinary sanctions gives rise to an appeal involving, inter alia, one of those listed above, the entire file falls within the competence of the Superior Commission of Appeal.
- 4) *Competitions and areas of responsibility of the Districts:*
 - *First instance: District Disciplinary Committee.*
 - *Appeal and last resort: District Appeal Board.*

or

regional League Appeals Commission

 - *under the conditions referred to in paragraph 3”.*

It may be noted that the Professional Football League has thus established a Disciplinary Committee, which is competent in the first instance, for the disciplinary proceedings relating to the competitions managed by the League (i.e. divisions 1 and 2).

The scope of competence of all these disciplinary bodies was detailed in Article 5 of the FFF Disciplinary Regulations for season 2016/2017 (transposed in article 2.1 of the Disciplinary Regulations for 2017/2018):³⁹

“These bodies are competent to judge, for the purpose of disciplinary proceedings, the relevant cases, in the following areas:

1) *Relevant facts of the fields policy, cases of indiscipline of players, educators, managers, referees, supporters, spectators or any other person performing a mission within a club or a federal body. Outside the context of a match, but related to it, the important facts reaching an official and, more generally, when the offenses or damages infringe the individuals or the properties.*

2) *Violations of sporting morals, serious breaches of the honor, image, reputation or consideration of football, the Federation, its Leagues and Districts or one of their managers, attributable to any person, physical or moral, linked to the jurisdiction of the Federation’s law”.*

Concerning doping, article 6 of the FFF Federal Doping Regulations for the 2016/2017 season⁴⁰ establishes “*a disciplinary body of first instance and appeal with disciplinary power with regards to the members mentioned in article L.131-3 of the Sport’s Code and the persons with a license, according to article L.131-6 of the same code, who have contravened the provisions of this Code relating to the fight against doping*”.

These mentioned bodies are the only ones with competence to hear disciplinary matters related to doping in football (*the FFF final decision can be then challenged before AFLD,⁴¹ a special State agency in charge in France of the fight against doping, and afterward Administrative jurisdiction*).

6. *The responsibility of the clubs, players and everyone affiliated to the French Football Federation*

6.1 *The persons subject to federal disciplinary power*

The standard disciplinary regulations enacted by decree provide that federal disciplinary power can be exercised upon “*associations affiliated to the federation, licensed members of these associations and licensed members of the federation*”.⁴²

Thus, FFF licenses play a major role in federal disciplinary power. It must be emphasized that this sports license is issued to various categories listed in Appendix I-6 of the Sport’s Code.

The French Football Federation can therefore exercise its disciplinary power on its affiliated and licensed members, as soon as a fault likely to justify a sanction has been committed.

It may concern players, referees, clubs, managers, agents, and any other person registered with the Federation.

Under this arrangement, administrative courts have long established an essential rule: delegated federations could only sanction members, i.e. persons who are licensed at the time of the disciplinary decision (regardless of when the punishable acts was committed).⁴³

The solution was obviously relevant as a body (as an association) shall not have any power, even a disciplinary one, over a person who is not a member.

In 2013, in France a very important case concerning Leonardo, a famous former player and at the time Sporting Director of the club Paris Saint-Germain (PSG) occurred. Leonardo had been suspended 9 months by PFL Disciplinary Committee in first instance. In appeal, the FFF Appeal Committee

⁴⁰ See https://www.fff.fr/common/bib_res/ressources/450000/5000/160719140454_annexe_4_-_reglement_federal_de_lutte_contre_le_dopage,_saison_2016-2017.pdf (1 June 2017).

⁴¹ See <https://www.afld.fr/> (1 June 2017).

⁴² Articles R.131-2, R. 131-3, appendix I-6 and article 131-7 of the Sport’s Code.

⁴³ CE, 4 November 1983, Noulard, No. 41775 : the sport’s federation is not empowered to impose a disciplinary sanction on the basis of facts which, irrespective of the date on which they were committed, have been committed by a person who, at the date of the decision of the sports association, no longer has the status of a member of that federation.

sanctioned him with a 14 months of suspension. After been mandated by Leonardo on this particular case, I contested the suspension first before the French Olympic Committee (*see Section 9.2.1*) and afterward before the Administrative Court (Court of Paris and Conseil d'Etat).

In fact, it appeared that Leonardo was not licensed either at FFF nor PFL. One the argument was therefore to contest PFL and FFF's disciplinary power.

For FFF, Leonardo should have been licensed, and was participating in competitions for which the federation had received delegation as manager of PSG. Therefore, FFF considered it had the power to sanction Leonardo.

The Administrative Court⁴⁴ and the Conseil d'Etat⁴⁵ both confirmed PFL and FFF had no right to sanction a non-licensee: Leonardo's suspension was cancelled by the courts (*but it took 9 months to obtain the final decision!*).

Following this case, it must be mentioned that the standard disciplinary regulations has been amended by the Decree of August 1st 2016.

Since the amendment, article 2 of the standard disciplinary regulations⁴⁶ states:

“There shall be established one or more disciplinary bodies of first instance and one or more disciplinary bodies of appeal empowered with disciplinary powers with regards to:

- 1. Associations affiliated to the federation;*
- 2. Licensees of the federation;*
- 3. Permanent holders of titles allowing participation in the sports activities of the federation;*
- 4. For-profit organizations whose object is the practice of one or more disciplines of the federation and which authorizes the issue of licenses;*
- 5. Organizations which, without having as their object the practice of one or more disciplines of the federation, contribute to the development of one or more of these;*
- 6. Sporting companies;*
- 7. Any member, official, employee or volunteer of such associations and sporting companies acting as an officer or de facto licensee”.*

⁴⁴ Tribunal Administratif Paris, Ordonnance de référé, 15 October 2013, No. 1313375/9-1 and Tribunal Administratif Paris, 17 June 2014, No. 1313372/6-1.

⁴⁵ CE, 28 April 2014 No. 373051 “Leonardo de Araujo”: an approved sports federation, whether or not it has received the delegation of the Minister responsible for sports provided by article L. 131-14 of the Sports Code, is empowered to impose a disciplinary sanction only against persons who, on the date on which it is decided by the competent disciplinary organ of the federation, shall have the status of licensee of that federation. The delegated federations do not have any power to impose disciplinary sanctions on persons who take part, without being licensed, in the competitions for which they have been delegated for.

⁴⁶ See [https://www.legifrance.gouv.fr/affichCodeArticle.do?sessionId=4806FD1737DEA7B073BD08B2CAB30F8B.tpdila14v_2?idArticle=LEGIARTI000032965204&cidTexte=LEGITEXT000006071318&categorieLien=id&dateTexte=\(1 June 2017\)](https://www.legifrance.gouv.fr/affichCodeArticle.do?sessionId=4806FD1737DEA7B073BD08B2CAB30F8B.tpdila14v_2?idArticle=LEGIARTI000032965204&cidTexte=LEGITEXT000006071318&categorieLien=id&dateTexte=(1%20June%202017)).

FFF has amended its Disciplinary Regulations in accordance with this new standard disciplinary regulations in order for it to take effect for season 2017/2018.⁴⁷

Thus, article 1 of the new FFF Disciplinary regulations⁴⁸ (for season 2017/2018) state that:

“It is established bodies of first instance and appeal have disciplinary powers upon physical or legal persons who are, at the date of the commission of the offense:

- Licensees of FFF;
- Clubs composed as an association affiliated to the FFF and, if required, composed as a company constituted in accordance with the provisions of the Sport’s Code;
- Member, official, employee, or volunteer of these clubs acting as an officer or *de facto* licensee”.

Of course, at the time of writing, no cases have been raised on this issue. But, needless to say, the added words “*de facto licensee*” will undeniably be the subject of a number of future litigation.

6.2 *The punishable behaviours: typology of the infringements*

The disciplinary responsibility of the licensee or of the affiliate may be engaged in the case of personal acts or, more exceptionally, in case of punishable acts committed by others.

Concerning personal liability, disciplinary proceedings can be implemented in case of a breach of the rules of the game, abusive and /or discriminatory behaviour, corruption, forgery and falsification (mainly in the matter of licenses), sport’s betting, etc..

According to article 200 of the FFF General Regulations:

“The main sanctions that can be levied by the Executive Committee; the Executive office of the AFL; the Commissions of the Federation, the Board of Directors and the Commissions of the PFL; the Regional Leagues and District;, in the event of any dispute they have to deal with or for any infringement of any kind whatsoever, against the players, educators, referees, executives, clubs or groupings of clubs are the one listed hereunder or in the various regulations:

- warning;
- blame;
- fine;
- loss of matches;
- loss of points in the ranking;
- game with no public (total or partial);

⁴⁷ See <https://www.bertrand-sport-avocat.com/droitduport/droit-du-sport/breves-juridiques/1114-nouveau-reglement-disciplinaire-pour-la-federation-francaise-de-football> (1 June 2017).

⁴⁸ See https://www.fff.fr/static/uploads/media/cms_pdf/0003/41/badffdb80ce11e96f954196a809fa01c4a2a9933.pdf (1 June 2017).

- *no supporter for the away matches;*
- *suspension of stadium;*
- *decommissioning;*
- *exclusion from competition;*
- *relegation to lower division;*
- *suspension (with or without matches lost by penalty);*
- *non-issue or withdrawal of license;*
- *limitation or prohibition of recruitment;*
- *prohibition from signing former professional players, elites or interns requalified as amateur players;*
- *exclusion or refusal of participation of the national or regional cups;*
- *a ban to use players who have undergone a club change;*
- *the prohibition to organize or participate in national or international friendly matches;*
- *non-presentation of a club to international competitions;*
- *prohibition of the bench and of the referee's dressing room;*
- *prohibition of all official functions;*
- *radiation;*
- *compensation for damage;*
- *ineligibility in time for the governing bodies.*

The penalties listed above may be combined in full or in part with probation sanctions.”

This list was reproduced in article 2 of the 2016/2017 FFF Disciplinary Regulations⁴⁹ (and in a different presentation at article 4.1 of 2017/2018 FFF Disciplinary Regulations).

Also, with the 2016 Decree and the disciplinary amendments to enter into force in July 1st 2017 (for season 2017/2018), a new kind of sanction had to be enacted too.

Indeed, now that the Disciplinary Regulations gives competence to the federal bodies to sanction a “*de facto licensee*”, who is by definition a person without any license, with any “suspension measures” that would have been without any coercive effect.

In these conditions, article 4.1.2. of the new FFF Disciplinary regulations for 2017/2018 state that, in accordance with the 2016’s Decree, a person can be sanctioned by a general “*prohibition for a limited period of time to be a licensee of the FFF.*”

Otherwise, the disciplinary sanctions enacted by the FFF are relatively usual.

Of course, for specific misconducts of a player, coach, manager, and any other member of a club during a football game, there is a scale of sanctions enumerated at the FFF’s Disciplinary Regulations (presented totally differently in the new version of Annex 2 for season 2017/2018). This scale constitutes only

⁴⁹ See https://www.fff.fr/common/bib_res/ressources/450000/5000/160719140417_annexe_2_-_reglement_disciplinaire_et_bareme_des_sanctions,_saison_2016-2017.pdf (1 June 2017).

directives, that can be increased or diminished, added to a fine and/or probation sentence (*article 4 of Annex 2*).⁵⁰

Here are some examples (taken from the new regulations for 2017/2018):⁵¹

- Exclusion of the player during a game (for instance because of 2 yellows cards): minimum one game suspension (*art. 1 of the scale in Annex 2*),
- Violation of the rules of the game for imprudence: 3 games suspension (*art. 3 of the scale in Annex 2*),
- Inappropriate gesture of a player during the match (1 game suspension), after the match (2 games suspension), of a coach during the match (2 games suspension) or after the match (3 games suspension) (*art. 4 of the scale in Annex 2*),
- Insult from a player to a referee during the match (4 games suspension), after the match (5 games suspension), from a coach to a referee during the match (8 games suspension), after the match (12 games suspension) (*art. 6 of the scale in Annex 2*),
- Menace / intimidation from a player to a referee during the match (7 games suspension), after the match (10 games suspension), from a coach to a referee during the match (5 months suspension), after the match (6 months suspension) (*art. 8 of the scale in Annex 2*),
- Racist or discriminatory behaviour,
- Menace / intimidation from a player (10 games suspension), from a coach (5 months suspension) (*art. 9 of the scale in Annex 2*),
- An attempt by a player to hit/strike a referee during the match (9 months suspension), after the match (18 months suspension); an attempt by a coach to hit/strike a referee during the match (1 year suspension), after the match (2 years suspension) (*art. 11 of the scale in Annex 2*),
- Stroke not causing injury from a player to a referee during the match (2 years suspension), after the match (3 years suspension), from a coach to a referee during the match (3 years suspension), after the match (4 years suspension) (*art. 13.1 of the scale in Annex 2*),
-

There are also some illustrations that can be found in FFF General Regulations, like for example in its article 124⁵² prohibiting betting by the “actors of the competitions”:

“1. The actors of the competitions organized by FFF or PFL (including players, coaches, club officers and managers, persons with a contractual relationship with the FFF or PFL, sports agents, etc.) cannot:

⁵⁰ Of course, the worst is the misconduct, the longer is the suspension.

⁵¹ See from page 28 and seq. of the new FFF Disciplinary Regulations: https://www.fff.fr/static/uploads/media/cms_pdf/0003/41/badffdb80ce11e96f954196a809fa01c42a9933.pdf (1 June 2017).

⁵² See https://www.fff.fr/common/bib_res/ressources/450000/5000/160901095232_reglements_generaux_de_la_fff2017.pdf (1 June 2017).

- Carry out sports prognostications on these competitions when these actors in the competition are contractually linked to a sports betting operator holding the authorization provided for in article 21 of Law n° 2010-47 6 of 12 May 2010 relating to The opening-up to competition and regulations of the online gambling sector or where such services are carried out under programs sponsored by such an operator,
- Participate in a sports betting operator holding the authorization provided by the same article 21 which proposes bets on the concerned sport,
- Putting bets on the aforementioned competitions, either directly or through intermediaries, in which they are directly or indirectly interested, in particular as a result of their participation or of any other link with the competition,
- Communicate to third parties privileged information obtained because of his profession or his duties, and which are unknown by the public.

These prohibitions concern the betting supports that are the competitions, organized by the FFF or the PFL, the events and the phases of game related to the competition, defined by the Regulatory Authority of the Online Games. The provisions of this Article shall also apply to bets made in Physical networks ("hard" bets).

2. Common provisions

Any violation of these provisions may lead to disciplinary sanctions under the conditions set out in Appendix 2 to these regulations.

The same applies to acts of sports corruption which are also punishable under criminal law under the conditions of Articles 445-1-1 and 445-2-1 of the Penal Code".

Illustrations about fraud and falsification can be found in article 207 of FFF General Regulations:

"Is liable to the sanctions provided by article 200 of the General Regulations or article 2 of Annex 2 of the General Regulations,⁵³ any licensee and / or club that has:

- *acquired an undue right, by concealment, misrepresentation or fraud,*
- *acting or concealed in order to circumvent or impede the application of laws and regulations,*
- *fraud or attempted to fraud,*
- *produces a false or concealed information concerning the obtaining or use of a license".*

Illustrations taken from article 38 of FFF Anti-doping Regulations,⁵⁴ in case of athletes violating the anti-doping provisions:

"I.-Without prejudice to the penal sanctions which may be incurred in accordance with Section II of Chapter II of Title III of Book II of the Sport's Code, the disciplinary bodies, in the exercise of their sanctioning power in the fight against doping, may pronounce:

⁵³ The French Football Federation's Disciplinary Regulations

⁵⁴ See https://www.fff.fr/common/bib_res/ressources/450000/5000/160719140454_annexe_4_-_reglement_federal_de_lutte_contre_le_dopage_saison_2016-2017.pdf (1 June 2017).

(...)

(A) A warning;

(B) A temporary or permanent ban of participating in sporting events authorized or organized by the federation, as well as training organized by the approved federation or one of its members;

(C) A temporary or permanent prohibition of participating directly or indirectly in the organization and the running of sports competitions and events authorized or organized by the federation and the trainings preparing for it;

(D) A temporary or permanent prohibition on the exercise of the functions defined in article L. 212-1 of the Sport's Code;

(E) A prohibition to be employed in a management staff within the federation or an affiliated member to the federation.

The sanction imposed on an athlete may be supplemented by a penalty which may not exceed Euro 45,000.

It shall be supplemented by a publication of the sanction, under the conditions laid down in Article 47. Furthermore, it may be supplemented by the provisional withdrawal of the license. (...)

Finally, one must know that clubs are considered by FFF as responsible for the behaviour of their supporters.

To fight the disorders caused by certain supporters during football games, FFF has adopted what is called the “*objective responsibility of clubs*”.

The institution of such liability was first declared unlawful by the Paris Administrative Court, which considered the contested provision as establishing vicarious liability, thus violating the constitutional principle of penalties applicable in disciplinary matters.⁵⁵

On the contrary, the Conseil d'Etat, seized for “formal opinion”, considered that the criticized provision was enacted “*within the framework of the organizational powers which are theirs and in accordance with the Objectives assigned to it*” as it “*imposes on the clubs an obligation of result with regard to security (...) sanctions the disregard by the clubs of an obligation which is their responsibility and which has been enacted by the sports federation of which they are members.*”

The Conseil d'Etat concluded that “*the regulations issued do not infringe the constitutional principle of personal liability in criminal matters applicable to administrative and disciplinary sanctions*”.⁵⁶

Thus, for a long time, article 129 of FFF General Regulations stated:

“1. *The receiving clubs shall be responsible for the police of the field and shall be responsible for any disorder that may result before, during or after the match due to the attitude of the public, players and leaders or the inadequacy of the organization.*

Nevertheless, clubs visiting or playing on neutral ground are responsible when the disorders are committed by their players, managers or supporters.

⁵⁵ TA Paris, 16 March 2007, SASP Paris Saint Germain.

⁵⁶ CE 29 October 2007, SASP LOSC Lille Métropole.

2. Access to the stadium of any person in possession of objects capable of being used as projectiles shall be prohibited as formally prohibited the use of laser pointers and pyrotechnic articles such as firecrackers, rockets or Bengal fires, Whose ignition, spraying or bursting can lead to serious accidents.

It is the responsibility of the organizers responsible to give publicity to the public for the latter to be known to the public.

3. Take-home sales of beverages or other products are permitted only in cardboard or plastic packaging.

Sales in bottles or metal cans are prohibited.

4. In all the cases mentioned above, the clubs shall be liable to one or more of the sanctions provided for in Title 4”.

The damages caused by the supporters expose their clubs to disciplinary, pecuniary and sporting sanctions, pronounced by the disciplinary bodies of the federation.

This obligation has now moved to article 2.1.b. of the “new” Disciplinary Regulations, to be applicable on next 1 July 2017.

7. Disciplinary proceedings before the federal bodies

7.1 Designation and rules governing the disciplinary bodies composition

At the time of writing, the Standard Disciplinary Regulations as issued from a Decree of 25 July 2007⁵⁷ is still applicable. But, as said above, a new one (issued from a Decree of 1 August 2016⁵⁸) will enter into force on next 1 July 2017.

Depending on when the reprehensible act was committed, you could still then have to refer to the “old” FFF Disciplinary Regulations⁵⁹ or, for acts committed after 1 July 2017, to the new one adopted by FFF during its General Assembly on last March 2017.⁶⁰

Only a few points will be outlined here, as it would be too long to develop all the regulations.

Basically, the initiation of a disciplinary proceedings results at first instance from the disciplinary commission (see article 7 for the “old” Annex 2 and article 3.3 of the new one).

Each disciplinary body must respect the principles of impartiality and independence.

⁵⁷ See https://www.legifrance.gouv.fr/affichTexte.do?sessionId=C5BD805C611D8E33DC674179081F760A.tpdila14v_2?cidTexte=JORFTEXT000000618072&dateTexte=20070725&categorieLien=cid#JORFTEXT000000618072 (1 June 2017).

⁵⁸ See https://www.legifrance.gouv.fr/affichTexte.do?sessionId=C5BD805C611D8E33DC674179081F760A.tpdila14v_2?cidTexte=JORFTEXT000032963271&dateTexte=20170528 (1 June 2017).

⁵⁹ See https://www.fff.fr/common/bib_res/ressources/450000/5000/160719140417_annexe_2_-_reglement_disciplinaire_et_bareme_des_sanctions_saison_2016-2017.pdf (1 June 2017).

⁶⁰ See https://www.fff.fr/static/uploads/media/cms_pdf/0003/41/badffdb80ce11e96f954196a809fa01c4a2a9933.pdf (1 June 2017).

It must be composed of at least 3 persons (used to be 5 before under the “old” regulations), designated by the Executive Committee, with no contractual link with the federation (other than the fact of being one of its licensee).

In order to ensure the impartiality of the disciplinary body, in addition to a duty of confidentiality, the members of disciplinary committees “*may not take part in deliberations when they have an interest, direct or indirect, to the case.*”

Interestingly, article 8 of the Decree of August 1st 2016 introduced the possibility of video conferencing for the Disciplinary hearings and its article 9 the possibility to notify the procedural acts by electronic means (like email) to the licensee (or to his legal representative, club or lawyer).⁶¹

For a long time, FFF Disciplinary Regulations (see article 8 of Annex 2) imposed the procedure to be subject to investigative measures if the acts committed could possibly be punished of six months of suspension or more.

Article 3.3.2 of the next regulations is larger than that and imposes such investigation measures when the acts committed concerns physical harms (especially towards a referee), security or fraud.

Of course, the instructor (in case of investigative measures) has the same obligations of impartiality and independence as the members of the disciplinary bodies.

Failure to comply with these rules may lead to the cancellation of the sanctions imposed by the disciplinary body, in particular where the requirements of independence and impartiality have been disregarded.⁶²

7.2 *The general principles of the disciplinary procedure*

Despite its principle of independence and its private nature, many general principles must be applied to the disciplinary proceedings instituted by/in front of the French Football Federation.

All the rules governing the conduct of FFF disciplinary proceedings, which will be detailed in this section, apply both to the disciplinary procedure at first instance and to the appeal procedure.

As stated above, the FFF is, as a legal person governed by private law entrusted with a public service mission, subjected to the general principles of administrative law.

As a result of these general principles, the guiding principles of federal disciplinary proceedings tend to offer protection to the licensee/affiliated involved.

First of all, FFF must have instituted a double degree of repression: disciplinary bodies of first instance and appeal must therefore be established, which is a fundamental guarantee for licensees.

⁶¹ Note that FFF new Disciplinary Regulations didn't seem to adopt the possibility to notify the licensee thru his lawyer: see Article 3.2.2 of the new regulations.

⁶² CE 30 November 1994 No. 136539.

This rule applies in particular to the standard disciplinary regulations,⁶³ and is respected by the French Football Federation.

Moreover, the FFF and its disciplinary bodies must respect the rights of defence of the person accused in the said proceedings.

The principle of respect for the rights of defence, also referred to as the adversarial principle, is one of the fundamental rules of the disciplinary process which inspired the rules laid down in the standard disciplinary rules concerning the conduct of disciplinary proceedings before sport's federations.

This respect must be observed throughout the procedure and must be implemented as soon as the licensee or the affiliate is summoned.

In particular, we can note that:

- the licensee can present its defence either by writings or in person (*in case of investigation measures*),
- in the second case, the licensee has to be notified of the hearing at least 7 days before (*used to be 15 before Decree of 1 August 2016*),
- the licensee can be assisted by an interpreter, and a lawyer,
- the licensee can consult the documents of the case,
- the licensee can request a delay of the hearing once (*for serious reason*),
- convocations must enunciate the objections raised against the licensee,
- hearings must be public (*even though in practice it is barely the case*), unless the president of the body decides it shall not for reasons of public order or respect of privacy,
- investigation reports must be done within six weeks of the designation of the instructor (*was 2 months before Decree of 1 August 2016*),
- the first instance body must give its decision within 10 weeks of the beginning of the procedure (*was 3 months before Decree of 1 August 2016*),
- the appeal body must give its decision within 4 months of the beginning of the procedure (*was 6 months before Decree of 1 August 2016*),
- all decisions must be notified and must mention the ways and delays to contest,
-

Moreover the Decree of August 2016 legalized the practice of "conservatory measures" (*that the licensee cannot appeal, see Article 12 of the Decree and Article 3.3.3. of the new FFF Disciplinary Regulations*) and has reversed the rule for the suspensive effect in case of an appeal.

Article 19 of Decree of 1 August 2016 (reported at Article 3.4.1.1 of the new FFF regulations) states that the appeal is not suspensive, unless motivated decision of the disciplinary body.

⁶³ Annex I-6 to Article R. 131-3 of the Sport's Code, Article 2, Annex II-2 to Article 232-86 of the Sport's Code.

8. Outcome of the proceedings: the sanction

8.1 The disciplinary decision

8.1.1 Its content

The principle of the lawfulness of crimes and penalties is implemented in the standard disciplinary regulations which require federations to list the different sanctions available to the various disciplinary bodies.

Article 22 of the Decree of August 2016⁶⁴ list the possible sanctions:

- *“A warning;*
- *A reprimand;*
- *A fine: when this fine is imposed on a natural person, it may not exceed EUR 45 000;*
- *A loss of one or more games;*
- *A penalty in time or points;*
- *A decommissioning;*
- *A non-homologation of a sporting result;*
- *A suspension of home-field;*
- *A total or partial closed session with no public for one or more sports events;*
- *A temporary or permanent ban from participation in sporting events organized or authorized by a federation;*
- *A temporary or permanent prohibition from participation directly or indirectly in the organization and running of competitions and sports events authorized by a federation delegated or organized by an approved federation;*
- *A prohibition from the exercise of a function;*
- *A provisional withdrawal of a license during the period of the prohibition;*
- *A radiation;*
- *Ineligibility for a fixed period of time to the governing bodies.*
- *The cancellation or prohibition of membership of a disciplinary body for a fixed term”.*

Article 2 of the “old” Annex 2 (as Article 200 of the FFF’s General Regulations) was reproducing the list of the Standard Disciplinary Regulations. The “new” Article 4.1 of the Annex 2 to be applicable on next 1 July 2017, is slightly different and is differencing depending if the sanction will be imposed on a club or on a person.

If on a Club, the following disciplinary sanctions may be imposed (Article 4.1.1):

- *“a call to order;*
- *a fine;*
- *a loss of one or more matches per penalty;*

⁶⁴ Before, it was listed in article 18 of the Decree of 2007.

- the withdrawal of points (s) in the ranking of a team in the context of the current competition or to come;
 - the total or partial closed session (non-public);
 - closure of the visitor area for away games;
 - suspension of home-field matches;
 - exclusion from competitions;
 - relegation to lower division(s);
 - the prohibition to engage a team (or teams) in a competition;
 - the radiation;
 - compensation for the material damage caused;
 - the prohibition for a limited period of time of being affiliated to FFF;
- (...)"

If on a person, the following sanctions are available (Article 4.1.2):

"(...)

- a call to order;
- the inclusion of the yellow card in the disciplinary file;
- a fine not exceeding EUR 45000;
- suspension: it entails the impossibility for the person to enjoy the rights which confers its license (s), in particular to participate in the functioning of the sports activities and their activities.

The suspended individual cannot therefore:

- be on the game sheet;
- take part in an official match, for any reason whatsoever;
- take a seat on the bench;
- enter the play area before, during and after the game;
- be present in the officials dressing room;
- perform any act in the name and on behalf of the club or represent it, before federal instances;
- sit in a commission.

The same applies to friendly games when the person is subject to suspension of at least equal to six firm months.

For professional clubs of Ligue 1 and Ligue 2, all the prohibitions mentioned above also necessarily involve being present before, during and after the match on the bench, in the locker rooms of the players and referees, the tunnel or the technical zone as well as all the corridors giving access to these areas if the disciplinary body retains serious misconduct.

The procedures for enacting a suspension are defined in section 226 of the General Regulations of FFF.

- a prohibition of participation directly or indirectly in the organization and conduct of sporting meetings organized or authorized by the competent authorities;
- the radiation;
- a prohibition for a limited period of time of being dismissed from FFF;
- compensation for material damage caused;

- *ineligibility in time for the governing bodies: it automatically entails the revocation of the current mandate(s).*
(...)”.

These sanctions can also be replaced or be in addition of community works and/or probation sentences (under certain conditions).

Also, the disciplinary body must respect the principle of proportionality.⁶⁵

This principle requires disciplinary bodies to choose a sanction commensurate with the seriousness of the offense and the circumstances of the case.

Following this, the FFF annexed a scale of penalties in its Disciplinary Regulations, which states:⁶⁶

“This scale sets out, as an indication, the disciplinary penalties incurred by any person subject to the disciplinary power of the Federation (as defined in Article 2 of the Disciplinary Regulations), convicted of one or more offenses. This scale may be aggravated by decision of the Executive Committee of the body concerned.

The penalties laid down in this scale shall be imposed, with due respect of the procedures set out in the Disciplinary Rules adopted pursuant to the provisions of Article L. 131-8 and R. 131-3 et seq. Of the Sport’s Code.

This scale sets out infringements and their reference penalty, but is not exhaustive.

(...)”.

Thus, this scale constitutes a simple scale of reference (*for some example, see §40*) and no automaticity of the sanction must be applied from these terms.⁶⁷

8.1.2 *Its form*

The decision of the disciplinary body must also satisfy conditions relating to its form.⁶⁸

First of all, the disciplinary body shall deliberate in private, without the presence of the persons concerned, neither the instructor nor witnesses.

In addition, a quorum must be reached.

Article 3.1.3 of the 2017’s FFF Disciplinary Regulations states that:

“(...) The disciplinary bodies shall deliberate validly when at least three are present.

⁶⁵ The Conseil Constitutionnel considered that this principle applied to administrative sanctions (CC 30 December 1987).

⁶⁶ See Preamble of the scale of the "new" FFF Disciplinary Regulations.

⁶⁷ In view of the solutions adopted by the Conseil Constitutionnel in this regard, it can be argued that a punishment forfeited which would completely disregard either the rights of the defense or the principle of individualization of sentences (CAA Nancy, 4th ch. 23 April 2012, No. 11NC00980), or the principle of proportionality of the sanction fails to comply with constitutional requirements (Cons., 30 December 1987, No. 87-237 DC).

⁶⁸ For an example, see CE 11 May 2016, FC Nantes / FFF, No. 388322, 388323 and 388324.

Decisions are taken by a simple majority of those present. In the event of a tie, the vote of the president of the body shall prevail. (...)”.

Moreover, the decision must be justified (in facts and law) and signed by the president and the secretary of the disciplinary body.⁶⁹

As well, the statement of reasons must enable the persons sanctioned to know the precise grounds of law and facts which justified the measure.⁷⁰

Similarly, the absence of a signature constitutes a substantial procedural defect, which entails the illegality of the sanction.⁷¹

8.2 *The notification of the disciplinary decision*

In order for the sanction to become enforceable, it must be noticed.

In fact, the penalty imposed by a delegated federation’s body is an individual administrative act and such act shall not normally take effect until it has been noticed to the person concerned.

Under Article 17 of the Decree of 2016, this notification must be done by a mean that will allow the proof of its deliverance (*registered letter, delivered by hand against acknowledgment of receipt, email with confirmation of delivery*).⁷²

It can be addressed to the person sanctioned, or if applicable, to its legal representative or club.⁷³

Moreover, the notification must mention the procedures and time limits to contest the disciplinary sanctions.⁷⁴

The 2017 FFF Disciplinary Regulations even specify in its Article 3.3.5 for the decisions of their first instance bodies that:

The notification of sanctions is made by:

- for firm or probation penalties (...) of less or equal to 6 games suspension or Euro 200 fine, by publication on Footclubs and on the personal space of the licensee “My Account FFF”, accessible from the Official website of FFF or of its Leagues and Districts;

- for others: by e-mail with acknowledgment of receipt or registered letter with acknowledgment of receipt, in accordance with the procedures set out in Article 3.2 of this Regulations.

(...)”.

⁶⁹ Articles 3.3.5 and 3.4.4 of the 2017’s FFF Disciplinary Regulations.

⁷⁰ CE 24 July 1981, No. 31.488.

⁷¹ “Whereas it appears from the documents in the file that no signature appears on the extract of the minutes of the meetings of 6 and 13 September 2007 notified to the persons concerned except on the report published in the official journal of the Corsican league of football; That, consequently, the non-fulfillment of this substantial formality renders the contested decision of the regional disciplinary commission of the Corsican football league dated 13 September 2007 irregular” (CAA Marseille, 6 May 2010, Assoc. Football club From Lucciana).

⁷² For an example of a cancellation of the decision because of a bad notification: CE 7 November.2012, No. 361038.

⁷³ Club that in all cases must be informed of the decision.

⁷⁴ For the consequences in case it is not mentioned: TA Nancy 18 December 2012, SLUC Nancy, No. 1001202.

and Article 3.4.5 for the decisions of their bodies of appeal:

“The extract of the minutes constituting the decision shall be notified to the person concerned by e-mail with acknowledgment of receipt or by registered letter with acknowledgment of receipt, in accordance with the provisions of Article 3.2 of this Regulations.

Such notification shall indicate the procedures and time-limits for Judicial review proceedings, including prior and compulsory submission to the French National Olympic and Sports Committee, governed by articles L.141-4 and R. 141-5 et seq. of the Sport’s Code”.

The Decree of 2016 also detailed in its article 24 (reproduced in article 4.1 of 2017 FFF Disciplinary Regulations) how the publication of a decision could take place:

“Decisions of the disciplinary bodies which have ordered publication shall lay down detailed rules for the execution of this measure, which may only take place after notification has been given to the persons who have been the subject of the measure and after the federal procedures have been exhausted. To this end, the disciplinary bodies of first instance and appeal may order the publication in the official bulletin of the federation of all or part of the decision or a summary informing the public of the grounds.

Decisions shall be published anonymously, unless the disciplinary body, by motivated decision, decides to order the publication of the decision or if the person who has been the subject of a decision of acquittal has requested that it is nominative”.

9. Challenging the disciplinary sanction

9.1 Federal appeal: the FFF’s appeal disciplinary bodies

As indicated above, a delegated federation must have a double degree of jurisdiction (Articles 19 and seq. of Decree 1 August 2016).

Article 3.4 of FFF’s 2017 Disciplinary Regulations establishes rules for disciplinary appeals.⁷⁵

We can point out that the delay to appeal is normally of 7 days (*used to be 10 before July 1st 2017*) and that the person sanctioned, the federation and the leagues can lodge appeals.⁷⁶

Article 3.4.3 §3 states that: *“When the disciplinary body of appeal has only been engaged by the person sanction, the penalty imposed by the disciplinary body of first instance may not be aggravated”.*⁷⁷

⁷⁵ Used to be article 10 and seq. of the previous regulations: See https://www.fff.fr/common/bib_res/ressources/450000/5000/160719140417_annexe_2_-_reglement_disciplinaire_et_bareme_des_sanctions_saison_2016-2017.pdf (1 June 2017).

⁷⁶ Regional or professional depending of the persons concerned.

⁷⁷ CE 16 March 1984, Moreteau, No. 41438.

Of course, the rights of defence, confrontation, notification, publication, and so on are the same as they were for the first instance. The Appeal Commission's actions hold as the final decision.⁷⁸

To challenge the FFF's disciplinary sanction, one can of course go before the national courts.

Here, the jurisprudence has stated that where the federation's regulations require parties to exhaust domestic remedies first, those remedies shall apply and constitute an irrevocably receivable condition before the court.⁷⁹

Now, Article 2 of FFF's General Regulations states that: "*Any physical or legal person or any member of the Federation who contests a decision has the obligation to exhaust domestic remedies before any judicial remedy*".

Therefore, the Supreme Court in 2011 held that in order to challenge a FFF disciplinary sanction before a national Court, the domestic federal procedure (first instance and appeal) must be exhausted.⁸⁰

9.2 *The judicial review*

Since the disciplinary power of the delegated federations is the consequence of the delegation of a public service mission, the judges have for long recognized that a dispute relating to a disciplinary sanction taken by a federation falls within the competence of the Administrative Courts.⁸¹

But before having the case judged by the administrative courts, the person sanctioned must respect the compulsory preliminary conciliation procedure before the French Olympic Committee.

9.2.1 *The compulsory preliminary conciliation procedure before the French Olympic Committee*

Following Article 19 of the Law of 16 July 1984, the French Olympic Committee aimed at establishing a conciliation procedure before litigation between licensees, clubs or agents, and federations or leagues (*professional or regional*) could be brought before a court.

Currently, article L.141-4 of the Sport's Code states that: "*The French National Olympic and Sports Committee is responsible for a conciliation mission in the conflicts between licensees, sports agents, sports associations and*

⁷⁸ Article 3.4.3 of 2017's FFF Disciplinary Regulations.

⁷⁹ CE, 13 June 1984, No. 42454, Association Handball Club de Cysoing; CAA Nantes, 5 January 2012, No. 09NT02067, Jean-Claude X.; CAA Marseille, 6 May 2010, No. 08MA04280, Association Football Club de Lucciana; TA Rennes, 12 March 2009, No. 061120, Le Roux.

⁸⁰ CE, 26 July 2011, No. 341199, Ligue corse de football; CAA Nantes, 5 January 2012, No. 09NTO2048.

⁸¹ CE, 26 September 2007, no. 285275, Assoc. Maximoise; CE, 16 March 1984, No. 41438, Moreteau; CE, 13 June 1984, No. 42454, Association Handball Club de Cysoing.

societies and approved sports federations, with the exception of conflicts involving doping".⁸²

Article R.141-5 of the Sport's Code adds: "*Referral to the Committee for conciliation is a compulsory prerequisite for any dispute, where the dispute arises out of a decision, whether or not an internal remedy, taken by a federation in the exercise of prerogatives of public authority or pursuant to its statutes*".⁸³

Under those conditions, a licensee, club or sport's agent who wants to challenge an individual federal disciplinary sanction has to fulfil this prerequisite before he can bring a case before the administrative Courts.⁸⁴

It should be noted that disputes concerning general (*as opposed to individual decision*) federal disciplinary regulations are excluded from the scope of this procedure.⁸⁵

The conciliation procedure must be requested in writing⁸⁶ within 15 days⁸⁷ of the notification of the disciplinary sanction.

The conciliation procedure can be started even if the federal domestic remedies are not exhausted⁸⁸, but once the case is before the administrative court only the "last" decision (*i.e. in practice the one of appeal since one must exhaust domestic remedies*) will be discussed.⁸⁹

Once the Olympic Committee accepts the request and calls up the parties to a hearing, the disciplinary sanction is suspended (*until the Olympic Committee proposal is given*).⁹⁰

After the hearing, and if no agreement is reached, the Olympic Committee makes a proposal. This proposal is supposed to be accepted by the parties unless opposition within 15 days of the notification of the proposal.⁹¹

The case can therefore be introduced before the administrative Court within one month of the opposition.⁹²

⁸² See https://www.legifrance.gouv.fr/affichCodeArticle.do?jsessionid=C4710EDDD42DE2A5656FC12E6E122B0.tpdila14v_2?idArticle=LEGIARTI000022326730&cidTexte=LEGITEXT00006071318&dateTexte=20170519 (1 June 2017).

⁸³ See https://www.legifrance.gouv.fr/affichCodeArticle.do?jsessionid=C4710EDDD42DE2A5656FC12E6E122B0.tpdila14v_2?idArticle=LEGIARTI000006547888&cidTexte=LEGITEXT00006071318&dateTexte=20170519 (1 June 2017).

⁸⁴ CE, 22 November. 2006, No. 289839, Association Squash Rouennaise; CE 29 September 1982, no. 15017; CAA Marseille 12 October 2015, No. 14MA02882

⁸⁵ The Conseil d'Etat has interpreted the Article R. 141-5 of the Sport's Code as limiting the prerequisite obligation to refer decisions to individual decisions, excluding the regulatory acts of the delegated federations (cf CE 20 November 1996, No. 164185, 164721 and 168145, Club de Reims Weightlifting and weight training, CE 19 January 2009, No. 314049, Sté Blagnac sporting club rugby).

⁸⁶ With a full statement and evidences annexed.

⁸⁷ Used to be one month before Decree 1 August 2016.

⁸⁸ CE 26 July 2011, No. 341199.

⁸⁹ CE December 26 2012, No. 350833

⁹⁰ Articles R.141-8 and R.141-15 of the Sport's Code.

⁹¹ Article R.141-7 of the Sport's Code.

⁹² Article R.141-9-1 of the Sport's Code.

Two kinds of claims are possible: a request to see the sanction cancelled and/or a request for the prejudice suffered.⁹³

9.2.2 *Proceedings before the administrative courts*

9.2.2.1 *Claims based on the illegality of the federal decision*

The claimant can have the disciplinary sanction cancelled by the administrative Court if he proves that the decision taken was illegal and that the federation exceeded its power in the use of its public service mission delegation (*either for reasons related to the form of the decision or to its grounds*).

They are *inter alia*: disciplinary bodies irregularly composed,⁹⁴

- missing signatures,⁹⁵
- non-compliance with the procedure (*for example, concerning the notification of the decision,⁹⁶ the respect of the right of defence,⁹⁷ the convocation*),⁹⁸
- lack of motivation,⁹⁹
- error in the facts,¹⁰⁰
- mistake in the application of the law, manifest error of assessment and/or abuse of power,¹⁰¹
- excessive violation of the right of a person to freely practice a sport,¹⁰²
- excessive or disproportionate sanction,¹⁰³ violation of the rule prohibiting automatic sanctions.¹⁰⁴

The administrative court applies the principle of the legality of sentences to disciplinary measures adopted by federal bodies.¹⁰⁵ Accordingly, in sports disciplinary law, penalties can only be imposed if they have been restrictively defined by the federal statutes and regulations.¹⁰⁶

⁹³ CE 19 February 2009, Atom, No. 274000: you can do both in the same request.

⁹⁴ CE 5 October 1984, No. 43534; CAA Nancy, 11 April 2011, No. 10NC00542.

⁹⁵ TA Montreuil 18 September 2012, No. 1009195.

⁹⁶ CE 11 November 2012, No. 361038.

⁹⁷ CE 13 June 1984, No. 42454; CE 23 March 1986, Lemaire, Lebon 734; CE 28 October 1987, Maymet et Besson, No. 64177 and 64178; CE 20 January 1988, M. Hass, No. 55587; CE 10 April 1991, No. 115482; CE 1st February 1989, Bellachioma, No. 60356.

⁹⁸ CE 25 June 1990, Tison, No. 96835; CE 3 February 1995, Benezech, No. 117097; CE 17 January 1990, Castaing, No. 95452; CE 29 December 1993, Bonnetat, No. 115635.

⁹⁹ CAA Marseille 28 June 2004, Ligue Méditerranée de Football, No. 02MA02335.

¹⁰⁰ CE 22 May 1992, Sabatier, No. 103527.

¹⁰¹ CE 7 November 2012, No. 361038, Jean-Luc B; CE 16 January 1985, No. 52654; CE 25 May 1998, Fédération française d'haltérophilie, musculation et disciplines associées, No. 170752; CE 19 March 1993, Denoual - Fédération Française de Tennis, No. 101423.

¹⁰² CE 16 March 1984, Broadie, No. 50878.

¹⁰³ CE 26 November 2007 Fédération Française de Judo, No. 294916; CE 20 October 2008, FFF, No. 320111; CE 13 March 1987, No. 54149 and 57318, Le Sain.; CE 22 October 1993, No. 109076.

¹⁰⁴ CE, 21 October 2013, Occansej c/ Fédération Française de Basket-Ball, No. 367107.

¹⁰⁵ TA Paris, 7 November 1995, Sonko, No. 9417393/6.

¹⁰⁶ CE 7 July 2004, Ministry of the Interior v Benkerrou, No. 255136.

Consequently, any sanction imposed by the disciplinary body which is not provided for in the disciplinary regulations is illegal.¹⁰⁷

Here, then comes an interesting debate concerning the disciplinary sanction taken by a foreign football federation and extended worldwide by a FIFA decision:¹⁰⁸ is it “de facto” enforceable in France? Of course, regarding FIFA Regulations, it should, but is it legally compatible with French Law? Does it have to be taken over by another decision of a French disciplinary body, and if so on what grounds? Also, should it be considered as part of the execution of the public service mission delegation, or in other words what is the “legal nature” of such a decision (civil or administrative)?

Some proceedings are still underway, but according to the relevant jurisprudence, the following can be observed:

- “foreign” regulations cannot be used by a French Disciplinary Body as legal grounds of its decision if it has not been transposed into the French Regulations of the Federation concerned;¹⁰⁹
- disciplinary sanction pronounced by an international federation is not, by itself, enforceable in France;¹¹⁰
- FIFA’s Regulations have no direct effect in France;¹¹¹
- a decision taken, independently, by a French Federation to extend and enforce in France a “foreign “ decision must respect the principles of administrative law and its own regulations;¹¹²
- a sanction pronounced by a French Federation on a French athlete on the grounds of an international regulations, but for a violation during an international competition cannot be considered as taken within the scope of its public service mission delegation;¹¹³ and
- by notifying the President of a professional football club of the suspension against a player extended by FIFA and simply informing him of the fact that said suspension extended to all matches, the French Professional Football League had not implemented any prerogatives of public authority.¹¹⁴

¹⁰⁷ TA Versailles, 16 May 1995, No. 945182, Tugault v. French baseball, softball and cricket and CAA Paris, 3rd ch., Section A, 26 May 2004 No. 00PA03353, French Federation of Boxing.

¹⁰⁸ see here the mechanism enacted by article 12.2 Chapter III of the FIFA Regulations on the Status and Transfer of Players.

¹⁰⁹ CE 29 November 1976, Pigeon c/ FF de Cyclisme, No. 95-262.

¹¹⁰ CE 23 June 1989, Fiba, No. 101894.

¹¹¹ CE 3 April 2006, FC Lorient - LFP, No. 282093 and No. 286848; see also Opinion of the Conseil d’Etat 20 November 2003 No. 379.474; Also, see Report of the Conseil d’Etat 15 February 1990 “*Sports, power and discipline: the exercise and control of the disciplinary powers of sports federations*”: “*The various regulations they enact or the decisions they take cannot be directly applicable in France. Their applicability implies a legal relay which can only be the competent national federation ...*”.

¹¹² CAA Lyon 7 July 2011, No. 10LY01811; CAA Paris 11 October 2011, No. 10PA04656.

¹¹³ CE 19 March 2010, Chotard, No. 318549.

¹¹⁴ TA Nantes, 25 October 2012, Adenon, No. 1210105. The Author has a case currently on the same question for which he considers that the fact for the league to say it limited its action to simply reminding the player of his prohibition to play because of a FIFA extension decision, is not sufficient to exonerate itself from its responsibilities under administrative law.

9.2.2.2 Claims based on the prejudice caused by the federal decision

In addition to the “appeal on illegality”, which tends to cancel an illegal decision taken by a federal disciplinary body like the French Football Federation, the affiliated person who has been punished can also refer his litigation to the administrative Courts on the basis of an “appeal on liability”.

Article R. 312-14 of the Code of Administrative Justice provides:

“Actions based on a cause other than disregard of a contract or a quasi-contract and directed against the State, other public persons or private bodies managing a public service are:

(1) Where the damage complained of is attributable to a decision which has been or could have been the subject of an action for annulment before an administrative tribunal within the jurisdiction of that court; (...)”.

These proceedings aim to fix the loss and prejudice suffered by the claimant because of an unlawful sanction¹¹⁵ or when damage is caused to the person sanctioned by the federation. If there was a fault committed by the said federation,¹¹⁶ it will be responsible and will have to compensate the damages.¹¹⁷

Furthermore, and in accordance with the general rules governing the responsibility of the public authorities, and unless otherwise stated, any claim for compensation of damages caused by an unlawful disciplinary sanction before the administrative court must be preceded by a claim for compensation addressed to the delegated federation.¹¹⁸ In practice, it is usually a registered letter sent to the Federation detailing the prejudice (*no need here to go before the French Olympic Committee*¹¹⁹). Only the total or partial refusal of the federation to accede to the applicant’s claims may then be the subject of an action for prejudice before the administrative court.

The prejudice can be moral and/or financial.¹²⁰

Hereunder is some jurisprudence concerning financial loss:

- the illegality of an administrative decision “*constitutes a fault which ... is liable to entail the responsibility of the State in respect of the person concerned*” and the prejudice can result from a loss of profit, missed opportunities, loss of revenue, ...¹²¹
- it is sufficient to establish for the applicant “*a sufficiently probable cause-effect relationship*” so that the loss of chance suffered is “*such as to give rise*

¹¹⁵ CE 12 February 1990, Bentejac, No. 57952 D. 1991, som. 281, obs. Lachaume; CAA Bordeaux 09.02.2010, Fédération d’études et de sports sous-marins No. 09BX01069.

¹¹⁶ Sometimes even in case of a legal decision : CAA Versailles 05.02.2009 No. 07VE01769, Club Entente Sannois Saint-Gratien / FFF & LFP.

¹¹⁷ CE 13 October 1978 No. 4216; TA Bordeaux, 1re ch., 15 January 2014, No. 1100776.

¹¹⁸ CE 4 November 1983, Noulard, No. 41775 and CE 25 June 1990, No. 96835.

¹¹⁹ TA Cergy-Pontoise 02 September 2002, Livry Gargan / Fédération Française de Handball, No. 0202814; CAA Paris 8 April 2003 No. 02PA03458; TA Cergy-Pontoise 20 November 2003, No. 0202815; TA Dijon 25 June 2013, FC Sans / Ligue de Bourgogne de Football, No. 1201856.

¹²⁰ For an example of a sentence for both against the French Handball Federation of €300,000 : CAA Paris, 8 April 2003, No. 02PA02538.

¹²¹ CAA Lyon 13 December 2007, No. 05LY00309; CE 27.05.1987, No. 59159.

to the right to compensation for the financial and sporting losses”¹²² (here FFF was sentenced to pay Euro 50,000),

- this loss of luck can still be assessed “notwithstanding the sporting hazards inherent in any competition” (for a sentence against FFF and LFP of Euro 500,000),¹²³
 - the illegality of a decision which deprived the applicant of foreseeable income (for a sentence against FFF of Euro 40,000),¹²⁴
 - unlawfully depriving an athlete of participation in a competition, constitutes (in any event) a significant sporting harm insofar as such deprivation “necessarily had an impact on the rest of his career” and the maintenance and/or the “renewal” of the financial terms of its various contracts.¹²⁵
- ... and concerning moral prejudice:
- Euro 15,000 for moral prejudice to a club because of an unlawful decision of FFF,¹²⁶
 - and for the lack of will to conciliate and/or dilatory conduct of the Federation (*Ice Skating Federation sentenced do Euro 52,000*),¹²⁷
 - for infringement of the applicant’s reputation (*FFF sentenced to pay Euro 20,000 to a football club*),¹²⁸
 - for damages of the athlete’s reputation and conditions of existence (*French Equestrian Federation sentenced to 50,000 French Francs*¹²⁹) or the violation of his image (for example, taking into account “the publicity given to the sanction in the press”¹³⁰).

Conclusions

Disciplinary procedures in French Football is a mix between administrative law and sports regulations, linked by the notion of delegation of public service.

The legislature fixes the rules and minimum requirements through the Sport’s Code and, in particular, the Standard disciplinary regulations. It regulates the procedures so that, if the sanction has to be challenged, the administrative court has jurisdiction.

¹²² CAA Nantes 19 December 2013, No. 12NT00835, Tours FC / FFF.

¹²³ CAA Versailles 5 February 2009 n ° 07VE01769, Club Entente Sannois Saint-Gratien / FFF & LFP.

Nevertheless, it must be specified that the Supreme Court overruled this decision, not on the principle of prejudice but on the fact that it considered the federation had not committed a fault : CE, 19 July . 2010, No. 325892.

¹²⁴ TA Dijon 25 June 2013 n ° 1201856 FC Sens / League of Burgundy of Football.

¹²⁵ CAA Versailles 24 March 2005, n ° 02VE03535 : here the French Federation of Athletics was sentenced to pay €15,245 to an athlete for having not respected the criteria of selection for the National Team.

¹²⁶ TA Toulouse 16 May 2017, SASP Luzenac Ariège Pyrénées, No. 1502750.

¹²⁷ TA Paris, 3 February 2011, n ° 0710616 / 6-2.

¹²⁸ CAA Nantes, 19 December 2013, no. 12NT00835, Tours FC / FFF.

¹²⁹ EC 12 February 1990 n ° 57952 X / Fédération Equestre Française.

¹³⁰ CAA Nancy, 8 April 2013, n ° 11NC01847.

Nevertheless, for the dispute to be receivable before the Court, the domestic federal procedures must be exhausted and the compulsory preliminary conciliation before the French Olympic Committee must be respected.

Of course, inside this system, each federation – included the football one – can adopt their own regulations according to their particularities.

DISCIPLINARY PROCEDURES IN GERMAN FOOTBALL

by Bastian Haslinger, Nicolas Klein, Jürgen Paepke*

I. Introduction

Sports law is a complex patchwork.¹ Sports federations create their own regulations and enforce them through internal – private – sanctioning systems. However, in the review of sanctions, national law plays an important role. A federation's decision to impose a sanction may be subject to review by national courts or in the frame of arbitration proceedings. An arbitral award, whose goal is to reach a final decision, can yet again be challenged before national courts. Thus, in the review of disciplinary sanctions, different legal frameworks – the private rules of sports federations, national and international law – cross each other's paths.

It could be said that the multitude of legal regimes that can potentially collide with the laws set by sports federations is nowhere greater than in sports disciplinary proceedings.² The challenges and difficulties of sports disciplinary cases are alike in almost all legal systems. The solutions found for these cases, however, can differ substantially, especially regarding the extent of judicial review and the importance accorded to national, constitutional and international law within a respective jurisdiction.³ In this context, this subsection aims to give a short but exhaustive introduction into the disciplinary rules and procedures of German football

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¹ Cf. K. VIEWEG, *The Appeal of Sports Law*, 2010, 6, available at: <http://irut.de/Forschung/Veroeffentlichungen/OnlineVersionFaszinationSportrecht/FaszinationSportrechtEnglisch.pdf> (last visited on 6 February 2017).

² R. VAN KLEEF, *Reviewing Disciplinary Sanctions in Sports*, in *Cambridge Journal of International and Comparative Law*, vol. 4(1), 2015, 3; K. VIEWEG / A. KRAUSE, *Germany*, in F. Hendricks (ed.) *International Encyclopedia of Laws: Sports law*, The Hague, Kluwer, 2013, 70; cf. with a critical analysis of Sports League Commissioner's disciplinary authority in US sports, A. PACIFICI, *Scope and Authority of Sports League Commissioner Disciplinary Power: Bounty and Beyond*, in *Berkeley Journal of Entertainment and Sports Law*, vol. 3(1), 2014, 93 ff.

³ K. VIEWEG, *Idem*; R. VAN KLEEF, *Idem* 3 ff.

as a basis for comparative analysis, in which topical international developments and judgments by national courts will be referenced when relevant to broader developments of general sports or disciplinary law. Although German disciplinary regulations and procedures in football have developed many distinct characteristics, the authors believe that several features of German football disciplinary law may be particularly instructive for international practitioners as point of reference.

II. *General Principles of German Disciplinary Law*

1. *The Autonomy and Power of Associations*

Under German law, the autonomy of clubs and associations is a consequence of the general principle of party autonomy, which includes the right of clubs and associations to regulate their own internal affairs. It comprises both the right to make laws – especially statutes and by-laws – and the right to administer these laws. Its legal basis is enshrined in §§ 21 ff. and especially § 25 of the German Civil Code (Bürgerliches Gesetzbuch – BGB). Furthermore, the autonomy of associations is an integral part of the right to freedom of association and as such is guaranteed by Article 9 (1) of the German Constitution (Grundgesetz – GG) and by Article 12 (1) European Charter of Fundamental Rights (Charta der Grundrechte der Europäischen Union – GRC).⁴ It is a recognized principle that in regulating their internal affairs sport associations may preserve the “specificity of sport” by incorporating and applying sport specific standards and values.⁵ The right to administer internal laws also includes the right to handle disciplinary cases and to enforce disciplinary sanctions when a member – or whoever falls under the jurisdiction of an association – does not comply with the rules of the organization. In Germany, it is not disputed that a disciplinary sanction imposed by a sports federation is a decision of the respective sports association and constitutes an exercise of disciplinary authority under private law, to which the constitutional principles of the rule of law are applicable.⁶

2. *Review of Disciplinary Sanctions and Constitutional Requirements*

Irrespective of developments in sports law, the review of disciplinary sanctions under the German law on associations (Vereinsrecht)⁷ has been a constant source of debate in German legal doctrine ever since the first review of a disciplinary

⁴ Cf. K. VIEWEG, *Idem* 9.

⁵ H. HILPERT, *Das Fußballstrafrecht des Deutschen Fußball-Bundes (DFB)*, Berlin, De Gruyter, 2009, 2, 4.

⁶ R. VAN KLEEF, *Idem*, 8; K. VIEWEG / A. KRAUSE, *Idem* 85.

⁷ Vereinsrecht, §§ 21 – 78 BGB.

⁸ R. VAN KLEEF, *Idem* 8; K. VIEWEG / A. KRAUSE, *Idem*.

sanction under the BGB in 1902.⁸ Historically, the review of associations' decisions has been restricted to a limited test, in recognition of the autonomy of an association.⁹

Nevertheless, a differentiated approach towards the review of disciplinary sanctions of sports associations has developed under German law. Despite the view that disciplinary sanctions are based upon the free subordination of members, the German Federal Court of Justice (BGH) has acknowledged that there are numerous situations in which this freedom is merely a fiction, including in the case of regional and national sports federations.¹⁰ In order to tackle this issue, the BGH ruled that, in cases where an association holds a preponderance of power in a specific economic or social field and the member is dependent on the membership, decisions and sanctions of the association do not only have to comply with the general principle of good faith (§ 242 BGB) but must also be justified by objective reasons.¹¹

In principle, whenever a sports federation imposes a sanction, this decision can be challenged before a national court.¹² The primary jurisdiction of the courts can only be ousted when a valid arbitration agreement exists. Any provision to the contrary in the rules and regulations of a sports governing body would be invalid.¹³ The rules and regulations of a sports governing body may, however, prevent direct appeals against first instance decisions before state courts or arbitral tribunals if the sports governing body has an internal appeals body that may rectify first instance decisions. Consequently, an athlete or club intending to appeal a decision of a sports governing body before a state court or an arbitral tribunal must generally exhaust all legal remedies available under the statutory provisions of the relevant sports federation.¹⁴ Internal remedies may only be disregarded if an internal appeal would be unreasonable or a mere formality. This would for instance be the case if the appeals body of a sports federation declares that it will dismiss an appeal before the appeal proceedings have started, if the appellant's right to be heard is violated or the appeals body is constituted in an improper way.¹⁵

⁹ BGH (German Court of Federal Justice), II ZR 17/53, 27 February 1954, 13 BGHZ 5; BGH, II ZR 142/65, 20 April 1967, 47 BGHZ 381; R. VAN KLEEF, *Idem*.

¹⁰ BGH, II ZR 138/82, 30 May 1983, 87 BGZ 337, 344; BGH, II ZR 54/98, 23 November 1998, 140 BGHZ 74; R. VAN KLEEF, *Idem* 9 f.; D.-R. MARTENS / A. ENGELHARD, *Germany*, in A. Gurovitas (ed.), *The Sports Law Review*, London, Law Business Research, 2016, 92; T. SUMMERER, in J. Fritzweiler / B. Pfister / T. Summerer (eds.), *Praxishandbuch Sportrecht*, München, C. H. Beck, 2014, 280, with further references.

¹¹ BGH, II ZR 43/87, 19 October 1987, 102 BGHZ 265; BGH, II ZR 311/87, 24 October 1988, 105 BGHZ 306; OLG Frankfurt, 13 W 29/00, 18 May 2000; LG FREIBURG, 14 O 46/12, 15 May 2012; R. VAN KLEEF, *Idem* 10.

¹² D.-R. MARTENS / A. ENGELHARD, *Idem* 93 f.; U. HAAS / D.-R. MARTENS, *Sportrecht – eine Einführung in die Praxis*, Zürich, Schulthess *et al.*, 2011, 119.

¹³ D.-R. MARTENS / A. ENGELHARD, *Idem* 94, Fn. 28.

¹⁴ D.-R. MARTENS / A. ENGELHARD, *Idem* 94.

¹⁵ U. HAAS / D.-R. MARTENS, *Idem* 121.

As to judicial review of decisions of sports federations under German law, it is thus vital to distinguish between three possible types of redress proceedings: 1) those provided under the jurisdiction of federations (*Verbandsgerichtsbarkeit*), 2) those provided under state jurisdiction (*staatliche Gerichtsbarkeit*), and 3) those provided by means of arbitration (*Schiedsgerichtsbarkeit*).¹⁶ The scope of review conducted by a state court will typically encompass the following issues:¹⁷

- Was the athlete, club or other sports stakeholder covered by the scope of the governing body's jurisdiction and sanctioning regime?
- Was there a sufficient legal basis for the decision contained in the rules and regulations of the sports governing body?
- Were the procedural rules of the sports governing body respected?
- Were fundamental procedural rights observed?
- Was the decision legal in view of higher ranking legal principles?
- Did the decision-making body establish accurately the facts that form the basis of the decision?
- Was the decision legal in the sense that it was neither arbitrary nor unjust?

In this context, the BGH recently held that the Regional Football Association of Northern Germany (NFV) was not allowed to order the relegation of the club SV Wilhelmshaven, as there was no sufficient basis for such disciplinary sanction in the statutes and rules of that federation even though the club had violated the FIFA Regulations on the Status and Transfer of Players.¹⁸ In the underlying case, the Bremen Court of Appeals had previously held a CAS Award in favor of Argentinian clubs for training compensation payable by SV Wilhelmshaven to be unenforceable, because the FIFA system of training compensation amongst football clubs was in violation of Article 45 of the EU Treaty. The BGH upheld this judgment but did not base its decision upon the illegality of the FIFA system of training compensation under European law – it expressly left this question undecided – but rather held that disciplinary measures in case of non-payment of training compensation could only be imposed, if the association's statute contained explicit regulations in this regard. As the regulations of associations only apply to their members, only the NFV statute was decisive in this matter, since SV Wilhelmshaven was a direct member of the NFV, but not of the DFB or FIFA. According to the BGH the NFV statute did not include a reference which sufficiently stated a submission of SV Wilhelmshaven to FIFA rulings regarding disciplinary measures in the mentioned cases. The relegation was therefore held not to constitute an execution of a decision made by the DFB or FIFA but a disciplinary measure imposed by the NFV without adequate legal grounds. Although this judgment was seen by many as highly controversial, its practical implications are limited. Statutory changes in the statutes of Germany's

¹⁶ K. VIEWEG / A. KRAUSE, *Idem* 88.

¹⁷ T. SUMMERER, *Idem* 276 ff., with further references; cf. D.-R. MARTENS / A. ENGELHARD, *Idem* 94.

¹⁸ BGH, Judgment of 20 September 2016 - II ZR 25/15; NJW-Aktuell 42/2016, 12; D.-R. MARTENS / A. ENGELHARD, *Idem* 95.

regional football associations can amply safeguard the enforcement of all relevant international decisions in the future.

Moreover, many substantive and procedural guarantees of German constitutional law also apply to disciplinary proceedings. Although under German law disciplinary proceedings are generally considered to be part of private law, it is well accepted and established that constitutional principles such as the principle of legal certainty, the principle of proportionality, the principle of ‘*nulla poena sine lege*’, the principle of non-retroactivity, the right to be heard, and the right to legal representation also generally apply in disciplinary proceedings.¹⁹ Despite these strict criteria of judicial review and the expansive application of constitutional guarantees to disciplinary proceedings under German law – as will be further elaborated below – DFB disciplinary bodies and proceedings generally meet these standards and often go well beyond these minimum requirements.²⁰

III. *History and Basic Structure of the DFB and its Disciplinary Bodies*

Disciplinary rules and proceedings before the disciplinary bodies of the German Football Federation (DFB) have a long history. The development of the DFB, from its humble beginnings in 1900 to becoming one of the biggest professional associations in world sport, is almost quintessentially reflected in the development and maturation of its disciplinary rules and proceedings. For example, underhand sales and slush funds were quite common in German football in the beginning of the 20th century. This led to the expulsion of the club Schalke 04 from Germany’s Western Football Association for one season by a judgment of the dispute resolution body of the Western German Football Association of 25 August 1930.²¹ Slush funds were also proving a problem in the lower leagues, which led to the introduction of a maximum wage in 1950. The inaugural Bundesliga match on 24 August 1963, however, opened the door for professionalism in football Germany and maximum wages would soon disappear.²² The professionalization and commercialization of German football had important implications for the development of the DFB’s disciplinary laws and procedures. The so called “Bundesliga scandal I” of the 1970s brought the disciplinary procedures of the DFB to broader public attention.²³

¹⁹ Cf. R. KOCH, *Sportschiedsgerichtsbarkeit national*, in M. Stopper / G. Lentze (eds.), *Handbuch Fußball-Recht*, Berlin, Erich Schmidt, 2011, 946; M. BUCHBERGER, *Das Verbandsstrafverfahren deutscher Sportverbände – Zur Anwendbarkeit rechtsstaatlicher Verfahrensgrundsätze*, in *SpuRt*, 1996, 122 ff. (1. part), 157 ff. (2. part); J. F. ORTH, *Vereins- und Verbandsstrafen am Beispiel des Fußballsports*, Frankfurt, Peter Lang, 2008, 86, 94 f., 115 ff.; C. LÜER, *Dopingstrafen im Sport und der Grundsatz „Ne bis in idem”*, Baden-Baden, Nomos, 2006, 82 ff.

²⁰ See *infra* 264 ff.

²¹ Urteil Spruchkammer des Westdeutschen Fußballverbandes vom 25. August 1930, although the penalty was subsequently suspended after a time period of 6 months, DFB, 100 Jahre DFB: Die Chronik – 1900 – 2000, 2000, 54; H. HILPERT, *Sportrecht und Sportrechtsprechung im In- und Ausland*, Berlin, De Gruyter, 2007, 11.

²² Cf. History of the DFB, available at: www.dfb.de/en/about-dfb.

²³ H. HILPERT, „Highlights” – *aus der Fußballrechtssprechung zum Bundesliga-Fußball*, in

53 players, 2 coaches, 6 officials and 2 clubs were punished by the DFB disciplinary bodies for match fixing and bribery offenses. This scandal and the following intense public scrutiny proved to be an important turning point in the development of the disciplinary rules of the DFB as they exist today.

The DFB Control Committee (DFB-Kontrollausschuss) functions as an independent prosecuting authority and is strictly separated from the DFB disciplinary tribunals.²⁴ As such the DFB Control Committee serves a similar function as the public prosecutor office under German criminal law.²⁵ The DFB disciplinary bodies that will be discussed in detail below²⁶ are moreover supplemented by the disciplinary bodies of state federations that provide multi-tier disciplinary proceedings for all disciplinary cases under the jurisdiction of state federations. As already indicated, the development of these bodies has always been closely linked to topical developments in German football. The “Hoyzer-scandal” of 2005 for instance, in which a referee was bribed for the purpose of match-fixing, led to changes in the cooperation of the DFB Control Committee with other DFB bodies and numerous changes to substantive rules all aimed at preventing match-fixing.²⁷ The most recent changes to the disciplinary rules occurred on the occasion of the DFB General Assembly (DFB-Bundestag) of 4 November 2016. Pursuant to the revelations about the incidents leading up to the bid of the DFB for the FIFA World Cup 2006 the DFB adopted a new DFB Code of Ethics connected with the implementation of special ethics proceedings including the creation of an independent ethics committee.²⁸

1. *The Organization of the DFB and its Members*

The governance of sport organizations in Germany is not subject to any sport-specific national laws, but is upheld through the interaction of civil, public and criminal laws as well as certain governance guidelines of sport organizations.²⁹ The organization of the DFB is marked by the typical pyramidal organization of sports federations while having the status of a registered association as defined by § 21 BGB. The pyramid is structured as follows: The DFB’s members are the state and regional federations as well as the DFL e.V. (formerly Ligaverband). Federations, clubs and individual members are grouped in currently 5 regional

W. Höfling / J. Horst / M. Nolte (eds.), *Fußball – Motor des Sportrecht*, Tübingen, Mohr Siebeck, 2014, 99 f.

²⁴ H. HILPERT, *Sportrecht*, Idem 17 f.; see further infra 261 f.

²⁵ H. HILPERT, *Sportrecht*, Idem 17, 29 ff.

²⁶ See infra 261 f.

²⁷ H. HILPERT, *Sportrecht*, Idem 212 ff., 220; H. HILPERT, *Fußballstrafrecht*, Idem 11 f.; see infra 277 f.

²⁸ Cf. § 46 DFB Statute, and the new DFB code of ethics, available at: www.dfb.de/fileadmin/_dfbdam/125701-04_Ethik-Kodex.pdf; for an extensive overview over the history of the DFB tribunal’s case law, see H. HILPERT, *Sportrecht*, Idem 1 ff.

²⁹ D.-R. MARTENS / A. ENGELHARD, *Germany*, Idem 92.

federations, 21 state federations – often congruent with the borders of Germany’s 16 federal states –, 25.075 clubs and 6.969.464 individual members.

The DFB’s statutory obligations apply to its members. Each regional federation, state federation and club has rules and statutes that also apply to its respective members. According to established rules the jurisdiction of disciplinary bodies over individual members needs to find a sufficient legal basis in the relevant statutory provisions on federation and club level.³⁰ In doing so, it must be possible for the individual athlete to identify clearly the regulations to which he is obliged to submit in practice.³¹ In this context, one topical area of debate is whether so called “dynamic references” (dynamische Verweisungen)³² are permissible, whose main characteristic is a general referral to the higher-ranking federation’s statutes and by-laws, which can be updated periodically.³³ The general principle however is clear: The association must expressly, and without leaving any gaps, allude to the specific higher-ranking regulation of the federation, naming the relevant provisions. The more serious the sanctions to be imposed in the event of a breach of the relevant regulation, the more precisely must its application be alluded to.³⁴

At federal level, there is a division between the DFB in the non-profit area and the Federal League Association (DFL e. V.), the latter being responsible for the organization and marketing of professional football in Germany since its foundation in 2001 as a separate legal entity under the roof of the DFB. Details of the relationship between the DFB and the DFL are regulated by the statutes of both the DFB and the DFL e.V. and by a fundamental contract (Grundlagenvertrag) which specifies the mutual rights and obligations.³⁵ According to the statutes, the DFL runs the professional leagues (Bundesliga and 2. Bundesliga), while the DFB organizes the amateur level, the cup competition and international matches, as well as attending to the national team. As such, the business operations of the professional football leagues are no longer performed by the DFB, but by the DFL, German Football League GmbH (DFL Deutsche Fußball Liga GmbH) a 100% subsidiary of the Football League Association (DFL e.V.).³⁶

2. DFB Disciplinary Bodies

The DFB Statute (DFB Satzung)³⁷ creates in its Article 38 two relevant legal bodies: the DFB Federal Tribunal (DFB-Bundesgericht) and the DFB Sports

³⁰ BGHZ 28,135; H. HILPERT, *Sportrecht*, Idem, 20.

³¹ Cf. BGH, Judgement of 20. September 2016 - II ZR 25/15; NJW-Aktuell 42/2016, 12; K. VIEWEG / A. KRAUSE, Idem 77 f.

³² Cf. with a detailed analysis of the different views concerning “dynamic references”, J. F. ORTH, Idem 152 ff.

³³ K. VIEWEG / A. KRAUSE, Idem 78.

³⁴ Cf. K. VIEWEG / A. KRAUSE, Idem.

³⁵ Grundlagenvertrag, available at: www.dfb.de/uploads/media/Grundlagenvertrag.pdf.

³⁶ K. VIEWEG / A. KRAUSE, Idem 70.

³⁷ DFB Satzung, available at: www.dfb.de/fileadmin/_dfbdam/125699-02_Satzung.pdf.

Tribunal (DFB-Sportgericht). These DFB tribunals are not ‘real’ courts of arbitration pursuant to §§ 1025 ff. German Code on Civil Procedure (ZPO), but organs of the federation. They are internal instruments which have precedence over other forms of dispute resolution. Their constitution and jurisdiction is regulated in §§ 39 ff. DFB Statute. Its general jurisdiction in disciplinary cases is regulated in § 44 DFB Statute.³⁸

The focal point of jurisdiction of the DFB Federal Tribunal is that of an appeals body, namely – and most importantly – of decisions of the DFB Sports Tribunal and last instance decisions of the disciplinary bodies of state federations (in case these tribunals declared their decisions reviewable). Applicants must show that a violation of relevant DFB regulations occurred. Moreover, last instance decisions of state federation tribunals can be brought before the DFB Federal Tribunal by the DFB Control Committee when a violation of universally binding DFB regulations occurred or in cases of a significant deviation of established practices of the DFB dispute resolution bodies, § 50 No. 3 (1) in connection with § 43 No. 2 DFB Statute.

The DFB Sports Tribunal’s first instance jurisdiction encompasses all cases involving violations by clubs and players of the DFL e.V. against the League Statute or other DFB or DFL rules (§ 42 No. 2 a) DFB Statute),³⁹ sporting misconduct in and in connection with federal matches (§ 42 No. 2 b), 50 No. 1 DFB Statute), appeals against results of federal matches (§§ 42 No. 2 c) DFB Statute), violations by coaches and licensed trainers (§ 42 No. 2 d) DFB Statute), referees (§ 42 No. 2 e) DFB Statute), special jurisdiction cases (§ 42 No. 2 f) DFB Statute) and acts of discriminatory and/or contemptuous behaviour (§ 42 No. 2 g) DFB Statute).

3. *The DFB’s Disciplinary Authority*

The DFB’s disciplinary authority is generally based on the membership of individual members in its clubs and federations.⁴⁰ However, the disciplinary authority from membership is in German practice often supplemented by individual contracts. Generally, upon conclusion of a participation or nomination contract - i.e. contracts concluded by sports federations with athletes for the participation in specific competitions prior to the competition -, an athlete is bound by the regulations of the federation which are applicable at that point in time. There are different ways in

³⁸ For more details see *infra* 263 ff.

³⁹ It must be noted that according to § 20 DFL e.V. Statutes the “Sports Jurisdiction” (“Sportrechtsprechung”) is handed over to the relevant DFB disciplinary bodies. It is, however, established practice that DFL e.V. and DFL GmbH sanction violations by clubs against licensing regulations in the form of contractual penalties pursuant to § 6 licensing agreement, and if applicable in connection with § 11 No. 4 Licensing Regulation, Annex XII - LO. These measures generally exclude the possibility of further disciplinary proceedings. For cases when there is an indirect connection with match operations specific referrals to DFB jurisdiction exist.

⁴⁰ See *supra* 260.

which a contractual agreement can be concluded: the participation or nomination permit applied for when the athlete registers for a competition, the grant of a license (for players and clubs), and an individual contractual agreement. Since the “Reiter” judgment of the BGH,⁴¹ the conclusion of an implicit agreement by behavior is also permitted. When athletes register for participation in a competition which takes place in accordance with the respective competition and disciplinary rules of the organizing federation they implicitly declare that they accept being bound by the code of conduct in place for the competition and the sanctions stipulated for breaching it by the responsible sports federation.⁴²

Of particular importance in this regard is the licensing procedure for Bundesliga clubs and players. Players submit themselves to the disciplinary authority of the DFB and DFL via §§ 2, 3 of their license agreement with the DFL pursuant to the Licensing Regulation for Players (*Lizenzierungsordnung Spieler – LOS*). The licensing procedure for clubs in German professional football is conducted by the DFL Deutsche Fußball Liga GmbH on behalf of the DFL e.V. on the basis of §§ 7, 8 of the Statutes of the DFL e.V. (*Satzung DFL e.V.*) in connection with the Licensing Regulation (*Lizenzierungsordnung - LO*). Through licenses, clubs in federal leagues receive full membership to the DFL e.V. and therefore also subject themselves to the disciplinary jurisdiction of both the DFB and the DFL.⁴³ The licensing procedure is initiated by means of a written application. A license is granted if a club fulfils the sporting, legal, personal and administrative, infrastructural, safety-related, media, technological, and financial criteria required by the Licensing Regulation (*LO*). The procedure itself is generally conducted by the management of the DFL which is responsible for reaching decisions as to the granting or refusal of licenses, per § 11 Nr. 1, No. 2 *LO*. It is possible to file an appeal with the licensing committee against a refusal, per § 11 No. 2 *LO*. After exhausting internal remedies pursuant to § 11 No. 2 *LO*, clubs may appeal licensing decisions by the DFL or DFB to the Permanent Court of Arbitration for Associations and Corporations of the License Leagues (*Ständiges Schiedsgericht für Vereine und Kapitalgesellschaften der Lizenzligen*) as an external remedy instead of a court of ordinary jurisdiction (§ 13 *DFL e.V. Statutes*).⁴⁴

IV. The legal framework - relevant DFB rules and regulations

The general jurisdiction of the DFB Tribunals in disciplinary cases is regulated by § 44 of the DFB Statute and encompasses all forms of unsportsmanlike and unethical behavior as well as violations of the DFB Statutes, its by-laws and the

⁴¹ BGHZ 28, 131, 134; K. VIEWEG, *Normsetzung und -anwendung deutscher und internationaler Verbände*, Berlin, Duncker & Humblot, 1990, 335 ff.

⁴² K. VIEWEG / A. KRAUSE, *Idem* 78 f.

⁴³ F. HOLZHÄUSER, *Das Lizenzierungsverfahren des Ligaverbandes*, in M. Stopper / G. Lentze (eds.), *Handbuch Fußball-Recht*, Berlin, Erich Schmidt, 2011, 747, 749.

⁴⁴ K. VIEWEG / A. KRAUSE, *Idem* 83 f.; c.f. with a detailed analysis of the licensing procedure F. HOLZHÄUSER, *Idem* 665 ff.

league statute. The details are governed by the Law and Procedure Regulations of the DFB (Rechts- und Verfahrensordnung),⁴⁵ the newly introduced DFB Code of Ethics (Ethik-Kodex),⁴⁶ the DFB Rules of the Game (Spielordnung),⁴⁷ the DFB Statute for the 3rd tier league (DFB Statut 3. Liga),⁴⁸ the DFB Statute for the women's Bundesliga and 2nd Bundesliga (DFB-Statut für die Frauen-Bundesliga und die 2. Frauen-Bundelsiga),⁴⁹ the DFB Rules for Referees (DFB-Schiedsrichterordnung),⁵⁰ the DFB Youth Regulations (DFB-Jugendordnung),⁵¹ the DFB Training Regulations (DFB Ausbildungsordnung),⁵² the implementing rules for the DFB Rules of the Game (Durchführungsbestimmungen zur DFB-Spielordnung),⁵³ the DFB Anti-Doping-Guidelines (DFB Anti-Doping-Richtlinien)⁵⁴ and as well, the regulations of the DFB by-laws particularly the regulations on the characteristics and features of playing kits and the guidelines on the improvement of security measures at federal matches (Regelungen unterhalb der DFB-Ordnungen, insbesondere die allgemeinverbindlichen Vorschriften über die Beschaffenheit und Ausgestaltung der Spielkleidung und die Richtlinien zur Verbesserung der Sicherheit bei Bundesspielen).⁵⁵

1. Procedure

According to § 13 No. 1 of the Law and Procedure Regulations of the DFB, disciplinary proceedings can only be initiated in writing. After proceedings have been initiated the affected parties – i.e. only the accused and other parties directly participating in the proceedings - must be informed of the initiation of proceedings and the nature of the alleged violations immediately and must be given the possibility to respond, § 14 Law and Procedure Regulations DFB.⁵⁶

⁴⁵ DFB Rechts- und Verfahrensordnung, available at: www.dfb.de/fileadmin/_dfbdam/125706-09_Rechts-Verfahrensordnung.pdf.

⁴⁶ DFB Ethik-Kodex, available at: www.dfb.de/fileadmin/_dfbdam/125701-04_Ethik-Kodex.pdf.

⁴⁷ DFB Spielordnung, available at: www.dfb.de/fileadmin/_dfbdam/125704-07_Spielordnung.pdf.

⁴⁸ DFB Statut 3. Liga, available at: www.dfb.de/fileadmin/_dfbdam/125702-05_Statut_3_Liga.pdf.

⁴⁹ DFB Statut Frauen Bundesligen, available at: www.dfb.de/fileadmin/_dfbdam/125703-06_Statut_Frauen-Bundesligen.pdf.

⁵⁰ DFB Schiedsrichterordnung, available at: www.dfb.de/fileadmin/_dfbdam/125711-12_Schiedsrichterordnung.pdf.

⁵¹ DFB Jugendordnung, available at: www.dfb.de/fileadmin/_dfbdam/125708-10_Jugendordnung.pdf.

⁵² DFB Ausbildungsordnung, available at: www.dfb.de/fileadmin/_dfbdam/125709-11_Ausbildungsordnung.pdf.

⁵³ Durchführungsbestimmungen zur DFB-Spielordnung, available at: www.dfb.de/fileadmin/_dfbdam/128206-08_Durchfuehrungsbestimmungen.pdf.

⁵⁴ DFB Anti-Doing-Richtlinien, available at: www.dfb.de/fileadmin/_dfbdam/71417-Anti-Doping-Richtlinie_2015.pdf.

⁵⁵ Allgemeinverbindliche Vorschriften über die Beschaffenheit und Ausgestaltung der Spielkleidung and Richtlinien zur Verbesserung der Sicherheit bei Bundesspielen, available at: www.dfb.de/fileadmin/_dfbdam/27994-07_Durchfuehrungsbestimmungen.pdf.

⁵⁶ Cf. R. KOCH, *Idem* 957.

a) *Expulsion of players*

The direct expulsion of a player during a football match with a red card automatically leads to a disciplinary proceeding before the Sports Tribunal, as under § 4 (1) Law and Procedure Regulations DFB a direct red card has the consequence of an automatic ban until a decision is reached by the Sports Tribunal. Under § 11 No. 1 (1) Law and Procedure Regulations DFB the indirect expulsion of a player – after an accumulation of two yellow cards – leads to an automatic one game suspension without the requirement of further disciplinary proceedings. This consequence, however, is subject to a limited appeal pursuant to § 11 No. 3 Law and Procedure Regulations DFB in cases in which the decision of the referee was evidently and objectively wrong.⁵⁷

b) *Prosecution by the DFB Control Committee*

In cases of violations of the DFB Statutes, its by-laws or the league statute⁵⁸ under § 13 No 1, a), b) of the DFB Law and Procedure Regulations, it is generally the DFB Control Committee that brings charges before the DFB Sports Tribunal.

Cases where the referee did not sanction a violation of a player during a match because the relevant actions went unnoticed by a referee can be problematic. According to § 8 No. 8 Law and Procedure Regulations DFB cases of blatant (“krass”) unsporting behaviour can be subject to prosecution by the DFB Control Committee whenever a referee did not make a “positive” or “negative” factual decision (Tatsachenentscheidung) concerning the incident. Less serious unsporting behaviour during a football match that went unnoticed by the referee is generally not subject to further disciplinary investigations.

c) *Investigatory Proceedings*

Analogous to the role of the prosecution body under German criminal law the DFB Control Committee assumes the role of an investigatory body that is under an obligation to extensively investigate the relevant facts.⁵⁹ The DFB Control Committee is free to determine which actions are necessary in order to investigate the relevant facts but in doing is bound by the fair trial principle at all times.⁶⁰ In most cases the primary source for charges are the reports of referees. However, independent of referee reports, charges can also be based on television recordings,⁶¹

⁵⁷ For further details see, R. KOCH, *Idem* 953 f.; 957 f.

⁵⁸ Cf. *supra* Fn. 39.

⁵⁹ H. HILPERT, *Sportrecht*, *Idem* 29 ff.

⁶⁰ R. KOCH, *Idem* 956, 959 f.

⁶¹ Television recordings were accepted as evidence in disciplinary proceedings for the first time in a judgment by the DFB Sports Tribunal of 31 January 1977 (Entscheidung No. 33/76/77). Although television recordings were perceived as highly controversial at that time they are now firmly established as admissible evidence in football disciplinary proceedings, cf. further with a detailed reasoning H. HILPERT, *Idem*, *Sportrecht*, 64 ff.

statements by other witnesses – (most importantly statements by players, coaches or club officials), – or media reports.⁶²

Under § 5 No. 5 of the Law and Procedure Regulations DFB, after investigating the relevant facts, the DFB Control Committee can either bring charges or terminate proceedings with the consent of the Sports Tribunal. In suitable cases the DFB Control Committee with the consent of the Sports Tribunal can terminate proceedings under the condition of the fulfilment of certain conditions and requirements – which are further regulated in § 7 b) Law and Procedure Regulations DFB⁶³ – and a notice that the relevant behavior was a rule violation that can be prosecuted in case of repetition.

d) *Decisions by a Single Judge*

Most proceedings – and particularly cases involving direct red cards⁶⁴ – require a speedy resolution and are thus (as a default rule) decided by a single judge of the DFB Sports Tribunal per § 15 of the Law and Procedure Regulations DFB. The procedure is modelled after the summary judgment procedure without trial under German criminal law.⁶⁵ The single judge generally has the competence to render a quick decision without hearings or trial. For proceedings concerning direct red cards, special time restrictions are applicable to further speed up the process.⁶⁶ There is no formal hearing prior to the decision of the single judge, however, although not expressly provided for in § 15 Law and Procedure Regulations DFB the right to be heard (Article 103 (2) GG and Article 6 (3) ECHR) requires that the accused has the possibility to respond to the charges brought by the DFB Control Committee in writing. In practice, the affected party is often times offered the possibility to communicate with the DFB Control Committee – sometimes also involving the judge – via phone.⁶⁷

e) *Hearings*

When there is an objection to a decision by a single judge by the DFB Control Committee, a player or a club, the DFB Sports Tribunal, which is composed of three judges, decides the case. In principle, a hearing will take place in addition to the written submissions, of which the relevant parties, witnesses and experts must be notified at least 48 hours in advance.⁶⁸ The hearings are generally

⁶² H. HILPERT, *Sportrecht*, Idem 32 f.

⁶³ See further infra 272.

⁶⁴ R. KOCH, Idem 960.

⁶⁵ Cf. §§ 407 ff. German Code on Criminal Procedure (StPO).

⁶⁶ § 15 No. 2 – No. 4 LAW AND PROCEDURE REGULATIONS DFB.

⁶⁷ H. HILPERT, *Fußballstrafrecht*, Idem 165.

⁶⁸ § 16 No.1, No. 3 Law and Procedure Regulations DFB; if all parties agree or if there is no dispute about facts, a three-judge panel can also render a decision without a hearing, § 16 No.1 sec. 2 Law and Procedure Regulations DFB.

public.⁶⁹ Further details are regulated in § 16 No. 6 of the Law and Procedure Regulations DFB. As a general rule, a lot of similarities exist between DFB disciplinary hearings and oral hearings in German criminal trials. After the hearing, the judges will deliberate in private over their judgment. The presiding judge will then read out the decision and give a short reasoning thereof.⁷⁰ The judgment must additionally be delivered to the parties in writing and must contain an explanation of and specific reference to the right to appeal the decision.⁷¹

f) *Appeal proceedings*

Against decisions of the DFB Sports Tribunal that are delivered by a three-judge panel an appeal is possible before the DFB Federal Tribunal.⁷² The right to appeal a decision belongs to the affected party, to the DFB Control Committee and in case of doubt as to the lawfulness of the decision also to the DFB Committee (DFB Präsidium).⁷³ Additionally, § 26 No. 2 Law and Procedure Regulations DFB provides that all member federations, its clubs, subsidiaries, individual members and players that can prove a direct legal interest in a decision also have a right to appeal.⁷⁴ The appeal must be filed in writing one week after the judgment was announced and the legal reasoning for the appeal must be submitted within two weeks thereof.⁷⁵ Under special circumstances the time limitation for an appeal can be reduced by the presiding judge to no less than 24 hours.⁷⁶ According to § 28 of the Law and Procedure Regulations DFB the principle of the prohibition of '*reformatio in peius*' applies when only the disciplined party appeals a decision.⁷⁷ An appeal generally has suspensive effect, unless the body of first instance declared its decision immediately effective because of reasons of sporting discipline or prevailing interests of the DFB.⁷⁸ The fact that less than 1% of all DFB Sports Tribunal decisions are appealed exemplifies that the decisions of the DFB Sports Tribunal are generally well perceived and respected by all parties and only in rare cases give rise to further legal disputes.

⁶⁹ § 16 No. 4 Law and Procedure Regulations DFB.

⁷⁰ § 16 No. 7, No. 8 Law and Procedure Regulations DFB.

⁷¹ § 23 Law and Procedure Regulations DFB; there is no specific timeline for the delivery of the judgement in writing. However, because the judgment is generally already decided upon immediately following the oral hearing, the judgment will be delivered to the parties in writing shortly after the hearing.

⁷² § 24 Law and Procedure Regulations DFB.

⁷³ § 26 No. 1 Law and Procedure Regulations DFB.

⁷⁴ This provision is primarily applied to appeals against match results. In these cases third clubs have a right to appeal when they are affected by the result of the match.

⁷⁵ § 25 No. 1 Law and Procedure Regulations DFB.

⁷⁶ § 25 No. 1 Law and Procedure Regulations DFB.

⁷⁷ H. HILPERT, *Sportrecht*, Idem 52 f.

⁷⁸ § 29 (1) Law and Procedure Regulations DFB; bans pursuant to § 8 and § 9 Law and Procedure Regulations DFB as well as bans on the basis of § 30 No. 3 c), d) DFB Training Regulations are effective immediately, § 29 No. 2 Law and Procedure Regulations DFB.

g) *Preliminary injunctions and provisional suspensions*

Pursuant to § 21 of the Law and Procedure Regulations DFB, the presiding judge has the power to issue preliminary injunctions when they are necessary to preserve orderly proceedings or sporting discipline. According to § 4 (1) Law and Procedure Regulations DFB a player who was expelled from an international match may be provisionally suspended by a preliminary injunction from participation in games in Germany.⁷⁹

h) *Review of Decisions*

The decisions of the DFB disciplinary bodies are generally not subject to review by national courts but by a permanent arbitral tribunal. For professional football in Germany the jurisdiction of a permanent arbitral tribunal is established through contractual agreement between players and their clubs and the DFB and the DFL respectively. Furthermore, § 17 of the DFB Statute provides for the jurisdiction of an arbitral tribunal for all disputes arising out of membership of the DFB and disputes between members of the DFB, which is permissible pursuant to § 1066 ZPO.⁸⁰ In doping cases § 17a DFB Statute establishes recourse to last instance decisions of the federations to CAS in Lausanne and creates a right of appeal for FIFA and WADA. At the same time § 17a DFB Statute further establishes CAS jurisdiction for international disputes.⁸¹

A good case to illustrate the review of disciplinary decisions of DFB bodies is the DFB Sports Tribunal's decision of 17 January 2013 to expel SG Dynamo Dresden from Germany's cup competition due to repeated spectator misconduct. The DFB Federal Tribunal dismissed Dresden's appeal against that decision via decision dated 28 March 2013. Dresden then sought recourse before the standing arbitral tribunal of clubs and capital companies of the licensed leagues to challenge the appeal. The Tribunal rejected Dresden's claim to overturn the judgment via decision dated 14 May 2013. Subsequently, Dresden intended to set aside the award pursuant to § 1059 ZPO and filed for a preliminary injunction to be included in the draw of the DFB cup competition for the season 2014/2015 before the Higher Regional Court Frankfurt.⁸² The Higher Regional Court Frankfurt, however, rejected Dresden's arguments, confirmed that the standing arbitral tribunal of clubs and capital companies of the licensed leagues is a 'real' court of arbitration pursuant to §§ 1034 ff. ZPO and held that there is no room for a preliminary injunction when the dispute has been settled by an arbitral tribunal under the specific circumstances of the underlying case.⁸³ Cases before the

⁷⁹ R. KOCH, *Idem* 964; H. HILPERT, *Sportrecht*, *Idem* 47.

⁸⁰ R. KOCH, *Idem* 931.

⁸¹ *Idem*.

⁸² OLG Frankfurt am Main, Decision of 13 June 2013, Az.: 26 SchH 6/13, also including a comprehensive summary with regard to the procedural history of the case.

⁸³ OLG Frankfurt am Main, Decision of 13 June 2013, Az.: 26 SchH 6/13, para. 13 ff.

permanent arbitral tribunal are very rare and on average only occur every 2-3 years.

2. *Responsibilities of clubs and players and those registered with the Association*

Clubs and their subsidiaries are responsible for the actions of their players, officials, employees, vicarious agents, members, supporters, spectators and other persons exercising a function for clubs during matches.⁸⁴ The hosting club as well as the visiting club or their respective subsidiaries are liable in stadiums before, during and after games for incidents of any kind.⁸⁵ According to § 9a No. 1 and No. 2 Law and Procedure Regulations DFB – with almost identical wording as Article 6 UEFA Disciplinary Regulations – clubs are not only liable for conduct of their players, officials and employees but also, most controversially, for acts of supporters and spectators. Although this general possibility of attribution has often been criticized in German legal literature, it does not constitute a violation of the rule of ‘*nulla poena sine culpa*’.⁸⁶ Rather, it is a sport specific application of that principle as it is squarely within the limits of a federation’s competences to decide upon the limits of attribution. This view has also been confirmed by the standing arbitral tribunal of clubs and capital companies of the licensed leagues, chaired by the former justice of the German Constitutional Court Udo Steiner, in the case of the expulsion of SG Dynamo Dresden from Germany’s cup competition.⁸⁷ In that case, the tribunal relied on similar arguments as CAS in its relevant case law in order to uphold the legality and constitutionality of the strict liability standard of attribution under § 9a Law and Procedure Regulations DFB under German law.⁸⁸ In light of these problematic cases it is, however, important for disciplinary tribunals to carefully distinguish whether a violation was committed directly by a club or to what degree actions are attributable to a club pursuant to § 9a Law and Procedure Regulations DFB. Although clubs are generally also responsible for actions of spectators, the degree of fault of the respective club plays an important role in the sentencing process.

The attribution of spectator conduct is also relevant for potential compensation claims by clubs against spectators. The BGH recently confirmed

⁸⁴ § 9a No. 1 Law and Procedure Regulations DFB.

⁸⁵ § 9a No. 2 Law and Procedure Regulations DFB.

⁸⁶ B. HASLINGER, *Zuschauerausschreitungen und Verbandssanktionen im Fußball*, Baden-Baden, Nomos, 2011, 154 ff; R. KOCH, *Idem* 937; cf. further M.-P. WELLER / N. BENZ / R. WOLF, *Vereinshaftung, Verbandsstrafen und Regress bei Zuschauerverhalten*, in *JZ*, vol. 5, 2017, 237 ff., 242.

⁸⁷ Ständiges Schiedsgericht für Vereine und Kapitalgesellschaften der Lizenzligen, Judgment of 14 May 2013, *SpuRt* 2013, 200; see *supra* 268.

⁸⁸ Cf. CAS, Decision of 3 June 2003, Az.: 2002/A/423 (PSV Eindhoven) and CAS Decision of 9 February 2007, Az.: CAS 2007/A/1217 (Feynoord Rotterdam).

with a judgment of 22 September 2016 that spectators can be held liable for fines against clubs for disciplinary sanctions of DFB Tribunals.⁸⁹

In the underlying case, a Bundesliga club commenced proceedings against a spectator, who had ignited an explosive device on the grand stand during a home match. 7 people were injured by the explosion. Because of this incident – and additional 4 previous incidents in other matches of the licensed professional team – the DFB Sports Tribunal imposed a fine of Euro 50.000,00 and as a condition of probation further Euro 30.000,00 to be spent on projects for preventing violence and identifying specific offenders at the club’s games. The club paid the fine and demanded repayment of Euro 30.000,00 – an amount corresponding to the sanction for that incident – from the spectator.

The BGH held that every spectator has an obligation not to interfere with a football match. If the spectator breaches this obligation by igniting and throwing fireworks, he is liable for damages resulting from his behaviour. That generally also includes fines imposed on the club by DFB disciplinary tribunals. These fines are not merely an accidental damage caused by the behaviour of the spectator – with no direct connection to the damage – but rather the penalty was imposed as a direct consequence of the disturbance caused by the defendant as the federation’s rules serve the prevention of disturbances of the match just like the spectator’s obligation from the spectator contract. After holding that fines are generally recoverable, the BGH remanded the case back to the court of second instance for examination of the further requirements of the damages claim.⁹⁰ The court of second instance determined that, from the specific circumstances of the case the club could recover Euro 20.340 from the spectator. However the question of how the concurrent sentence for several incidents of the DFB Sports Tribunal can be “calculated” into a specific damages claim for one incident might be brought again to the BGH.⁹¹

The judgment of the BGH is to be welcomed and is also consistent with existing case law at lower instances, which, up until now, had predominantly affirmed the liability of disruptive spectators for the fines imposed on clubs by DFB disciplinary bodies.⁹² In Germany, this decision creates legal certainty to the extent that clubs can generally claim damages from offenders for imposed fines. It remains to be seen, however, to what extent these fines will be deemed recoverable particularly in cases in which multiple disciplinary offenses are grounds for a fine. In any event, the judgment will serve as an important auxiliary tool to further increase deterrent effects for disruptive spectators.

⁸⁹ BGH, Judgment of 22 September 2006, Az.: VII ZR 14/16; for a detailed analysis cf. M.-P. WELLER / N. BENZ / R. WOLF, *Vereinshaftung, Verbandsstrafen und Regress bei Zuschauerverhalten*, in *JZ*, vol. 5, 2017, 237 ff.

⁹⁰ BGH, Judgment of 22 September 2006, Az.: VII ZR 14/16, para. 19 ff.

⁹¹ OLG Köln, Judgment of 9 March 2017, Az.: 7 U 54/15.

⁹² Cf. OLG Rostock, Judgment of 28 April 2006, Az.: 3 U 106/05 – where a fine was imposed and recovered from pitch invaders.

3. Sanctions

§ 44 DFB Statute is the center piece of the DFB sanctioning system and § 44 No. 2 DFB Statute lists possible sanctions that can be applied accumulatively, § 44 No. 3 DFB Statute. § 44 No. 2 lit. a) – n) DFB Statute list fourteen different sanctions:

- a) warning (Verwarnung),
- b) reprimand (Verweis),
- c) fines against players up to Euro 100.000,00, in other cases up to Euro 250.000,00, (Geldstrafe)
- d) bans for individual persons (Platzverbot für einzelne Personen),
- e) permanent or temporary ban on holding office in the DFB, its member federations, clubs and capital companies of up to three years (Verbot auf Zeit – längstens drei Jahre – oder Dauer, ein Amt im DFB, seinen Mitgliedsverbänden, deren Vereinen und Kapitalgesellschaften zu bekleiden)
- f) permanent or temporary match suspensions of up to three years (Sperrung für Pflichtspieltage, auf Zeit – längstens drei Jahre – oder auf Dauer),
- g) permanent or temporary expulsions of up to three years (Ausschluss auf Zeit – längstens drei Jahre – oder auf Dauer),
- h) permanent or temporary ban of up to three years from the use of all association's facilities of the DFB including a withdrawal of license (Ausschluss auf Zeit – längstens drei Jahre – oder auf Dauer von der Nutzung der Vereinseinrichtungen des DFB einschließlich Lizenzentzug),
- i) ban – of up to five matches – from being present in the inner-area of the stadium or sports facility for one or more games (Verbot – bis zu fünf Spiele – sich während eines oder mehrerer Spiele im Innenraum des Stadions oder der Sportstätte aufzuhalten),
- j) permanent or temporary withdrawal of trainers' licences for up to three years (Entzug der Zulassung für Trainer auf Zeit – längstens drei Jahre – oder auf Dauer),
- k) ban on playing at a certain venue or playing games without or partially without spectators (Platzsperrung oder Spieldaustagung unter Ausschluss oder Teilausschluss der Öffentlichkeit),
- l) deduction of points (Aberkennung von Punkten),
- m) order to play in a lower tier league (Versetzung in eine tiefere Spielklasse),
- n) permanent or temporary ban for up to three years to register players on national and international level (Verbot auf Zeit – längstens drei Jahre – auf nationaler und internationaler Ebene Spieler zu registrieren).

According to § 44 No. 4 DFB Statute all sanctions except permanent bans and sanctions pursuant to § 44 No.2 a) and b) DFB Statute can be suspended on probation. § 44 No. 5 DFB Statute clarifies that additional requirements and penalties may be imposed against clubs, capital companies and individuals pursuant to the Law and Procedure Regulations of the DFB. The details of the suspension

of a sanction on probation are regulated in § 7a Law and Procedure Regulations DFB and of the imposition of additional requirements as preventative measures in § 7b Law and Procedure Regulations DFB. Both are of great practical importance.

Pursuant to § 7a Law and Procedure Regulations DFB a sanction that is not a warning, reprimand, permanent ban on holding office in the DFB, its member federations, clubs and capital companies, permanent bans (including withdrawal of licenses) or permanent withdrawal of a trainer license can be suspended on probation. The probation period can be a period of between six months and five years, § 7a No. 2 Law and Procedure Regulations DFB. If another disciplinary offense is committed during the period of probation, the competent judicial body may upon request by the DFB Control Committee or the DFB Ethics Committee revoke the suspension on probation and order the enforcement of the original penalty, § 7a No. 3 Law and Procedure Regulations DFB. The original penalty may be imposed in addition to the sanction for the latter offense. Pursuant to § 7a No. 3 Law and Procedure Regulations DFB the revocation of the suspension can also follow when a club or capital company fails to comply with additional requirements and penalties that were imposed as preventative measures pursuant to § 7b Law and Procedure Regulations DFB.

§ 7b No. 1 Law and Procedure Regulations DFB expressly allows for requirements to be imposed on clubs and capital companies as additional preventative measures by the competent judicial body. These preventative obligations can be imposed in addition to a sanction, in connection with a sanction that was suspended on probation, or without a corresponding sanction. § 7b No. 2 Law and Procedure Regulations DFB includes a non-exhaustive list of requirements including organizational requirements, safety-related requirements, person-related requirements and infrastructural requirements. Compliance with the requirements must be proven by the respective clubs or capital companies without further notice within a time limit set by the competent judicial body, § 7b No. 3 Law and Procedure Regulations DFB. Non-compliance with requirements is sanctionable as unsporting behaviour pursuant to § 1 No. 4 Law and Procedure Regulations DFB, unless non-compliance results in the revocation of the suspension of a penalty on probation, § 7a No. 4 Law and Procedure Regulations DFB.

A recent case illustrates the functioning of the suspension of penalties on probation. In July 2016, a Bundesliga club was sanctioned with a fine of Euro 75.000, and a partial closure of the lower stand of the standing area of its stadium due to spectator misconduct. This sanction was suspended on probation with a probation period until 31 May 2017, i.e. for the entire Bundesliga season 2016/17. During a Bundesliga match in February 2017 numerous spectator incidents occurred. The DFB Control Committee therefore requested the revocation of the suspension of the previous penalty, imposed a fine in total of Euro 100.000 and ordered a complete closure of the standing areas including the upper stand. The club did not object to the decision of the single judge following the charges pressed by the DFB Control Committee in order to avoid the false impression it would play

down the incidents. Nevertheless, there has been criticism about the proportionality of that decision.

4. *Enforcement rules*

Enforcement of decisions has never been a point of concern in the past, because clubs have almost universally complied with disciplinary decisions by the DFB and its member federations. § 39 Law and Procedure Regulations DFB merely provides that it is within the competence of the DFB central administration to enforce decisions and that decisions of the DFB disciplinary bodies as well as the disciplinary bodies of its member federations and subsidiaries are binding. Only with the case of SV Wilhelmshaven⁹³ the issue of enforcement of decisions received broader public attention. However, the case of SV Wilhelmshaven illustrates how severe the consequences of a failure to comply with sanctions can be. After having repeatedly refused to comply with decisions of the federation – even after a deduction of points – SV Wilhelmshaven was ordered to play in a lower league. In light of these severe consequences compliance with disciplinary decisions is very much the norm.

5. *Infringements:*

a) Rules of the game and general requirements for sanctions

The rules of the game are not subject to modification by DFB bodies but generally are determined by FIFA Statutes and the International Football Association Board (IFAB). § 1 No. 1 Law and Procedure Regulations DFB supplements these rules by providing for the general applicability of the principles of integrity, loyalty, solidarity and ethics. However, the relevant rules and statutes cannot cover every aspect. As such § 3 No. 2 Law and Procedure Regulations DFB acknowledges that gaps in the relevant rules and statutes may be filled by “unwritten” rules (“das ungeschriebene Recht des Sports”) that can for instance be derived from a common practice of federations as customary law.⁹⁴

Just like culpability under German criminal law a sanction generally requires a three-part test to be fulfilled: the accused must violate a written norm, act unlawfully and with fault.⁹⁵ However, contrary to criminal law, the requirement as to the specificity of a norm prohibiting certain behaviour is less strict in sports disciplinary law. Consequently, the general norm of § 1 No. 4 Law and Procedure Regulations DFB – which generally prohibits unsportsmanlike behaviour – can serve as legal basis for a sanction. The individual athlete must merely identify

⁹³ See supra 258.

⁹⁴ R. KOCH, *Idem* 928.

⁹⁵ R. KOCH, *Idem* 933; however, subject to the conditions of § 9a No. 1 Law and Procedure Regulations DFB – see supra 269 – the culpability of clubs is extended to actions of third parties.

clearly that he submits to the disciplinary authority of the federation and that he may be sanctioned for unsporting behaviour.⁹⁶ An attempt is only sanctionable when expressly stated.⁹⁷ Moreover, the minimum age of criminal culpability of 14 under German criminal law does not apply to disciplinary sanctions against youth players. In this regard, the available sanctions are limited by the DFB Youth Regulations and do not include monetary fines.⁹⁸

While § 7 Law and Procedure Regulations DFB lists offenses of clubs and subsidiaries, § 8 Law and Procedure Regulations DFB includes offenses of players. Nevertheless, offenses are not limited to these paragraphs but are included in many other provisions of the Law and Procedure Regulations of the DFB. Listing all of them would exceed the purpose of this contribution. However, offenses that are frequently invoked or are otherwise of relevance include the following:

b) Disorderliness at matches and competitions

§ 8 No. 1 a) – unsporting behaviour

The offense of committing unsporting behaviour in the context of § 8 No. 1 a) Law and Procedure Regulations DFB is to be interpreted restrictively.⁹⁹ “Unsporting behaviour” is a low threshold offense with a relatively minor maximum sentencing of a ban of up to six months. When no expulsion from a match occurred a ban or fine can also be substituted by a warning or reprimand. It covers all culpable sport related incidents that are not already sanctionable pursuant to § 8 No. 1 b) – j) Law and Procedure Regulations DFB. It covers incidents such as repeated handballs, kicking of the ball after being cautioned, kicking of the ball to waste time, grabbing the opponent to prevent him from reaching the ball and similar incidents.¹⁰⁰ Specific cases included the slight pulling of an opponent’s hair¹⁰¹ or for example a case where a player took the yellow card from a referee and showed it to his opponent.¹⁰² Unsporting behaviour pursuant to § 8 No. 1 a) Law and Procedure Regulations DFB is to be distinguished from unsporting behaviour according to § 44 DFB Statute and § 1 (4) Law and Procedure Regulations DFB which cover unsporting behaviour in a broader sense in the form of unsporting behaviour of any kind.

⁹⁶ *Idem.*

⁹⁷ See for instance § 7 No. 2, § 8 No. 2 Law and Procedure Regulations DFB.

⁹⁸ § 10 No. 2 DFB Youth Regulations.

⁹⁹ H. HILPERT, *Sportrecht*, *Idem* 107.

¹⁰⁰ H. HILPERT, *Sportrecht*, *Idem* 108.

¹⁰¹ Judgment of the DFB Sports Tribunal of 15 April 1999 (Entscheidung Nr. 82/98/99).

¹⁰² DFB Sports Tribunal (2. Liga Süd – Entscheidung 1/74/75) in SportR 17/16/40.

§ 8 No. 1 b) – rough play

According to § 8 No 1 b) Law and Procedure Regulations DFB someone plays rough when he or she in the struggle for the ball recklessly injures or endangers another player. The subjective element of the offense is generally found to be present by DFB Tribunals when the offender out of self-serving motives disregards his duty of care towards his opponent or because of indifference suppresses concerns.¹⁰³ This is for instance the case when a player tackles his opponent without the possibility of reaching the ball. Sliding tackles from behind are generally considered to be more dangerous than tackles from the side and – as a general rule – the play is considered the more dangerous the higher the feet are in the air during the tackle. The minimum sanction is a ban of two weeks and the maximum sanction a ban of six months. The subjective element can be the decisive difference when determining whether a tackle falls under § 8 No. 1 b) or § 8 No. 1 a) Law and Procedure Regulations DFB. When a tackle caused an injury, it will generally be a reason for the DFB Control Committee to increase the sanction depending on the severity of the injury.¹⁰⁴

§ 8 No. 1 c), d) – violent conduct against opponents, spectators and referees

These offenses are considered to be the most severe form of match related misconduct. Violent conduct occurs when a player intentionally assaults an opponent, spectator or referee. The offense typically occurs in the form of punches, kicks or pushes. It is not necessary that the opposing player is injured nor that he suffers any kind of pain. Spitting can also constitute violent conduct. The attempt is also sanctionable. § 8 No. 1 c) Law and Procedure Regulations DFB further expressly provides for acts against opponents and spectators that in the event that the violent conduct was imminently preceded by an unsporting behaviour against the offender or in less serious instances the minimum sanction is only a ban of three weeks; when both mitigating factors are present the minimum sanction is a ban of two weeks.¹⁰⁵ According to § 8 No 1 d) Law and Procedure Regulations DFB violent conduct against a referee is sanctionable with a ban of at least eight weeks in less serious cases but regularly with a ban of six months up to two years.

§ 8 No. 1 e) – insulting and threatening the referee

Sanctions for insulting referees are regularly around two to four games in minor cases also one game long. The definition of insult is generally congruent with the definition of an insult under German criminal law: Any unlawful attack on the inner honour, which every human has as the carrier of spiritual and ethical values,

¹⁰³ DFB Federal Tribunal Judgment of 2 May 1975 (109/74/75) in SportR 17/16/44.

¹⁰⁴ H. HILPERT, *Sportrecht*, Idem 108 f.

¹⁰⁵ H. HILPERT, *Sportrecht*, Idem 110 f.

as well as his significance as such or his good reputation in society. The case law of DFB Tribunals differentiates between minor, moderate and severe cases.¹⁰⁶ In Bundesliga matches a ban for cases of insults against referees is often times accompanied by fines.¹⁰⁷

§ 8 No. 1 f) – j) corruption and others

The offenses of non-compliance with decisions by referees; culpably causing a match to be abandoned; playing without eligibility and the offense of active or passive corruption are fortunately of minor relevance in the DFB Tribunals' case law.¹⁰⁸ Nevertheless, particularly the offense of corruption has severe legal consequences. Corruption by players is sanctioned with a ban of between 3 months and three years. Corruption in this regard is not limited to activity directly relating to matches.¹⁰⁹ The attempt is also sanctionable, § 8 No. 2 Law and Procedure Regulations DFB.

c) Offensive and discriminatory behaviour

§ 9 – discrimination and similar offenses

Discriminatory and similar behaviour is considered a very severe form of an actionable offense. § 9 Law and Procedure Regulations DFB includes drastic sanctions for the persons and clubs involved – and constitutes an almost literal implementation of Article 55 FIFA Disciplinary Code of 2006.¹¹⁰ While § 9 No. 1 Law and Procedure Regulations DFB merely clarifies that unsporting behaviour, §1 No. 4 Law and Procedure Regulations DFB particularly encompasses political, extremist, obscene offensive or provocative insulting behaviour. § 9 No. 2 – 5 Law and Procedure Regulations DFB include severe sanctions for discriminatory or similar behaviour ranging from a minimum ban of five weeks and a minimum fine of Euro 12.000 for players and a minimum fine of Euro 18.000 for officials as well as a minimum fine of Euro 18.000 for clubs and the sanction of playing the next game without spectators. If the discriminatory behaviour of spectators cannot be attributed to a specific club, in any event the club organizing the game is to be punished. Multiple offenses by players, officials or spectator can lead to point deductions for clubs or to the consequence of being order to compete in a lower league in case of repetition. Mitigating circumstances can, however, be taken into account, § 9 No. 6 Law and Procedure Regulations DFB.

¹⁰⁶ For further details see H. HILPERT, *Sportrecht*, Idem 114 f.

¹⁰⁷ H. HILPERT, *Sportrecht*, Idem 116.

¹⁰⁸ Idem.

¹⁰⁹ Cf. H. HILPERT, *Fußballstrafrecht*, Idem 129.

¹¹⁰ H. HILPERT, *Fußballstrafrecht*, Idem 141 ff.

*d) Match-fixing**§§ 1 No. 2, No. 3, 6a – match manipulation*

The explicit prohibition of placing bets for players, referees and officials and the offense of match manipulation were introduced after the “Hoyzer-scandal” in 2005. Before, attempts to fix matches were only covered by the general clause of unsporting behaviour pursuant to § 1 No. 4 Law and Procedure Regulations DFB. § 1 No. 2 Law and Procedure Regulations DFB now states that players, coaches and officials of clubs and subsidiaries – the latter only when they have influence on match operations – are prohibited from participating in betting on the outcome or course of football matches or football competitions in which their team participates directly or indirectly, or similar for profit activity directly or indirectly through third parties – particularly including family members – for their or a third parties gain. They may also not instruct or aid others to do so and they are also under an obligation not to share information that is not publicly available with others that can be used for betting purposes. Violations constitute unsporting behaviour. Moreover, § 1 No. 3 Law and Procedure Regulations DFB provides for special obligations of referees not to bet on divisions in which they are active. § 6a Law and Procedure Regulations DFB further covers all acts by players, referees, coaches or officials attempting to influence a match and/or the result thereof or the sporting competition with the intention to gain an advantage for themselves or somebody else. This does not include acts by players who during or in connection with a match, violate match rules to gain a match and sport related advantage only. These acts can, however, still be sanctioned under § 1 No. 4 Law and Procedure Regulations DFB. The sanctions for match manipulations include the entire range of sanctions under § 44 DFB-Statute.¹¹¹ Additionally, DFB and DFL have been combating match-fixing in football through various preventive measures including systematic monitoring of Bundesliga games down to the 5th league, DFB Cup, international matches as well as junior and women’s leagues, cooperation with crime detection authorities and international cooperation with UEFA and FIFA. In June 2011, the DFB appointed its own integrity officer and an anti-corruption officer. In July 2012, DFB and DFL pooled their previously separate prevention campaigns in the project “Together against match-fixing”.¹¹² This project was implemented with the support of Transparency International Germany (TI), BZgA (Federal office of health education), the Centre of Interdisciplinary Addiction Research of the University of Hamburg (ZIS) as well as the players union (VdV). The most important elements of the campaign are the appointment of an ombudsman as an independent and external discussion partner in doubtful cases and the preparation of wide-ranging educational and information material (including

¹¹¹ H. HILPERT, *Fußballstrafrecht*, Idem 108 f.

¹¹² For further information see: www.gemeinsam-gegen-spielmanipulation.de.

information brochure, flyer and video with key information on the ombudsman, website, poster, e-training program, educational material and presentation).

e) Doping

§ 6, 8a ff. – doping offenses

The Anti-doping framework of the DFB is an implementation of the NADC and is regulated in the DFB Anti-Doping-Guidelines as well as the Law and Procedure Regulations of the DFB. The DFB regularly adapts its statutes, its anti-doping guidelines and its other regulations in coordination with the international football federations to the new requirements of the WADA Code and works very closely with the German NADA. DFB and DFL can carry out doping tests in relation to all national matches (championship matches of the Bundesliga and 2nd Bundesliga, 3rd league, national women's league, A and B junior national leagues, matches of the DFB cup and super cup). In addition, training tests are organized for players of the Bundesliga and 2nd Bundesliga as well as for players from NADA's national test pool (e.g. players in the A national team). In the 2015-2016 season, NADA carried out 457 training tests and 1,252 match tests, with 736 tests for the Bundesliga and 2nd Bundesliga. Since some of these tests were "combined tests" (both blood and urine samples), a total of 1,912 samples were analysed in German football. Training centres for junior players are obliged to implement and document annual courses to educate about and prevent doping in elite sport (U16-U23). When, during the time of a season two members of a team commit anti-doping violations, in addition to the sanctions against the players committing the violation, a sanction may be imposed against the club or its subsidiary or the team for which the players were playing respectively, § 8 h) Law and Procedure Regulations DFB.

6. Unlawful Penalties

If a federation imposes an unlawful penalty, the affected party may be entitled to demand that the body refrain from imposing the penalty pursuant to §§ 823(1), 1004 BGB, and possibly to damages arising from breach of the membership or license contract between association and athlete or club pursuant to § 280(1) BGB or pursuant to § 823(1) BGB. Although there are hardly any cases in which sanctions were found to be unlawful, the case of SV Wilhelmshaven helps to clarify what consequences follow from the sanctioning of a club – in this case the relegation of a team to a lower league – that is later found to be unlawful by state courts.

V. Conclusions

Football disciplinary law in Germany is subject to intense public scrutiny. The public debate includes calls to find more suitable and innovative solutions to tackle and to prevent spectator misbehaviour. This debate aims to balance claims that sanctions such as partial stadium closures constitute “unfair” collective punishment – when a vast majority of peaceful supporters are affected – on the one hand with the undeniable and predominant need to set effective deterrents on the other hand. In this context, however, the authors submit that the strong institutional basis and procedural setting of football disciplinary regulations in Germany already provide the ideal foundation for DFB disciplinary bodies to strike the right balance. Strong similarities between the German law on criminal procedure and DFB disciplinary law ensure that the rights of affected parties and procedural guarantees are protected in a coherent and comprehensive manner. All deviations of these high standards are justified by the broad competences of sports federations to regulate their internal affairs and the typical challenges of sporting competitions particularly regarding the prevention of violence and unethical behaviour. In this regard, DFB disciplinary procedures set the highest standards. An open, constant and reliable dialogue between the governing bodies DFB and DFL e.V. – especially the judicial bodies of the DFB – clubs, police, public administration, public fan projects and representatives of the organized fan scene is key to facilitate mutual understanding and to establish effective additional preventive measures. A strong institutional basis in conjunction with a willingness of the DFB to adapt the system in cooperation with the DFL e.V. when new challenges or new approaches are identified has been key to make DFB disciplinary procedures a role model for sports federations within Germany.

DISCIPLINARY PROCEDURES IN GREEK FOOTBALL

by *Konstantinos N. Zemberis**

Introduction

Sport in Greece is regulated by Law 2725 of 1999, as amended and in force (hereinafter “Sports Law”), which contains provisions relevant to sports associations in general and specific provisions applicable only to football. The regulations of the Hellenic Football Federation (hereinafter “HFF”) are in compliance with the provisions of the Sports Law, the general principles of law and, of course, in compliance with the regulations and mandatory provisions of UEFA and FIFA.

As a rule, Football Justice is in the hands of the Hellenic Football Federation: the national association that is responsible for the regulation, protection and promotion of football, undoubtedly the most popular sport in the country with a significant financial and social impact.

1. The Hellenic Football Federation and its legal framework

The HFF was founded in 1926 and has been a member of FIFA since 1927. The HFF was one of the founding members of UEFA in 1954 and is also a member of the Hellenic Olympic Committee. As a member of UEFA and FIFA, the HFF has an obligation to comply with their regulations and principles and to respect the awards of the Court of Arbitration for Sport (hereinafter “CAS”), as well as to secure that its members, its clubs, the players, representatives, and officials and members of said clubs, also abide by the principles and regulations of UEFA and FIFA, and respect and comply with the awards of the CAS.

The HFF enjoys, as it is the case with all European football associations, the autonomy of sport administration and of sport legal order. It has the power to set its own rules and regulations, both for its administration and management and for all football related issues.

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The HFF is a non-profit association with aim, among others, to continuously improve, promote, manage and control the game of football in Greece.¹ The HFF is also responsible to draft all football-related regulations and provisions and to secure their implementation. In doing so, being a member of FIFA and UEFA, the HFF must fully comply with the statutes, regulations, directives, decisions and instructions of FIFA, and UEFA bodies which are immediately applicable.

Nevertheless, the autonomy of the HFF and its exclusive power to set its own rules and regulations that apply to football-related matters (the real meaning and the extent of which have raised many controversies in the past and is still today the issue of a big debate), seems to be limited up to a certain extent by the new law 4326/2015 (“*Urgent measures for combating violence in sports and other provisions*”) that was enacted on 13 May 2015.²

In fact, following the enactment of law 4326/15, the Deputy Minister of Culture and Sports, who is the competent Minister for Sports (hereinafter the “Minister of Sports”) has the power to impose heavy sanctions on clubs, leagues, and federations. The Minister of Sport, as well has the power to sanction natural persons, in case of serious riots, serious incidents of violence and racist behaviours related to sports that take place in or out of the football pitch. Said sanctions could be a fine between ten thousand (10,000) euros and one million (1,000,000) euros. The Minister of Sports is also entitled, as precaution measures so that such incidents and behaviours are not repeated, to suspend for one or more match days or even to cancel the championship or other competitions. The Minister is also empowered to forbid the distribution and/or selling of tickets for matches and/or the use of specific zones and stands of a stadium. Moreover, the law provides that in case of non compliance with the aforementioned bans, the Minister of Sports has the power to sanction, by means of a justified decision and only following a hearing, the natural or legal persons that do not comply, with a fine between twenty five thousand (25,000) euros and five million (5,000,000) euros, depending the gravity of the violation and whether there is a relapse, the extent of the consequences and/or the possible benefit aimed by the person.

It is clear that the said powers of the Minister of Sports, which allegedly are of administrative nature, constitute, nevertheless, a direct threat to the autonomy of the HFF and an intervention to its exclusive disciplinary power on football-related matters.

In April of 2016, following a decision of the Minister of Sports to cancel the final of the Greek cup competition, because of incidents of violence and riots that occurred in the first leg of the semi-final between Olympiacos CFP and PAOK FC, on the basis of the new law, FIFA has threatened the HFF with a ban from international competitions and an automatic suspension and granted a final ten (10) days deadline to the Greek State to withdraw the decision to cancel the

¹ Statutes of the Hellenic Football Federation, edition 2015, article 2, available at www.epo.gr/Default.aspx?a_id=42345 (in Greek).

² Law 4326/15 is available at <http://gga.gov.gr/athlitisimos/nomothesia> (in Greek).

final of the Greek cup, since it considered the decision of the Minister of Sports to be an unacceptable interference in internal football matters.³

Moreover, it should be mentioned that in December of 2016, the Minister of Sports submitted a draft of a new sports law⁴ to replace the sports law 2725/99, which included provisions that clearly and deeply interfere in the autonomy of the HFF to self govern and regulate football matters. It is enough to say that pursuant to that draft of law, the final decisions of the sports judicial bodies on “civil” sport disputes (e.g., financial disputes between players and clubs) would be appealable before the relevant ordinary Court of Appeals and all transfers on a loan basis would be banned.

The draft law caused a big debate and huge controversies and was eventually not brought to a vote before the Parliament. However, the new Minister of Sports has announced that the new sports law would be discussed from the beginning with all relevant stakeholders.

Furthermore, apart from the provisions of the aforementioned new law 4326/15, the self-government of the HFF and its disciplinary power are also “threatened” by the interference of ordinary courts in sports disputes and especially in the enforcement of decisions taken by the HFF judicial bodies and the application of disciplinary sanctions by the football authorities. In fact, in the last couple of years, there have been a few cases when the ordinary courts had interfered in sport justice and in particular in the enforcement of disciplinary decisions against clubs that had not complied with final decisions of the HFF judicial bodies as well as of the Court of Arbitration and/or were found to be in violation of the HFF regulations. The said interference consisted in granting provisional orders, whereby the football authorities were forbidden from enforcing a decision of the sport judicial bodies and from applying the imposed sanctions against a club, until the ordinary courts take a final decision on the respective petition of the club (in most of the cases, the provisional order was issued within the frame of pre-bankruptcy and/or restructuring procedures).

It is noteworthy that in all the above-mentioned cases, the clubs that were protected by provisional orders of the ordinary courts, were invited by the Greek football authorities, who invoked the ban on redress to the ordinary courts for football matters, to withdraw their petitions pending before the ordinary courts, threatened with expulsion in case of denial to comply.

2. *Clubs, players and officials’ responsibilities*

All natural persons and legal entities directly or indirectly affiliated with the HFF have the obligation to follow HFF regulations, as well as all of the regulations,

³ A. WARSHAW, “FIFA give Greece 10-day deadline to shape up or ship out”, Inside World Football, 6 April 2016, available at www.insideworldfootball.com/2016/04/06/fifa-give-greece-10-day-deadline-shape-ship/.

⁴ The draft of the new law is available at www.opengov.gr/cultureathl/?p=6416 (in Greek).

provisions and directives of FIFA and UEFA that are directly and immediately applicable. They also need to respect and comply with the decisions of the CAS and the decisions of the Greek Court of Arbitration for football, as well as the decisions of the HFF judicial bodies.

The clubs have the obligation to secure that in their stadium, the officials of the match, the football players, the spectators and the officials of the opponent team are safe and that public order is respected.

They also have the obligation to protect the reputation and the integrity of football and have strict objective liability in case of violation of any provisions of the HFF Disciplinary Code (hereinafter “DC”),⁵ regulations and Statutes by their officials, players and/or fans.

The DC provides that there can be no responsibility of a club for indecent behaviour of spectators during the match, if the club has not received and has not distributed tickets to its supporters.

The team’s responsibility is limited to the area around the stadium and the pitch and only for the time between the arrival of the team to the stadium and its departure from the stadium after the match.

As a general principle, the violations are punishable independently of whether they have been committed intentionally or by negligence, unless otherwise provided by any specific provision.

The clubs are also responsible for the behaviour of their players, coaches, officials and supporters and they have strict liability in case that one of the above violates any provision of the DC of the HFF and/or of other regulations of the HFF. As a result, the clubs frequently end up being sanctioned on account of the indecent behaviour of their players, coaches, officials and/or supporters.

3. *Offences and violations*

The meaning of offence is quite a broad one, since it includes both sport offences and violations related to the actual match and/or the rules of the game and more serious violations of the regulations and offences that usually take place out of the stadiums.

One of the most serious offences is the manipulation of match results. The DC provides serious and heavy sanctions for any official or any person that is somehow involved in football and is subject to the jurisdiction of the HFF, who attempts or participates to an attempt to manipulate the result of a match or the outcome of a competition in a corrupted and incompatible with sporting ethics manner. It is also provided that if a team or an official of the team are found guilty for match-fixing and manipulation of match results and/or the outcome of a competition, the fine is 10 times bigger and the team is relegated to the lower division. Finally, the team would be anyway presumed guilty, even if no official of

⁵ Disciplinary Code of the Hellenic Football Federation, edition 2016.

the team is involved in the manipulation of the match result, in case that two or more of its players are involved in the offence (articles 20 & 22 of the DC).

Another very serious offence and violation of the regulations is doping, which is punishable with heavy sanctions in accordance with the Anti-doping Regulation and the DC of the HFF. A player whose sample contained a prohibited substance is facing a two years' suspension and in case of relapse, a ban for life. When the violation is related to trafficking in prohibited substance or a prohibited method or administration of a prohibited substance or prohibited method to any player, the sanction is a suspension of at least four years and if any of the players involved is under twenty one years old, the sanction is a ban for life.⁶

Moreover, it is provided that players, coaches, referees, officials and persons involved in football with any capacity, are prohibited from betting on competitions or matches in which they participate or are involved.⁷

The DC also contains provisions referring to racism, which determine the sanctions for anyone who publicly disparages someone, discriminates against someone or denigrates someone in a defamatory manner on account of race, skin colour, language, religion or ethnic origin, or commit any other racist act,⁸ provisions referring to bribery, which determine the sanctions for anyone who offers, promises or grant, on his behalf or on behalf of a third party, an unjustified gift to a member of a HFF body, to a match official, to a player or a club's official, urging him to violate a regulation of the HFF, of FIFA or of UEFA (article 18 of the DC) and provisions referring to the defamation of the football authorities and bodies.⁹

In the DC of the HFF, there are also provisions pertinent to some special offences, like for example the provision on threats, the provision on violence and the provision on forgery.¹⁰

Finally, it should be mentioned that the non-payment of amounts awarded by a final decision of the sports judicial bodies and the non-compliance with the final decisions of the judicial bodies of the HFF, of the Arbitration Court and of the CAS, constitute as well an offence.

4. *Sanctions on clubs, players and officials*

The disciplinary bodies of the Greek Superleague and of the HFF are competent to impose the sanctions provided by the Regulations, on the natural persons and legal entities (football clubs, unions, etc.) found guilty of violations and offences.

The Disciplinary Code of the HFF provides for the sanctions applicable to natural persons and legal entities (players, clubs, officials of clubs, unions, etc.), the limits of the said sanctions, as well as for circumstances where the said sanctions are diminished or doubled.

⁶ Article 24 of the DC.

⁷ Article 21 of the DC.

⁸ Article 27 of the DC.

⁹ Article 25 of the DC.

¹⁰ Articles 28, 29, and 30 of the DC.

Article 5 of the DC of the HFF provides for the following sanctions:

Sanctions for both natural persons and legal entities:

- a) Warning,
- b) Reprimand,
- c) fine (Clubs are jointly liable for fines imposed on their players and officials. The fact that a natural person has left the club does not cancel the joint liability),
- d) return of trophies.

Sanctions that could be imposed only to natural persons:

- a) caution,
- b) expulsion,
- c) disqualification,
- d) ban from entering to the pitch or to the lockers or to both,
- e) ban from entering a stadium,
- f) ban on participation to any activity related to football,
- g) social work.

Sanctions that could be imposed only to legal entities:

- a) ban on transfers,
- b) match played without fans,
- c) match played in neutral ground (stadium),
- d) prohibition on playing a match in a specific stadium,
- e) annulment of the result of a match,
- f) disqualification from a competition,
- g) defeat by forfeit,
- h) deduction of points,
- i) relegation to the lower division,
- j) replay of a match.

Pursuant to Article 3 para. 1b of the DC of the HFF, the judicial bodies of football are not allowed to impose football sanctions that are not provided by the Statutes and the Regulations of the HFF.

Specific fines imposed pursuant to the DC provisions, are imposed, unless it is stipulated differently, in full on football clubs of the first division and on their players and officials, by 2/5 of the fine on football clubs of the second division and on their players and officials and by 1/6 of the fine on amateur clubs and on youth teams of the football clubs and on their players and officials. Likewise, acts amounting to attempt are also punishable but the judicial body shall reduce the sanction provided for the actual infringement accordingly and shall determine the extent of mitigation, without however being able, in any case, to impose a smaller sanction than the lower limit of the envisaged fine.¹¹

Moreover, any person that is involved in committing an infringement of the rules or regulations, either as an instigator or accomplice would be punished as

¹¹ Article 3 para. 3-5 and Article 4 para. 2-4 of the DC.

well and the judicial body should take into account, when deciding the sanction, the degree of guilt of the person involved and shall reduce the sanction at its discretion, but without being able, in any case, to impose a smaller sanction than the lower limit of the envisaged fine.

The DC provides that any natural or legal person sanctioned for two or more disciplinary offences, shall receive a total sanction that would comprise of the heavier sanction imposed in full, increased by half of each of the remaining sanctions.

With respect to the sanctions imposed on football clubs, when a match is forfeited for any reason, the club sanctioned with match forfeiture, would be considered to have lost the game 0-3, unless the real score is higher, in which case the real score is maintained.¹²

The clubs are obliged to protect the integrity and reputation of football and have strict objective liability, in case of violation of the provisions of the DC and of other regulations of the HFF or of the Statutes of the HFF by the club's officials, players and/or supporters.¹³

Specific sanctions and fines are imposed on clubs in case of riots and incidents before, during or after the matches (e.g., throwing of flares and/or other objects in the pitch before, during or after the game, the entering of spectators in the pitch, the injury of a player and/or an official as a result of the throwing of the aforementioned objects, and extended riots. Incidents of violence and riots are considered extended when a significant number of spectators is involved in such riots and incidents of violence). A typical example of the sanctions that can be imposed on clubs in such cases, are the sanctions that have been imposed on AEK FC and PAOK FC by the HFF Disciplinary Committee for the extended riots and incidents of violence that took place before the 2017 final of the Greek Cup in and out of the stadium. AEK FC was sanctioned with a fine of 170,000 euros and a sanction of three games without fans for the extended riots and the incidents of violence and PAOK FC was sanctioned with a fine of 282,500 euros, a sanction of 7 games without fans and a deduction of 6 points from the championship's table for the said riots and incidents of violence and the additional violation of fans entering in the pitch.¹⁴

The violations of the Disciplinary Code that constitute a sanctionable offence determined by the DC and which were committed by a natural or legal person, are time-barred after three months of the day when they were committed, if there was no written complaint and no prosecution and the competent judicial bodies were not informed of the offence for any reason, unless another provision regulates in a different way the limitation period.¹⁵

¹² Article 13 para. 2.

¹³ Article 14 para. 2.

¹⁴ Decision 157/2017 of the HFF Disciplinary Committee.

¹⁵ Article 32 para. 1.

However, offences such as distortion of the circumstances of a match, threats and violence are time-barred after six months of the day when they were committed, while others like bribery, match-fixing for reasons of betting, manipulation of the result of a match and doping) are never time-barred.¹⁶

5. *The football disciplinary bodies and the HFF prosecutor*

5.1 *The disciplinary bodies*

5.1.1 *The First Instance Single-member Disciplinary body of the Greek Leagues*

Within the Greek Superleague (the top professional league of Greek football) and the Football League (the league that manages the championship of the second division in Greece) a First Instance Single-member Disciplinary body established by the relevant provisions has jurisdiction to rule on violations and offences stipulated in the provisions of the match regulations of those above-mentioned leagues and to impose the relevant sanctions. The members of the disciplinary body (Sports Judge and Deputy Sports Judge) are active first instance ordinary judges appointed by the HFF for a period of three years that cannot be renewed.¹⁷

5.1.2 *The HFF Disciplinary Committee*

The operation of the HFF Disciplinary Committee is regulated by the DC of the HFF. The Disciplinary Committee is constituted by five members and is able to decide on a matter when at least three of the members are present. The said Disciplinary Committee has jurisdiction to decide on violations and offences related to matches and events organized by the HFF.¹⁸

5.1.3 *The HFF Appeals Committee*

The operation of the Appeals Committee of the HFF is regulated by the HFF DC and the HFF Code of Ethics. The Appeals Committee consists of five members and can decide on a matter only when at least three of the members are present.

The Appeals Committee is competent to hear appeals against the decisions of first instance single-member disciplinary bodies of the Leagues and against the decisions of the Disciplinary Committee of the HFF that are not final, according to the HFF relevant regulations.

The decisions of the Appeals Committee can be appealed before the Court of Arbitration for Football (which operates within the HFF, but is independent),

¹⁶ Article 32 para. 2.

¹⁷ Articles 119 and 127B of law 2725/99, as amended by Article 5 of law 4326/15.

¹⁸ Article 62 of the HFF Statutes.

provided that the imposed sanctions are with respect to natural persons: i) sport suspension of more than three months, ii) ban on taking part in any football related activity of more than three months, iii) ban from entering a stadium of more than four months, iv) suspension of more than four match days or v) a fine of more than fifty thousand (50,000) euros and with respect to legal persons: i) a sanction of playing a match without fans of more than one match day, ii) a sanction of playing a match on neutral ground of more than one match day, iii) sanction of playing a match in a particular stadium of more than one match day, iv) a fine of more than one hundred thousand (100,000) euros, v) annulment of the result of a match, vi) repetition of a match day, vii) sanction of deduction of more than three points or viii) a sanction of relegation.

5.1.4 The Court of Arbitration for Football

The Court of Arbitration for Football (which is considered by FIFA to be an independent and duly constituted arbitration tribunal in the sense of art. 58 par. 3 lit. c of the FIFA Statutes, following the decision of the CAS on the arbitration CAS 2012/A/2983 Aris FC v. Marcio Amoroso dos Santos & FIFA, of 22 July 2013) is the highest judicial body of Greek Football. Its aim is the resolution of disputes by means of arbitration. It is an independent judicial body that has been founded pursuant to article 66 of the HFF Statutes and decides in last instance, following the exhaustion of all other internal remedies and procedures, on all internal national disputes between the HFF, the Leagues, the clubs, the players, the coaches, the officials and the intermediaries. It is mandatory for all leagues (professional and amateur) that are members of the HFF to include, in their statutes and in the procurements of the professional and amateur championships, a specific provision granting the sports stakeholders the possibility to submit their disputes to arbitration pursuant to the Regulation for the operation of the Court of Arbitration for Football.

The Court of Arbitration for Football has jurisdiction to decide as final instance body, among others, on appeals lodged against decisions of the Appeals Committee of the HFF, that can be appealed pursuant to article 64 of the HFF Statutes (see above). When the Court of Arbitration decides on such appeals, it sits in a composition of five (5) members. Three of those members are high or supreme judiciaries appointed by means of a decision of the Executive Committee of the HFF for a period of two years (the said ordinary members of the Court need to have good knowledge of the football regulations and of sports law in general) and two of them are arbitrators, each of them appointed by one of the parties of the dispute, out of the relevant approved list that is held in the Secretariat of the Court of Arbitration (before the beginning of each sportive season, each of the HFF, the Leagues, the Panhellenic Professional Football Players Association and the Panhellenic Associations of Coaches and of Intermediaries, provide the Secretariat of the Court with a list of three to five arbitrators).

The time limit for filing an appeal against a decision of the Appeals Committee of the HFF before the Court of Arbitration, is five days from the notification of the challenged decision.

5.1.5 *Code of Ethics and Ethics Committee*

The HFF Code of Ethics¹⁹ applies on behaviours that harm the integrity and the reputation of football and especially on illegal, immoral and non-ethical behaviours. The Code refers to the overall behaviour within the world of organised football that could have minor or even no relation at all to the actions that take place in the stadiums.

The Ethics Committee may refer and base its decisions on precedents and on the general principles of sports law, already established by means of the jurisprudence of the sport judicial bodies of the HFF, FIFA, UEFA and CAS.

The Ethics Committee may impose on the persons that are subject to the Code of Ethics (i.e., players, coaches, intermediaries, referees, officials of clubs, leagues and other persons involved with any capacity in the organization of football matches and championships), the sanctions provided by the Code of Ethics, the DC of the HFF and the Statutes of the HFF.

As a rule, the violations of the provisions of the Code of Ethics cannot be prosecuted after a period of ten years.²⁰ However, the prosecution for the offences of bribery, match fixing, doping, as well as for any violation related to the integrity of matches and competitions cannot fall into this limitation (Article 12 para. 2 of the Code of Ethics).

The Code of Ethics provides for a general obligation of the persons that are subject to the provisions of the Code, to respect any and all relevant laws and regulations and to behave in a decent manner and to act with honesty and integrity.

Moreover, the Code of Ethics contains articles regarding bribery and corruption (Article 21) providing that the persons bound by the Code shall not offer, promise or accept and receive any unjustified financial or other benefit for the execution or the omission of the execution of their duties.

Then, with regard to the ban on discrimination, all those who are bound by the Code shall not offend a person or a country and shall not disparage or denigrate someone and his dignity and integrity through defamatory and undignified statements on account of race, colour of skin, national or social origin, sex, language, religious and political beliefs, or for any other reason.²¹

As for the protection of physical and intellectual integrity of others and the integrity of competitions, Articles 25 and 26 of the Code prohibit from participating, directly or indirectly, or to be involved somehow with betting and similar transactions connected to football.

¹⁹ The Code of Ethics of the Hellenic Football Federation, edition 2016.

²⁰ Article 12 para. 1 of the Code of Ethics.

²¹ Article 23 of the Code of Ethics.

The Ethics Committee consists of two departments, the investigation department and the judicial department, since the Committee has both an investigation procedure and a judicial one.

The Ethics Committee is competent to decide on all cases that arise from the application of the Code and to rule on the behaviour of all the persons that are bound by the Code when they perform their duties, provided that the alleged violation does not have consequences on international level (i.e., when the case is decided in national level).²²

The investigation department shall examine possible violations of the Code of Ethics, either following prosecution by the HFF Prosecutor, by its own initiative and *ex officio*, following report from the President or the Executive Committee of the HFF, or following submission of complaint by any person bound by the Code. The investigation department decides whether it shall close a case, archive it or refer it to the judicial department.²³

The judicial department shall examine the files of the cases referred by the investigation department and shall decide whether the investigation procedure shall close or whether the case shall proceed with further judicial procedure. If the judicial department decides to proceed with the case, it shall provide the accused party (it should be clarified that only the accused is considered a party) with a copy of the final report and invite him/her to submit its position.

The party has the right to be heard, the right to submit evidence, the right to examine all the elements and evidence that might lead to a decision and the right to have access to the file and to receive a motivated decision.²⁴

During the procedure, any kind of evidence can be presented, like for example, documents, officials' reports, witnesses' testimonies, video footages and sound recordings, experts' reports, etc., and the Ethics Committee shall have full discretion in the assessment of the submitted evidence.²⁵

It is important to note that the Code provides even for anonymity and the protection of a witness, whose testimony might put his life in danger or his family at risk.²⁶

The decisions of the Ethics Committee can be challenged before the Appeals Committee of the HFF, unless the sanction imposed is a warning, a reprimand, suspension for less than three matches or up to two months or a fine lower than five thousand euros.

The deadline for the appeal is five days from the notification of the decision.

Finally, the Code provides for the possibility of the Ethics Committee to reopen a case, for which a decision has already be taken, in the event that the

²² Article 27 of the Code of Ethics.

²³ Article 28 of the Code of Ethics.

²⁴ Article 39 of the Code of Ethics.

²⁵ Articles 46 and 50 of the Code of Ethics

²⁶ Article 47.

sanctioned party discovers new facts or evidence that, despite the investigation could not have been presented earlier, and which could lead to a more favourable decision.

5.2 *Prosecution officer for football offences*

Pursuant to article 35 of the DC, a prosecution office for football offences operates within the HFF. The Prosecutor is responsible for prosecuting violations of the provisions of the Statutes or the Regulations of the HFF and for referring disciplinary offences to the competent committees (of the Leagues or of the HFF) that are not mentioned on the match report and come to his knowledge from a referral by the Executive Committee of the HFF or by other committees or services of the HFF, from his own awareness regarding things that have happened or statements that have been made that are covered by the media or finally, from substantiated named complaints.

It should be mentioned that while the disciplinary committees have no power to prosecute on the basis of the video material (when no reference to the offence is made in the match report), the Prosecutor for football offences has such power.

The Prosecutor is also competent to prosecute in cases of extended riots and incidents of violence and he has the power to lodge before the Appeals Committee of the HFF, *ex officio* or following petition of any party, appeals against the decisions of the First Instance Disciplinary Committees. The deadline for the prosecutor to lodge such an appeal is 12 days from the notification of the award.

6. *The disciplinary procedure*

6.1 *Procedural Regulation for the Operation of Judicial Bodies*

The provisions of the Procedural Regulation for the Operation of Judicial Bodies²⁷ govern the operation of all the Judicial Bodies of the HFF, that is, the Disciplinary Committee, the Ethics Committee and the Appeals Committee.

These provisions apply to all football championships, and to all natural and legal persons involved, with any capacity, in football, who are, because of the said involvement parties to disciplinary proceedings before the aforementioned judicial bodies (e.g., football clubs, football leagues, natural persons participating to organized football like players, coaches, clubs' officials, owners or shareholders of clubs, as well as supporters and other persons that enter the stadiums depending their capacity).

The prosecution procedure is initiated either *ex officio* by the Disciplinary Committee itself, on the basis of the match reports or the Prosecutor for football offences as provided by law, or following an objection/petition submitted by an

²⁷ The Procedural Regulation for the Operation of Judicial Bodies, edition 2016.

interesting party, pursuant to the specific provisions of the regulations in force. In case of partial prosecution, the Disciplinary Committee is entitled to supplement and/or extend the initial prosecution.

The procedure before the Ethics Committee is initiated following the complaint of any person subject to the Code of Ethics or a prosecution. The investigating member of the Ethics Committee will open the proceedings if, following the review and examination of all the submitted documentation, it considers that *prima vista* a disciplinary offence exists.

It is important to note that any objection on the jurisdiction of a judicial body of the HFF needs to be submitted by the party on the first hearing, otherwise it is inadmissible. Nevertheless, each committee examines *ex officio* its competence.

The evidentiary procedure depends on the type of violation. If the violation is related to facts that took place during a football match, the substantiation is exclusively based on the match reports and only as supplementary evidence is it possible for the police reports and the video footage of the match to be taken into consideration, in support of the match reports. For the examination of the rest of the violations, the basic means of proof are the written documents, the confession and the experts' reports.²⁸

The testimonies of witnesses and the oral examination of the parties are subsidiary evidence for special cases and only if the Disciplinary Committee considers them necessary. However, when the Disciplinary Committee decides on violations of the Code of Ethics, the testimonies of witnesses and the examination of the parties constitute the standard means of proof.

Before the Appeals Committee there is no examination of parties and witnesses, unless the Committee itself consider it necessary and request it in exceptional cases.

The written submissions of the parties together with all the supporting documents and evidence must be submitted before the day determined by each judicial body and in any case no later than the day of the hearing.²⁹ In some cases, the judicial bodies may give after the hearing, a short deadline for parties to submit additional submissions in order to rebut the position of the opposing party.

Affidavits can be accepted, although freely assessed, provided that they have been legally received in the frame of the case under judgment or of other relevant procedure (civil or criminal).³⁰

The decisions of the judicial bodies are taken by majority vote. Each decision must necessarily contain the composition of the judicial body, the full names of the parties and of their attorneys, a short reference to the background of the case, the grounds of the decision with reference to any minority opinion, the provisions on which the decision is based, the ordering part of the decision, the

²⁸ Article 14 of the Procedural Regulation.

²⁹ Article 15 of the Procedural Regulation.

³⁰ Article 16 of the Procedural Regulation.

place and date of issue of the decision, reference to the fees of the procedure and notification of the possibility to appeal the decision and of the relevant deadline to file such an appeal.³¹

Decisions taken by the judicial bodies are immediately enforceable.³² The filing of an appeal against the decision of a first instance body does not suspend the execution of the said decision. It is however possible for the competent judicial body to suspend the enforcement of the decision in some cases (e.g., cases concerning violations of the Code of Ethics). The decisions of the first instance bodies become final if the deadline to file an appeal has expired without such an appeal being lodged.

The deadline to file an appeal against the decisions of the first instance judicial bodies of the HFF are two days with respect to the professional championships [Superleague (first division) and Football League (second division)], eight days with respect to the decisions of the Disciplinary Committee of the Amateur Clubs Unions and the decisions of the board of directors of the said Unions and five days with respect to the competitions organized by the HFF (Greek cup and amateur championships), the cases concerning violations of the Code of Ethics and for all remaining cases. The deadline for the Prosecutor for football offences to file an appeal is, as aforementioned, twelve days.³³

6.2 *Regulation on the Operation of the Court of Arbitration for Football*

The Court of Arbitration decides in final instance on appeals against decisions of the HFF Appeals Committee. As mentioned *above*, the time limit for the filing appeals against a decision of the Appeals Committee is five days from the notification of the decision.

The parties can be represented by an attorney-at-law or they may represent themselves through the entire procedure.

The Court of Arbitration decides on its jurisdiction, independently of any claim that might be pending before a civil court or before another arbitration tribunal and concerns the same matter.

The evidentiary procedure before the Arbitration Court consists mainly of written submissions of the parties and only if the Court deems that a hearing would be necessary, such hearing could take place. During such a hearing, the Court can examine the parties and any witnesses. The parties shall submit together with their written submissions any evidence that supports their position.³⁴

The Arbitral award is taken unanimously or by majority vote. It must be in writing and must bear the date of issue and the signatures of all the members of

³¹ Article 27 of the Procedural Regulation.

³² Article 28 of the Procedural Regulation.

³³ Article 36 of the Procedural Regulation.

³⁴ Article 14 of the Regulation on the Functioning of the Court of Arbitration for Football, edition 2016.

the Court. The Court of Arbitration may decide to issue first the findings of the decision and then to notify the full decision with the grounds at a later stage. However, the award would already be enforceable following the notification of the findings of the decision.³⁵

The Court of Arbitration decides in accordance with the applicable Regulation and the Statutes and Regulations of the HFF and supplementary pursuant to the Statutes and the obligatory directives of UEFA and FIFA.

Finally, it is worth mentioning that article 20 of the Regulation for the Operation of the Court of Arbitration provides for the possibility of reopening of a case under special and extraordinary circumstances.³⁶ The petition to rehear a case can refer only to a decision that ends a dispute and is not subject to any other legal remedies. The petition shall be filed within 15 days from the day that the requesting party undoubtedly become aware of the facts that provide the basis for the rehearing and in any case, not later than one year from the date of issue of the decision in question.

Conclusions

Football is not only the most popular sport in Greece, but also the most influential, with a huge impact in the social and financial life of the country. Its popularity and importance make it a powerful tool, ideal, and mechanism for political and economic exploitation.

Huge investments are being made every year and incredible amounts of money are being spent and thus, inevitably, many strong and opposing interests are created.

The HFF clearly has an interest to preserve and maintain its autonomy and its power to set its own rules and regulate football in Greece in accordance with its goals and objectives and the goals and objectives of UEFA and FIFA.

On the other hand, the State has an interest to control and supervise all football related activities due to the social impact and financial importance of football.

It is also true that in Greece there were many occasions in the recent past that in a way provoked the interference of the State with football matters and with the autonomy of the HFF. In fact, the huge match-fixing scandal that was unveiled a couple of years ago, financial and other scandals, repeated riots and

³⁵ Article 16 of the Regulation.

³⁶ For example, if the challenged decision was based on false witness testimony, a false report, testimony of an expert, or on forged documents and such falsehood or forgery has been acknowledged by a final decision of a criminal court, if the party requesting the reopening of the case has found or took into possession, after the rendering of the challenged award, new important and crucial documents which could not have been presented timely in Court for reasons of force majeure or because they have been kept secret from him and he ignored their existence during the trial, or if the outcome of the trial and the challenged decision was substantially affected by a bribery of an arbitrator, provided that the said bribery is proven by a final decision of a criminal court, etc.

incidents of violence inside and out of the stadiums, controversial decisions of the sports bodies, and problems with referee appointments, have created both the need and the excuse for the State to intervene and interfere in football matters by asserting, among others, the power and competence to decide on disciplinary matters and offences, a power and competence that is normally vested in the sport judicial bodies.

At the same time, an increasing interference of sport justice by ordinary courts has been noticed, and poses a problem for the HFF, its autonomy, as well as the football competitions. Indeed, the reality of football competitions today requires immediate solutions and fast judicial procedures that cannot be guaranteed if the ordinary justice has jurisdiction to decide on football matters and the power to interfere with disciplinary cases of football world. On the contrary, previous experience has shown that the slow procedures and the infamous delays of ordinary justice would seriously jeopardise the integrity of football competitions.

It is, thus, important for the integrity of football competitions that disciplinary matters related to football activity are decided by the judicial bodies of the HFF and the leagues, within the football world. These disciplinary bodies consist of experienced judges (nowadays active ordinary judges) with knowledge of the football matters and specificities and guarantee a fast and fair procedure. Ordinary justice shall only deal, at a criminal law level and independently of sport justice (and of the relevant sanctions imposed by the sport bodies), with violations of the DC that constitute criminal acts, like for example match fixing.

Given all the aforementioned, it is obvious that the discussions among the stakeholders for the new sports law would be everlasting with many debates, but it is also certain that the new sports law that would result from the said discussions and negotiations would determine the future of football in Greece.

DISCIPLINARY PROCEEDINGS IN ITALIAN FOOTBALL

by *Salvatore Civale** and *Michele Colucci***

Introduction

Sports justice in Italy is defined by two apparently mutually exclusive traits.

As the other national football associations, the autonomy of sport legal framework typifies the Italian Football Federation (Federazione Italiana Giuoco Calcio, hereafter “FIGC”), which has the power to set its own sport rules.¹ However, the growth of cases brought before the administrative judges by sports stakeholders has spurred an increasing invasion of ordinary judges into sports disputes and, therefore dangerously threatening sporting judicial self-governance. The growing invasion of state court in football matters aims to bring sports regulations in line with state law, while protecting those sporting actors’ rights, whose scope goes well beyond the purely sporting and disciplinary matters.

Therefore, the once tightly separated sport legal world and the ordinary justice system are marching towards a perilous collision, whose long-term consequences must be scrutinized with all due attention.

Hence, in order to have a clear understanding of disciplinary proceedings in the sport, it is important to analyse the principles, substantive and procedural rules of the Italian sports’ justice in general, and its evolving relationship with ordinary law and justice.

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¹ M. COLUCCI, *L'autonomia e la specificità dello sport nell'Unione europea: alla ricerca di norme necessarie e di buon senso*, in *Riv. Dir. Ec. Sport*, n. 2, 2006, SLPC, 15.

The Italian sport justice system

The Italian Olympic Committee (Comitato Olimpico Nazionale Italiano, hereafter “CONI”) is responsible for the organization and co-ordination of all sports at national level. It has established fundamental principles of sports justice to be implemented by all national sports federations – including the FIGC.

In 2015, CONI reformed radically the sports justice system revising both the substantive and the procedural rules.²

First, it set up the “Collegio di Garanzia dello Sport”, which has its seat in Rome. This is the national court of third and final instance, whose responsibility covers all the appeals against decisions taken by the relevant federation’s bodies.³

The primary task of this supreme court is ensuring the uniform interpretation of all sports regulations in Italy and providing counsels on demand.

Then, the General Prosecutor Office (Procura Generale dello Sport) supervises and controls the activity of each federation’s prosecutors (Procuratori Federali), whose tasks is to investigate on any violations of sports rules.

Overall, the reform harmonized the various sports justice regulations and procedures into one Code of Sports Justice (hereafter “the Code”), which is applicable to all the Italian sports federations and associations.⁴

In fact, the Code provides them with a unique legal and procedural framework for all sports issues with the exclusion of anti-doping offences.

Doping Regulations fall within the exclusive competence of the CONI National Anti-Doping Tribunal (Tribunale Nazionale Anti-Doping) according to the Italian national anti-doping agency (NADO)’s rules which reflects the provisions of the WADA Code.⁵

Regardless of the common Code framework, sport disputes’ scope may vary greatly from one federation to another, and, as a consequence, the same procedure is not viable for all kind of controversies.

Therefore, sports associations can adopt their own substantive rules and set up their own list of violations as well as the applicable sanctions for any wrongdoings committed by their members. Naturally, each federation’s regulations has to be in line with the uniform principles and procedural rules of the CONI Code.

² S. CIVALE, *La riforma della Giustizia Sportiva adottata dal CONI: un nuovo sistema procedurale unico*, in *Riv. Dir. Ec. Sport*, n. 1, 2014, SLPC, 159. For a critical analysis of the CONI reform see also P. SANDULLI, *Acquisizione e valutazione della prova nel processo sportivo: profili problematici*, in *Riv. Dir. Ec. Sport*, n. 2, 2015, SLPC, 47.

³ A. MERONE, *Nomina dei giudici sportivi e federali; terzietà, autonomia ed indipendenza*, in *Riv. Dir. Sport.*, CONI, available at www.coni.it/it/rivista-di-diritto-sportivo-dottr/dottrina/9557-merone-nomina-dei-giudici-sportivi-e-federali.html.

⁴ The CODE of Sports Justice is available at www.coni.it/images/Procura_Generale_dello_Sport/Codice-Giustizia-Sportiva_nov2015-def.pdf (February 2017).

⁵ The CONI antidoping rules (“Norme Sportive Antidoping, Documento tecnico-attuativo del Codice Mondiale Antidoping WADA e dei relativi Standard internazionali”) are available at www.nadoitalia.it/it/nazionale-sportiva.html.

Moreover, as it happens for every association governed by its own laws, sports rules must also comply with ordinary law and fundamental principles such as public order and public security.

Sports associations are therefore autonomous and self-governing for all that concern their sporting activities and can adopt all disciplinary measures they deem appropriate. Nevertheless, when the fundamental rights of stakeholders (clubs, coaches and athletes) are involved, they are entitled to submit their disputes before the ordinary judges. This case may arise any time an infringement of the sports disciplinary and ethics rules abuts ordinary laws.

In 2003, the Italian legislature clarified that jurisdiction on sports matters varies according to the nature of disputes, without prejudice to the alternative dispute resolutions that may be provided for by the agreements between the parties or by sports rules and regulations.

Then, the Italian Government confirmed the sports' federations' autonomy. However, since some sports matters trespass the boundaries of sports disciplines because they affect individual rights and interests, the 2003 law made a point to safeguard the right of action of the sports' stakeholders before ordinary justice.

Specifically, in view of regulating the relationship between ordinary justice and sports justice, the law no. 280/2003 identified several kinds of disputes.

For those concerning financial matters between clubs, players and/or other persons or entities registered with the federation, ordinary civil courts have jurisdiction. Nevertheless the same law specifies that this must be without prejudice to alternative dispute resolution methods, which private contract clauses or sport rules and regulations may bind parties to any sport agreement.

In this context, the national football collective agreement obliges clubs and players (“vincolo di giustizia sportiva”) to refer their disputes to the football dispute resolution bodies.⁶

For sports technical or disciplinary matters or the organization of sports institutions and bodies, ordinary courts have no competence. Any dispute must be resolved exclusively by sports bodies and courts; due to arbitration clauses, the members of a given federation cannot refer their disputes to the ordinary judges otherwise they shall be sanctioned by the relevant sport federation for breach of the above mentioned “vincolo di giustizia sportiva”.⁷ Any infringement of such obligation leads the culprit to disciplinary proceedings and final sanctions decided by the federal justice bodies.

For all other disputes, once the internal, federal and CONI remedies have been exhausted, the Administrative Regional Tribunal of Lazio (“TAR Lazio”)

⁶ Article 21 of the Collective Bargaining Agreement signed between Serie A League, AIC - Italian Players Union and FIGC - Italian Football Association (available at the following link: www.assocalciatori.it/sites/default/files/attachment/pagina/Accordo%20Collettivo%20AIC%20-%20Lega%20Serie%20A.pdf), establishes an arbitration body which decides economic dispute between Clubs and Players or Coaches.

⁷ See Article 1, para. 5 of the FIGC Statutes.

has exclusive jurisdiction, because Rome is the CONI seat and it is the Lazio Region's capital.⁸

Since 2003, the TAR Lazio, the Italian Supreme Court (Corte di Cassazione) and the Italian Constitutional Court have passed rulings,⁹ which intrude on the autonomy of the sport legal framework because the borderline between the purely sporting issues, reserved to the judicial sovereignty of each federation, and the fundamental rights of persons falling within the ordinary judge competency is blurred. Those repeated invasions have finally upheld the resolve of ordinary jurisdictions to be enmeshed with certain sports disputes.

The typical disputes excluding any jurisdiction of state courts are those concerning the decisions taken by the courts of sports federations to impose sports sanctions on persons or entities found guilty of disciplinary offences. Such decisions fall within the exclusive competency of sports bodies and courts and cannot be overruled by state courts.

In 2010, however, the absolute exclusion of ordinary justices from dealing with the purely sporting issues was deemed to be unconstitutional as breaching the personal right of action of citizens. Therefore, the matter was brought before the Constitutional Court, which ruled in favour of the conformity of the sports laws on purely sporting issues with relevant Constitutional rules.¹⁰

Notably, the Court stated that even if the decisions on disciplinary matters delivered by sports bodies cannot be overruled by state courts, the latter can however decide on the case for compensation purposes only.

In other words, the Court ruled that, while the decisions of the disciplinary bodies of sports federations remain final and cannot be overruled by state courts, the clubs or the persons that are condemned for sports offences, are entitled to bring a lawsuit against the federation before TAR Lazio for seeking compensation for the damages suffered because of the sporting judiciary decision.¹¹

⁷ Comunicato Ufficiale n. 1/PS available on www.figc.it.

⁸ Recourse to the others Administrative Regional Tribunals, as occurred in the past, was avoided.

⁹ P. AMATO, *Il vincolo di Giustizia Sportiva e la rilevanza delle sanzioni disciplinari per l'ordinamento statale. Brevi riflessioni alla luce delle recenti pronunce del TAR Lazio*, in *Riv. Dir. Ec. Sport.*, n. 3, 2006, SLPC, 41. TAR Lazio, Sez. III Ter, 22 August 2006, R.G. n. 7844/2006. E. LUBRANO, *Il TAR Lazio segna la fine del vincolo di giustizia sportiva. La FIGC si adegua*, in *Riv. Dir. Ec. Sport.*, n. 2, 2005, SLPC, 21-37. A. QUARANTA, *Rapporti tra ordinamento giuridico sportivo e ordinamento giuridico*, in *Riv. Dir. Sport.*, I, 1979, 32 e ss.. M. RUOTOLO, *Giustizia sportiva e Costituzione*, in *Riv. Dir. Sport.*, n. 3, 1998, 403 e ss.. TAR Lazio, ord. del 22 agosto 2006, n. 4671 e TAR Lazio, ord. del 22 agosto 2006 n. 4666, entrambi in *For. It.*, n. 9, settembre 2006, 19-20.

¹⁰ E. LUBRANO, *La Corte Costituzionale n. 49/2011: nascita della giurisdizione meramente risarcitoria o fine della giurisdizione amministrativa in materia disciplinare?*, in *Riv. Dir. Ec. Sport.*, n. 1, 2011, SLPC, 63.

¹¹ See the decision of TAR Lazio, Sez. I Ter, 23 January 2017, no. 1163 (available at the following link: www.avvocatisport.it/sentenza%201163_2017%20TAR%20Lazio.pdf) - Associazione Corpo Libero Gymnastics Team A.s.d. v. Federazione Ginnastica d'Italia (F.G.I.) and CONI, whereby the Sports Institutions have been condemned to pay the amount of 100,000 euros to a Club as damages for the disqualification of one of its athletes.

It must be emphasized the tricky result of admitting such double screening by two different jurisdictions: one purely sport discipline ruling and the other focused on damages assessment and compensation definition, based on a declaration of “illegitimacy” of the sports-bodies decision. Although the sporting ruling cannot be quashed in reviewing the economic damages for calculating the compensation, the administrative judge has the power to indirectly pronounce the sporting decision as ungrounded or unjust in order to justify the compensation. On this basis, the ordinary judge can settle the value of compensation for damages.

Such aberrant interplay between the sporting ruling and the ordinary judge’s decision would deserve an in-depth review of the scope and impact of this contradiction between a definitive sporting ruling and an ordinary one, which can simply neglect the former without making it a judicial formality.

1. *The Italian Football Federation and its legal framework*

The FIGC is an association of private law regulating and promoting football in Italy.

It is responsible for:

- a) the technical, organizational, and economic management of national teams;
- b) the registration of clubs, coaches and players;
- c) the proper functioning of sports justice.

It establishes its own legal, procedural, and disciplinary framework in line with the CONI principles of sports justice and the Code.

In particular, FIGC Statutes¹² states that all stakeholders, registered with FIGC (such as professional and amateur players, coaches and staff, leagues, associations of players, coaches, referees, etc.), are subject to all FIFA, UEFA, and FIGC rules and regulations. Moreover they accept as final and binding all decisions taken by their judicial bodies (Article 30 Statutes).

Nevertheless, once their disputes have been decided in last instance before the relevant association court, they can submit their disputes to the Collegio di Garanzia of CONI, i.e. to the sports body outside the football federation.¹³ In exceptional cases, the Executive Committee of FIGC may authorize persons or entities registered with FIGC to start proceedings before state courts against other persons or entities registered with FIGC.¹⁴

¹² Available at this link: [www.figc.it/Assets/contentresources_2/ContenutoGenerico/2.\\$split/C_2_ContentutoGenerico_3827_Sezioni_1stSezioni_0_1stCapitoli_0_upfFileUpload_it.pdf](http://www.figc.it/Assets/contentresources_2/ContenutoGenerico/2.$split/C_2_ContentutoGenerico_3827_Sezioni_1stSezioni_0_1stCapitoli_0_upfFileUpload_it.pdf).

¹³ The following disputes cannot be brought before CONI: a) those resolved in arbitration before FIGC’s arbitration panels; b) those concerning the result of football matches; c) those concerning sanctions of minor importance; d) those concerning the partial stadium closure or the obligation to play behind closed doors or in a third city.

¹⁴ No authorization is needed to seek the nullity of FIGC’s arbitration panels awards before the competent civil courts (in accordance with the ordinary law provisions concerning the appeal of arbitration awards).

FIGC internal organisational rules or “Norme Organizzative Interne” (hereafter “NOIF”)¹⁵ illustrates the football organization in Italy, the FIGC Code of Sports Justice (hereafter “CGS”),¹⁶ a comprehensive set of rules of both substantive and procedural nature, describes the members’ rights and obligations and the disciplinary measures that can be imposed on them.

Furthermore, FIGC enacts provisions on sports justice for the purpose of regulating and organizing both professional and amateur football competitions. Such provisions are legally binding on FIGC members following their publication on the FIGC website.

2. *Clubs, Coach and Players’ Responsibilities*

All persons and entities registered with FIGC or operating within the federation must behave according to the principles of loyalty, honesty and integrity (Article 1bis CGS).

These standards of conduct, which are moral before being legal, are the pillars of the FIGC’s sports justice building.

In line with those principles, the FIGC members must refrain from disclosing any information pertaining to an open and on-going disciplinary investigation, they have to submit to the sport rules and procedures, and have to appear before the FIGC sports justice bodies, if and when so requested.

Nobody under disciplinary proceedings can be exempted from their responsibility because they were allegedly not aware of the sports provision(s)’ infringement (Article 2 CGS).

In fact, all sports rules are immediately, directly, applicable, and binding countrywide. FIGC members are expected to know any sport rule and be aware of any publication of relevant public statements issued by the Federation, with no room to give evidence to the contrary.

All FIGC members can be sanctioned for infringing sports rules, whether the breach occurred for negligent or wilful misconduct. As well, a member can be disciplined whenever the strict liability principle may apply. See the case of a football team’s captain, who is in any case liable for the assault against the referee or other officials committed by fellow team players, who cannot be identified (Article 3, para. 2, CGS).

In general, FIGC members can be subject to direct, strict, or so-called presumed liability, according to the circumstances of the infringement.

Pursuant to the principle of “direct responsibility”, clubs assume liability whenever their representatives breach the sports rules. Likewise, they are responsible for the behaviour and declarations of their directors, registered players and/or technical staff, or persons who, directly or indirectly, control the

¹⁵ Available at the following link: www.figc.it/it/93/3817/Norme.shtml (8 May 2017).

¹⁶ Available at the following link: www.figc.it/it/99/3815/Norme.shtml (8 May 2017).

club or carry out any activity on behalf of the club that may be relevant for FIGC's organization (so called "objective responsibility", another case of strict liability).

In both cases, the club is always responsible, regardless of any negligence or wilful misconduct ascertained and held by its own staff. It has to be noted, however, that the sanctions punishing a direct responsibility are harsher than those imposed for objective responsibility.

Clubs are also responsible for ensuring safety and security of players and audiences, while being liable for the offensive behaviour of their supporters, both inside and around the stadium before, during and after their matches (article 12CGS). Where supporters take part in racial abuse or disorders happen inside or around the stadium, the club can be excused and avoid any sanction whenever it is able to provide evidence that it has implemented suitable measures aimed at preventing the actionable events and it has established a proper cooperation with police forces. Moreover, the club must also prove that its staff intervened immediately to remedy the incidents and implemented adequate security measures (Articles 13-14 CGS).

While clubs demonstrating that only some of the circumstances mentioned above have actually happened, cannot be excused, their sanction can be mitigated under those circumstances.

Finally, clubs are presumed to be liable whenever match-fixing cases committed by persons, unaffiliated with the clubs themselves, happen and benefit to those clubs. For this kind of responsibility (so called "presumed responsibility") the clubs are only presumed to be responsible, and have the possibility to be exempted of any sanction if they can provide evidence that they were not part of the fraud or were fully unaware of it. On the contrary, if those wrongdoers were clubs' staff, it would be a case of direct or objective responsibility.

3. Sporting Offences

Some sporting offences arise out of violation of the game's rules, such as rough play, violent protests against the officials.

Others come from illegitimate "out of competition" conduct of players, officials and members of the clubs.

In fact, the latter are prohibited from expressing offensive remarks about the reputation of those who act within the CONI, FIGC, FIFA or UEFA (Article 5 CGS on offensive declarations).

Anyone registered with FIGC are not allowed to bet, directly or indirectly, on football matches. As well, those registered with FIGC who is aware of the breach of this provision by a third party must immediately report the facts to the Federation (Article 6 CGS).

They are not allowed to manipulate, or even to try to manipulate the ordinary course of a match or a competition, or give or try to give or to procure a competitive advantage for a club. Anyone registered with FIGC who is aware of

match fixing by a third party must immediately report the facts to the Federation (Article 7 CGS).

Moreover, the submission to FIGC of false accounting documents and/or any other conduct aimed at eluding the periodical audit controls carried out by FIGC on the financial standing and the management of professional clubs or at obtaining with manipulated accounting documentation the license for the participation to a competition (Article 8 CGS on financial violations) is also considered a sporting offence.

The same applies to those violations related to the registration of players. They concern arrangements prohibited by sports rules and regulations. An example of this kind are the economic agreements that are reported in side letters kept confidential and off the official contracts filed with the Federation or the intervention of intermediaries who are not duly documented in the relevant transfer and/or employment agreements.

Clubs failing to pay the salaries and/or the relevant taxes, pensions and/or social security contributions within the time limits set by the federation also commit a sports offence. The CGS applies to professional clubs periodical time lines to certify the payment of salaries due to players, trainers and technical staff (Article 10 CGS).

Discriminatory acts on the basis of race, colour, religion, language, sex, nationality, ethnical origin, or that can be qualified as act of ideological propaganda forbidden by law are also considered sporting offences (Article 11 CGS).

Filing a complaint before state courts beyond the strict cases permitted by sports rules and regulations without the express authorization of FIGC Executive Committee is also considered to be a sports offence (Article 15 CGS).

Finally, a doping violation is surely a sports offence and it is sanctioned by the National Anti-Doping Tribunal according to the relevant CONI anti-doping rules which the FIGC has to implement. Therefore, the enforcement of a decision passed by the Anti-Doping National Tribunal (as a way of example, a ban of a Player for a certain period from any kind of sports activities, including training with the teammates) must be guaranteed by FIGC through the provision of a further sanction in case of failure to respect the ban.

As already recalled above, to comply with the FIFA, UEFA statutes, regulations and decisions.¹⁷ Moreover they have to recognise the jurisdiction of the Court of Arbitration for Sport – CAS of Lausanne, Therefore, a Club, a Coach or a Player who fail to respect a CAS award in an appeal proceeding against a decision passed by a FIFA or UEFA body undergoes a disciplinary procedure in Italy.

¹⁷ See Article 1, para. 5 of FIGC Statutes and Article 64 of the FIFA Disciplinary Code.

4. *Sanctions on Clubs, Coaches and Players*

The disciplinary FIGC bodies may sanction persons and/or entities found guilty of sports offences pursuant to the relevant CGS rules or other applicable sports rules and regulations (Article 16 CGS).

They decide the type and magnitude of the sanction according to the kind and the gravity of the offence.

A sanction may also be agreed upon between the party charged and FIGC Prosecutor. It shall be subsequently ratified by the relevant judge.

Furthermore, a sanction may be reduced in light of cooperation by the charged party with the Prosecutor. Conversely, the sanction may be increased in the case of recidivism or whenever a violation is committed by three or more people who have acted together for the purpose of committing the offence (Article 23-24 CGS).

Sanctions applicable to clubs can be harsh. They are determined, on a case by case basis, according to the type of offence committed and the specific sports regulations violated (Article 18 CGS).

In particular, a Club can be sanctioned with a:

- reprimand;
- fine;
- fine with warning;
- playing one or more matches behind closed doors;
- partial stadium closure;
- playing in a third city for a determined time frame or for a determined number of matches;
- deduction of points;
- relegation to the lower division;
- exclusion from a competition and, if applicable, inclusion in one of the lower divisions;
- seizure of a title or award.

Whenever the ordinary course of a match is altered by impropriety from one or both clubs involved, the match is declared lost by forfeit and the club/s responsible is/are deemed to have lost the match 0-3, unless the actual result is less favourable to the club/s at fault (Article 17 CGS).

The actual occurrence impropriety that have altered the ordinary course of a match is evaluated by the referee during the match or by disciplinary courts.

Then, players, officials, trainers and staff and other persons registered with FIGC and/or operating within the organization of FIGC may be sanctioned for their misconduct on and around the pitch (Article 19 CGS). These offences may be reported in writing by referees and other officials or resulting from the evidence collected by FIGC Prosecutor during an investigation. According to article 35 of FIGC Code of Justice, the sports justice bodies could use, as evidence, the video footage of the matches, in case the sanction has been applied by the refer to the wrong player.

The persons charged with sporting offences may be provisionally suspended during the disciplinary proceedings opened against them. All sanctions are immediately enforceable and effective when the relevant decisions are published in a written statement.

Just like for those applicable to clubs, sanctions on persons within the category identified in Article 19 CGS, can be imposed cumulatively and are determined each time on the type of offence committed and the specific regulations violated. The wrongdoers can be sanctioned with the following:

- reprimand;
- reprimand with warning;
- fine;
- fine with warning;
- suspension for a determined number of matches;
- suspension for a determined time frame;
- prohibition to access sports facilities where matches organized by FIGC, UEFA and/or FIFA are played;
- prohibition to carry out any football related activity within FIGC for a lapse of time.

In principle, with the agreement of the President of FIGC and the Court of Federal Justice, the FIGC Executive Committee may pardon persons and clubs sanctioned for any sports offence, with the exception of doping wrongdoings (Article 26).

The prosecution of sports offences is time barred after a period, which may vary from a minimum of sports season to a maximum of eight seasons according to the nature of the offence.¹⁸

4.1 *The position of the Intermediary (Procuratore Sportivo)*

The FIFA Regulations on Working with Intermediaries¹⁹ delegates to each national association the power to determine and apply disciplinary sanctions against Intermediaries and who deal with them.

Article 9 of those Regulations remains general and abstract, providing no details about forms and types of sanctions. Therefore, the national associations are entitled to adopt their own substantial and procedural rules in view of enacting and administering the pertinent sanctions, enjoying a full autonomy.

¹⁸ Pursuant to Article 25 of the FIGC Statute, “A sporting offence is time barred: at the end of the season following the season during which the offence was committed, for all the offences that are committed on the occasion of a football match; at the end of the sixth season following the season during which the offence was committed, for all the offences related to financial matters; at the end of the eighth season following the season during which the offence was committed, for match fixing and anti-doping cases; at the end of the fourth season following the season during which the offence was committed, for all other cases”.

¹⁹ Available at this link: https://www.fifa.com/mm/Document/AFFederation/Administration/02/36/77/63/RegulationsonWorkingwithIntermediariesII_Neutral.pdf (7 May 2017).

Article 9 of the FIGC regulations (the "Regolamento per i Servizi di Procuratore Sportivo")²⁰ confers the jurisdiction's responsibility for any violations of the Regulations, and all the relevant applicable sports rules, committed by an intermediary to a special three-member "Intermediaries Committee".

Upon request of the interested party(ies) or by its own initiative, the Committee's President shall examine the facts and evidence produced. He can decide to archive the case or to go further with the proceedings, summon the parties and invite them to a hearing, according to the Committee's proceedings, as approved by the FIGC Board.

It is important to emphasize the fact that though intermediaries are not members of the football sports system, they subject to the jurisdiction of such a Committee.

According to the clear provision of the first sentence of article 9, para. 1, the Procuratore Sportivo is obliged to correctly apply not only the relevant Regulation's rules but observe also all the pertinent FIGC, FIFA and UEFA rules concerning the exercise of intermediaries' activities. The logical inference of this provision is that the "Intermediaries Committee" has a very large competence, not constrained by the limited scope of the regulation, in its primary jurisdiction.

The committee can suspend intermediaries for one year but it can even strike the intermediary off the role of the register in case of reiterated offence and foreclose him from any subsequent registration. The sanctioned intermediary may appeal against those rulings to the FIGC Appeal Tribunal in last instance.

Article 9, para. 4, prescribes the obligatory communication by the FIGC to the FIFA of the disciplinary sanctions decided upon the intermediaries. It is up to the FIFA Disciplinary Committee to take the appropriate decision in the light of the provisions of the FIFA Disciplinary Code in order to confer a worldwide effect to the FIGC's sanctions.

5. The FIGC Sports Disciplinary and Inquisitorial Bodies

5.1 The disciplinary bodies

All sports judicial bodies, included the disciplinary ones, operate in compliance with the principles of full independency, impartiality, and confidentiality.

The so-called "Commissione federale di garanzia" appoints sports judges in line with the above principles. This FIGC panel is an *ad hoc* body of reputable law professors, judges, or lawyers appointed by the FIGC Executive Committee, who carry out their tasks on a voluntary basis.

The football justice system is quite complex and it goes through two different tracks on the basis of their specific competences of its bodies.

²⁰ Available at this link: www.figc.it/Assets/contentresources_2/ContenutoGenerico/28.Split/C_2_ContentutoGenerico_3818_Sezioni_1stSezioni_0_1stCapitoli_0_upffileUpload_it.pdf.

On one track, there are courts of first instance “giudici sportivi nazionali” at national level and “giudici sportivi territoriali” at local level.

They sit as sole judges and may impose sanctions on the basis of the facts described in the matches’ reports (Article 29 CGS). They also deal with sports disputes concerning the regularities of games related to national and local competitions respectively.

The Appeal Court of Sport (“Corte sportiva di appello”) is composed of one national section and several local ones. It decided as an appeal body of second instance and sits in chambers of three, five, or seven members at national level.

In first instance, the territorial sports judge decides on the basis of written documents and without hearing the parties (Article 44 CGS) while in second instance, the territorial sports court of appeal can hear the parties upon their express request.

On the second track a different body, “Tribunale Federale” is established at both national and local level (Article 30 CGS).

At national level, it is composed of three main sections deciding on disciplinary, registration, and economic matters.

With specific regard to disciplinary section, the Tribunale Federale is composed of 20 members and decides cases in panels of three or five members. It acts as a body of first instance in those proceedings concerning national competitions or on disciplinary matters concerning the federation’s managers.

In the same way, the Tribunale Federale at local level has jurisdiction on local disciplinary disputes. The so-called disciplinary committees (commissioni disciplinari) are composed of three to five members and operate at both local and national level. Disciplinary committees act as courts of second instance when they hear the appeal lodged against decision of sports judges. They act as court of first instance in those cases opened by the FIGC prosecutor.

All their decisions can be challenged in second instance before the Federal Court for Appeals (Corte federale di appello) (Article 31 CGS).

Finally, the “Collegio di Garanzia dello Sport” of CONI is the third and final, supreme court, which decides appeals against all decisions issued by the relevant, distinct sport federation’s jurisdiction.²¹

Everybody claiming a right legally protected in the sports system can act before the jurisdiction of the sports bodies.²²

For the sake of completeness, following the Code of Sports Justice, economic disputes, but not related to disciplinary matters, may be referred to an arbitration panel in accordance with the ordinary law’s Code of Civil Procedure, as alternative dispute resolution.²³ Arbitration Panels have jurisdiction whenever

²¹ The “Collegio di Garanzia dello Sport” is not competent for those trifling cases which concern violations that resulted in the imposition of sanctions like suspension of less than 90 days or fines of up to 10,000 Euros.

²² The Code of Sports Justice provides that a party is obliged to appoint a lawyer to be represented during the proceeding.

²³ Article 4 CGS. See M. SANINO, *L’arbitrato sportivo in Italia*, in *Riv. dir. sport.*, 1993, 352; F.P. LUISO, *L’arbitrato sportivo fra ordinamento statale e ordinamento federale*, in *Riv. Arbitrato*, 1991,

this is provided for by the agreements between the parties²⁴ or the applicable sports rules and regulations (articles 47-48 CGS).²⁵

5.2 *The inquisitorial bodies*

The Prosecutor's Office performs both investigative and prosecuting functions (Article 32).

The Office is composed of the Federal Prosecutor, the Interregional Federal Prosecutor, Deputy Prosecutors as well as Adjunct Prosecutors both at national and international level.

In order to guarantee more efficiency, the National FIGC Prosecutor Office has also three interregional sections concerning respectively the Nord, Centre, and South of Italy (Article 32 bis).

They decide on local matters but the FIGC Prosecutor has also the power to declare itself competent on interregional matters.

The FIGC Prosecutor undertakes all necessary investigation in order to ascertain the violation of the FIGC statutes and regulations (Article 32 sexies). The prosecutor may decide either to file a case or to go further with the Proceedings.

For sports fraud, the Prosecutor can take all appropriate measures (Article 40).

In any case, he has the obligation to register the case in the relevant register established according to the CONI code of justice so that the latter is informed about the parties.

During the proceedings, the parties under investigation can also reach an agreement with the Prosecutor about the sanction to be given if the parties have been co-operative. Substantial is the Article 32, septies because the FIGC Prosecutor is now obliged to forward a case to the relevant ordinary judge if he discovers that a given sports matter has ordinary criminal law relevance.

The same applies with regard to doping, whereas Article 32 octies obliges the Prosecutor to refer the relevant doping files to the CONI anti-doping Prosecutor's office.

840; F. PICONE, *Arbitrato sportivo e conciliazione extragiudiziale*, in *Riv. dir. sport.*, 1991, 15.

Taking in due consideration the competence of the Collegio di Garanzia dello Sport, sports federations may authorize parties to solve disputes involving individual rights by arbitration, so excluding the parties to go before the ordinary jurisdiction.

In fact, in accordance with Article 806 of the code of civil procedure (ccp), 'the parties may allow arbitrators to decide on the outcome of the dispute' through an 'arbitration award' which must be declared enforceable by the relevant ordinary Court, in accordance with Article 825 ccp.

²⁴ The typical example is that of the employment agreement between a club and a player, that remits to Arbitration Panels any and all disputes concerning the interpretation, the performance and the termination of the agreement between the parties.

²⁵ In Italy, each professional league (Serie A, Serie B and Lega Pro) has signed an agreement with the Italian Players' Union and FIGC, in order to assign to arbitration panel the power of settling such kind of disputes.

The Prosecutors have broad investigatory powers. They can hear witnesses and technical experts and they can also ask for supplementary evidence. The FIGC Prosecutor is completely free to start the investigations on sports offences. Although any member of the Federation is entitled to report any alleged violations to the FIGC Prosecutor to the CGS, the Prosecutor has discretionary power on the issues and the persons or entities to be investigated. Once the investigation complete, FIGC Prosecutor is the only one entitled to submit the case with the necessary background to the Federation courts.

With the communication to the parties, the disciplinary proceedings start and those parties may defend their case before the Committee. The persons charged are entitled to a) receive a copy of the case, b) submit written arguments, c) ask for the acquisition of documents or the testimony of witnesses, d) be assisted by a lawyer or another counsel.

The committee schedules a hearing, and after the case is exposed by the parties orally, the decision is taken.

Against the first instance's decision both parties may lodge an appeal before the competent sports court of second instance. The claimant has to file a statement of appeal and must include the reasons for the appeal and the pieces of evidence. The respondent may submit counter-arguments and further evidence and file a cross-appeal. After that the parties have presented their arguments orally, a decision on the merits of the case is taken. The decision is given on the merits of the case but is limited to the issues brought in by the parties with their appeal and cross-appeal, if any. As a consequence thereof, the appeal body cannot raise sanctions inflicted in first instance unless FIGC Prosecutor has submitted an appeal or a cross-appeal.

The appeal is not decided on the merits if the Tribunale Federale, acting as Disciplinary Committee of first instance, was wrong in declining its jurisdiction, or the parties were not given full action in the proceedings. Instead, the appeal judge remits the case back to the body of first instance for a new decision.

In cases of match-fixing, disciplinary investigations are usually carried out by FIGC Prosecutor through the hearing of the Federation's members and collecting all documents and other pieces of evidence at the Federation's bodies and offices, such as employment agreements and representation contracts with Intermediaries.

Despite their broad investigatory powers, the FIGC Prosecutor has no police power and cannot arrange wiretaps nor search personal belongings or premises, obliging persons not registered with FIGC to present at the Prosecutor's office to render their testimony and/or disclose any useful information or documents they may have for the purposes of an on-going investigation.²⁶

For these reasons, the collection of evidence in match fixing cases is extremely difficult, given that this offence is conducted in secrecy by the offenders,

²⁶ M. GALLAVOTTI, S. LA PORTA, *Sports Justice in Italy*, in *International and Comparative Sports Justice*, European Sports Law and Policy Bulletin, 1/2013, M. Colucci and K. L. Jones eds., 425.

who try to avoid guilt, offence and sanctions with at least three years of suspension. Furthermore, it is nearly impossible to achieve adequate proof of the actual manipulation of a football match through the observation of the game: the competitive features of professional football competitions make it nearly impossible to detect, for example, the wilful purpose of some of the players to direct the match towards a pre-determined result illicitly agreed upon with the opponent team or other persons.

It has to be considered, however, that match fixing represents a major threat for the reputation and the integrity of football and is getting more and more substantial, given the huge financial interests in the football industry as well as the betting on competitions.

In this context, in Italy nearly all cases of match fixing have been discovered thanks to the collaboration between State authorities and sports authorities.

Match fixing, as a consequence, is prosecuted and processed not only by sports bodies but also by state courts and the office of the public prosecutor, who dispose of extremely effective means to lift the veil of the conspiracy of silence among those who alter the ordinary course of a competition

Notwithstanding anything to the contrary provided for with regard to data protection and secrecy of criminal investigations, sports disciplinary bodies may ask for copy of the evidence collected during the on-going (or closed) investigations led by the public prosecutor for the benefit of sports disciplinary proceedings. The same law specifies that, when the examination of such documents gives start to sports proceedings, the two proceedings before the sports and State courts, continue their own separate paths on parallel tracks, with no mutual influence. Notably, the outcome of the criminal proceedings cannot have any influence over the result of the matches presumed altered, nor on the findings of sports bodies, which can carry on their investigations with full autonomy and independence. Likewise, the ordinary law proceedings are not affected by the sports ones.

6. *The Disciplinary Procedure*

The disciplinary action may move along different procedure paths according to the nature and substance of the matters at stake.²⁷

The FIGC President and the Prosecutor's office are entitled to initiate a disciplinary proceeding and lodge a complaint before the relevant instances (Article 33 CGS).

With specific regard to matches, only those clubs whose registered members participated to the match at stake can lodge a complaint. This means that anyone with no specific and protected interest in the matter is not entitled to start a disciplinary procedure.

²⁷ M. GALLAVOTTI, S. LA PORTA, *Ibidem*.

Whenever the proceedings are based on the match reports written by match officials, the persons and/or entities charged are the sole parties to the proceedings, since FIGC Prosecutor is not even present nor plays any role during the proceeding. In first instance, the case is decided by the sports judges exclusively on the basis of the match reports and without any hearing nor participation from the parties charged, who cannot submit written arguments nor present any kind of evidence.

The reports written by the match officials cannot be rebutted. Nevertheless sports judges can use TV footage for sanctioning the player who committed an offence and was not identified by the officials, who wrongly sanctioned another, innocent player.

Television footage is also allowed in case of serious misconduct (simulation, goal scored with hands) by professional players that went unnoticed by the officials during the match. FIGC Prosecutor can submit the footage to the competent national Sports Judge to integrate the match official reports.

Then, players and clubs can submit the footage to national Sports Judge to give evidence in respect of the innocence of a player who was wrongly sanctioned by the officials for serious and grave misconduct.

Besides these cases, TV footage is not used as evidence aimed at contradicting the match official reports. No written or oral testimony of witnesses is equally admitted.

Within the legal deadline, persons and entities condemned in first instance may file an appeal before the competent Disciplinary Committee against the decision of sports judges. The appeal contains the grounds and – to the extent admissible – the pieces of evidence. The appellant is heard by the judges and assisted by a lawyer or another counsel. The judges can ask the match officials to clarify the facts described in their reports, either in writing or during a hearing. In the latter case, however, there is no confrontation between the appellant and the officials.

The decision of second instance goes on the merits of the case and the judges may reduce, cancel or even raise the sanction.

In case of sports fraud (*illecito sportivo*), even third parties, who have an interest to safeguard, can lodge a complaint (as a third club which could gain an advantage in the ranking).

Against decisions taken by the territorial sports bodies, the interested parties can lodge a complaint with the Sports Court of Appeal at local level.

The complaint must be duly motivated and lodged within 7 days following the publication date of the relevant official communication (Article 36 CGS).

In the same way, clubs and their members can lodge a complaint with the Sports Court of Appeal at national level against decisions of the national sports judge (Article 36 bis CGS).

Proceedings before the Federal Court of Appeal can be initiated by the interested parties within 7 days from the publication of the official communication by the Federal prosecutors. Within 3 days from the communication of the decision the Parties can ask to be heard.

The court can confirm, reject or partially modify the decision taken in first instance (Article 37 and 38 CGS).

All rulings by the sports justice bodies, though they cannot be challenged in appeal, can be submitted before the Federal Court of Appeal if:

- they have been caused by a party in bad faith;
- on the basis of evidence which has been declared false after the decision;
- if by force majeure, the relevant party could not produce the evidence in time during the proceedings;
- the judicial body in first instance did not examine some decisive facts;
- if the judges committed a manifest factual mistake, (Article 39 CGS).

All rulings by the sports justice bodies, though they cannot be challenged

The territorial jurisdiction of the court depends on the place where the offence has been committed (Article 41). The President of the relevant judicial body notifies the parties and invites them to the hearing within at least 20 days from the notification.

Decisions in first instance must be taken within 90 days from the day of the disciplinary action, or within 60 days if a precautionary measure has been adopted.

Decisions in second instance must be taken within 60 days from the day the appeal was lodged. The same deadline applies when the matter is partially sent back to the judge of first instance.

If the proceedings pass the above deadlines, the disciplinary proceeding is considered as terminated, even *ex officio*, if the defendant is not opposed (Article 34 bis).

The FIGC disciplinary bodies decide by a majority vote.

The decisions must be motivated and registered within 10 days from their adoption and published via official communication on the FIGC website.

The parties are entitled to be heard in all proceedings and they can be assisted by lawyers (Article 34).

The decisions taken by the disciplinary justices are published on FIGC website.

The President of FIGC is entitled to lodge an appeal against the decisions of first instance before the Court of Federal Justice – even after the time limit (60 days) for the appeal of the parties has expired – that are deemed to be against sports rules and regulations or to be inadequate.

Moreover, all parties to the proceedings of second instance may file a petition before the Court of Federal Justice to revise the decision whenever they can give evidence that:

- the decision was adopted because of the fraud of one party against the other;
- or
- the false evidence on which the decision was taken; or
- a party was not able to provide decisive evidence due to *force majeure*; or
- new facts or new pieces of evidence prove that the decision was wrong; or
- the court was wrong in understanding or interpreting the case; or

- the findings of the decision were inconsistent with another decision of sports courts.

Decisions of second instance can be appealed before CONI within 30 days from the ruling, when so permitted by the rules and regulations of FIGC.

Conclusion

Football has gained an extremely relevant social impact in Italy and the FIGC disciplinary proceedings receive extraordinary media coverage because of the interest for anything linked with this massively practiced sport.

The huge popularity, increasing financial investment, and the return of football's sporting and complementary activities are a point of force to safeguard the FIGC legal order's autonomy. At the same time, they represent also a point of weakness because the ordinary law jurisdictions are inclined to intrude in the sport legal order precisely in view of protecting the social dimension and huge economical interest in this sport. The CONI reform aims at stabilizing and affirming vigorously the sport legal order autonomy against increasingly intrusive actions by the ordinary justices because of various, sporting and financial scandals involving clubs and players.

The FIGC has implemented carefully the CONI principles and has adopted its own substantive and procedural rules to enhance the effectiveness of the sporting procedures and discipline sanctioning. The independence of FIGC courts of justice guarantees a fair and timely resolution of the disputes. Time is of the essence in sports matters, particularly as decisions of a disciplinary nature often impact the integrity of football competitions. Surely the timely decision on football sporting disputes and disciplinary actions is a positive result of the reform of the sport justice.

However, this reform has not completely successful at the ordinary judicial process from invading the sport domain when fundamental rights of sport players and clubs are at stake. The truth is that the occasional confrontations between the two legal orders and the compromises that arise out of those confrontation are inevitable whenever the current huge financial and social issues of football in Italy (and all over the world) are to be dealt with in a fair, effective way.

DISCIPLINARY PROCEDURES IN JAPANESE FOOTBALL

by *Kengo Harima**

1. *Japan Football Association*

The Japan Football Association (JFA) is the only governing body of football in Japan, which is recognized by Fédération Internationale de Football Association (FIFA), as provided for in Article 2.1 of JFA Statutes.¹ JFA is a member of FIFA, Asian Football Confederation (AFC) and East Asian Football Federation (EAFF).

2. *Structure of Japanese Football*

Japanese football organization has a pyramidal structure. On top, there is a professional league, the Japan Professional Football League (J.League), while it has nation-wide grassroots amateur football on the bottom.

The J.League is composed of three divisions: J1 (1st division, 18 clubs), J2 (2nd division, 22 clubs), and J3 (3rd division, 13 clubs). In each J.League division, clubs compete in annual league matches (starting in February, ending in December), while J1 clubs also compete in the League Cup. Between each division, there is a promotion/relegation system, where the top/bottom of one to three club(s) in the annual league competition of each division will be promoted/relegated between the leagues.

Below the J.League, the vast majority of amateur football shapes the rest of the pyramid with the Japan Football League (JFL) as an amateur top league, followed by the nine Regional Leagues, the 47 Prefectural Leagues (in each 47 prefectures). Below the adult category there are respectively the youth club leagues (under 18 years old), the high school leagues, the junior youth clubs' league (under 15 years old), the junior high school league and under- 12-year-old competitions.

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¹ Officially translated as “Fundamental Rules”, but here simply referred to as “Statutes” to harmonize it with FIFA’s terminology.

Regarding women's football, the top women's league is the L.League which is comprised of division 1st to 3rd. Futsal also has a national league, the F.League, with 12 teams participating.

There are 47 prefectural football associations (Prefectural FAs) in each of the 47 prefectures (states) of Japan. While the purely amateur and relatively lower layer competitions are generally administrated and organized by each Prefectural FA, the top layer of each of these categories is organized by the professional league (J.League) or some specific nation-wide federations (JFL, L.League, Japan University Football Association, Japan Football Amateur Federation, All Japan High School Athletic Federation, Japan Club Youth Football Federation, Japan Junior High School Physical Culture Association, Japan Futsal Federation).

3. *Legal Structure of JFA*

The JFA is organized as a "Public Interest Incorporated Foundation", which is governed by a national law specially designed for corporations of public nature, namely the Act on General Incorporated Associations and General Incorporated Foundations.²

While complying with the requirements of this national law, the legal structure of the JFA is, for the most part, in line with the FIFA Standard Statutes, and implements the principle of corporate governance of separation of powers within the JFA. The institution consists of (1) Congress, its supreme and legislative body, (2) the Executive Committee, as its executive body assisted by some standing and special committees, (3) the Judicial Bodies (Disciplinary Committee, Ethics Committee and Appeal Committee) and (4) the JFA General Secretariat as its administrative body.

3.1 *Congress*

At JFA, as in FIFA, the Congress is the supreme and legislative body, which elects the members of the Executive Committee and the Judicial Bodies and approves amendments of the Statutes.

The composition of Congress³ mirrors the composition of the Japanese football society and balance between amateur football, professional football and

² Ministry of Justice of Japan web site: www.japaneselawtranslation.go.jp/law (17 April 2017). In this Act, the body, which is hereby referred to as "Congress", called "Hyougiinkai" (in Japanese), is officially translated as "Board of Councilors" according to the Japanese government's official website. However, this body is translated here simply as "Congress", to harmonize it with FIFA's terminology.

³ While the FIFA members are legal persons, members of the JFA Congress shall be natural persons under the above national law. To better comply with the FIFA model, the JFA's Articles of Incorporation establish bodies called "Congress Member Nomination Organizations" ("CMNOs"), where each CMNO is represented by one natural person.

various other stakeholders. The Congress consists of 75 members in total, as follows; (i) 47 Prefectural FAs; (ii) J.League; (iii) 18 clubs of first division of J.League; (iv) JFL; (v) L.League; (vi) Japan Futsal Federation; (vii) Japan University Football Association; (viii) Japan Football Amateur Federation; (ix) All Japan High School Athletic Federation; (x) Japan Club Youth Football Federation; (xi) Nippon Junior High School Physical Culture Association; and (xii) Japan Pro-Footballers Association.

In short, 47 votes are allocated for local football associations, 19 votes for professional football and 9 votes for various football entities including the players' association.

According to the JFA Statutes, the main competences of Congress are (1) the appointment or discharge of members of Executive Committee; (2) the appointment or discharge of members of judicial bodies; (3) the decision about the amount of remuneration of members of Executive Committee; (4) the appointment and discharge of Congress Members; (5) the approval of balance sheets and profit-and-loss statements; (6) the Amendments to the Statutes (and Articles of incorporation).

3.2 Executive Committee

The Executive Committee is the executive body of the JFA and has 23 members, which include one President, three Vice Presidents, one Senior Member and three Standing Members. According to the Statutes, the President of J.League is entitled to sit as one of the JFA Vice Presidents, while 9 members will be elected from the representatives of Prefectural FAs.

3.3 Standing Committees and Judicial bodies

There are various Standing and Special Committees which assist the business and the decision-making of the Executive Committee, such as, (1) Legal Committee, (2) Competitions Committee, (3) Referees Committee, (4) Technical Committee, (5) Medical Committee, (6) Futsal Committee, (7) Finance Committee, (8) Women's Committee, (9) International Committee, (10) Facilities Committee, (11) Respect and Fair Play Committee, (12) Hall of Fame Committee and (13) Committee for Social Responsibility.

The Judicial bodies of the JFA are the Disciplinary Committee, the Ethics Committee and the Appeal Committee.

4. Responsibilities of clubs and players and those registered with the JFA

All teams (clubs), players, coaches, referees and officials who are playing or are actively involved in Japanese football at any level must be registered with the

JFA. All registrations of these individuals to the JFA must be done via an internet-based registration system called KICKOFF System. As a result, approximately 1.4 million individuals (including 950,000 football players, 45,000 futsal players, 280,000 referees, 13,000 coaches etc.) and 28,000 teams (clubs) are currently registered with the JFA.⁴ To notice, not only the limited numbers of professionals, but also all amateurs, are directly registered to the JFA.

According to Article 3.1 of the JFA Statutes, all entities and individuals registered or affiliated to the JFA are obliged to comply with the Statutes and regulations of JFA. Such registration to JFA is the legal basis, which establishes jurisdiction by JFA over these individual and entities.

5. *The legal framework*

Article 201 of the JFA Statutes grants the JFA Judicial Bodies the power to impose sanctions on such entities and individuals registered or affiliated to JFA.

As a result, the JFA Judicial Bodies have disciplinary jurisdiction over approximately 1.3 million individuals – professional and amateur players, futsal players, referees, officials and intermediaries and approximately 30,000 legal persons such as teams/clubs, local associations, federations, leagues etc.

5.1 *Problems related to Jurisdiction*

As for the registration, the jurisdiction of the JFA, raises two controversial issues.

The first issue is whether the JFA disciplinary jurisdiction over the accused stops in case of de-registration of the accused from the JFA. Formerly, the JFA was of the opinion that its Judicial Bodies' jurisdiction was only valid if the accused remained registered with the JFA at the time of the Judicial Bodies' decisions on them. In some cases, therefore, the accused intentionally de-registered themselves immediately after their alleged conduct to avoid receiving a sanction from JFA. Then, in 2015, in order to remedy this unsatisfactory result, the JFA amended the Disciplinary Code so that the jurisdiction remains as long as the accused was registered at the JFA at the time of the conduct.

The second issue is whether JFA's jurisdiction can reach the accused if they are not officially registered at the JFA but are very active in football. For instance, in 2014 there was a case, where a manager of a private under-12 academy school repeatedly used excessive corporal punishment against some minors, who were under 12-year-old children. Neither the academy school nor the accused manager was officially registered at the JFA. Therefore, notwithstanding the existence of sufficient evidence to act against him (such as footage and several witnesses), the JFA Ethics Committee finally refrained from deciding the case due to lack of jurisdiction.

⁴ JFA web site: www.jfa.jp/eng/about_jfa/organization/databox/ (17 April 2017).

6. *Relationship between ordinary and sports rules*

In Japan, there is no national law which specifically regulates disciplinary matters in sports organizations. However, general principles of law apply. As a general legal principle, well-established in the jurisprudence of the Supreme Court of Japan in the case *Toyama-Daigaku Jiken (1977)*,⁵ the so-called “Doctrine of Partial Society” generally applies when dealing with the disciplinary issues of a private organization, which may also apply to the management of disciplinary matters at the JFA:

“... *With respect to legal issues in special partial society attached with self-governance, as long as such issues remains internal in nature and are not directly related to his/her rights and duties as a citizen of Japan, resolutions of such issues shall be subject to the judgment of such self-governance and shall not fall under that of ordinary court...*” (original in Japanese).

In this regard, the Disciplinary Code provides for the procedural rules and sanctions. The JFA Judicial Bodies can take disciplinary measures which are only effective within JFA’s jurisdiction (i.e., only effective within “the partial society” of football in Japan) and do not influence constitutionally guaranteed fundamental rights outside of “the partial society” of football. Those measures are internal in nature and do not prejudice the rights and duties of the persons as citizens of Japan. Thus, the JFA, as the sole governing body of Japanese football, is deemed to legitimately have authority to govern and deal with the disciplinary issues over all its registered individuals and entities.

Except for this principle of “Partial Society”, there is no special mandatory national law to be considered, when designing and applying the disciplinary rules within Japanese football. Therefore, the JFA, as a member association of FIFA, takes a basic policy to design its own internal, autonomous legal system in line with FIFA’s rules (FIFA Statutes, FIFA Disciplinary Code and FIFA Standard Statutes).

7. *General Principles of JFA’s judicial system*

7.1 *The JFA Judicial Bodies and their jurisdiction*

As mentioned, the Judicial Bodies of the JFA are (1) the Disciplinary Committee, (2) the Ethics Committee⁶ and (3) the Appeal Committee.

⁵ Toyama-Daigaku Jiken, Decision of Supreme Court of Japan, 1977.

⁶ To be precise, JFA’s Ethics Committee is named the “Ethics and Mediatorial Committee” since it concurrently has the function of mediation in dealing with disputes of some specific situation. However, for the sake of simplicity, it will only be referred to as the “Ethics Committee” in this paper.

While the FIFA Statutes differentiate the competence between its Disciplinary Committee and Ethics Committee, through distinct applicable codes (i.e., issues of Disciplinary Code for Disciplinary Committee, those of Code of Ethics for Ethics Committee), the JFA Disciplinary Committee deals with the infringements directly or indirectly related to a competition (on-the-pitch), while the Ethics Committee deals with those not linked to competitions (off-the-pitch).

In cases where the distinction between on and off the pitch is vague, and the jurisdiction cannot be determined, such as a case of a coach's misconduct at a training site during training time, in accordance with Article 40.3 of the JFA Statutes, the Senior Member of the Executive Committee will decide which committee has the jurisdiction.

In addition to these two bodies, the Appeal Committee is the appellate body for the decisions of both the Disciplinary Committee and the Ethics Committee.

7.2 *Rule of delegation of disciplinary power*

Unique in the Judiciary system of Japanese football is the delegation of judicial power from JFA's Judicial Bodies to the judicial bodies of each local association or the leagues. As stated above, JFA's Judicial Bodies are endowed with the original judicial power over all organizations and individuals affiliated to or registered with JFA, amounting to 1.3 million individuals and 30,000 entities. As a result, about 3,800 disciplinary cases are opened per year (including indirect red card cases) in Japan.⁷ These huge number of cases make it practically impossible for the JFA Judicial Bodies to deal directly with all such cases. Therefore, under article 202.1 of the JFA Statutes, JFA's Judicial Bodies delegate their judicial powers to each judicial body of local associations or the leagues, which deal with disciplinary cases.⁸

For example, the JFA Disciplinary Committee delegates the judicial power to the Disciplinary Committee of the Tokyo FA concerning the cases of matches of amateur level in Tokyo, and the J.League Disciplinary Committee deals with disciplinary cases in the J.League through the delegation of that power from the JFA Disciplinary Committee.

In this delegation system, the judicial bodies of the local associations or the leagues are authorized to take disciplinary measures on those cases where the level of sanctions is lesser (e.g., less than six-month suspension). In such

⁷ Data provided by JFA, 2012.

⁸ Article 202.1 [...] *the Disciplinary Committee and Ethics Committee of the JFA delegates the authority to dispose of issues of disciplinary measures concerning Affiliated Entities or Players etc. falling under the jurisdiction of the Disciplinary Committees of any Prefectural Football Association, Regional Football Association, any of the various federations or the J.League (hereinafter referred to as "Prefectural Associations, etc.") and to determine and apply disciplinary measures on those Prefectural Associations, etc. in accordance with Disciplinary Code of JFA.*

circumstances where they do not have competence, the judicial bodies of local associations or the leagues can only make a proposal of the disciplinary measure to the JFA's Judicial Bodies, who shall render the final decision.⁹

7.3 *Exception to JFA's Jurisdiction (Doping case)*

Doping is the exception to the above-mentioned exclusive jurisdiction of JFA's Judicial Bodies. Under Article 38.3 and 239 of the JFA Statutes, the JFA renounces its judicial power in doping cases and delegates it to the Japan Anti-Doping Disciplinary Panel (JADDP), an external disciplinary body which is totally independent from JFA. Therefore, JADDP has exclusive jurisdiction over doping cases in football at national level. The doping cases' proceedings are conducted in line with the code of Japan's national anti-doping agency (JADA).

7.4 *Appeals*

Under Article 203.1 of the JFA Statutes, parties are entitled to appeal the decision made by the Disciplinary Committee and Ethics Committee to the JFA Appeal Committee.

The JFA Appeal Committee reviews not only the decisions of the JFA Disciplinary Committee but also the decisions made by the judicial bodies of local associations or leagues, to which the disciplinary authority are delegated from the JFA's Judicial Bodies as mentioned above. As a consequence, through such direct appeal procedure to the JFA Appeal Committee, the JFA's Disciplinary Code ensures the uniform standard of fair proceedings both at local associations and leagues' level as well as at the level of the JFA.

The JFA Disciplinary Code limits the scope and by this way the number of appeals to the JFA Appeal Committee.¹⁰ In fact, parties in dispute are not entitled to appeal if the original punishment decided by the judicial bodies of the JFA, local associations or the leagues carries a sanction lower than a certain degree of gravity, such as, suspension of three matches or less, suspension of two months or shorter, fine of one million JPY or less.

⁹ Article 202.4 Notwithstanding Paragraph 1, in case of imposing disciplinary measures falling under any of the following items, the Disciplinary Committees of Prefectural Associations, etc. shall not have the right to decide but shall inform the JFA of a proposal of disciplinary measures. The Disciplinary Committee or Ethics Committee of the JFA shall determine and apply disciplinary measures. (1) Match suspension, suspension, prohibition or discharge from official position, or ban on taking part in any football-related activities for a period of six months or more; (2) Fine; (3) Forfeiture; (4) Relegation to a lower division; (5) Forfeiture of qualification to participate in competitions; (6) Prohibition of registration of new players; (7) Dismissal from the JFA; and (8) In addition to the disciplinary measures listed in the preceding items, punishment deemed essentially equivalent in disciplinary effect to any of the preceding items.

¹⁰ Article 35, JFA Disciplinary Code.

8. *Competencies of members of the JFA Judicial Bodies*

Under the JFA Statutes, the Chairman of each of the JFA's three Judicial Bodies as well as the Vice-Chairman of the Appeal Committee must have a legal qualification (lawyer, prosecutor, judge of ordinary court or law professor).¹¹ Other members of the Judicial Bodies are persons with experience and knowledge on football or persons with high academic backgrounds who are able to deliver impartial decisions.¹² To ensure their independence, members must not concurrently hold any other position in the JFA and shall be appointed by Congress.¹³

In addition to these statutory requirements, members are elected on the basis of their professional background. As a result, the Chairman of the Disciplinary Committee is a former Judge of a High Court, the Chairman of the Ethics Committee is a former President of the Japanese Bar Association, and the Chairman of the Appeal Committee is a former Chief Public Prosecutor. Other members of the three Judicial Bodies are lawyers, a former International Referee, former players, representatives from other sports (volleyball, basketball and track and field) and representatives of the Prefectural FAs and J.League.

9. *Procedures*

9.1 *Burden of Proof*

Generally, the basic disciplinary procedure at JFA is in line with FIFA's Disciplinary Code. While the JFA's Disciplinary Code is silent about the burden of proof, the JFA (its General Secretariat) has the burden of proving disciplinary infringements. Equally, the JFA's Disciplinary Code provides the same principle of *presumption of accuracy of match officials' reports* as FIFA's Disciplinary Code. Therefore, the burden will shift to the accused, if the match official's report provides the fact of the case which is *prima facie* accurate.¹⁴

In the context of burden of proof, in case of off-the-pitch cases (such as ethical violations), the limitation of the investigatory capability sometimes becomes problematic. For on-the-pitch cases, it is relatively easy to prove the alleged fact because evidences are relatively easy to obtain, due to the existence of match officials' reports, video footage and sufficient witnesses to the misconduct concerned.

For off-the-pitch cases, on the other hand, to prove the alleged misconduct is much harder firstly because no presumption of accuracy rule is applied, due to the inexistence of match officials' report in ethical cases, and secondly because

¹¹ Article 37-2.2 at el., JFA Statutes.

¹² Article 37-2.3 at el., JFA Statutes.

¹³ Article 37-2.4, 37-2.5 at el., JFA Statutes.

¹⁴ Article 21.2 *The fact contained in referee's or match commissioner's report is presumed to be accurate.*

the JFA, as a mere private organization, has no compulsory investigative authority against any individual.

9.2 *Right to be heard (oral hearing)*

Contrary to FIFA's Disciplinary Code,¹⁵ the JFA's Disciplinary Code puts more emphasis on oral hearings. In fact, while at the FIFA level there are as a general rule no oral hearings and the admissibility of conducting an oral hearing is subject to the discretion of the Disciplinary Committee, within the JFA, unless the defendants renounce to their right, the JFA Judicial Bodies must conduct oral hearings to protect their right to be heard.¹⁶

10. *Sanctions*

The types of sanction that the Judicial Bodies of JFA may impose are generally in line with FIFA's Disciplinary Code.

In particular, pursuant to Article 204.1 the types of disciplinary measures upon individuals shall be:

(1) Caution; (2) Sending-off and expulsion; (3) Admonition; (4) Reprimand; (5) Fine; (6) Forfeiture; (7) Return of prize; (8) Match suspension of a certain number of matches, for a certain period, an unlimited period or permanently; (9) Suspension, prohibition or discharge from official activities for a certain period, an unlimited period or permanently; (10) Ban on taking part in any football-related activities for a certain period, an unlimited period or permanently; (11) Dismissal; and (12) Community Service.

Then, in line with Article 204.2 the types of disciplinary measures upon legal persons are:

(1) Admonition; (2) Reprimand; (3) Fine; (4) Forfeiture; (5) Return of prize; (6) Nullification of match result (and order of re-match under the circumstances); (7) Deduction or invalidation of goals or points; (8) Forfeiture of a match by deeming the scores 3-0; (9) Playing a match without spectators; (10) Playing a match at a neutral venue; (11) Suspension from official matches of a certain number, for a certain period, matches of a certain number, for a certain period, an unlimited

¹⁵ FIFA Disciplinary Code

Article III.1 As a general rule, there are no oral statements and the Disciplinary Committee decides on the basis of the file.

2. At the request of one of the parties, the body may arrange for oral statements to be heard, to which all the parties shall be summoned.

¹⁶ JFA Disciplinary Code

Article 20 Disciplinary Committee and Ethics Committee, in principle, must conduct oral hearings to the accused and hear his/her allegation, provided, however, that the accused agreed not to conduct oral hearing or he/she refuse to attend the hearings.

period or permanently; (12) Suspension of the whole or part of an official position for a certain period, an unlimited period or permanently; (13) Relegation to a lower division; (14) Forfeiture of qualification to participate in competitions; (15) Prohibition of registration of new players; (16) Expulsion; and (17) Replaying a match.

11. *Infringement (Jurisprudence)*

11.1 *Ordinary cases on the pitch (red card incidents)*

With respect to ordinary red card cases during a match, the Disciplinary Committee of each local association or leagues (including J.League) deals with them on a daily basis in line with the JFA Disciplinary Code as long as such sanction is less than six months. If the sanction is higher than six months, it must otherwise be decided by the JFA Disciplinary Committee. The applicable JFA Disciplinary Code in such ordinary red card cases during official matches is basically the same as the FIFA Disciplinary Code.

In the J.League, for example, out of all the 1,002 matches held during the season of 2015 (division 1st, 2nd and 3rd), there were 232 indirect red card (two yellow cards in the same match) cases and 128 direct red card cases. For these 128 direct red card cases, J.League Disciplinary Committee decided 123 one-match suspensions, 3 two-match suspensions, 1 four-match suspension and 1 six-match suspension.¹⁷ The most serious case at J.League in that year was thus related to a six-match suspension, where the player intentionally elbowed the opponent player's face, fracturing his nose.

11.2 *Discrimination*

In Japanese football, while there have been only a few disciplinary cases of discrimination, one of such cases made a great impact on Japanese society. In this case, at the J.League 1st division match on 8 March 2014 *Urawa Red Diamonds vs. Sagan Tosu*,¹⁸ a supporter of Urawa hanged a discriminatory banner stating “*Japanese Only*” in the stands of the stadium during the match. The J.League initiated a disciplinary proceeding against Urawa for an alleged discriminatory act, and the club's spectators' liability. In the course of the proceeding, it was particularly noted that the responsible club (Urawa) left the banner hanging for as much as one hour during the match with no preventive measures taken to avoid such a discriminatory act. Thus, a sanction of a match behind closed doors was levied against Urawa. This has become the first and only case in the history of Japanese football where a sanction involving a match behind closed doors has been applied.

¹⁷ Data provided by J.League.

¹⁸ J.League Web site: www.jleague.jp/sp/release/article-00005691/ (17 April 2017).

11.3 Ethical Violations

Generally, in Japan, the scope of “ethical violation” is much broader than FIFA’s. Indeed within the JFA, the scope of ethical violations is defined much more broadly under Article 34, par 3 and par 5 of the JFA Disciplinary Code. Under these provisions, any conduct that impairs credit or the reputation of the JFA or its members as well as any criminal violations may constitute the ground of disciplinary sanction. Importantly, under the Japanese Code, such ethical violations do not need to be linked to football and the Ethics Committee may take disciplinary measures upon such cases.

This wider definition of ethical violation in Japan probably derives from the peculiar culture of Japanese society, where people generally have a mentality of putting more emphasis on social order. In this sense, Japanese people believe that an athlete should be a role model for society not only on the pitch but also off the pitch in his/her daily life. As a result, society expects athletes to seemingly apply a high standard of moral, whose infringements such as misdemeanours in daily life eventually entail disciplinary sanction in sports. Such practices may be seen as controversial from another country’s point of view.

On another note, it may potentially include the problem of double jeopardy. In most of such cases, the accused has already been judged and sentenced by an ordinary criminal court. If the sports jurisdiction imposes further sanctions on him/her, in addition to the penalty from the ordinary court, such facts carry a problem of double jeopardy. In the author’s view, when his/her misbehaviour is directly linked to his/her capacity as sports person, the additional sanction may have sufficient ground and be lawfully applied by that sports organization. However, if his/her conduct is not related to sports activity but is exclusively relevant in his/her daily life, sports organizations should be much more cautious in dealing with such cases.

The next three cases might demonstrate in what circumstances the JFA Ethics Committee may take disciplinary measures in case of “criminal violations” by a person subject to sports jurisdiction committed during his/her daily life.

11.3.1 Sexual misconduct with minors

In the case of *player K (2007)*, then playing for a J.League 1st division club, K was arrested on the suspicion of having sexual relations with a minor (a 15 year-old girl). He was eventually released on the prosecutor’s decision to suspend the indictment. Notwithstanding that ordinary justice’s suspension, the JFA Ethics Committee decided to impose a one-year suspension (ban of registration) on him, because of the huge negative social impact of the affair on Japanese society.

In another case in 2007, *futsal player H*, who was then playing for a Regional League (2nd division in Japanese futsal), was arrested for allegedly having sexual relations with a minor (a 17 year-old girl) and sentenced with a fine of

500,000 JPY (approximately 5,000 USD) by a Criminal Court. The JFA Ethics Committee imposed on him a ban for unlimited period.

11.3.2 *Minor criminal offense*

In 2014, in *case of the player G*, then playing for J.League 2nd division club, G was arrested on a charge of larceny for stealing boots from a shoe store. The JFA Ethics Committee, especially considering the impact of the action on society, decided to impose a one-year suspension (ban of registration) on him.

11.3.3 *Excessive corporal punishment*

In Japanese sports, incidents of excessive corporal punishment of children by coaches sometimes occur at youth clubs and schools. This kind of problem is not only the case in football, but it is problematic in all sports in Japan. For instance, in late 2012, a 17-year-old high school boy who was a captain of his high school basketball team, committed suicide after having been physically punished by his coach.¹⁹ After this tragic incident, the problem of applying excessive corporal punishment to children in sports has come to people's attention as serious national problem. In reply to such situation, JFA established a telephone hotline open to the public to prevent and tackle these kinds of incidents.²⁰ Through this hotline, with whistle-blowing from victims of such corporal punishment or their parents, JFA may undertake disciplinary investigations and proceedings in collaboration with relevant local associations.

Until today, there are several of such cases where JFA Ethics Committee has taken disciplinary measures. As an example of such cases, in 2015, the *coach S* violently blamed an under-15 year-old boy belonging to his club saying "*our team lost the game because of you*", locked the boy in his car, and repeatedly punched him. This defendant was also reported, in another occasion, to have repeatedly punched another boy, resulting in the child's brain contusion. The JFA Ethics Committee decided to impose a permanent ban on his taking part in any football-related.

In these kinds of cases, the JFA Ethics Committee sometimes finds difficulty in establishing the facts of the case. This is because, as mentioned before, the JFA, as a mere private organization, has no compulsory investigative authority against the defendants. In establishing the fact in such cases of excessive corporal punishment, where no presumption rule is applicable, the mere testimony of the victims is not sufficient to establish the facts. In reality, for the Ethics Committee to establish facts to the level of its comfortable satisfaction, it usually needs additional evidence such as the final and binding judgment of an ordinary criminal court or videos showing the conduct in question.

¹⁹ The Japan Times, 9 January 2013 www.japantimes.co.jp/news (17 April 2017).

²⁰ JFA web site: www.jfa.jp/violence_eradication/ (17 April 2017).

11.4 *Failure to comply*

Under Article 34.2 of the JFA Disciplinary Code, non-compliance with the decisions or the directives made by the JFA constitutes ground for further disciplinary sanctions. In case of *head coach W at a Regional League* (5th division in Japan), in July 2015, the JFA Disciplinary Committee had imposed a stadium ban for an unlimited period of time on W due to his repeated violent acts against referees (assaulting and insulting them). Subsequently in May 2016, on the occasion of another official match, W, in spite of the said stadium ban, was alleged to have instructed his players and have repeatedly uttered insulting words against referees in a loud voice from the spectator stand close to the team bench, while in a highly intoxicated state. Then, the JFA Disciplinary Committee decided to impose a further sanction on W, banning him from official functions for an unlimited period, for the violation of said article due to his failure to comply with JFA's original decision.

11.5 *Forgery and falsification*

In Japanese football, there have been several cases (around 20 cases from the year 2007 to 2011) of forgery of a player's identity card issued by JFA, all of which occurred in very low levels of amateur competition. Before 2014, the player's identification cards issued by JFA via the above-mentioned KICKOFF system did not electronically generate the photo of each player. Photos would have to be attached to the card by the representative of each team by laminating the card. This made it physically possible for representatives of teams to eventually replace the photo with another player's in order for that substitute player to play in a match.

Since JFA's Disciplinary Code is generally set in line with FIFA's Disciplinary Code, the JFA Disciplinary Code at that time provided for exactly the same sanction as FIFA's²¹ in cases of forgery. Therefore, the JFA Disciplinary Committee always imposed a one-year suspension on the representative of the team in such cases of forgery of a player's identification card by replacing its photo with another person's one. However, there had been an opinion that the culpability of a perpetrator in such case is much lesser than the one originally intended by the drafter of the FIFA Disciplinary Code. This is firstly because all of such cases in Japan occurred at purely amateur level and secondly because a player identification card is not a document issued by a government authority. Therefore, in 2011, the JFA Executive Committee amended the Disciplinary Code to distinguish between official documents issued by a government (such as passports) and other quasi-official documents such as player's identification cards, and to reduce the statutory sanction in the latter case (to a one-month suspension).

There has been no case of forgery of government-issued documents such as passports.

²¹ Article 61, FIFA Disciplinary Code.

11.6 Corruption

In Japanese football, few corruption cases have been reported and sanctioned by Ethics Committee, all of which were for embezzlement. In the 2012 *case of T*, the Executive Director of a Prefectural FA allegedly embezzled the Prefectural FA's money in a total amount of 39,000,000 JPY (approximately 390,000 USD), by abusing his position as the Executive Director of that FA, who managed the association's financial affairs all on his own. He was then arrested and sentenced to three years in jail on a charge of embezzlement by a Criminal Court. The JFA Ethics Committee decided to impose life ban on him.

11.7 Doping

*CAS 2008/A/1452 Kazuki Ganaha v. J.League*²² is a landmark CAS decision for the history of Japanese football. In this case, the professional player Kazuki Ganaha, then playing for J.League 1st division club Kawasaki Frontale, was sanctioned with a six-match suspension by the J.League Anti-Doping Special Committee, which was the disciplinary body for doping cases at that time. The basis of the decision by the Anti-Doping Special Committee was that, by referring to the relevant provision of the previous version WADA Code (version 2006), the alleged intravenous injection treatment by the player *cannot be approved as an acute and legitimate medical treatment* for the player's health condition. Then, the player appealed to the CAS. The main issue at CAS was whether the intravenous injection of the player was a legitimate medical treatment within the meaning of the applicable WADA Code (version 2007). In its decision, the CAS Panel implicitly admitted that the intravenous injection in this case constituted a legitimate medical treatment for the player, and it further accepted that this was a case of "no fault" of the player. Thus, the CAS Panel upheld the appeal lodged by the player and decided to annul the six-match suspension that had been imposed on him by the J.League Anti-Doping Special Committee.

As a fundamental problem related to the doping proceedings in Japanese football, which was partly pointed out by Ganaha in the CAS proceedings, the doping rules of JFA and J.League at that time generally deviated from the international standard, where, for example, it lacks sufficient procedure to guarantee the right to be heard of the accused as well as sufficient independency of each body (doping investigatory body and doping adjudicatory body). Then, after this landmark CAS decision, in 2009, the JFA and J.League decided to amend their respective relevant regulations in line with JADA Code, so that the JFA and J.League delegated the investigatory authority of doping to the national anti-doping agency (JADA), also delegating the disciplinary authority in doping cases to an external and independent judicial body called Japan Anti-Doping Disciplinary Panel (JADDP), as explained earlier.

²² CAS 2008/A/1452 Kazuki Ganaha v. Japan Professional Football League.

After the *Ganaha* case, there had been no doping case until recently. In late 2016, the first doping case at national level since *Ganaha*, that is, the first case which was decided by an external body, the JADDP, arose. In this JADDP case, *Kazuhiko Chiba*,²³ the player of J.League 1st division club Sanfrecece Hiroshima tested positive for the presence of the “methylhexaneamine”, a prohibited substance in the 2016 Prohibited List International Standard. In its decision, while the JADDP Panel admits that *the methylhexaneamine that was detected in this case can be reasonably presumed to have been contained in the supplement taken daily by the player for the purposes of taking vitamins*, the panel concludes that *it cannot be said that the player entirely lacked fault or negligence*. The Panel then decided to impose on him a reprimand without any suspension.

Conclusion

In Japanese football, as observed above, the JFA designs and applies, in the majority of the cases, its disciplinary rules and proceedings in compliance with the relevant FIFA rules. However, some differences exist depending on the regions and leagues, as well as on the specific culture, which differentiates the Japanese society from other FIFA countries. While the JFA Judicial Bodies’ jurisdiction is competent for all Japanese football, including amateurs and professionals, the reality of the football justice might vary among the regions of Japan because of the rule of delegation of judicial power. Indeed, a difference exists about the gravity of the punishment depending on the locality, especially in case of minor infringements with relatively small sanctions (because the accused may not appeal to the JFA Appeal Committee in cases of sanctions of three matches or less etc.). Furthermore, the Japanese system and rules possibly deviate from those of the world standard in some fields, such as in the case of ethical violations, due to the national mentality peculiar to the country. In Japan, a player may be sanctioned by sport judicial bodies for misconduct he commits off the pitch in his own private life.

Although the sanctions are only effective within the world of football, they have serious impact on the person on whom they are imposed. They can close off the opportunity to play football for a person who loves to play it, possibly forever. Thus, as a responsible national association, the JFA has a great obligation towards its football family to ensure fairness and transparency in the proceedings with the solid regulatory foundation.

²³ JADA Web site: www.playtruejapan.org/ (17 April 2017).

DISCIPLINARY PROCEDURES IN MEXICAN FOOTBALL

by *Victor Garza Valenzuela**

Introduction

Article 146 of FIFA Disciplinary Code establishes the basic and mandatory rules that every association affiliated to FIFA must follow for the sole purpose of creating harmony within the frame of disciplinary matters, this way, each association has a certain degree of autonomy to adapt their own disciplinary regulations.

Thus, within the frame of this autonomy, the Mexican Football Federation (FMF), in the case of infringement of the rules governing the jurisdiction of the different Professional Divisions by its affiliates, enforces a Sanctions Regulation by means of its Disciplinary Commission which we will address in this section.

In this chapter we will briefly explain the structure of the Federation, so that later we can focus on the Disciplinary Commission: its structure, jurisdiction, operation, proceedings and other significant features.

Additionally, we will cover the FMF Sanctions Regulation, its scope, and some of its differences in comparison to other associations and FIFA. For example, the FMF has devoted a great deal of work and dedication to settle deception and fair play issues encouraging its affiliates to behave respectfully, honestly and uprightly during any competition, in contrast with situations in which a player, pretending having received a foul or being injured, confers a direct benefit upon his/her Club on the final score of the match; sanctions have already been established for such situations and can be consulted in this book.

Another important point that will be addressed is the particular way in which the Federation bodies' decisions are enforced, which, in the Author's opinion and without conceit, is more effective than what is set forth in the Article 64 of FIFA's Disciplinary Code or, at least, from this association and my own perspective it has been quite effective.

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1. General principles

Mexico's football is regulated by the Mexican Football Federation (*Federación Mexicana de Fútbol Asociación A.C.*, hereinafter "FMF" and/or Federation), which brings together professional clubs as well as most part of the amateur football leagues in our country.

The Federation is an association that has established within the framework of its operation certain rules and regulations for all the individuals that aim to be part of it and become affiliates. These rules are mainly set forth in the Federation Bylaws, in which the rights and responsibilities of all affiliates are clearly set out.

Any regulation would be futile if it lacked of a coercive method to bind the individuals subject to it to comply with it.

Thus, the Federation Bylaws, on its Article 78, confers jurisdiction upon the Disciplinary Commission, setting out the following:

"The Disciplinary Commission's duty is to sanction any infringement of this Bylaws, Code of Ethics, Regulations, resolutions issued by the General Assembly or Executive Committee committed by Clubs, State Associations, Players and Technical Staff.

It will also sanction the fouls committed by Technical Directors, Support Staff, Players and Referees during official and friendly matches authorised by the Federation".

Hence, the FMF Disciplinary Commission, by means of the Sanctions Regulation that governs its actions, has two duties: on the one hand, it will ensure full compliance with the Bylaws and other Regulations, thus, becoming the guarantor of the compliance with all the administrative regulations issued by the Federation and, on the other hand, it is in charge of sanctioning sport infringements committed on the field of play by the players and staff involved.

That said, the Sanctions Regulation establishes the sanctions that might be imposed to its affiliates, namely.:

For natural and legal persons that own a club:

- a) Warning;
- b) fine;
- c) annulment of awards;
- d) community services.

For natural persons:

- a) Caution;
- b) expulsion as a Federation affiliate;
- c) suspension as a Federation affiliate;
- d) match suspension;
- e) temporary disqualification;
- f) fine;

- g) ban from entering a pitch, field of play, dressing rooms, halls or substitutes' bench;
- h) ban from entering stadiums;
- i) ban on taking part in any football-related activity.

For legal persons that own a club:

- a) Transfer ban;
- b) playing a match behind closed doors;
- c) playing a match on neutral territory;
- d) notice of veto*;¹
- e) stadium veto;
- f) forfeit due to withdrawal or failure to appear;
- g) annulment of the result of a match;
- h) deduction of points from the overall quotient ranking;
- i) relegation to the immediate lower division;
- j) expulsion as a Federation affiliate.

Furthermore, the Sanctions Regulation describes in detail the procedures to impose sanctions to the Federation affiliates, as it will be discussed below.

2. *The Federation*

2.1 *Structure*

In compliance with Article 19 of the Federation Bylaws, the FMF is composed of governing and administrative bodies that help, within the scope of their respective competences, to achieve a better performance of its operation, being such bodies the following:

- 1. General Assembly;
- 2. Executive Committee;
- 3. General Secretariat;
- 4. General Assemblies and Steering Committees of the Professional and Amateur Sectors;
- 5. Standing Committees of:
 - 5.1 Referees and;
 - 5.2 Players.
- 6. Temporary Committees;
- 7. Judicial bodies:
 - 7.1 Disciplinary Commission;
 - 7.2 Appeal Commission; and
 - 7.3 Conciliation and Dispute Resolution Board.

¹ The sanctioned Club must play the next match in their Stadium behind closed doors or in the Stadium designated by the sanctioned Club and in this case, it must be approved by the competent authorities of the League.

2.2 Competence

The competences of each governing and administrative body will be explained in detail below.

2.3 General Assembly

It consists of the Professional Sector (*LIGA MX*, *ASCENSO MX*, Second and Third Professional Division, which will be discussed hereinafter) and the Amateur Sector.

As in any other company, the General Assembly is the supreme body of the FMF, its decisions are the supreme expression of the will of all the sectors that are part of it and its resolutions are mandatory for all its affiliates.

The Assembly reaches decisions through the representatives appointed by each sector – Professional and Amateur – by voting in accordance with the following percentages:

<i>LIGA MX</i>	55%
<i>ASCENSO MX</i>	5%
Second Division	18%
Third Division	13%
Amateur Sector	9%

As can be seen, the *LIGA MX* is the one that holds the majority of votes over the rest of the divisions and sectors for the decision-making process of some issues – unlike FIFA, in which each one of the 211 Associations is entitled to vote. In my opinion, this is rather logical if we take into account the fact that the *LIGA MX* is the one that invests the most in the Federation through the training of players and infrastructure. Likewise, *LIGA MX* Clubs of such league provide the various National Football Teams with players. From this standpoint, and assuming the FMF was a corporation, it is undeniable that the partners that provide more resources to the company will have greater participation in the decision-making process.

In the case of the *ASENSO MX*, the difference between the percentage of votes with the other sectors is due to a change made in 1994 in regards to the decision of creating an ascent division in order to bridge the sports and financial gap between the teams that ascended from the Second Division to the First Professional League (now known as *LIGA MX*), which back then was named First Division “A” (now known as *ASCENSO MX*). All the sectors that supported this initiative assigned a small percentage of their corresponding votes so that such Division had 5%.

The resolutions of the Assembly are made by majority of votes and in order to counteract the high percentage that the *LIGA MX* has, but mainly for the purpose of having control; in order to be authorised, the most important issues must have 80% of approval out of 100% of the total votes, such issues include:

- a) Modifications to the Bylaws.
- b) Acquisition, disposal or encumbrance of the Federation real estate.
- c) Sale or disposal of any property when the amount due for it is equal or higher than the equivalent in pesos of USD \$500,000.00 (five hundred thousand dollars 00/100 legal tender of the United States of America).
- d) Making oneself joint and several obligor, guarantor or surety.
- e) Any modification to the automatic ascent and descent system in the Professional Leagues or Divisions and their corresponding competition.
- f) Early dissolution or winding-up of the Federation.
- g) Restructuring or merger of the Federation.

Furthermore, the Assembly is responsible for authorising new affiliations (membership) and disaffiliations, approving the annual cost budget, approving the balance sheet, financial statements, activity report and, of course, the FMF President appointment.

2.4 Executive Committee

Pursuant to article 38 of the Bylaws, the Executive Committee is the FMF administrative body responsible for enforcing the Assembly agreements and serving as the official FMF representative.

The Executive Committee is composed of the President of each Professional Division (*LIGA MX*, Second and Third Professional Division) and the President of the Amateur Sector, except for the *ASCENSO MX*, since there's no President for such Division, instead, the *ASCENSO MX* Secretary General acts on behalf of such Division.

The Committee decision-making process is divided into 10 votes as follows:

<i>LIGA MX</i>	5
<i>ASCENSO MX</i>	5
Second Division	2
Third Division	1
Amateur Sector	1

Decisions are made by majority of votes and in the event of a tie, the FMF President shall have the tie-breaking vote.

As noted above, and just like the General Assembly, in order to authorise the most relevant issues, and as a transparency and control measure, they must have, at least, six out of ten of the total votes, such issues include:

- a) Trading of the Federation's intellectual property rights related to the official competitions of both Sectors, except for the *LIGA MX* and the *Liga de Ascenso MX*, which must be expressly and jointly authorised by the FMF President and the *LIGA MX* President.
- b) Incurring in one or more acts of indebtedness for an amount higher than the equivalent in pesos of USD \$500,000.00 (five hundred thousand dollars 00/100 legal tender of the United States of America).

- c) The acquisition or lease of any asset by the Federation whether individually or jointly, whose monetary value is greater than the equivalent in pesos of USD \$100,000.00 (one hundred thousand US dollars).
- d) Granting credits or guarantees for an amount higher to the equivalent in pesos of USD \$50,000.00.
- e) Signing employment contracts that involve settlements and compensations for amounts higher than the ones set forth in the applicable law.

Thus, the Executive Committee is responsible for the FMF's administrative and operational decisions.² It should be noted that the FMF is adjusting its Bylaws to the new FIFA reforms approved by the Congress in May 2016 concerning the creation of the FIFA Council, in order to submit it to the consideration of the Assembly in 2017.

2.5 General Secretariat

The General Secretariat is the FMF administrative body, the Secretary General is appointed by the Executive Committee and proposed by the Federation President and its duties include, but are not limited to: implementing policies, measures and provisions agreed upon by both the Assembly and the Executive Committee, being responsible for the correspondence with FIFA and the international associations, as well as for the administrative operation of the Federation, monitoring the proper operation of the Commissions, being its main task the direction and organization of the National Football Teams.

Just like FIFA, the Secretary General has a say but no voting rights in the Executive Committee and the Assembly.

2.6 General Assemblies and Steering Committees of the Professional and Amateur Sectors

It is important to mention that each of the Professional Divisions and the Amateur Sector have autonomy in their own internal regime, but their actions cannot contravene nor run contrary to what the Federation Bylaws establishes.

Each League or Division has its own *Competition Regulations* and *Internal Regulations*. Each League or Division makes decisions on the tournaments they organize, as well as on the affiliates that will be part of them, although, ultimately, the FMF Executive Committee and the General Assembly are the ones that approve such affiliates. They also make decisions on the competition structure, approve the dates of such competition, designate the stadiums of the competing Clubs, appoint the Match Commissioners, choose the laboratories that will perform the doping control tests – this is only for the *LIGA MX* and *ASCENSO MX* –, establish and, when necessary, decide on the issues arising out

² For further information on the Executive Committee duties, see Article 49 of the FMF Bylaws.

of a force majeure event during the competitions.

LIGA MX, was constituted the 16 of July of 2012 and carries out its duties through (i) the General Ordinary Assembly, better known in Mexico as the *Asamblea de Dueños* (“Owners Assembly” due to the fact that only the owners of the 18 Clubs currently affiliated to the *LIGA MX* attend to such meeting), and (ii) a President that is appointed by such Assembly and who is responsible for complying with the agreements originated from it. Additionally, for the purpose of helping the Assembly with the decision-making process, several Labour Committees were formed, including but not limited to, the Sports Development, Audit, Legal, and Marketing Committee.

It should also be mentioned that the *ASCENSO MX* Division has 18 affiliated Clubs.

The decisions made by the *LIGA MX* Assembly are the ones that set the direction of the Federation, considering the votes it is entitled to in the FMF Assembly and the Executive Committee.

With regard to the Second and Third Division and the Amateur Sector, they operate through an Assembly, an Executive Committee and a Director.

With respect to the Second Professional Division, it is formed by two leagues called *Liga Premier* (“Premier League”) and *Liga de Nuevos Talentos* (“New Talent League”), it is currently comprised of 47 and 21 teams, respectively. Regarding the *Liga Premier*, the teams must all have the necessary infrastructure so that they can ascend to the *Liga de Ascenso MX*, while the teams that are part of the *Liga de Nuevos Talentos* can aim to ascend to the *Liga Premier*.

The Third Professional Division is composed of 213 teams, divided into 14 zones and the Amateur Sector is formed by an association in each state of Mexico and one association belonging to Mexico City, in other words, for this purpose, there are 33 state associations, all of them are composed of leagues and clubs which carry out tournaments and competitions.

2.7 *Standing Committees*

The Standing Committees are the Federation auxiliary bodies that contribute to the achievement of its corporate purpose and stay in force for an indefinite period.

The FMF has one Standing Committee, that is, the Referee Committee, which is responsible for providing referee services to the Professional and Amateur Sectors, in regards to the international, national, state and interstate competitions.

With respect to the Players Committee, its duty is to advocate for the professional players interests before the Federation authorities, and to submit to the Federation competent bodies all the matters related to the professional players activities. It is worth noting that in the following months such Committee will change its address, legal personality and legal structure, consequently, it will no longer be a FMF Standing Committee but a partnership.

2.8 *Temporary Committee*

These are constituted for the purpose of carrying out a specific task for a limited period of time, that is, whenever the FMF needs to elaborate any sports or legal project, such project is entrusted to a Temporary Committee for its elaboration.

2.9 *Judicial Bodies: Disciplinary Commission, Appeal Commission and Conciliation and Dispute Resolution Board*

With regard to this sub-section, we will explain all of these bodies further on in the text.

3. *Legal Framework*

The FMF disciplinary body – that is, the Disciplinary Commission –, with the purpose of issuing resolutions, acts in accordance with the Bylaws, the Code of Ethics, the Sanctions Regulation, the Security Regulations for Official Matches and any other code or regulations that might be infringed by the Federation affiliates.³

4. *Relationship between ordinary and sports rules*

The *General Law of Physical Culture and Sports*⁴ establishes the rules regarding everything related to sports in Mexico, thus creating a comprehensive system in the country named *Sistema Nacional de Cultura Física y Deporte* (“National System of Physical Culture and Sports”, better known as “SINADE”).

The SINADE is composed of all offices, public and private agencies and institutions, national associations, local associations and, in general, any organization recognized by the General Law of Physical Culture and Sports.

As supreme body of sports in Mexico, the General Law creates the *Comisión Nacional de Cultura Física y Deporte* (“National Commission for Physical Culture and Sports”, CONADE) whose main objectives are to operate federated sports in Mexico, to cluster all the national federations, to elaborate and disseminate the regulations applied to the different federations, and to contribute with these in the development of sports in the country.

The CONADE is an unincorporated⁵ public body of the Federal Public Administration that has legal personality and private equity, and is formed by governing bodies and a managing director appointed by Mexico’s President himself.

The National System of Physical Culture and Sports has a pyramidal operation system and within its structure you can find the so-called “National

³ Available at www.fmf.mx/ to refer the above mentioned Regulations.

⁴ Available at www.diputados.gob.mx/LeyesBiblio/pdf/LGCFD_250117.pdf to refer the General Law of Physical Culture and Sports.

Sports Federations”. As defined by the General Law, the National Sports Federations are “associations with legal personality and private equity whose scope of action includes the whole national territory, and which are composed of state sports associations, sports leagues, sports clubs, teams, sport players, technical staff, judges and referees, professional leagues, if any, and other organizations that promote, practise or contribute to the development of sports”.

It is precisely within the framework of the National Sports Federations that the National System of Physical Culture and Sports acknowledges the existence of the FMF as the governing body of football in the country.

4.1 *Infringements and sanctions in the field of sports*

It is particularly important to go through article 148 of the General Law of Physical Culture and Sports which sets forth the following:

“Within the scope of sports justice, the extension of sanctions due to infringements of its bylaws, sports regulations and codes of conduct is the responsibility of:

I. The COM, the COPAME, the National Sports Associations, Similar Organizations, Sports, Recreational Sports, Sports Rehabilitation and Physical Culture and Sports Associations and Partnerships, and

II. Directors, judges and referees of sports competitions”.

The above mentioned article confers jurisdiction upon the National Federations to impose sanctions due to infringement of its own bylaws and sports regulations; to this effect, the Federation is entitled to define its own authorities that will impose the sanctions which they deem appropriate and impose such sanctions, in terms of its regulations, due to infringement of the Federation Bylaws and regulations and other similar sports organizations – particularly, the regulations laid down by FIFA.

Thus, it is clear that the FMF is entitled, by the Mexican Law, to determine its regulations, to define the sanctions for non-compliance and establish a court that will evaluate the disciplinary offences or infringements of any kind and, additionally, will be responsible for the enforcement of such resolutions made by the court.

As a matter of fact, the Law itself provides, in Article 150, rules that the National Sports Federations should comply with when determining the regulations and authorities that shall be entitled to impose sanctions to them, as it follows:

⁵ Decentralized Bodies are legal entities constituted according with the provisions of the “Ley Orgánica de la Administración Pública Federal” and their objective is: (I) The accomplishment of the correspondence activities related to the strategy and priority areas, (II) To provide public and social services and (III) The collection or application of economic resources for social welfare or social security purposes.

“In order to impose sanctions for infringements of bylaws, regulations and codes of conduct, the sports organizations that belong to the SINADE shall foresee the following:

- I. A section within its bylaws that considers the relevant infringements and sanctions, according to the corresponding sports discipline, the procedure to impose such sanctions and right to hearing granted to the alleged infringer;*
- II. The criteria to determine whether it is a minor, a serious or a very serious infringement.*
- III. The procedures to lodge the appeals established in the previous article.”*

These rules legitimise the issuing of a Disciplinary Code for the FMF, and give rise to the Federation’s judicial bodies: the Disciplinary Commission, the Appeal Commission and the Conciliation and Dispute Resolution Board.

4.2 Sports Appellate and Arbitration Commission (Comisión de Apelación y Arbitraje del Deporte, CAAD)

The General Law of Physical Culture and Sports, for the purpose of monitoring the proper compliance with the provisions related to the imposition of all kind of sanctions for infringement of the Federation regulations, creates and establishes in the Law itself this Commission, whose purpose is as it follows:

“The CAAD duties include the following:

- I. To know and rule on, by means of an appeal, the challenges filed by any individual or legal entity enrolled in the RENADE or by any of the SINADE members, against acts, omissions, decisions, agreements or resolutions issued by sports authorities, institutions or organizations affecting the sports rights established in favour of the appellant, either on this Law or on the regulations and other provisions pertaining thereto. The challenger may exhaust the corresponding defence or directly file the appeal;*
- II. To grant the provisional and, when applicable, indefinite stay of the challenged act within the appeal process...”*⁶

Hence, the CAAD shall act as an appeal in the disciplinary and jurisdictional proceedings carried out before the Federation competent authorities; any resolution issued by the Federation Appeal Commission – last resort within the FMF in regards to disciplinary matters and infringement of the sports regulations

⁶ Refer to the General Law of Physical Culture and Sports to read the full article.

or the Disciplinary Commission provisions – may be appealed against the Sports Appellate and Arbitration Commission (CAAD), created within the frame of the General Law of Physical Culture and Sports.

It is important to mention that the CAAD does not deal with labour matters.

4.3 *Two competent authorities?*

Let's assume, for example, that a Federation affiliate decides to appeal a sanction imposed to a player who severely injured another player during a football match. First of all, it is a fact that such sanction will have been imposed by the Federation Disciplinary Commission; once this sanction has been issued, the complainant affiliate shall, mandatorily, appeal such sanction before the Federation Appeal Commission. Once this Commission has issued a resolution, pursuant to the General Law of Physical Culture and Sports, the Sports Appellate and Arbitration Commission (CAAD) is the competent authority to hear an appeal on this effect. However, and just as we have seen, the Federation has, in accordance with the law, autonomy to establish its disciplinary and jurisdictional proceedings, including the stage proceedings that must be followed in order to assert its rights and to have several appeals that ultimately settle such matters.

Therefore, the Federation has in all its bylaws, as a last resort for all its jurisdictional resolutions, conferred jurisdiction upon the Court of Arbitration for Sport (CAS), which is based in Lausanne, Switzerland.

Hence, if an affiliate decides to appeal an ultimate resolution issued by the Federation jurisdictional authorities may also resort to Mexico's Sports Appellate and Arbitration Commission (CAAD) or to the Court of Arbitration for Sport (CAS); it is also clear that, once one of these bodies is chosen, it will be the ultimate hearing body, and it will not be possible to file a new appeal against the decision passed by one of these two authorities, since there is no direct relationship between these two bodies. It is also worth recalling that, in accordance with the FIFA Bylaws, all of its affiliates, as it is the case of the FMF, should file, according to regulations, any appeal against CAS and not the CAAD.

5. *The Association Disciplinary bodies*

As we noted earlier, in the FMF Administrative Structure section, the authorities that comprise it are indicated and regarded as "judicial bodies" and are the following:

- a) the Disciplinary Commission,
- b) the Appeal Commission and
- c) the Conciliation and Dispute Resolution Board.

Now, considering that only the two first Commissions are disciplinary bodies of the Federation, we will describe both of them hereinafter, taking care to mention that the proceedings of such Commissions – Disciplinary and Appeal –

are ruled by regulations that contain the provisions relating their administration, formation and operation. Such regulations should be approved by the FMF Executive Committee.

The Regulations we mentioned are the following:

- a) Sanctions Regulation and
- b) Appeal Commission Regulations.

Disciplinary Commission

As it was previously mentioned, the Disciplinary Commission is the body responsible for evaluating and enforcing sanctions imposed in the context of infringements and/or violations of the Bylaws, the Code of Ethics, the Regulations and/or Resolutions issued by the General Assembly or the Executive Committee committed by the FMF affiliates.

Furthermore, it will sanction those responsible for the events that constitute an infringement and infringe the rules governing the federative football, as well as the principles of sportsmanship and fair play.

Appeal Commission

In turn, the Appeal Commission is the body to which the FMF affiliates can assert the arguments and evidence in their defence, regarding the sanctions that the Disciplinary Commission or any other competent body impose to them.

All the matters submitted to the Appeal Commission shall adhere to the principles of lawfulness and sports ethics, therefore, the appellant must prove that the decision appealed against this body infringes upon themselves and it is not being used as a way to delay the compliance with an obligation.

6. *Structure and jurisdiction*

Currently, the Disciplinary Commission is composed of a president, a secretary, a board member and the necessary staff to carry out administrative operations, who exercise their duties in compliance with the Sanctions Regulation.⁷

Additionally, the Disciplinary Commission has an Internal Committee composed of the president of such Commission, a Representative appointed by the *LIGA MX* and an independent representative, whose purpose is to sanction any matter related, strictly and exclusively, to the *LIGA MX* and *ASCENSO MX* pursuant to Article 72, last paragraph of the FMF Bylaws.

That is, the Disciplinary Commission is responsible for sanctioning any breach and infringement committed by the FMF affiliates such as the Second and Third Professional Divisions and the Amateur Sector, except for anything related

⁷ Available at www.fmf.mx/#/reglamentos/Generales to refer the Sanctions Regulation.

to the *LIGA MX* and *ASCENSO MX* since, as we have already mentioned, it is within the jurisdiction of the Disciplinary Committee.

The Internal Committee of the Disciplinary Committee holds session every Monday for the purpose of sanctioning the matches of the *LIGA MX* and *ASCENSO MX* as well as the Sub 15, 17 and 20 Tournaments of the *LIGA MX*. With regard to the *COPA MX* matches, these are also sanctioned since the teams of the *LIGA MX* and *ASCENSO MX* play in such matches; however, for these particular cases, the Committee holds session on Thursday since the matches are played on weekday.

With regard to the Second and Third Division matches, the Disciplinary Commission holds session on Tuesday for the purpose of sanctioning the infringements committed on the corresponding matches of such Divisions.

Both the Disciplinary Commission and the Disciplinary Committee evaluate approximately 186 referee's match reports per week and around 45 match commissioner's reports.

The powers and duties of the Disciplinary Commission are defined in three sets of rules, namely:

1. The Federation Bylaws,
2. The FMF Sanctions Regulation and
3. The Code of Ethics.

In this regard, pursuant to Article 78 of the Bylaws, Article 2 of the FMF Sanctions Regulation and Article 36 of the Code of Ethics,⁸ the duties and powers of the Disciplinary Commission are set out as follows:

- a) To sanction any violation of the Bylaws, Code of Ethics, Regulations, resolutions issued by the General Assembly or the Executive Committee committed by Clubs, State Associations, Players and Technical Staff.
- b) To sanction any infringement committed by Technical Directors, Support Staff, Players and Referees during the official and friendly matches authorised by the FMF.
- c) To sanction the Affiliates non-compliance with the resolutions issued by the FIFA and the FMF Bodies as well as those issued by the Court of Arbitration for Sport (CAS).
- d) To sanction and implement the rules set forth in the Competition Regulations of the different Professional Leagues and Divisions, as well as the Sub 20, Sub 17, Sub 15 and Sub 13 Junior Team Sector of the *LIGA MX*.

With regard to the infringements of the FIFA Code of Ethics, there is an Ethics Committee composed of an investigative body and a decision-making body, which are responsible for resolving such matters.

In the case of Mexico, the Disciplinary Commission itself is the one in charge of being informed of and addressing infringements of the Code of Ethics, unlike FIFA.

⁸ Available at www.femexfut.org.mx/#/reglamentos/Generales to refer the Code of Ethics.

With respect to the Appeal Commission, in accordance with the provisions of Article 9 of the Regulations that govern its proceedings, it is composed of seven members who are appointed by the Federation Executive Committee.

It is important to mention, in this respect, that for the purpose of the issued resolutions to be valid, at least 3 of its members shall attend to the meeting, and prior to the meeting the members shall appoint, from among the attendees, a president, a secretary and a board member.

The president appointed in such meeting shall be entitled to have the casting vote in case of a tie in the voting carried out in order to resolve an appeal. The secretary shall draw up the minutes of the meetings as well as the resolutions issued, and the board member shall only be entitled to vote for or against.

When the members of the Commission were not able to hold physical meetings at the FMF offices, there's the possibility for such meeting to be held by phone to know their decisions and issue the corresponding resolution.

The Appeal Commission shall be aware of the complaints submitted by the Affiliates against the Disciplinary Commission resolutions, or against the body that considers it as an appeal.

In accordance with Articles 2, 3 and 4 of the provisions of the Sanctions Regulation, its duties are described as follows:

- a) It is intended to be informed of, evaluate and resolve the appeals submitted as a last resort by the FMF affiliates, provided that they deem themselves aggrieved by the resolution or decision of the Disciplinary Commission or any other body that considers it as an appeal.
- b) Perform its duties in a totally autonomous and independent manner and, properly aware of such matter, it shall elaborate, revoke, modify or set aside the appeal; however it shall not revoke, set aside, or modify in any way the resolutions issued by the FIFA bodies and the Court of Arbitration for Sport (CAS).
- c) Its resolutions shall be mandatory compliance for the parties involved in the dispute and shall only be appealable against the CAS.
- d) Its proceedings comply with what is set forth in its own Regulations, the Code of Ethics and Sanction Regulation.

That said and pursuant to Article 8 of the Appeal Commission Regulations, it shall not acknowledge appeals against:

- a. The first yellow card;
- b. Indirect expulsions that were not the result of a manifest error;
- c. Match suspension sanctions that were not the result of a manifest error;
- d. Fines.

The fines resulting from the imposition of yellow or red cards shall follow the resolution of the appeal, that is, they will be disposed of in the event of the dismissal of the sports sanction.

It is important to mention that a Club that wants to file an appeal shall pay USD \$3,000.00.

7. *Disciplinary Procedures*

This Disciplinary Commission has three disciplinary procedures, namely:

- Match day monitoring;
- Manifest error;
- Investigation procedures.

7.1 *Match day monitoring*

Regarding the first procedure, we will explain how the Commission works match day by match day.

Let us imagine that there was a match on Day 1 of the 2017 Torneo Clausura; once this match is over but before leaving, the referees make use of a comprehensive platform whereby they make a record of all the yellow and red cards – if any –, as well as of the incidents occurred during the match.

These reports are sent through a digital card to both the Disciplinary Commission Management System (a system created so that the Disciplinary Commission imposes sanctions to the infringements committed by the FMF affiliates) and the Clubs that were part of the match.

In that way, the latter can verify the reported data and facts, and, if they notice any manifest errors (we will explain this point later), they have the right to submit a complaint for manifest error to the Disciplinary Commission before 13:00 on Monday following the regular match day, since the Disciplinary Commission must evaluate the match day based on the referee's match reports and the match commissioner's reports, which are considered to constitute a true and faithful document, unless proven otherwise, pursuant to Article 74 of the Sanctions Regulations.

Along this line of thinking, once the referee sends the report, and assuming there were yellow cards, the Disciplinary Commission Management System carries out the automatic count of cards that, by regulations, the player has up until that moment.

The members of the Disciplinary Commission are under the obligation to verify the monitoring of the player's cards that the System itself had already delivered automatically.

The aforementioned is necessary since, if a player has 5 yellow cards, he is subject to a match suspension; however, if a player does not receive a yellow card for 2 consecutive matches, one card is taken out from his report. Likewise, the system automatically detects when a club is infringing a rule, for example, if a club has more than 4 cautioned players within the same match, the system detects this and imposes the corresponding sanction pursuant to the Sanctions Regulation and the UMA⁹ cost corresponding to that year.

⁹ Unit of Measure and Update (UMA) is the economic reference in pesos to determine the due amount to comply with the payment of obligations and assumptions as provided in the federal

With regards to the red cards, the Disciplinary Commission analyses the video of the move that resulted in an expulsion so that it can determine the number of match suspensions.

Likewise, the match commissioner and the referee upload to the system their reports and the Disciplinary Commission has the obligation to check all the reported incidents, since, in the event of an infringement, the Disciplinary Commission must submit the corresponding causal so that the Disciplinary Commission Management System establishes the amount and/or sanction that shall be imposed to the offender Club.

Subsequently, the Disciplinary Commission must authorise the disciplinary report for each Club so that the Disciplinary Commission Management System notifies the Clubs. These, in turn, receive the official sanctions report in which the committed infringements are detailed and, thus, the sanctions that result from them, that is, for instance, if a Club had 4 yellow cards and each yellow card equals to a 10 UMAs sanction, the Club receives the official report in which the reason why they received a yellow card is described and the total amount due by the Club is determined.

Along that same line of reasoning, when a match day is over, the Disciplinary Commission publishes the disciplinary report on the FMF webpage in order to show the cards every player received during that match day and the corresponding sanctions imposed to the Clubs, obviously, only of the match they played, from every branch of the FMF.

Once the procedure called “match day monitoring” is complete, and as we already mentioned, if a Club disagrees with what was reported on the referee’s match report or notices a serious infringement that wasn’t reported, it may petition the Disciplinary Commission via any of the following actions: a complaint for manifest error and/or a complaint upon request of the interested party. Furthermore, the Disciplinary Commission, under the powers granted by Articles 73 and 75 of the Sanctions Regulation,¹⁰ is entitled to open *ex officio* investigations, as we will see hereinafter.

7.2 *Manifest error*

It should be noted that the FMF adopted the concept of manifest error from Article 77 of the FIFA Disciplinary Code whereby it grants the competent authorities the power to rectify any mistakes in calculation or any other manifest errors at any time, leaving it to the interpretation of the sanctioning body.

However, the Sanctions Regulation, in its Article 75, does give the definition of manifest error, which is defined as an error that is ostensible, obvious and undeniable, without further reasoning needed. Nonetheless, a manifest error

laws, the states and Mexico City’s laws, as well as in the legal provisions pertaining thereto. The current value of the UMA is 75.49 Mexican pesos, that is, 3.70 USD, approximately.

¹⁰ See Articles 73 and 75 of the Sanctions Regulation.

shall only be considered as such when it is proven that the referee, as a result of a mistake, has sanctioned the wrong player with an expulsion or has taken a wrong decision that is obviously serious with regards to an expulsion given by means of a direct and/or indirect red card.

Along this line of thinking, if the Club submits a complaint for manifest error, it forwards a brief to the Disciplinary Commission arguing why it considers it is a manifest error, and provides evidence that supports this, be it video, photographs or any thing else. Subsequently, the Commission analyses both the play and the brief submitted by the Club in order to determine whether it is appropriate or not, and notifies its decision to the Club.

In the case it is appropriate, the sanction is set aside, otherwise, the sanction remains and in both cases the Club is notified.

7.3 *Investigation procedures*

As already mentioned earlier, there are two investigation procedures, namely, *ex officio* or upon request of the interested party.

Along that same line of reasoning, we will first address the infringements that result when the Disciplinary Commission opens an *ex officio* investigation.

7.3.1 *Ex officio investigation*

As a general rule, the Disciplinary Commission will open an *ex officio* investigation when the following infringements are committed:

- *Incorrect alignment* – Participation of a player or technical staff that is not registered or is suspended.
- *Serious infringements not seen by the referees* – These are classified as “serious infringements” when they call for expulsion, for example, spitting on an opponent or any other person.
- *Violent behaviour not seen by the referees* – A player will be guilty of violent behaviour if he uses excessive force or brutality against an opponent when no challenging for the ball.
- *Showing slogans or unauthorised advertising* – Players are not allowed to show political campaign images, political or religious messages.
- *Accept gifts* – To offer gifts in cash or in kind in order to receive a benefit from a third party.
- *Engaging in excessive or inappropriate celebrations* – Players that celebrate a goal or winning a match with inappropriate, offensive or unsporting gestures towards their opponents or the general public.
- *Riots or serious events, contrary to the safety regulations outside the Stadium that hadn't been noticed by the officials* – All of those that jeopardise spectators safety.

- *Deceiving the referees pretending having received a foul within the penalty area or scoring a goal with the hand* – The purpose of this provision is for the players to respect the fair play and to avoid behaviour that goes against honesty, ethics and integrity.
- *Public statements* – When an affiliate makes a public statement that damages, disrespects, defames or offends the FMF or its affiliates.

It is worth mentioning that regarding showing slogans or unauthorised advertising as well as engaging in excessive celebrations, from a very particular point of view, these do not constitute a serious infringement which investigation should be opened *ex officio*, since these do not jeopardise the match nor the safety of those involved.

That said, when the Disciplinary Commission becomes aware of any of the above-mentioned infringements, either by means of social media, newspapers, television or any other media, it will notify the responsible Club about the opening of an *ex officio* investigation. The Club is granted the right to a hearing to state its case as well as to provide the corresponding evidence in order to support such statement.

Likewise, the Disciplinary Commission shall determine the corresponding sanction within 48 hours of having knowledge of the facts that gave rise to the infringement; however, it has the authority to extend such term period when, in the light of the nature of such facts, a further investigation is required, but not exceeding 15 business days.

To illustrate the above, we will mention the case of the player Diego Martín Novaretti, from Club León, against the player Hirving Rodrigo Lozano from CF Pachuca, in the match of the day 02 of the 2017 Closing Tournament, in which, the former spat on Hirving Lozano without neither the referee nor the match commissioner reporting it in their respective reports.

Once the corresponding investigation was carried out and the Disciplinary Commission heard both parts' statements, it determined that Diego Novaretti had indeed spat on Hirving Lozano. Therefore, the Commission sanctioned him with 6 match suspensions and a fine.¹¹

7.3.2 *Upon request of the interested party*

Regarding investigations initiated upon request of the interest party, the Clubs, an FMF body, or a Professional Division may request to initiate an investigation due to the events that occurred before, during and after a match which infringe the following provisions and that hadn't been noticed by the referees and/or the match commissioner:

- To sanction the violent behaviour of a player that wasn't noticed by the referee and/or the match commissioner and which the Disciplinary Commission deems to have been indeed committed.

¹¹ www.femexfut.org.mx/#/Noticia/16441.

- Shall have the right to know the serious cases in which the individuals subject to this Regulations, particularly the supporters' groups, are involved and whereof neither the referee nor the match commissioner were aware of, but of which the Disciplinary Commission knows for a fact that such cases occurred before, during and/or after the match; furthermore, these events are beyond the scope of the referee's disciplinary decisions during the 90-minute match within the field of play.
- In the cases of injuries committed by and among players, pursuant to article 24 by the Sanctions Regulation.

As an example of the aforementioned, there is the case of the players Jair Pereira, from CD Guadalajara, and Jonathan Fabbro, from Jaguares de Chiapas; both of them jumped on a move and when they fell, the former elbowed the latter breaking his nose; this event was not noticed by the referee or the match commissioner. Therefore, Jaguares de Chiapas requested the initiation of an investigation against the Guadalajara player.

After analysing the videos and the evidence submitted by the parties, The Disciplinary Commission sanctioned the Guadalajara player, Jair Pereira, with a two match suspensions for violent behaviour.

It should be noted that, in the event that a Club is dissatisfied with the determination taken by the Disciplinary Commission, the Club may lodge an appeal to the Appeal Commission.

8. *Failure to comply with the sanctions imposed*

Throughout this analysis we have already seen the powers, duties and sanctions that the Mexican judicial bodies have and are entitled to impose. However, none of this would make sense if there wasn't a coercive power by which affiliates are legally bound to comply.

As a result of this, and as we have already discussed, the disciplinary body may impose sporting or economic sanctions. The former are those imposed for the purpose of preventing the offender from taking part in any sporting and/or administrative activity resulting from infringement of any article, for example: match suspension, disqualification, disaffiliation, transfer ban, among others. The latter are financial penalties and the most common example of these is a fine.

But, what would happen if the infringer fails to comply with the sanction imposed?

Along this line of thinking, it is important to note that the FIFA Disciplinary Code, in its Article 64, establishes certain procedures in the event of failure to comply with the decisions, which, for reference purposes, are presented hereunder:

“Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS

appeal decision (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision):

- a) will be fined for failing to comply with a decision;*
- b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;*
- c) (only for clubs): will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced;*
- d) (only for associations) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, further disciplinary measures will be imposed. An expulsion from a FIFA competition may also be pronounced”.*

On this particular point, and as a result of the obligation imposed by the Article 146 of the FIFA Disciplinary Code, whereby the member associations must adopt the Disciplinary Code provisions, the FMF has included such provision in the Article 14 of its Sanctions Regulation.

Nevertheless, the FMF, in order to bind the affiliates to comply with the resolutions issued by the judicial bodies, has implemented another procedure – set forth in each of the *LIGA MX* and Divisions Competition Regulations – that, from the author’s point of view, is more effective. Its purpose is, regarding financial resolutions and/or sanctions, to bind the Clubs to comply with such resolutions, otherwise they will not be allowed to participate in any Tournament they should be part of unless they pay in time their financial obligations to the FMF, the LIGA or the CCRC; and the same applies for the Final Stage and the Transfer System, therefore, the affiliates are free to choose any of the two above mentioned procedures, and in all the cases they have chosen the one implemented by the FMF.

Likewise, the players or the technical staff that are in debt to any Club duly registered in the FMF are obliged to pay such debt, otherwise they won’t be able to register; the foregoing is supported by Article 27 of the LIGA MX Regulations Season 2016-2017.¹²

As a result of this, the Clubs are aware of the three moments when they must comply with their financial obligations, which are:

¹² Available at <http://ligamx.net/cancha/reglamentos#competencia> to refer the LIGA MX Competition Regulations.

1. Before the start of the Tournament;
2. Before the start of the Final Stage;
3. Before the Players Transfer System is done.

To illustrate the foregoing, let us imagine a hypothetical example in which a Club does not pay one of its players his salary once the 2017 Torneo Clausura starts, consequently, the player files a claim to the Conciliation and Dispute Resolution Board since this is the body responsible for the resolution of disputes among affiliates.

Subsequently, such Commission resolves that the Club must pay the accrued salaries of the player, so if the Club qualifies for the Final Stage, it would not be allowed to take part until it pays the amount due to its player.

This procedure provides security and certainty to the creditor to enforce the collection of the amount due laid down in the resolution within a period no longer than 4 months.

It is important to mention that a player and/or technical staff member may also be subject to financial sanctions, for example, in the case a player makes offensive or insulting hand gestures, gestures or behaves inappropriately towards the audience, the Sanctions Regulation states that an sporting sanction from 1 to 3 match suspensions and a fine from 90 to 500 UMAs (357 to 1986 USD) shall be imposed.

But what would happen if such player fails to pay the fine?

In order to prevent such situation from happening, the Sanctions Regulation, in its article 7, states that the Clubs shall be jointly and severally liable for the fines imposed to both players and members of the technical staff and/or officials, in other words, if the player doesn't pay the fine, the club is responsible for paying it.

9. *Infringements*

The infringements specified in the FMF Sanctions Regulation tend to be more detailed and specific with regards to the sanction imposed to the infringer, as compared to the FIFA Disciplinary Code.

In this section we will see some of the infringements set out in the Sanctions Regulation and their corresponding penalty.

9.1 *Laws of the Game*

Now we will proceed to explain the infringements of the Laws of the Game which, in compliance with the FMF Sanctions Regulation, are divided into "minor", "serious" and "other infringements"; additionally, such infringements have been classified for players, technical staff and referees.

As for the first ones, that is, the "minor" infringements, the Sanctions Regulation states that these are the ones cautioned by the referee with a yellow card, for example:

- Delaying the restart of play;
- Dissent by word or action;
- Failure to retreat the required distance when play is restarted with a corner kick, free kick or throw-in;
- Unsporting behaviour.¹³

As it has been previously explained, once the Disciplinary Commission Management System has received the referee's match report, it automatically counts the yellow cards that the referee has imposed as a sanction during the match and estimates the amount due to pay by the Club for the yellow card(s); such amount may be from 30 to 200 UMAs (119 to 794 USD) for each card, according to the seriousness of the infringement.

It is important to mention that the first yellow card is immovable, and the decision could only be modified in case the wrong player has been sanctioned.

As for the sanctions classified by the Sanctions Regulation as "serious", these are the ones that lead to an expulsion, whether it is direct or indirect, and that the regulation itself has defined them with the applicable sanction, for example, when a player is guilty of violent behaviour, this being understood as when a player uses excessive force or brutality against an opponent when no challenging for the ball, the Sanctions Regulation states that the applicable sanction to such player is from 1 to 3 match suspensions and from 90 to 1000 UMAs (357 to 3,973 USD); therefore, the Disciplinary Commission must analyse the corresponding video and this way it will have enough criteria to determine the applicable sanction depending on the move.

Along this line of thinking, the Sanctions Regulation has a list of serious infringements, some of which, for reference purposes, are listed as follows:

- Serious foul play: from 1 to 2 match suspensions and a fine of 90 to 500 UMAs (357 to 1,986 USD).
- Violent conduct: from 1 to 3 match suspensions and a fine of 90 to 100 UMAs (357 to 397 USD).
- Spitting on a player or a member of the technical staff of their own Club or the opponent Club, official or spectator: at least 6 match suspensions and a fine of 450 UMAs (1,787 USD).
- Disrespecting or insulting the FMF and the *LIGA MX/ASCENSO MX* authorities or the managers of the affiliate Clubs or the attending audience: from 1 to 3 match suspensions and a fine of 90 to 1,500 UMAs (357 to 5959 USD).
- Entering the field of play to insult the players or match officials: from 1 to 3 match suspensions and a fine of 90 to 500 UMAs (357 to 1986 USD).
- Attacking a spectator that bursts into the pitch without engaging in the game or starting a brawl: from 1 to 6 match suspensions and a fine of 18 to 450 UMAs (71 to 1787 USD).

¹³ The whole list of infringements is contained in Article 15 of the Sanctions Regulation.

- The player biting another player on any part of the body shall be liable to a sanction of 6 match suspensions and a fine of 500 UMAs (1986 USD).¹⁴

It is important to mention that the Sanctions Regulation provides for sanctioning both the aggression and the attempt of aggression, since, even though the aggression is not committed as such, any attempt to hit or to engage in any physical contact with the intention to cheat or to cause any damage shall be punished, since that infringes the fair play.

Now we will discuss other serious infringements that the Sanctions Regulation has classified as “Other infractions”, and these are:

- *Brawls*: When a player engages in a brawl, he shall be liable to 3 to 6 match suspensions and a fine of 700 to 2,000 UMAs (2,781 to 7,946 USD), being understood by brawl as the dispute among 3 or more players and/or technical staff and/or officials of each Club that hit or kick each other. As it was mentioned before, the Disciplinary Commission will have to check the referee and the match commissioner’s match report, then, analyse the video and finally determine the applicable sanction to each player involved in such brawl; for example, the player that started the brawl shall be subject, necessarily, to a greater punishment than the rest of the players, furthermore, the players that engage on the brawl for the sole purpose to separate those involved, will not be punished.
- *Deceptions*: As it has been mentioned in the introduction herein, the FMF, concerned for the proper observance of the fair play, has put particular emphasis on this kind of infringements since it is a deeply-rooted bad habit among players all over the world to pretend or fake a foul in order to take advantage of something that didn’t actually happen, hampering the work of the referees. That is the reason why the FMF has deemed important to provide in the Sanctions Regulation, sanctions for the players who try to deceive the referees, being understood by deception as the situation in which a player pretends or fakes a foul or an injury and/or handles the ball, such player will be subject to a sanction of one match suspension and a fine. The Sanctions Regulation establishes 3 assumptions that should be met to constitute a deception, and these are:
 - a) If the deception confers a direct benefit upon the player’s Club on the final score of the match, the player shall be sanctioned with 1 match suspension and a fine of 90 to 300 UMAs (357 to 1,191 USD).
 - b) If the deception took place in any part within the field of play, provided that the simulation leads to an expulsion, the first time the player commits such infringement, he will be sanctioned with a fine; however, if the player repeats such infringement, he will be sanctioned with one match suspension and a fine.

¹⁴ In case you want to check the whole list of infringements, please refer to Article 17 of the Sanctions Regulation.

c) If a player handles the ball and by doing so he scores a goal easily, he shall be sanctioned with one match suspension and a fine.

It is important to mention that the Disciplinary Commission has the authority to prosecute these *ex officio* infringements, furthermore, it has constantly sanctioned them.

- *Injuries during the match*: As it is generally known, there are some players in every football team that get cautioned constantly. These are, usually, the most destabilising members of the team and their opponents may take advantage of such cautions to “soften them up”. As a result of this, the FMF has implemented a procedure to protect the players’ integrity by which, if a player gets injured due to an infringement committed intentionally, wilfully and with malice aforethought by another player, the Club to which the injured player belongs to may seek for a ban to the infringer player. If the Disciplinary Commission carries out an investigation and deems it appropriate, it will ban the infringer player from playing until the injured player is fully recovered.
- *Gifts in cash or in kind*: As in any league worldwide, there is the possibility of people trying to bribe players, technical directors or referees. Hence, if the Disciplinary Commission proves that a player, a technical director or a referee has accepted a gift to affect the match result, it shall recommend the applicable sanction to the FMF General Assembly, which might even be the disaffiliation of the perpetrator.
- *Incorrect alignment*: In general terms, the incorrect alignment occurs when: a player or a technical member is not registered according to the regulations; is not registered in the formation sheet; is suspended and yet decides to participate; does not deliver the formation sheet with the minimum of registered players; the number of foreign players is greater than the amount allowed; doesn’t respect the formation conditions provided in every competition regulation.¹⁵

Now, as it was mentioned at the beginning of this section, the Sanctions Regulation has a chapter devoted to the infringements committed by the members of the technical staff and the referees.

With regards to the infringements committed by the technical staff, the Sanctions Regulation divides them into: a) Unsporting behaviour and b) Aggressive behaviour.

Regarding the unsporting behaviour of the technical staff, the Sanctions Regulation provides a list of 25 infringements classified as unsporting behaviour, however, we will cover just a few of them for reference;

- Deliberately leaving the technical area without the referee’s permission.
- Threatening match officials in the pitch, entrances, halls or dressing rooms before, during and/or after the match.
- Deliberately entering the field of play to insult the players or the referees.

¹⁵ The complete Incorrect Alignment section is contained in Article 28 of the Sanctions Regulation.

- Commanding the technical staff and the substitute players to leave the bench before the match ends, except for the players that have been sent off or substituted.
- Using abusive and offensive hand gestures, gestures or behaviour towards the audience, players or members of the technical staff.¹⁶

With regards to the Aggressive behaviour section, the Sanctions Regulations defines aggression as the deliberate act that is intended to harm or attack by means of: a) punching or hitting using hands, feet, knees, elbows or the head; b) throwing, charging, or violently shaking someone by the neck, the hair or any other part of the body, and c) stepping on the opponent when no challenging for the ball.

In this frame of mind, we can find in Article 33 of the Sanctions Regulation the infringements classified as aggressive behaviour by the technical staff, which implies a greater sanction than the unsporting behaviour infringements. Some of them are as follows:

- Attacking an official inside the pitch, field of play, halls, tunnels, entrances or dressing rooms, etc.
- Attacking an authorised individual by the Club to enter to the pitch, regardless of his/her role, before, during and/or after the match.
- Responding to an aggression.¹⁷

As to the infringements committed by the referees, although it is true that the referees are the highest authority in a football match, the fact remains that such authority body is not without risk of committing an infringement, be it through action or omission, for example:

- Disrespecting the players, technical staff and authorised personnel in order to be in the field of play.
- Accepting gifts.
- Faking aggressions committed by the public.
- Using offensive hand gestures and gestures that affect the reputation of the FMF affiliates.
- Not sending the corresponding referee's match report within 45 minutes right after the match ends, for reasons attributable to them.

In general terms, the infringements and omissions committed by the referees that were mentioned above, shall be sanctioned with referee suspensions, fines and even definitive disaffiliation – in the event of accepting gifts.¹⁸

¹⁶ The complete list of Unsporting Behaviour by the technical staff is contained in Article 32 of the Sanctions Regulation.

¹⁷ The complete list of Aggressions by the technical staff is contained in Article 33 of the Sanctions Regulation.

¹⁸ Article 44 of the Sanctions Regulation.

9.2 *Disorder at matches and competitions*

Regarding this subject we will mention that the Sanctions Regulation provides which are the Clubs' responsibilities. The Regulation imposes two main obligations:

- Upon the supporters and the away sector of the stadium.
- Upon the pitch and the field of play.

With respect to the first point, the Article 50 provides that the Clubs, in order to keep order in the stadium where the match is taking place, among other things, are bound to count on the necessary police force and private security during the match.

Moreover they must make sure the away sector of the stadium is not overcrowded and that beverages are sold without crushed ice, in tinsplate cans, or glass bottles that might cause damage. Finally, they have to count on the necessary staff to carry out inspections to the general public.

Clubs that fail to comply with these provisions are sanctioned with a subpoena and/or a fine of 200 to 3,000 UMAs (795 to 11,920 USD), or even with a stadium veto.

Now, as to the supporters overcrowding, the Disciplinary Commission, for the purpose of determining if there was an infringement, shall consider the information on the match commissioner's match report which might report on, among other things, when the stairs, halls or tunnels are not being clear or when there are more spectators in a particular area of the stadium than those allowed by its capacity. If the Disciplinary Commission determines that there was overcrowding, the Clubs will be fined for the resulting amount from multiplying the average price of the match ticket at issue by the estimated number of over-sold tickets.

On the other hand, article 51 of the Sanctions Regulation provides that the Club is responsible for the inappropriate behaviour of the supporters' groups and the general public attending to the stadiums.

This article provides what is considered as an inappropriate behaviour, among others:¹⁹

- Riots;
- Throwing objects to the stand, pitch or field of play;
- Violent acts against people, facilities and/or property;
- Use of sparklers, fireworks or any of the kind;
- Displaying offensive banners;
- Use of umbrellas, toilet paper, rags, T-shirts, banners.

Sanctions on a local Club for inappropriate behaviour include a subpoena and/or a fine of 200 to 2,000 UMAs (795 to 7,947 USD), or even a stadium veto; in the event of more serious situations, the fine might increase up to 4,000 UMAs (15,892 USD).

¹⁹ See Article 51, available at website: www.fmf.mx/#/reglamentos/Generales.

For such cases, if the Disciplinary Commission fully identifies the supporters of a specific Club as the responsible ones for behaving inappropriately, it shall impose the corresponding sanction to the Club regardless of the being the home or away team.

Furthermore, Article 52 of the Sanctions Regulation establishes a ban of ticket sale to supporters' group, hence, the local Clubs that negotiate, facilitate and/or sell unauthorised tickets to supporters' group shall be sanctioned with a fine of 2,000 UMAs (7947 USD).

Now, with regards to the pitch and the field of play, in accordance with article 53 of the Sanctions Regulation, the affiliated Clubs are bound to comply with the provisions regarding this matter. Some of these obligations include:²⁰

- Making proper use of the big screens and/or the sound system.
- Having protective tunnels for the entry and exit of the players.
- Not delaying the start of the first half or the second half for any reason.
- A Club shall be sanctioned if the public within its stadium is reported for attacking the referees, match commissioner, players, managers, technical staff, officials in the stadium facilities, tunnels, dressing rooms and parking lots within 3 hours after the ending of the match.
- The manager of any Club that enters to the field of play, pitch and/or dressing rooms for the purpose of trying to attack or attacking the referees, the match commissioner, players, etc. shall be sanctioned.
- Smoking in the field of play, pitch, tunnels, halls and technical area is forbidden.

Clubs that infringe the provisions of this section shall be sanctioned with a subpoena and/or fine from 50 to 3,000 UMAs (198 to 11,920 USD), or even with a stadium veto. In the event of a more serious situation, the fine might increase up to 4,000 UMAs (15,892 USD) as determined by the Disciplinary Commission.

9.3 *Offensive and discriminatory behaviour*

Regarding the discriminatory behaviour, the Sanctions Regulation includes a special section called "Racism and Discrimination" – Appendix III – which provides in its articles the sanctions that shall be imposed to those who publicly humiliate, discriminate or outrage another person, sing offensive racist songs, insult, shout or display offensive signs, flags, among others, or act in a way that constitutes an affront to human dignity on the grounds of race, colour, language, religion or ethnic origin.

It is also important to mention that such section includes more severe infringements, compared to the rest of the sanctions provided in the Regulation; the foregoing has its basis on the fact that racism is a serious offence not only in the sporting field but also in the social context.

²⁰ See Article 51, available at website: www.fmf.mx/#/reglamentos/Generales.

Once the corresponding investigation is carried out, the Disciplinary Commission may impose sanctions to those individuals who commit an infringement for racism or discrimination, and, depending on the seriousness and circumstances of such infringement, such sanctions might include match suspensions, fines, ban from entering the stadium, deduction of points and even relegation to a lower division.

Furthermore, the FMF Code of Ethics, in its article 6 forbids such practices.

“Any individual involved, directly or indirectly, with the FMF and/ or its members shall respect the dignity of any person and refrain from any discriminatory act on the grounds of gender, race, ethnic origin, nationality, political opinion, social class, wealth, religion, dialect or language, sexual orientation or disability”.

It is important to mention that the FMF, through the Disciplinary Commission, has launched some proceedings against its affiliates, being one of the most recent cases the one in 2015 in which the manager of a Club belonging to the LMX was sanctioned with 1 year of suspension and a fine for racist slurs against a player.

9.4 *Forgery and falsification*

With regards to this sub-section, we can say that this kind of infringements are set forth in the Sanctions Regulation, Chapter II “Infringements committed by players against the Laws of the Game” which provides that, among other things, in the event of any alteration, modification, substitution or falsification of a register issued by the FMF, this shall be deemed a violation.

Although it is true that such Regulation clearly establishes the sanctions that shall be imposed to the Club that commits this kind of infringements – which consist of the loss of the points won during the match and the result will be 3-0 in favour of the opponent’s team –, the fact remains that as for the actions of the players the Regulation is not clear. However, the Professional Third Division Competition Regulations clearly provides in its article 40 that in the event that a player alters or modifies the register issued by the FMF and therefore becomes part of the formation for an official match, it will be possible to submit an application to the FMF Executive Committee for the player’s disqualification for 2 years, and even for his disaffiliation, considering the seriousness and involvement of the technical staff in such event in order to determine the corresponding sanction.

Additionally, in accordance with article 84 of the Disciplinary Commission Bylaws, in the event that the infringement committed is not specified in any regulation, the Disciplinary Commission shall be entitled to impose the sanctions that it deems appropriate considering the seriousness of the infringement as well as the infringer’s past record, the circumstances in which the event took place and any other relevant evidence.

9.5 Corruption

As to this matter, both the Code of Ethics and the Sanctions Regulations consider two important notions relevant to corruption: the first one is bribery and the second one is gifts.

While the Sanctions Regulation does not include provisions regarding bribery and its corresponding sanction, we must remember that in accordance with the Code of Ethics the competent authority to enforce sanctions against bribery is the Disciplinary Commission, and in such Code the sanctions that may be imposed for this kind of infringement are set forth, which are: caution, warning, temporary suspension, expulsion, fine and/or community service.

Along this line of thinking, and with regards to bribery, the Code of Ethics expressly states that it is one of the most disgraceful activities in which an affiliate might fall into, hence affiliates must refrain from committing any act aimed at fixing the final result of a match or affecting a Club performance encouraging the defeat of a team in favour of the other in order to obtain a benefit, either on their own behalf or on behalf of a third party.

Furthermore, persons bound by the Code of Ethics must refrain from granting, giving or providing referees, commissioners, members and affiliates of the FMF with any kind of gift.

On the other hand, the Sanctions Regulation provides in two of its chapters information regarding gifts, whether these are in cash or in kind.

In this case, the Disciplinary Commission by virtue of its own office shall open an investigation in order to prove that a player, a technical director or a member of the technical staff has accepted any gift in cash or in kind from any individual for the purpose of affecting the result of a match; consequently, the Commission will recommend the applicable sanction to the General Assembly, which might even be the disaffiliation from the federated football of the perpetrator.

9.6 Doping

On doping matters, we will mention that it is expressly stated in the Code of Ethics, the Sanctions Regulation and in every LIGAS and Divisions Competition Regulations that doping is prohibited.

Doping infringements shall be sanctioned in accordance with the FIFA Disciplinary Code and the FIFA Anti-Doping Regulations, as it is expressly provided in the FMF Sanctions Regulation.

Now, with respect to the *LIGA MX* and based on the “Doping Prevention and Control Program”, randomized doping control tests are performed every match day of the Tournament during the qualifying stage.

This procedure is performed by choosing 2 *LIGA MX* matches and 2 *ASCENSO MX* matches, and from every Club 2 players are chosen, that is, 16 players per day will be subject to the doping control test.

As for the final stage of the corresponding Tournament, all the players taking part in it, without exception, will be subject to the doping control test.

In general terms, the procedure goes as follows:

- Once all the samples from the chosen players have been taken, these are sent to the laboratory accredited by the World Anti-Doping Agency (WADA).
- The *LIGA MX* will receive the results of such samples and in the event that an adverse analytical finding is reported for any of the chosen players, this shall be forwarded to the FMF Disciplinary Commission for its knowledge and corresponding follow-up.
- In accordance with the FIFA Anti-Doping Regulations, the Disciplinary Commission will open an investigation, granting right to hearing to the player that might have violated an anti-doping rule so that he has the chance to prove if there are specific or exceptional circumstances that may justify the corresponding sanction reduction.
- If the Disciplinary Commission finds that a violation of the anti-doping rule has been committed, it will determine a duly grounded resolution, subsequently proceeding to the imposition of a suspension period for the player.
- The Disciplinary Commission will notify the corresponding resolution to the player, his Club, the LIGA and/or Division authorities, the FMF authorities, the FIFA and the WADA; with regards to the FIFA, the extension of the sanctions to an international scope is requested since the violation to the anti-doping rule is deemed as serious.

Violations to the anti-doping rule are sanctioned with a period of ineligibility of 2 to 4 years, and even to lifetime ineligibility.

Finally, we should mention that in accordance with Article 82 of the Sanctions Regulation, the only competent body to hear appeals lodged against a doping sanction is the Court of Arbitration for Sport (CAS).

Conclusion

The Disciplinary Commission is an effective body in regards to the imposition of sanctions aimed at the affiliates fully compliance with the regulations issued by the Mexican Football Federation.

Undoubtedly, one of the main features of the Commission is its expeditiously resolution proceedings, since this provides meaningful security to the Federation affiliates not only within, but also outside the pitch.

The Conciliation and Dispute Resolution Board – which settles disputes among affiliates – together with the Appeal Commission – which acts as an appeal for the sporting decisions taken by the Disciplinary Commission – have helped in the development of a strong jurisdictional structure intended for providing transparency and certainty not only to the affiliates, but also to the supporters and all the people that enjoy football, both within and outside the pitch.

DISCIPLINARY PROCEDURES IN DUTCH FOOTBALL

by *Manfred Nan** and *Ninon Kok***

1. *Introduction*

The first few paragraphs provide the reader with the essential information concerning the legal framework of the Dutch football disciplinary procedures.

In particular, the authors, shall examine the general principles that apply to disciplinary proceedings in the Netherlands as well as the structure of the Royal Netherlands Football Association (the “KNVB”) and the applicable legal framework, including the Dutch implementation of the various regulations of FIFA. Specific sets of disciplinary regulations devoted to doping and sexual harassment will also be addressed.

The subsequent paragraphs carry more detailed information about the specific structure and procedures implemented within professional football in the Netherlands. The structure of the disciplinary bodies and their competences will be examined together with the responsibilities and sanctions for those who are subject to this disciplinary process. Particular attention shall be given to the relationship between ordinary law and sports regulations as well as to the enforcement of disciplinary measures.

Finally, an overview of the main issues and the benefits of the disciplinary process in the Netherlands will conclude the essay.

2. *General Principles*

No legal system can function properly without taking into account general principles of law. In the Netherlands, they are legally standardised.

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These public policy principles are often not written, rather abstract norms and values. Although often not explicitly defined, they form the legal basis for many other, written laws and regulations. They can be enforced in court. In the Netherlands, disciplinary law has its position in between civil law and criminal law.

On the one hand, disciplinary law is developed by the association itself, thus being the result of the KNVB's competence to lay down its own principal rules on disciplinary matters. On the other hand, it is still a system of law and justice and it is therefore important to establish a system that fits within the frame of those Dutch general principles of law.

The KNVB has incorporated these general principles in the "Reglement Tuchtrechtspraak Betaald Voetbal" (the "KNVB Disciplinary Regulations").¹ These Disciplinary Regulations are implemented by the General Assembly of the KNVB.² The General Assembly consists of all professional football club representatives and two representatives from the players.³ Amendments to the Disciplinary Regulations are approved by the General Assembly. As for amendments to provisions in the Disciplinary Regulations governing the exclusion of players from participation in matches and the eligibility to play, the players represented by the "Centrale Spelersraad" ("CSR") have a special right of approval.⁴

The principles applicable to the disciplinary procedure can be derived from the Disciplinary Regulations. It shall be noted that these Disciplinary Regulations are divided in rules for professional football and rules for amateur football. This chapter focusses on the rules for professional football.

Hereafter the most important principles that apply to the execution of Dutch law are set out. Each principle is linked with that specific Disciplinary Regulation:

- *The right to a fair trial*

Everyone has the right to a fair trial. This principle is laid down in Article 6, para. 1 of the European Convention on Human Rights (the "ECHR"). In the Disciplinary Regulations this principle is not mentioned explicitly but it influences the rules that design the procedure before the disciplinary bodies. For example, the suspect receives all the information that applies to his case, he is entitled to legal aid, he has the right to challenge a member of the disciplinary bodies etc.⁵

- *Separation of power*

The separation of powers means that the different legal bodies within the justice system are working independent from each other so that the case is dealt with separately by each organ. This principle is clearly reflected in the

¹ www.knvb.nl/downloads/bestand/5425/reglementen-betaald-voetbal-seizoen-2016-17 (24 March 2017).

² The General Assembly of the KNVB is dealt with in more detail below in para. 3.

³ Article 18 KNVB Regulations Professional Football.

⁴ Article 31 KNVB Regulations Professional Football. The CSR is dealt with in more detail below in para. 3.

⁵ See in this regard Article 41, 41A and 47 of the Disciplinary Regulations.

Disciplinary Regulations; each disciplinary body has its own, independent and sovereign responsibilities.⁶ Furthermore, the Disciplinary Regulations determine that membership of a disciplinary body is incompatible with membership of another disciplinary body.

- *The principle of reasonable and fair balancing of interests*

This principle covers the so-called subsidiarity and proportionality. Therefore, the disciplinary body is bound to seek an appropriate balance between the gravity of the violation and the severity of the sanction. Decisions creating a disproportional disadvantage must be avoided. In the Disciplinary Regulations, a separate chapter is devoted to providing guidelines regarding the sanctions to be imposed on a defendant in relation to several offences.⁷ Furthermore, more specific guidelines for offences that relate to players or officials and offences that relate to clubs are conscripted by the prosecutor. These guidelines are not incorporated in the Disciplinary Regulations, but are published and forwarded to the clubs by the KNVB.

- *Equality of arms*

The principle of equality of arms is applied in disciplinary proceedings before the KNVB, putting on the same level playing field the defence and the prosecutor, who have the same file and the same means to deal with a case. This principle is also included in Article 47 of the Disciplinary Regulations, stating that both the prosecutor and the accused party and/or his legal counsel receive a copy of the complete file before the hearing.

- *Equal treatment*

Similar cases are to be treated similarly. There is a clear connection with the principle of reasonable and fair balancing interests.

One way in which this principle is safeguarded is the fact that all disciplinary decisions are published on the website of the KNVB. This gives the members of the KNVB the opportunity to check if this principle is upheld.

- *Presumption of innocence*

The suspect is presumed innocent until proven guilty. This principle is mentioned in Article 6 of the ECHR and is a guideline for the criminal authorities and the justice system. It can be inferred from several provisions in the Disciplinary Regulations that this principle has been implemented. The main provision says that the suspect is not suspended until the prosecutor has directed him a settlement proposal for a sanction and the suspect has accepted this proposal.⁸ If the suspect does not accept the proposal, the case will be forwarded to the disciplinary committee and the suspect will

⁶ See in this regard for the prosecutor Article 9 of the Disciplinary Regulations, Article 12 for the Disciplinary Committee, and Article 15 of the Disciplinary Regulations for the Appeals Disciplinary Committee.

⁷ See in this regard Chapter VI of the Disciplinary Regulations and the Guidelines of the Disciplinary Regulations.

⁸ See in this regard Article 11, para. 2, sub a Disciplinary Regulations.

only be suspended after the disciplinary committee has decided to sanction the suspect.⁹

- *Nulla poena sine lege*

No sanction can be applied without a legal basis and laws cannot be applied retrospectively. In the Disciplinary Regulations this principle is laid down as such.¹⁰ The Disciplinary Regulations determine which acts are in violation of the Disciplinary Regulations and consequently can result in a sanction being imposed.

- *Ne bis in idem (double jeopardy)*

No legal action can be instituted twice for the same cause of action. Although the Disciplinary Regulations do not explicitly mention this principle, it is embedded in Dutch legal systems and as such will apply.¹¹

Should the disciplinary procedure of the KNVB not comply with the general legal principles set out above, there is a risk that a civil court may decide that the internal disciplinary procedures implemented by the KNVB cannot withstand the scrutiny of public policy and ordinary law.

The fact that the Disciplinary Regulations are made up in co-operation with the members of the KNVB results in a great degree of trust and support that is placed in the disciplinary procedure. This can be derived from the figures that state that more than 85% of the settlement proposals for sanctions are accepted by the prosecuted parties.

3. *The Association (structure and competencies)*¹²

The KNVB is a so called “association”, which means that it is controlled by its members. The structure and powers are discussed with a focus on professional football.

The KNVB was founded on 8 December 1889 and was first named “de Nederlandschen Voetbal- en Athletischen Bond” (“NVAB”), meaning the Dutch Football and Athletics Union. In 1895, the General Assembly decided that the athletics should become an independent department. So the football department was called “NVB”. The number of members expanded rapidly from 250 in 1889 to 65.000 in 1929. In that year, the NVB was awarded the title “Royal” thus being named “Koninklijke Nederlandse Voetbal Bond” (“KNVB”). The KNVB currently has over 1,2 million members and is the biggest sport association in the Netherlands.

The KNVB consists of two units: amateur football and professional football.

⁹ See in this regard Article 56, para. 3 Disciplinary Regulations.

¹⁰ See in this regard Chapter V Disciplinary Regulations.

¹¹ See in this context: Article 11, para. 2 Disciplinary Regulations.

¹² It shall be noted that during the process of writing this chapter, the KNVB is investigating its structure and governance for possible adjustments. This could affect the information provided in this paragraph.

Both units are represented by members of the KNVB in the assembly of the association (“bondsvergadering”), which is the highest body within the KNVB, where the clubs decide about the course of the KNVB as a whole.¹³

The board of the KNVB is responsible for the execution of the KNVB policy as a whole and is presided by the President of the association.

The secretary-general of the KNVB has *ex officio* access to the meetings of the board of the KNVB. The secretary-general assists the board of the KNVB in international matters and/or represents the KNVB in international matters, more specifically regarding representation at FIFA, UEFA, the EU or other international co-operations. Furthermore, the secretary-general is entrusted with those activities assigned to him by employment contract or otherwise by the board of the KNVB. The secretary-general is appointed, suspended and can be dismissed by the board of the KNVB.

The staff of the KNVB is organised in two business units that are directed by a Board of Directors. Each unit deals with its own business, relating only to the specific unit. Tasks and responsibilities are laid down in separate regulations of which the content must be approved of by its members.

The unit amateur football can be divided in the following bodies: Member Council, Supervisory Board, Board of Directors, Staff.

The Member Council is the equivalent body to the General Assembly for the members of the KNVB that represent amateur football. The Member Council is presided by the Supervisory Board of amateur football. The staff is instructed by the Board of Directors which consists of two directors and a secretary of the board. The staff itself is divided into three regional offices in Zeist, Zwolle and Eindhoven:

- The department that works from the main office at Zeist provides services for the Central and Western area of the Netherlands;
- The department that works from the office situated in Zwolle provides services for the Northern and Eastern area of the Netherlands;
- The department that works from the office situated in Eindhoven provides services for the Southern area of the Netherlands.

The main tasks of the unit professional football is to organise competitions of professional football, to organise international football of the Dutch representative teams and to provide support on these areas to the professional clubs. In order to accomplish this, the KNVB works closely together with the “Eredivisie Commanditaire Vennootschap” (the “ECV”), *i.e.* the First League, and the “Coöperatie Eerste Divisie” (the “CED”), *i.e.* the Second League.

The unit professional football consist of four bodies: General Assembly, Supervisory Board, Board of Directors, Staff.

The staff is situated in the KNVB headquarters in Zeist. This department is governed by four directors; one Director Professional Football, one Operational Director, one Marketing Director and one Financial Director. The Board of Directors

¹³ Article 20 Statutes KNVB.

is supported by the secretary of the Board of Directors, who is also responsible for the legal department of the KNVB.

The Board of Directors has to answer to the Supervisory Board professional football. The members of the Supervisory Board are appointed by the General Assembly. The Directors are appointed by the Supervisory Board.

As mentioned before, the KNVB is not the only organisation that plays a role in the professional football competition. The following stakeholders are important:

- The ECV, or the First League;
- The CED, or the Second League;
- The “Federatie Betaald Voetbal Organisaties” (the “FBO”), or the Federation of Professional Football Organisations, the external representative organisation of professional football clubs;
- The “Vereniging van Contractspelers” (the “VVCS”) and Pro-prof, or the representative organisations of professional football players.

The ECV

The ECV consists of the 18 clubs of the top flight league (“Eredivisie”). The main task of the ECV is the commercial exploitation of media rights and sponsorship rights for and on behalf of the Eredivisie clubs, as well as the branding of the Eredivisie. The ECV also promotes the interests of its member-clubs and represents them nationally and internationally. To this purpose the ECV is a member of the European Professional Football Leagues (the “EPFL”).

The CED

In 1993, the CED was established as the umbrella organisation of the clubs in the second tier of Dutch professional football (“Jupiler League” or “Eerste Divisie”) and serves the interests of these clubs in general, and in the common commercial interests of these clubs in particular. To this end, the CED is a party to the discussion for all stakeholders surrounding the professional first division clubs, such as the KNVB, the ECV and local governments.

The FBO

The FBO supports and promotes the interests of the professional clubs in social-economic, human resources and legal matters. The FBO has three core tasks: representation, advisory task and provision of information. To this purpose the FBO, amongst other things, guides clubs in arbitral and disciplinary cases before the KNVB, FIFA and/or CAS. The FBO also supports clubs with the drafting of contracts (transfer agreements, player contracts, etc.). The FBO also represents clubs in the realisation of the collective bargaining agreement (the “CBA”) for professional players and trainers. Finally, the FBO provides legal advice to the ECV and CED.

The VVCS

The VVCS is one of the two unions for professional football players. This union is a member of the FNV – one of the biggest employee unions in the Netherlands – and its goal is to support their members individually and collectively in labour matters and in social issues. The VVCS represents the professional players in

relation with other stakeholders in professional football, as well as advises players in employment matters.

Pro-prof

Pro-prof is also a union for professional football players. Its main goal is to represent its members in respect of social-economic and social matters as far as these arise directly or indirectly out of the employment relationship with the club. Pro-prof is, as well as the VVCS, a party to the CBA negotiations and participates also in the CSR.

The members of the KNVB play a large role in the decision-making process of the KNVB due to their voting power. Only members that have a licence to play professional football have a vote in the decisions that affect professional football.

The General Assembly consists of professional football clubs that compete in the Eredivisie and the Eerste Divisie and two appointed members of the CSR (the “CSR Representatives”).¹⁴ The General Assembly is presided by the chairman of the Supervisory Board.¹⁵ The professional unit currently consists of 34 clubs.¹⁶ The CSR consists of at least eight active professional players. Maximum one third of its members are non-players.¹⁷ The CSR represents the professional players in matters regarding the position of the players in professional football. To this purpose the CSR has an important vote in the general assembly.¹⁸ The CSR also has the right of consultation and the right of approval in respect of decisions regarding important changes or amendments of the regulations within the section professional football.¹⁹

Furthermore, the CSR has the right of approval regarding decisions to determine, change or withdraw regulations that relate to player contracts and transfer agreements and/or relate to the individual employment relationship between player and professional football organization.²⁰

This right of approval also concerns regulations that relate to the constitution, working method and competences of the CSR and the position of the player representatives at the general assembly.²¹

¹⁴ Article 18, para. 1 in conjunction with Article 1, para 4 of the KNVB Regulations Professional Football.

¹⁵ Article 18, para. 2 of the KNVB Regulations Professional Football.

¹⁶ Eighteen Eredivisie clubs, sixteen Eerste Divisie clubs; three youth teams playing in the Eerste Divisie (Ajax, PSV en Utrecht) and one amateur team in the Eerste Divisie (Achilles) do not have voting rights.

¹⁷ Article 25, para. 4 of the KNVB Regulations Professional Football.

¹⁸ See in this regard para. 3.3.3.

¹⁹ Article 27 and Article 31 of the KNVB Regulations Professional Football.

²⁰ Article 31, para. 1 sub a and b of the KNVB Regulations Professional Football.

²¹ Article 31, para. 1 sub c of the KNVB Regulations Professional Football.

4. *The Legal Framework*

As a member of FIFA and UEFA, the KNVB has to respect and abide by the statutes, regulations and decisions of the bodies of the FIFA and UEFA and has to supervise that these are observed by the bodies and members of the KNVB. Both FIFA and UEFA have their own disciplinary codes; the FIFA Disciplinary Code (“FIFA DC”) and the UEFA Disciplinary Regulations (“UEFA DR”). These regulations both find their origin in the FIFA and UEFA Statutes.

The KNVB is subject to both the FIFA DC²² and the UEFA DR.²³ However, these abovementioned regulations principally apply to specific matches and competitions. The FIFA DC *“applies to every match and competition organised by FIFA. Beyond this scope, it also applies if a match official is harmed and, more generally, if the statutory objectives of FIFA are breached, especially with regard to forgery, corruption and doping. It also applies to any breach of FIFA regulations that does not fall under the jurisdiction of any other body”*.²⁴ The UEFA DR applies to *“any breach of UEFA’s Statutes, regulations, directives or decisions, with the exception of any breach of the UEFA Club Licensing and Financial Fair Play Regulations which may be penalised by the Club Financial Control Body in accordance with the Procedural rules governing the UEFA Club Financial Control Body”*.²⁵ Furthermore, the UEFA DR stipulates that it applies to every match and competition organised by UEFA, e.g. the UEFA Europa League and the UEFA Champions League.²⁶

Implementing a domestic disciplinary framework and the execution of disciplinary regulations is left to the national associations, therewith taking into consideration the legal framework provided by UEFA and FIFA. However, UEFA and FIFA require for certain provisions of their own regulations to be implemented in the regulations of the national associations.

The structure of the KNVB regulations regarding disciplinary law is comparable with FIFA and UEFA regulations in the sense that it finds its origin in the Statutes. The KNVB Statutes provide a general overview of acts and omissions that are punishable, namely acts and omissions that are in conflict with the Statutes and Regulations of the KNVB, the decisions of its bodies, and the rules of the game that are declared applicable by the Executive Board and the Professional Football Executive Board and the Amateur Football Executive Board including the laws of the game.²⁷ Also, acts and omissions that affect the interests of the KNVB and/or her bodies and/or football in general are punishable.²⁸ Members

²² Article 3 of the FIFA DC.

²³ Article 3, para. 1 of the UEFA DR.

²⁴ Article 2 FIFA DC.

²⁵ Article 2, para. 1 UEFA DR.

²⁶ Article 2, para. 3 UEFA DR.

²⁷ Article 8, para.1 sub a of the KNVB Statutes.

²⁸ Article 8, para.1 sub b of the KNVB Statutes.

who commit such offences are subject to disciplinary law, in accordance with various regulations of the KNVB related to disciplinary matters.²⁹

Furthermore, the KNVB Statutes provide that the execution of disciplinary proceedings shall be in conformity with various regulations concerning disciplinary matters. Amongst these are the KNVB Regulations on Disciplinary Proceedings Professional Football (the “KNVB Disciplinary Regulations”).³⁰ Only the disciplinary bodies named in the afore-mentioned regulations are competent to impose sanctions in connection with the offences named in the respective disciplinary regulations, and to register warnings given by the referee.³¹ The disciplinary bodies themselves are competent to delegate jurisdiction in accordance with the respective regulations.³²

The legal framework concerning disciplinary matters does not only consist of the rules laid down in the KNVB Statutes, but is further set out in various regulations of the KNVB. The KNVB Regulations on Professional Football provide a general outline regarding the nomination,³³ the appointment³⁴ and incompatibility of positions³⁵ of the members of the KNVB Disciplinary Bodies. The KNVB Disciplinary Regulations further outline disciplinary matters in Dutch professional football. Not only the nomination of members and the composition of the KNVB Disciplinary Bodies³⁶ is set out, also competences and responsibilities,³⁷ various disciplinary offences,³⁸ the variety of disciplinary measures,³⁹ and procedure of disciplinary proceedings⁴⁰ is regulated.⁴¹ The competence of the Extraordinary Disciplinary Committee⁴² and the appointment of its members⁴³ is prescribed in the KNVB Regulations on Extraordinary Disciplinary Proceedings.

²⁹ Article 8, para. 2 sub a of the KNVB Statutes. Regulations of the KNVB that concern disciplinary matters are the KNVB Regulations on Disciplinary Proceedings Professional Football, the KNVB Regulations on Extraordinary Disciplinary Proceedings, the KNVB Regulations of Disciplinary Proceedings Amateur Football, the KNVB Doping Regulations and the KNVB Regulations on Central Disciplinary Proceedings on Doping, and the KNVB Regulations on Sexual Harassment and the KNVB Regulations on Central Disciplinary Proceedings for Sexual Harassment. See in this regard para. 4.2.2 with further references.

³⁰ Article 9, para. 1 sub a of the KNVB Statutes.

³¹ Article 9, para. 2 sub a of the KNVB Statutes.

³² Article 9, para. 2 sub b of the KNVB Statutes.

³³ Article 36 of the KNVB Regulations Professional Football.

³⁴ Article 33, para. 2 of the KNVB Regulations Professional Football.

³⁵ Article 35 of the KNVB Regulations Professional Football.

³⁶ Chapter 2 of the KNVB Disciplinary Regulations.

³⁷ Chapter 3 and 4 of the KNVB Disciplinary Regulations.

³⁸ Chapter 5 of the KNVB Disciplinary Regulations.

³⁹ Chapter 6 of the KNVB Disciplinary Regulations.

⁴⁰ Chapter 7-10 of the KNVB Disciplinary Regulations.

⁴¹ Specific rules on the appointment of members, composition, responsibilities and competencies of the disciplinary bodies of Professional Football and procedures of disciplinary proceedings within the KNVB will be explained into more detail in para. 6.

⁴² Article 4 in conjunction with Article 2, para. 1 of the KNVB Regulations on Extraordinary Disciplinary Proceedings.

⁴³ Article 5 and 6 of the KNVB Regulations on Extraordinary Disciplinary Proceedings.

Regarding doping related matters, the KNVB Doping Regulations regulate the substantive issues and the procedure in doping related matters, whereas the KNVB Regulations on Central Disciplinary Proceedings on Doping regulate the specific disciplinary bodies in doping related matters, such as competence and composition.⁴⁴

In matters related to sexual harassment, the framework is similar to doping related matters. The KNVB Regulations on Sexual Harassment outline the substance and the procedural structure of matters related to sexual harassment, whereas KNVB Regulations on Central Disciplinary Proceedings on Sexual Harassment regulate the specific disciplinary bodies in doping related matters, such as competence and composition.⁴⁵

5. Doping

The KNVB has adopted specific regulations for doping related matters. The KNVB Doping Regulations deals mainly with the offences, the prohibited substances and methods, enforcement issues, and various aspects of the disciplinary procedure (enforcement of the regulations, management of testing results, disciplinary proceedings, proof, sanctions, penalties and mitigation of penalties, appeal).⁴⁶ Specific disciplinary bodies, namely the Central Disciplinary Committee Doping in first instance and the Central Appeals Committee Doping in appeal are competent to adjudicate cases concerning doping.⁴⁷

The KNVB Doping Regulations are drafted in accordance with the World Anti-Doping Code (the “WADC”). Accordingly, many rules contained in the KNVB Doping Regulations find their equivalent in the WADC.

The anti-doping violations under the KNVB Doping Regulations are the same as the violations set out in the WADC. The applicable list of prohibited substances is always the updated list of prohibited substances by WADA and which entered into force.⁴⁸ For exemptions of doping offences, there shall be a valid exemption and there shall be acted in accordance with the requirements for exemption.⁴⁹ Further rules, requirements and restrictions concerning obtaining and validity of the exemption are contained in the Exemption Appendix.⁵⁰ The applicable list of prohibited substances shall be published on the KNVB website.⁵¹ Moreover, the KNVB shall inform the affiliated members on various subjects, *i.e.* on the prohibited substances and methods on the applicable list, the doping offences, the doping control procedure, rights and duties of the affiliated members, exemptions,

⁴⁴ See for a further outline of regulations on doping related matters para. 5.

⁴⁵ See for a further outline of regulations on sexual harassment related matters para. 6.

⁴⁶ KNVB Doping Regulations, edition 2017.

⁴⁷ KNVB Regulations on Central Disciplinary Proceedings on Doping, edition 2017.

⁴⁸ Article 13, para. 1 of the KNVB Doping Regulations.

⁴⁹ Article 14, para. 1 of the KNVB Doping Regulations.

⁵⁰ Article 14, para. 2 of the KNVB Doping Regulations.

⁵¹ Article 15, para. 1 of the KNVB Doping Regulations.

risks of supplements, health effects of use of prohibited substances and methods, and whereabouts-duties.⁵²

Enforcement of these KNVB Doping Regulations is effected by doping control testing, detection and investigation.⁵³ Doping control testing by the national Doping Authority is undertaken to obtain analytical evidence as to whether the respective player complied with prohibitions on presence or use of a prohibited substance or method.⁵⁴ Investigation is undertaken in relation to atypical findings and adverse medical passport findings, gathering intelligence or evidence (including, in particular, analytical evidence) in order to determine whether the respective player complied with prohibitions on presence or use of a prohibited substance or method, and in relation to other indications of potential anti-doping rule violations, gathering intelligence or evidence (including, in particular, non-analytical evidence) in order to determine whether any other anti-doping rule violation mentioned afore has occurred.⁵⁵ All affiliates are obliged to cooperate with doping control testing.⁵⁶ The KNVB, the national Doping Authority, an international federation which organises an event, the WADA, or any other organisation which has statutory or regulatory competence are entitled to execute doping control testing or to have doping control testing executed.⁵⁷

The national Doping Authority collects, assesses and processes information from all relevant sources, for the purpose of the execution of doping control testing and investigation to possible anti-doping rule violations. The International Standards for Testing and Investigations (the “ISTI”) further regulates the investigation.⁵⁸ The national Doping Authority investigates atypical findings, adverse medical passport findings and atypical medical passport findings. Adverse analytical results may lead to investigations to other anti-doping rule violations, committed by the subject of the investigations or others.⁵⁹ Furthermore, the national Doping Authority investigates all other analytical or non-analytical information or intelligence which indicate possible anti-doping rule violations.⁶⁰

Results management contains assessment of testing results, reports of possible anti-doping rule violations, information and intelligence of possible anti-doping rule violations, information from follow-up investigations and reanalyses, and information and intelligence from investigating authorities, public organisations, and Anti-Doping Organisations, as well as disciplinary prosecution in doping related matters.⁶¹ In principle, the Doping Authority is responsible for results management.⁶²

⁵² Article 15, para. 2 of the KNVB Doping Regulations.

⁵³ Article 16, para. 1 of the KNVB Doping Regulations.

⁵⁴ Article 16, para. 2 of the KNVB Doping Regulations.

⁵⁵ Article 16, para. 3 of the KNVB Doping Regulations.

⁵⁶ Article 17, para. 1 of the KNVB Doping Regulations.

⁵⁷ Article 17, paras. 3 and 4 of the KNVB Doping Regulations.

⁵⁸ Article 20, para. 1 of the KNVB Doping Regulations.

⁵⁹ Article 20, para. 2 of the KNVB Doping Regulations.

⁶⁰ Article 20, para. 3 of the KNVB Doping Regulations.

⁶¹ Article 21, para. 1 of the KNVB Doping Regulations.

⁶² Article 22, para. 1 of the KNVB Doping Regulations.

In this context, it assesses all adverse analytical results, atypical findings, other testing results and other (investigations concerning) possible anti-doping rule violations.⁶³

If the testing sample is divided in an A-sample and a B-sample, the subject has the right to analysis of the B-sample in the event of a positive A-sample.⁶⁴ The testing results, whether positive or negative, are communicated to both the KNVB and the subject.⁶⁵ Moreover, in case of an atypical finding, the Doping Authority shall assess whether an exemption is applicable or whether is deviated from the procedure of analysis of the samples or procedure of storage which led to the adverse analytical result.⁶⁶ A provisional suspension can be imposed on the subject in the event of a positive A-sample, unless the positive result concerns a specified substance and/or a contaminated product.⁶⁷ In such case, a provisional suspension can be imposed if there is a reasonable chance that the subject shall test positive again within short term related to (the preparation of) a match, competition or event, if the subject is likely to be imposed any period of ineligibility due to the anti-doping rule violation, or if the subject fails to submit to doping control testing or other rules of procedure for testing.⁶⁸ The national Doping Authority may propose the subject a sanction.⁶⁹

In principle, if the national Doping Authority finds that an anti-doping violation exists, the national Doping Authority reports to the Executive Board a reasoned notification in writing accordingly.⁷⁰ In accordance with Article 6 of the ECHR, disciplinary proceedings in doping related matters shall guarantee a fair hearing within a reasonable time by a fair and impartial disciplinary body or arbitration panel and a timely reasoned decision specifically including an explanation on the evidence, any deviation from standard period of ineligibility and the commencement of any period of ineligibility.⁷¹

The Executive Board or the national Doping Authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether an anti-doping rule violation can be established to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation.⁷² Evidence adduced by an affiliate who is alleged to have committed an anti-doping rule violation, shall be weighted by a balance of probability.⁷³

⁶³ Article 22, para. 2 of the KNVB Doping Regulations.

⁶⁴ Article 23, para. 1 of the KNVB Doping Regulations.

⁶⁵ Article 24, paras. 1 and 2 of the KNVB Doping Regulations.

⁶⁶ Article 25, para. 1 of the KNVB Doping Regulations.

⁶⁷ Article 26, para. 3 of the KNVB Doping Regulations.

⁶⁸ Article 26, para. 4 of the KNVB Doping Regulations.

⁶⁹ Article 27, para. 1 of the KNVB Doping Regulations.

⁷⁰ Article 29, para. 1 of the KNVB Doping Regulations.

⁷¹ Article 30, para. 1 of the KNVB Doping Regulations.

⁷² Article 33, para. 1 of the KNVB Doping Regulations. This standard of proof is in all cases greater than a mere balance of probability but less than proof beyond a reasonable doubt.

⁷³ Article 33, para. 2 of the KNVB Doping Regulations.

An anti-doping rule violation of more than three affiliates of the same team as a consequence of doping control testing in-competition, could lead to invalidation of match results.

In accordance with the WADC, the period of ineligibility for presence, use or attempted use or possession of a prohibited substance or prohibited method shall be four years where the anti-doping rule violation does not involve a specified substance, unless the subject can establish that the anti-doping rule violation was not intentional, or the anti-doping rule violation involves a specified substance and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional.⁷⁴ If the foregoing does not apply, the period of ineligibility shall be two years.⁷⁵ The term “intentional” concerns the intention to cheat. It requires that the subject engaged in conduct which he or she knew that it constituted an anti-doping rule violation, or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.⁷⁶ An anti-doping rule violation resulting from an adverse analytical finding for a substance, which is only prohibited in-competition, shall be presumed to be unintentional if the substance is a specified substance and the player can prove that the prohibited substance was used out-of-competition.⁷⁷ An anti-doping rule violation resulting from an adverse analytical finding for a substance which is only prohibited in-competition shall be considered unintentional if the substance is not a specified substance and the subject can establish that the prohibited substance was used out-of-competition in a context unrelated to sport performance.⁷⁸

For violations regarding failure to submit to sample collection and tampering with the doping control process, the period of ineligibility shall be four years unless, in the case of failing to submit to sample collection, the subject can establish that the commission of the anti-doping rule violation was not intentional, in which case the period of ineligibility shall be two years.⁷⁹

For violations concerning whereabouts failures, the period of ineligibility shall be two years, subject to reduction down to a minimum of one year, depending on the athlete’s degree of fault.⁸⁰ Factors which are to be taken into consideration are the level of experience of the involved player, the circumstance that the player was a minor at the time of the anti-doping rule violation, the risk of which the player should have been aware, the caution and diligence exercised by the player concerned with regard to what should have been the perceived risk, and special considerations such as a handicap.⁸¹ No whereabouts are currently performed by the national Doping Authority, but this might change as the national Doping Authority periodically evaluates its policies with the aim to adjust them.

⁷⁴ Article 37, para. 1 of the KNVB Doping Regulations.

⁷⁵ Article 37, para. 2 and 3 of the KNVB Doping Regulations.

⁷⁶ Article 38, para. 1 of the KNVB Doping Regulations.

⁷⁷ Article 38, para. 2 of the KNVB Doping Regulations.

⁷⁸ Article 38, para. 3 of the KNVB Doping Regulations.

⁷⁹ Article 39 of the KNVB Doping Regulations.

⁸⁰ Article 40, para. 1 of the KNVB Doping Regulations.

⁸¹ Article 40, para. 3 of the KNVB Doping Regulations.

For violations regarding trafficking and administration of prohibited substances or methods, the period of ineligibility shall be a minimum of four years up to lifetime ineligibility, depending on the seriousness of the violation.⁸² Such violations involving a minor is considered a particularly serious violation and, if committed by athlete support personnel for violations other than for specified substances, shall result in lifetime ineligibility.⁸³

For violations concerning complicity, the period of ineligibility imposed shall be a minimum of two years, up to four years, depending on the seriousness of the violation.⁸⁴

For violations concerning prohibited association, the period of ineligibility shall be two years, subject to reduction down to a minimum of one year, depending on the athlete or other person's degree of fault and other circumstances of the case.⁸⁵

A player bears no fault or negligence if he establishes that he did not know or suspected, and even with the highest degree of caution he could not have known or suspected that he had used, taken or been administered a prohibited substance or method, or that he committed an anti-doping rule violation.⁸⁶ In the event of 'presence of a prohibited substance or method', an additional requirement is that the respective player establishes how the prohibited substance or method entered his system.⁸⁷ If a player establishes to bear no fault or negligence in committing the anti-doping rule violation, the otherwise applicable period of ineligibility shall be eliminated.⁸⁸ It is explicitly mentioned that such rule is only applicable in exceptional circumstances, *e.g.* in case of sabotage by a third party.⁸⁹ In other specific circumstances, the player shall be held responsible, *e.g.* regarding a mislabelled or contaminated product.⁹⁰ In the event the player proves that his degree of fault or negligence was not significant in relation to the anti-doping rule violation, there is no significant fault or negligence.⁹¹ In such case, the sanction to be imposed may be reduced under specific circumstances.⁹²

Other non-fault related reasons for reduction of sanctions are substantial assistance by the respective person in discovering or establishing anti-doping rule violations,⁹³ an admission of an anti-doping rule violation by the respective person

⁸² Article 41, para. 1 of the KNVB Doping Regulations.

⁸³ Article 41, para. 2 of the KNVB Doping Regulations.

⁸⁴ Article 42 of the KNVB Doping Regulations.

⁸⁵ Article 43 of the KNVB Doping Regulations.

⁸⁶ Article 44, para. 1 of the KNVB Doping Regulations.

⁸⁷ Article 44, para. 2 of the KNVB Doping Regulations. This additional requirement does not apply to a player who was a minor at the time of the anti-doping rule violation.

⁸⁸ Article 44, para. 3 of the KNVB Doping Regulations.

⁸⁹ Article 44, para. 4 of the KNVB Doping Regulations.

⁹⁰ Article 44, para. 5 of the KNVB Doping Regulations.

⁹¹ Article 45, para. 1 of the KNVB Doping Regulations.

⁹² Article 45, paras. 2-6 of the KNVB Doping Regulations.

⁹³ Article 46 of the KNVB Doping Regulations.

in the absence of other evidence,⁹⁴ or a prompt admission of an anti-doping rule violation by the respective person after being confronted with a violation.⁹⁵ It is possible that the respective person establishes that he is entitled to reduction of the sanction on the basis of multiple grounds. The period of ineligibility may then be reduced, but not below one-fourth of the otherwise applicable period of ineligibility.⁹⁶

In the event of multiple violations, a longer period of ineligibility shall in principle be imposed on the respective person.⁹⁷ However, such period may be reduced in case of substantial assistance or admission of the anti-doping rule violation.⁹⁸ A third anti-doping rule violation results in a lifetime period of ineligibility, except if the third violation fulfils the condition for elimination or reduction on the basis of no (significant) fault or negligence.⁹⁹

In addition to sanctions being imposed on individual players committing an anti-doping rule violation, the competent disciplinary body can also impose an appropriate sanction on a team, *e.g.* disqualification from a competition or event, invalidity of game or result(s), or loss of points, prizes or money, in case of anti-doping rule violations of more than two members of the same team during or in connection with an event.¹⁰⁰

A decision of the competent first instance disciplinary body in doping related matters can be appealed before the competent appeals disciplinary body.¹⁰¹ The Central Disciplinary Committee Doping is the competent first instance body, whereas the Central Appeals Committee Doping is competent to hear doping related matters in appeal.¹⁰²

Decisions of the Central Appeals Committee Doping can be appealed before the Court of Arbitration for Sport.¹⁰³ The right to appeal a decision of the Central Disciplinary Committee Doping or the Central Appeals Committee Doping lies with the person to whom the decision applies, the KNVB, the relevant international federation, the national Doping Authority, the National Anti-Doping Organisation of the country of nationality, or the country of domicile, of the respective person, the IOC or the IPC if relevant for the eligibility for participation in the Olympic Games or the Paralympic Games, and WADA.¹⁰⁴

⁹⁴ Article 47 of the KNVB Doping Regulations.

⁹⁵ Article 48 of the KNVB Doping Regulations.

⁹⁶ Article 49 of the KNVB Doping Regulations.

⁹⁷ Article 50, para. 1 of the KNVB Doping Regulations. Each anti-doping rule violation must take place within the same ten-year period in order to be considered multiple violations, see Article 50, para. 7 KNVB Doping Regulations.

⁹⁸ Article 50, para. 2 of the KNVB Doping Regulations.

⁹⁹ Article 50, para. 3 of the KNVB Doping Regulations.

¹⁰⁰ Article 53, para. 1 of the KNVB Doping Regulations.

¹⁰¹ Article 60, para. 1 of the KNVB Doping Regulations.

¹⁰² Articles 3 and 4 of the KNVB Regulations on Central Disciplinary Proceedings on Doping.

¹⁰³ Article 60, para. 2 of the KNVB Doping Regulations.

¹⁰⁴ Article 60, para. 3 of the KNVB Doping Regulations.

An appeal shall be filed within a twenty-one-day time limit starting from the notification in writing of the appealable decision.¹⁰⁵ An appeal filed by WADA or the Doping Authority shall be filed within a twenty-one-day time limit starting from the day after the expiration date of the time limit to file an appeal by any other party entitled to appeal, or twenty-one days after WADA's or, respectively, the national Doping Authority's receipt of the complete file relating to the decision.¹⁰⁶

Two cases related to doping were heard by the competent disciplinary bodies of the KNVB under the present regulations.

A decision of the Central Disciplinary Committee Doping of 25 November 2015¹⁰⁷ concerned an amateur football player who tested positive in an in-competition doping control testing for carboxy-THC,¹⁰⁸ which is a specified substance. The committee found a violation of Article 3 of the KNVB Doping Regulations to be established, *i.e.* presence of a prohibited substance. The national Doping Authority had not established intent to the anti-doping rule violation by the player. A maximum sanction of a two-year period of ineligibility would therefore be applicable.¹⁰⁹ The committee held that the player had not established how the prohibited substance entered his system since he did not put forward a defence. Therefore, he did not pass the entrance test for *no fault or negligence* or *no significant fault or negligence*.¹¹⁰ The player did neither qualify for any other reduction of the sanction for substantial assistance or an admission.¹¹¹ A two-year period of ineligibility was therefore imposed on the player.¹¹²

In appeal before the Central Appeals Committee Doping,¹¹³ the player explained how the prohibited substance had entered his system, that he did not know the substance to be a prohibited substance, and that the context of the use of cannabinoids was unrelated to sport performance.¹¹⁴ The player's defence for no fault or negligence failed although he had established how the prohibited substance had entered his system. Namely, the appeals body found that the player could and even should have known that use of cannabis would result in a positive doping test.¹¹⁵ Due to newly adduced facts and circumstances – the player established that the use of the prohibited substance was unrelated to sport

¹⁰⁵ Article 63, para. 1 of the KNVB Doping Regulations.

¹⁰⁶ Article 63, paras. 2 and 3 of the KNVB Doping Regulations.

¹⁰⁷ Central Disciplinary Committee Doping, decision of 25 November 2015 (CDCD, 25 November 2015).

¹⁰⁸ Carboxy-THC is contained in cannabinoids.

¹⁰⁹ CDCD, 25 November 2015, para. 6.1.

¹¹⁰ CDCD, 25 November 2015, paras. 6.2 and 6.3.

¹¹¹ CDCD, 25 November 2015, para. 6.4.

¹¹² CDCD, 25 November 2015, paras. 6.5 and 7.

¹¹³ Central Appeals Committee Doping, decision of 26 February 2016 (CACD, 26 February 2016).

¹¹⁴ CACD, 26 February 2016, para. 6.

¹¹⁵ CACD, 26 February 2016, para. 7.

performance – the appeals body therefore upheld the appeal and the period of ineligibility was reduced to a nine-month period of ineligibility.¹¹⁶

Another case that was heard by the Central Disciplinary Committee Doping concerned a professional player, who tested positive in an in-competition doping control testing for furosemide, which is a specified substance.¹¹⁷ The player stated in his defence that he used supplements to lose weight and specified the supplements he used to this end.¹¹⁸ The committee found that the player did not have a valid exemption.¹¹⁹ The committee further held that the national Doping Authority did not establish intent to commit the anti-doping rule violation. Thus, a two-year period of ineligibility would in principle be applicable.¹²⁰ The player did not submit evidence as to how the prohibited substance entered his system, since he refrained from having the used supplements tested in a WADA-accredited laboratory. The player therefore did not pass the entrance test for a reduction of the sanction on the basis of *no fault or negligence* or *no significant fault or negligence*.¹²¹ The committee further found that the player did not qualify for any other reduction of the period of ineligibility for substantial assistance or an admission.¹²² Consequently, a two-year period of ineligibility was imposed on the player.¹²³ The player did not file an appeal against this decision.

6. Sexual Harassment

Sexual harassment is separately regulated in the regulations of the KNVB. More precisely, the KNVB Regulations on Sexual Harassment¹²⁴ regulate what is considered sexual harassment, sets out rules of conduct in respect of sexual harassment, and stipulate what is considered an offence under these regulations. In addition, various aspects of the disciplinary procedure are regulated, such as the reporting of the offence, the rights of the person concerned, the assessment of the competence of the respective disciplinary body and admissibility, the proceedings, the investigation, the hearing, the hearing of witnesses and experts, the decision, the appeal, enforcement, and registration of the sanction. Furthermore, sanctions possibly to be imposed and the way of sanctioning are regulated.

An anonymous report of sexual harassment will not be processed.¹²⁵ The report will be forwarded to the person against whom the report is filed – the

¹¹⁶ CACD, 26 February 2016, para. 7 and conclusion.

¹¹⁷ Central Disciplinary Committee Doping, decision of 28 December 2015 (CDCD, 28 December 2015).

¹¹⁸ CDCD, 28 December 2015, para. 3.

¹¹⁹ CDCD, 28 December 2015, para. 4.

¹²⁰ CDCD, 28 December 2015, para. 6.1.

¹²¹ CDCD, 28 December 2015, paras. 6.2 and 6.3.

¹²² CDCD, 28 December 2015, para. 6.4.

¹²³ CDCD, 28 December 2015, paras. 6.5 and 7.

¹²⁴ KNVB Regulations on Sexual Harassment, edition 2017.

¹²⁵ Article 6, para. 7 KNVB Regulations on Sexual Harassment.

person concerned.¹²⁶ The person concerned can as such be familiar with the name of the person who filed the report. Hearing the victim anonymously as such is thus not possible. However, it is possible that the victim and the person against whom the report was filed be heard separately in the presence of the respective party's counsel.¹²⁷ Furthermore, the sitting disciplinary body is competent to call witnesses (and experts) and will report its decision as well as the names of the witnesses (and experts) to the parties.¹²⁸ Hearing witnesses anonymously is therefore also not possible.

Specific disciplinary bodies, namely the Central Disciplinary Committee Sexual Harassment in first instance and the Central Appeals Committee Sexual Harassment in appeal are competent to adjudicate cases concerning sexual harassment.¹²⁹

Violation of the prohibition on sexual harassment or violation of the rules of conduct concerning sexual harassment constitute violations of the KNVB Regulations on Sexual Harassment.¹³⁰ Sexual harassment is described as unwanted verbal and non-verbal or physical conduct of a sexual nature which has as its object or effect violating the dignity of persons, in particular when creating an intimidating, hostile or degrading, humiliating or offensive environment.¹³¹ Sexual harassment includes sexual offences of the Criminal Code.¹³² The KNVB Regulations on Sexual Harassment applies to all affiliates.¹³³

The sexual harassment's rules of conduct apply to supervisors in football.¹³⁴ Their infringement constitutes a violation of the KNVB Regulations on Sexual Harassment.¹³⁵ Moreover, not timely or not properly fulfilling obligations under the Statutes or regulations, as well as to provide the opportunity or to encourage, to facilitate, or to assist in committing an offence also constitutes a violation of the KNVB Regulations on Sexual Harassment.¹³⁶ Violation of the KNVB Regulations on Sexual Harassment is punishable in the event of intent, guilt, negligence or carelessness.¹³⁷ Evidence of an offence is provided when the disciplinary body, on the basis of the facts and circumstances of the case, is of the firm belief that the person concerned has committed the offence.¹³⁸

¹²⁶ Article 7, para. 1 KNVB Regulations on Sexual Harassment.

¹²⁷ Article 11, para. 6 KNVB Regulations on Sexual Harassment.

¹²⁸ Article 12, para. 3 KNVB Regulations on Sexual Harassment.

¹²⁹ KNVB Regulations on Central Disciplinary Proceedings on Sexual Harassment, edition 2017.

¹³⁰ Article 5, para. 1 KNVB Regulations on Sexual Harassment.

¹³¹ Article 3, para. 1 KNVB Regulations on Sexual Harassment.

¹³² Article 3, para. 2 KNVB Regulations on Sexual Harassment.

¹³³ Article 3, para. 3 KNVB Regulations on Sexual Harassment.

¹³⁴ Article 3, para. 3 KNVB Regulations on Sexual Harassment.

¹³⁵ Article 4, para. 1 KNVB Regulations on Sexual Harassment.

¹³⁶ Article 5, para. 2 KNVB Regulations on Sexual Harassment.

¹³⁷ Article 5, para. 3 KNVB Regulations on Sexual Harassment.

¹³⁸ Article 5, para. 5 KNVB Regulations on Sexual Harassment.

After an offence of sexual harassment is reported, the person concerned is granted a time limit to file a statement of defence. Subsequently, the case is handled during a hearing.¹³⁹ An investigation may precede the hearing.¹⁴⁰ The disciplinary body will decide on who may attend the hearing.¹⁴¹ Witnesses and experts may be called by the disciplinary body. The disciplinary body informs the parties accordingly, as well as of the names and expertise of the witnesses and experts.¹⁴² The parties may call at most five witnesses or experts.¹⁴³

Sanctions that can be imposed by the competent disciplinary body are:¹⁴⁴

- A reprimand;
- A prohibition to participate in one or more activities of the KNVB for a maximum period of three years;
- A prohibition to exercise one or more members' rights granted for a maximum period of three years;
- A prohibition to exercise one or more functions in the KNVB for a maximum period of ten years;
- Suspension for a maximum period of five years;
- Expulsion as a member.

A sanction imposed in relation to sexual harassment is also aimed at preventing recurrence and restore security.¹⁴⁵

Cases are handled by a three-member committee.¹⁴⁶ The decision of the Central Disciplinary Committee Sexual Harassment is passed by a decision with a simple majority.¹⁴⁷ As mentioned afore, the disciplinary body shall be of the firm belief that the offence was committed in order to impose a sanction on the person concerned.¹⁴⁸

The person who filed the report of sexual harassment and the suspect may appeal a decision of the Central Disciplinary Committee Sexual Harassment by submitting a motivated appeal brief in writing, within four weeks as from the date of receipt of the appealed decision.¹⁴⁹

The Board of Directors of the KNVB is responsible for enforcement of sanctions.¹⁵⁰ The person concerned and other affiliates are obliged to cooperate with enforcement of the sanction. Failing to do so constitutes a violation under the KNVB Regulations on Extraordinary Disciplinary Proceedings.¹⁵¹

¹³⁹ Article 9, para. 1 KNVB Regulations on Sexual Harassment.

¹⁴⁰ Article 10, para. 1 KNVB Regulations on Sexual Harassment.

¹⁴¹ Article 11, para. 1 KNVB Regulations on Sexual Harassment.

¹⁴² Article 12, para. 1 KNVB Regulations on Sexual Harassment.

¹⁴³ Article 12, para. 2 KNVB Regulations on Sexual Harassment.

¹⁴⁴ Article 13, para. 1 KNVB Regulations on Sexual Harassment.

¹⁴⁵ Article 13, para. 2 KNVB Regulations on Sexual Harassment.

¹⁴⁶ Article 6, para. 1 KNVB Regulations on Central Disciplinary Proceedings on Sexual Harassment.

¹⁴⁷ Article 15, para. 1 KNVB Regulations on Sexual Harassment.

¹⁴⁸ Article 15, paras. 2 and 3 KNVB Regulations on Sexual Harassment.

¹⁴⁹ Article 16, paras. 1-3 KNVB Regulations on Sexual Harassment.

¹⁵⁰ Article 17, para. 1 KNVB Regulations on Sexual Harassment.

¹⁵¹ Article 17, para. 2 KNVB Regulations on Sexual Harassment.

In all other cases of sanctions imposed than a reprimand, a disciplinary sanction under the KNVB Regulations on Sexual Harassment will lead to registration of the personal data of the person concerned in the Registration System Sexual Harassment of the National Olympic Committee*National Sports Federation (“NOC*NSF”).

7. *National Law and Sports Rules*

This paragraph deals with the interrelationship between domestic Dutch law and sports regulations enacted by the KNVB. Hereafter, first we will discuss what national law prescribes for associations like the KNVB and the freedom the KNVB has to implement their own regulations in respect of disciplinary matters. Subsequently, the competence of the Civil Court within the scope of the KNVB disciplinary regulations will be described. Finally, the role of criminal law in sports will be discussed.

National association law is embedded in Book Two of the Dutch Civil Code (the “DCC”). Only minimal requirements with respect to the organisational structure are set by the DCC. As such, the association is merely required to institute a Board of Directors and a General Assembly.¹⁵² The association is in all other respects free to design its own organisation to its own needs. This freedom of organisation, as well as the lack of domestic legislation on disciplinary matters in the context of an association provides the possibility for sports associations – like the KNVB – to establish their own disciplinary framework.¹⁵³

An association may choose not to regulate its disciplinary matters at all and for disciplinary sanctions to be issued by the Board of Directors or to create a separate body within or outside the association that is in charge of disciplinary matters, either regulated in separate disciplinary regulations or otherwise.¹⁵⁴

As an association, the KNVB may thus issue its own disciplinary regulations with respect to their own members. Clubs are as members thus subject to the disciplinary regulations of the KNVB. Through their club membership, members of the clubs affiliated with the KNVB become indirect members of the KNVB.¹⁵⁵

The KNVB Regulations on Disciplinary Proceedings govern the competences of the disciplinary bodies within the KNVB as such, which will be further discussed in para. 8 below. In addition, the KNVB Regulations on Disciplinary Proceedings further set out the procedure of disciplinary proceedings

¹⁵² Article 27, sub d and e of Book Two of the DCC.

¹⁵³ KOLLEN, F.C., ‘*Verenigingsrechtelijke aspecten van het tuchtrecht in de sport*’, in *Sport en Recht. Tuchtrecht in de sport, Vereniging voor Sport en Recht*, volume 6, 1998: De Vrieseborch Haarlem, 3.

¹⁵⁴ *Ibid.*

¹⁵⁵ Article 6, para. 2 under d in conjunction with sub a, b and c of the KNVB Statutes.

within the KNVB. Furthermore, a wide variety of sanctions is provided for violations of the regulations and statutes of the KNVB, UEFA and FIFA, or for infringements of the interests of professional football or football in general.¹⁵⁶ Liability for disorder in stadiums is also regulated in the KNVB Regulations on Disciplinary Proceedings.¹⁵⁷

The KNVB has issued many regulations on various topics concerning clubs as well as their players, coaches or other officials. The KNVB Licensing Regulations prescribe, *inter alia*, requirements clubs shall meet in order to qualify for a professional licence. Various regulations prescribe rules of conduct on professional players, such as regulations on the rules of the game. The range of sanctions for specific violations of the Statutes or Regulations of the KNVB is often incorporated in the respective regulations.

According to the KNVB Statutes, the Disciplinary Bodies are internal bodies of the KNVB.¹⁵⁸ This means that for decisions of these disciplinary bodies to be held void or to be annulled specific rules of association law apply.¹⁵⁹ Civil courts are obliged to treat internally final and binding decisions of an associations with a certain deference.

In accordance with Article 14 of Book Two of the DCC, a decision of a KNVB Disciplinary Body is void when it violates the law or the KNVB Statutes. Especially when a Disciplinary Body acts in conflict with the Statutes and a decision by a Disciplinary Board is void, that nullity cannot be considered into an overall balancing of the interests of the parties.¹⁶⁰ In essence, a void decision does not have legal effect. Although a void decision can thus theoretically be ignored, in practice a civil court will be requested to prohibit the enforcement of the imposed sanction in a declaratory judgment in order to have the sanction not enforced.¹⁶¹

Article 15 of Book Two of the DCC prescribes that a decision of an internal disciplinary body can be annulled if the decision violates statutory provisions or provisions contained in the KNVB Statutes which regulate the formation of the respective decision,¹⁶² if the decision violates the principles of reasonableness and fairness in internal relationship,¹⁶³ or if the decision violates KNVB regulations

¹⁵⁶ Article 19 in conjunction with Articles 21-37 of the KNVB Regulations on Disciplinary Proceedings.

¹⁵⁷ Article 20 of the KNVB Regulations on Disciplinary Proceedings.

¹⁵⁸ Article 9 in conjunction with Article 2, sub h and i of the KNVB Statutes.

¹⁵⁹ Article 14 and 15 of Book Two of the DCC apply as regards decisions of KNVB Disciplinary Bodies.

¹⁶⁰ KOLLEN, F.C., 'Verenigingsrechtelijke aspecten van het tuchtrecht in de sport', in *Sport en Recht. Tuchtrecht in de sport, Vereniging voor Sport en Recht*, volume 6, 1998: De Vrieseborch Haarlem, 9.

¹⁶¹ *Ibid.*, 10.

¹⁶² Article 15, para. 1, sub a of Book Two of the DCC. In a case concerning the licence of the club, the composition of the respective Disciplinary Body – the KNVB Appeals Committee – was not in accordance with the applicable rules, both with regard to the number of panel members as well as their expertise (Middle-Netherlands District Court, 17 June 2009, ECLI:NL:RBUTR:2009:BI8398).

¹⁶³ Article 15, para. 1, sub b of Book Two of the DCC.

which purport to regulate disciplinary matters.¹⁶⁴ In principle, such decision has legal effect. However, upon a claim of an interested party, such decision can be annulled by the civil court.

It shall be noted that the invalidity or the annulment of a decision cannot be ordered by a judge in interlocutory proceedings. If a prohibition to enforce the disciplinary sanction is desired, the claim shall be expressed accordingly.¹⁶⁵ The chance of success in substantive proceedings will then be assessed. In this regard, substantive proceedings are rarely initiated as this would only have practical significance if the enforcement of the imposed sanction is suspended for the duration of the substantive proceedings.¹⁶⁶

For a claiming party, it is difficult to have a decision of a disciplinary body declared invalid or annulled. Jurisprudence demonstrates that disciplinary bodies shall at least comply with the regulations of the association and take fundamental principles of law into consideration. Compliance with the association's regulations follows from the fairness test that shall be conducted. Regarding failure to comply with fundamental principles of law, the claimant shall demonstrate this would have caused him damages. This includes violation of the right of due process, such as the right to be heard.¹⁶⁷

The civil court could also be competent in case of an unlawful act of a club. In case of an unlawful act, it shall be assessed whether or not this has caused any damages. As such, the causality between the unlawful act and the damages must be determined in order for a club to be liable. An example of such a case would be liability of a club for disorder caused by its fans in and around the stadium.

Disciplinary regulations are different from criminal law. Criminal law, on the one hand, governs the trial of offenses and crimes that are laid down in the domestic Penal Code. The public prosecutor would initiate the criminal proceedings on behalf of the Public Prosecution Service. Within the context of football, the following offences and crimes may occur in particular:¹⁶⁸

- Serious offences against public morality,¹⁶⁹
- Assault,¹⁷⁰
- Death and bodily injury,¹⁷¹
- Insult and discrimination.¹⁷²

¹⁶⁴ Article 15, para. 1, sub c of Book Two of the DCC.

¹⁶⁵ In accordance with Article 254 of the Code of Civil Procedure.

¹⁶⁶ KOLLEN, F.C., '*Verenigingsrechtelijke aspecten van het tuchtrecht in de sport*', in *Sport en Recht. Tuchtrecht in de sport, Vereniging voor Sport en Recht*, volume 6, 1998: De Vrieseborch Haarlem, 11.

¹⁶⁷ JELLINGHAUS, S.F.H., '*Geweld op het veld*', in *Justitiele verkenningen 2010-1*, 82.

¹⁶⁸ Olfers, M., Van Bockom, B., VSK Tuchtrecht. Geschillenbeslechting, NOC*NSF, March 2015, 12.

¹⁶⁹ Articles 239-253 of the Dutch Penal Code.

¹⁷⁰ Articles 300-306 of the Dutch Penal Code.

¹⁷¹ Articles 307-309 of the Dutch Penal Code.

¹⁷² Articles 137c-137g and 429quater of the Dutch Penal Code.

Disciplinary regulations, on the other hand, govern procedures and consequences of infringements of the statutes and regulations of the KNVB. The KNVB Disciplinary Committee and the KNVB Appeals Committee, as the adjudicating bodies in disciplinary matters, are bodies of the KNVB and are as such part of the KNVB. These bodies decide on matters regarding violations of rules concerning the sport.

However, many similarities can be drawn between criminal procedures and disciplinary proceedings. In this sense, the parallel between the role of the public prosecutor and the role of the KNVB Prosecutor is important to note.¹⁷³ Furthermore, many principles of law that play a role in criminal proceedings are also to be taken into account in disciplinary proceedings, as set out *supra*.

Disciplinary regulations and criminal law do not aim to protect the same interests. Disciplinary regulations aim to protect the interests of the sport as such and of the other interested parties, such as other players and clubs than the party involved in the respective disciplinary proceedings, whereas criminal law aims to protect society as a whole from criminal acts to happen. Therefore, the fact that disciplinary proceedings are conducted, does not exclude the trial of the same facts in criminal proceedings, and *vice versa*. It is thus possible that a player or club is sanctioned both in criminal proceedings and disciplinary proceedings. In addition, the accused party can be held liable for the damage caused.

An infamous example of how an action during a match could lead to a criminal charge and a conviction in addition to a disciplinary sanction is the case of Dutch football player Rachid Bouaouzan. A severe tackle led to a red card and a subsequent suspension of ten matches, which was extended by his club Sparta Rotterdam until the end of the regular season. The Public Prosecutor charged the player with aggravated assault. The player was sentenced to six months' suspended imprisonment, with an operational period of two years, and to a community service order of 200 hours.¹⁷⁴ In appeal, the Court of Appeal sentenced the player to six months' suspended imprisonment, with an operational period of two years, but without any community service order.¹⁷⁵ The Netherlands Supreme Court affirmed the decision of the Court of Appeal in appeal in cassation.¹⁷⁶

8. *The association disciplinary bodies*

The main rules and regulations that apply are written down in the KNVB Disciplinary Regulations. These regulations apply to the following parties:¹⁷⁷

- a. The members of the KNVB that are submitted to and/or fall under the section professional football;

¹⁷³ The KNVB Prosecutor will be further discussed in chapter 6, as part of the KNVB Disciplinary Bodies in professional football.

¹⁷⁴ Rotterdam District Court, 10 August 2005, ECLI:NL:RBROT:2005:AU0860.

¹⁷⁵ The Hague Court of Appeal, 29 May 2006, ECLI:NL:GHSGR:2006:AX5782.

¹⁷⁶ The Netherlands Supreme Court, 22 April 2008, ECLI:NL:HR:2008:BB7087.

¹⁷⁷ Article 3 KNVB Disciplinary Regulations.

- b. The members of the KNVB that are functionally involved with the section professional football;
- c. Third parties that have subjected themselves at any time to the disciplinary law in accordance with the Disciplinary Regulations.

Members of the KNVB are, generally speaking, players, clubs and officials, such as (assistant-)coaches, physiotherapists, etc.¹⁷⁸ If members of the KNVB act in violation of statutes, regulations, Laws of the Game and/or (board) decisions of the KNVB, UEFA or FIFA and/or the interests of the division professional football or football in general, the disciplinary bodies of the KNVB are authorised to act.

The main disciplinary bodies within professional football are:

- the Prosecutor;
- the Disciplinary Committee;
- the Appeals Committee.

One of the most important features of these disciplinary bodies is that all of them operate independently from the KNVB.

8.1 *The Prosecutor*

The Prosecutor professional football is relatively new within the disciplinary framework of the KNVB. As of the season 1997/1998 the prosecutor is incorporated in professional football.

One of the main reasons for the introduction of the Prosecutor was to implement a separation between the body that prosecutes and the body that adjudicates the matter. Before the 1997/1998-season, the Disciplinary Committee played a double role; in first instance this committee had to decide if a case would be prosecuted.

The Disciplinary Committee itself also handled the investigative phase. Investigation, prosecution and adjudication were thus all handled by one body. In practice, this procedure was not consistent with the strict requirement of independence which is demanded of a judicial authority. Besides, these multiple responsibilities were not compatible with the principle of “fair trial”. A valid procedure, also in disciplinary matters, requires that the judge can assess and adjudicate impartially, with a certain distance to the case that is presented to him.

Furthermore, during the hearing of a disciplinary case, the lack of impartiality of the operating prosecutor, next to the adjudicating body also appeared to be problematic. Actually, the disciplinary judge was the one proceeding against the accused. To implement a prosecutor would create more clear relations.

A procedure with an independent prosecutor was not entirely new at that time in disciplinary sports law. The German Football Association had already introduced the ‘Kontrollausschuss’ which was a prosecuting body. The KNVB

¹⁷⁸ Article 6 KNVB Statutes.

has based its system of the prosecutor on the system that was already known in Germany.

The body of the Prosecutor consists of five prosecutors, whom are assisted by a secretary. The persons appointed as prosecutor are mainly persons who are also working as a public prosecutor in the Netherlands or used to work in such capacity. It is a requirement for them to have experience in the area of football. The prosecutor works as a volunteer; this is to maintain the independence of the prosecutor. The secretary of the prosecutor is employed by the KNVB.

A prosecutor must be nominated and appointed by the General Assembly of the KNVB. As mentioned before this means that the members of the KNVB actually decide who is appointed. Each member is appointed for a period of three years with a maximum of twelve years. The prosecutors are working on the basis of a weekly schedule which means that a prosecutor deals with all the cases that are forwarded to him during that week.

The tasks and jurisdiction of the Prosecutor are laid down in the Disciplinary Regulations. The main tasks of the Prosecutor are to supervise on the compliance of the Statutes, Regulations and/or decisions of bodies that are mentioned in Article 2 of the Regulations Professional Football and/or decisions (of the board) from the KNVB, FIFA or UEFA, and to protect the interests of the KNVB in general and more specifically the professional football division.¹⁷⁹

In general the following acts or failures can be subject to prosecution:

- If an act or failure is in violation with the Statutes, Regulations, Laws of the Game and/or decisions (of the board) of the KNVB, UEFA or FIFA;
- If an act or failure harms/damages/hurts the interests of the Professional Football division or football in general.

For an act or failure to constitute a disciplinary offence requires intent, guilt, negligence or carelessness.

The prosecutor has several competences. He may:¹⁸⁰

- Dismiss a case;
- Prosecute the accused by either offering the accused a settlement proposal which includes a sanction, or forward the case directly to the Disciplinary Committee. The Prosecutor will only do the latter if, in his opinion, a settlement proposal is not fit for the case. This is for example the case in the event of a very unusual violation of the Laws of the Game by a player or if a possible violation of a registered intermediary is committed. It is not possible to appeal this decision of the prosecutor.

Furthermore, the Prosecutor is competent to request a preliminary investigation under his responsibility. He may decide to proceed in this way if there is a suspicion of a punishable act or failure to act in conformity with the relevant regulations and/or in case of complex situations. For example, violations

¹⁷⁹ Article 9 KNVB Disciplinary Regulations.

¹⁸⁰ Article 10 KNVB Disciplinary Regulations.

committed by supporters of clubs (setting of fireworks, crowd disturbances, etc.) can first be investigated by the Prosecutor before he decides to prosecute or not. This will also be done in case of match-fixing issues or cases in which intermediaries are involved. In case of complicated investigations, such as match-fixing issues, the so-called 'integrity unit' is appointed. This unit can be given the assignment by the prosecutor or the Board of professional football of the KNVB, to investigate special matters. This unit has the same competences as the Prosecutor when investigating and consists of a team of four members, who are specialists on the areas of gambling, law and investigation. The team members are volunteers and act independently from the KNVB and/or clubs and are supported by a secretary who is employed by the KNVB. In the end, it will always be the Prosecutor who decides if a case is actually prosecuted; this cannot be done by the integrity unit.

In conclusion, it can be said that the Prosecutor is competent to deal with the following situations:

- Violations of the Laws of the Game;
- Violations of the Statutes and Regulations of the KNVB, FIFA, UEFA;
- Violations of other decisions that apply to the members of the KNVB;
- Offences of players and/or officials that are not seen by the arbitral quartet;
- Disorderliness of the supporters of clubs.

The Prosecutor mainly deals with the prosecution of members of the KNVB acting in violation with the KNVB regulations. Those regulations cover a great variety of issues and entail a lot of specific conditions.

Although there is a general procedure the Prosecutor is required to follow when assessing an offence, there are certain small differences in conducting this procedure depending to the offences that are committed. The first and most frequently applied procedure is the one relating to offences of players during a match when an infringement of the Laws of the Game is committed. These are also the most common offences that occur. Namely, when a player receives a yellow card, a red card or should have been given a red card. Especially for this last situation a slightly different procedure applies, as we will explain further.

Yellow cards

If a player is shown a yellow card by the referee, this booking will be registered by the Prosecutor, after the receipt of the match form. Following this registration, the booking will be registered in the disciplinary chart of the player, and both the player and the club will be notified of it. This notification states that the yellow card is registered, for which offence during which match and whether or not the yellow card leads to a match ban for the player. A yellow card shown by the referee will always be registered, unless the following situations apply:

- The yellow card will not be registered if, before the following competition match of the player's club, the prosecutor is informed that the referee has given a yellow card to another player than the player who committed the offence;

- If the referee has made a notification on the match form that he has given a yellow card to another player than the player who committed the offence. In this case, the yellow card will be registered to the player who actually committed the offence.

After a player receives his fifth and tenth yellow card, he will be excluded for the next match of his team. After the tenth yellow card every subsequent yellow card will lead to an automatic exclusion for the next match.¹⁸¹ The club will be informed about the exclusion by the KNVB and the sanction will be published on the website of the KNVB.

Due to the fact that players can play for different teams in different competitions, different registration systems exist. This results in the following registration systems:

- Yellow cards in the first team of a professional club;
- Yellow cards in the second team of a professional club;
- Yellow cards within the official competition;
- Yellow cards within the national cup competition;
- Yellow cards within the play-off competition;
- Yellow cards within match of the Johan Cruijff-trophy ('Supercup');
- Yellow cards in friendly matches.

For each registration system a separate system applies with respect to the number of registrations a player can get before he is banned for the next match. However, it shall be noted that a player will only be banned for the team and competition he has been given the yellow cards for. This also applies for two yellow cards in one match, which automatically results in a one-match ban. For example, if a player has been shown his fifth yellow card in the first team of a league match, he is only banned for the next league match of the first team of his club. Thus, he is allowed to play for the second team as well as for the first team in the national cup. Another characteristic of the disciplinary regulations of the KNVB is that in case of two yellow cards in one match, these cards do not add up to the total of the number of registrations of the player. Consequently, if a player has had in total three registrations and gets two yellow cards in one match, he will be excluded for the next match, yet his total of registrations remains three. This is to avoid double punishment.

A ban as a result of registrations will not be erased due to the season having come to an end. If a player has not yet served his ban at the end of the season, the ban will apply to the first match in the following season. This principle applies to all competitions within professional football. The only exception to this rule is that a ban for the play-off competitions and the match of the Johan Cruijff-trophy remains valid for three years. If the player has not played in these competitions within those three years, the ban expires. The reason for this exception is that it is unsure whether the player's club will participate in these competitions the following year as opposed to the other competitions. This gives the players

¹⁸¹ Article 29, sub 2 KNVB Disciplinary Regulations.

less opportunities to serve the match ban and therefore a maximum validation period was implemented.

Direct red cards

If a player is shown a red card, he must leave the field of play immediately. This red card is mentioned on the match form and the match form will be forwarded to the Prosecutor. The Prosecutor then has to assess whether or not any offence was committed and, if so, if a sanction must be imposed on the player. To be able to judge the case the Prosecutor prepares a file. In order to do so, the following procedure applies.

When a red card is shown, the following persons must hand in their written declarations at the secretary of the Prosecutor the next day before 9.30am:

- The referee, assistant-referees and 4th official;
- The captains of both teams;
- The player that has allegedly committed the offence and his opponent;
- A representative of both teams; this will mostly be the team managers of these teams.

When completing the file, the Prosecutor looks at the disciplinary chart of the player. This means that all the yellow and red cards and other sanctions that have been imposed on the player in the last two years are reviewed. If a player has been sanctioned as a result of a red card in an earlier stage during this period of two years this could be an aggravating circumstance. Finally, the Prosecutor checks if there is video footage of the incident. A player is also allowed to provide video footages or other evidence he deems appropriate.

After having studied the file the Prosecutor has three options (as mentioned above):

- Dismiss the case;
- Offer the player a settlement proposal; or
- Forward the case directly to the disciplinary committee.

Dismissal of a case

A red card can be dismissed if the Prosecutor is of the opinion that there is no legal and/or convincing evidence on the basis of which the accused player should have to be penalised. As a result, the player will get no sanction and not even the automatic one-match suspension is to be served.¹⁸² It is important to note that, in accordance with the Disciplinary Regulations, to be able to prove that an offence was committed, at least two means of evidence must be present.¹⁸³ The only exception in the sense that only one piece of evidence is sufficient, is the situation that the player has insulted the referee, an assistant-referee or the 4th official. It

¹⁸² Article 34, para. 4 in conjunction with Article 10, para. 1 sub a KNVB Disciplinary Regulations.

¹⁸³ Article 40 KNVB Disciplinary Regulations.

could thus be possible that the referee has shown a red card, yet he was the only person who saw the situation. In that case there is not enough evidence and the case shall be dismissed. This does not provide any conclusive evidence on whether or not the player has indeed committed the offence. Although the player is not officially acquitted, he will not be sanctioned in such case.

A Prosecutor can also decide to dismiss a case if there is enough written evidence but the video footage does not support this written evidence. Of course, it must be evident in that case that the video footage shows that no offence was committed or that the committed offence is not supported by the written evidence.

The last situation in which the prosecutor can decide to dismiss a case is when legal evidence is present but the Prosecutor is not convinced the player committed the offence.

A member of the KNVB or a body of the KNVB, who is a directly interested party, can protest against the decision of the Prosecutor to dismiss a case. Upon receipt of such protest, the Disciplinary Committee can order the Prosecutor to make up a settlement proposal. To our knowledge no interested party has ever protested against a dismissal until today.

Settlement proposal

If the Prosecutor is of the opinion that there is enough evidence to sanction a player, a so-called settlement proposal will be forwarded to the player. This will generally be done the first working day after a match is played. Since most matches are played in the weekend, the prosecutor mainly sends proposals to the players on Monday. A settlement proposal means that the player is informed about what he is charged with and which sanction the Prosecutor would like to impose on him. In the settlement proposal it is also mentioned within which timeframe the player has to respond. The Prosecutor's settlement proposal is provided to the player together with the complete file. By doing so the Prosecutor acts in a transparent manner, which is in accordance with a fair trial.

The main purpose of the settlement proposal is that there is an advantage for both the accused player as well as the Prosecutor. The advantage for the player is that he knows within a very short period of time if he is sanctioned or not and which sanction is imposed. In his settlement proposal the Prosecutor informs the player that in case he rejects the settlement proposal, in general the sanction proposed at the hearing at the disciplinary committee will be harsher. For example, if the jurisprudence and the guidelines regarding sanctions (which are laid down in the Disciplinary Regulations and made up by the Prosecutor) prescribe that for elbowing a four matches exclusion applies, the settlement proposal will be a four-match suspension of which one match on probation. The advantage for the prosecutor is that the case is dealt with very quickly. When the player accepts the settlement proposal, the sanction is final. Should the player decide not to accept the settlement proposal, then the case is forwarded to the Disciplinary Committee for review.

Offences not seen by the arbitral quartet

A serious offence is considered an offence for which a player normally would be shown a direct red card and is sent off. In cases in which a serious offence is committed but not seen by the arbitral quartet, the Prosecutor has the opportunity to still investigate this offence and even sanction the player. The following procedure applies.

Each week that matches are played the Prosecutor who is on duty receives the video footage of the matches that are broadcasted. If the Prosecutor notes that a player has committed a serious offence for which he should have been given the direct red card, first the Prosecutor needs to check if the arbitral quartet has not seen the incident. This is very important because pursuant to the FIFA Regulations the Prosecutor is not allowed to reconsider field of play decisions by the referee. This also means that if the referee or the assistant-referee(s) or the 4th official have observed the incident, their judgement about the incident remains final and untouched. So if one of these persons has actually observed the incident, the Prosecutor is not able to prosecute the player for the incident, regardless of the nature and severity of the offence. Even when the referee has not whistled for the offence but has still observed the incident, the Prosecutor cannot act anymore.

When a Prosecutor is of the opinion that he can still pursue the case, the procedure is almost the same as in the situation that a red card was actually given to the player. However, where the declaration of the parties involved when given a red card, must be handed over to the Prosecutor which is at that time the responsibility of the parties involved, in cases where the incident was not seen, the Prosecutor himself starts the investigation by requesting the written declarations from the parties involved. The parties involved are the same as in case of a direct red card (see the para. "direct red card"). After these declarations are received, the procedure will be the same as described before for a direct red card. So even a case like this can be dismissed, for example if there is not enough evidence to give proof of the offence or if the declaration of someone of the arbitral quartet turns out to be inconclusive regarding the fact if the incident was seen by this person. In case there is doubt whether or not the Prosecutor can prosecute, normally the Prosecutor will decide in favour of the accused and the case will be dismissed.

Part of the incident not seen

A special situation is the situation where the referee has seen part of the incident. For example, a player kicks an opponent against his ankle and at the same time hits the opponent in the head. The referee has observed the kicking and gives the player a yellow card. However, he has not seen the other incident. The Disciplinary Appeals Committee of the KNVB considered it to be in accordance with the applicable FIFA rules that it is still possible for the prosecutor to investigate the situation as long as this relates to the incident that was not seen by the referee. So

it is possible to divide an incident in two separate actions of which one was not seen and judged by the referee (or other officials) and thus still prosecute a player for this.¹⁸⁴

Code of conduct

Although there are many incidents and/or violations of the applicable regulations that can be investigated by the Prosecutor – e.g. a player who is not eligible, a match that is postponed or delayed, etc. – one set of regulations deserves specific mention. This is the so called “Code of Conduct Officials Professional Football”. This Code describes in general terms how all players and officials in professional football are expected to behave towards each other in order to preserve and maintain the reputation of professional football. On the basis of this Code, players and/or officials (including coaches) can be subject to an investigation of the Prosecutor. For example, if a player or a coach speaks negatively about a referee or another club in the press or on social media, the Prosecutor can request him to provide information about this incident and even sanction the player or coach.

Disorderliness

With the term ‘disorderliness’ general misconduct of supporters of a football club is meant. This behaviour can consist of chanting of abusive language, setting off fireworks, destroying seats in the stadium, fighting with other supporter groups, etc. In such case, both the supporters and the club they are supporting can be punished for that behaviour.

When supporters misbehave, a stadium ban can be imposed on them. This means that they are not allowed to visit football matches during a certain period. A difference is made between a local stadium ban and a national stadium ban. A local stadium ban can be imposed by the club and is only valid for matches of that club, whereas a national stadium ban is imposed by the KNVB and is valid for all competitions played in the Netherlands. This procedure is not seen as disciplinary procedure within the KNVB but is merely civil law executed by the KNVB and the clubs. Also the Public Prosecution is involved and criminal proceedings can be opened.

Related to the liability of clubs for their supporters, article 20 para. 2a of the Disciplinary Regulations provides that a club can only exculpate itself if it actively makes plausible through facts and/or circumstances that, before, during and after the match, it has taken sufficient measures of such widespread and stringent nature that the likelihood of its supporters misconduct is negligible.

¹⁸⁴ Disciplinary Appeal Committee, decision of 17 December 2013 (13/14-03; M. Kramer).

Sanctions on clubs

A club is responsible for the safety and security in and around the stadium. To ensure that visitors are safe during a football match, the club has to comply with certain rules regarding match organisation and safety and security. These rules are described in the KNVB Safety Handbook. The basis for this Handbook is laid down in the Regulations Competitions Professional Football.¹⁸⁵ This basis provides the board of professional football of the KNVB the right to lay down general provisions and directions with regard to maintaining order and security at matches or tournaments to which the regulations of the KNVB apply. These measures are taken in the interest of the safety and security of players, officials and supporters of each professional football club. These regulations prescribe, *inter alia*, the procedure that has to be followed when abusive chanting takes place, how the placement of home and away supporters must be arranged, etc. As mentioned before, the Prosecutor is also responsible for investigating situations where the supporters of the clubs did not behave in a proper manner.

The question remains how the Prosecutor is informed on this. One of the main sources of information for the Prosecutor is a form that is filled in by the clubs themselves. After each match, both clubs have to fill in information about the course of the match. This includes information about the arrangements that the clubs have made together, how many stewards are involved, and have there been any incidents and if so, what actions have been taken by the club(s) involved. On the basis of this information the prosecutor can decide to further investigate an incident. In addition, the KNVB has so called auditors that are appointed at a number of matches. An auditor's task is comparable to an UEFA safety and security officer's task. The role of this auditor is first to support and help the club in executing and improving the safety and security measures in and around the stadium. If an auditor is present at a match he makes up a report and will send this to the Prosecutor.

If the Prosecutor is of the opinion that the incidents occurred require more investigation, he will start an investigation.¹⁸⁶ The club(s) involved will be requested to inform the Prosecutor about all the measures the club has taken before, during and after the match to ensure incidents would not occur. Also the referee can be asked to give his statement that depends on the case.

After the Prosecutor has closed the investigation, he decides if he will prosecute the club or not. In that way the procedure before the Prosecutor is similar to the procedure of a player who is shown a red card. The Prosecutor shall assess if before, during and after the match a club has done everything in their power to prevent and stop the disorderliness. The Prosecutor has to take into account one of the most important characteristics of the disciplinary system of the KNVB in this assessment, namely the so called "exculpation norm". This means that the Prosecutor will look at all the measures taken by the club before, during

¹⁸⁵ Article 40 KNVB Regulations Competitions Professional Football.

¹⁸⁶ Article 39 KNVB Disciplinary Regulations.

and after the match so that no disorderliness will take place and if they take place that they will end as soon as possible. In addition, measures taken after the match are to be taken into account to identify and sanction the supporters that have been part of the disorderliness. This also means that the Prosecutor can still dismiss the case even though disorderliness has taken place, if the club is able to convince the prosecutor that they have done everything in their power to prevent the incidents from happening. This as opposed to the “strict liability” norm that is executed by UEFA. The measures that the club has taken to prevent and stop the disorderliness can be taken into account when deciding the sanction. The main reason to apply the exculpation norm is to motivate clubs to take measures and invest in better safety and security rather than simply penalise them regardless of the measures taken by the club. The disciplinary bodies can impose a plan of action to the club in case of riots, which will be explained in more detail below.

8.2 *Disciplinary Committee*

The Disciplinary Committee has been mentioned before several times. This disciplinary body is normally the second disciplinary body to act in case of a disciplinary procedure. If a settlement proposal is not accepted by the accused party, the case will be forwarded to the Disciplinary Committee. Furthermore, if the Prosecutor decides that a case cannot be dealt with by a settlement proposal, the case will be forwarded to the Disciplinary Committee directly. The Disciplinary Committee is the adjudicating body in first instance.

The disciplinary committee consists of at least seven members of which one is the president, supported by a secretary. These members are not employed by the KNVB, only the secretary is. The president must hold a degree as Master of Laws.¹⁸⁷ The members are appointed by the General Assembly, the same way as a Prosecutor is appointed. The incompatibilities for the appointment of members of the Disciplinary and Appeal Committee are regulated in the Disciplinary Regulations.¹⁸⁸ The composition of the disciplinary committee is quite diverse. There are members with a legal background such, as lawyers or judges (at least half of the committee must hold the degree of Master of Laws), but also former football players and a former referee are part of the current Disciplinary Committee. Especially the clubs and players have requested that former football players and a referee are appointed in the Disciplinary Committee since the disciplinary football law is quite specific and therefore the stakeholders felt that persons with experience in that field should be part of it. The period for which a member is appointed is the same as for the Prosecutor, *i.e.* a maximum period of twelve years (four periods of three years).

If a case is forwarded to the Disciplinary Committee, this means the complete file of the Prosecutor is forwarded and the Disciplinary Committee can

¹⁸⁷ Article 5 KNVB Disciplinary Regulations.

¹⁸⁸ Article 8 KNVB Disciplinary Regulations.

either deal with this case in writing or proceed with a hearing. Normally a case will be adjudicated during a hearing. A case will only be dealt with in writing if both the Prosecutor and the accused party agree with a written procedure and if the Disciplinary Committee is deemed to be sufficiently well informed.

Although the disciplinary committee consist of seven members, three of them are appointed to actually deal with a case. All members will be appointed at some time, a schedule will be made up at the start of the season. One member of the three will act as the president of that committee and must hold a Master of Laws degree.¹⁸⁹

In case of offences of players and officials, *i.e.* offences that relate to a match, these cases will be dealt with by the Disciplinary Committee in the same week the alleged offence was committed. Generally, the Disciplinary Committee will hold the hearing on Thursday in order for the decision to be issued before the next match day. This is regarded a very important condition for a fair and sporting competition.

The hearing is public unless the Disciplinary Committee decides that this is not desirable in the specific circumstances of the case. The Prosecutor and the accused can request for a hearing behind closed doors. In addition, the Disciplinary Committee can decide itself to hold a hearing behind closed doors in case the interest of the KNVB and/or if the accused desires so. This may be the case, for example, if supporters of a club threaten to disrupt a hearing. However, in practice this is an exception to the rule. Almost all hearings are held publicly. At the hearing, both the prosecutor and the accused must be present. If the accused is a club, this club can be represented by at most three members of the board. One of these will act as a spokesman. The committee has the right to remove (one of the) accused from the hearing room in case of misbehaviour.

All parties present – *i.e.* the Prosecutor, the Disciplinary Committee and accused party – have the right to call witnesses or experts to the hearing. Being a member of the KNVB, such witness or expert is obliged to attend the hearing. Also these persons are informed that they are obliged to tell the truth.

The hearing itself will mainly unfold according to the following procedure. Firstly, the Prosecutor informs the accused of the charges. At that stage, the Prosecutor has still the right to change or amend the charges. Secondly, the president of the Disciplinary Committee informs the parties of the documents on file, thus making sure that all the parties are provided with the same information. Then, the accused has the right to defend himself. During this process the Prosecutor and the Disciplinary Committee have the right to ask questions to the accused and/or witnesses or experts present. The Disciplinary Committee can also ask questions to the Prosecutor. If available, video footage will be shown at the hearing. When the Disciplinary Committee is of the opinion that it has all the information needed, the accused has the right to the last word at the hearing. After this the hearing will be closed.

¹⁸⁹ Article 7 KNVB Disciplinary Regulations.

Directly after the closing of the hearing the Disciplinary Committee will deliberate. This will take place in a closed setting. If the case relates to an offence of a player that is match-related such as a red card, the decision of the Disciplinary Committee will be communicated to the accused the next morning after the hearing. This will be a short notification of the charges and the sanction or acquittal of the accused party; a written and fully motivated decision follows shortly afterwards.

If the case relates to disorderliness of a club or another offence of a club, the motivated decision in writing will follow within two weeks after the hearing.

Should a case be dealt with in writing, the procedure as described above is mostly the same; both the accused and the Prosecutor can submit their positions in writing and the Disciplinary Committee can ask questions in writing to them.

Both the Prosecutor and the accused party can file a motivated appeal against any decision of the Disciplinary Committee in writing before the Appeal Committee. This appeal must be received by the Appeal Committee within four working days after the date of the decision of the Disciplinary Committee.¹⁹⁰

8.3 *Appeal Committee*

The Appeal Committee is the highest disciplinary body of the KNVB and as such the second and last instance where an accused party or the Prosecutor can submit its case to. The procedure for the appointment of the members of the Appeal Committee is the same as for the other disciplinary bodies. The Appeal Committee consists of at least six members of which one is the president, supported by a secretary. The members of the Appeal Committee are not employed by the KNVB, whereas the secretary is. At least half of the members must hold a degree as Master of Laws, amongst which the president of the Appeal Committee.¹⁹¹ The procedure before the Appeal Committee is exactly the same as the procedure before the Disciplinary Committee.

Furthermore, an appeal filed against a sanction imposed by the Disciplinary Committee has in principle suspensive effect until the Appeal Committee issues a decision.¹⁹² However, in the event that a player is shown a direct red card and the player appeals the decision of the Disciplinary Committee to the Appeal Committee, the player shall nevertheless serve a one-match automatic suspension, regardless of the decision of the Appeal Committee. The player cannot appeal the automatic suspension. This is a rule that was executed by FIFA in order to protect the referee.¹⁹³ All associations had to implement this rule in their national regulations. Note that this rule only applies to a player that is shown a red card and is sanctioned by the disciplinary committee. In case the player was charged by the Prosecutor but not because of a red card (but for example for an offence

¹⁹⁰ Article 16 KNVB Disciplinary Regulations.

¹⁹¹ Article 5 and 7 KNVB Disciplinary Regulations.

¹⁹² Article 58 KNVB Disciplinary Regulations.

¹⁹³ FIFA Circular no 821 d.d. 1 oktober 2002 para. 8.3.

that was not seen by the referee) or if the player received a red card but was acquitted by the Disciplinary Committee, this rule does not apply and the player will not be suspended until the Appeal Committee has issued its decision to suspend the player.

Although the Appeal Committee is the highest instance for disciplinary cases, it may, under specific circumstances, be requested to assess a case and to revise its decision. If a sanction is imposed against which no appeal is possible anymore, the involved party can request for a full or partial revision of the sanction on the ground of newly arisen facts under the following circumstances:

- The facts were not known or were not brought to the attention of the disciplinary body at the time the case was assessed by that disciplinary body; and
- If the facts were known at that time, it could be suspected that this would have resulted in another outcome for the accused.

The motivated request for revision must be submitted in writing to the Appeal Committee. Unless the Appeal Committee decides otherwise, the execution of the sanction will not be suspended. If the Appeal Committee decides that the request for revision is grounded, the decision of which revision is requested will be annulled and the Appeal Committee will issue a new decision. Should the Appeal Committee decide that the revision is not grounded, the request shall be dismissed. This decision must be motivated. The decision of the Appeal Committee cannot be appealed.¹⁹⁴

If a sanction is imposed against which no appeal is possible anymore, the involved party can request pardon. A motivated request for pardon shall be submitted to the board of directors in writing. This shall thus not be done directly to a disciplinary body. Before the board of directors decides upon this request, the board asks:

- Advice from the disciplinary body that has imposed the sanction;
- The point of view of the Prosecutor in relation to the pardon request.

The board decides within two months as from the receipt of the request. A pardon request does not suspend the execution of the sanction. If the board decides to pardon, it can decide to impose the remainder of the sanction in full or in part to be served on probation.¹⁹⁵

9. *Infringements and Sanctions*

Above it is set out which infringements of the Disciplinary Regulations of the KNVB can be subject to prosecution: if members of the KNVB act in violation with statutes, regulations, laws of the game and/or (board) decisions of the KNVB, UEFA or FIFA and/or the interests of the division professional football or football in general, the disciplinary bodies of the KNVB are authorised to act.

¹⁹⁴ Article 17 KNVB Disciplinary Regulations.

¹⁹⁵ Article 60 KNVB Disciplinary Regulations.

In general the following acts or failures can be subject to prosecution:

- Acts or failures in violation with the Statutes, Regulations, Laws of the Game and/or decisions (of the board) of the KNVB, UEFA or FIFA;
- Acts or failures that harms the interests of the Professional Football division or football in general.

Although not mentioned in the other chapters, acts like forgery, falsification and corruption could be defined as acts that are subject to prosecution under the Disciplinary Regulations. These acts mainly relate to financial activities. The licensing department of the KNVB is the first department to deal with such a case. Mostly the club itself that has benefited from these activities is in that case sanctioned by the Licensing Committee. However, this could also mean that members of that club have acted in violation of the Disciplinary Regulations and can thus be prosecuted by the Prosecutor. Until today no such case has yet been sanctioned by the Prosecutor.

It is important to emphasise that only a member of the KNVB can be the subject of a disciplinary procedure or a third party that has subjected himself/itself to the Disciplinary Regulations of the KNVB. However, there is an exception to this rule.¹⁹⁶ Former members of the KNVB that have committed a violation of the Statutes, Regulations or a decision of the KNVB or its bodies during the period of their membership will be subject to the Disciplinary Regulations.

The sanctions that the disciplinary bodies can impose both on natural persons (players, coaches officials, etc.) and clubs are exclusively written down in the Disciplinary Regulations.¹⁹⁷ These sanctions are:

- a. Warning;
- b. Obligation to make up a plan of action that is aimed to prevent disorderliness (this will be explained in more detail below);
- c. Fine. For natural persons this is maximised to EUR 34.000,- for clubs to EUR 90.750,-.
- d. Exclusion of participation of matches;
- e. One or more points deduction on the league table of the competition and the rank list of the specific period;
- f. To play one or more home matches with only those persons as spectator as defined by the decision of the disciplinary body;
- g. To temporarily or definitely deny the right to exercise one or more functions;
- h. Suspension of the right for a club to acquire tickets for a number of away matches of that club;
- i. Relegation to the next lower competition starting as of the next season in case of violation of the offence mentioned in the Guidelines under chapter I article 2.6b (racism/discrimination);
- j. Exclusion of (further) participation of:

¹⁹⁶ Article 10, para. 9 KNVB Statutes.

¹⁹⁷ Article 22 KNVB Disciplinary Regulations.

- a. The national cup tournament or,
- b. A series of matches that can lead to promotion or relegation (in the Netherlands play-off competition) or;
- c. A series of matches that decides about participation in international competitions (in the Netherlands play-off competition) or;
- d. Johan Crujff-trophy (Supercup).

In case of a violation of the offence mentioned in the Guidelines under chapter I article 2.6b (racism/discrimination).

All these sanctions can be imposed separately or together; also the sanctions can be imposed on probation. The Guidelines to the Disciplinary Regulations is an annex that forms an integral part of the Disciplinary Regulations and provides guidelines on what offences will have to be sanctioned with a yellow or red card as well as on the maximum sanction for these offences. For instance, these Guidelines provide a more detailed explanation of the severity of sanctions that can be imposed in case of racism/discrimination. These severe sanctions had to be implemented by the KNVB in the Disciplinary Regulations as a result of FIFA Circular no. 1369 (dated 8 July 2013).

Plan of action

The most occurring disorderliness that clubs are charged with is the chanting of abusive language. In the past, the disciplinary bodies mainly imposed a fine upon the clubs for this offence. However, the clubs argued that this sanction did not help them to prevent this from happening. On the one hand it was very difficult for the clubs to act against the supporters that committed this offence; on the other hand the group that committed the offence did not suffer from the sanction because the club had to pay the fine and not the supporters. As a result, the KNVB and the clubs together came up with an alternative sanction, the so-called “plan of action”. The club must make up a plan of action that provides specific results from the club aimed at preventing the abusive chanting within a certain period of time. The KNVB takes charge of a check on the execution of the plan of action. In case the club does not comply with its own plan of action, the Prosecutor will be notified about this and this can result in other charges to the club.

If a member of the KNVB is sanctioned by a disciplinary body and this sanction is final, the member must comply with this sanction. If this member does not comply, this means that the member will again be subject to a disciplinary investigation and could again be sanctioned. The KNVB has provided some tools to help the members that are sanctioned to comply with their sanction. The first tool is the digital match form; not only does it help the referee when filling in the yellow and red cards that he has given during a match but it also checks if a player that is put on the match form, is not suspended. Both clubs have to put all the players and officials for that match on the digital match form, before the start of the match. Should any of these persons not be allowed to participate then the

match form gives a signal. Because it is the responsibility of the club if a player or official is allowed to be present, the club can ignore this signal and still put the player or official on the match form. If afterwards it turns out this person was still under suspension, the club will face disciplinary action. The other tool that assists clubs in complying with the decisions of the disciplinary bodies is that fines are balanced via the current account of the clubs at the KNVB. That way the clubs will never be late in paying the fine and will thus comply.

10. Enforcement Rules

Many of the rules on enforcement are already discussed in the foregoing paragraphs. Therefore, only a summary of the different enforcement mechanisms of the Disciplinary Regulations is provided in this paragraph. Furthermore, a new means of enforcement of the Laws of the Game will be discussed, namely the instrument of the video assistant-referee (“VAR”).

The enforcement of the Laws of the Game is mainly executed by the referee, his assistants and the 4th official. During the match they are the first responsible for a just execution of these rules. Over the last few years sometimes 5th and 6th officials are added to the four officials. Should the match officials have missed a violation of the rules, the Prosecutor will be the person responsible for execution of the Laws of the Game. As set out above, the Prosecutor can act in the event a serious violation was not seen by the officials present at the match.

Technical developments are rapidly growing in football. First, the goal-line technology was developed. This technology has been used in the Dutch professional football division as of 28 September 2013, at the match FC Utrecht – Roda JC. This technology has been used in several matches since. It is however not possible to use this technology at every stadium, due to technical conditions.

As of the start of the 2016/2017-season within the Dutch professional football division a new instrument is added, namely the VAR. The KNVB has introduced this instrument in the National Cup competition, at a number of selected matches.

The KNVB has been working on this project for quite some time but required approval from FIFA before it could test this system in official matches. FIFA approved to test the VAR in March 2016. The VAR is a referee that can support the referee on the pitch when taking crucial decisions during the match. The VAR acts on the basis of images on the cameras present in the stadium. The VAR advises the referee in game changing situations, such as penalties, red cards and offside in case of a goal. It must be emphasised that it is merely an advice; in the end the referee is always responsible for the decisions.

Next to the Laws of the Game, a number of other disciplinary regulations apply to players. The main rules relate to behaviour of the player on and off the field, the signing of a contract and his relation with an intermediary. With regard to the behaviour of the player, the referees and the Prosecutor are the bodies that

have an important role in enforcing the applicable regulations. With regard to the contract and intermediary rules (amongst which also the transfer regulations) the KNVB has a role in the enforcement. The contracts that the player signs are subject to a check at the KNVB before they are approved. The same applies to the intermediary procedure. Also the instrument of FIFA TMS plays an important role in enforcing regulations. Although this system applies to international transfers, the KNVB has implemented Domestic Transfer Matching System (“DTMS”), a system similar to TMS but DTMS is set up for the domestic transfers. DTMS is a web-based digital system for national transfers. Clubs need to fill in all kind of data in this database, such as player contract, transfer agreement, amount of transfer fee, etc.

DTMS helps the KNVB with compliance of their members with the regulations, more specifically the transfer and intermediary regulations.

As stated above, clubs have to comply with many rules and regulations regarding safety and security in and around the stadium. These rules play an important role in disciplinary cases regarding crowd disturbances. These rules are enforced by several departments of the KNVB:

- Firstly, the clubs need to comply with licensing regulations regarding safety and security. The licensing department of the KNVB is responsible for the enforcement of these rules;
- Secondly, the safety department of the KNVB plays a role in checking whether or not a club complies with all the safety regulations as mentioned in the KNVB Safety Handbook;¹⁹⁸
- Thirdly, an auditor can be appointed to a club. This auditor has a role to advise the club on safety and security but also checks if the club fulfils all the required conditions;¹⁹⁹
- Fourthly, the clubs themselves have a role in the enforcement of the regulations because they have to make up a report for the prosecutor after each match.²⁰⁰

II. Conclusion

A well-known say of the Dutch tax department is: “we cannot make it more fun but we can make it easier”. In a way this also defines disciplinary football regulations. More than often disciplinary regulations are no fun at the concerned Clubs and professionals, but the KNVB has made huge efforts, together with stakeholders such as the ECV, FBO, VVCS and Pro-prof, to come up with a rigorous but fair and still easy to handle disciplinary system. As a result, the disciplinary system of the KNVB Professional Football division has a few specific features besides the basic principles of an effective law system.

¹⁹⁸ See para. 8.1 under *Sanctions on Clubs*.

¹⁹⁹ See para. 8.1 under *Sanctions on Clubs*.

²⁰⁰ This procedure is described in para. 8.1 under *Sanctions on Clubs*.

The Office of Prosecutor is one of the most striking characteristics which makes the KNVB, a Football Association apart from the majority of the national associations worldwide. The main reason for setting up that office, however, was to guarantee a better, independent and objective disciplinary process, which would generate more support from the members of the KNVB and more credibility and reliance on the overall, football justice system in the Netherlands

Another outstanding, singular characteristic that can be highlighted here, is the “exculpation norm” as opposed to the “strict liability principle”. Although it is well established case law of the Appeals Committee that extraordinary strict requirements are set to not lose the club's liability for the conduct of its supporters, clubs could actually be rewarded for positive, useful initiatives undertaken and efforts made to limit and prevent the damages resulting from supporters’ actions, so considerably improving the local, social situation. In other words, sanctioning a club for misconduct of supporters goes along with taking into account all the efforts made by the Club to prevent accidents.

Moreover, the KNVB is very much open to high tech developments and is not afraid to legally innovate, provided of course that their members are not negatively affected. This has until now resulted in the use of goal-line technology and the video assistant-referee. The overall target is thereby to make the beautiful game of football fairer, which ultimately is not only in the interest of the members of the KNVB and other stakeholders in Dutch football, but serves the great concern of the spectators and football sport as a whole.

Also, the KNVB is an association, which means that its members have significant influence on the legal framework governing the disciplinary regulations and procedures via their votes in the General Assembly. This ensures a broader participation and representativeness and thus more support. Therefore, this is possibly the most important feature of all.

DISCIPLINARY PROCEDURES IN PORTUGUESE FOOTBALL

by *João Leal**

Introduction

In order to fully grasp the disciplinary structure, concepts and decisions of the Federação Portuguesa de Futebol (hereafter “FPF”), we must consider that, according to the Portuguese Sports Law (Lei No. 5/2007) and Legal Regime for Sports Federations (Decreto – Lei No. 248/B-208), the Disciplinary Committee is organized in two different sections: one professional and one non-professional.

The professional sport’s section of the Disciplinary Committee deals, as its name implies, with professional competitions organized by the Portuguese professional league and applies the disciplinary regulations approved by the professional clubs in the General Assembly of the Liga Portuguesa Futebol Profissional (hereafter “LPFP”). The non-professional section of the Disciplinary Committee applies the disciplinary regulations of the Federação Portuguesa de Futebol as approved by its board.

1. General Principles

In general, when defining disciplinary liability in sport, the principles contained in the Portuguese Penal Code must be observed. Moreover, the principles foreseen in the General Labour Law in Public Functions may also apply.

Therefore, the disciplinary system is notably characterized by the separation and independence between the disciplinary investigatory bodies and the decision-making bodies. Equally, parties are granted the possibilities to challenge a decision taken in first instance on appeal.

The right to be heard, the right to use all means of proof allowed by law and defence rights of the accused in general (included the right to remain silent) are guaranteed throughout the disciplinary process.

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There is a presumption of veracity of the facts contained in the statements and reports of referee teams and match delegates. Proof of inaccuracy may still be brought by an opposing party.

There is a prohibition on overturning decisions taken by the referees relating to situations or behaviour observed and sanctioned by the officiating team with a yellow card or red card, under the terms of the Laws of the Game.

With specific regard to the Football Regulations, the following also apply: the principle of non-retroactivity, the principle of legality, the principle of equality and the principle of proportionality.

Moreover, in no case or circumstance can anyone be punished more than once for the same facts (prohibition of double jeopardy, *ne bis in idem*).

A decision becomes final and binding once the time-limit to appeal has expired. The fact that the case-law may evolve differently does not, in itself, imply that there is an obligation to re-open a matter, which had been closed by a legally binding decision (principle of *tempus regit actum*, applies).

2. *The legal framework*

The scope of the activity of the Portuguese sports federations, included the Football Federation, is regulated in two major set of rules:

- Lei de Bases da Atividade Física e do Desporto – Lei n.º 5/2007, de 16 de Janeiro (Portuguese Sports Law);
- Regime Jurídico das Federações Desportivas – Decreto-Lei n.º 248 - B/2008, de 31 de dezembro (Legal Regime for Sports Federations).

The Federations all approve their own regulations (organization of competitions; discipline; referee and all needed to exercise its functions). However, regarding the professional competitions, the legal regime for sports federations state that the professional league shall fulfil, by delegation from the corresponding Federation, the competencies relating to professional competitions, including: organizing and regulating competitions in accordance with technical rules foreseen in by the competent national and international federative bodies; exercising control and supervision over its members, which are foreseen by law or Statutes and regulations; defining sporting, financial and organization access to professional competitions; and supervising their execution by the entities and their participants.

However, in Portugal, at this moment, only football has a professional league, namely “Liga Portuguesa de Futebol Profissional”, which is, by law, the only entity that has the competence to organize and manage professional competitions. Thus, in this context, it is up to the professional clubs to approve, in their general meeting, the regulations regarding organization, disciplinary and refereeing matters of the professional competition.

Regarding more specifically disciplinary matters, Law No. 112/99 approved the disciplinary regime of sports federations.

According to the above-mentioned Law, sports federations carrying public sporting utility status (UPD) must have disciplinary regulations in order to sanction violations of the rules of the game or of competition, as well as other rules of sport, in particular those relating to sports ethics.

The disciplinary regime implemented by sports federations shall provide in particular for the following matters:

- a) Classification of the infractions ranging from minor, serious until very serious and determination of the corresponding penalties;
- b) Compliance with the principles of equality of treatment, non-retroactivity and proportionality of the applicable sanctions;
- c) Exclusion of life ban or sanction of unlimited duration;
- d) Enumeration of the causes or circumstances that exempt, attenuate or aggravate the responsibility of the offender, as well as the requirements of its elimination;
- e) Requirement of disciplinary proceedings for the imposition of sanctions when they concern offenses classified as very serious and, in all cases when the sanction to be applied leads to the suspension of activity for a period exceeding one month;
- f) Respect of the accused's guarantees of defence, namely requiring that the accusation shall be sufficient to clarify the facts determining the exercise of disciplinary power and guaranteeing the accused right to be heard in cases where it is necessary to institute disciplinary proceedings;
- g) Right to appeal, whether or not it is mandatory to have disciplinary proceedings.

3. *The Federation*

3.1 *Structure and competencies*

The Portuguese Football Federation is a non-profit private association with the status of a public-interest entity, registered in the form of a private-law association comprising twenty-two regional or district associations, a professional league of clubs, associations of sports agents, clubs or sporting companies, players, coaches and referees, registered or affiliated in FPF.¹

The governing bodies of the Federação Portuguesa de Futebol are the General Assembly, the President, the Management Board, the Fiscal Council, the Disciplinary Committee, the Appeals Committee (Council of Justice) and the Referees Committee.²

The main objective of FPF is to promote, regulate and organise, at national level, the teaching and the practice of football, in all its variations and competitions.

¹ Portuguese Football Federations Statutes, Artt. 1 and 10, para. 2, available at www.fpf.pt/pt/Institucional/Documenta%C3%A7%C3%A3o (11 June 2017).

² Portuguese Football Federations Statutes, Article 20.

In order to achieve its purpose, FPF shall – *inter alia* –:

- a) represent Portuguese football nationally and internationally;
- b) recognize, organize and ensure the competitive participation of national teams;
- c) represent and protect the interests of its members;
- d) elaborate and approve rules and regulations, ensuring their application;
- e) respect and prevent any violation of the Statutes, Laws of the Game, regulations, directives and the decisions of FIFA, UEFA, in the context of which FPF should make every effort to ensure that they are fulfilled by its Members.³

3.2 *The disciplinary bodies*

The Federação Portuguesa de Futebol has one disciplinary committee composed of two different sections (one section dedicated to the professional competitions and one section to the non-professional competitions) and one appeal body.

The Disciplinary Committee is supported by the following Committees:

- The “Comissão de Instrutores” (instructor committee) – foreseen in the Disciplinary Regulation for the professional competitions (non-statutory body).
- The Disciplinary Instructors Committee implemented by the board of Federação Portuguesa de Futebol for the non-professional competitions (non-statutory body).

³ Other competences are foreseen in Article 2 of the Portuguese Football Federation Statutes:

- Organize, at national, district and regional level, football competitions in all its modalities and variations and award the titles of national, district or regional champion of the competition, without prejudice of the recognized competences of the District or Regional Associations and professional league (LPPF);
- Develop football in the Portuguese territory according to the sports spirit, educational, material, cultural and humanitarian values through training programs and the development of different sports agents, in particular players, coaches, referees and officials;
- Prevent practices that may affect the integrity of matches and / or competitions or, in somehow, harm football;
- Supervise friendly games of all categories and variations in national territory;
- Accept the organization of international level competitions.

In accordance with its affiliation with FIFA and UEFA, FPF is also responsible *inter alia* for:

- a) observing and enforcing the principles of loyalty, integrity and sportsmanship of Fair Play rules;
- b) comply with FIFA, UEFA and FIFA Statutes, Regulations, Directives, Decisions and Circulars, including the FIFA Code of Ethics;
- d) recognize the jurisdiction of the Arbitration Court of Sport of Lausanne, in all litigation concerning a cross-border dimension, in accordance with the provisions of the Statute of the FIFA and UEFA;
- e) endorse to the Arbitration Court of the FPF, which will decide without appeal, all disputes of a national dimension arising out of or in connection with the application of the Statute or FPF regulations, except those which fall within the jurisdiction of other bodies or whose assessment is prohibited by legal requirements.
- f) ensure that it's Members, through its Statutes, license, registration or any other document, acknowledge and accept all obligations of the FPF's Statutes and regulations.

3.2.1 *The Disciplinary Committee*

The disciplinary committee is composed of 13 members, and each section works with one president (the same for both sections), one vice-president for each section and five members. All members must have a law degree.

Comissão de Instrutores (instructor's committee), for professional competitions, is composed of 3 members. This body is competent to conduct the disciplinary investigations for the professional competitions.

The Disciplinary Instructors Committee is currently composed of four instructors and one coordinator appointed by Federação Portuguesa de Futebol board. The body has the competence to conduct the disciplinary investigations for the non-professional competitions.

It is the responsibility of the Disciplinary Committee, *in camera*, to decide on the opening or closure of disciplinary proceedings, as well as to jointly assess and decide, in accordance with applicable law and regulations, on disciplinary infractions. The president can, in urgent matters, take the decision to open disciplinary proceedings but subject to the ratification of the chamber that must occur in the first following meeting that takes place.

The Instructors Committee implements the investigation processes as well as the disciplinary proceedings, in particular:

- conducts the investigation proceedings;
- defines the course of the investigations;
- proposes the filing of the disciplinary proceedings under the terms set forth in these Regulations;
- prosecutes violations before the disciplinary decision-making body and intervenes in the disciplinary hearing, while observing the principles of legality and sporting correctness.
- enforces the disciplinary decisions rendered by the Disciplinary Committee, under the guidance and oversight of the Board of the League.

3.2.2 *The Appeal Body (Justice Council)*

The Justice Council is composed of seven members, one president, one vice-president and five members. All members must have a law degree.

In second instance, the Justice Council is competent to judge on decisions taken by LPFP bodies and the electoral commission, the Board and the President of the FPF. Equally, it also obviously has jurisdiction to decide appeals against decisions adopted by the Disciplinary Committee, the Referee Committee as well as the referees' reports of the matches.

Finally it may adopt, in first instance, sanctions against the members of the Regional and District Associations of the FPF, Liga Portuguesa de Futebol Profissional (LPFP), Associação Nacional dos Treinadores de Futebol (ANTF); Associação Portuguesa de Árbitros de Futebol (APAF); Sindicato de Jogadores

de Futebol Profissional (SJFP); Associação Nacional dos Dirigentes de Futebol (ANDIF); Associação Nacional dos Enfermeiros Desportivos e Massagistas de Futebol (ANEDAF) and Associação Nacional dos Médicos de Futebol (AMEF).

3.2.3 *The Portuguese Sports Arbitration's Court – Tribunal Arbitral Do Desporto (TAD)*

The establishment of the Court of Arbitration for Sport (Law 74/2013, of 6th September, with the amendments introduced by Law 33/2014, of 16th of June), confers to TAD the power to judge the appeals lodged against the decisions of the Disciplinary Councils of all Sports Federations, including therefore the FPF.

In line with Art. 4 of Law 74/2013, of 6th of September, TAD is competent to hear disputes arising from acts and omissions of sports federations in the exercise of their regulatory, organizational, management and discipline powers (para. 1). TAD is entitled to decide disputes arising out of the exercise of disciplinary powers. In line with the disciplinary scope ex Article 4, para. 3, a) of Law 74/2013, 6th of September, the TAD decides on appeal against “the decisions of the disciplinary body or of the judicial body of sports federations, in the latter case when pronounced in appeal of decisions of another federative organ that the organ of discipline”.

It follows that the TAD has the power to review, on appeal, the decisions of the Justice Council, provided that they do not relate to the application of the laws of the game. Other decisions of the Disciplinary Committee may be appealed to TAD directly.

This was undoubtedly the most substantial change in the new legal regime for the exercise of disciplinary powers of sports federations. Indeed before the creation of the TAD, the Council of Justice was the last instance of the sports federations in terms of judicial decisions' appeal, and its decisions were appealed only to the state courts (Administrative Courts), except in cases of strict sporting matters – cf. Article 12 of Dec. Law 248-B/2008, of December 31 and Article 18, para. 2 of Law 5/2007 of 16 January.

The abovementioned Article 4 (3) of Law 74/2013, of 6 September, establishes that the decisions of the disciplinary body may be appealed to TAD and not to the Council of Justice. However, para. 6 of the same Art. 4 excludes from the jurisdiction of the TAD, disputes on certain issues, such as: “the resolution of questions arising from the application of technical and disciplinary rules directly related to the practice of the sporting competition itself”.

This rule must be read in connection with the provisions of art. Article 44, 1, of Decree-Law 248-B/2008, of December 31, as amended by Decree-Law 93/2014 of June 23), which state: “In addition to other powers endorsed by the Statutes, it is the [Council of Justice's] competence to hear appeals of disciplinary decisions relating to matters arising from the application of technical and disciplinary rules directly related to the practice of the sporting competition itself”.

This means that the Council of Justice has jurisdiction to rule on appeals against the disciplinary decisions handed down by the Disciplinary Committee, depending on the subject matter of those decisions. The defining criteria as we have already seen, are those foreseen in Articles 4, 6 of Law 74/2013, and 44, Law 248 / B of 31st of December, in the wording of Decree Law 93/2014. The disciplinary decisions shall concern issues related to purely sporting technical and disciplinary rules of the football and other sports competitions.

The statement of the Explanatory Memorandum contained in Proposed Law No. 84-XII (pp 184-XII), which preceded Law No. 74/2013 and created the Arbitral Court of Sports, strictly refers to sporting matters, or “only matters arising from the practice of the competition itself will be exclusively appreciated by the federal disciplinary bodies”. It is clear from the explanatory memorandum, that the content of Article 4, no. 6 of Law 74/2013, aims to clarify the concept of “strictly sporting matters” restricting them to questions emerging from the competition itself.

A disciplinary matter emerges from a competition when the offense was committed in the course of the game, that is when the disciplinary rule foresees and punishes behaviour inherent to the practice of the sport in a match. More precisely, with regard to football, whenever there is a disciplinary sanction that is a direct consequence of an on-the-pitch incident or decided on the field of play by the referee, these matters arise from the application of technical and disciplinary standards directly related to the practice of the competition.

4. Responsibilities of clubs and players

Clubs, players but also other members of the football league have to abide by the FPF Regulations and shall act in accordance with the sporting principles of loyalty, probity, truth and righteousness in all matters of a sporting, economic or social nature.

Individuals are also prohibited from making public statements causing prejudice to the reputation of natural or legal persons or bodies of the sports entities, players in the competitions organized by the League, the other sporting stakeholders, as well as communicating, giving interviews or providing third parties with news or information about facts that are under investigation in disciplinary proceedings.

All persons and entities subject to the FPF Regulations shall act in accordance with the principles of ethics, sportsmanship, sporting truth, loyalty and correctness and must act appropriately among themselves, towards the public and accredited entities for official matches.

All actors have a duty to cooperate in order to prevent improper or offensive behaviour, such as violence, doping, corruption, racism, xenophobia or any other form of discrimination, and to this end, refrain from making public statements that put into question their observance, as well as unnecessary statements about organs of the sporting structure and individuals related to them.

5. Procedure

Disciplinary regulations foresee two different types of procedures: one applicable to the professional and the other applicable to non-professional competitions.

5.1 Ordinary Disciplinary Proceedings for Professional competitions

The so – called “ordinary disciplinary proceedings” apply – as its name implies – to professionals competitions.

The Disciplinary Committee opens the investigation, that ends with a formal accusation or with the proposal to close the proceedings. In the first case, the Disciplinary Committee notifies the accused, who has the possibility to present his arguments in writing or orally at the occasion of a hearing.

Expedited procedure applies when a disciplinary proceeding is still under the investigation phase. If the defendant and the Instructors Committee agree on the applicable sanction, they file a joint request with the Disciplinary Committee.

Summary proceedings apply when disciplinary action concerns disciplinary misdemeanours: disciplinary offenses punishable by a suspension for a period of time inferior or equal to one month. The summary proceedings shall also apply in the case of disciplinary infractions committed by officials, players, coaches, technical assistants, doctors, masseurs and spectators, provided that the corresponding sanction does not exceed a suspension for a period longer than one month.

Rehabilitation process applies to players and officials sanctioned with ban from participating in professional competitions. They may be rehabilitated, regardless of the review of the disciplinary procedure, provided that the sanction has been complied with for at least five sports seasons and the convicted person proves to be worthy of his good conduct in that period to be readmitted to participation in professional competitions.

Investigative proceedings start whenever there is evidence of a disciplinary infraction, but the perpetrators cannot be identified. The Disciplinary Section, on its own initiative or at the request of any interested party, shall initiate the investigation process.

The review process is a review of the conviction handed down in disciplinary proceedings in a final and binding way. It shall be available when circumstances or evidence prove that the facts leading to the conviction do not exist, provided that those circumstances or evidence could not have been invoked by the accused in disciplinary proceedings or summary proceedings.

Special procedures shall apply in the cases expressly provided by the disciplinary regulations when the ordinary procedure does not apply.

5.2 *Proceedings for non professionals competitions*

As for non-professional competitions, the Disciplinary Regulations of the Portuguese Football Federations foresee the follow proceedings:

A) *Ordinary proceedings*: the Disciplinary Committee takes a decision on the basis of the report made by the instructor and following a hearing and/or the submission of the parties in writing.

B) *Inquiry process*: for the purposes of establishing the facts of a case and the origin of a disciplinary infraction, the Disciplinary Committee can order an investigation and the FPF Board shall appoint an instructor for that purpose.

C) *Summary procedure*: it applies only in cases where minor infractions are at stake and where the relevant sanctions do not exceed one month of suspension. The facts are described in the official reports (referee and match delegate).

D) *Review process*: this is admissible only if there are circumstances or new evidence capable of demonstrating that the facts which led to final and binding sanctions were not available and could not have been used by those who have been sanctioned in the course of the disciplinary proceedings.

E) *Special Process of impediment for debts*: those who are condemned in last instance and who are not able to pay the economic sanctions cannot sign new contracts or renew existing ones.

F) *Special process of justification of non-appearance*: in case of no-show at the occasion of official games, the relevant persons must provide their justification supported by evidence within two days of the absence.

G) *Rehabilitation*: sports officials who have been banned for life get the opportunity to ask for rehabilitation when more than five years have elapsed since the decision in last instance or the sanction has been suspended for more than 5 years and three quarters of the sentence has elapsed.

6. *Sanctions*

The types of disciplinary sanctions applicable to clubs in the context of professional and non-professional competitions are: a) warning, b) fine; c) compensation; d) forfeited match, e) deduction of points, f) temporary ban on the sports venue, g) playing behind closed doors, h) withdrawal of a title in the sports competition or qualification, i) declassification (i.e. club is ranked last with zero points), j) relegation to a lower division; k) exclusion from professional competitions.

In the case of clubs with “B” teams, the sanctions provided for in points d), e), f), g), h), i) and j) shall be enforced within the championship where the infringement was committed.

The types of disciplinary sanctions applicable to referees, assistant referees, referee observers and League delegates for the infractions they commit are: a) warning, b) suspension, c) exclusion from professional competitions.

Club officials and delegates, as well as players, coaches, technical assistants, doctors, physiotherapists masseurs, officials, and other agents participating in competitions organized by the League or who carry out activities, perform functions or hold positions in these competitions, can be sanctioned with a) warning, b) fine, and c) suspension.

The disciplinary sanctions applicable to sports agents shall be a) warning, b) fine, c) compensation, d) Suspension for a period of time or by number of matches, e) cancellation of registration, f) registration ban.

Finally, all economic sanctions, payment of fines shall be made to the treasury of the League within 30 days of notification to that effect.

If payment is not made within the deadline, the amount of the fine shall be increased by an additional amount corresponding to 20% or 40% of the outstanding fine depending on the delay namely, from 1 to 15 or 16 to 30 days respectively.

Thus, 30 days after the deadline, the debtors are notified by the Executive Committee to pay the fine within 15 days, otherwise they are prevented from participating in official competitions until full payment.

If, until the end of the season, players, coaches and technical assistants still fail pay the fines, they shall be automatically prevented from exercising any activity in football competitions, such impediment ceasing with the payment of the outstanding amounts.

No contracts shall be registered by the League relating to the sport agents that are in debt.

7. *Enforcement of disciplinary decisions in non-professional competitions*

The disciplinary sanctions applicable to clubs in the context of non-professional competitions are:

a) warning, b) fine; c) compensation; d) loss of match revenue; e) forfeited match, f) prohibition of playing in a given sports venue, g) playing behind closed doors, h) exclusion from a competition, i) relegation to a lower division, j) deduction of points, k) ban on transfer of players, and l) registration ban, in the cases and with the effects expressly foreseen in Disciplinary Regulation.

Disciplinary decisions are enforceable as soon as they are notified to the accused, except for decisions that admit an appeal within the sporting structure carrying automatic suspensive effect.

Payment of the fine must be made to the FPF's treasury, within 30 days from its notification.

If payment is not made within the deadline, its amount is increased by 50%.

Fines of value equal to or less than 1/2 UC⁴ (Euro 51.00) when increased are immediately discounted in the checking account of the club that is directly or

jointly responsible for the payment. Clubs are jointly liable for the payment of the fines imposed on their players or officials.

Fines of more than 1/2 UC (Euro 51.00) when increased in 50% are notified to debtor to make payment within 10 days.

When the increased fine is not paid within the deadline, the FPF services register the club's inability to register players and / or the sports agent to perform duties.

Clubs are sanctioned with a fine to be fixed between 1 and 10 UC, in all cases not expressly provided for in the regulation. However, there are also duties imposed by the regulations, rules and instructions of the FPF and other applicable sports legislation.

Club officials are sanctioned with suspension from 15 days to 1 month and a fine to be set between 1 and 8 UC in all cases not expressly foreseen in which he violates duties imposed by the regulations and applicable sports legislation.

FPF Ordinary Member who does not comply or does not enforce order or deliberation emanating from the competent associative body of the FPF, or judicial body especially provided for in its Statutes or in this Regulation, violates obligations imposed by the Statutes of FPF or provides false declarations or information to the FPF is sanctioned with a fine between 15 and 50 UC and may be sanctioned with the reparation.

Failure to abide by disciplinary decisions imposing a suspension for a term of matches or days on a players and/or coach is penalized with a fine and match lost by forfeit, if they are present on the match sheet while suspended.

In general terms, if clubs, players and officials fail to comply with the disciplinary decisions, this will lead to noncompliance to legal duties. In this case, disciplinary proceedings will be initiated against the clubs, players and officials that can lead to the application of a fine and days of suspension if the defendant is a club, a player or an official.

8. *Infringements*

Portuguese legal framework (Law No. 112/99 of 3 of August) imposes to sport federations holding statute of public sport (UPD) some obligations. One of them is to have a disciplinary regulation to enforce the rules of the game as well as the other sporting rules, in particular those relating to sports ethics in particular the rules for the defence of sporting ethics, including violence, doping or corruption, as well as all manifestations of perversion of the sports phenomenon.

⁴ When referring to the fines' amounts foreseen in Disciplinary Regulations we refer to UC – Unidade de Conta (unit of account); this is the expression for the monetary amount equivalent to one quarter of the Portuguese minimum monthly wage guaranteed to employees, at the time of the conviction, rounded up where necessary to the nearest Euro unit or if the proximity is the same, to the Euro unit immediately lower. So, 1 UC is, in this moment, Euro 102.00.² In the professional disciplinary regulations this value is reduced to 75% of Euro 102.00 for the clubs that take part in the 1st League and to 35% of Euro 102.00 for the clubs that take part in 2nd League.

8.1 *Ethics violations*

For the professional competitions, Law No. 112/99 foresees the following specific sanctions for conducts against unethical behaviour (such as corruption):

- a) A fine of Euro 2.500,00 to Euro 25.000,00;
- b) Disqualification of the exercise of any related sports activity between 1 to 10 years, with a double increase in case of recidivism;
- c) Deduction of points or places in the ranking order of the championship;
- d) Relegation to a lower division;
- e) Exclusion from professional competition for a period not exceeding five years.

8.2 *Rules of the game*

Players can be sanctioned with a minimum of one to a maximum of four games and, with a fine of an amount to be set between a minimum of 3 UC and a maximum of 25 UC, in case of aggression against another player. Misbehaviour already sanctioned by the referee with a yellow card is subject to a fine plus one match suspension after the 5th, 9th, 12th and 14th yellow card.

Infractions committed by players in the course of the match are sanctioned by the referee under the Laws of the Game, by showing a yellow card or red card, and are notified at the end of the match to the respective club official, under the terms and for the effects of the provisions regarding automatic preventive suspension. In this case, a player who has been sent off during a match stays automatically suspended for, at least, 12 days and/or until the disciplinary committee assesses the case and takes a decision.

Two yellow cards received in the course of the same match (indirect red card) incurs an automatic one-match suspension. Such suspension is enforceable immediately and no notification is required.

That sanction may not be increased or reduced on the basis of mitigating or aggravating circumstances, nor may it constitute an aggravating or mitigating factor in determining the sanction for other infractions.

The consequences of cards shown in the various competitions organized by the FPF and the LPFP are defined in regulatory agreements between these entities according to the applicable legislation.

Reference must be made to the fact that the yellow cards shown in the National Cup (organized by Federação Portuguesa de Futebol) to players of clubs that take part in professional competitions (1st and 2nd professional league) are not computed for the accumulation of yellow cards that lead to a match suspension in the professional championships.

8.3 Irregular inclusion of players

A club that, in official match, includes in the match sheet ineligible players (ie. those suspended or without license) shall be sanctioned as follows:

(A) in the case of competition by points, with the sanctions of match lost by forfeit and deduction of points to be fixed between a minimum of two and a maximum of five points and, with a penalty of a fine to be fixed between a minimum of 25 UC and a maximum of 100 UC;

B) in the case of qualifying matches, with the sanctions of disqualification and, penalties of a fine in an amount to be set between a minimum of 25 UC and the maximum of 100 UC.

8.4 Disorderliness at matches and competitions

The club whose members or supporters have an inappropriate behaviour, such as the throwing of objects onto the pitch, insults or acts that cause property damage or disturb or threaten to disrupt order and discipline shall be punished with a sanction of fine to be set between a minimum of 5 UC and a maximum of 15 UC for antisocial or non-sporting behaviour.

In case of behaviour threatening order via the throwing of firecrackers and torches, a fine between a minimum of UC15 and Maximum of 75 UC can be imposed.

Clubs are also responsible for damages caused by its members, sympathizers, supporters and spectators, when they occur before, during or after official matches in complex and sports grounds.

Clubs participating in a match shall be liable in equal parts for the damages arising from infractions that occurred within the outer limits of the sports complex before, during or after the match, whose responsibility is not assigned to any of them.

8.5 Offensive and discriminatory behaviour

Clubs that promote, consent or tolerate the display of offensive banners, racist slogans or, in general, any behaviour offending human dignity on the basis of race, language, religion or ethnic origin will be punished with a match behind closed doors to be set between a minimum of one and a maximum of three matches plus, a fine to be set between a minimum of 200 UC and a maximum of 1000 UC.

Players who engage in behaviour that offends human dignity, in particular on the basis of race, colour, language, religion or ethnic origin, shall be punished with a fine to be set between a minimum of 20 UC and a maximum of 100 UC.

Officials who engage in conduct that violates human dignity, on the basis of race, colour, language, religion or ethnic origin, shall be punished with a suspension to be set between a minimum of one month and a maximum of one year and with

a fine of an amount to be set between a minimum of 20 UC and a maximum of 100 UC.

A club that promotes or consents to any conduct, whether written or oral, that by any means violates human dignity on the basis of race, language, ethnic origin, religion, sex or sexual orientation, or any other racist or xenophobic behaviour, will be sanctioned with 2 to 5 matches behind closed doors and with a fine to be set between 10 UC and 20 UC.

In case of aggravating circumstances such as offences committed against the referee or a FPF member, the club shall be sanctioned with 2 to 5 matches behind closed doors and with a fine to be set between 10 UC and 20 UC and deduction of 2 to 5 points in the league table or exclusion of the competition for a period to be set between 1 and 3 sports seasons in case of knock-out competitions.

The official who, through acts or words, offends the dignity of a sports agent, according to his or her origin, sex, race, nationality, ethnicity, language, territory of origin, religion, political or ideological convictions, education, or sexual orientation is punished with a fine to be set between 10 and 20 UC and, in case of aggravating circumstances, with a suspension for 6 months to 2 years.

A player who, through acts or words, offends the dignity of a sports agent according to his or her origin, sex, race, nationality, ethnicity, language, territory of origin, religion, political or ideological convictions, education, or sexual orientation is punished with suspension to be set between 2 to 8 matches and, if he is professional, with a fine to be set between 25 to 125 UC. In case of aggravating circumstance, he may be suspended for a period going from 3 up to 15 matches.

8.6 *Infringements of personal freedom*

Clubs that offend or use expressions, signs, writings, or gestures that are abusive, offensive or gross to members of the organs of the Portuguese Professional League and the Portuguese Football Federation, their respective members, referees, managers and other sports agents, by virtue of the exercise of their functions, or to the same organs as such, shall be punished with a fine between a minimum of 25 UC and a maximum of 250 UC. In the event of a repeated offense, the minimum and maximum limits of the mentioned penalty shall be doubled.

Club shall be held responsible for any behaviour that is made public by its private press and Internet sites which are operated by the club, the sports company or the founding club of the sports company, directly or through an intermediary.

Officials who disrespect or use expressions, signs, writings, or gestures that are abusive, offensive, or gross to members of the League's organs Portuguese Football Association and the Portuguese Football Federation, their respective members, referees, managers and other sports agents, by virtue of the exercise of their functions, or to the same organs as such against members of the bodies of the sporting structure, elements of the refereeing team, managers, players, other

sports agents, or spectators, are punished with the sanction of suspension to be set between a minimum of one month and the maximum of one year, and, additionally, with a fine to be set between the minimum of 25 UC and the maximum of 200 UC. In case of repeated offense, the minimum and maximum limits of penalties are doubled.

A fine will be imposed, between 3 to 8 UC, to the club that challenges the FPF, its statutory activities, governing bodies, committees, ordinary members, delegates of FPF, referees, referees' observers, referees' assistants, to another club and their respective members, managers, employees during the performance of their duties or by virtue of them, even in the form of a suspicion, a fact, or make a judgment on them, offensive to their honour, consideration or dignity. Oral defamation and insults shall be treated as written, gestures, images or any other means of expression. A club that threatens any sports agent by virtue of the exercise of his functions or spectator shall be punished with the same sanction.

Clubs are responsible for the activities of its officials, representatives, partners and employees for the messages transmitted by its own organization and private media.

In the event of a repeated offense, the minimum and maximum limits of penalties referred shall be doubled.

If a Club official challenges the FPF, its statutory activities, governing bodies, committees, regular members, FPF delegates, referees, referee observers, other officials and other sports agents in the performance of their duties or by virtue of them, even in the form of a suspicion, a fact, or a judgment on them, offensive to their honour, consideration or dignity is sanctioned with suspension from 1 month to 1 year and a fine to be set between 3 and 8 UC.

If a club official acting in co-operation with another sports official attempts to force any member of the refereeing team or other sports agent through intimidation during the course of a match to exercise a particular act or to refrain from doing it, is sanctioned with suspension from 2 months to 1 year and a fine to set between 4 and 10 UC.

In the event of a repeated offense, the minimum and maximum limits for suspension sanctions shall be doubled.

A player who challenges the FPF statutory activities, social organs, commissions, ordinary members, FPF delegates, arbitrators, observer, referees assistants to another club and its members, officers, employees or any person with a right of access and stay on the sports site in the performance of their duties or by virtue of them, even in the form of a suspicion, a judgment, offensive to his honour, consideration or dignity is sanctioned with suspension to be set between 4 to 10 matches, and if he is a professional player, he is also sanctioned with a fine to set between 10 to 20 UC.

In the event that the offense is directed against another player or spectator, the penalties referred above shall be reduced by half.

A player who attempts to force any member of the refereeing team or other sports agent through intimidation during the course of a match to exercise a particular act or to refrain from doing so shall be punished with a suspension of 2 to 6 months.

In the event of a repeated offense, the minimum and maximum limits of the suspension sentence are doubled.

8.7 *Forgery and falsification*

A club which, in the processes related to the signing, modification, or termination of contracts, act fraudulently or contrary to the rules of sporting collective bargaining shall be punished with a fine of an amount to be set between a minimum of 125 UC and a maximum of 250 UC.

Referees, assistant referees, referees' observers, and league delegates who in their official report intentionally modify, misrepresent, falsify the events occurring in the game, make false statements, or give wrong information will be sanctioned with an exclusion from professional competitions.

When a referee, observer or match delegate forges a match report, (e.g. changes, misrepresents, distorts or omits the description in the match report of events occurring in the match that occurred on the sports grounds before, during or after the match), or subsequently makes false statements or provide false information about the match report, they shall be punished with a suspension to be established between one and four years.

A club providing false information to the FPF, regardless of the purpose, is sanctioned with a fine to be set between 4 and 10 UC.

False declarations and fraud regarding club official who makes false statements, forge documents, or presents documents to the FPF knowing that they are forged, or acts in simulation or in fraud in violation of the law, sports regulations, or collective agreement are sanctioned with suspension to be set between 1 and 2 years and a fine to be set between 10 and 20 UC.

The club's member who gives false declarations denouncing wage defaults with awareness of the inaccuracy shall be sanctioned with suspension to be set between 3 and 6 months and a fine to be set between 5 to 15 UC.

If the player makes false declarations, falsifies a document or presents a document to FPF, knowing that it is falsified, they will be sanctioned with suspension for 1 to 2 years. If he is a professional player, he will be sanctioned with an additional fine to be set between 15 and 25 UC. If a player does not comply with an order or decision issued by a competent governing body of the FPF, or a court specifically provided for in its Statutes or the Regulation or gives false information to the FPF, whatever its title and regardless of purpose, will be sanctioned with suspension to set between 1 and 6 months and, if he is a professional player, with a fine to be set between 10 and 20 UC.

8.8 *Corruption*

A club that, by offering gifts, loans, promises of a reward, or any other advantage to anyone within the refereeing team or third parties, directly or indirectly requests such agents, expressly or implicitly, threaten the normal development of matches in sporting competitions, in order to have the games taking place under abnormal circumstances, alter or misrepresent the results of matches, or falsify the report of the match will be sanctioned with a fine in an amount to be set between the minimum of 500 UC and the maximum of 2000 UC.

Attempt shall be punished with a deduction of points to be set between a minimum of five and a maximum of eight points and with the sanction of a fine with an amount to be set between the minimum 250 UC and the maximum of 1000 UC.

In case of knock-out competitions, the club will be fined as mentioned in the previous paragraphs and shall be punished with a disqualification and/or exclusion from the competitions for a period to be set between the minimum of one and the maximum of three sports seasons.

Clubs are liable for the acts committed, directly or indirectly, by any of their officials or sports agents.

Clubs that make or take part in illegal arrangements to obtain an irregular result, whether due to the anomalous performance of one or both teams players or by any of its players, or by either presenting a less prominent team than the usual one or other procedure leading to the same purpose, shall be punished with deduction of points between a minimum of five and a maximum of eight points plus a fine between a minimum of 250 UC and a maximum of 1000 UC and disqualification of the season in progress.

The match in which a corrupt act occurs will be invalidated and replayed, provided that the sports result has not yet been ratified, and in case a damage to the other non-guilty club or third parties occurs.

Clubs that give or accept reward or promise of reward, to the purposes of corruption shall be punished with the penalties mentioned above.

Clubs that act in view of organizing corruption of other clubs shall be punished with:

- A) Deduction of points between a minimum of two and a maximum of five points in the general classification;
- B) Forfeit of the match played in knock-out competitions or, if the result of match has been ratified, forfeit of the match or deduction of three points in the current competition in the sporting season corresponding to the date in which the conviction becomes final.

Clubs that give or promise a reward to any agent of the team in order to obtain an undue advantage shall be punished with a deduction of points to be set between a minimum of five and a maximum of eight points and with a fine of an amount between the minimum of 250 UC and the maximum of 1000 UC.

The players who receive a reward or accept a reward to lose or to distort the results of official matches, will be punished with a suspension to be set between a minimum of two and a maximum of six years and, with a fine to be set between a minimum of 25 UC and a maximum of 125 UC.

Officials who participate or claim to have participated in acts of corruption shall be, depending on the circumstances, punished with a suspension to be set between a minimum of two and a maximum of 10 years and a fine to be set between a minimum of 25 UC and a maximum of 250 UC.

A Club will be sanctioned with a fine to be set between 50 to 250 UC in addition to the exclusion from the competition for period to be set between 1 and 3 sports seasons whenever it offers gifts, loans, promises of reward or, in general, any other equity or non-equity advantage for any member of the referee team or third parties, directly or indirectly, request from those agents a partial performance so that the match occurs in abnormal conditions, or with pre-fixed results.

With regard to non-professional competitions, any attempt will be punished with a fine reduced by half, in addition with the following main sanction:

- A) In the championship: forfeit of the match and the deduction of points between 3 and 5 in the overall classification, for every match tried to manipulate.
- B) In knock-out competitions: exclusion from that competition for a period of 1 to 3 sporting seasons.

Clubs are responsible for the acts committed by their officials, representatives and employees.

However, the offer of symbolic objects or of mere courtesy are not sanctionable.

Clubs shall be punished with a fine of 25 to 125 UC and also with deduction between 3 and 5 for every fixed game and with the exclusion from the competition,

Fixed matches shall be invalidated, provided that they have not yet been ratified and in cases where damage to the opposing not guilty club or to third parties not responsible occurs.

A club official who, through the offer of gifts, loans, promises of reward or, in general, any other equity or non-equity advantage for any member of the refereeing team or third parties, directly or indirectly, request from those agents a partial performance so that the match takes place in abnormal conditions, or with consequences in its result or that falsifies the report of the match, is sanctioned with suspension of 2 to 10 years and with a fine to be set between 25 and 125 UC.

A club official making or intervening in agreements to fix a match, whether due to the anomalous performance of one or both of the contending teams or of some of their players, or by the intentional irregular use of either of these, either by the presentation of a team notoriously inferior than the usual or other procedure leading to the same purpose, is sanctioned with suspension from 1 to 8 years and with a fine to be set between 10 and 20 UC.

The official who gives or promises rewards to any sports agent, in order to obtaining a false result or falsifying any incidence of the match, will be sanctioned

with suspension from 1 to 8 years and subsidiary with a fine to set between 10 and 20 UC.

Attempt will be sanctioned with a suspension of 1 to 2 years and with the fines reduced by half.

Club officials are sanctioned with a suspension from 2 to 8 years and a fine to set between 25 and 125 UC when before, during, or after an official match, exercise or threaten physical violence against spectators, members of the public security forces, the referee team, observers of referees, FPF delegates, or sports agents linked to the opposing club, cause physical incapacity, even if temporary, in any of the above, or contributes to a match that occurs in conditions of competitive abnormality or falsify the report of the match.

The player is sanctioned with suspension of 2 to 8 years and a fine to set between 15 and 150 UC, whenever offering gifts, loans, promises of reward, or, any other equity or non-equity advantage to any member of the referee team or third parties, directly or indirectly, request from those agents a partial performance in a way that the relevant game takes place in abnormal conditions or with pre-fixed results or with a distorted report of the match.

8.9 *Doping*

Regarding doping related matters, the disciplinary regulations of the competitions organized by Portuguese professional football league do not apply to offenses committed in violation of the rules on the control and prevention of doping in sport, that are foreseen in paras. 1 and 4 of Article 12 of Law No. 38/2012, of August 28, with the modifications made by the Law No. 93/2015 of August 13. Doping issues are regulated by the doping control regulations approved by Federação Portuguesa de Futebol. Thus, according to the Portuguese anti-doping legislation, Federação Portuguesa de Futebol approved the Regulamento Antidopagem da Federação Portuguesa de Futebol that applies to both professional and non-professional competitions. This regulation was also approved by the Portuguese anti-doping authority registered as ADoP.

According to the Regulamento Antidopagem da Federação Portuguesa de Futebol, depending on the gravity of the offense committed and in case of first infraction, players shall be suspended for a period of maximum 2 years.

Regarding disciplinary procedure two aspects must be taken in consideration:

- a) according to the Portuguese legislation, the ADoP (Portugal's national anti-doping organization) has the disciplinary competence to deal with doping matters. This competence is, however, delegated to national federations but, the ADoP has the power to take over the disciplinary files and take decisions;
- b) since the anti-doping regulation is the same for professional and non-professional competitions, the applicable disciplinary procedure is the

one deriving from the Federação Portuguesa de Futebol disciplinary regulation. According to its relevant rules, the accused must present his defence in writing and submit the appropriate measures of evidence, contrary to the procedure provided for in the regulation of the professional competitions that, with the notification of the accusation, the disciplinary committee set the date of the hearing and the procedure becomes oral.

Conclusions

The Portuguese disciplinary system is centred on one body divided in two different and separate sections. The professional section and the non-professional section, which apply distinct regulations, deal separately with professional and non-professional football players. Diverse approaches and philosophies define the sanctioning policy enacted by those two regulations.

One should consider the agreement concluded between the Federação Portuguesa de Futebol and Liga Portuguesa de Futebol Profissional, which is in line with the relevant rules of the Portuguese laws governing sports federations. That agreement must include, among other obligations, the ones relating to the application of the disciplinary code to the professional clubs when playing in the Cup of Portugal and the Super Cup organized by the Federação Portuguesa de Futebol aside from the professional league championship. According to the application of the above-mentioned contract, disciplinary infringements committed by players and coaches of teams that participate in professionals competitions, when committed in Cup of Portugal and Super Cup, are processed and decided by the nonprofessional section, applying the substantive rules provided in the professional disciplinary regulation, but following the procedure established in the disciplinary regulation of Federação Portuguesa de Futebol for the non-professionals.

A certain public apprehension arises among the football stakeholders and supporters, who have difficulty in grasping correctly the working of the two, distinct sections of the unique Disciplinary Committee.

Another pillar of the Portuguese disciplinary system is the Tribunal Arbitral do Desporto, which deserves to be highlighted.

The insertion of such a judicial body in the sports system brought in material reform to the football federation's appeal bodies responsibilities.

In doing so, the law broke with the previous approach of respecting the autonomy of the sporting jurisprudence dealing with strictly sporting matters. Before this reform, sports issues have never been submitted before state courts (administrative courts).

In fact, administrative courts have, over the past 20 years, decided the settlement of strictly sport questions involve the application of the laws of the game.

Now, Portuguese law excludes issues directly related with the practice of the competition itself from the competences of Tribunal Arbitral do Desporto.

Two main interpretations dominate the review of this reform. The narrow interpretation associates this new designation with the “old” strict sports matters. In other words, the legislative reform has not changed the previous situation so radically. Another interpretation is inclined to welcome the intrusion of the ordinary law in deciding on disciplinary infractions in a match, even if it is an issue that is not related with the application of the laws of the game *per se*. Such an approach has been upheld in some judgments of the council of justice of the Federação Portuguesa de Futebol.

We end by saying that the disciplinary system is not set in stone but is in permanent evolution. In the professional league and in Federação Portuguesa de Futebol new disciplinary regulations are constantly approved and as such the system is continuously changing. Thus, acts which could constitute an infringement today, may not be an infringement tomorrow.

DISCIPLINARY PROCEDURES IN QATAR FOOTBALL

by *Ettore Mazzilli** and *Martin Cockburn***

1. Introduction

The autonomy of sport associations, within the framework of international and national laws as well as the pyramidal organisation structure of sports, results in a federation's high degree of responsibility for ensuring well-organised, fair and exciting competitions. In this context, a transparent, efficient and well-functioning disciplinary system, based upon a set of high standard disciplinary rules and regulations, has turned out to constitute a major pillar for the success and integrity of a sport-discipline.

On those grounds, the Qatar Football Association ("*QFA*"), i.e. the primary authority for organised football in the State of Qatar, over the past years has established a modern disciplinary system, which has proven to cope with today's necessities. Notwithstanding the above, the QFA disciplinary-system as well as the underlying set of rules has undergone frequent changes in light of the rapid development of sports and football in particular – from both an international and local perspective. On a side note, the authors expect this modernization process of the QFA disciplinary-system to continue at high speed, even in the near future.

Against this background, this chapter introduces the disciplinary-system applied by the QFA, mainly focussing on its centrepiece, i.e. the QFA Disciplinary Code in its edition 2016 (hereinafter also referred to as the "*QFA DC*"). Various elements of procedural and substantive nature, playing a significant role in the daily work of the QFA and its judicial bodies, will be outlined. The QFA judicial

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bodies undertake their duties, almost exclusively, in Arabic language. Hence, the available resources on jurisprudence for the purposes of this chapter are limited to its authors. Yet, the disciplinary measures and tools adopted by the QFA, for safeguarding the image, integrity and fairness of the beautiful game of football in the State of Qatar, will be explained in detail.

2. Background

Preliminary, it deems useful to provide some basic information on the modern history as well as the political landscape within the State of Qatar, with particular focus on the underlying judicial system.

Qatar is a hereditary monarchy under the leadership of H.H. Sheikh Tamim Bin Hamad Al-Thani who became Emir on 25 June 2013 upon abdication of his father, H.H. Sheikh Hamad bin Khalifa Al-Thani. The Emir Father has been a key-player in the transition process of shaping Qatar as the modern state it has become. On 8 June 2004, the Emir Father ratified the Permanent Constitution of the State of Qatar (hereinafter also referred to as the “*Constitution*”), which had been overwhelmingly approved in a referendum held on 29 April 2003. Such Constitution repealed the Amended Provisional Constitution, issued on 19 April 1972. The new Constitution represents an important step concerning the democratisation and modernisation of the country. In particular, it foresees the clear separation of powers, namely legislative, executive as well as judiciary.

Today’s legal system in Qatar is grounded on both ancient as well as classical sources and contains elements of Islamic Law. On the other hand, many legal principles derive from the Napoleon Civil Code as well as from Egyptian Law, jurisprudence and procedural aspects.

The State of Qatar in 1916 signed a treaty with the United Kingdom by means of which Qatar became a British protectorate. As consequence, the British established their own court system enforcing English civil law statutes whereas alongside the local courts continued to administer a legal system partially based on the principles of Sharia law. Such practice of dual court system prevailed until 1971 when the first national court system was established in Qatar pursuant to law No. 13 of the Year 1971 (the “*Court of Justice System*”). Accordingly, the court system was divided into four deferent courts, i.e. the Criminal Court (Junior – Major), Civil Court (Junior – Major), Labour Court, and Court of Appeal. This court system remained in place until recently when, pursuant to the stipulations of the Law No. 10 of the Year 2003 (the “*Judicial Authority Law*”), a new court system in the State of Qatar was established, replacing the previous, and unifying the national judicial system.¹ Pursuant thereto litigation, generally, is divided into three stages and can take place at the Court of First Instance, the Court of Appeal as well as the so-called Cassation Court which is also foreseen to establish general

¹ Information according to: www.qatarlaw.com.

guiding principles to be followed by lower courts.² In addition, in 2008 it was newly established the Supreme Constitution Court which is competent, *inter alia*, to supervise the law's compliance with the Constitution as well as providing interpretation to vague legal texts.

3. *Freedom of associations in the context of an internal sanctioning mechanism*

Article 45 of the Constitution provides the legal basis for the establishment of sports federations in Qatar, as well as their operation. Translated into English, the aforesaid article states that “*the right of citizens to establish associations is guaranteed under the conditions and circumstances set out in the Law*”. Hence, the freedom to establish associations is granted as long as the requirements of sub-constitutional law are met. In the context of sport, the freedom of association must also include the gathering of individual athletes in federations and/or clubs. Otherwise the purpose of their establishment would be jeopardized.

Beyond the wording of said article 45, merely referring to the establishment of associations, its substantial scope also grants an association, subject to law, the right to decide on its organization, administration as well as its decision-making process.

In this context, further specifications are included in Law no. (22) of the Year 2004 on the Promulgating of the Civil Code (“CC”). Article 53 CC, section “*Juridical Persons*”, lit. 1) foresees, among others, that private associations and corporations shall be considered as “*corporate persons*” which, pursuant to the CC’s Article 54 para. 2, lit. b), are equipped with “*the capacity within limits defined by its founding constitution or as provided by law*”. Hence, the right to self-legislation by (sport) federations within the legal framework “*of a founding constitution*”, i.e. a federation’s articles of association and/or statutes, is expressly recognized. Therefore, a sports federations’ autonomy in the State of Qatar as per Article 45 of the Constitution also applies to the establishment and ratification of articles of association/statutes.

Such articles of association/statutes constitute the legal basis of an association and will include fundamental principles concerning a federation’s organisation and function. Key-elements, reflecting a sport association’s internal self-regulation include: its objectives, membership, organizational structure, organs and bodies, legal representation, judicial bodies and the internal law-making process.

In lieu of its statutory foundation, an association will regulate its functioning on a day-to-day basis through by-laws, rules, regulations, directives and/or circulars (hereinafter also individually and/or jointly referred to as “*Regulations*”) of lower rank than the articles of association/statutes. Such

² In this respect, the Cassation Court will only consider a wrong application or interpretation of the rules of law. The Court of Appeal is competent to decide the appeals objecting to the judgements delivered by the First Instance Courts.

Regulations of sports federations will not only refer to internal administrative aspects, but will specify the means of reaching the association's goals and objectives.

Obviously, the Regulations of sports associations will extensively contain competition-related aspects including, *inter alia*, rules according to which a competition shall be played, rules of conduct, a sanctioning mechanism for rule violations and how such violations shall be dealt with. Emphasis shall be given that the relationship between an association and its direct/indirect members, including association-internal sanctions based on the underlying Regulations in this regard, are of purely civil law nature.

Yet and as sport federations do not practice in a legal vacuum, a sport association's sanctioning mechanism, having certain similarities to penal procedures conducted by state courts, may be required to follow minimum standards and/or principles. In any case, in accordance with the QFA internal sanctioning system, the QFA judicial bodies conduct their proceedings in accordance with fundamental legal principles also applied in penal law, taking into account the specificity of sport. Hence, the disciplinary proceedings carried out by the QFA judicial bodies are understood to comply with core values under Qatari law to be considered in any penalising proceedings, may they be of penal and/or civil nature.³

Hence, it can be concluded that sport federations in Qatar, in light of their constitutional and sub-constitutional freedoms, have the mandate to include in their Regulations, subject to Qatari law and fundamental legal principles, an internal mechanism for sanctioning rule violations of disciplinary nature.

4. *The QFA (structure and competencies)*

The QFA was established in the year 1960. The QFA is a non-profit organization under the laws of the State of Qatar established in the legal form of a private organization of public interest in accordance with applicable Qatari law. The QFA Statutes in their current version⁴ form the back-bone of the association and enshrine, *inter alia*, the QFA internal structure and competencies. The QFA, in particular, is

³ As will be set forth in greater detail throughout this chapter, the QFA judicial bodies, *inter alia*, observe fundamental procedural principles of law as follows:

- Compliance with composition and quorum of judicial bodies;
- Independence of judges;
- The right to be heard;
- The right to appeal unless expressly excluded;
- "Nulla poena sine lege", i.e. with regards to the principle of certainty of sanctions no sanction shall be imposed if at the time of the alleged violation no any such sanction was foreseen in the QFA DC;
- Unless the aspects of specificity of sports may so require otherwise, the principle of culpability of the perpetrator applies. No sanction shall be imposed if the perpetrator has not acted with any default;
- Prohibition to impose a double-sanctioning for the same rule violation; and
- The principle of proportionality of sanctions.

⁴ The current version of the QFA Statutes has been adopted in a QFA Extraordinary General Assembly held on 18 April 2017.

a member of the Fédération Internationale de Football Association (“FIFA”), the Asian Football Confederation (“AFC”) and the Qatar Olympic Committee (“QOC”).

a) *The QFA’s objectives*

Among others, the objectives of the QFA, as the governing authority of organised football in the State of Qatar, related to the relevant topic, are:

- to constantly improve the game of football and promote, regulate and control it throughout the territory of the State of Qatar;
- to organize competitions in association football in all its forms at a national level, apart from the organization of competitions under the area of authority conceded to the Qatar Stars League Management (“QSLM”) by the QFA Executive Committee;
- to draw up regulations and provisions and ensure their enforcement;
- to promote integrity, ethics and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardize the integrity of matches, competitions, players, officials and members or give rise to abuse of association football;
- to provide the necessary institutional means to resolve any internal dispute that may arise between members, clubs, officials and players of the QFA;
- to respect, observe and ensure the application of the statutes, regulations, directives, decisions and the Code of Ethics of FIFA, of AFC, of QOC and of the QFA as well as the Qatar Anti-Doping Commission Anti-Doping Policy; and
- to prevent any infringement of the statutes, regulations, directives and decisions of FIFA, of AFC and the QFA as well as the Laws of the Game issued by the International Football Association Board (“IFAB”) and to ensure that these are also respected by its members, clubs, officials and players as well as to prevent all methods or practices which might jeopardize the integrity of matches or competitions or give rise to abuse of association football.⁵

b) *Summary of the QFA’s structure and competencies*

The QFA’s objectives shall be reached through the democratic structure of the QFA, as controlled by its members.⁶ On those grounds, the following paragraphs will briefly set forth selected aspects concerning the QFA’s structural composition in accordance with Article 22 (“*Bodies of the QFA*”) of the QFA Statutes.⁷

⁵ A complete listing of the QFA’s objectives can be found in Article 2 of the QFA Statutes.

⁶ Currently the QFA consists of 19 members, i.e. 18 professional football clubs established as one person companies under the laws of the State of Qatar as well as the Qatar Stars League Management (“QSLM”).

⁷ Article 22 of the QFA Statutes reads as follows:

“1 *The General Assembly is the supreme and legislative body.*

Accordingly, the General Assembly is the supreme and legislative body of the QFA. As per Article 25 of the QFA Statutes, the General Assembly, *inter alia*, carries responsibility for adopting and amending the QFA Statutes as well as the QFA Electoral Code. The General Assembly elects the QFA President, the members of the Executive Committee as well as the Electoral Committee. An ordinary general assembly shall be held every year (Article 29 para. 1 of the QFA Statutes).

The QFA Executive Committee is the executive body of the QFA. It consists out of seven members: the QFA President and six members of which one shall be appointed as the Vice-President, elected for a period of four years. The powers of the Executive Committee are enshrined in Article 37 of the QFA Statutes. Among others, the Executive Committee shall pass decisions on all cases that do not come within the sphere of responsibility of the General Assembly or are not reserved for other bodies by law or under the QFA Statutes. Moreover, it shall adopt and issue the rules and regulations of the QFA unless otherwise stipulated in the QFA Statutes. For the purposes of this chapter, the QFA Executive Committee shall appoint the chairman, deputy chairman and members of the QFA judicial bodies. Standing and ad-hoc committees shall advise and assist the Executive Committee in fulfilling its duties.

The General Secretariat is the administrative body of the QFA under the leadership of the General Secretary, i.e. the chief executive of the QFA.

The judicial bodies of the QFA are the Disciplinary Committee, the Ethics Committee – which, however, has not yet been established –, and the Appeal Committee.

c) *Football Competitions in Qatar*

For the sake of completeness, it shall not remain unmentioned that the QFA is not the only stakeholder in the organization of football competitions in the State of Qatar. On 24 September 2008 the QFA founded the QSLM which was legally established in order to further achieve progress of the national football league in Qatar in compliance with FIFA's as well as the AFC's aims, i.e. the promotion and development of football on regional and international level maintaining its independence and integrity.

² *The Executive Committee is the executive body.*

³ *Standing and ad-hoc committees shall advise and assist the Executive Committee in fulfilling its duties. Their duties, composition and function are defined in these Statutes and/or special regulations drawn up by the Executive Committee.*

⁴ *The General Secretariat is the administrative body.*

⁵ *The Judicial Bodies are the Disciplinary Committee, the Ethics Committee and the Appeal Committee.*

⁶ *The Club Licensing Bodies are in charge of the club licensing system within the QFA.*

⁷ *The Electoral Committees are in charge of organising and supervising the election process.*

⁸ *The bodies of the QFA shall be either elected or appointed by the QFA itself without any external influence and in accordance with the procedures described in these Statutes".*

On those grounds, there are, in particular, four major professional club football competitions in Qatar. Pursuant to Article 74 of the QFA Statutes as well as the relevant assignments from QFA to the QSLM, such relevant competitions are organized as follows:

- The QFA organizes and coordinates, in particular, the Second Division National League as well as the H.H. the beloved Emir's Cup (the biggest cup competition played among all professional Qatari clubs – Article 74 para. 1 QFA Statutes);
- The QSLM organizes and coordinates, in particular, the Qatar Stars League (“QSL” – First Division National League) as well as the Qatar Cup (cup competition between the first four ranked clubs of each QSL season – Article 74 para. 2 QFA Statutes).⁸

Against this background though, emphasis shall be given that the QFA retains the disciplinary power for all aforesaid football competitions under the umbrella of the QFA judicial bodies, which shall perform their responsibilities in accordance with the QFA DC.

5. *The legal framework (sources: statutes and regulations)*

The QFA, when implementing its own disciplinary mechanism at national level, needs to consider requirements deriving from an international legal framework, i.e. requirements set up by FIFA and the AFC, as well as comply with its own regulatory framework, first and foremost being the QFA Statutes.

a) *FIFA Requirements*

In this context, the autonomy of the QFA to regulate its disciplinary system at the domestic level is heavily influenced by requirements deriving from the FIFA Statutes and, in particular, the FIFA Disciplinary Code in its applicable edition 2011 which entered into force on 1 August 2011.

On the one hand, Article 15 (“*Member associations’ statutes*”) lit. g) of the FIFA Statutes requires member associations to have in place statutes which, *inter alia*, must include “*the imposition of disciplinary measures, including for ethical misconduct, and measures required to protect the integrity of competitions*”. However, such minimum requirements set up by FIFA do not *de facto* impact the legal framework and/or the substance of the disciplinary system established by the QFA.

However, the QFA disciplinary system has been influenced by Article 146 of the FIFA Disciplinary Code. In the spirit of harmonizing disciplinary measures, Article 146 para. 1 obliges member associations to adapt their own disciplinary code in a way which, to a considerable extent, follows the example of the FIFA Disciplinary Code. On those grounds, Article 146 para. 2 lists a number of provisions of the FIFA Disciplinary Code, which must be incorporated in a national

⁸ An U23 league competition may be introduced to take place shortly.

association's disciplinary code in accordance with their internal association structure.⁹ Per Article 146 para. 3 of the FIFA Disciplinary Code, associations shall also incorporate in their national disciplinary code a number of provisions of the FIFA Disciplinary Code but, in doing so, they are at liberty to choose the exact means and wording.¹⁰ In addition, associations are advised under Article 146 para. 4 of the FIFA Disciplinary Code to incorporate in their own disciplinary regulations articles which are not listed under the latter's Article 146 para. 2 and 3.

b) *QFA Statutes*

Against this background, the QFA has established its own disciplinary system at national level which, concerning its structure follows the FIFA disciplinary system to a large extent complying with the requirements set up by Article 146 of the FIFA Disciplinary Code, while simultaneously, incorporating aspects of domestic particularity.

Certainly, the framework of the disciplinary system of the QFA originates in the QFA Statutes. On those grounds, Article 22 ("*Bodies of the QFA*") para. 5 as well as Article 57 ("*Judicial Bodies*") para. 1 of the QFA Statutes name the Disciplinary Committee, the Ethics Committee as well as the Appeal Committee as the judicial bodies of the QFA.

Article 57 para. 2 of the QFA Statutes foresees that the responsibilities and functions of the aforesaid judicial bodies shall be stipulated in the Disciplinary Code of the QFA and in the Code of Ethics of the QFA, both to be issued by the Executive Committee. Other than that, the QFA Statutes mainly draw up rather generic requirements on the QFA judicial bodies, which will be set out in greater detail below. Furthermore, the QFA Statutes in Article 61 ("*Disciplinary Measures*") set out a primary list of potential disciplinary measures, which may be imposed on natural and/or legal persons. However, additional sanctions may be included in QFA regulations, including, in particular the QFA DC.¹¹

⁹ The wording of Article 146 para. 2 of the FIFA Disciplinary Code states as follows:

"The associations shall, without exception, incorporate the following mandatory provisions of this code into their own regulations in accordance with their internal association structure: art. 33 para. 6, art. 42 para. 2, art. 58, art. 63, art. 64, art. 99 para. 2 and art. 102 para. 3. Pursuant to art. 146 para. 3, the associations do, however, have some freedom with regard to the fines stipulated in art. 58 and art. 64".

¹⁰ Article 146 para. 3 of the FIFA Disciplinary Code contains the wording as follows:

"The associations shall also incorporate the following provisions of this code to achieve the objective of harmonising disciplinary measures but, in doing so, they are at liberty to choose the means and wording of the provisions: art. 1-34, art. 39-57, art. 59-62, art. 65-72, art. 75-77, art. 85-90, art. 94-98, art. 99 para. 1, art. 100, art. 102 para. 1 and 2, art. 103-108, art. 110, art. 115, art. 129-132, art. 136-137, art. 142 and art. 144. The associations are obliged to ensure especially that the infringements mentioned in these provisions and the appropriate sanctions are strictly incorporated and that the general principles are adhered to".

¹¹ A comprehensive list of sanctions under the QFA DC will be set forth below in section 8 ("*Sanctions*") of this chapter.

In fact, it is the QFA DC which, in accordance with and in specification of the QFA Statutes, sets out in detail its scope of application, available sanctions, punishable conduct or omission as well as the composition of and the proceedings in front of QFA judicial bodies.

c) *The Structure of the QFA DC*

Concerning its structure, in a preliminary title, the QFA DC includes relevant definitions, sets out its objectives as well as incorporates its scope of application (substantive law, persons being subject to the QFA DC and its application from a timely perspective). The First Title of the QFA DC deals with aspects of substantive law. Insofar, Chapter I (“*General Part*”) contains generic conditions for sanctions, a list of applicable disciplinary measures, including an explanation of their meaning, as well as rules for the determination of sanctions. Chapter II (“*Special Part (Infringements)*”) includes, *inter alia*, specific violations related to the general principles of conduct, infringements of the laws of the game, disorderliness at matches, competitions and official activities, the aspect of responsibilities of clubs, offensive and discriminatory behaviour, infringements of personal freedom, forgery and falsification, integrity-related matters, doping as well as matters related to the failure to respect decisions. Subsequently, the QFA DC in its Second Title (“*Organization and Procedure*”) contains in Articles 83 *et seq.* aspects related to the jurisdiction and organization of as well as the procedures in front of the QFA judicial bodies, including appeal proceedings.

d) *Scope of application*

The QFA DC applies to every match and competition organized by the QFA or the QSLM. Beyond this scope it also applies if a match official is harmed and, more generically, if the statutory objectives of the QFA and QSLM are breached (Article 2 para. 1 QFA DC). However, the QFA DC does not apply to certain amateur competitions such as the Qatar Amateur League, the University League as well as grass-root competitions (i.e. competitions of U12 and younger teams). Disciplinary-related aspects related to the aforesaid amateur competitions, are governed by separate regulations fitting the relevant competition format.

Article 3 of the QFA DC sets out the personal scope of application. Accordingly, the QFA DC applies, in particular, to member clubs, the QSLM, other members of the QFA, officials, players, match officials, intermediaries registered with the QFA, anyone having obtained an authorization of the QFA or the QSLM with regards to a match, competition or other event organised by the QFA or the QSLM as well as spectators.

On those grounds, emphasis shall also be given that certain disciplinary-related matters do not fall under the competence of the QFA judicial bodies as will be demonstrated in the paragraphs to follow.

e) *Financial Control/Club Licensing*

As a novelty and in addition to the existing disciplinary system established by the QFA, the QFA Statutes on 18 April 2017 were amended through a QFA Extraordinary General Assembly to introduce, in light of efforts to limit club expenditure in Qatar, a new QFA standing committee, the so-called Financial Control Committee (“FCC”). As per Article 55 of the QFA Statutes the FCC “*shall, primarily, safeguard the financial performance, stability and management of member clubs. An effective control mechanism shall ensure the member clubs’ and their officials’ compliance with obligations and duties set out in the QFA Financial Control Regulations issued from time to time by the Executive Committee*”.

In this context, violations of the QFA Financial Control Regulations may be subject to sanctions of disciplinary nature. However, as per Article 55 para. 5 of the QFA Statutes, the FCC, due to its expertise, was assigned decision-making powers (as first instance decision-maker) to pronounce sanctions described in the QFA Financial Control Regulations. Uniquely, decisions rendered by the FCC are not appealed to the QFA judicial bodies. Appeals to FCC decisions are made directly to the Qatar Sport Arbitration Tribunal (“QSAT”) in accordance with the QFA Statutes as well as the QSAT Code (Article 55 para. 8 of the QFA Statutes).

For the sake of completeness, it shall not remain unmentioned that the aspect of financial control is materially different than club licensing.

In this context, Article 75 (“*Club Licensing System*”) of the QFA Statutes expressly states that “*the QFA shall be responsible for the operation of a club licensing system in accordance with the relevant club licensing regulations of AFC and FIFA. The QFA Executive Committee may delegate the operation of the club licensing system to the QSLM*”. With the respective approval of the AFC dated 29 July 2011, the QFA delegated the operation of the national club licensing system to the QSLM.

Such system established certain requirements on Qatari professional football clubs, organised as one person companies in accordance with the laws of the State of Qatar, to be met in certain criteria including: the sectors sports, infrastructure, personnel and administration, and legal and finance. If the minimum criteria are fulfilled the club will be granted a license allowing entrance in the QSL as well as AFC club competitions, if qualified.

According to the provision 2 (“*Procedure*”) of the QSLM Club Licensing Regulations (hereinafter, the “*Licensing Regulations*”), lit. 2.2.2 there are three different criteria grades. “*A*” Criteria are mandatory. If the license applicant does not fulfil any of such “*A*” Criteria, then it shall not be granted a license. “*B*” Criteria are also mandatory. However, if the license applicant does not fulfil any of them, it shall be sanctioned. “*C*” Criteria refer to best practice elements and are only recommendations. Non-fulfilment of any “*C*” Criteria does not lead to any sanction or to the refusal of the license.

Against this background, the QSLM then established decision-making bodies, i.e. a first instance body (the Club Licensing Committee (“CLC”) and a second instance body (the Club Licensing Appeal Committee (“CLAC”)), with regards to the licensing process. The CLC will decide within the relevant deadlines whether a license should be granted to the applicant commercial entity or whether a license should be withdrawn on the basis of the documents at its disposal and in accordance with the provisions of the Licensing Regulations. The QSLM insofar nominates administrative staff of QFA and QSLM as members of the CLC.

The CLAC decides on appeals submitted in writing against decisions of the CLC and makes a final and binding decision on whether a license should be granted. Members of the CLAC shall not include administrative staff of the QFA or QSLM and may not be member of any other statutory body or committee of QSLM.

In any case though, it is important to note that neither the CLC nor the CLAC will decide on disciplinary sanctions to be imposed on any license applicant for any violation of the Licensing Regulations. Rather any such violations shall be referred to the QFA judicial bodies for adjudication according to the QFA Disciplinary Code.

f) Competence for doping-related matters

The QOC is the authority in the State of Qatar to fight the use of doping in accordance with the World Anti-Doping Agency (“WADA”) Code. For this purpose, the QOC, on 7 March 2005, established the Qatar Anti-Doping Commission (“QADC”) to carry out anti-doping functions on behalf of the QOC, which are undertaken on the basis of the QADC Anti-Doping Rules in force from time to time.

These Anti-Doping Rules will apply, in particular, to QADC, national sports federation of Qatar, and each participant in their activities by virtue of the participant’s membership, accreditation, or participation in their national sports federations, or their activities or events. Moreover, these Anti-Doping Rules will apply to all doping controls over which the QADC has jurisdiction.

In accordance with the QFA Statutes as well as Article 78 (“Doping”) of the QFA Disciplinary Code, the QFA recognizes all football-related decisions of the QADC, the Qatar Anti-Doping Disciplinary Panel as well as the Qatar Anti-Doping Appeal Panel whereas the QFA judicial bodies are not competent do take decisions on doping matters.

6. The QFA’s judicial bodies/Structure/Competencies

As indicated above, the QFA judicial bodies are stipulated in Articles 22 para. 5 and Article 57 para. 1 of the QFA Statutes. Despite naming also an Ethics Committee, so far no any such body has been created. Against this background, the existing QFA judicial bodies are the Disciplinary Committee as well as the Appeal

Committee. Responsibilities and functions of both said judicial bodies are stipulated, in particular, in the QFA Statutes as well as the QFA DC.

a) *The QFA Disciplinary Committee*

In accordance with Article 57 para. 2 of the QFA Statutes as well as Article 88 (“*Jurisdiction*”) para. 1 QFA DC, the Disciplinary Committee is authorized to sanction any breach of statutes, regulations, directive, circulars or decisions of the QFA or QSLM which does not come under the jurisdiction of another body. Moreover and as per Article 88 para. 2 QFA DC, the Disciplinary Committee is also responsible for sanctioning serious infringements which have escaped the match officials’ attention, rectifying obvious errors in referees’ disciplinary decisions, and extending the duration of a match suspension incurred automatically by an expulsion and pronouncing additional sanctions, such as a fine.¹²

Members of the QFA judicial bodies may not belong to any other body of the QFA (Article 57 para. 4 QFA Statutes). The Disciplinary Committee shall consist of a chairman, a deputy chairman and the number members deemed necessary (Article 58 para. 1 of the QFA Statutes and Article 88 para. 1 of the DC). At least one committee member must have legal qualifications.

The Disciplinary Committee shall pass decisions only when at least three (3) members are present. In certain cases, the chairman may rule alone if provided in the QFA DC (Article 58 para. 2 of the QFA Statutes). The Disciplinary Committee may pronounce the sanctions described in the QFA Statutes, the QFA DC or other applicable regulations on members, officials, players, clubs, intermediaries and all those subjects to its jurisdiction.

¹² In this context though, Article 88 para. 2 of the QFA DC needs to be considered in conjunction with Article 85 (“*Referee*”) which reads as follows:

1. *During matches, disciplinary decisions are taken by the referee.*
2. *Decisions taken by the referee on the field of play are final and may not be reviewed by the QFA judicial bodies.*
3. *In cases where a decision by the referee involves an obvious error, only the disciplinary consequences of that decision may be reviewed by the QFA judicial bodies.*
4. *In cases of mistaken identity, disciplinary proceedings may, in accordance with this Code, be opened only against the person who was actually at fault.*
5. *A protest against a caution or expulsion from the field of play after two cautions is admissible only if the referee’s error was to mistake the identity of the player.*
6. *In certain circumstances, the jurisdiction of the judicial bodies may apply:*
 - a) *Sanctioning serious infringements which have escaped the match officials’ attention;*
 - b) *Rectifying obvious errors in the referee’s disciplinary decisions (cf. Art. 85 paras. 3 & 4 above);*
 - c) *Extending the duration of a match suspension incurred automatically by an expulsion;*
 - d) *Pronouncing additional sanctions, such as a fine”.*

b) *The QFA Appeal Committee*

In accordance with Article 57 para. 2 and Article 60 para. 3 of the QFA Statutes, in connection with Article 90 (“*Jurisdiction*”) para. 1 of the QFA DC, the Appeal Committee is responsible for hearing appeals against decisions of the Disciplinary Committee that are not declared final by the relevant regulations of the QFA.¹³ The Appeal Committee may uphold, amend or overturn the appealed decision. In case of a fundamental mistrial, the Appeal Committee can overturn the appealed decision and refer the case back to the Disciplinary Committee for reassessment (Article 90 para. 2 QFA DC).

The Appeal Committee shall consist out of a chairman, a deputy chairman and the number of members deemed necessary (Article 60 para. 1 of the QFA Statutes, Article 91 para. 1 QFA DC). The chairman and the deputy chairman shall have legal qualifications.

The Appeal Committee shall pass decisions only when at least three members are present. In certain cases, the chairman may rule alone if provided in the QFA DC.

For the sake of completeness and whereas this aspect will be set out in greater detail below, already at this stage it shall be indicated that decisions pronounced by the Appeal Committee may be appealed to the QSAT in accordance with the QFA Statutes and the QSAT Code (Article 60 para. 4 of the QFA Statutes).

7. *Responsibilities of clubs*

Within disciplinary disputes, characteristically, punitive measures – such as sanctions, penalties or fines – are imposed by a sports body against a club, an individual or members by means of which the behaviour during or outside an event is penalised. For the sake of clarification though, any such punitive measures are of a civil law nature and, therefore, of paramount difference than sanctions imposed in penal law procedures prosecuted by the state. The latter, in particular, shall serve deterrence, betterment as well as retaliation in return for a culpable act of the perpetrator weighing up the state interests and the personal freedom of an individual. In contrast, disciplinary measures in sports shall serve, among others, compliance with the “*law and order*” of the game, the integrity and fairness of sport competitions and, eventually, are the outflow of the freedom of associations in view of specificity of sports.

¹³ In accordance with Article 124 (“*Contestable Decisions*”) of the DC “*an appeal may be lodged with the Appeal Committee against any decision passed by the Disciplinary Committee or Ethics Committee, unless the disciplinary sanction pronounced is:*

- a) *A warning;*
- b) *A reprimand;*
- c) *A suspension of up to two (2) matches;*
- d) *A fine of up to QAR 50,000;*
- e) *Decisions passed for failure to respect decisions”.*

Against this background though and in accordance with general legal principles, those legal and natural persons being subject to the QFA DC should be able to foresee which scenarios, conduct or omission may lead to the applicability of sanctions. In this context, subjects to disciplinary measures shall be aware of their responsibilities under the relevant QFA Statutes and the QFA DC.

a) *Responsibilities as per QFA Statutes*

First of all, as per Article 16 (“*Members Obligations*”) of the QFA Statutes, members, *inter alia*, have the obligations to:

- comply fully with the statutes, regulations, directives and decisions of the QFA, FIFA and AFC, the QADC at all times as well as with the awards of the QSAT and to ensure that these are also respected by its members;
- respect the Laws of the Game as laid down by IFAB and the Futsal Laws of the Game and the Beach Soccer Laws of the Game as laid down by FIFA and to ensure that these are also respected by its members through a statutory provision;
- observe the principles of loyalty, integrity and good sporting behaviour as an expression of fair play through a statutory provision; and
- comply fully with all other duties arising from the Statutes and other regulations of the QFA, FIFA and AFC.

These obligations under the QFA Statutes, being merely selective in light of the purpose of this chapter, do not only impose a set of general obligations and responsibilities on the QFA’s members but also safeguard their observance by its own members which are, in particular, registered athletes and officials.

b) *Responsibilities on Clubs as per the QFA DC*

On the grounds of the above and in the light of the complex nature to organize and conduct sporting competitions, the following paragraphs will set out selected club responsibilities under the QFA DC taking into account the specificity of sport.

Several of these responsibilities are enshrined under Section 4 (“*Responsibilities of Clubs*”), Articles 61 *et seq.* of the QFA DC. Among others and related to safety aspects of match organization, clubs as per Article 62 of the QFA DC, *inter alia*, shall collaborate with the relevant authorities for securing the safety of sporting events before, during and after the events takes place. In this context, full compliance with the relevant competition regulations issued by the QFA/QSLM is of the utmost importance. Violations of such important provisions may result in sanctions, in terms of fines, stadium bans or an order to play on neutral grounds. In exceptional circumstances, it may be ordered, for safety reasons, that a match has to be played without spectators, on neutral territory or in a certain stadium without that a club infringement has been committed (Articles 62 para. 4 and 5 para. 2 QFA DC).

Another prominent example of club responsibilities, which already has been discussed in many jurisdictions, is the question whether a club can be held liable for spectator conduct even though it may not have any degree of culpability, i.e. the application of so-called strict liability principle.

The QFA DC in its Article 63 (“*Liability for spectator conduct*”) clearly provides an answer in the affirmative. As per its para. 1, the home club is liable for improper conduct among spectators, regardless of the question of culpable conduct or culpable oversight. On the other hand, the visiting club is liable for improper conduct among its own group of spectators, regardless of the question of culpable conduct or culpable oversight (para. 2). In this context, supporters occupying the away sector of a stadium are regarded as the visiting club’s supporters, unless proven to the contrary.

Improper conduct in terms of the above provisions includes, *inter alia*, offending the dignity of a person or group of persons through contemptuous, discriminatory, or derogatory words, sounds or actions concerning race, colour, language, religion, or national origin; invading the field of play; using any type of explosions, fireworks or smoke bombs, letting off incendiary devices, or objects, throwing any projectiles, violence towards any persons or objects; displaying or using insulting, racist or political slogans in any form; and/or the use of laser pointers or similar electronic devices.

Violent spectator behaviour or other improper conduct during matches, unlike in many other parts of the world, is not a common phenomenon in Qatari football. Therefore, the QFA judicial bodies so far have never dealt with such a case. Hence, the question whether such strict liability principle included in Article 63 of the QFA DC could be upheld in accordance with the laws of the State of Qatar has never been answered, either by the QFA judicial bodies or ordinary Qatari courts.

In addition, the QFA DC contains various other elements, which, in light of the specificity of sports, assign clubs responsibility for the behaviour of its teams, players and/or officials. One example in this context is Article 52 (“*Team misconduct*”) of the QFA DC. Accordingly and related to match participation, a club may be sanctioned in cases where a team fails to conduct itself properly. Improper conduct in the aforesaid sense may relate to the delay or refusal in appearing in the field of play, the receipt of a certain number of cautions (5) and expulsions (2) during one match, threatening and/or harassment of match officials by players, etc.

As a final remark, it shall not remain unmentioned that club responsibilities may also extend on legal consequences invoked by the judicial bodies on either players and/or officials. In this context and as per Article 12 (“*Fine*”) para. 4 of the QFA DC, clubs are jointly liable for fines imposed on their players and officials.

Additional club responsibilities in accordance with the QFA DC will be set out in the context of sanctions further below.

8. *Procedures*

The procedures of disciplinary matters in front of the QFA judicial bodies are set out, in particular, in Articles 114 *et seq.* of the QFA DC and shall be strictly obeyed.

a) *Commencement of proceedings*

Proceedings on potential disciplinary infringements are prosecuted either *ex officio* or upon request (Article 114 para. 1 QFA DC) whereas the Disciplinary Committee is the first instance judicial body. Regularly, disciplinary proceedings will be opened based upon official reports, protests, requests of the QFA Executive Committee, the QFA President or the QFA General Secretary, on the basis of documents received from public authorities and/or where a complaint has been filed. In this context, any person may report conduct considered incompatible with the requirements on football stakeholders. Such relevant complaints shall be made in writing and will be forwarded by the QFA General Secretary to the relevant judicial body.

b) *Investigation/Collaboration by the parties*

Unlike in other associations, the QFA judicial bodies are not separated in an investigatory and a decision-making chamber/department. Rather, the chairman of the respective judicial body shall lead the investigations in a matter unless he assigns this role to other member(s) of such judicial body. Also the secretariat to the QFA judicial bodies may assist in investigations (Article 115 para. 1 QFA DC). In cases of complex nature, third parties may be engaged for investigative duties (Article 115 para. 2 QFA DC). Investigations are carried out by means of written inquiries and written or oral questioning of the parties and witnesses, verification of the authenticity of documents or any further investigative measures relevant to the case or any other measure which is deemed necessary (Article 115 para. 3 QFA DC).

As QFA judicial bodies, certainly, do not have at their disposal the same tools as ordinary courts, party collaboration is paramount. On those grounds and as per Article 116 para. 1 of the QFA DC, the parties are obliged to collaborate to establish the facts. In particular, they shall comply with requests for information from the QFA judicial bodies. If the parties do not collaborate, the competent judicial body may, after warning them, impose a fine (Article 116 para. 3 QFA DC) and/or other sanctions deemed necessary to facilitate party collaboration.

c) *Fundamental rights*

At all times throughout the relevant proceedings in front of the QFA judicial bodies, a party's fundamental procedural rights shall be safeguarded. Among others, a

party's right to be heard, as enshrined in Article 103 of the QFA DC, shall be guaranteed in writing or orally before any decision is passed. In particular, parties may refer to the case file, submit – at a minimum – written statements, request the production of proof, be involved in the production of proof and obtain a reasoned decision (Article 103 para. 2 QFA DC). The right to be heard may be restricted in exceptional circumstances, such as when confidential matters need to be safeguarded (Article 103 para. 3 QFA DC). Furthermore, parties have the right for legal representation and assistance. As per Article 104 of the QFA DC, a legal representative, based upon a power of attorney, can be from either inside or outside the State of Qatar. Moreover, parties, in particular, may produce any type of proof as far as human dignity is not violated (Article 105 para. 1 QFA DC). Evidence, among others, is admissible in the form of reports from referees, assistant referees, match commissioners and referee inspectors, official records, declarations from the parties and witnesses, material evidence, expert opinions and audio or video recordings. In this context and *in lieu* of Article 107 of the QFA DC, facts contained in match officials' reports are presumed to be accurate whereas proof of the inaccuracy of the contents of these reports may be provided.

d) Deliberation/Burden of Proof

Upon completion of the relevant investigations, the QFA judicial bodies will adjourn for consideration and to produce formal decision. In this context and as a general rule, there are no hearings and the judicial bodies will decide on the basis of the file at disposal (Article 117 para. 1 QFA DC). However, at the request of one of the parties or on its own initiative, the competent judicial body may arrange for a hearing (Article 117 para. 2 QFA DC). Hearings are heard behind closed doors. The language of proceedings in front of the QFA judicial bodies is Arabic (Article 110 para. 1 QFA DC). However, the services of an interpreter, at the cost of the requesting party, may be provided.

In its meetings, the judicial bodies may call external experts or advisors who can attend meetings to provide reports or opinions only with consultative voice, but no right to vote (Article 95 para. 2 QFA DC).

In case the judicial bodies consider them sufficiently informed, they will enter into deliberations which may be conducted via telephone conference, videoconference, written circulation or a similar method in exceptional circumstances (Article 118 para. 1 of the QFA DC).

As a general rule, the burden of proof regarding disciplinary infringements rests on the QFA (Article 109 of the QFA DC). Members of the QFA judicial bodies shall decide on the basis of their personal conviction (Article 106 para. 3 of the QFA DC).

e) *Decisions*

Decisions come into force as soon as they are notified to the parties concerned (Article 119 para. 1 QFA DC). As a general rule, decisions shall contain the composition of the committee, the names of the parties, a summary of the facts, the grounds of the decision, the provisions on which the decision was based, the terms of the decision, notice of the channels for appeal as well as signature of the committee's chairperson and secretary.

The judicial bodies may decide not to communicate the grounds of a decision and instead communicate only the terms of the decision. At the same time, the parties shall be informed that they have ten (10) days from receipt of the terms of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision becoming final and binding and not appealable (Article 120 para. 1 QFA DC). If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal, where applicable, begins upon receipt of the motivated decision (Article 120 para. 2 QFA DC). Decisions may be published by the QFA without approval of the parties.

f) *Appeal to the Appeal Committee*

Contestable decisions¹⁴ of the Disciplinary Committee may be appealed to the QFA Appeal Committee against a non-refundable appeal fee of QAR 5,000. As per Article 125 para. 1 of the QFA DC "*anyone who has been a party to the proceedings before the first instance and has a legally protected interest justifying amendment or cancellation of the decision may lodge an appeal with the Appeal Committee*". In this context, clubs may appeal against decisions sanctioning their players or officials provided they have the written agreement of the person concerned (Article 125 para. 2 QFA DC).

The time-limit for appeal, as a general rule, is ten days upon notification of the motivated decision. However, the Disciplinary Committee may shorten the deadline to appeal in urgent cases to a minimum of three days from notification of the decision. Time-limits begin the day after the relevant parties has been notified with the relevant documents (Article 102 para. 1 QFA DC).

Finally, it is also important to note that an appeal has no staying effect, except with regards to orders to pay a sum of money (Article 129 para. 1 QFA DC). An appellant may request to stay the execution of the appealed decision until the decision of the Appeal Committee. The reasoned request for stay of execution must be filed together with the appeal. The Chairman of the Appeal Committee may, on receipt of a reasoned request, award a stay of execution (Article 129 para. 2 QFA DC).

¹⁴ Concerning the aspect of contestable decisions in front of the QFA Appeal Committee reference is made to footnote 13.

g) *Rectification of decisions/Review of decision*

As per Article 130 of the QFA DC a judicial body may rectify any mistakes in calculation or any other obvious errors in the decision at any time. Rectification in the aforesaid sense can be undertaken *ex officio* and/or upon request.

On request, the competent judicial body may reopen proceedings after a legally binding decision has been passed where a party or the QFA claims to have new and substantial facts or proof that it was unable, even with due diligence, to produce before the decision became effective. A request to reopen proceedings must be addressed to the General Secretary within 10 days of discovering the reasons for review, and no more than one year after the decision in question became effective. The General Secretary transfers the application to reopen proceedings to the judicial body that took the contested decision (Article 131 QFA DC). In this context though, the QFA judicial bodies have never been confronted with a request for rectification and/or review of a decision.

h) *Provisional measures*

The chairman of the Disciplinary Committee, or in his absence the deputy chairman, is entitled to issue provisional measures where these are deemed necessary in case of emergency, to maintain sporting discipline, to avoid irreparable harm, or for reasons of safety and security. The chairman, or in his absence the deputy chairman, shall make his decision based on the evidence available at the time. He is not obliged to hear the parties. A provisional measure shall apply for a maximum of thirty days. The duration of any such measure may be deducted from the final disciplinary sanction. The chairman, or in his absence the deputy chairman, of the Disciplinary Committee may exceptionally extend the validity of a provisional measure only once by up to twenty days. Provisional measures pronounced by the chairman, or in his absence the deputy chairman, of the Disciplinary Committee, may be appealed to the Appeal Committee in accordance with the QFA DC within two days of notification of the contested measure. There is no appeal fee. The chairman, or in his absence the deputy chairman, of the Appeal Committee decides on these sort of appeals as a judge sitting alone. Such decisions are final and not subject to further recourse (Article 132 QFA DC).

i) *Appeal to the QSAT*¹⁵

As per Article 119 para. 4 of the QFA DC, decisions of the Appeal Committee are final and binding and not subject to appeal, unless to the QSAT, once established and operational.

¹⁵ The QFA, the QSLM and the Qatar Players' Association are the founders of the QSAT, i.e. an independent arbitration tribunal in the State of Qatar which shall be, *inter alia*, competent to take first instance and yet binding decisions concerning disputes regarding contractual matters (i.e.

In this context, the QFA has recognized in Article 62 para. 1 lit. b) of its Statutes the jurisdiction of the independent QSAT to hear “*appeals against decisions from the QFA Judicial Bodies and first instance decisions of the Financial Control Committee within 21 days from the receipt of the motivated decision appealed against and after all other internal channels have been exhausted*”.

However, the QSAT cannot hear appeals arising from violations of the Laws of the Game, warning or reprimand, suspensions of up to four matches or up to three months, a fine of up to QAR 200,000 imposed on a club or of up to QAR 100,000 in other cases.

An appeal to the QSAT has no staying effect, except with regard to orders to pay a sum of money. Upon reasoned request of the appellant together with his/its appeal, the QSAT may order the appeal to have a suspensive effect. The provisions of the QSAT Code shall apply to the proceedings. The QFA shall ensure full compliance of its members, players, officials and intermediaries with the awards passed by the QSAT. All awards passed by the QSAT shall be final and binding and not subject to appeals to the CAS (cf. Article 58 para. 3 lit. c of the FIFA Statutes).

9. *Sanctions*

The catalogue of sanctions which may be imposed on legal and natural persons being subject to the QFA DC are specified, in particular, in Articles 8 and 9 of the Disciplinary Code.

a) *Sanctions to be imposed on legal persons*

The following disciplinary sanctions may be imposed on legal persons as per Article 8 of the QFA DC:

- a) Warning
- b) Reprimand
- c) Fine
- d) Return of awards
- e) Transfer ban
- f) Playing a match without spectators

disputes between clubs and players/coaches or between coaches and QFA, disputes between clubs, disputes between players’ agents and clubs/players, etc.) and and/or regulatory matters (i.e. solidarity mechanism, etc.). Insofar, the QSAT will be in conformity with the requirements of FIFA concerning the establishment of an independent arbitration tribunal at national level, i.e. will adhere to minimum procedural standards and equal representation of players and clubs. In addition, the QSAT shall also serve as final and binding appeal instance with regards to decisions rendered by the QFA judicial bodies in accordance with the QFA Statutes and the QFA DC as well as first instance decisions of the FCC. Whereas the Foundation of the Qatar Sport Arbitration already has been established, the QSAT, i.e. the decision making body, is not yet operational.

- g) Playing a match on neutral territory
- h) Ban on playing in a particular stadium
- i) Annulment of the result of a match
- j) Expulsion from a competition
- k) Relegation to a lower division
- l) Deduction of points
- m) Forfeit
- n) Replay of a match
- o) Withholding of financial entitlements from the QFA or QSLM
- p) Registration cancellation
- q) Any other sanctions provided in QFA or QSLM regulations.

b) Sanctions to be imposed on natural persons

As per Article 9 of the DC the following disciplinary sanctions may be imposed on natural persons:

- a) Warning
- b) Reprimand
- c) Fine
- d) Return of awards
- e) Caution
- f) Expulsion
- g) Match suspension
- h) Ban from dressing rooms and/or substitutes' bench
- i) Ban from entering a stadium
- j) Ban on taking part in any football-related activity
- k) Suspension of a license for up to 12 months
- l) Registration cancellation
- m) Any other sanctions provided in QFA or QSLM regulations.

Sanctions under Articles 8 and 9 of the QFA DC may be imposed separately or cumulatively. Against this background, Articles 10 *et seq.* of the QFA DC further define the meaning of the relevant sanctions as included in Articles 8 and 9 which, however, for the purpose of this chapter shall not be displayed in greater detail.

c) General principles with regard to sanctions under the QFA DC

In principle, infringements are punishable regardless of whether they have been committed deliberately or negligently (Article 5 para. 1 QFA DC).

When determining a sanction, the QFA judicial bodies, in accordance with general legal principles, shall adhere to the principle of proportionality. Therefore, the judicial body issuing a decision decides the scope and duration of the sanction, accounting for all relevant factors in the case and the degree of the

offender's guilt (Article 35 para. 1 QFA DC). Mitigating factors may be taken into account. Sanctions may be limited to one or more specific matches or competitions.

The range of a sanction to be imposed for a concrete infringement may be predetermined by the QFA DC. Provided it is not, the QFA judicial bodies shall impose the disciplinary measures provided in Articles 8 and 9 of the QFA DC they deem appropriate. In this context though, the judicial bodies shall adhere to the relevant minimum and maximum limitations as included in the QFA DC. For example, a fine shall not be less than QAR 1,000 and not more than QAR 2,000,000 (Article 12 para. 3 QFA DC). Match suspensions, unless otherwise specified, may not exceed twenty-four matches (if imposed in terms of matches), or twenty-four months (if imposed in terms of months).

Repeated infringements count as aggravating circumstance, which shall be duly taken into account by the QFA judicial bodies. The latter may increase, in case of repetition, the sanctions to be pronounced as deemed appropriate (Article 36 para. 1 QFA DC). Repetitions occur if an infringement of similar nature is either committed in the same competition of the previous infringement if that infringement was punished with at least a one-match suspension, the same season or the next season of the previous infringement if that infringement was punished with at least a two-match suspension, ten years of the previous infringement if that infringement was related to match-fixing or corruption or five years of the previous infringement in all other cases (Article 36 para. 2 QFA DC).

Article 32 ("*Partial suspension of implementation of sanctions*") of the QFA DC provides the judicial bodies with the possibility, to partially suspend the implementation of a match suspension, a ban on access to dressing rooms and/or the substitutes' bench, a ban on taking part in any football-related activity, the obligation to play a match without spectators, the obligation to play a match on neutral ground or a ban on playing in a certain stadium. A partial suspension is only permissible if the duration of the sanction does not exceed six matches or six months and if the relevant circumstances allow it, particularly, with regards to the previous record of the perpetrator. The judicial bodies decide which part of the sanction may be suspended. In any case, half of the sanction is definite. By suspending implementation of the sanction, the judicial body subjects the (natural or legal) person sanctioned to a probationary period from six months to two years. If the (natural or legal) person benefiting from a suspended sanction commits another infringement during the probation period, the suspension is automatically revoked and the sanction applied, in addition to the sanction pronounced for the new infringement.

10. *Enforcement rules*

The following paragraphs will set out the relevant enforcement rules contained in the QFA DC concerning, on the one hand, decisions rendered by the QFA judicial

bodies and, on the other hand, decision making bodies of FIFA, the AFC, the CAS as well as the QSAT.

a) *Enforcement of Decisions rendered by QFA judicial bodies*

Concerning the enforcement of decisions of the QFA judicial bodies, Article 30 (“*Enforcement*”) of the QFA DC stipulates that the QFA General Secretariat has the competence to enforce decisions rendered by the QFA judicial bodies. Whereas the QFA General Secretariat has been giving this far reaching competence, the QFA DC does not specify into the details which measures can be taken by the QFA administration to ensure enforcement. This gives the QFA General Secretariat a rather wide margin of discretion. Insofar the General Secretariat is also given the possibility to order the QSLM or clubs to enforce decisions of QFA judicial bodies. However, the enforcement of decision of the QFA judicial bodies through the QFA administration seems of rather theoretical nature. So far sanctioned parties have regularly complied with decision of the QFA judicial bodies.

As a further measure of guaranteeing enforcement, clubs are jointly and severally liable for fines, confiscation of pecuniary benefits and procedural costs, if any imposed on their players and officials (Article 30 para. 2 QFA DC).

Different than the question of enforcing decisions of QFA judicial bodies is the scenario in which a party fails to respect decisions (either financially or non-financially) rendered by the competent decision making bodies of FIFA, the AFC, in subsequent CAS appeal proceedings and/or the QSAT as the case may be.

b) *Decisions of FIFA, the AFC and the CAS*

As per Article 79 (“*Failure to respect FIFA or AFC decisions*”) of the QFA DC, the QFA may be requested by FIFA or AFC to implement sanctions imposed by FIFA or AFC to anyone who fails to pay another person (such as a player, a coach or a club) or FIFA or AFC a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or AFC or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA or AFC, or by CAS (subsequent appeal decision).

In this context, it shall also not remain unmentioned, concerning awards rendered by the CAS in ordinary proceedings, the QFA in recent years has been requested several times by the AFC administration, in light of Articles 62 para.1 and 64 of the AFC Statutes, to ensure that its members comply with the respective ordinary CAS Awards.

c) *Decision of the QFA and/or the QSAT*

Concerning decisions rendered by the QFA and/or the QSAT, Article 80 para. 1 of the QFA DC states as follows:

“Anyone who fails to pay another person (such as a player, a coach or a club) or QFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of QFA or an award of the Qatar Sports Arbitration Tribunal (if established) (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of QFA or by the Qatar Sports Arbitration Tribunal (if established) shall be sanctioned by the Disciplinary Committee as follows:

- a) Fine of maximum QAR 100,000 for failing to comply with a decision;*
- b) Final deadline will be granted by the Disciplinary Committee in which to pay the amount due or to comply with the (non-financial) decision;*
- c) (only for Clubs:) warning and notification that, in the case of default or failure to comply with a decision within the final deadline, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced. If points are deducted, they shall be proportionate to the amount owed.*
- d) (only for natural persons): warning and notification that, in the case of default or failure to comply with a decision within the final deadline, match suspension may be ordered until compliance with the financial or non-financial decision”.*

Provided a club or a natural person disregards the final deadline, the sanctions shall be implemented. Decisions of the Disciplinary Committee in accordance with this article may not be appealed to the Appeal Committee, but directly to the QSAT.

- d) Failure to respect decisions of former associations/ request to extend sanctions worldwide*

As per Article 81 (*“Failure to respect decisions of former associations”*) of the QFA DC *“any financial or non-financial decision that has been pronounced against a natural person who is registered (or has otherwise signed a contract in the case of a coach) with a Club affiliated to the QFA by a court of arbitration or a dispute resolution chamber within the former association, both duly recognized by FIFA, shall be enforced by the QFA, in accordance with the principles established in Art. 80 and Art. 12 of the FIFA Regulations on the Status and Transfer of Players”.*

Moreover and provided the QFA can no longer enforce a sanction against a perpetrator of the QFA DC as such individual may have permanently left the State of Qatar as well as the jurisdiction of the QFA, the latter shall request FIFA to extend the sanctions to have worldwide effect in the cases outlined in Article 42 of the QFA DC.¹⁶

¹⁶ Article 42 of the DC literally contains the wording as follows:

“1. If the infringement is serious, in particular, but not limited to, doping, match-fixing, corruption,

11. Infringements

a) Rules of the game

The Laws of the Game issued by the IFAB constitute an integral part of the football system in Qatar. As per Article 4 (“*Legislation*”) lit. c) of the QFA Statutes, the Laws of the Game form part of the legislation applicable to the QFA. In accordance with Article 8 para. 1 of the QFA Statutes, “*the QFA and each of its Members play Association Football in compliance with the Laws of the Game issued by IFAB. Only IFAB may lay down and alter the Laws of the Game*”. Application of the Laws of the Games is also expressly referred to in the relevant QFA/QSLM competition regulations.

This concept is also expressly outlined in Article 44 (“*General principles of conduct*”) para. 1 of the QFA DC which obliges anyone bound by the Code to “*respect the Laws of the Game, as well as the Statutes, regulations, directives and decisions of the QFA and the QSLM*”. Furthermore, it must be complied with general principles such as loyalty, integrity and sportsmanship. Violations of the aforesaid principles, if not specified in greater detail within the QFA DC, may be sanctioned with the sanctions provided for in Articles 8 and 9 of the Code and in accordance with the general principles applying to sanctions.

Aside of its general reference to the laws of the game, the QFA DC in its Chapter II (“*Special Part - Infringements*”), Section 2 (“*Infringement of the Laws of the Game*”), Articles 45 (“*Minor infringements – yellow card*”) and 46 (“*Serious infringements – red card*”) expressly refers and quotes Articles 12 of the Laws of the Game.

Accordingly, Article 45 of the QFA DC specifies that a player is cautioned if he commits one of the following offences: unsporting behavior, dissent by word or action, persistent infringement of the Laws of the Game, delaying the restart of play, failure to retreat the required distance when play is restarted with a corner kick, free kick or throw-in, entering or re-entering the field of play without the referee’s permission, or deliberately leaving the field of play without the referee’s permission.

The following offences, in accordance with Law 12 of the Laws of the game, are characterized in Article 46 of the QFA DC as serious infringements punishable with a red card: serious foul play, violent conduct, spitting at an opponent or any other person, denying the opposing team a goal or an obvious goal-scoring

betting, misconduct against match officials, forgery and falsification, or violation of the rules governing age limits, the QFA shall request FIFA to extend the sanctions they have imposed so as to have worldwide effect.

2. The procedure and conditions to request worldwide extension is stated in FIFA Disciplinary Code.

3. If the judicial bodies of FIFA discover that the QFA has not requested a decision to be extended to have worldwide effect, the FIFA bodies may themselves decide to extend such decision to have worldwide effect”.

opportunity by deliberately handling the ball (this does not apply to a goalkeeper within his own penalty area), denying an obvious goal-scoring opportunity to an opponent moving towards the player's goal by an offence punishable by a free kick or a penalty kick, using offensive, insulting or abusive language and/or gestures, and receiving a second caution in the same match.

Interesting questions in relation between the Laws of the Game as well as the QFA DC may arise related to the application of technical sports rules or the rules of the game, which are regularly applied by referees or match judges and emerge before, during or after a match.

In this context, the Laws of the Game within their Law 5.2 (*"The Referee" – "Decisions of the referee"*) state that *"the decisions of the referee regarding facts connected with play, including whether or not a goal is scored and the result of the match, are final. The referee may not change a decision on realising that it is incorrect or on the advice of another match official if play has restarted or the referee has signalled the end of the first or second half (including extra time) and left the field of play or terminated the match"*. Hence, it may be concluded that, upon continuation of a match respectively termination of the first or second half, the integrity of a competition is considered to be of superior value than the actual correctness of a referee's factual decisions. Factual decisions of the referee, upon continuation of the match respectively termination of its first or second half, are final and, hence cannot be successfully challenged. As such the legal stability concerning match results, even if produced wrongly, is a sports-typical principle to be accepted, even in the context whether a goal is scored and an incorrect match result. With regards to the latter events it is also interesting to note that the QFA recently entered into an arrangement with FIFA for providing technical assistance to the referee during matches through video assistance referees.

b) Disorderliness at matches and competitions

The QFA DC contains a long list of misconduct falling under the category of disorderliness of matches, competitions and official activities, set out in its Articles 47 *et seq.* For the purpose of this chapter the following provisions have been selected.

Article 47 (*"Misconduct against opponents or persons other than match officials"*)

Misconduct, related to matches, against opponents or persons other than match officials, falls in the scope of Article 47 of the QFA DC. The cases described in Article 47 appear to fit to misconduct of players. Yet, in the light of the stipulated wording, application on other persons bound by the QFA DC cannot be excluded. Article 47 para. 1 of the QFA DC specifies that the recipient of a direct red card

shall be sanctioned, including the automatic match suspension for one match in light of Article 15, by one or more of the predetermined sanctions. Depending on the concrete offence, Article 47 includes a wide range and margin of sanctions. In case of repeated offences, the margin may be widened. Concerning the legal consequences of an offence a distinction is drawn whether such offence was committed within an age category competition (i.e. U13 to U19 competitions) or any other competitions falling under the scope of the QFA DC (hereinafter also referred to as “*Professional Competitions*”). In both categories, the margin of match suspensions is similar. However, in case of fines, lower fines will be applied in age category competitions.

The following, non-exclusive examples, shall illustrate from a practical point of view the aforesaid principles. In this context, the denial of a clear goal scoring opportunity may lead to a one-match suspension. Serious foul play (excessive or brute force) will lead to a maximum of three-match suspension as well as a maximum fine of QAR 100,000 in Professional Competitions whereas no fine is applicable in age category competitions. Attempt of a physical assault (elbowing, punching, kicking, etc.) shall be sanctioned with a match suspension between at least one match and ten matches as well as a maximum fine of QAR 50,000 in Professional Competitions, respectively QAR 3,000 concerning age category competitions. Repetition of the latter offence may lead to a maximum suspension of six months and a double of the relevant fines.

Article 47 para. 2 of the QFA DC expressly reserves the Disciplinary Committee’s competence to punish serious infringements in the scope of Article 47, which have escaped the match official’s attention.

Article 48 (“*Misconduct against match officials*”)

The aforesaid principles demonstrated under Article 47 also apply in cases of misconduct against match officials. However, offences committed against match officials are under the threat of even more severe punishment. There is a tendency that the maximum duration of match suspensions for offences committed in age category competitions is considerably lower than in Professional Competitions. For example, the offence of spitting, using offensive or abusive language and/or gestures towards a match official may lead to a maximum match suspension of six months related to Professional Competitions. The same offence in age category competitions may lead to a maximum suspension of ten matches only.

Article 50 (“*Brawl*”)

The creation and/or involvement of a brawl in a match is considered as serious infringement of disciplinary nature under the QFA DC. Involvement in a brawl may be sanctioned with a match suspension up to ten matches as well as a maximum fine of QAR 50,000. Remarkably, Article 50 applies with regards to the

legal consequences to Professional and age category competitions without any distinction. Hence, also in age category competitions a fine of up to QAR 50,000 may be imposed. Article 50 para. 2 foresees that anyone who tried to prevent a fight, shielded others or separated those involved in a brawl is not subject to punishment. In case the perpetrator(s) of violence cannot be identified, a club may be subject to sanctions (Article 51 QFA DC).

Article 53 (“*Inciting hatred and violence*”)

Football competitions shall be conducted in a safe environment, despite the emotional side of the game. In any case, aggression among players, officials and/or supporters shall neither be caused nor promoted by persons bound by the QFA DC. Therefore, players and officials who publicly incite others to hatred or violence will be sanctioned with a match suspension for a maximum duration of 15 matches as well as a maximum fine of QAR 20,000 (Professional Competitions), respectively a suspension for maximum 12 matches and a maximum fine of QAR 10,000 related to age category competitions. In serious cases, in particular when the infringement is committed using the mass media (such as the press, radio or television) or if it takes place on a match day in or around a match venue, the maximum fine will be QAR 80,000.

Article 54 (“*Provoking the general public*”)

Another offence under the category of disorderliness of matches and competitions which may jeopardize the safety and security of football competitions and, in addition, is contrary to the general rules of conduct is the provoking of the general public during a match. Any offence in this regard will be sanctioned with a maximum suspension of six (6) matches as well as a maximum fine of QAR 20,000. No distinction between Professional and age category competitions is drawn.

c) *Discriminatory behaviour*

The QFA does not accept discrimination of any kind. In fact, the QFA in Article 3 of its Statutes prohibits discriminatory behaviour in all its forms.¹⁷ Article 69 of the QFA DC places discriminatory behaviour under severe punishment. In particular, contemptuous, discriminatory or denigratory words or actions concerning race, colour, language, religion or origin, etc. are considered to state discriminatory

¹⁷ Article 3 (“*Neutrality and Non-Discrimination*”) para. 2 of the QFA Statutes literally contains the wording as follows:

“Discrimination of any kind against a country, private person or group of people on account of race, skin colour, ethnic, national or social origin, gender, language, religion, politics, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason is strictly prohibited and punishable by suspension or expulsion”.

behaviour. The individual perpetrator faces a match suspension up to five (5) matches. In addition, a fine up to QAR 80,000 may be imposed (QAR 120,000 if the offender is an official – Article 69 para. 1 lit. a) QFA DC). Where several players and/or officials from the same club simultaneously display discriminatory behaviour or in case of other aggravating circumstances (e.g. repetition) the team concerned, *inter alia*, may be subject to point deduction, and/or relegation (Article 69 para. 1 lit. b) QFA DC). If discriminatory behaviour is displayed by supporters at a match, a fine of maximum QAR 120,000 shall be imposed on a club concerned, regardless the question of culpability or oversight. Additional sanctions, such as to play match(es) behind closed doors, match forfeit, points deduction, may be imposed. Spectators in breach of the Article 69 shall receive a stadium ban of at least two years (Article 69 para. 3 QFA DC).

d) *Infringements of personal freedom*

Under the QFA DC, infringements of personal freedoms as per Article 70 (“*Threats*”) and Article 71 (“*Coercion*”) expressly deal with the expression of threat and/or coercion towards match officials only. However, this does not mean that acts of intimidation, coercion or similar behaviour towards other football stakeholders would not be punishable under the QFA DC. Such violations may be captured under more generic provision of the QFA DC whereas Articles 70 and 71 constitute a *lex specialis* concerning threats and coercion towards match officials. On those grounds, the intimidation of a match official by means of threats is subject to a maximum sanction of a three match suspension as well as a maximum fine of QAR 50,000. Under Article 71 of the QFA DC the use of violence or threats to pressure a match official into taking certain actions or to prevent him in any other way from acting freely will be sanctioned with a fine of at least QAR 50,000 and a maximum three match suspension.

e) *Integrity-related aspects*

Integrity related matters are not considered to state an imminent threat for Qatari football. Yet, the QFA DC contains several provisions regarding this matter, which, in case of occurrence, certainly, would jeopardise the integrity of Qatari football competitions.

Article 73 (“*Corruption*”)

It goes without saying that any act of corruption in football competitions must be prevented. Active corruption may be undertaken through offering, promising or granting an unjustified advantage to a body or an employee of the QFA, QSLM, a club, a match official, a player, or an official on behalf of himself or a third party in an attempt to incite it or him to violate the regulations of the QFA (Article 73 para.

1 QFA DC). Passive corruption may take place by means of soliciting, being promised or acceptance of an unjustified advantage (Article 73 para. 2 QFA DC). In both cases, the applicable sanctions are a fine of at least QAR 100,000, a ban on taking part in any football related activity for up to two years and a ban on entering any football stadium. In serious cases and in case of repetition, a life ban on taking part in any football related activity may be pronounced (Article 73 para. 3 QFA DC). In all cases, the QFA judicial bodies shall order the confiscation of assets involved in the act of corruption.

Article 75 (“*Unlawfully influencing match results – Match-fixing*”)

Match fixing has not been known as phenomena in Qatari football. Yet, drastic sanctions await any potential perpetrator. Conspiracy to manipulate or influence match results in a manner contrary to sporting ethics with the view of gaining an advantage for himself or a third party by offering, attempting to offer, receiving, attempting to receive, or seek a bribe shall be sanctioned with a match suspension of two years or a ban of taking part in football related activity as well as fine of at least QAR 60,000. In serious cases, a lifetime ban shall be imposed (Article 75 para. 1 QFA DC). In case a player or official is involved in an act of match fixing in the aforesaid sense, the club to which the player or official belongs is subject to fines and, in serious cases, expulsion from a competition, relegation to a lower division, a point deduction and the return of awards (Article 75 para. 2 QFA DC). A Club that manipulates the results of its match to influence the rank of another Club or several other Clubs shall be fined and sanctioned with a deduction of points, expulsion from a competition, relegation to a lower division and/or the return of awards (para. 3). All football stakeholders are required to immediately report to the QFA their knowledge in connection with activities aimed at manipulating or influencing in an unlawful or undue manner the course and/or result of a match or competition.

Article 76 (“*Betting*”)

Betting is not embedded in the local, cultural tradition and, in fact, is illegal in accordance with the laws of the State of Qatar. On those grounds, Article 76 of the QFA DC places the participation, being it directly or indirectly, in betting or similar activities (including soliciting or facilitating, or attempting to solicit or facilitate another person to do so) concerning competition matches or otherwise connected with football or who has a direct or indirect financial interest in such activities, under sanction. The margin of a potential sanction is not listed and, hence, will be determined on a case-by-case analysis within the applicable margins.

f) Doping

As per Article 78 of the QFA DC, doping is prohibited. Doping and anti-doping rule violations are defined in the QADC Anti-Doping Rules and sanctioned in accordance with the QADC Anti-Doping Rules by the Qatar Anti-Doping Disciplinary Panel and the Qatar Anti-Doping Appeal Panel. The QFA recognizes all football-related decisions of QADC, Qatar Anti-Doping Disciplinary Panel and the Qatar Anti-Doping Appeal Panel. If an appeal has not been lodged by the specified deadline, FIFA and WADA shall be notified of the doping decisions passed by the Qatar Anti-Doping Disciplinary Panel. The parties, FIFA and WADA shall be notified simultaneously regarding doping decisions passed by the Qatar Anti-Doping Appeal Panel. Any doping-related, legally binding sanction imposed by another sports association in Qatar or the Qatar Anti-Doping Disciplinary Panel and the Qatar Anti-Doping Appeal Panel or any other Qatari state body that complies with fundamental legal principles shall automatically be adopted by the QFA.

12. Conclusions

Sports law in the State of Qatar has undergone an enormous development during the last decade, and in particular, the last few years. However, such progress is part of an on-going process, which will lead to further changes and amendments in the field of sports law. In this context, and throughout the recent years, the QFA, in light of the freedom of associations, has adopted a set of modern disciplinary rules. The QFA Disciplinary Code, the centrepiece for disciplinary proceedings related to QFA and QSLM competitions, is in full accordance with the relevant legal framework, in particular, the requirements set up by FIFA as well as the AFC.

In disciplinary disputes, punitive measures – such as sanctions, penalties or fines – are imposed by a sports body against an individual or members by means of which the behaviour during or outside an event is penalised. Such punitive measures are of civil legal nature, and therefore are of paramount difference to those sanctions imposed in penal law procedures prosecuted by the state. Notwithstanding the above, the existing QFA judicial bodies, i.e. the Disciplinary Committee and the Appeal Committee, conduct their proceedings in accordance with fundamental legal principles also applied in penal law, while also taking into account the specificity of sport. Hence, the disciplinary proceedings carried out by the QFA judicial bodies are understood to comply with core values established under Qatari law.

In accordance with such fundamental principles, as well as the entire set of rules under the QFA Disciplinary Code, the day-to-day work of the QFA judicial bodies has proven able to cope with the domestic needs.

Yet, the authors do expect further amendments to the QFA disciplinary system in the near future. In light of the issues to be decided by the QFA judicial

bodies, which mostly relate to violations of the laws of the game, or other misbehaviour related to matches, a structure according to which the QFA judicial bodies may be separated in an investigative and an adjudicatory chamber is not required. However, the QFA intends to set up an Ethics Committee, which may have impact on the existing Disciplinary Code. Furthermore, once the QSAT should become operational, it remains to be seen whether the QSAT, as a final appeal instance in disputes of disciplinary nature, will be embraced by Qatari football stakeholders. In any case, the jurisprudence of the QSAT will constitute a new source of sports law in Qatar, which is understood to provide a further contribution for the development of the beloved game of football.¹⁸

¹⁸ The authors specify that in the present Chapter they express their personal opinion only, and therefore not in their respective positions within the QFA.

DISCIPLINARY PROCEDURES IN RUSSIAN FOOTBALL

by *Oleg Zadubrovskiy**

1. *Introduction*

Disciplinary procedures in Russian sport have historically been the exclusive domain of sports federations. Those federations determine what infringements are punishable, what persons within the realm of organised sport in Russia are subject to disciplinary sanctions, which sanctions may be imposed and what body within the relevant federation has competence to impose such sanctions. The State, on the other hand, has traditionally refrained from intervening in sport disciplinary matters. Even where the government does pass regulations concerning sport, it leaves significant autonomy to the sports federations with respect to disciplinary proceedings thereby considering those as an “internal matter” of subjects of sport.¹

It is due to the above-described autonomy from the State that the Football Union of Russia has created a complex disciplinary system covering all aspects of modern football, amateur and professional, women’s and men’s; and eleven-a-side and other varieties of football. This system encompasses a number of disciplinary regulations and six bodies competent to impose disciplinary sanctions on those within football organised by the Football Union of Russia. It is the system that we will give a short description of below.

2. *The Federation (structure and competencies)*

Rossiyskiy Footballniy Soyuz (RFS), or Football Union of Russia (FUR) in English,² was founded on 8 February 1992 as a legal successor to the USSR

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¹ One of the most evident examples in this regard is the regulation by the State of the spectators’ behaviour at stadiums. More on this in subsection 8.2. below.

² This is the official English name of the organisation in accordance with its Charter, although one

Football Federation.³ It is a member of FIFA and UEFA. The Ministry of Sport of the Russian Federation exclusively recognises FUR as a sole all-Russian sports federation, which is responsible for football in Russia.⁴

Currently the FUR consists of 178 members, of which 81 are regional football federations, 10 are inter-regional football unions, 71 are football clubs and 16 are associations and leagues, including the Russian Football Premier League (RFPL), which is in charge of running the top-level competition among Russian football clubs.⁵ Members of the federation meet at annual and extraordinary conferences, where they elect members of the Executive Committee and the President of the federation, as well as adopt amendments to the FUR Charter, approve annual reports, vote on exclusion of FUR members and inclusion of the new members, etc...

In accordance with the current edition of the FUR Charter, the Executive Committee consists of 25 members, including the President of FUR, elected for four years. Each of the groups within the Russian football holds a certain number of seats on the Executive Committee: for instance, the professional clubs propose candidates for three seats on the Committee, footballers and coaches propose a candidate each for two such seats, and a union of football supporters proposes one such candidate. The Executive Committee has ample powers: it approves the financial reports and votes on the annual budget of FUR, it appoints the federation's general director, approves results and final standings of all competitions held under the aegis of FUR etc. The two important powers of the Executive Committee, which are relevant to the topic of this article, are the following: this body adopts all FUR regulations, including the FUR Disciplinary Regulations, and it appoints members of all standing committees and jurisdictional bodies at the FUR.

The FUR Charter draws a line between the standing committees and jurisdictional bodies. The former ones, which are 14, provide consultations and expertise to the Executive Committee on certain aspects of football in Russia – be it professional football, or coach licensing or beach football etc. – whereas the latter ones, which are six, have a power within their respective competence to pass decisions, which are compulsory for all so-called “subjects of football”. The jurisdictional bodies are independent from the FUR administration. Those are:

- Control and Disciplinary Committee;
- Appeals Committee;
- Dispute Resolution Chamber;
- Players' Status Committee;
- Ethics Committee;
- Intermediaries' Commission.

may find the abbreviation 'RFU' (Russian Football Union) in many English texts, including CAS decisions.

³ See www.rfs.ru/rfs/information/general/history/ (21 March 2017).

⁴ See www.minsport.gov.ru/sport/high-sport/gosudarstvennaya-akk/28743/ (21 March 2017).

⁵ See www.rfs.ru/rfs/documents/docs8_0/ (21 March 2017).

The FUR Charter also mentions two other bodies, which are empowered to pass obligatory, including disciplinary, decisions. Those are the Licensing Commission and the Appeals Committee for Licensing Issues.

3. *The legal framework (sources: statutes and regulations)*

The Federal Law No. 329-FZ of 3 December 2007 ‘*On Physical Culture and Sport in the Russian Federation*’ regulates sport in Russia.⁶ Article 14 of the law establishes a major principle, under which each sport (football, basketball, hockey, biathlon, athletics etc.) may be run only by one accredited all-Russian sports federation. Accordingly, the FUR is the only all-Russian sport federation accredited by the Ministry of sport of the Russian Federation to regulate football in Russia.

Pursuant to Article 16(1) of the law, which in a sense repeats relevant provisions of the FIFA Statutes, the FUR as an all-Russian sports federation holds an exclusive right to organise its competitions in the territory of Russia. The federation is also the only owner of all commercial rights emanating from such competitions. The FUR also holds an exclusive right, subject to rules of international sports organisations, i.e. FIFA and UEFA, to adopt rules establishing rights, obligations of, and sporting sanctions for, those who accept such rules as obligatory (i.e. clubs, athletes, leagues, intermediaries etc...).

The law allows the FUR to delegate its right to run competitions to other sports entities, usually a professional league, under a four-year contract, which may be extended for another four years. Article 19.2 of the law, however, directly forbids transferring disciplinary powers from the federation to a professional league. This means that FUR disciplinary bodies are the only bodies competent to consider disciplinary cases in football.

Article 20(18) of the law establishes that FUR as an accredited all-Russian sports federation is entitled to determine:

- types of sporting sanctions, including disqualification, warning and fine;
- a procedure for imposing sporting sanctions and their enforcement, including statute of limitations;
- grounds for suspension of sporting sanctions and release from application of such sanctions;
- a procedure for appealing imposition of sporting sanctions;
- a procedure for establishment and day-to-day operations of the bodies (persons), which impose sporting sanctions.

The FUR has adopted a number of regulations that touch upon disciplinary matters. The most important of these is the FUR Disciplinary Regulations, which provides a detailed document consisting of 130 articles and which is based on the

⁶ Federal Law No. 329-FZ of 3 December 2007 ‘*On Physical Culture and Sport in the Russian Federation*’, *Rossiyskaya gazeta*, N 276, 8.12.2007.

FIFA and UEFA disciplinary regulations.⁷ Other documents by FUR that regulate disciplinary infringements and sanctions are the Ethics Regulations, Regulations on Working with Intermediaries⁸ and the Guidelines for Licensing Football Clubs in the Russian Federation.⁹ All those documents will be described in more detail below when we discuss various disciplinary bodies created by the FUR.

Under Article 36.5 of the Federal Law ‘*On Physical Culture and Sport in the Russian Federation*’ Football Union of Russia, just like any other all-Russian sports federation, may establish a compulsory prejudicial dispute resolution system, which may cover *inter alia* disciplinary incidents. Moreover, Article 36.2. of the same law provides for foundation of an arbitration entity which will have jurisdiction to hear disputes between various sport subjects as well as appeals against decisions of bodies forming the federations’ prejudicial dispute resolution system. This arbitration entity, whose founders shall be the Russian Olympic Committee, the Russian Paralympic Committee, all-Russian sports federations and professional leagues, has yet to be created.

At the same time Article 36.4. of the law entitles an all-Russian sport federation to refer disputes to a foreign arbitration institution. In line with this provision, Article 47 of the FUR Charter reads that an appeal against a final decision by the FUR in the absence of an independent Russian arbitration tribunal may be submitted to the Court of Arbitration for Sport, Lausanne (hereinafter, also CAS). This means that currently all decisions by the disciplinary bodies of the FUR, while the Russian arbitration entity is yet to be created, may be referred to CAS.

4. *FUR disciplinary bodies*

The major disciplinary bodies at the FUR are the Control and Disciplinary Committee and the Appeals Committee. They consider the overwhelming majority of disciplinary cases. There are, however, a number of other bodies at the FUR, which are empowered to impose disciplinary sanctions.

4.1 *Control and Disciplinary Committee*

Pursuant to Article 39 of the FUR Charter, the Control and Disciplinary Committee (CDC) is a jurisdictional body of first instance empowered to impose disciplinary sanctions in accordance with the FUR Disciplinary Regulations. Article 51 of the FUR Disciplinary Regulations (FUR DR) specifies that the general competence of CDC comprises disciplinary cases related to breaches committed during all-Russian football competitions (Russian Football Championship, lower divisions’ tournaments, youth team tournament and Russian Cup).

⁷ See www.rfs.ru/rfs/documents/strategies/ (21 March 2017).

⁸ *Ibid.*

⁹ See www.rfs.ru/rfs/documents/docs4_0/ (21 March 2017).

At the same time, Article 53 of the FUR DR reads that the CDC also enjoys special powers, namely:

- A. it imposes sporting sanctions for serious disciplinary violations that the Officials failed to take notice of;
- B. it rectifies the following errors made by the match referee:
 - erroneous caution of a player instead of another player;
 - erroneous expulsion of a player;
 - failure to send off a player after he/she receives his/her second caution during the match;
- C. it applies additional sanctions to a person sanctioned by the referee;
- D. it sanctions for failure to comply with decisions of the Court of Arbitration for Sport (Lausanne), in which CAS acted as an appeals body for decisions by the FUR Dispute Resolution Chamber, FUR Players' Status Committee, FUR Appeals Body or FUR CDC;
- E. it considers appeals against decisions of disciplinary bodies at regional and inter-regional football federations, which are members of the FUR.

It is worth noting here that the FUR DR says nothing about the FUR CDC's competence to enforce decisions pronounced against a natural person, who is registered with the FUR, by a court of arbitration within another association or by a national dispute resolution chamber of such another association, both recognised by FIFA. This omission seems to be in contradiction with Article 64(7) and Article 146 of the FIFA Disciplinary Code.

CDC consists of its chair, deputy chair and nine ordinary members, which are appointed for four years. Members of the FUR Executive Committee and employees of clubs and leagues may not be on the CDC. At the same time, an employee of the FUR office - but only one - may serve as a CDC member. The chair of CDC must hold a law degree.

The Committee conducts hearings in presence of at least four CDC members, one of which must be either its chair or deputy chair.

4.2 *Appeals Committee*

The competence of the Appeals Committee and its structure are for the most part defined in the FUR DR. In accordance with Article 54 of the Regulations, the Appeals Committee considers appeals against CDC's decisions unless such decision is not subject to appeal. In this context, Article 79 of the DR determines that the following decisions by the FUR CDC are not appealable:

1. a disqualification for less than three matches or for a period which is less than two months;
2. a fine not exceeding RUR 100,000 imposed on legal entities, or a fine not exceeding RUR 40,000 imposed on natural persons, if those fines are imposed on RFPL clubs or its officials or its players;

3. a fine not exceeding RUR 50,000 imposed on legal entities, or a fine not exceeding RUR 20,000 imposed on natural persons, if those fines are imposed on clubs or their officials or their players, which are not mentioned in clause 2 above;
4. a sanction for failure to comply with decisions of the Court of Arbitration for Sport (Lausanne), in which CAS acted as an appeals body for decisions by the FUR Dispute resolution chamber, FUR Players' Status Committee, FUR Appeals Body or FUR CDC.

In accordance with Article 35 of the FUR Ethics Regulations, the Appeals Committee hears appeals against any decision of the Ethics Committee.

Interestingly enough, in accordance with Articles 40 and 44 of the FUR Charter, the Appeals Committee is also responsible for appeals against decisions of the Intermediaries' Commission. The FUR Regulations on Working with Intermediaries, however, do not mention the Appeals Committee at all. This contradiction between FUR documents makes unclear what procedure a party should follow in order to appeal a decision by the FUR Intermediaries' Commission. In author's opinion, the FUR Charter prevails over the FUR Regulations on Working with Intermediaries, and the aggrieved party may appeal the decision of the FUR Intermediaries' Commission to the Appeals Committee.

Under Article 47 of the FUR Charter and Article 81(4) of the FUR Disciplinary Regulations, a decision by the Appeals Committee may be further appealed to the Court of Arbitration for Sport (Lausanne).

The Appeals Committee consists of a chair, deputy chair and five ordinary members all appointed for four years. Members of the FUR Executive Committee and employees of clubs and leagues may not be on the Appeals Committee. At the same time, an employee of the FUR office – but only one – may serve as an Appeals Committee member. The chair of the Committee must hold a law degree.

The Committee conducts hearings in presence of at least four ordinary members, one of which must be either its chair or deputy chair.

4.3 *Ethics Committee*

In accordance with Article 43 of the FUR Charter, FUR Ethics Committee is a jurisdictional body, whose activity is aimed at safeguarding business reputation of FIFA, UEFA, FUR, leagues and other subjects of football. The Committee imposes disciplinary sanctions for breaches of ethic norms set in the FUR Ethics Regulations. Under the FUR Ethics Regulations those ethic norms are:

1. safeguarding business reputation;
2. loyalty and confidentiality;
3. political neutrality;
4. prohibition of taking part in betting;
5. fair play (prohibition of match-fixing);
6. prohibition of discrimination;
7. restriction of gifts and other benefits, prohibition of corrupt business practices.

In accordance with Article 13 of the Ethics Regulations, the FUR Executive Committee determines the total number of members of the Committee. Currently, there are 14 members, including the chair and the deputy chair, appointed for five years.¹⁰ Members of the FUR Executive Committee as well as heads of clubs and leagues may not be members of the Ethics Committee.

The hearings are held in presence of at least seven members.

There is an interesting limitation on competence of the Committee. In accordance with Article 21 of the Ethics Regulations, proceedings may be initiated before the Ethics Committee only upon a written request from FUR President or FUR Executive Committee.

A peculiarity of the FUR Ethics Committee is that it often takes up cases, which would seem *a priori* to be in the domain of the FUR CDC. Indeed, one would think that the Control and Disciplinary Body is the only body to consider infringements that take place during matches. On the other hand, an Ethics Committee's jurisdiction should apply to breaches of general nature, which occur outside the timeframe of a specific match and are not related to it. Additionally, the Ethics Committee would be expected to pay more attention to breaches within the federation committed by its employees or officials. This is not, however, the case in Russia. The overwhelming majority of cases that the FUR Ethics Committee to date do not deal with FUR officials but with players, coaches and presidents of clubs. Moreover, often the Ethics Committee would be asked to take up incidents involving insults by players, coaches or club officials made during matches or immediately after matches.

A good example of this blurred line between the competence of the FUR CDC and FUR Ethics Committee is an incident that occurred in late 2016. On 6 November 2016 FC Orenburg, a club which for the first time in its history had been promoted to the Russian Football Premier League, was playing an away match against FC Krasnodar. After wild exchange of goals, FC Orenburg was leading 2-3 by the 35th minute. Under such circumstances, an obvious decision for the underdog team playing away was to 'park a bus' before its goal line. In the end, FC Krasnodar managed to draw 3-3, but only with a great effort. After the match, a local journalist during a broadcasted press conference asked Mr. Evdokimov, the head coach of FC Orenburg, whether he "*was ashamed of the circus show that the team of FC Orenburg ... staged in the last ten minutes of the match*". Mr. Evdokimov gave a polite answer to the provocative question, saying that it "*was not circus but football. If one never played football, he would not understand it*".¹¹ After the interview, however, when the cameras had been turned off, Mr. Evdokimov offended the press officer of FC Krasnodar for having allowed the journalist to ask the question. His words were recorded and then the audio leaked out.

¹⁰ See www.rfs.ru/rfs/committees/jurisdictional/etika/ (21 March 2017).

¹¹ See https://www.youtube.com/watch?v=P_9AkOoWepM (21 March 2017).

Insults of third parties by club officials after the match fall under Article 94(6) of the FUR Disciplinary Regulations. In turn, definition No. 20 of the same Regulations reads that ‘post-match’ means the time between the final whistle from the referee and the teams’ departure from the stadium.¹² Obviously, the FC Orenburg team, playing away in Krasnodar, was still at the stadium, when its head coach Mr. Evdokimov was participating in the press conference. Nevertheless, the FUR CDC declared that it had no jurisdiction over the incident and suggested that the FUR Ethics Committee take up the case.¹³ In February 2017, however, the chair of the latter body announced that neither the FUR President nor the FUR Executive committee so far has referred the case to the Committee. In the same announcement, the chair suggested amending the Ethics Regulations in order to allow the Committee to initiate proceedings on its own.¹⁴

The example above is not the only case of insulting and/or offensive behaviour during matches or immediately thereafter, when the public, including sport lawyers, expects the FUR CDC to impose disciplinary sanctions but then learns that the case is referred to the Ethics Committee. So far, neither body has given any clear guidelines about how one should determine which organ has competence to take which case. Article 32 of the Ethics Regulations, which reads that “cases which fall both under the Ethics Regulations and the Disciplinary regulations must be considered first by the CDC”, does not help much in this regard.

4.4 *Licensing Commission*

Pursuant to Article 48(4) of the FUR Charter, the Licensing Commission ensures licensing of football clubs in the Russian Federation and imposes disciplinary sanctions for violations of the FUR Guidelines for Licensing Football Clubs in the Russian Federation. For various breaches, the Commission may sanction clubs with a warning, a fine, a transfer ban or a limitation of number of players that a club may put on the participation list in competitions under aegis of the FUR (Article 1 of Appendix II of the Guidelines).

The FUR Executive Committee appoints members of the Licensing Commission for four years. The FUR Charter demands that at least one member of the Licensing Commission hold a law degree and at least one member hold a degree in economics. These members must also have at least five years of work experience in the corresponding fields (law and finances).

Since the Licensing Commission is not a purely jurisdictional body under the FUR Charter, an unlimited number of employees of the FUR administration may be appointed to the Commission. At the same time, members of the FUR

¹² Here the term is a direct translation of definition 1. of Article 5 of the FIFA Disciplinary Code.

¹³ See <http://spb.sovsport.ru/news/text-item/938185> (21 March 2017).

¹⁴ See www.sport-express.ru/football/rfpl/news/komitet-po-etike-obrascheniy-po-delu-gershkovicha-v-komitet-po-etike-iz-kdk-ne-postupalo-1218394/ (21 March 2017).

Executive Committee, the FUR General director, members of the FUR jurisdictional bodies, officers of leagues and employees of football clubs may not become members of the Licensing Commission (Article 2 of the Appendix III of the Guidelines).

Currently there are six members of the Licensing Commission.¹⁵

A number of recent cases in CAS related to exclusion of professional clubs from UEFA competitions due to their incompliance with the UEFA Licensing and Financial Fair Play Regulations have shown a rather lenient approach of some national federations toward sanctioning their clubs.¹⁶ This is not the case in Russia where the federation has strictly – and some may say, overzealously – checked clubs' compliance with the licensing regulations. The most famous case of the Licensing Commission's strict approach occurred in 2014 when it decided not to grant a 2014/2015 UEFA license to FC Rostov, which had won the Russian Cup that year and therefore had earned a spot in the UEFA Europa League for the first time in 14 years. The Commission, and then the FUR Appeals Committee for Licensing Issues argued that FC Rostov among other things breached criterion F.03 of the FUR Guidelines for Licensing Football Clubs in the Russian Federation ('No overdue payables towards other clubs'), namely it failed to make timely solidarity and training compensation payments to the FUR, and it breached criterion F.04 ('No overdue payables towards employees, extra-budgetary funds and tax authorities') of the same Guidelines, namely it failed to make timely payments to the Russian Pension Fund and it failed to pay personal income tax to the Russian tax authorities on time.

The rulings of the Licensing Commission and the Appeals Committee for Licensing Issues were overturned by CAS.¹⁷ It would seem that, despite existence of good arguments justifying the decisions of its bodies, FUR failed to present them properly before the CAS panel. For instance, FC Rostov argued that it had no overdue payables towards the Russian Pension Fund since the fund had sent a letter to the club in which it allegedly had agreed to deferral of payments. Despite the jurisprudence of the Russian Supreme Commercial Court, which at the time made it impossible for Russian state funds to agree to deferrals of obligatory payments, the FUR failed to make a proper translation of such case law and present it in a convincing way to the arbitrators.

This case showed that the FUR Licensing Commission should be better prepared to explain in detail its decisions and articulate in advance all its arguments. At the same time, this case, in which none of the arbitrators spoke Russian nor had any knowledge of Russian law and, as a consequence, all depended on ability

¹⁵ See www.rfs.ru/rfs/comitees/licensing/license/ (21 March 2017).

¹⁶ CAS 2012/A/2821 Bursaspor Kulübü Dernegi v. Union des Associations Européennes de Football (UEFA); CAS 2012/A/2824 Besiktas JK v. Union des Associations Européennes de Football (UEFA); CAS 2013/A/3233 PAE Giannina 1966 v. Union des Associations Européennes de Football (UEFA).

¹⁷ CAS 2014/A/3621 JSC PFC Rostov v. Football Union of Russia (RFU).

of the parties to translate fast huge bulks of text into English, pushed the FUR administration yet further toward establishing an independent Russian arbitration tribunal, which could substitute CAS as a final forum for all the appeals against decisions by the FUR bodies. As we noted before, both Russian law and the FUR Charter envision establishment of such national independent arbitration tribunal.

4.5 *Appeals Committee for Licencing Issues*

The name of this body is self-explanatory. It considers appeals against decisions by the Licensing Commission.

All members of the Committee are appointed by the FUR Executive Committee for four years. Neither employees or officials of FUR, leagues and clubs, nor members of the FUR Executive Committee, FUR jurisdictional bodies, FUR Licensing Commission may be members of the Appeals Committee for Licencing Issues (Article 2 of the Appendix IV of the FUR Guidelines for Licencing Football Clubs in the Russian Federation).

The FUR Charter and the FUR Guidelines for Licencing Football Clubs in the Russian Federation demand that at least one member of the Appeals Committee for Licencing Issues hold a law degree and at least one member hold a degree in economics. These members must also have at least 5 years of work experience in the corresponding fields – law and finances.

Currently there are six members on the Committee.¹⁸

Any decision of the Appeals Committee for Licencing Issues may be currently appealed to the Court of Arbitration for Sport (Lausanne).

4.6 *Intermediaries' Commission*

In accordance with Article 44 of the FUR Charter, the Intermediaries' Commission regulates the intermediaries' activities related to football players' employment and other issues as envisioned by the FUR Regulations on Working with Intermediaries. In particular, the Intermediaries' Commission registers all contracts between intermediaries and players or clubs. It is also responsible for publishing the list of registered intermediaries on the FUR website. Most importantly, the commission monitors compliance by players and clubs with requirements of the FUR Regulations on Working with Intermediaries and is empowered to impose certain sanctions on them.

Pursuant to Article 9 of the FUR Regulations on Working with Intermediaries, in case of violations the Intermediaries' Commission may sanction intermediaries with a warning, a fine, suspension of accreditation or annulment of accreditation. Under Article 15 of the FUR Regulations on Working with Intermediaries, a player, who breaches requirements related to intermediaries'

¹⁸ See www.rfs.ru/rfs/comittees/licensing/appl/ (21 March 2017).

activities, may be sanctioned with a warning or a fine, or a disqualification for up to three months. Article 17 of the same regulations reads that a club breaching requirements related to intermediaries' activities may be sanctioned with a warning or a transfer ban not exceeding 12 months or a fine.

Neither the FUR Charter, nor the Regulations determine the total number of members of the Intermediaries' Commission. Currently there are five of them.¹⁹

5. Persons and entities which are subject to disciplinary sanctions by FUR: their responsibilities

In accordance with Article 3(4) of the FUR Disciplinary Regulations, clubs, players and club officials are those who are subject to disciplinary sanctions. At the same time, the regulations specify that certain infringements and corresponding sanctions may cover other subjects of football. An obvious example would be a non-compliance of an intermediary with a CAS decision taken on appeal against a decision by a FUR jurisdictional body. In such case, the intermediary would become subject to a specific disciplinary sanction under the FUR DR.

Article 2 of the FUR Ethics Regulations reads that all officials and top-managers of the FUR, leagues, clubs and FUR members as well as referees, their assistances, match delegates, commissioners and inspectors, coaches, team doctors, team managers and press-officers are subject to sanctions under the regulations. Players, match agents and intermediaries may also be subject to sanctions under the FUR Ethics Regulations, although not all articles apply to them.

Articles 9, 12 and 15 of the FUR Regulations on Working with Intermediaries determine concrete sanctions for intermediaries, clubs and players only.

Annex II to the FUR Guidelines for Licensing Football Clubs in the Russian Federation establishes sanctions for football clubs.

All those four Regulations, except for the FUR Regulations on Working with Intermediaries, are not very eloquent about the responsibilities that those, who subject to disciplinary sanctions, bear. In short, it may be summed up that those persons and entities must refrain from actions, which are prohibited, and must act according to the regulations.

6. Procedures of the FUR Jurisdictional Bodies

6.1 Procedures of the Control and Disciplinary Committee

In accordance with Article 53 of the Disciplinary Regulations, proceedings commence in the Control and Disciplinary Committee after the body receives any of the following documents referring a possible disciplinary violation:

¹⁹ See www.rfs.ru/rfs/comitees/jurisdictional/agent/ (21 March 2017).

- match report completed by a referee;
- match report completed by a commissioner, inspector or delegate;
- letter from a member (members) of the FUR Executive Committee;
- letter from a league, or a club, or a player, or a match official or a club official;
- submission from the FUR Dispute Resolution Chamber or the FUR Players' Status Committee;
- protest.²⁰

In accordance with Article 68 of the CDC, facts contained in match officials' reports are presumed to be accurate, unless there exists compelling evidence to the contrary.

Article 53 of the FUR DR also reads that the CDC may instigate proceedings on its own if it learns about infringements from mass media or other publicly available sources.

Article 31 of the FUR DR sets a statute of limitations on prosecution, which is time-barred after:

- 1) two years for disciplinary infringements committed during the match, pre-match or post-match;
- 2) eight years for doping offences;
- 3) ten years for all other offences.

Statute of limitations does not apply if the FUR CDC passes a decision before the above-indicated time limit expires.

If there are no obstacles impeding the opening of the procedure, the Technical Secretary of the CDC, who is not a member of the body, immediately informs a person, against whom the proceedings have been instigated, via fax or email and, upon demand, forwards him/her copies of the documents on file.

Any person subject to a procedure of the FUR CDC is guaranteed the following rights under Article 58 of the DR, which largely is reminiscent of Article 94 of the FIFA Disciplinary Code:

- a) to submit explanations;
- b) to refer to the documents on file;
- c) to present his/her argument in fact and in law;
- d) to request production of proof;
- e) to pose questions to persons invited to the oral hearing;
- f) to request withdrawal of a member (members) of the CDC from the oral hearing.

All persons, whether natural or legal, may have a representative to defend their interests before the CDC (Article 61 of the DR). There is no requirement for

²⁰ There exists no independent prosecutor or disciplinary inspector at FUR who instigates the proceedings further to information he/she receives. Instead, it is the chair of the CDC, who determines with assistance from the secretary of the committee as well as committee members, which proceedings to open.

such representative to have a law degree, but he/she must hold a power of attorney issued by the person that he/she represents.

The CDC always conducts oral hearings before issuing a ruling on sanctions. A natural or legal person, who is being investigated, is always informed about the date, time and place of the meeting, but he/she may voluntarily refrain from attending. At times, though, the Committee deems participation of a person necessary, often when the proceedings concern a brawl or insults on the pitch, in which case the CDC expressly invites perpetrators and other participants of the incident to testify in person. Since the proceedings must be conducted speedily before the next match day starts and since territory of Russia is so large that just getting to Moscow from, say, Tomsk, which is located more than 3,500 km away, may take a whole day, the CDC has recently agreed to accept testimonies by videoconference (usually Skype).

In fact, the Committee may summon to the hearing, and request documents from, any person that may have information and/or documents that could be useful for the investigation. Failure of a person to comply with a CDC's request may result in a fine of up to RUR 30,000 (Article 60(3) of the DR).

The proceedings are conducted in Russian (Article 62 of the DR). A person who submits documents in foreign languages must translate them into Russian. If a person summoned to the oral hearing has no grasp of Russian, he/she must bring their own translator.²¹

The procedure of the oral hearing is rather simple. The Chair of the Committee presents the case and all the documents, which are on file, including the parties' written submissions. He then gives the floor to the witnesses. Both the person under investigation and CDC members ask questions to the witnesses. After that, the floor is given to the person under investigation who is generally asked to skip the arguments already presented in his/her/its written submission and present only new evidence. Once his/her/its arguments are heard, and members of the Committee ask all the questions they deem necessary, all those invited to the meeting leave the room. The members of the Committee then immediately proceed to deliberation behind closed doors and pass the verdict. After that, the persons involved are invited back to the room, where the chair of the CDC informs them about the decision. On the same date, terms of the decision (i.e. without grounds) appear on the official website of the FUR.²² Terms of the decision are then sent to the sanctioned person within seven days of passing the ruling.

Under Article 72 (1) of the DR, a CDC decision comes into effect at the moment when its terms are published on the FUR website or received by the sanctioned person, whichever moment comes first.²³

²¹ The author himself has served a number of times both as representative and as translator of coaches and players summoned to the CDC.

²² Here is an example of terms of decisions by CDC on the FUR website: www.rfs.ru/main/news/rfs_news/85944.html (21 March 2017).

²³ Under Article 13 of the FUR DR, however, in case of an appeal, a person sanctioned with a fine, is obliged to pay it to the FUR within 30 days after the Appeals Committee passes its ruling.

The proceedings before the CDC are free of charge, i.e. the FUR itself bears all its costs (Article 65 of the DR).

6.2 *Procedures of the Appeals Committee*

As mentioned before all decisions of the FUR CDC, except those listed in Article 79 of the DR, may be appealed to the Appeals Committee. In addition to those sanctioned by a FUR CDC ruling, anyone, whose interests were directly affected by the ruling can submit an appeal to that decision. In addition, the FUR President is also entitled to appeal any decision by the CDC (Article 76 of the DR).

The declaration of appeal must be submitted to the Appeals Committee within seven days of the notification of the decision. If the appellant before appealing requests grounds of the CDC decision (he/she has three business days to do that), the seven-day period is suspended and resumes after the day on which he/she receives the grounds. The FUR DR, however, does not expressly require the appellant to obtain the grounds before submitting the declaration of appeal to the Appeals Committee.

The declaration of appeal must be submitted together with a proof of payment of the appeal fee – RUR 5,000 if the appellant is a natural person and RUR 20,000 if the appellant is a legal entity (Article 82 of the FUR DR). If the appellant wins on appeal, the FUR reimburses the fee.

Unlike UEFA and FIFA disciplinary regulations, the FUR DR does not split the act of appeal into two documents: notification on intention to appeal and grounds of appeal. This means that in its declaration of appeal the appellant must already provide reasons why in his/her opinion the CDC decision inaccurately represented the facts or wrongly applied the law.

An appellant in his/her appeal against the decision to the Appeals Committee may ask for suspension of only the following two sanctions: a match (matches) behind closed doors or a match (matches) on neutral territory (Article 72(2) of the DR). It is the chair of the Appeals Committee who deals exclusively with the request and takes a decision on suspension or non-suspension of the sanctions.

The Appeals Committee must take a decision on the appeal within 14 days of its receipt. The procedure for the oral hearing at the Committee is the same as at the FUR CDC.

Under Article 84 of the DR, the Appeals Committee may either:

- 1) leave the CDC decision intact; or
- 2) amend the CDC decision; or
- 3) annul the CDC decision and send it back to the CDC; or
- 4) annul the CDC decision and take a new decision.

Terms of the decision by the Appeals Committee are announced to those present at the oral hearing. They are also published on the FUR website and sent to the sanctioned person. The same persons, who were entitled to submit an appeal

to the Appeals Committee, are entitled to appeal the decision of that jurisdictional body to the Court of Arbitration for Sport (Lausanne). They have 21 days from the notification of the decision to do so, unless they request the grounds, in which the 21-day period starts from the date on which the appellant receives the full decision by the Appeals Committee (Article 81 of the DR). The FUR DR, however, do not oblige the appellant expressly to obtain the grounds before going to CAS.

6.3 Ethics Committee

As already mentioned above, the proceedings before the FUR Ethics Committee may start only upon a written request from the FUR President or Executive Committee of the federation (Article 21 of the Ethics Regulations). The Committee must pass a ruling within 15 days of the receipt of the request to open proceedings. In exceptional cases, this period may be extended to 30 days (Article 23 of the Ethics Regulations).

Generally, prosecution of persons, whether natural or legal, is time-barred after two years. The statute of limitations for betting and match fixing, however, is 10 years (Article 25 of the Ethics Regulations).

All football subjects must comply with inquiries of the Committee and provide necessary information and/or documents. In accordance with Article 26 of the regulations, failure to comply may result in a fine, the amount of which is not specified.

The procedure of the Ethics Committee overall is similar to the one of the FUR CDC and the Appeals Committee. The person under investigation is guaranteed a right to be heard in all of its aspects. The members of the Ethics Committee pass a decision after an oral hearing, to which all interested parties are invited. The decision is then announced to the person that is sanctioned, or acquitted, and then the terms of the ruling are sent to that person by mail/e-mail and published on the website.

In fact, Article 32 of the Ethics Regulations directly authorizes the Ethics Committee to apply provisions of the FUR Disciplinary Regulations by analogy in cases when the Ethics Regulations do not cover an aspect of the procedure. Moreover, similarly the Ethics Committee may apply by analogy sanctions, which are in the Disciplinary regulations.

Under Article 36 of the Ethics Regulations, any decision by the FUR Ethics Committee may be appealed to the Appeals Committee within three business days after the notification of the ruling. The procedure before the Appeals Committee is regulated by the FUR Disciplinary Regulations, as described above. Decision of the Appeals Committee may then be appealed to the Court of Arbitration for Sport (Lausanne) as per Article 81 of the FUR DR.

6.4 *Licensing Commission*

As mentioned above, the Licensing Commission is the one in charge of taking decisions on granting licenses to professional football clubs thus authorising them to participate in FUR and UEFA club competitions. In accordance with Annex III of the Guidelines for Licensing Football Clubs in the Russian Federation, the Commission takes such decisions in its meetings held normally in May and June of each year. Representatives of clubs, which undergo licensing procedures, are invited to such meetings where they may be asked questions and where they are also given an opportunity to submit their last minute clarifications.

After short deliberation, the Commission on the spot pronounces its decision, which may be either of the two:

- 1) to grant a license (without reservations or with a list of measures that the club must take to comply fully with licensing requirements, with or without sanctions);
- 2) to deny a license and impose sanctions.

The terms of the decision are sent to the club within three business days after the Commission passes the ruling.

6.5 *Appeals Committee for Licencing Issues*

In accordance with Annex IV of the Guidelines for Licensing Football Clubs in the Russian Federation, any decision of the Licensing Commission may be appealed to the Appeals Committee for Licencing Issues within three days after notification of the decision. It is not only the club, which may appeal the ruling, but the FUR licensing manager as well. The latter may appeal without paying an appeals fee.

The appeal must be considered within 10 days after the appellant submits it to the Committee. The decision of the Appeals Committee for Licensing Issues may be appealed to CAS. Interestingly enough, the latest edition of the Guidelines for Licensing Football Clubs in the Russian Federation sets two different deadlines for appealing decisions of the Committee: if the decision concerns a license for participation in FUR competitions, the appeal must be sent to the Court of Arbitration for Sport within 10 days; in case of a license for UEFA club competitions the time period is extended to 21 days.

7. *Types of sanctions*

7.1 *Sanctions, which are common for both natural and legal persons*

Article 9 of the FUR DR enlists the following sanctions, which may be imposed on both natural and legal persons:

- 1) warning;
- 2) fine;
- 3) return of awards.

In accordance with Article 12 of the FUR DR, a *warning* may be imposed only for first-time infringements, the default fine for which does not exceed RUR 50,000.²⁴

Under Article 13 of the FUR DR, a *fine* for clubs in the Russian Football Premier League must be no less than RUR 5,000 and not more than RUR 5,000,000; for other clubs the fine is between RUR 1,000 and RUR 1,000,000; for natural persons the fine is between RUR 1,000 and RUR 500,000. A club is only subsidiarily liable for fines imposed on persons on the club's list (players, coaches etc.).

A feature of the FUR DR is that it sets specific maximum amounts of fines for almost every disciplinary infringement. Moreover, the amounts of fine for the same infringement differ depending on the level of competition.²⁵

The FUR DR declare that the federation must spend all the disciplinary fines that it collects on development of youth football, preparation of stewards at stadiums and various fan activities. In 2016, an amendment was introduced into Article 13(9) of the DR requiring that FUR publish each year a report on distribution of the collected fines in the previous year. The first such publication is to appear on the FUR website in April 2017.

7.2 *Sanctions applicable to natural persons only*

In accordance with Article 10 of the FUR DR, the following sanctions are applicable only to natural persons:

- 1) caution;
- 2) expulsion;
- 3) match suspension (disqualification);
- 4) ban on taking part in any football-related activity;
- 5) ban on entering a stadium.

Under Article 15 of the FUR DR, if a player receives four *cautions* in four separate matches of the Russian Championship (RFPL), he gets an automatic suspension for the next match of this tournament. The same applies in lower divisions' tournaments. In the Russian Cup, however, two cautions received in two separate cup matches result in automatic suspension. The DR is strict in keeping separate count of cautions received in Russian Championship (or lower divisions' tournaments) from the count of cautions in the Russian Cup.

Article 16 of the DR, dedicated to *expulsions*, in almost entirely a translation of the relevant provision of the FIFA Disciplinary Code.

A *match suspension* under Article 17 of the FUR DR means that a person (a player or a club official) is banned from taking part in a future match or competition and from being on the substitutes' bench, in the dressing rooms and in

²⁴ An integral part of the FUR Disciplinary Regulations is Annex I, which contains a list of fines for about 90% of all infringements enlisted in the FUR DR.

²⁵ For instance, if a coach smokes on the bench during a match, he/she must pay RUR 5,000 if it is a RFPL match and RUR 3,000 if it is a Russian Cup match.

the tunnel during the match as well as pre-match and post-match. Interestingly enough, unlike the UEFA Disciplinary Regulations (cf. Article 62), the FUR DR have no direct prohibition for a suspended team manager or coach to communicate with the team's players and/or technical staff during a match. In 2014 the chair of the FUR CDC, while commenting on the fact, that the suspended coach of FC Amkar Slavoljub Muslin had communicated on the cell phone with his assistant during an RFPL match, confirmed, though bitterly, that the FUR DR do not forbid such communication.²⁶

A match suspension, not served in the current season, is carried over to the following season. This rule does not cover automatic suspensions.

Article 18 of the FUR DR, in describing *ban on taking part in any football-related activity* gives an open list of such activities. These are playing, coaching, refereeing, inspecting, and intermediating activities, as well as managing and any other activities in football organisations or activities at request of football organisations.

Surprisingly enough, while the FUR DR mention such sanction as a *ban on entering a stadium*, the document never gives a description of this sanction and, in fact, never mentions it elsewhere.

7.3 Sanctions applicable to legal persons only

In accordance with Article 11 of the FUR DR, the following sanctions are applicable only to legal persons:

- 1) playing a match without spectators;
- 2) playing a match on neutral territory;
- 3) ban on admitting spectators into stadium sectors;
- 4) annulment of the result of a match;
- 5) forfeit;
- 6) deduction of points;
- 7) expulsion from a tournament;
- 8) relegation to a lower division.

The disciplinary measure *playing a match without spectators* was, some years ago, unfortunately a common sanction in Russian football. The FUR CDC applied it to a number of Russian clubs for conduct of their fans. Those decisions, however, were heavily criticised, as they often seemed to punish spectators irrespectively of their involvement in incidents. Moreover, it would be often infringements committed in away matches, for which the club was punished with home matches behind closed doors: thus, the sanction was directed against holders of season tickets, the vast majority of which never travels to away games. In addition, normally decisions of the FUR CDC would be taken on Thursday, they would come into effect immediately, whereas the sanctioned club would have

²⁶ See <https://www.sports.ru/football/1023938323.html?ext=yandex> (21 March 2017).

a home match on Saturday or Sunday; all this inevitably would lead to a headache related to selling of tickets, reimbursement of tickets already paid for etc. Last but not the least, whenever big clubs were punished, their matches behind closed doors were often against big rivals, which was against commercial interests of the league and against general interest of public.

Just to give an example of the above. On 30 October 2013, FC Spartak from Moscow played a Russian Cup match away in Yaroslavl where one of its fans displayed a banner with a swastika. The verdict of the FUR CDC on 1 November 2013 was to impose a hefty fine on FC Spartak and order the club to play the next two home matches behind closed doors.²⁷ On 3 November 2013, FC Spartak played the first home match behind closed doors – which was an RFPL match and a derby! – against FC Lokomotiv. On 10 November 2013, FC Spartak played the second home match behind closed doors, an RFPL match, against FC Zenit, which in terms of Russian football equals to the Real Madrid / Barcelona rivalry.²⁸

After the criticism from clubs and public, the FUR agreed to amend the DR. On 2 December 2013, the FUR Executive Committee approved amendments to the regulations.²⁹

Firstly, these amendments introduce in Article 19¹ of the DR a new sanction, namely *a ban on admitting spectators into stadium sectors* (partial closure). The CDC in its decision may indicate a specific sector (even a sector for away fans, if those fans previously committed a breach at an away game) which it wants to be closed. In 2015, the FUR Executive Committee introduced yet another amendment into Article 19¹ of the DR clarifying that the prohibition to admit fans to a closed sector (or sectors) does not apply to women and children under 13 years.³⁰ Here it would seem that the FUR followed the positive practice of the Turkish Football Federation, which in 2011 started allowing women and children to attend matches behind closed doors.³¹

Secondly, under Article 11(3) of the DR the three sanctions, which are playing a match without spectators, playing a match on neutral territory and ban on admitting spectators into stadium sectors, from now on may be enforced only after expiry of five business days from the date of the FUR CDC ruling. Thus, the club may rest assured that the matches, that it already started selling tickets, will be played with spectators.

Thirdly, under Article 11(2) of the DR a sanction for infringement in one tournament, may affect matches in the same tournament only. In other words, a violation at a Russian Cup match may result in playing a match without spectators in the Russian Cup only.

²⁷ See www.rfs.ru/main/news/rfs_news/77872.html (21 March 2017).

²⁸ Just imagine an *El Classico* match without spectators in the stands!

²⁹ See www.rfs.ru/main/news/rfs_news/78095.html (21 March 2017).

³⁰ See www.rfs.ru/main/news/rfs_news/81310.html (21 March 2017).

³¹ See www.bbc.com/sport/football/14998237 (21 March 2017).

Article 21 of the FUR DR determines that *annulment of the result of a match* may lead to either replay of the match, or forfeit for one team or both teams. Annulment may be applied both before and after the FUR Executive Committee approves the final standings in a competition.

Just like Article 31 of the FIFA Code, Article 22 of the FUR DR determines that a team sanctioned with a *forfeit* is considered to have lost the match by 3-0, unless competition regulations envision some other score in case of forfeit. If the goal difference at the end of match is greater than the default one in case of forfeit, the result on the pitch is upheld. In case of forfeit, all cautions and expulsions by the match referee remain effective.

Definitions of *deduction of points*, *expulsion from a competition* and *relegation to a lower division* in the FUR DR are very similar to those in the FIFA Disciplinary Code. The only specificity is that relegation to a lower division in Russia may be made only in between seasons.

Annex II of the FUR Guidelines for Licensing Football Clubs in the Russian Federation establishes two more sanctions applicable to clubs:

- 1) ban on registration of new players;
- 2) limitation of number of players on a club's list for a certain FUR club competition.

The Licensing Committee and the Appeals Committee for Licensing Issues impose these sanctions.

The Guidelines specify that the limitation of number of players on a club's list may apply to all FUR club competitions, in which the club participates, or to some of them. Moreover, the limitation does not apply to amateur players registered with a sanctioned club's football academy.

8. *Common rules for application of sanctions. enforcement*

8.1 *Culpability*

Under Article 5 of the FUR DR, a person is guilty of committing an infringement irrespectively whether such person committed it deliberately or negligently. Moreover, a legal person is to be found guilty if it had an opportunity to ensure compliance with rules and norms, the violation of which is subject to prosecution, but failed to take all necessary and possible measures to ensure the compliance.

Article 6 and 7 of the FUR DR also make punishable an attempt to commit an infringement³² as well as involvement in committing an infringement.

Article 32 of the FUR DR sets the much-debated principle of strict liability. In accordance with the Article, a home club is liable for any violations

³² Interestingly, though, the FUR CDC has never wanted to take cases in which a club during a match would inform the fourth referee about the upcoming substitution of a Russian player on the pitch for a foreign player, thereby exceeding the total permitted number of foreigners allowed to be present simultaneously on the field, and then, after noticing the error, would cancel the substitution before it actually takes place.

committed by spectators of a match, unless otherwise indicated further. At the same time, a visiting club shall be liable for any violation committed by spectators who are its supporters, i.e. persons occupying seats of the stadium provided for a visiting club by a home club as per the competition regulations.

This article of the DR came under scrutiny in a case involving FC Zenit. In November 2012, the club from St. Petersburg was playing away in Moscow against a bitter rival FC Dynamo. While FC Zenit was trailing 0-1, a small projectile came flying from the stands. It landed near the Dynamo goalkeeper and exploded causing eye damage to the player. The referee abandoned the match due to fear of further disturbances. The FUR CDC ruled that those were the visiting fans, who threw the petard at the Dynamo goalkeeper, since the visiting sector was right behind the Dynamo goal. For the incident, FC Zenit was sanctioned with a forfeit, a fine of RUR 500,000 and two home matches behind closed doors.

In its appeals to both the Appeals Committee and CAS, the club argued that there existed no sufficient proof to confirm that those who had thrown the petard were Zenit fans. The projectile was so small that its origin could not be determined convincingly. Even if it had been thrown from the stands behind the Dynamo goal, those stands were not to be considered guest sectors. To support that assertion FC Zenit referred to the Russian championship 2012/2013 Regulations, which in clause 22.3.1 stated that: “The spectators (the team supporters) of the visiting Club are meant to be the supporters who are in the guest sector during the Match and who have bought tickets in accordance with the request of the visiting Club specified in Par. 21.7.2 of the Regulations”.

But, as the club from St. Petersburg argued, due to miscommunication between FC Dynamo and FC Zenit offices and incompatibility of their ticket software systems, the request had never been sent and it was the home club which had sold tickets to the visiting sector to whomever it wanted. Accordingly, the sector behind the Dynamo goal was *de jure* a home fans’ sector according to FUR Regulations. The CAS arbitrators, however, dismissed that argument as too formalistic by applying Swiss legal rules of interpretation to the FUR regulations.³³ The Panel after having watched the footage of the match was convinced that those had been Zenit fans in the stands behind the Dynamo goal and, therefore, FC Zenit was liable for violations committed by those spectators in accordance with Article 32 of the FUR DR. The decision of the FUR CDC was upheld.³⁴

8.2 Determination of a sanction

In accordance with Article 31 (3) of the FUR DR, when determining a sanction the FUR CDC must take into account if:

³³ Needless to say that in the proceedings involving Russian clubs and FUR, none of the parties ever invoked application of any other law but Russian. Just like in the *Rostov* case cited above, one could reasonably argue that CAS is not always the best forum for appeals of national disputes.

³⁴ CAS 2013/A/3047 FC Zenit St. Petersburg v. Russian Football Union (RFU).

- 1) the infringement was serious;
- 2) a person who committed the infringement had a clean record in the past;
- 3) it is a repeated offence;
- 4) there are mitigating and/or aggravating circumstances;
- 5) there are other factors in FUR CDC's opinion, which might influence determination of the sanction.

An interesting case concerning determination of a sanction occurred in 2013. During a Russian Championship match between FC Zenit and FC Terek (Grozny) some of the home fans set on fire a banner resembling the flag of the Chechen Republic. The stewards intervened immediately and forced the fans to extinguish the flame. The stadium security also sent photos of the fans to the police, which in turn was able to arrest one of the perpetrators. The local court then sanctioned him with a fine of RUR 1,000. FC Zenit recited all those facts to the FUR CDC, which, nevertheless, sanctioned the club with the maximum fine of RUR 500,000.³⁵ In its appeal to the Appeals Committee the club argued that the fine had to be reduced due to mitigating circumstances, namely the active position of the club, which had led to interruption of the flag burning on the spot and later to arrest and prosecution of the perpetrator. The club further insisted that ignoring those club's actions would render meaningless its work with fans as, irrespective of what the club might do to diminish harm inflicted by a fan, a FUR jurisdictional body would still punish it with a maximum sanction. The Appeals Committee agreed with the club's arguments and reduced the fine from RUR 500,000 to RUR 300,000 because of club's actions aimed at interrupting the infringement and prosecuting the perpetrator.³⁶

Thereafter, the case law above was introduced into Article 31(3) of the FUR DR, which now obliges the FUR DRC, when sanctioning clubs for infringements committed by their fans, to consider the following club's:

- 1) actions aimed at prevention of infringements by fans (the club is responsible for proving existence of such actions);
- 2) actions aimed at stopping infringements during their perpetration;
- 3) participation in identifying and finding perpetrators;
- 4) assistance to the police in finding and arresting perpetrators.

It is also interesting to compare here the sanctions that the CDC imposes on clubs for behaviour of their spectators with sanctions that the state courts impose on those very spectators.

In 2013, Russia adopted amendments to the various laws including the Federal Law No. 329-FZ of 3 December 2007 '*On Physical Culture and Sport in the Russian Federation*' and the Code of Administrative Offences of the Russian Federation.³⁷ The same year The Russian Government adopted Rules of

³⁵ See www.rfs.ru/main/news/rfs_news/77479.html (21 March 2017).

³⁶ See www.rfs.ru/main/news/rfs_news/78270.html (21 March 2017).

³⁷ Federal Law No. 192-FZ of 23 July 2013 '*On amending legislative acts of the Russian Federation in order to ensure public order and public safety during official sports competitions*', *Rossiyskaya gazeta*, N 161, 25.07.2013.

Spectators' Behaviour During Official Sports Competitions.³⁸ Those documents established unified rules for spectators at various stadiums and arenas. Breaches of these rules are now considered administrative violations punishable by state courts. Under Article 20.31. of the Code of Administrative Offences of the Russian Federation first breach of the Rules is sanctioned with a fine of no less than RUR 3,000 and no more than RUR 10,000 or community service work for up to 160 hours. Both sanctions may be supplemented with an administrative ban on entering sports venues for a period of no less than six months and not more than three years. Repeated violation of the Rules or first-time violation stopping the sports event or resulting in abandon of the sports event leads to a fine not exceeding RUR 15,000 or arrest for 15 days, which may be additionally supplemented with an administrative ban on entering any sports venues for a maximum period of seven years.

To this day, the jurisprudence of local courts shows that the spectators are sanctioned mildly by the State.³⁹ The fines imposed are normally minimal, and bans on entering stadiums may either be ignored or imposed but only for a minimal period. Courts also generally dismiss suits brought by the clubs trying to recover fines that they pay to the FUR from spectators. The Courts' logic is that fans are not parties to the Disciplinary Regulations and therefore they may not be ordered to pay fines imposed by the CDC. As mentioned in the introduction above, the State still considers disciplinary matters involving spectators as the internal problem of a sports federation, whereas the federation tends to shift responsibility onto clubs, which in the end bear all the negative consequences.

8.3 *Enforcement*

As already mentioned above in accordance with Article 33 of the FUR DR, decisions on sanctions come into force on the day the terms of the ruling are communicated to the person sanctioned or published on the FUR website – whichever comes first – irrespectively of an appeal. There are two exclusions to this general rule. Firstly, if a fine is appealed, it is to be paid within 30 days after the Appeals Committee renders its decision. Secondly, decisions on playing behind closed doors, or with some sectors closed, or on neutral territory, must be enforced only after five business days after the decisions of FUR CDC come into force.

³⁸ Decree of the Government of the Russian Federation No. 1156 of 16.12.2013 'On Adopting Rules of Spectators' Behaviour During Official Sports Competitions', *Rossiyskaya gazeta*, N 286, 19.12.2013.

³⁹ From 2013 through 2016, the Russian police have opened 2, 168 cases of violations by spectators under Article 20.31 of the Code of Administrative Offences of the Russian Federation. Of these 2,168 cases, 1,900 deal with football fans. An average fine imposed on violators equals RUR 3,000. Only 123 spectators, i.e. one out of every seventeen violators, were banned to enter sports venues (source: Explicatory note to the draft No. 48959-7 of the Federal law 'On Amending The Code of Administrative Offences of the Russian Federation').

Article 34 of the FUR DR envisions consequences for failure to comply with a sanction. If a disqualified player plays in a match, his/her club is sanctioned with a forfeit. If a person fails to make a timely payment of a fine, the CDC may increase the outstanding fine by 50%. In all other cases of failure to comply, the CDC may choose between:

- 1) imposing a fine, the amount of which may not exceed the maximum amount of fine under the DR;
- 2) increasing the existing sanction by 200% maximum;
- 3) imposing a stricter sanction, if the DR provide for such stricter sanction.

Under Article 35 of the FUR DR, the FUR CDC has a power to suspend partially implementation of a sanction. Such partial suspension is permissible only if a sanction is no less than two matches or one month and no more than five matches and six months, and if the relevant circumstances allow it, in particular the previous record of the person sanctioned.

Partial suspension of implementation may apply only to the following sanctions: match suspension (disqualification), ban on taking part in any football-related activity, ban on admitting spectators to stadium sectors, obligation to play a match behind closed doors and obligation to play a match on neutral territory.

A person sanctioned may request for partial suspension of implementation of the sanction only after he/she serves at least half of the sanction. Some violations under the DR are so serious – match fixing, aggression against players, referees etc. – that their perpetrators may not ask for partial suspension of implementation of the sanction under any circumstances.

When partially suspending implementation of a sanction the FUR CDC establishes a probationary period between three months and two years.

9. *Infringements*

9.1 *Rules of the game*

Under Article 84 of the FUR DR, a referee sanctions any breaches of Rules of the game with cautions and expulsions. At the same time, as mentioned before, the CDC may impose sporting sanctions for serious disciplinary violations that the officials failed to take notice of. Usually these involve illegal tackles and hits during the game. The FUR CDC has established a consistent case law, under which it would refuse to start proceedings against a player for an incident on the pitch, which the referee saw, judged and left without caution and/or expulsion, even if CDC is of the opinion that the incident was worth sanctioning.

The CDC may also rectify obvious errors by the match referee, such as an erroneous expulsion of a player, but only after receiving an expert opinion from the FUR Referees Department.

9.2 Disorderliness at matches and competitions

Article 94 of the FUR DR sanctions misconduct against opponents or persons other than match officials. Unlike the FIFA Disciplinary Code, the FUR DR sets maximum, not minimum, sanctions for various types of misconduct. For instance, serious foul play, i.e. use of excessive or brute force while trying to take away the ball, shall be sanctioned with suspension for up to three matches. Aggressive play, i.e. use of excessive or brute force without trying to get hold of the ball, is sanctioned with suspension for up to four matches.

The same article establishes an interesting rule, which is based to some extent on *lex talionis*. If a foul play or aggressive play leads to the opponent's injury, then the sanction shall be a suspension for six matches. Nevertheless, if the injured opponent recovers within 15 days and is able to participate in trainings and/or games, then the sanction is reduced to three matches.

Spitting at an opponent or a club representative leads to suspension for four matches and a fine. Insults and offensive gestures against an opponent or a club official are sanctioned with a suspension of at least two but no more than four matches and a fine.

Article 95 of the FUR DR regulates misconduct against match officials. Any pushing of a match official leads to a suspension for six matches. This would seem too strict when compared to similar sanctions in other European national tournaments: just recently, Arsène Wenger received a four-match touchline ban for shoving a fourth official,⁴⁰ whereas in Russia Guus Hiddink,⁴¹ Dan Petrescu⁴² and other coaches had each received a suspension of six matches for the same infringement.

Any other aggressive conduct toward the match official, excluding pushing, is sanctioned with suspension for at least six months but no more than two years. At the same time, spitting at a match official is sanctioned only with six matches.⁴³

A brawl is sanctioned with a suspension for five matches under Article 97 of the FUR DR. If the brawl involves more than two people, the suspension is for six matches. Anyone who has tried to prevent a fight, shields others or separates those involved in a brawl is not subject to punishment.

In accordance with Article 98 of the DR, a club receives a fine if its players collect at least six cautions or two expulsions during a single match.

Provoking the general public is sanctioned with a suspension for one match and a fine. If such provocations leads to a crowd disturbance, the suspension is increased to five matches.

⁴⁰ See www.thefa.com/news/2017/jan/27/arsene-wenger-four-match-touchline-ban-burnley (21 March 2017).

⁴¹ See www.rfs.ru/main/news/rfs_news/77055.html (21 March 2017).

⁴² See www.rfs.ru/main/news/rfs_news/73909.html (21 March 2017).

⁴³ This looks like a very mild sanction compared to suspension for 12 months for the same offence under Article 49 of the FIFA Disciplinary Code.

9.3 *Offensive and discriminatory behaviour*

The FUR DR treat insults of opponents or match officials by players and club officials as part of misconduct infringements. The sanction for such infringements is a suspension for at least two but no more than four matches and a fine.

A serious violation of fair play principles by a player is sanctioned under Article 94(7) of the DR with a suspension for one or two matches. For instance, the CDC in 2016 suspended for one match two players of FC Khimki in the third division for scoring while their team, as a gesture of fair play, was returning the ball to the opponent.⁴⁴

Any other unsporting behaviour, including minor violations of fair play principles, are sanctioned with a fine.

Interestingly enough, FUR's jurisdictional bodies are lenient on sanctioning coaches and club officials for behaviour, which is in direct contradiction with the fair play principles. This blindness of the CDC and Ethics Committee was more than evident in March 2015 when FC Arsenal from Tula was to host PFC CSKA from Moscow in the Russian Championship. The Russian Football Premier League examined the pitch in Tula a week before the match and ruled that it was not fit for playing the match. Accordingly FC Arsenal was ordered to move the match to its reserve stadium, which was located ... in Moscow. The then head coach of FC Arsenal Mr. Alenichev considered the decision of the League to be an offence against fans from Tula who had been expecting with great anticipation the match against such a big name as CSKA. In a sort of retaliation, Mr. Alenichev publicly announced on the club's website that he decided as a gesture of protest to bring only young players for the game in Moscow.⁴⁵ Moreover, he then called in sick and did not travel to the game. The FC Arsenal top management and the governor of Tula region publicly supported the actions of the head coach. Arsenal lost to CSKA 1-4.⁴⁶ Despite the outcry of other clubs complaining that Arsenal simply handed over three points to CSKA, and notwithstanding the public opinion of the Russian Minister of Sport, that Mr. Alenichev's decision was illegal, both CDC and Ethics Committee ignored the incident.⁴⁷

Article 121 of the FUR DR outlaws any insults or offensive behaviour concerning race, colour, language, religion or origin. A player or club representative, who commits such infringement, is subject to a suspension for 10 matches and a fine. If spectators engage in discriminatory actions or publicly demonstrate Nazi insignia or any other banners and placards bearing discriminatory content, their club is sanctioned with a fine and partial closure for no less than one and no

⁴⁴ See www.rfs.ru/main/news/rfs_news/84009.html (21 March 2017).

⁴⁵ See https://arsenaltula.ru/news/novosti-kluba/dmitriy-alenichev-tulu-lishili-grandioznogo-prazdnika/?sphrase_id=14327 (21 March 2017).

⁴⁶ www.rfpl.org/match/match_10479.html (21 March 2017).

⁴⁷ One is left wondering whether the general public's opinion – which in its majority supported a small provincial club's 'crusade' against 'bureaucrats' in Moscow – had any influence over the jurisdictional bodies' position.

more than three matches, or full closure of the stadium for no less than one and no more than three matches, or with a forfeit.

It is worth mentioning here that lately the FUR CDC has intensified its fight against racism and discrimination at Russian stadiums. It also adopted the Fare's⁴⁸ Guidance on discriminatory signs and symbols used in European football⁴⁹ as its official guideline and made it Appendix to the DR. As a result, the number of racist and discriminatory incidents in Russian football has decreased significantly.⁵⁰

9.4 *Infringements of personal freedom*

In accordance with Article 118 of the FUR DR, direct or indirect coercion of players, match officials or representatives of clubs, federations or leagues in order to fix the match result is sanctioned with a ban on any football-related activity for at least one year but no more than five years and a fine. If the coercion involves a real threat to life, health or the property of a person being pressured, the ban on any football-related activity becomes lifelong.

If the coercion above is not aimed at fixing the match result, the ban on any football-related activity may not exceed three years.

Under Article 120 of the FUR Regulations, a threat to a person's⁵¹ life or health is sanctioned with a suspension for not less than three and not more than three matches and a fine.

9.5 *Forgery and falsification*

Under Article 122 of the FUR DR, deliberate submission of false information or forged documents to the FUR or leagues as well as use in any football-related activity of a document obtained illegally is sanctioned with a ban on any football-related activity for at least six months. Additional fines may be imposed.

It seems that the above quoted Article 122 of the DR covers only natural persons, whereas clubs are sanctioned for forgery, submission of falsified information and use of an illegally obtained documents under Article 123 of the DR, which states that such infringing clubs are to be sanctioned with deduction of three points or relegation to a lower division, as well as with a fine.

⁴⁸ Fare, or Football Against Racism in Europe, is a network of NGOs set up to fight against discrimination in the European football. The network has been cooperating with FIFA and UEFA. UEFA disciplinary bodies have frequently referred to Fare's Guidance on discriminatory signs and symbols used in European football in its decisions.

⁴⁹ See www.farenet.org/get-involved/report-discrimination/guide-to-monitor-offensive-and-discriminatory-signs/ (21 March 2017).

⁵⁰ See <https://goo.gl/GmgUSM> (21 March 2017).

⁵¹ A player, a representative of a club, federation and league, or a match official.

9.6 Corruption

Article 124.2. of the FUR DR outlaws match fixing and attempts at match fixing. The sanction for this infringement for natural person is a fine between RUR 1,000,000 and RUR 5,000,000 as well as suspension for up to two years (one year in case of attempt) or a ban on any football-related activity for at least three years (or at least one year in case of attempt). For legal persons the sanction is a fine between RUR 10,000,000 and RUR 50,000,000, deduction of 15 points and/or return of awards and/or exclusion from a competition and/or relegation to a lower division. Interestingly, prosecution under the Article 124.2. by the FUR CDC is possible only if there exists an effective court decision confirming the fact or facts of match fixing.

Corruption is not mentioned in the FUR DR. At the same time, the FUR Ethic Regulations read in Article 11 that bribes of officials are banned. Any gifts that are offered, promised or sent in order to instigate violations or unfair behaviour in interests of a third party are also prohibited. In case of any violation of this prohibition, the Ethics Committee may impose a sanction from the following list:

- 1) reprimand;
- 2) fine;
- 3) return of awards;
- 4) match suspension (disqualification) for a definite or indefinite period;
- 5) ban on any football-related activity.

A fine may be imposed together with the match suspension.

9.7 Doping

Under Article 124 of the FUR DR, a violation of anti-doping rules is subject to a sanction in accordance with anti-doping regulations adopted by FUR and Russian Anti-Doping Agency (RUSADA). If no such document exists, then FIFA Anti-Doping Regulations apply.

On 9 August 2016, the Russian Ministry of Sport approved new edition of the Anti-Doping Rules in the Russian Federation. This edition is the result of requirements that WADA put forward after it had declared RUSADA non-compliant.⁵² The regulations are obligatory for all-Russian sport federations, including the Football Union of Russia.

Under clause 8.1. of the Rules it is the Anti-Doping Disciplinary Committee (ADC) at RUSADA which has jurisdiction to rule on doping violations. At the same time, proceedings involving an athlete of national or international level may be submitted directly to CAS upon consent of such athlete, RUSADA, WADA and any other anti-doping organisation, which in principle could appeal the ADC decision to CAS.

⁵² See www.rusada.ru/en/press/antidoping_news/changes-in-anti-doping-rules-of-the-russian-federation-have-been-approved (21 March 2017).

Section XI of the Anti-Doping Rules establishes special consequences for teams by importing relevant provisions from Article 11 of the World Anti-Doping Code. Namely, if more than one member of a team in a team sport has been notified of an anti-doping rule violation under the Rules, target testing of the team must be conducted. If more than two members of a team in a team sport are found to have committed an anti-doping rule (ADR) violation during an event period, the event organiser shall impose an appropriate sanction on the team (e.g., loss of points, disqualification from a competition or event, or other sanction) in addition to any consequences imposed upon the individual sportsmen committing the ADR violation.

Cases of ADR violations are rather rare in Russian football. In accordance with 2014 RUSADA annual report, in 2011 the organisation collected 593 samples in Russian football and registered only one ADR violation, in 2012 there were 561 samples collected in football and six ADR violations, in 2013 there were 646 samples collected and no ADR violations, in 2014 there were 470 samples taken and only one ADR violation in women's football.⁵³ The RUSADA annual report for the year 2015 does not mention football at all, although as of March 2017, there was one player in women's football, Kamila Alekseeva, who was serving a two-year ban for ADR violation committed in 2015.⁵⁴

It is also worth mentioning here that currently it is the UKAD, not RUSADA, which manages testing on Russian athletes with use of private sample collection providers.⁵⁵ Inevitably, the number of tests conducted on Russian athletes has dropped drastically. In previous years, RUSADA conducted no less than 14,000 tests in all Russian sports, and often up to 20,000 tests, per year. In 2016, when WADA and UKAD took over, only 3,000 samples were collected and for the year 2017 just 6,000 tests are planned.⁵⁶

In a recent public communication, WADA declared that it was "encouraged by signs of progress within Russia".⁵⁷ Hopefully, Russia restores a credible anti-doping system within a shortest time possible.

10. Conclusions

As we have seen above, the Football Union of Russia, having enjoyed a vast autonomy given by the State, has created a complex disciplinary system, which is largely based on the principles set in disciplinary documents adopted by FIFA and

⁵³ See www.rusada.ru/en/www.rusada.ru/en/node/1807 (21 March 2017).

⁵⁴ See www.rusada.ru/en/work/investigation/provisional_suspension_ineligibility (visited on 12 March 2017). The player's disqualification expires on 22 March 2017.

⁵⁵ See https://www.wada-ama.org/sites/default/files/resources/files/wada-status-of-russia-testing_0.pdf (21 March 2017).

⁵⁶ See www.sport-express.ru/doping/reviews/isinbaeva-poshla-v-rusada-na-vtoroy-srok-1227672 (21 March 2017).

⁵⁷ See <https://www.wada-ama.org/en/media/news/2017-03/wada-encouraged-by-signs-of-progress-within-russia-after-president-vladimir-putin> (21 March 2017).

UEFA. The cornerstone of the system is the FUR Disciplinary regulations, which declare the rule of law and ensure fair proceedings for all involved parties. The FUR DR is a living document: largely the FUR is responsive to criticism from clubs and leagues and takes note of best practices in Europe. As a result, the federation amends the document from time to time in order to make it less rigid, more balanced and more adapt for realities of modern life.

At the same time, the FUR disciplinary system is not ideal and there are still areas for improvement. The creation of an *independent* prosecutor within the FUR disciplinary system and reconsideration of the principle of strict liability are just two possible examples of further development of the disciplinary procedures in football in the Russian Federation.

DISCIPLINARY PROCEDURES IN SOUTH AFRICAN FOOTBALL

by *Johan Van Gaalen**

Introduction

Laws of the game of football are important in order to ensure that all participants understand the boundaries in which the game must be played. Chaos will be created if there are no rules or regulations. The law, rules and regulations are there to protect the participant and without it, there will be no winner.

As such, disciplinary rules and regulations are vital to achieve one of the stated objectives of the beautiful game of football, namely fair play. It is not just important to discipline participants and officials who breach the rules of the game on the field, it is equally important to ensure that all misconduct off the field, which falls within the ambit of football, is also regulated and disciplined.

This chapter will deal with the disciplinary procedure of professional footballers in South Africa, whose disciplinary procedures are regulated in terms of the National Soccer League (hereafter “NSL”) Handbook,¹ the South African Football Association (hereafter “SAFA”) Statutes² and the SAFA Disciplinary Code.³

1. Structures in South African Football

SAFA, as the country’s governing body, is affiliated to the Confederation of African Football (hereafter “CAF”) and therefore by extension to the Federation of International Football Federations (hereafter “FIFA”).

Professional football in South Africa is regulated by the NSL, a founding and special member of SAFA, having as its members the Clubs that participate in professional football in the country.

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The opinion expressed by the author in this chapter is personal and does not affect the opinion of the South African Football bodies or its decision-making and judicial bodies.

¹ NSL Handbook dated 15 November 2016, available at www.psl.co.za (17 March 2017).

² SAFA Statutes dated 26 September 2015, available at www.safa.net (17 March 2017).

³ SAFA Disciplinary Code dated 18 August 2012, available at www.safa.net (17 March 2017).

All professional Clubs and professional footballers are subject to the NSL rules and regulations, as well as the rules and regulations of SAFA, CAF, and/or FIFA. These rules will be referred to generically as the “football rules”.

The NSL, also referred to as “the League” in its constitution, is a legal personality endowed with rights and duties distinct from the individuals.

The League is the only special member of SAFA and operates within the provisions of the SAFA Constitution.⁴ The League is the only professional body recognised by SAFA and is responsible for the management and control of the Premier and First Divisions of the country’s domestic competitions.

The objects of the League are, *inter alia*:⁵

- to promote, administer, control, and govern all professional football in South Africa in accordance with the prescripts of FIFA, CAF, and SAFA, within the constraints of South African law; and
- to regulate misconduct and disciplinary proceedings; and
- to regulate all other such things as may be necessary to give effect to the objectives of the League.

The powers of the League are, *inter alia*:⁶

- to make rules which will shall not be inconsistent with the terms of the Constitution and the Statutes of FIFA, CAF, and SAFA, to give effect to the objects of the League (own emphasis); and
- to elect the Executive Committee of the League; and
- to appoint the Chief Executive Officer, the Prosecutor, the members of the Judicial Tribunals and Standing Committees, and such Sub-Committees as may be considered necessary; and
- To suspend, fine, terminate the membership of, or otherwise sanction or deal with any Member Club, Member Club Official, Player or individual falling under the jurisdiction of the League for infringing the NSL Handbook or for engaging in acts of misconduct, improper practices, acts of defiance, or for bringing the League into disrepute.

The Executive Committee is the committee as elected in terms of Article 17 of the NSL Handbook. The Executive Committee consists of candidates nominated by the Clubs and for whom the Clubs have voted. The Executive Committee effectively consists of club owners.

The Executive Committee of the League is responsible for the administration, management, and control of the League and has the authority to exercise all of the powers related to the League except to the extent that the Constitution reserves certain powers exclusively for the Board of Governors.

Therefore, the Executive Committee of the League does have the power to appoint the Chief Executive Officer of the League and the Prosecutor⁷ of the Disciplinary Committee of the League.

⁴ Article 4 of the NSL Handbook, read together with Article 10.3 of the SAFA Statutes.

⁵ Article 8 of the NSL Handbook.

⁶ Article 9 of the NSL Handbook.

⁷ Article 21 of the NSL Handbook.

SAFA is an entity with full legal personality. SAFA is the superior football organisation governing all football in South Africa and is governed by the SAFA Statutes, Rules, and Regulations.

Some of SAFA's aims and objectives include:

- to carry on the public benefit activity of administering, developing, coordinating, and promoting the game of football in which the participants take part, in accordance with the principles as laid down in the Statutes of FIFA;
- to draw up regulations and provisions and to ensure their enforcement;
- to respect and prevent any infringement of the statutes, regulations, directives, and decisions of SAFA, COSAFA, CAF, and FIFA, as well as the Laws of the Game and to ensure that these are also respected by its Members; and
- to settle disputes arising between members, or bodies, or persons connected directly or indirectly to football within the jurisdiction of SAFA.

All participants and stakeholders in football are encouraged to exhaust all internal remedies prior approaching any court. No member club, player, coach, member club official, or any person subject to the provisions of the NSL Handbook, SAFA Statutes and/or SAFA Disciplinary Code shall seek recourse in a court of law, or an administrative tribunal, on any issue that may be determined/decided in terms of the NSL Handbook or the SAFA, FIFA or CAF Statutes, until all procedures prescribed in the NSL Handbook, SAFA Statutes and/or SAFA Disciplinary Code have first been exhausted. Any breach of this provision will constitute misconduct, which shall be dealt with in terms of the South African Disciplinary Procedures. However, this provision does not prevent any party in football to approach a court of law or an administrative tribunal for urgent relief.

2. Disciplinary Processes in South African Football in general

The South African Disciplinary Processes consists of a four (4) stage process.

- NSL Disciplinary Committee – stage one (1);
- SAFA National Appeals Board – stage two (2);
- SAFA Arbitration Tribunal – stage three (3); and
- The Court of Arbitration for Sport (CAS) – stage four (4).

2.1 Disciplinary Committee of the NSL

2.1.1 How it is constituted and its jurisdiction

The NSL has the authority to take disciplinary measures in respect of an issue that is in any way connected to a Member Club, Member Club Officials or Players.⁸

The NSL Disciplinary Committee (hereafter also referred as the NSL Committee) is an independent Judicial Tribunal that determines all matters of alleged misconduct limited to Member Clubs, Member Club Officials, and Players.

⁸ Rule 55 of the NSL Handbook.

It is submitted that the defined parameters constitute a limitation of jurisdiction, which may result in a lack of powers of the NSL Committee to act against misconduct of other football stakeholders, such as intermediaries.

The NSL Committee deals with all cases of alleged misconduct, protests and complaints.⁹

The Chairperson of the NSL and the President of SAFA appoints the members of the NSL Committee. The panel for each matter consists of:

- an independent chairperson qualified in the practice of law for at least ten (10) years as an attorney or an advocate; and
- members drawn from the panel of members¹⁰ of the NSL Committee.

The tribunal to hear a matter is constituted by the NSL through its Executive Committee or by the Chief Executive Officer of the NSL in the event the Executive Committee has delegated its powers. Each panel must at least comprise a minimum of three (3) committee members, including the chairperson. The panel does have the powers to appoint an assessor to assist in relation to findings of fact or where an expert may testify on behalf of a party. The assessor does not have any powers to prescribe and/or dictate the outcome of the proceedings; neither will the assessor be entitled to decide the outcome or to deliberate in respect of the merits of the matter.

Neither the composition of the NSL Committee nor the findings thereof is affected by the absence of any member of the panel if any member has previously sat in the hearing, provided that it is presided over by the same chairperson and at least 2 (two) others who have been present throughout the hearing.

A panel shall be regarded as properly constituted if it consists of a chairperson and at least two additional panel members.

2.1.2 Applicable law, rules and regulations

The NSL Committee is guided by the NSL Handbook, the principles of fairness and equity, the developing jurisprudence of sports tribunals, and South African law, when making any decisions.

The NSL Committee's proceedings are relatively informal, wherein it is expressly stipulated that although it is subject to the South African law, it is not bound by any laws relating to procedure or the admissibility of evidence in proceedings before a court of law.¹¹

Although the rules do not expressly stipulate that the NSL Committee is subject to the rules and regulations of FIFA, it will be implied that the NSL Committee will be indeed bound to the rules and regulations of FIFA and should give adherence thereto due to the fact that:

⁹ Rule 56.1 of NSL Handbook.

¹⁰ It must be noted that the no player representatives or player union representatives are part of the panel of members of the NSL Committee.

¹¹ Rule 56.2 of the NSL Handbook.

- The NSL is stipulated as being empowered to make rules which will shall not be inconsistent with the terms of the Constitution and the Statutes of FIFA, CAF and SAFA to give effect to the objects of the League; and
- In consequence of the nature of the sport of association football and the football rules, all professional Clubs and professional footballers are subject to the NSL rules and furthermore also to the rules and regulations of SAFA, CAF, and/or FIFA (“*football rules*”); and
- Pursuant to Article 13 of FIFA Statutes, all members are obliged to comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time, as well as the decisions of the Court of Arbitration for Sport (CAS), passed on appeal on the basis of Article 66 para. 1 of the FIFA Statutes.

The *football rules*, although not expressly stipulated in the NSL Handbook, also need to be complied with when considering any disciplinary matter before the NSL Committee.

2.1.3 Powers and Sanctions

The decisions of the NSL Committee are based on majority vote of the panel, with the chairperson having a casting vote in the event of a tie.

The NSL Committee does have the powers to make rulings and findings as may be necessary in order to give effect to the NSL Handbook, which includes orders as to costs, and by implication, also to give effect to the *football rules*.

The NSL Committee is empowered to impose any 1 (one) or combination of sanctions¹² in respect of misconduct matters.

Save for the sanctions applicable and imposed on the field of play, the following sanctions may be imposed by the NSL Committee in respect of matters of misconduct. These sanctions are divided into categories of natural and legal person, legal persons only, and natural persons only.

The sanctions that may be imposed on natural and legal persons are:

- Warning;
- Reprimand;
- A monetary Fine on any terms decided on by the NSL Committee with a maximum of one million South African Rand (ZAR1,000,000.00) for a Member Club, two hundred thousand South African Rand (ZAR200,000.00) for a Player or Member Club Official, and one hundred thousand South African Rand (ZAR100,000.00) for any natural person.

The jurisdiction of the NSL Committee is limited to Member Clubs, Players, and Member Club Officials. Therefore, the monetary fine specific to any natural person cannot apply as a result of the limitations of the NSL Committee’s jurisdiction.

The sanctions that may only be imposed on natural persons are:

- Caution;
- Expulsion;

¹² Article 56.13 the NSL Handbook.

- Match suspension:
 - a Member Club Official who is suspended is banned from the dressing rooms and the area within the perimeter demarcation;
 - the suspension is imposed in terms of matches, days or months and, otherwise specified in the Rules, may not exceed twenty four (24) matches or twenty-four (24) months;
 - if the suspension is to be served in terms of matches, only those matches actually played to completion count towards execution of the suspension;
 - if a suspension is combined with a Fine, the suspension may be extended until the Fine has been paid in full.
- A ban from dressing rooms or technical area;
- A ban from entering one or more stadiums;
- A ban on taking part in any football related activity.

The sanctions that may only be imposed on legal persons are:

- Playing a match without spectators;
- Playing a match in a neutral venue;
- A ban on playing in a particular stadium;
- The annulment of the result of a match;
- Expulsion from a competition or from the League;
- Forfeit of a match:
 - a team sanctioned with a forfeit is considered to have lost the match by three (3) goals to nil (0);
 - if the goal difference at the end of the match is greater than three (3), the result on the pitch is upheld.
- Deduction of points;
- Relegation to a lower division;
- Replay of a match if it could not take place or could not be played in full for reasons other than force majeure.

Under only certain circumstance, may the NSL Committee suspend a sanction wholly or partially. These circumstances include and are limited to:

- a match suspension;
- a ban on access to dressing rooms or the technical area;
- a ban on taking part in any football-related activity;
- the obligation to play a match without spectators;
- the obligation to play a match on neutral ground; or
- a ban on playing in a certain stadium.

Partial suspension is only permissible if the duration of the sanction does not exceed six matches or six months. Suspended sanctions are prescribed and limited for a period of between six months to two years. The effect of the suspended sanction is that if a party with a suspended sentence commits another similar infringement during the suspension period, the suspension is automatically revoked and the suspended portion of the sanction is applied and is added to the sanction pronounced for the new infringement. The new misconduct therefore not only

triggers the suspension, it will also have an effect to a further sanction imposed on the party. However, this suspension rule is not applicable in the case of breach of any anti-doping rules. Sanctions will, unless otherwise stated, be effective immediately on pronouncement by the NSL Committee and are not dependent on the written confirmation by the NSL Prosecutor.

Despite the guideline for general disciplinary sanctions being prescribed by the NSL, the NSL also makes reference to specific sanctions in specific cases of misconduct.¹³ These specific sanctions are indeed in position to protect all other stakeholders against the abusive and unacceptable behavior of any person involved in football. These expressly specific sanctions are:

- Misconduct against persons other than a Match Official:
 - in addition to the automatic suspension which may have been incurred in accordance with these Rules, any person will be charged by the League, and upon conviction will, besides a Fine, be suspended for:
 - at least two matches for assault;
 - at least six (6) matches for spitting at a person other than a Match Official.
- Misconduct against a Match Official:
 - in addition to the automatic suspension which may have been incurred in accordance with these Rules, any person will be charged by the League, and upon conviction will, besides a Fine, be suspended for:
 - at least four (4) matches for unsporting conduct towards a Match Official;
 - at least six (6) months for assaulting a Match Official;
 - at least twelve (12) months for spitting at a Match Official.
- Involvement in a brawl may result in the alleged perpetrators being charged by the League, and upon conviction will be suspended for at least six (6) matches:
 - anyone who attempted to de-escalate the brawl will, at the discretion of the Prosecutor, not be charged;
 - if it is not possible to identify the perpetrator in a brawl, the League will charge the Member Club or Member Clubs to which the aggressors belong.¹⁴
- Additional disciplinary measures may be imposed on a Member Club in the following circumstances:
 - where the referee cautions or expels at least five (5) Players of the same team during a match;
 - where a Player or Member Club Official from the same team threatens or harasses a Match Official or other person.

¹³ Rule 57 of the NSL Handbook.

¹⁴ This place a huge responsibility and burden on all members club to ensure that they control their fans as a measurement to avoid crowd violence and/or hooliganism.

A great emphasis is placed on prevention of crowd violence and/or hooliganism. In addition to the specific sanctions stipulated above, a player or member club official who publicly incites others to violence will be sanctioned with match suspension for no less than twelve (12) months, coupled with a fine, and any player or member club official who provokes the general public before, during, or after a match will be suspended for a minimum of two (2) matches coupled with a fine.

Although a referee may take disciplinary action on the field of play during matches, the NSL reserves the right to take any action against serious on-field misconduct that escaped the match officials' attention, and serious infringements not sanctioned adequately by the match official. These powers entrenched on the NSL Committee in fact not only make the NSL Committee a disciplinary body of first instance, but also, given the NSL Committee's powers to review certain sanctions, a secondary disciplinary body.

2.1.4 Time limits for prosecution

Infringements committed during a match must be prosecuted within two (2) years, while other infringements must be prosecuted within ten (10) years. Prosecution for corruption is not subject to a limitation period, as it is an infringement of a criminal nature.¹⁵

2.1.5 The Institution of disciplinary charges

The NLS Handbook makes provision for a party to plea bargain with the NSL prosecutor. The Executive Committee of the NSL appoints the NSL prosecutor¹. The NSL prosecutor is responsible for drafting of the charge sheet. For all administrative purposes, the NSL prosecutor reports to the NSL Chief Executive Officer.

The NSL prosecutor has the sole power and authority to:

- take decisions as to whether it is appropriate for the NSL to prosecute any alleged acts of misconduct;
- prosecute any such proceedings before the NSL Committee or resolve them on a basis provided for in the NSL Handbook (e.g. plea bargain); and
- represent the NSL in any misconduct proceedings and in any appeal or arbitration proceedings.

As stipulated above, the NSL prosecutor's powers are wide and that he does have the power / obligation to intervene in all matters of a disciplinary nature under the jurisdiction of the NSL. The NSL prosecutor is regarded as the "representative" of the NSL. If the accused party entered into a plea bargain with

¹⁵ Article 59 of the NSL Handbook.

¹⁶ Article 21 of the NSL Handbook.

the NSL prosecutor, this plea bargain arrangement agreed to between the parties must be in writing and be placed before the NSL Committee for approval, in which event it will not be necessary for the offender to appear before the NSL Committee. In the event that the plea bargain arrangement is acceptable to the NSL Committee, the NSL Committee shall make the plea bargain agreement an order. However in the event that the NSL Committee does not approve the plea bargain arrangement, the NSL Committee shall order a hearing to take place. In this instance, the right to plea bargain does not take away any of the NSL Committee's powers.

However this power of the NSL Committee to approve or decline the plea bargain arrangement can be overridden by the powers vested in the Chief Executive Officer of the NSL in that only a fine may be granted. If the Chief Executive Officer of the NSL, in consultation with the NSL prosecutor, is of the opinion¹⁷ that a NSL Committee, upon convicting the accused, will not impose a fine in excess of twenty thousand South African rand (ZAR20,000), the Chief Executive Officer may rule that the alleged offender has an option to plead guilty to the charge and pay of a fine without having to appear before the NSL Committee.¹⁸

2.1.6 Procedures before the disciplinary hearing

All parties before the NSL Committee have the right of "natural justice," in that each party will have an opportunity to present its case, call witnesses, cross-examine witnesses, and submit evidence. If any party is found guilty, there also exists the right to submit mitigation and aggravating factors in respect of the sanction.¹⁹

The NSL prosecutor may withdraw a charge at any time before an offender pleads to the specific charge, in which instance no verdict of acquittal will be given. The effect hereof is that the offender may at any time in the future (subject to time limitations) be charged again for the alleged misconduct and/or offense. In the event that the NSL prosecutor decides to withdraw charges after the offender has pleaded, the NSL Committee will acquit the alleged offender in respect of that specific charge. If an accused pleads guilty to the charges, the NSL Committee will only after it satisfied itself that the accused is in fact guilty of the offence, proceed with sanctioning the offender.²⁰

Any party may on application after the case has closed, apply that further evidence be submitted, provided that it is regarded as relevant and important to

¹⁷ A viewpoint or judgment short of absolute conviction, which is exercised at the sole discretion of the Chief Executive Officer of the NSL and the NSL prosecutor without any input from the NSL Committee. The risk is that you may enter a playing field acting as judge and jury.

¹⁸ Article 60 of the NSL Handbook.

¹⁹ Article 61 of the NSL Handbook.

²⁰ Article 61.5 of the NSL Handbook.

the matter. The NSL Committee has the power, at its sole discretion, to allow the further evidence or not.²¹

Although the NSL Committee is not bound by the strict application of the South African law of evidence, it is stipulated that, save where otherwise provided for in the NSL Handbook, no document will be accepted into evidence unless the author thereof will be present for the purposes of being questioned with regard thereto, unless the contents thereof are not disputed,²² although the principle is that all documents may be placed in dispute, therefore the authenticity must be proved by the author of such documents.

2.1.7 Compliance with penalties or orders imposed

Anyone who fails to pay the League a sum of money in full by the due date stipulated by the Disciplinary Committee will automatically be sanctioned with a minimum Fine of ten thousand rand (ZAR10,000.00).

If the defaulting party is a Member Club, Player, or a Member Club Official, the Chief Executive Officer will deduct the total outstanding amount from any monies payable by the League to the Member Club.²³

2.1.8 Exclusive powers of the NSL Chief Executive Officer

At the sole discretion of the NSL chief executive officer, he/she may, if he/she is of the opinion that the prosecution of a complaint, protest, disciplinary matter or appeal, according to the prescribed timeframes, will in any manner prejudice the League (e.g. cup competition matters), he/she may escalate the relevant issue directly to arbitration as provided for in terms of the SAFA Statutes. It provides the NSL Chief Executive Officer with overriding powers to expedite the finalisation of disputes and will result in a party's right to appeal to the SAFA Appeal Board (stage two (2) of the South African disciplinary process) being taken away.²⁴

2.2 SAFA National Appeals Board

2.2.1 How it is constituted and its jurisdiction

Save in the event that the NSL Chief Executive Officer exercises his/her discretion to refer a dispute directly to SAFA Arbitration Tribunal (as stipulated above), all appeals against decisions of the NSL Committee will be referred directly to the SAFA National Appeals Board and will be regulated by the SAFA and FIFA regulations. All NSL Committee decisions are appealable.

²¹ Article 61.14 of the NSL Handbook.

²² Article 61.15 of the NSL Handbook.

²³ Article 62 of the NSL Handbook.

²⁴ Article 63 of the NSL Handbook.

Pursuant to NSL Handbook, section 24, an appeal against any order of the NSL Committee will not suspend the operation of that order pending the finalisation of any appeal or arbitration in respect of that order. This provision is contrary to the provisions of SAFA, where the SAFA Disciplinary Code, Article 125, stipulates that the appeal does not have a suspensory effect, except with regard to orders to pay a sum of money. Due to the fact that as from the appeal stage, SAFA and FIFA regulations are applicable, it is submitted that the SAFA Disciplinary Code will prevail in such an instance and the sanction of payment of any monies will be suspended until the finalisation of the matter.

Parties eligible to appeal²⁵ are those parties who have been a party to the proceedings before the first instance and who have a legally protected interest justifying amendment or cancellation of the decision by the disciplinary committee of first instance. Even SAFA members, which include the NSL,²⁶ may appeal²⁷ against decisions sanctioning their players, officials, or members, subject to the SAFA member appealing having the written agreement of the person concerned.

The SAFA Executive Committee appoints the members of the SAFA National Appeals Board for a period of four years. The SAFA Executive Committee furthermore appoints the chairman and deputy chairman of the SAFA National Appeals Board, with the proviso that the chairperson shall have legal qualifications. There exists no express requirement that any of the SAFA Appeal Board members must be independent, however a member of the SAFA Appeal Board may not belong to any body of SAFA at the same time.²⁸

The SAFA National Appeals Board consists of a chairperson and two or more additional members. The SAFA National Appeals Board and its members are appointed by the National Executive Committee of SAFA (this committee is elected from people involved in the clubs and football regional associations²⁹) from a selection of Appeal Board members approved at the last Annual General Meeting of the SAFA. The Disciplinary Code of SAFA, CAF, and FIFA govern the SAFA National Appeals Board.

The chairman of the SAFA National Appeals Board may take the following decisions alone:³⁰

1. decide on an appeal against a decision to extend a sanction;
2. resolve disputes arising from objections to members of the SAFA National Appeals Board;
3. rule on appeals against provisional decisions passed by the Chairman of the Disciplinary Committee;
4. pronounce, alter and annul provisional measures.

²⁵ Article 120 of the SAFA Disciplinary Code.

²⁶ Due to the fact that the NSL Prosecutor is the representative of the NSL, it is him appealing a decision of the NSL Committee is necessary.

²⁷ Article 120 (2) of the SAFA Disciplinary Code.

²⁸ Article 67.4 of the SAFA Statutes.

²⁹ SAFA Statutes Articles 32.

³⁰ Article 80 of the SAFA Disciplinary Code.

The Disciplinary Code of SAFA applies:

1. to every match and competition organised by SAFA;
2. when a match official is harmed;
3. when the statutory objectives of SAFA are breached, especially with regard to forgery, corruption and doping; and
4. to any breach of SAFA regulations that does not fall under the jurisdiction of any other body.

The SAFA Disciplinary Code applies to the following natural and legal persons:³¹

- SAFA Members, which includes the NSL, who is a special member of SAFA;³²
- Affiliates of SAFA Members;
- officials;
- players;
- match officials;
- licensed match and players' agents;
- anyone with an authorisation from SAFA, in particular with regard to a match, competition, or other event organised by SAFA; and
- spectators.

The scope of application of the SAFA Disciplinary Code is much wider than the scope of application of the NSL Handbook in respect of disciplinary matters. Although spectators are regarded as forming part of the persons who are subject to the SAFA Disciplinary Code, it is doubtful whether the SAFA Disciplinary Committee or SAFA National Appeals Board will be able to summon spectators to appear before a SAFA Disciplinary Committee or SAFA National Appeals Board.

The NSL Committee (disciplinary committee of first instance) and the SAFA National Appeals Board (disciplinary committee of the second instance) apply a different set of rules (NSL Handbook and the SAFA Disciplinary Code respectively) for the same matter. This may create confusion and a conflict of application of rules.

2.2.2 *Applicable law, rules and regulations*

As stipulated above, as a consequence of the nature of the sport of association football and the football rules, all members of SAFA are subject to the SAFA Statutes, SAFA Disciplinary Code and furthermore also to the rules and regulations of CAF, and/or FIFA ("*football rules*"). The SAFA Disciplinary Code shall govern the functioning of the SAFA National Appeals Board.³³

SAFA stipulates the scope of application of the substantive law in its Disciplinary Code.³⁴

³¹ Article 3 of the SAFA Disciplinary Code.

³² Article 10.3 of the SAFA Statutes.

³³ Article 69.2 of the SAFA Statutes.

³⁴ Article 2 of the SAFA Disciplinary Code.

1. *Culpability*: unless otherwise specified, infringements are punishable regardless of whether they have been committed deliberately or negligently. Therefore intent does not have to be proven by the prosecutor of a disciplinary hearing.³⁵
2. *Attempt*: Acts amounting to attempt are also punishable. However the SAFA National Appeals Board may consider the actual infringement when deciding on an appropriate sanction.³⁶
3. *Involvement*: Anyone who intentionally takes part in committing an infringement, either as instigator or accomplice, is punishable. However, the SAFA National Appeals Board may consider the actual involvement of a party when deciding on an appropriate sanction.³⁷
4. *Fine*: Clubs are jointly liable for fines imposed on their players and/or officials. It is important to note that even if a natural person has left a club, it does not exclude the club to be jointly liable.³⁸

2.2.3 Powers and Sanctions

Unless otherwise ordered by the SAFA National Appeals Board, the appeal shall not be conducted as a re-hearing of the case and the record before the SAFA National Appeals Board shall be confined and limited to be the evidence, which was presented before the NSL Committee.³⁹ Due to the SAFA National Appeals Board's limitation to be bound to the record of the proceedings, the SAFA National Appeals Board is regarded as a review body rather than an appeals body.

Save for the specific powers of the SAFA National Appeals Board in respect of specific misconduct, the SAFA National Appeals Board shall have the powers:⁴⁰

- on good cause shown, to condone the failure to comply with the time limits;
- to adjourn the appeal hearing wholly or in part;
- to make one of the following decisions after considering the submissions of the parties:
 - to allow or dismiss the appeal;
 - to alter or to modify the decision being appealed against;
 - to reduce, increase, modify, or leave unaltered the penalty, if any, resulting from the decision being appealed against; and
 - to order a re-hearing of the original case by a disciplinary committee, which shall specifically exclude the presence of any member of the disciplinary committee who dealt with the case in the first instance.

³⁵ Article 7 of the SAFA Disciplinary Code.

³⁶ Article 8 of the SAFA Disciplinary Code.

³⁷ Article 9 of the SAFA Disciplinary Code.

³⁸ Article 15 of the SAFA Disciplinary Code.

³⁹ SAFA Rules relating to misconduct and disciplinary proceedings, rule 7.7.

⁴⁰ SAFA Rules relating to misconduct and disciplinary proceedings, rule 7.9.

Further to the general powers of the SAFA National Appeals Board, in terms of the SAFA Disciplinary Code, the following specific sanctions may be applied:

- In respect of natural and legal persons:
 - warning;
 - reprimand;
 - fine;
 - return of awards.
- In respect of natural persons:
 - caution;
 - expulsion;
 - match suspension;
 - ban from dressing rooms and/or substitutes' bench;
 - ban from entering a stadium;
 - ban on taking part in any football-related activity.
- In respect of legal persons:
 - transfer ban;
 - playing a match without spectators;
 - playing a match on neutral territory;
 - ban on playing in a particular stadium;
 - annulment of the result of a match;
 - exclusion from a competition;
 - defeat by forfeit;
 - deduction of points;
 - demotion to a lower division;
 - forfeit .

The SAFA National Appeals Board may combine any of the above sanctions if need be and such sanction must therefore not be regarded in isolation. The duration of a time sanction can be interrupted by rest periods during or between seasons.

A sanction imposed by the SAFA National Appeals Board has the same effect as if the NSL Committee had imposed the sanction.⁴¹ The SAFA Disciplinary Code is silent whether the SAFA National Appeals Board more imposed a more severe sanction as imposed by the NSL Committee.

2.2.4 Time limits

The appellant of a decision of the NSL Committee has to lodge a notice of appeal within three days of notification of the decision of the NSL Committee. The grounds for the appeal must then be submitted in writing within a further time limit of seven days (this seven-day period starts after the first deadline of three days has

⁴¹ Article 141 of the SAFA Disciplinary Code.

expired).⁴² An appeal referred is only regarded as properly referred if the appeal referral, which includes the grounds of appeal together with the required appeal fee, is lodged within the prescribed time limits.

2.2.5 Procedure before the SAFA National Appeal Committee

The appellant must comprehensively disclose the grounds for appeal and submit an appeal fee as determined in the SAFA Statutes. He may appeal to the inaccurate representation of the facts and/or wrong application of the law. Presently the cost for referring a matter to the SAFA National Appeals Board amounts to ZAR23 000.00 (Twenty Three Thousand South African Rand). It is the appealing party's responsibility to ensure that the full record (transcription of the recording and bundle of documents), which was before the NSL Committee, is made available to all parties and the SAFA National Appeal Committee before the appeal hearing. As stipulated, the SAFA National Appeal Committee is confined to the record when making its decision. The parties may submit further legal arguments. However, they may not introduce any new evidence. Only the parties who appeared before the NSL Committee may appear before the SAFA National Appeal Committee.

2.2.6 Compliance with penalties or orders imposed⁴³

In the event that the infringement/misconduct is serious, in particular but not limited to doping, unlawfully influencing match results, misconduct against match officials, forgery and falsification, or violation of the rules governing age limits (protection of minors), SAFA may be requested to extend the sanctions its judicial bodies (SAFA National Appeal Committee and/or SAFA Arbitration Tribunal) have imposed so as to have a worldwide effect. Whether SAFA will have the powers to extend the sanction to have a worldwide effect is doubtful. Only FIFA will be in such a position to be able to extend any valid sanction in order to have a worldwide effect.

Anyone who fails to pay another person (such as a player, a coach or a club) or SAFA a sum of money in full or part, even though instructed to do so by a body, a committee, or an instance of SAFA or CAS (financial decision), or anyone who fails to comply with any non-financial decision passed by a body, a committee, or an instance of SAFA or CAS will be:

- fined at least ZAR 5,000 (five thousand South African rand) for failing to comply with a decision;
- granted a final deadline by the judicial bodies of SAFA in which to pay the amount due or to comply with the non-financial decision;

⁴² Article 121 of the SAFA Disciplinary Code.

⁴³ Article 64 & 137 of the SAFA Disciplinary Code.

- (*only for clubs*) warned and notified that, in the case of default or failure to comply with a decision within the period stipulated by the judicial bodies of SAFA, points will be deducted or demotion to a lower division ordered. A transfer ban may also be pronounced.

If a club disregards the final time limit set by the SAFA judicial body, the relevant SAFA member shall be requested to implement the sanctions. In the event that points are deducted, they shall be proportionate to the amount owed. The SAFA judicial bodies may also impose a ban on any football-related activity against natural persons.

2.3 SAFA Arbitrational Tribunal

2.3.1 How it is constituted and its jurisdiction

Any dispute or difference regarding decisions, rulings or awards of the NSL Committee or the SAFA Appeals Board will be referred to arbitration pursuant to and conducted in accordance with the SAFA Statutes.⁴⁴ As a result of the SAFA National Appeals Board acting as a “review” body of the decision of the NSL Committee, whose powers are limited in that a decision is made solely on the transcribed record, the SAFA Arbitrational Tribunal is established to act as a true appeal body with wider and greater powers. A great concern of these various stages of disciplinary committees is that it may result in a delay of justice, which may be of great prejudice to the party being charged.

A decision of the NSL Committee may be appealed directly to the SAFA Arbitrational Tribunal,⁴⁵ if the Chief Executive Officer of the NSL is of the opinion that the prosecution of a complaint, protest, disciplinary matter or appeal according to the prescribed time lines will prejudice the League.

The arbitrator will be a senior counsel appointed by SAFA from its arbitrators’ panel. Although it is stipulated in the SAFA Statutes that the Arbitrator’s decision will be final and binding, the decision of the arbitrator may be appealed to CAS.

2.3.2 Applicable law, rules and regulations

As stipulated above, the SAFA Statutes, SAFA Disciplinary Code, and the rules and regulations of CAF, and/or FIFA (*football rules*) together with the Laws of South Africa apply.

⁴⁴ Article 69.2 of the SAFA Statutes.

⁴⁵ Rule 63 of the NSL Handbook.

2.3.3 Time limits

All disputes against the decisions of the SAFA Appeals Board or NSL Committee shall be submitted to SAFA for arbitration at the discretion of the Chief Executive Officer of the NSL for a direct arbitration within seventy-two (72) hours of the decision being made known to the parties in writing. The SAFA-appointed arbitrator may, on good cause shown, condone non-compliance with this time limit. A referral fee shall accompany the request for arbitration, which is ZAR30 000.00 (thirty thousand South African rand) at present.

2.3.4 Procedure before the SAFA Arbitrational Tribunal

The party requesting arbitration shall file with his/her request a notice of dispute, which shall set out fully the grounds for dispute. Such notice of dispute shall be served on all relevant parties within a day of the date of filing the notice of dispute, or within such later period as may, on good cause shown, be condoned by the arbitrator.⁴⁶

The parties to the arbitration shall be the party requesting (which may include the NSL prosecutor acting on behalf of the NSL) arbitration and any other relevant parties who may have an interest in the matter, and who have, within 3 days of receipt of the notice of dispute, or such later period as may, on good cause shown, be condoned by the Arbitrator, given notice of their intention to participate in the arbitration. The effect of this provision is that any party, who was not involved in the matter before the NSL Committee or the SAFA National Appeal Committee, may enter into the dispute at arbitration stage. The parties to the arbitration are entitled to be represented by any person, including legal representatives.

The arbitration is done informally, without strictly applying the rules of evidence or procedure.

2.3.5 Powers and Sanctions

The arbitrator's powers are very broad and not confined to the record before the SAFA Appeals Board or the NSL Committee. The arbitrator is empowered to call for any papers, records or other evidence, as he/she may deem necessary to reach a finding. If necessary, even the chairpersons of NSL Committees or the SAFA Appeals Board may be called to explain their decisions, at the sole discretion of the arbitrator. The arbitrator can apply a wide discretion when making any ruling. Although the arbitrator can be guided by the sanctions prescribed in the SAFA Disciplinary Code, he/she may make any ruling which is just and fair.

The arbitrator shall furthermore have the power to award costs to any party, and shall decide what portion, if any, of the referral fee shall be refunded. In

⁴⁶ Article 81 of the SAFA Disciplinary Code.

the event that the cost of the arbitration exceeds the referral fee amount, the arbitrator shall decide who is responsible for such costs. Failing a decision of the arbitrator in respect of costs, the parties to the arbitration shall be jointly and severally liable to SAFA for such costs.

The SAFA Arbitration Tribunal rules, in principle, as a body in the last instance. However, provision is made to appeal a decision of the SAFA Arbitration Tribunal to CAS.

2.3.6 Compliance with penalties or orders imposed

Due to the fact that both the SAFA Arbitration Tribunal and the SAFA Appeals Board are judicial bodies constituted in terms of the SAFA Statutes, it is submitted that the provisions stipulated in respect of compliance with penalties or orders as stipulated above in respect of the SAFA Appeals Board also apply in respect of penalties and orders of the SAFA Arbitration Tribunal.⁴⁷

2.4 Court of Arbitration for Sport

Certain decisions passed by the SAFA Arbitration Tribunal may be appealed against before the Court of Arbitration for Sport.

The right is reserved for an appeal to be made to the Court of Arbitration for Sport (CAS).⁴⁸

During 2013, the disciplinary process of South Africa was tested in that the first ever disciplinary dispute had been referred to CAS.⁴⁹

The appellant, the fourth and fifth respondents were subsequently (some 7 months later) charged with misconduct by the NSL, and it was ordered by the NSL Committee that those matches not played during the 2012/2013 football season be regarded as abandoned and be forfeited, and that no points be awarded.

The appellant argued that the NSL Committee should have ordered the matches to be replayed in terms of FIFA Rule 31bis read with Rule 56 of the FIFA Disciplinary Code. At the heart of the appellant's case was the complaint that sentences were imposed at the disciplinary hearing that were inconsistent with the relevant constitutions and rules.

The appellant argued that the NSL Committee had no power or authority to order the matches not played by the appellant and any of the other NFD clubs to be regarded as abandoned and forfeited, since no matches, as defined in the FIFA Disciplinary Code, in fact took place, and none of the teams (save for one (1) team) turned up for any of the matches concerned.

⁴⁷ Article 64 & 137 of the SAFA Disciplinary Code.

⁴⁸ Article 129 of the SAFA Disciplinary Code & Article 73 of the SAFA Statutes.

⁴⁹ See CAS 2013/A/3276 *Thanda Royal Zulu FC (Pty) Limited v South African Football Association, The National Soccer League, Chippa United FC, Santos FC, Mpumalanga Black Aces FC, Polokwane City FC, Adv. P Pretorius SC N.O. & Adv. P Mokoena SC N.O.*

It was submitted that the FIFA Disciplinary Code provides that in such circumstances, the matches be rescheduled, and that the clubs concerned, at most, be issued with a fine. No forfeiture of points under such circumstances is permitted by the FIFA Disciplinary Code.

The Rules and Constitutions of CAF deal with the situation of abandonment and the FIFA Disciplinary Code deals with abandonment and unplayed matches. The FIFA Disciplinary Code stipulates the sanctions applicable under the circumstances. Article 31bis of the FIFA Disciplinary Code stipulates:

“A match may be replayed if it could not take place or could not be played in full for reasons other than force majeure, but due to the behaviour of a team or behaviour for which an association or a club is liable.”

In terms of the laws of the game 2012/2013 of FIFA, the following is stipulated under the heading *Abandoned Match*:

“An abandoned match is replayed unless the competition rules provide otherwise.”

It does not appear from the NSL Rules or Constitution, that there is prohibition against the replay of matches where the matches were abandoned, or were simply not played when both teams failed to turn up for the matches

The appellant argued, in light of the above, that it follows that in imposing the sentence, the NSL Committee went beyond the scope of its powers. Nothing in the NSL Rules or Constitution at the time stipulated that there is prohibition against the replay of matches where the matches were abandoned, or were simply not played when both teams failed to turn up for the matches.

The appellant lodged an appeal against the aforementioned sentences with the SAFA National Appeals Board; its decision was taken to the SAFA Arbitrational Tribunal, and finally appealed to CAS.

CAS made the following ruling:

“... ”

109. *In this context, the NSL DC was empowered to impose on the Appellant, in accordance with this provision, a forfeiture (“walk-over”), unless it was satisfied that another sentence would be more appropriate, under the circumstances (emphasis added).*
110. *The NSL DC decided that under the circumstances of the case, and in particular the fact that not only the Appellant but also its respective opponents for the three abovementioned matches failed to appear at these matches, the proper sanction was, in substance, that said matches were “abandoned and forfeited” by the Appellant, and that no benefits were to flow from these matches with no points awarded and no goals being awarded.*
114. *The Panel considers that this approach is erroneous. Indeed, in the context of international football, the National Federations, such as SAFA, and their members, such as the NSL, have certainly the general obligation to respect the regulations of their supervisory bodies (such*

as CAF and FIFA, see Article 2.6 and 13.1.1 of the SAFA Constitution), but this does not mean that all the regulations implemented by these bodies are directly applicable to the National Federations and their members. On the contrary, FIFA leaves a certain discretion to the National Federations to deal with their affairs, in particular with regard to the purely national matters. In this regard, the Panel refers as an example to the commentary of Article 1 of the FIFA Regulations for the Status and Transfer of Players, which states in particular the following:

“As a general rule, FIFA does not interfere in the day-to-day business of the associations, provided that severe infringements of the FIFA Statutes and/or regulations do not occur.

The autonomy of the association is, however, limited by the basic principles of the Regulations that have to be observed at all times and in particular by those provisions that are in particular binding at national level and have to be included without modification in the association regulations”.

115. *This position of FIFA demonstrates that the National Federations have a large discretion with regard to purely national issues. It is true that certain provisions of the FIFA regulations have to be included without modification in the National Federations’ regulations. Article 56 of the FIFA Disciplinary Code is certainly not among those particular provisions “binding at national level and have to be included without modification in the association regulations”.*
116. *Even if it was the case, the National Federation in question would still have to implement such FIFA binding provisions in its own regulations in order for it to be applicable at national level (see CAS 2008/A/1576 & 1628, para. 74 et seq.)*
117. *In any case, even if one assumed that Article 56 of the FIFA Disciplinary Code was directly applicable to the case at hand, the Panel deems that it is not in contradiction with Article 10.2 of the NSL Rules, as both of these provisions provide for the possibility given to the relevant disciplinary authority to declare the forfeiture of a match. Even if Article 56 of the FIFA Disciplinary Code was to be applied, the NSL DC still had the possibility to choose between the forfeiture and the replay of the matches. It can therefore in any case not be reproached to the NSL DC to have imposed, and to Adv Pretorius SC to have confirmed, this sanction to the Appellant.*
118. *The NSL DC’s further decision to accompany the forfeiture by the non-attribution of any points and any goals to the teams that did not appear to the matches in question is not only in accordance with its large discretion to impose any sanction it deems appropriate, but it is*

also a fair and equal decision, considering the circumstances of the case. Indeed, as none of the teams appeared at the boycotted matches, it is in particular logical not to apply the “3-0” usual rule in case of forfeiture.

XII CONCLUSION

121. In view of all the above, the Panel concludes first that the Appealed Decision shall be considered as being the final decision within the SAFA system of dispute resolution, and as SAFA’s Constitution set forth an appeal to CAS against its final decisions, the appeal shall be declared admissible.

122. As to the merits, the Panel concludes that the NSL DC correctly assessed and applied the applicable rules, in particular by wisely using its discretion regarding sanctions, which is set forth by Article 10.2 of the NSL Rules. The Appealed Decision, which upheld the NSL DC’s decision, shall therefore be confirmed.

...”.

From the above CAS case, the following principles were confirmed:

1. there is an obligation on all South African football disciplinary bodies to comply with FIFA rules and regulations;
2. the disciplinary bodies of South Africa do have a wide discretion when it comes to imposing sanctions in respect of purely national matters;
3. CAS is regarded as the final appeal body in respect of disciplinary matters.

Conclusions

It is interesting to note that neither the NSL Committee, SAFA Appeals Board or the SAFA Arbitration Tribunal follow a principle to equal representation of players and clubs, with a jointly appointed chairperson and only consists of representatives appointed by the NSL or SAFA respectively. The lack of the application of the principle of equal representation of players and clubs and a chairperson appointed by consensus and agreement may cause some concern of fairness and independency.

The use of two sets of disciplinary rules (NSL Handbook and the SAFA Disciplinary Code) during the disciplinary process may result to possible contradictions and/or the correct application of disciplinary measures.

It is important that all stakeholders in football understand and know the rules of the game, on and off the field of play, in order to ensure that the disciplinary system can be effectively applied. The core principle to any disciplinary hearing should be fairness and reasonableness. Although there are some contradictions between the NSL Handbook and the SAFA Statutes with regard to disciplinary matters and its processes, it is submitted that in general the South African disciplinary process works, even when tested at CAS level. It is also evident from the relatively low number of serious offenses reported. Although further work can

be done to remove possible discrepancies between various sets of rules, the fact that, as in the example provided, a finding is upheld at subsequent appeals with higher bodies, proves that the process is sound. As long as decisions are made in the interests of the game first and foremost, this will continue to be the case.

DISCIPLINARY PROCEDURES IN SPANISH FOOTBALL

by *Lucas Ferrer**

1. *Introduction*

It is generally considered that the evolution of the Spanish Sports system from 1975 until now can be divided in three stages. These three stages have been influenced by historical events that have, in one way or another, had an impact on the local sport systems. The first stage, from 1975 to 1983, was dominated by the transition to democracy after forty years of dictatorship under General Franco's regime. It is normally considered that 1983 represents the end of the first stage because by then the structures for a new democratic State were properly in place. The second stage (1983-1996) features a slow reconstruction of civil society and a consolidation of the state structures. The third and most recent stage began in 1996, which is characterized by a rationalization of sports policy management, a diversification of sports organizations and the definite incursion in the public sphere of sport in general, and football in particular, as an activity that increases its weight in the local economy.

Out of those event, the Spanish Disciplinary System of Football also underwent several changes. Indeed, the national football associations and other sporting federations now have their own autonomous power to create, apply and

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enforce rules in order to regulate the activities of sports stakeholders. In doing so, they act according to the “*specificity of sport*” in view of preserving the integrity of competitions at national (and international) level. Normally, each judicial body of a national federation is competent to investigate and sanction, as the case may be, any infringement that occur in the frame of a match or a competition, which falls within that federation’s responsibility. However, the competence of the disciplinary body often goes further than the disciplinary administration of a competition and the latter body will be competent to sanction other possible infringements to the relevant regulatory framework.

The sports legal framework in Spain consists of a large number of laws pertaining to different state institutions including the Government, National Courts and National Committees. Similarly, such legal framework is also linked and correlates with different areas of law, such as Civil Law, Administrative Law and even Criminal Law. As a result, the disciplinary system of football in Spain is influenced by all institutions and areas of law mentioned above, as it will be further explained throughout this chapter.

2. *The Discipline of Football in Spain*

2.1 *The sporting disciplinary power in Spain and its legal sources*

Spain is a single sovereign State, but it is composed of 17 regions or autonomous communities – named “*Comunidades Autónomas*” – that are vested with a fair grade of autonomy and with competences to rule on very diverse issues. The country’s structure is primarily recognized in the Spanish Constitution (“*Constitución Española*”) of 1978 which recognizes in its Article 2 the right to the autonomy of the nationalities and regions, and determines in its Article 137 that the State is territorially organized into municipalities, provinces and Autonomous Communities. In the field of sports, these communities are entitled to assume ruling competences in accordance with Article 148.1.19 of the Spanish Constitution.

The particularity of the Spanish sports legal framework is the fact that, at a regional level, each autonomous community has its own regional football federation, that adopt their own rules, regulating the legal procedures to recognize sport organizations within a given territory.¹

¹ For example, in the case of the Autonomous Community of Madrid - which contains the *Federación de Fútbol de Madrid* - its Statutes specifies that the latter has the exclusive competence of enacting laws in the State of Madrid regarding the activities correlated with sports and leisure. This competence is developed in Act 15/1994, of Sport of Madrid, enacted by the regional parliament of the Autonomous Community of Madrid which in Articles 33 and ff. rules that the Federations of that Community are defined as private entities, without lucrative purpose, with legal standing, which scope of activity is the territory of the community of Madrid, in the development of its competences, and are integrated by clubs, athlete, coaches, judges and referees, and other natural or corporate persons which foster, practise or contribute to the development of sport.

These regional rules and statutes recognize and organize the constitution of regional/autonomous sports federations independent of their national counterpart. Despite the obvious link between the national and regional federations, the latter are, legally speaking, separate organizations.

Sport in Spain is regulated by the National Sports Act, and the well-known *Ley del Deporte*, Law 10/1990, of 15 October 1990. The National Sports Act introduced new types of associations, mainly due to the development of sport-business in the 1990s. This act also establishes the general promotion of sport within the country, which shall be performed in a coordinated manner by both national and regional sporting associations or federations, as mandated by Article 33.1 of the National Sports Act, which stipulates that “*Under the coordination and supervision of the Higher Council for Sport, the Spanish sports Federations shall exercise the following functions: [...] act in coordination with the Federations of the Autonomous Communities for the general promotion of sport throughout the national territory*”.

In accordance with the aforementioned provisions, in Spain one can find a national federation and additionally, several regional federations incorporated or created by the relevant autonomous communities in the majority of sports activities. These regional sport federations have legal standing and legal personal status. However, as per the legal mandate enshrined in Articles 2.1² and 6.2 d)³ of the Spanish Royal Decree 1835/1991, of 20 December, on Sports Associations, these regional associations are integrated into the relevant national federation and are the representatives of the national federation in the corresponding territory.

Hence, when the legal framework of Spanish football is concerned, Spain comprises a national federation – the Royal Spanish Football Federation (*Real Federación Española de Fútbol*⁴) – and 17 regional football federations⁵ which are integrated into the RFEF as per the legal mandate enshrined in the

² Article 2.1 of the Spanish Royal Decree 1835/1991 of 20 December on Sports Associations reads as follows: “*The Spanish sports federations are integrated by the autonomous community sports federations, sports clubs, athletes, technical staff, judges and referees, professional leagues, if any, and other interested groups that promote, practice or contribute to the development of sport.*”

³ Article 6.2 d) of the Spanish Royal Decree 1835/1991 of 20 December on Sports Associations reads as follows: “*The autonomous community sports federations, which are integrated into the corresponding Spanish sports federations, will represent the aforementioned in their respective Autonomous Community*”.

⁴ The Royal Spanish Football Federation, which will be hereinafter referred to as “the RFEF”, is, according to Article 1.1. of its Statutes, “*a private associative entity, though of public interest, which is governed by Act 10/1990, dated 15 October; on Sports, by the Royal Decree 1835/1991, of 20 December; on Spanish Sports Associations, by the rest of the provisions which form the Spanish Law in force, by the present Statutes and its General Regulations and the rest of the internal rules which RFEF enacts on the exercise of its competences*”.

⁵ To give a fair example, the Madrid Football Federation, or the Catalan Football Federation, are two of these 17 regional associations integrated into the RFEF, and are the representatives of this RFEF in the territory of Madrid and Catalonia as per article 6.2.d) RD 1835/1991.

aforementioned articles of the Spanish Royal Decree 1835/1991, on Sports Associations.⁶

As you can see, in Spain, the sporting disciplinary power is of a public nature, which is in turn delegated to the national sport federations and, if applicable, the professional leagues. This delegation is outlined in Articles 33 and 41 of the National Sports Act, where it is also stated that the disciplinary power will be executed under the coordination and tutelage of the Higher Council for Sports (*Consejo Superior de Deportes*), *i.e.* under the coordination and tutelage of a public authority.

Therefore, the execution of this power will be subject to the same rules and principles that govern the performance of the administrative sanctioning power. As we will see, several other public powers and functions are also delegated to the sports authorities, impacting the organisation of national sporting federations and professional leagues, including the sporting disciplinary procedures.

The first practical consequence of the exercise of the disciplinary power within the Spanish legal framework arises when we analyse its legal sources. As this power is considered to be of public nature but delegated private entities, it is thus both publicly and privately regulated. Therefore, the discipline of football in Spain falls under several laws, decrees and acts passed by the Spanish Government, as well as under regulations passed by the RFEF and the Professional Spanish Football League⁷ (*Liga Nacional de Fútbol Profesional* – hereinafter “LNFP”).

The Spanish regulatory framework requires a careful analysis and is certainly not of simple application, even though it is up to the federations and leagues to properly navigate through this system, passing and approving rules that comply with the public regulations and provide the necessary specificity to adapt these general regulations to each specific sport.

In the light of the foregoing, the regulatory framework of discipline in Spanish football is created by the following laws and regulations:

⁶ The aforementioned legal mandate has been clearly embodied in the Statutes and Regulations of the RFEF and almost every autonomous community, by means of the following provisions: Article 2 of the RFEF Statutes establishes that “*The RFEF is integrated by the Autonomous Communities’ Federations, pursuant to the terms of article 9 of these Statutes, and by the clubs, football players, referees, coaches and the Liga Nacional de Fútbol Profesional.*”; Article 6 of the RFEF Statutes further states that “*The territorial organization of the RFEF conforms to that of the State divided into Autonomous Communities. By virtue of such territorial organization, it is integrated by the following Autonomous Community Federations [...]*”; Article 10 of the RFEF Statutes also displays that, the Regional Associations “*shall remit to the [RFEF] their statutory and regulatory provisions as well*”. Finally, Article 12 of the RFEF Statutes, by virtue of which the RFEF “*recognizes the following functions of the Autonomous Community Federations: a) to represent the RFEF’s authority in its functional and territorial context*”.

⁷ Noted that the sporting disciplinary regime established under the RFEF and the LNFP is totally independent of civil or criminal liability which may arise out of those actions, or labor relations, which are governed by their respective law. Indeed, Article 5 of the RFEF Disciplinary Code states that “*El régimen disciplinario deportivo es independiente de la responsabilidad civil o penal, así como del régimen derivado de las relaciones laborales (...)*”.

PUBLIC NATURE

- Law 10/1990, of Sport – the National Sports Act
- Law 39/2015, on the Regular Administrative Proceedings of Public Administrations;
- Law 40/2015, on the Legal Regime of the Public Sector;
- Royal Decree 1835/1991, on Spanish sporting federations;
- Royal Decree 1591/1992, on Sporting Discipline; and
- Royal Decree 53/2014, which governs the composition, organisation and functions of the Administrative Court for Sport (*Tribunal Administrativo del Deporte*).

PRIVATE NATURE

- RFEF Statutes;
- General Regulations of RFEF;
- Code of Ethics of RFEF;
- RFEF Disciplinary Code;
- Rules on the internal functioning and management of the RFEF disciplinary bodies;
- LNFP Statutes; and
- *Coordination Agreement* between RFEF and LNFP.

Furthermore, on the public spectrum of the regulatory framework, we also have specific regulations on certain matters that require special treatment, as seen below:

DOPING

- Organic Law 3/2013, on protection of athlete's health and anti-doping in sport;
- Royal Decree 3/2017, of 17 de February, by virtue of which the Organic Law 3/2013 is modified in order to include the amendments of the 2015 version of the WADA Code;
- Royal Decree 63/2008, regulating the procedure for the imposition and review of disciplinary sanctions on doping matters; and
- Royal Decree 255/1996, laying down the regime of infractions and sanctions for the fight against doping.

VIOLENCE AND DISCRIMINATION

- Law 19/2007, against violence, racism, xenophobia and intolerance in sports;
- Royal Decree 748/2008, which regulates the State Commission against violence, racism, xenophobia and intolerance in sports; and
- Royal Decree 203/2010, which approves the regulations on prevention of violence, racism, xenophobia and intolerance in the sport.

These legal sources will be further analysed in the subsequent sections and will be used to describe and explain the functioning and the practical application of the disciplinary procedures in football.

2.2 *The General Principles and the Organisation of football in Spain: the RFEF and the LNFP*

In accordance with the applicable regulatory framework, the principles governing the discipline in Spanish football arise both from the public and private spheres. On the public sphere, special relevance is given to *Law 40/2015, of 1 October, regulating the Legal System of the Public Sector* which sets the general principles that govern the public sanctioning power, including when it is exercised by delegation, as it is the case with the disciplinary power in football.

The principles set forth by Law 40/2015 are the following: (i) legality; (ii) proportionality; (iii) *non bis in idem*; (iv) *nulla poena sine lege previa*; (v) *novatio legis in melius*; and (vi) *nulla poena sine culpa*.

From the private sphere, the RFEF Statutes and Disciplinary Code⁸ as well as the LNFP Statutes reinforce the necessity to abide by the principles of *nulla poena sine lege previa*, *nulla poena sine culpa*, *non bis in idem*, and *novatio legis in melius*. In addition, the RFEF Disciplinary Code also provides for the application of the principle of *immediate execution* and the principle of *due process*.⁹

While the Spanish state delegates competence to organize and manage football in Spain to the RFEF and the LNFP, the Spanish State retains a supervisory role through the Higher Council for Sports, including the power of review of decisions rendered by the disciplinary bodies of the RFEF and the LNFP.

Direct management of football is performed by the RFEF and the LNFP. While the RFEF has a role of organising football in all its aspects, including low division competitions, beach football and indoor football, the LNFP is exclusively dedicated to organising top division league competitions, *i.e.* the two top men's divisions and the top women's division.

The relation between these two entities is regulated by a *Coordination Agreement*. This agreement sets forth the rules for the organisation of official professional competitions on issues such as the calendar, promotion and relegation of clubs, referees, registration of players, etc.

Likewise, the *Coordination Agreement* also divides the competences between the two entities, their economical relation, and the functioning and

⁸ Article 7 and 8 of the RFEF Disciplinary Code establishes that when it comes to the determination of the liability arising from sporting infringements, the disciplinary bodies must comply at all times to the basic principles of the sanctioning power.

⁹ All of the principles listed above are well-known principles of Law that do not require detailed explanation. However, confusion can arise from the application of the principle of *non bis in idem*, thus requiring further clarification. This principle generally states that one violation cannot give rise to more than one sanction; notwithstanding, the imposition of a sporting sanction does not exclude the possibility of civil or criminal liability and the imposition of further sanctions in such event. This is supported by express dispositions in Spanish Law, as seen on Article 83 of Law 10/1990 of 15 October and articles 5.2, 34 and 35 of the Royal Decree 1591/1992, and is due to the fact that the legal interest violated is different in each of these cases.

composition of the disciplinary bodies. This *Coordination Agreement* operates under a fixed terms and thus the RFEF and the LNFP renegotiate and renew the agreement from time to time.¹⁰

As for the internal organisation, the RFEF and the LNFP, are both private associations with legal and financial independence. However, the RFEF is considered to be of public interest, as it exercises a range of powers delegated by public authorities, and is integrated by clubs, players, referees, coaches, the LNFP and the regional federations.

The LNFP, in its turn, is composed exclusively by the clubs – *i.e.* its members – that participate in the first and second division of men’s football and by the clubs of the first division of women’s football.

Both the REFE and the LNFP possess a complex internal organisation, as briefly presented in the scheme below.

The main RFEF bodies are:¹¹

- a. *Management and representation bodies:* (i) General assembly and its delegated commission; (ii) the President.
- b. *Complementary bodies:* (i) Board of Directors; (ii) Commission of the Regional Federations’ Presidents.
- c. *Technical bodies:* (i) Referees’ Technical Committee; (ii) Coaches’ Committee.
- d. *Internal regime bodies:* (i) General Secretariat; (ii) Legal Counseling; (iii) General Management.
- e. *National committees:* (i) National Committee of Indoor Football; (ii) National Committee of Feminine Football; (iii) National Committee of Beach Football.
- f. *Commissions:* (i) Commission of Second Division “B”; (ii) Anti-Doping Commission; (iii) Medical Commission; (iv) Mixed Commissions.

Sporting discipline and extrajudicial resolution: (i) Competition’s Committee; (ii) Single Judges of Competition; (iii) Appeal’s Committee; (iv) Jurisdiction and Conciliation Committee.

The main LNFP bodies are:¹²

¹⁰ The last *Coordination Agreement* signed between both entities entered into force on 1 July 2014 and lasts until 30 June 2018, pursuant to Clause II of the agreement. It is also important to mention that the LNFP also signed a *Coordination Agreement* with AFE (*Asociación de Futbolistas Españoles*), which dictates the rules and regulations regarding the work conditions of the professional football players playing in Spanish clubs who are members of the LNFP. There are two highly important competitions in Spain, the “*Copa del Rey*” and the “*Supercopa de España*”, these are organised and managed by the RFEF and thus, do not fall within the scope of the *Coordination Agreement* and the LNFP, which bears significant repercussions on these two competitions, including disciplinary procedures.

¹¹ The representation and competences of each internal committee and body of the RFEF are expressly displayed in Title VI, Articles 21 to 41 of the REFE Statutes. For the sake of efficiency, the competences the bodies expressed above will not be analyzed in this book.

¹² The representation and competences of each internal committee and body of the LNFP are expressly described in Title I, Chapter II – Articles 6 to 53 of the Statutes of the LNFP.

- a. Management and representations bodies: (i) General Assembly; (ii) Divisions Board; (iii) President.
- b. Other bodies: (i) Delegated Commission; (ii) Electoral Commission; (iii) Social Discipline Judge; (iv) Economic Control Committee; (v) Licenses Committee; (vi) Budget Validation Body; (vii) Control Body of the Management of the Audiovisual Rights; (viii) Body of Regulatory Compliance; (ix) General Corporate Direction; (x) Legal Director.

2.3 *Disciplinary bodies*

In order to present a detailed explanation about the disciplinary bodies within the RFEF and the LNFP, we must first analyse the nature of the competition, since the competence of each disciplinary body will depend directly on the fact of whether a competition is professional or non-professional.

Pursuant to Article 16 of the RFEF Disciplinary Code, in professional competitions, disciplinary authority is exercised by bodies established by the *Coordination Agreement* between the RFEF and the LNFP, the Second Additional Disposition of the Royal Decree 1835/1991, on Spanish sporting federations as well as Article 6.2c) of Royal Decree 1592/1992, on Sporting Discipline.

Therefore, for professional competition,¹³ then, there are five different disciplinary bodies competent to deal with discipline in Spanish Football, three in the first instance, one in the second instance, and one in the third and final instance. All these bodies, except for the one of third instance – which functions under the control of the Higher Council for Sport¹⁴ – are integrated into the structure of the RFEF.

These disciplinary bodies include:

- *First instance:* (i) Single Anti-Doping Judge; (ii) Professional Competition Committee; (iii) Single Judge of Competition.
- *Second instance:* Appeal Committee.¹⁵
- *Third and final instance:* Administrative Court for Sport.¹⁶

The three bodies at the first instance differ themselves by their scope of competence. As mandated in Article 143 of the RFEF Disciplinary Code, the Single Anti-Doping Judge deals with all doping related issues in Spanish football;

¹³ In amateur competitions the first instance disciplinary bodies are established by Article 17 of the RFEF Disciplinary Code. In these cases, the President of the RFEF designates a Single Judge which will exercise the disciplinary authority within the *Copa del Rey*, *Supercopa de España*, Second Division B, the amateur football competitions of the LNFP, women's football competitions and, where appropriate, Third Division Groups composed by clubs affiliated within different federations, and in general, any official matches or competitions played at a national level.

¹⁴ According to Article 1 of the Royal Decree 53/2014, which governs the composition, organisation, and functions of the Administrative Court for Sport, the latter is a collegiate body of national scope organically assigned to the Higher Council for Sport.

¹⁵ Reference is made to Article 18.1 of the RFEF Disciplinary Code.

¹⁶ Reference is made to Article 18.3 of the RFEF Disciplinary Code.

the Professional Competition Committee deals with all disciplinary matters (except for doping) related to the men's professional competitions, *i.e.* the two top masculine divisions, as per stated in Title I Article 5) of the *Coordination Agreement*; and the Single Judge of Competition deals with all disciplinary matters (except for doping) not related to the masculine professional competitions. Furthermore, the Single Judge of Competition and the Single Anti-Doping Judge are appointed by the President of the RFEF, while the Professional Competition Committee is composed of three members.¹⁷

All appeals against the decisions rendered by the disciplinary bodies at the first instance are heard by Appeal Committee, which is composed of three members appointed by the President of the RFEF. Finally, appeals from decisions of the Appeal Committee are heard by the Administrative Court for Sport,¹⁸ which functions under the control of the Higher Council for Sports. The Higher Council for Sport has the power to designate the seven members that compose the aforesaid Court, out of which three shall be appointed from the suggestions made by the Spanish national sports federations, pursuant to Article 2 of the Royal Decree 53/2014, which governs the composition, organisation and functions of the Administrative Court for Sport.

2.4 *Scope of competence: responsibilities of clubs, players and those registered at the association*

The scope of competence of the disciplinary system in Spain is very broad. The RFEF is competent to deal with cases involving clubs, players, coaches, referees, officers, directors, managers, everyone that makes part of its own organic structure and every entity registered at the federation that develops any activity related to football in Spain.

The Administrative Court for Sport is competent to deal with cases involving all subjects the RFEF is competent to deal with in addition to the LNFP, the RFEF itself and its directors.

Additionally, referees exercise the disciplinary power during matches against the players, coaches and other officials involved in that specific event.

The LNFP also possesses the disciplinary power against its members, their managers and their directors. Even though the disciplinary procedures are mostly carried out by the disciplinary bodies of the RFEF, the LNFP still holds

¹⁷ The composition of the Professional Competition Committee is established in Title I Article 5) of the *Coordination Agreement*, which states that the president of the aforesaid Committee is appointed by the RFEF, one of the members appointed by the LNFP and the last one appointed by mutual agreement of the RFEF and the LNFP.

¹⁸ Besides the content of Article 18.3 of the RFEF Disciplinary Code, which establishes that the Administrative Court for Sport is a third and last instance body, Article 1 c) of the Royal Decree 53/2014 also mandates that one of the competences of this Court is indeed the resolution of disciplinary proceedings in last administrative instance, at the request of the President of the Higher Council for Sport or its Executive Committee.

competence on issues related to the economic control of its clubs. Moreover, the football clubs have their own internal rules and policies, as well as disciplinary power against its players, coaches, officers, managers and members.

Finally, it is important to notice that matters related to doping, discrimination, and disorder at matches and competitions, due to its special treatment, can also subject other people to disciplinary proceedings, such as doctors and fans attending a match.

As it happens in other countries, the most important aspects to retain about the responsibility of clubs, players and other parties within the football world is the existence of any mitigating or aggravating factors that might increase or reduce the degree of liability and consequently, the possible sanctions to be imposed,¹⁹ and also the circumstances which will exempt or extinguish any type of responsibility.

In this context, under Article 10 of the RFEF Disciplinary code considers the following mitigating circumstances: (i) spontaneous regret and recognition of any infraction or misconduct committed; (ii) the offence was immediately preceded by sufficient provocation; (iii) first offence; (iv) collaboration in identifying the offenders; (v) collaboration in combating or mitigating violent, racist, xenophobic or intolerant conducts. Additionally, the attempt to commit an infringement shall be punished with the sanction immediately lower in severity to the sanction applicable to the consummated infringement. Conversely, Article 11 recognises recidivism as the sole aggravating factor, which is settled under some particular circumstances.²⁰

Disciplinary responsibility can be extinguished where and offender dies or ceases to exist, in case of fulfilment of the sanction, in case of prescription of the infraction or sanction and the loss of the status of an athlete or member of the organization.

3. *The Disciplinary System and its Sanctions in Spain*

3.1 *Disciplinary procedures*

According with Article 22 of the RFEF Disciplinary Code, the disciplinary procedures in Spanish football are always initiated in one of the three disciplinary bodies of first instance, *i.e.* Professional Competition Committee, Single Judge of Competition, or Single Anti-Doping Judge. After a decision at first instance is rendered, an appeal can be lodged before the Appeal Committee, where the jurisdiction of the federation is exhausted.²¹ Further appeals shall be directed to

¹⁹ The existence of any mitigating or aggravating factors must determine the proportionality of the sanction that shall eventually be imposed, pursuant to Article 12 of the RFEF Disciplinary Code.

²⁰ Under the RFEF Disciplinary Code, a repeated offense/recidivism happens when the offender has been previously sanctioned, by a firm resolution, for any infraction of equal or greater gravity than the one committed, or by two or more of lower gravity. Furthermore, recidivism only exists if the infractions are committed during the same season. Finally, recidivism cannot be considered when the player is facing a suspension due to a red card shown by the referee during a match.

the Administrative Court of Sport, which functions under the control of the Higher Council for Sports.

In the first instance, the proceedings can be initiated directly by the competent body at the request of an interested party² or the Higher Council for Sports. The legal nature of the infringement will not only determine the competent body to deal with the proceedings in first instance, but will also determine which procedural rules shall be applied, *i.e.* the ordinary proceedings' rules or the extraordinary proceedings' rules.

Ordinary proceedings displayed in Articles 30 and 31 of the RFEF Disciplinary Code, deal with infringements related to the rules of the game or matters presented in the match report. It is an expedited procedure, with very short deadlines. For instance, the deadline for the submission of the written defence to an infringement stated in the match report is until 2pm of the second working day after the relevant match. These proceedings still allow for the ordering of provisional measures and a hearing shall always be held before rendering a decision.

On the other hand, pursuant to Article 32, the extraordinary proceedings are applicable to all other kinds of infringements, and are naturally, of a greater complexity and last longer. These proceedings shall adjust to other principles and rules of general legislation when the case requires, for example in doping related matters.

The extraordinary proceedings have an instruction phase where an instructor is appointed to conduct the proceedings, and order all the necessary measures to determine and prove the facts of the case and determine the infringements incurred by the offender. After the conclusion of this investigatory phase, the instructor will determine the opening of the evidentiary phase in which the parties will submit appropriate evidence. Finally, the instructor will declare his findings, suggesting a resolution of the case to the parties, whereby the parties will be allowed to present any further allegations or comments. At this point the case file is sent to the competent judge or committee, as the case may be, who will then render a proper decision.

After this first instance decision, all cases follow the same path, as appeals from every first instance body are sent to the Appeal Committee, and, as the case may be, a second appeal to the Administrative Court for Sport. On appeal to the second and third instance appeals bodies, new evidences can only be submitted if such evidences were not available at the time of the previous instance. Hence, the decision will confirm, revoke or amend the appealed decision without prejudice to the appealing party.

²¹ Pursuant to Article 23 of the RFEF Disciplinary Code, the petitions or claims lodged before the disciplinary committees must be resolved within a period not exceeding ten business days. If a decision is not rendered within that time limit, the petition or claim shall be deemed rejected.

²² Pursuant to Article 24 of the RFEF Disciplinary Code, it is considered as an "*interested party*" those who promote or are directly affected as part of the disciplinary proceedings, as well as those who may be affected by the latter as long as they have participated in disciplinary proceedings and a decision is not yet rendered.

3.2 Types of Sanctions

The sanction imposed to an infringement is tightly related to its severity, *i.e.* if the infringement is very serious, serious or a simple offence. The classification of each kind of infringements in these three categories will be further discussed and explained below.

The severity of the sanction is also relevant to its statute of limitation. In this regard, the period of limitation starts to run as from the moment that the infraction is committed and may be interrupted by the initiation of legal procedures. In case of very serious offences the statute of limitation is three years, for serious offences the statute of limitations is 1 year, and simple offences have a statute of limitations lasting one month.

Apart from the statute of limitation, the responsibility for an infringement will also be extinct in the event the offender dies or ceases to exist, the sanction is complied with or the offender loses its sporting condition or sporting membership.

In light of all of the above, the following list includes the sanctions that can be imposed in disciplinary procedures in Spanish Football, according to Article 51 of the RFEF Disciplinary Code:

- Fine or financial sanction;
- Public reprimand;
- Reprimand;
- Match suspension;
- Suspension for a fixed time;
- Deduction of points;
- Loss of match;
- Relegation to a lower division;
- Exclusion of competition;
- Warning of closing of sports venue;
- Playing a match on neutral territory;
- Playing a match without spectators;
- Total or partial closing of sports venue;
- Ban on taking part in any football-related activity;
- Deprivation of licence;
- Alteration of the result of a match.²³

As already mentioned in section 2.4 above, the sanctions imposed must be weighed in light of the aggravating and mitigating factors surrounding the case. In matters related to doping, disorder at matches or discrimination different sanctions may be applicable as these matters are subject to especial treatment. This issue will be further discussed in the Sections specifically dedicated do these types of infringements.

²³ Pursuant to Article 51.2, the alteration of the result of a match is exclusively dedicated to match-fixing cases and only applicable when the circumstances so require.

3.3 Enforcement rules

The general enforcement rule, which is provided both by national legislation and the RFEF's regulations, is that disciplinary sanctions in Spanish football are immediately enforceable from the moment the decisions are rendered, as mandated in Article 8 of the RFEF Disciplinary Code. This rule does not only apply to final decisions, but also to non-final decisions.

Article 81 of the National Sports Act (*Ley del Deporte* 10/1990 of 15 October), which was later modified by Law 53/2002 of 30 September, regulating the fiscal, administrative and employment measures, establishes that the sanctions imposed through a disciplinary procedure will be executed immediately, without any suspension of the procedure whatsoever.²⁴

Therefore, any kind of appeal to a decision imposing a disciplinary sanction does not automatically suspend the enforceability of such decision. However, this provision does not exclude the possibility of ordering provisional measures to suspend the execution of the disciplinary sanction, which will be assessed on a *case by case* basis to determine if the requirements to obtain such measures are met.²⁵

Finally, the enforcement of the disciplinary sanctions are made directly by the RFEF, including when the sanction is originated by a decision of the Administrative Court for Sport as the power to enforce these decisions is delegated to the RFEF by national legislation.

3.4 Failure to comply

The failure to comply with a disciplinary sanction is considered to be a very serious disciplinary infringement. This is stated in national legislation, in the regulations of the LNFP and in the regulations of the RFEF, more specifically in Article 64 of the RFEF's Disciplinary Code, which also provides for the sanctions applicable in that case. Moreover, the same treatment is given to the non-compliance with provisional measures ordered by the disciplinary bodies.

In line with what is dictated by this Code, a club that is found responsible of non-compliance with a disciplinary sanction or provisional measure will be subject to a fine up to EUR 3.006 to EUR 30.051 and, in addition, will also be sanctioned with one or several of the following sanctions:

- Loss of match;
- Deduction of three points;
- Relegation to a lower division;
- Playing matches on neutral territory;

²⁴ R. TEN, Javier, *Deporte y Derecho administrativo sancionador*, Colección Jurídica General Monografías, Madrid 2008, 191-193. This also goes in line with what is affirmed on Article 30 of the Royal Decree 1591/1992 of 23 December on Sport.

²⁵ *Idem*.

- Total or partial closing of sports venue from four matches to one season;
- Ban on taking part in the federative organisation of football, or suspension or deprivation of licence from two to five years; and
- Revocation of licence.

In contrast, when an official is found to be responsible for the non-compliance with a disciplinary sanction or a provisional measure, the sanctions imposed will be a fine of EUR 3.006 to EUR 30.051 and (i) a public reprimand or (ii) a ban to take part in football-related activities from two to five years.

Naturally, the imposition of the sanctions mentioned above shall take into account the circumstances of each case, particularly after evaluating the mitigating and aggravating factors that might be observed.

Notwithstanding the above, the RFEF's Disciplinary Code also contains specific provisions for the case of non-compliance with decisions, orders, instructions, agreements and obligations imposed by FIFA, UEFA, the Court of Arbitration for Sport (CAS-TAS)²⁶ or other federative bodies.²⁷ This type of conduct would constitute a serious infringement punishable with a between EUR 602 to EUR 3.006 and one or more of the following sanctions:

- A suspension for between one month to two years or for at least four matches;
- Total or partial closing of the sports venue up to three matches or two months; and
- Loss of points on the classification.

Furthermore, the imposition of further sanctions directly by FIFA, UEFA or CAS-TAS is also permitted in such cases.

3.5 *Infringements*

3.5.1 *Rules of the game*

As set forth by the RFEF's Disciplinary Code,²⁸ infringements to the rules of the game are the actions or omissions that during a match or competition could harm, impede or disrupt their regular development. Under Spanish Law, the direct disciplinary control over this kind of infringement is exercised by the referees,

²⁶ The failure to comply with that kind of decisions is displayed on Article 87bis of the RFEF Disciplinary Code.

²⁷ In the case of other federative bodies, an infringement will only be established when the non-compliance is a repetitive and conscious practice.

²⁸ For the sake of clarity, it shall be noted that the RFEF Disciplinary Code establishes three categories of infringements: the simple offences, the serious offences and the very serious offences. The RFEF Disciplinary Code does not give a separate analysis of every offence per se, but instead it organizes the infringements through five independent Chapters (*Capítulo Primero.- Disposiciones Generales Capítulo Segundo.- Infracciones muy graves y sus sanciones Capítulo Tercero.- Infracciones graves y sus sanciones Capítulo Cuarto.- Infracciones leves y sus sanciones Capítulo Quinto.- De las infracciones cometidas con ocasión de Partidos amistosos*).

who have the exclusive and definitive power to interpret and apply the rules of the game.

The disciplinary bodies do not have the power to review the disciplinary decisions taken by the referees during a match or competition. However, the disciplinary bodies may nullify the disciplinary consequences in case of manifest material error of the referee or impose further sanctions depending on the type and severity of the infringement committed.

Article 111 of the RFEF's Disciplinary Code provides some guidance to referees on which occasions to apply a yellow card. Under Article 111, a player, coach or other team official may receive a yellow card when they: (i) make a dangerous play; (ii) enter, re-enters or leaves the field of play without the referee's authorisation; (iii) dissent by word or action; (iv) commit an act of disregard towards officials, coaches, spectators or players; (v) adopt passive or negligent behaviour while complying with, or fail to comply with a referee's orders, decisions or instructions; (vi) deliberately waste time; (vii) commit any foul play that demands sanctioning; (viii) remove their jersey or go to the stands in a celebration; (ix) discuss with an opposing player, coach or other team official; or (x) commit any other action or omission that constitutes an infringement under the Rules of the Game or that FIFA determines to be sanctioned with a yellow card.

Furthermore, the accumulation of two yellow cards during one match will cause the offender to be sent-off and, in case it does not constitute a more serious infringement, the offender will be further sanctioned with a one match suspension. If the offender is a physician, physiotherapist or something similar, being sent-off will not impede the official from performing their role when needed. As well their subsequent suspension will be for four matches.

Moreover, the accumulation of five yellow cards in different first second men's divisions fixtures, or 3 yellow cards in other competitions will cause the offender to be suspended for one match and fined. Disciplinary bodies may also extend the suspension by one match, in case it deems the yellow card that caused the suspension to have been "forced", *i.e.* if the offender caused the accumulation of the fifth or third card, as the case may be, on purpose, with the intent to comply with the match suspension on a less harmful moment.

As for red cards, the RFEF's Disciplinary Code does not provide a specific guidance on when one must be applied. The referees must take the classification of an infringement as simple, serious or very serious in the RFEF's Disciplinary Code, as well as what is provided in the FIFA's regulations as a guide to the application of a red card. However, the RFEF's Disciplinary Code does state that a player, who is sent-off in a foul play with no possibility of disputing the ball, must have receive an automatic suspension of one match with the possibility of an extension to two matches.

In addition to all of the above, the competent disciplinary bodies may impose additional sanctions to certain prohibited conducts, as seen below.

An aggression, which implies the intention to cause harm, may be classified as very serious, when it results in an especially severe injury, or other similarly serious cases. When the injury inflicted is especially severe, the offender may be suspended for two to three years or three to five years if the victim is a referee. When the injury is not especially severe the suspension will be for six to fifteen matches or, if no injury was inflicted, of four to twelve matches. If the offender is a physician or physiotherapist, a suspension from six to eight months shall apply.

Similarly, aggression against a referee, director, or any sports authority when no injury is inflicted, will be considered a serious offence with a sanction of suspension for two to three months. In case the victim requires medical attention or the offender is a physician, physiotherapist or similar the sanction will be for six months to a year.

Violent acts will be classified as serious or simple, if no harmful consequence arises. Violence against referees will be sanctioned with a suspension for four to twelve matches or four to six months when the offender is a physician, physiotherapist or similar. Violence against an opponent that results in serious harm will be sanctioned with a suspension for four to twelve matches or six to eight months when the offender is a physician, physiotherapist or similar. Finally, a violent act that does not generate harmful consequences will be sanctioned with a suspension of one to three matches or alternatively up to one month; or even, in case the act happens outside the field of play or with the game paused – *i.e.* without the possibility of sanctioning during the match – the suspension shall be of two to three matches.

Insults or offenses directed to the referees are considered serious infringements and will be sanctioned with a suspension of four to twelve matches or one to three months if committed by a physician, physiotherapist or similar. Insults, threats or provocation directed at an opponent are considered simple infringements and will be sanctioned with a suspension of one to three matches or up to one month.

Dissenting with the referee is a simple offence and will be sanctioned with a suspension of two to three matches or up to a month. Violating the decorum or making offensive gestures are considered to be simple offences and will be sanctioned with a suspension of one to three matches or up to a month.

Likewise, acts of disregard or depreciation against a referee, a director or any sports authority is a simple offence and will be sanctioned with a suspension of two to three matches or up to one month.

Removing a jersey or pulling it up to exhibit any kind of advertisement, slogan, legend, anagram or drawing during a celebration is a serious offence and shall be sanctioned with a warning and a fine up to EUR 3,000.

Inducing the referee in bad-faith to commit an error by means of simulating the suffering of a foul or any other act or attitude is a simple infringement that will be sanctioned with a warning and a fine up to EUR 602.

Finally, performing a dangerous play is a simple offence and will be sanctioned with a suspension for one to three matches or up to a month.

3.5.2 Disorderliness at matches and competitions

The infringements regarding disorderliness at matches and competitions cover a wide array of conducts that are classified from simple infringements to very serious infringements. These types of infringements can be committed by anyone related to a match or a competition, from the players and referees to the organisers and spectators. In order to facilitate comprehension, the infringements will be grouped and discussed along with its similar practices.

In this context, the first important group of infringements are the acts of provocation, which may be classified as serious or simple infringements. Provoking the crowd will be a simple offence when there is no reaction, punishable with a suspension of one to three matches or up to a month. When the provocation ensues a reaction from spectators, it will be considered a serious offence punishable with a suspension of four to twelve matches. As to provoking someone against a third party, the sanction will be a suspension of one to three matches or up to a month; or, when the provocation is followed by a reaction, the offender shall be punished with the same sanction imposed to the provoked party.

The RFEF Disciplinary Code also provides for punishments for acts that threaten the decency and decorum of the sport. When these acts are embedded with especial gravity or constitute a repeated offence it will be considered a very serious infraction, which may be punished with a fine from EUR 3,006 to EUR 30,051 and a suspension or ban from football-related activities from two to three years – that can be substituted by a public reprimand when purported by a director.

Other cases are considered serious offences and may be sanctioned with: (i) a fine of EUR 602 to EUR 3,006; (ii) a suspension or ban from football-related activities for one month to two years or at least four matches in the same season; or (iii) the total or partial closing of the sports venue for one match to two months.

On the matter of registration of players and coaches, the club that fields a player that does not fulfil the requirements to play will incur a very serious infraction and will be subject to (i) a fine up to EUR 9,000; and (ii) the loss of the match²⁹ or (iii) to the exclusion from the competition,³⁰ in which case the offender will also have to indemnify the opponent in the event the away match was still to be played. Moreover, the person directly responsible for this offence will be sanctioned with a suspension or ban from football-related activities from two to six months.

The club that does not register a head coach with the RFEF will be fined depending on the period that this offence lasts: the first week will constitute a simple infraction fined with EUR 600; the second to the fifth week will constitute a serious infraction fined with an amount that increases in EUR 600 per week,

starting in EUR 1,200 for the second week until EUR 3,000 for the fifth; from the sixth week on the infraction will be very serious, fined with an extra EUR 4,000 for the sixth week and another EUR 1,000 for every subsequent week until the total fine limit of EUR 30,000.

Finally, if a player possesses two federative licences or requests a second federative licence, *i.e.* possesses two different registrations before the RFEF or requests a second registration, they will have committed a serious infringement subject to a sanction of a suspension for one to three months.

In the following paragraphs we will analyse infringements that have a direct relation to the organisation of matches and competitions.

If a team that does not appear to play a match they will incur a very serious infringement resulting in a severe sanction. If the non-appearance happened for the first time, the club will be sanctioned with (i) the loss of the match; and (ii) the loss of three points in competitions disputed by points or, in the case of eliminatory competitions, elimination from the current edition and exclusion from the next edition of the competition. If the non-appearance happens for the second time it will constitute an abandonment of the competition, and will be sanctioned with (i) the loss of all the matches still to be played and (ii) the automatic relegation to a lower division – which may be increased to relegate the team in two divisions when the abandonment took place when the club was virtually relegated. Additionally, these infringements will be subject to a fine of EUR 3,006 to EUR 12,011 and the payment of compensation for non-played away games,³¹ or sanctioned with a fine of up to EUR 9,000 for the *Copa del Rey* calculated in accordance with the team's division.

Similarly, the team that leaves the field of play after the beginning of the match or refuses to play will have incurred a very serious infringement sanctioned with the same penalties described on the paragraph above. Additionally, the person responsible for the non-appearance described above will have incurred in a serious infraction sanctioned with a suspension or ban from football-related activities for two to six months.

When a team shows up for a match in a delay that prevents the match from taking place it will constitute a very serious infringement with a sanction of the loss of the match. When said delay does not prevent the match from taking place the infringement will be serious, and the sanction will be (i) a fine up to EUR 3,000 and (ii) the expelling with a suspension from one to three matches of the head coach when the delay occurred from the entrance to the field of play, or a ban from football-related activities of up to two months of the responsible director when occurred in the arrival to the match.

²⁹ This sanction shall only be applicable for group tournaments where points are awarded for each fixture.

³⁰ This sanction shall only be applicable for eliminatory/rounds competitions.

³¹ This will only apply in case of eliminatory competitions.

Furthermore, conduct that violates the good sporting order, but do not fall under the scope of other infringements, is considered to be a very serious offence and will be sanctioned with a fine from EUR 3,006 to EUR 30,051 and one or several of the following sanctions: (i) loss of match; (ii) loss of three points; (iii) relegation to a lower division; (iv) playing on neutral territory; (v) total or partial closing of the sports venue from one match to one season; (vi) suspension or ban from football-related activities for two to five years – that may be definitive, in case of recidivism in very serious offences. Similarly, when this offence is performed by a director the sanction will be the fine mentioned above, and a public reprimand or a ban from football-related activities from two to five years.

On the other hand, when this conduct is considered serious, the sanction will be (i) a suspension for four to ten matches or (ii) a fine from EUR 602 to EUR 3,006; and when the conduct is considered to be simple, the sanction will be (i) a suspension from one to three matches or (ii) a fine up to EUR 602.

When the order of a match is disturbed, apart from the possible sanctions that may arise to the direct responsible for the disturbance, the organisers of the match will also be subject to sanctioning. If the disturbance is considered to be serious the offence incurred by the organiser will also be serious and will be subject to: (i.a) a fine up to EUR 6,000 and (i.b) the partial closing of the sports venue for one match when it is the first offence; (ii.a) a fine from EUR 6,001 to EUR 12,000 and (ii.b) the total closing of the sports venue for one or two matches when it is the second offence; (iii.a) a fine from EUR 12,001 to EUR 18,000, (iii.b) the total closing of the sports venue for three or four matches and (iii.c) the loss of one to three points; and finally to (iv) the same sanctions imposed for the very serious violation of the good sporting order mentioned above when it is the fourth offence. When the disturbance to the order of a match is considered to be simple, the organiser will be sanctioned with a fine up to EUR 602.

The organiser of the matches will also be subject to sanctions when it does not comply with its obligations for organising a match, which may be classified as a serious or simple offence, depending on the particularities of each case. For the serious cases the sanction will be (i) a fine of EUR 602 to EUR 3,006 or (ii) the total or partial closing of the sports venue from one to three matches; and for the simple cases the sanction will be a fine up to EUR 602.

Furthermore, the non-observance or non-implementation of the required safety measures on the organisation of a sporting event, put forth by the Royal Decree 203/2010, is a serious infringement that may be punished with the following sanctions: (i) a fine of EUR 6,004 to EUR 18,000 for professional competitions or EUR 500 to EUR 6,000 for non-professional competitions; (ii) a suspension or ban from football-related activities from one month to two years or for at least four matches; (iii) total or partial closing of the sports venue up to three matches or two months; and (iv) the loss of points or positions.

Moreover, the alteration of the field of play in bad-faith or the intentional or negligent non-correction of defects is a serious offence that will be subject to

(i) a fine of EUR 602 to EUR 1,503 and (ii) a public reprimand. However, in case the match cannot take place due this prohibited conduct, the following consequences will arise: (i) the match will be played in neutral territory on another date; (ii) the fine imposed will be EUR 602 to EUR 3,006 and (iii) those responsible will be suspended or banned from football-related activities from one to three months.

Besides, the manipulation or alteration of the sports equipment in circumvention of the technical rules of football and putting at risk the safety of the competition and/or the physical integrity of other people is a very serious infringement. The sanction in these cases will be (i) a fine of EUR 3,006 to EUR 30,051 and (ii) a suspension or ban from football-related activities for two to five years – that can be definitive in case of recidivism on very serious infractions or substituted by a public reprimand when the offender is a director.

Another issue that may arise is the non-payment of the referees' fees. A first offence will be considered a simple infringement and sanctioned with a fine up to EUR 602; the second and third offences will be considered serious infringements and sanctioned, respectively, with a fine of EUR 602 to EUR 3,006 and the loss of two points; the fourth offence will be considered a very serious offence and will generate the exclusion of the club from the competition with the imposition of the appropriate sanctions to the abandonment of a competition already explained above.

3.5.3 Offensive and discriminatory behaviour

The RFEF Disciplinary Code makes a slight -but certainly important- distinction between the offensive acts or conducts that promote violence in football and the discriminatory behaviour and conducts, which comprises all racist, xenophobic and intolerant acts during any football activity. Articles 69 and 70 of the Disciplinary Code list several actions and situations that fall into the scope of violence and discriminatory behaviour, which are obviously strongly condemned throughout Articles 70 to 74 of the aforesaid Code.

The following behaviours are considered to be offensive conducts by the RFEF Disciplinary Code:

- Fighting or getting involved in altercations;
- Chanting or displaying posters, emblems, symbols, or similar that incite violence;
- Invading the field of play to perform acts or manifestations of violence;
- Making pre-game manifestations inciting violence or containing threats; or
- Facilitating the methods to perform any of these acts.

The participation, incitation, promotion, organisation, direction, cover up or defence of any of those acts is considered as a very serious infringement and may be punished with a suspension or ban from all football-related activities for a period from two to five years or even a definitive suspension or ban in case of recidivism in very serious infringements. In addition, a fine of EUR 18,001 to

EUR 90,000 when occurred in professional competitions, or of EUR 6,001 to EUR 18,000 when occurred in other competitions can also be imposed.

Furthermore, the non-repression, the non-cooperation, the failure to adopt the required measures or even the facilitation of methods to perform violent acts are also very serious infringements that may be punished with one or several of the following sanctions: (i) the suspension or ban from football-related activities explained in the paragraph above; (ii) the fine explained in the paragraph above; (iii) total or partial closing of the sports venue from one match to one season; (iv) playing matches with no spectators; (v) loss of points; and (vi) relegation to a lower division.

Finally, the passive repression of acts of violence is a serious infringement that may be punished with one or several of the following sanctions: (i) a suspension or ban from football-related activities from one month to two years or of at least four matches in the same season; (ii) a fine from EUR 6,001 to EUR 18,000 for professional competitions or from EUR 500 to EUR 6,000 for non-professional competitions; (iii) total or partial closing of the sports venue from one to three matches or of two months; and (iv) loss of points or positions.

With regards to acts considered discriminatory behaviour, the Code enumerates the following situations:

- Statements under which a person or group of persons threatens or insults someone because of their race, ethnic, religion, nationality, convictions, age or sexual orientation;
- Actions involving any kind of racial, ethnic, sexual, or religious harassment;
- Statements, gestures, insults made on the premises of any sporting venue, which are manifestly offensive towards any person due to his/her race, ethnic, religion, conviction, sexual orientation as well as all cases that promote the hatred or seriously harm the rights and values of others;
- Use or display of banners, flags, or other symbols containing offensive messages; and
- Participation in competitions organized by countries, associations or entities that promote the racial discrimination, xenophobia, intolerance and/or violence.

Due to its specific nature, the Articles 71 and 72 RFEF Disciplinary Code establishes sanctions applicable to any the abovementioned discriminatory behaviour. The participation,³² incitation, promotion, organisation, direction, cover up or defence of any of these acts is considered as a very serious infringement and may be punished with a suspension or ban from all football-related activities for a period of two to five years or a permanent suspension or ban in case of recidivism in very serious infringements. In addition, a fine of EUR 18,001 to

³² Article 72.1 of the Code defines the active participation on discriminatory behavior as the use or display of statements, gestures, insults and any other conduct that may imply a vexatious action towards any person or group of persons due to their race, ethnic, religion, convictions, disability, age, sex and sexual orientation.

EUR 90,000 when occurred in professional competitions, or of EUR 6,001 to EUR 18,000 when occurred in other competitions can also be imposed.

As it can be perceived by the content of the paragraphs above, it seems that all infringements committed within the scope of offensive and discriminatory behaviour are considered very serious infringements by the RFEF Disciplinary Code.

3.5.4 *Forgery and falsifications*

There is no specific section or chapter within the scope of application of the RFEF Disciplinary Code related to forgery or falsification. Instead, they are spread throughout the Code and, as anyone can perceive from the title of the infringement, are naturally associated with the basic principles of Criminal Law.

There are three types of *forgery and falsification* expressed in the Code, as follows: Article 102 deals with the falsification of the content of the match report, Article 104 establishes the consequences of the falsification of the players' licenses, contracts or any other documents that serve to obtain the license, and Article 138 regarding Futsal, which deals with the false wording, alteration or wilful manipulation of the match report, so that their notes do not correspond to what happens within the sporting facilities, as well as the issuance of malicious or fake reports.

All of these infringements are considered serious offences by the Disciplinary Code. In fact, referees who falsify or forge the match report can be sanctioned with a suspension that can go from 2 months to one year, depending on the degree of fault or negligence. Anyone who tries to falsify or forge a player's license pursuant to Article 104 shall be sanctioned with a suspension of 4 to 20 matches or for one to six months. For the sake of efficiency, the explanation of the offences committed and the sanctions imposed within indoor football will not be analysed in the present chapter.

3.5.5 *Match-Fixing and Corruption*

It has been said that match-fixing violates the ethics and integrity of sport in general, and football in particular, as it strikes right at the heart of sport by being aimed directly at manipulating results, and thus destroying the element of competition.

According to the Council of Europe Recommendation on *Promotion of the Integrity of Sport Against Manipulation of Results Notably Match-Fixing*,³³ *the attempts to manipulate sports results constitute an important threat to the*

³³ Council of Europe Recommendation CM/Rec (2011)10 on the *Promotion of the Integrity of Sport Against Manipulation of Results Notably Match-Fixing* (as adopted on 28 September 2011). Similarly, the European Commission also stated in the past that "*corruption, money laundering, and other forms of financial crime are affecting sport at local, national and international levels*" - European Commission, White Paper on Sport (2007).

integrity of sport. Match-fixing may erode confidence among the public if it perceives sport as a place where manipulation gives substantial benefits to certain individuals, rather than as an activity where glorious uncertainty of sport predominates. The aforesaid recommendation further stated that governments of member states of the Council of Europe must “*adopt policies and measures aiming at preventing and combatting the manipulation of results in sports*”. Furthermore, regarding the sports movement at the international level, the same Recommendation established that “*particular leadership and disciplinary responsibilities lie with sports governing bodies and their affiliated national organisations*”.

Similarly, the Court of Arbitration for Sport (CAS-TAS) has also expressly recognised that “*(...) match-fixing is one of the worst possible infringements of the integrity of sports (...)*”.³⁴ In fact, the CAS has on numerous occasions confirmed important sanctions against both, individuals and clubs.³⁵

Due to the importance and consequences raised by this issue, it is of the utmost importance to give a brief introduction to this specific matter within the Spanish criminal framework.

As already mentioned above, in Spain the disciplinary regime and liability established within the RFEF and the LNFP is completely independent from civil or criminal liability, and therefore, anyone who commits a crime will be held liable and suffer the consequences recognized under criminal law, in addition to the sporting sanctions imposed by the RFEF and/or the LNFP. Hence, alongside the prohibition stated in the RFEF’s Disciplinary Code, there exists an anti-corruption unit and anti-corruption public prosecutors that investigate and sanction, according to the Spanish criminal framework, anyone involved in such prohibited conducts or activities.

The Investigatory Courts (*Juzgados de Instrucción*) are responsible for the investigation of bribery and corruption offences during the preliminary phase of the criminal proceedings in which the Public Prosecutor acts as the public accusation party and other parties are entitled to hold private or popular prosecution. Further, a special division called the Anti-Corruption Prosecutor’s Office (*Fiscalía Anticorrupción*) investigates and hears cases concerning financial crimes or other corruption-related crimes committed by government officials while holding public office.

Note that, in Spain, there is not a corruption crime *per se*, but many other crimes that are included in what is popularly known as “corruption”. For instance, all the offences referred to government contracting fraud, such as: influence peddling (Articles 428 to 429), which implies the criminal liability of legal

³⁴ CAS 2009/A/1920 *Pobeda*, N115, confirmed by the CAS Award CAS 2010/A/2267, 2278, 2279, 2280 *Football Club Metalist et al. v. FFU*, N1095 (not published).

³⁵ CAS 2010/A/2172 *Oriekhov v. UEFA*; CAS 2010/A/2266 *Mészáros & Poleksi v. UEFA*; CAS 2011/A/2528 *Olympiakos Voulou v. UEFA*; CAS 2013/A/3324 *GNK Dinamo v. UEFA*, CAS 2015/A/4351 *VSL Pakruojis FK et al. v. Lithuanian Football Federation* (not published).

entities; misappropriation of public funds (Articles 432 and 433); fraud and illegal levies (Articles 436 to 438); negotiations and activities forbidden to public officials and breaches of trust in the performance of their duties (Articles 439 to 442); and bribery of government officials (Articles 419 to 422), are means of corruption.

On the private sector side, offences of corruption in business (formerly known as corruption between private individuals) were introduced for the first time in the Spanish legislation by the Organic Law 5/2010 of June 22, which came into force on December 24, 2010. The cited law was recently reformed by the Organic Law 1/2015 of March 30, in force since July 1, 2015, which modified the provisions under the Section named “*Corruption in business*” and improved the wording of the former version and clearly specified and differentiated active and passive corruption, including new factual cases.

Additionally, when the so-called “corruption in sports” is concerned, Article 286bis of the Spanish Criminal Code establishes that “*the terms set forth in this article may apply, in the corresponding cases, to directors, managers, employees or collaborators of an sporting entity, irrespective of its legal form, as well as to the sportsmen, referees and judges, with regards to those conducts that aim to deliberately and fraudulently predetermine or alter the results of a sporting event, match or competition of special relevance economically or in sporting terms*”.³⁶

With the reform of the Criminal Code in 2015, the wording and determination of such offences was modified and is now regulated under Article 286 *ter* as follows:

“Whoever promises, offers or gives any undue benefit or advantage, pecuniary or of other kind, corrupts or tries to corrupt, directly or through a third person, a public authority or official in their own benefit or that of third persons, with the aim they act or refrain from acting regarding the performance of their public functions to gain or retain a contract, deal or any other competitive advantage in the execution of international economic

³⁶ On December 15, 2014, the Spanish Anticorruption Public Prosecutor formally requested a Spanish criminal judge to start criminal proceedings against the club *Real Zaragoza S.A. Deportiva*, its president, two members of the board, two members of the staff (including the coach), and 36 soccer players (18 from Real Zaragoza and 18 from Union Deportiva Levante) in relation to the last match of the 2010 – 2011 Spanish First Division Football League. On May 21, 2011, *Real Zaragoza* and *Unión Deportiva Levante* played the last match of the season. *Unión Deportiva Levante* had already obtained the necessary points to stay in the Spanish First Division in the following season (2011-2012). In contrast, *Real Zaragoza* needed to win the match to be able to play in the Spanish First Division the following season. *Real Zaragoza* won the match with a score of 2-1. The Public Prosecutor found suspicious bank transfers between *Real Zaragoza* and some of its players made before the match, as well as suspicious cash withdrawals of identical amounts from the same *Real Zaragoza* players, also made before the match. The Public Prosecutor has stated that the amount withdrawn in cash was used to pay *Unión Deportiva Levante* soccer players in exchange for them losing the soccer match, and allowing *Real Zaragoza* to play in the Spanish First Division in the 2011 – 2012 seasons. These criminal proceedings are the first ones started in Spain on the basis of the referred Article 286bis Section 4 of the Spanish criminal Code.

activities shall be punished, unless already punished with a more serious penalty in this Code, with imprisonment from three to six years, fine from twelve to twenty four months, unless the benefit obtained was higher than the resulting amount, in which case the fine shall be from such amount up to the triple of that benefit”.

In addition to the above, the following penalties shall be imposed on the offender: a prohibition from contracting with the public sector, as well as a prohibition from access to public subsidies and the right to enjoy tax or social security benefits, and prohibition of involvement in public relevant commercial transactions for seven to twelve years.

With regards to corruption in sports, the offence shall be considered of special gravity when: a) the purpose is to influence the course of gambling; or b) they are committed in an official sporting state competition classified as professional or in an international sporting competition.

Likewise, on the disciplinary and sporting point of view, the RFEF Disciplinary Code also prohibits and strongly condemns the manipulation of results through its Articles 75, 75bis, and 82. Not only does the RFEF condemn all conduct aimed at manipulating results, *i.e.* match-fixing, but also establishes such conducts as very serious infringements, condemning the following actions:

- anyone who offers gifts or promises to the referees with the intention of obtaining a partial performance, as well as those who receive and accept them, will be sanctioned with a ban from all-football-related activities for two to five years;
- anyone involved in agreements aiming to obtain an irregular match result (regardless of the type of agreement) will be sanctioned with a ban from all-football-related activities for two to five years and a deduction of six points will apply to all clubs involved;
- in addition, the participation of football players, coaches, managers, referees, and anyone who is part of the football federative organization in bets and games with an economic nature and have a direct or indirect relation with the match in question, will lead to the application of cumulative sanctions.³⁷

It is important to note that not all conducts that are considered to violate the integrity of sport are classified as very serious infringements in the RFEF Disciplinary Code. As a matter of fact, Article 82 considers the promise or deliver of cash or monetary compensation by any third club as an encouragement to obtain a positive result, as well as the acceptance of such offer shall be considered as a “serious infringement”, and therefore, the sanctions that will be imposed to the offenders will be less harsh than the ones stated above.

³⁷ According to Article 75bis, besides the fine that shall be imposed to those who take part in such activities, the Disciplinary Code allows the application of other sanctions, *e.g.* loss of the match in question, deduction of points, relegation, etc.

The LNFP has put a lot of efforts to eradicate this kind of behaviours that throughout the time have become somehow “accepted” or “tolerated” in Spanish football.³⁸ After the reform in 2010 created an Integrity Department to monitor all games of football in Spain and to collaborate with authorities in order to alert of any potential risk of corruption or match fixing. From a disciplinary point of view, one could affirm that the RFEF and the LNFP have corruption and match-fixing more or less under control. However, one could argue that this is not how things happen in practice. In fact, the OCDE’s 2013 report reproached Spain for not having prosecuted a single person for an offence of international bribery in the 13 years since the offence was in force in the country and calls for a quick reform of the Criminal Code in this regard. Hopefully, after this reform and the efforts of institutions such as the LNFP, the commencement of the prosecution of national and international corruption crimes within the sports legal framework will gain a more active role.

3.5.6 Doping – The regime established under the disciplinary code of the RFEF

Article 1 of the RFEF’s Disciplinary Code establishes that the scope of the sport discipline concerning the activities or competitions organized at a state level and, where appropriate, organized at an international level, or concerning its participants, extends to the infringement of rules of the game or competitions and the general sport regulations typified in Law 10/1990, of 15 October, in the Organic Law 3/2013, enacted on the 20th of June, protecting athlete’s health and fighting against doping in sports, in Law 19/2007 of 11 July against the Violence, racism, xenophobia and intolerance in sport, and in the Royal Decree 1591/1992, of December 23, on Sports Discipline.

Furthermore, and to better understand the scope of application of the RFEF’s Disciplinary Code and the aforesaid legislation, it is of the utmost importance the analysis of articles 142 and 143 of the RFEF’s Disciplinary Code, whereby it is established that the doping disciplinary regime in Spanish football shall be governed by the Organic Law 3/2013 of 20 of June, protecting athlete’s health and fighting against doping in sports, hereinafter referred to as OL 3/2013.

Moreover and as already mentioned in section 1.5 above, in case the competence to deal with doping related matters falls within the scope of the RFEF, the latter is attributed to the Single Anti-Doping Judge, pursuant to article 143 of the RFEF’s Disciplinary Code.

Given the complexity of the matter at stake, the present section will provide a brief explanation of the fight against doping in Spain and the scope of application of the anti-doping rules established in the RFEF’s Disciplinary code and also in the general Organic Law 3/2013 enacted on the 20th of June, protecting

³⁸ Please see also in that regard <https://www.theguardian.com/football/2015/mar/17/spain-finally-fighting-match-fixing> (23 March 2017).

athlete's health and fighting against doping in sports and the Royal Decree 3/2017,³⁹ of 17 de February by virtue of which the Organic Law 3/2013 is modified in order to include the amendments of the 2015 version of the WADA Code.

3.5.6.1 The Organic Law 3/2013, protecting athlete's health and fighting against doping in sports

The Spanish effectiveness in the fight against doping has been increasingly questioned due to some polemic cases such as "*Operación Puerto*",⁴⁰ "*Operación Galgo*"⁴¹ or "*the Contador case*". Hence, the recent regulatory effort made in Spain is aimed to change the international perception based on weakness of the Spanish legislation in the fight against doping. Following the example of other European countries, Spain has proceeded in recent years to incorporate into its national legislation anti-doping regulations, which derive from and transpose the WADA anti-doping regulations.

In this regard, 2013 was particularly relevant for the detailed study of the legal considerations that doping implied. Spain undertook to develop and enact a long-awaited regulation: the OL 3/2013, protecting athlete's health and fighting against doping in sports, which led to the abolishment of the previous organic law dated on 2006 concerning the aforesaid subject.

Concerning the field of application, the law refers both to the athletes having an approved state-license that allows them to participate in official competitions at the state level, and to the foreign athletes, who stay in Spain in certain cases (such as in case of anti-doping controls carried out in international competitions taking place in Spain, as well as those competitions managed by international organizations and involving Spanish athletes having a Spanish license).

For the sake of protecting the athletes' health, the existing measures were strengthened, such as (a) in the case of medical examinations that become more intense according to the physical activity, or (b) in the case of the requirements that sports facilities should have in order to combat any acute cardiopulmonary disease, or (c) in the hypothesis of the establishment of a health care system for high-level athletes or professionals. All these measures are complemented by the establishment of a "*Health Support Plan*" in the field of sport that identifies risks and prevention measures, among the other issues.

Regarding the fight against doping, the policy is focused on standardizing the Spanish regulation to the provisions of the international law, and especially to the 2015 World Anti-Doping Code currently in force.

³⁹ By virtue of the Decree 3/2017 the Spanish National Anti-Doping Organization was removed from the list of Signatories deemed non-compliant with the 2015 World Anti-Doping Code .

⁴⁰ www.dailymail.co.uk/sport/sportsnews/article-3640676/Operation-Puerto-blood-bags-Spanish-doping-scandal-ordered-released-court-10-years-seized.html.

⁴¹ www.cyclingnews.com/news/operacion-galgo-comes-to-an-end-in-spain/.

4. Conclusions

The Disciplinary System of Football in Spain contains several peculiarities, compared with other national models. The fact that the Spanish sports legal framework covers the existence of 17 sports regional federations, with their own competences and their own set of rules, that act under the auspices of the national football federation is certainly one of the main differences from the sports legal system elsewhere. However, despite the existence of several regional federations, which may cause confusion within various international entities – like FIFA – the disciplinary system of football in Spain is mostly regulated by various national Laws, Decrees and Royal Decrees as well as the RFEF disciplinary regulations, which facilitates the classification of the relevant infringements and, consequently, the application of the adequate disciplinary sanctions.

It is also worth noting that the RFEF is not solely responsible for the disciplinary system of football in Spain. As it was mentioned throughout this entire chapter, the disciplinary path under the Spanish legal system is complex and contains two instances, each one of different nature: the first one through the disciplinary bodies of the RFEF, to which we can call the “*sporting stage*” – and the second one through the Higher Council for Sports and the Administrative Court for Sport – to which we call the “*administrative stage*”.

This coexistence between both stages (private-public) constitutes the main feature of the Spanish disciplinary system and demonstrates the strong connection between the public law and the sporting disciplinary power within the Spanish sports legal framework. Nonetheless, the coexistence between the public and administrative sphere and the private and sporting one is not always as smooth as one would desire and has caused in the past important disruptions and disputes between federations and public authorities such as the Higher Council for Sports.

DISCIPLINARY PROCEDURES IN SWISS FOOTBALL

by Jan Kleiner*

1. Introduction and Overview¹

This chapter outlines the legal and regulatory framework for disciplinary proceedings in football in Switzerland. After a brief presentation of the structure of the Swiss Football Association and its various divisions and sub-divisions,² the chapter will present the general legal framework under Swiss law for disciplinary proceedings organized by a private association.³ Subsequently, the general regulatory framework established by the Swiss Football Association will be explained,⁴ before the article describes more in detail the various disciplinary bodies and their respective competencies.⁵

Subsequent sections will elaborate on the various substantive rules for disciplinary matters in Swiss football,⁶ before describing the applicable proceedings in detail.⁷ Where appropriate, references to recent case law will be made.

Finally, it shall be noted at the outset that this chapter is limited to describing the disciplinary instances existing within the Swiss Football Association and its top division, the Swiss Football League. Disciplinary instances existing at lower levels will not be addressed.

All applicable Regulations, to which reference is made in this article, can be downloaded on the Swiss Football Association website (www.football.ch).

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² *Infra* section 2.

³ *Infra* section 3.

⁴ *Infra* section 4.

⁵ *Infra* section 5.

⁶ *Infra* section 6.

⁷ *Infra* section 7.

2. The Swiss Football Association

The Swiss Football Association⁸ (SFV) is constituted as an association⁹ under Swiss Civil Law.¹⁰ It has its seat in Muri in the Canton of Berne.¹¹ Its members are, in principle, clubs which exercise the sport of football and which have their seat in Switzerland.¹²

The SFV has three divisions:¹³

- (i) The Swiss Football League (SFL);
- (ii) The First League;
- (iii) The Amateur League.¹⁴

The main statutory purpose of the SFV is the promotion, regulation, and control of the sport of football in Switzerland on an overall level.¹⁵ The primary statutory goal of the SFL is to promote professional football and high-level youth football.¹⁶ The statutory purpose of the First League is to organize the football championships on the (lower) sporting level of the First League,¹⁷ whereas the statutory goal of the Amateur League is, in essence, to organize football in Switzerland on an amateur level.¹⁸

The three divisions of the SFV are each separate legal entities with their own legal personality.¹⁹ They are, in principle, autonomous, insofar as the rules and decisions of the SFV do not provide otherwise.²⁰ Accordingly, the SFV and the respective divisions also have separate competencies with regard to disciplinary infringements.²¹

⁸ German: *Schweizerischer Fussballverband*; French: *Association Suisse de Football*; Italian: *Associazione Svizzera di Football*.

⁹ Article 60 *et seq.* of the Swiss Civil Code (CC).

¹⁰ Article 1 para. 1 SFV Statutes.

¹¹ Article 1 para. 2 SFV Statutes.

¹² Article 8 para. 1 and 2 SFV Statutes. Under certain circumstances, the SFV accepts also other natural persons or legal entities as so-called “*Extraordinary Members*” as well as “*Honorary Members*” and “*Honorary Presidents*”; cf. Article 9 and 10 SFV Statutes.

¹³ Article 17 para. 1 SFV Statutes (German: *Abteilungen*).

¹⁴ One must note that within the Amateur League, further regional associations may exist; Article 17 para. 4 SFV Statutes.

¹⁵ See Article 2 SFV Statutes.

¹⁶ Article 3 lit. a) SFL Statutes.

¹⁷ Article 2 para. 1 First League Statutes.

¹⁸ Article 2 Amateur League Statutes.

¹⁹ Article 17 para. 2 SFV Statutes.

²⁰ Article 17 para. 3 SFV Statutes. All member clubs of the SFV are also member of the respective section of the SFV, in the championship of which the first men’s team of the club participates; Article 18 para. 1 SFV Statutes.

²¹ See *infra* section 5.1.

3. Legal Framework for Disciplinary Proceedings under Swiss Law

3.1 Introduction

Based on the so-called “*autonomy of associations*”, an association established under Swiss law enjoys a high degree of legal autonomy to enact rules and regulations about its internal structure and the rights and obligations of its members:²²

*“Recognized by the Swiss Federal Constitution and anchored in the Swiss law of private associations is the principle of autonomy, which provides an association with a very wide degree of self-sufficiency and independence. The right to regulate and to determine its own affairs is considered essential for an association and is at the heart of the principle of autonomy. One of the expressions of private autonomy of associations is the competence to issue rules relating to their own governance, their membership and their own competitions. (...)”*²³

This autonomy gives associations far-reaching possibilities to enact rules and regulations, notably with regard to disciplinary matters, sanctions in case of infringement and the applicable procedural framework.²⁴ It also allows an association to freely define its internal organs, bodies and their respective competencies.²⁵ Accordingly, the SFV and its divisions enjoy such autonomy as far as the establishment of its own rules about disciplinary matters in Swiss football are concerned.

The SFV and its divisions have enacted a rather detailed set of regulations.²⁶ Since Switzerland does not have a sports statute, applicable to disciplinary matters,²⁷ the rules and regulations enacted by these associations on the basis of their autonomy form the primary legal framework for disciplinary proceedings in Swiss football.

In addition, it must be noted that these regulations contain various references to state law, which may therefore find subsidiary application.²⁸

²² See also Article 23 of the Swiss Constitution.

²³ CAS 2011/O/2422, USOC v. IOC, at para. 55.

²⁴ *Ibid.*, at para. 55: “(...) rules relating to their own governance, their membership and their own competitions (...)”.

²⁵ *Ibid.*

²⁶ For an overview see *infra* section 4.

²⁷ The main sports legislation in Switzerland consists of the “*Bundesgesetz über die Förderung von Sport und Bewegung*”, *SpoFöG* (“*Loi fédérale sur l’encouragement du sport et de l’activité physique*”), which deals primarily with issues such as promoting sports in general, raising the importance of sports in education, creating a framework to promote youth sports and high-level sports, promoting actions to strengthen the values of sport and to combat its negative aspects and the prevention of accidents; see Article 1 *SpoFöG*.

²⁸ Notably, article 4 of the Disciplinary Regulations of the SFV states that insofar as these regulations do not contain a specific provision, the competent instance shall decide “*based on recognized principles of law and ex aequo et bono*”. In doing so, it shall decide “*based on customary law of the SFV or, in the absence of customary law, pursuant to the rules the competent organ would enact as*

Furthermore, a disciplinary infringement – for example a gross foul play on the pitch – can also lead to civil liability between the parties involved and/or to sanctions under criminal law. While civil and criminal liability may to a certain extent be influenced by disciplinary proceedings of a sports federation,²⁹ they are entirely separate proceedings from a legal point of view. They are thus not further addressed in this article.

3.2 *Limits to the Autonomy of Associations*

The autonomy granted to associations under Swiss law is not absolute.³⁰ There are certain restrictions regarding which rules a private association may enact and how they may be applied. These restrictions result notably from mandatory provisions and requirements of Swiss statutory law. The following considerations give a brief overview on the most important restrictions.

Swiss association law includes a relatively low number of mandatory provisions. For the most part, they concern the right of one fifth of the members of an association to call for a general assembly,³¹ the right of the general assembly to dismiss members of the board for good cause,³² the exclusion of a member from his/her voting rights in certain cases of conflict of interest or bias,³³ the right to leave an association³⁴ and, most importantly in practice, the mandatory right of appeal against decisions taken by an association in case such a decision violates the law or the internal rules or regulations of the association.³⁵ As commonly known, in practice, this right of appeal has to be exercised by means of an Appeal in front of the Court of Arbitration for Sport (CAS).³⁶

a legislator". See, in this respect, the decision of the Disciplinary Commission of the SFL of 14 August 2015, where the question had to be addressed what shall be done with an amount of EUR 20,000, which was supposed to be used as illicit "third party bonus", but which was secured in the course of the proceedings (see, on this topic, also *infra* section 6.3.2b)). Finally, Article 5 para. 3 DR SFV clarifies that in any event, a prosecution under state criminal law remains reserved; see, in this respect, SFT, decision 134 IV 26 *et seq.*

²⁹ Cf. SFT, decision 134 IV 26 *et seq.*, para. 3.

³⁰ CAS 2011/O/2422, USOC v. IOC, at para. 55, *in fine*.

³¹ Article 64 para. 3 CC.

³² Article 65 para. 3 CC.

³³ Article 68 CC.

³⁴ Article 70 para. 2 CC.

³⁵ Article 75 CC. On the purpose of Article 75 CC, see, for instance, CAS 2008/A/1705, Grasshopper v. Alianza de Lima, at para. 19/20: "The purpose of Article 75 CC is to safeguard the individual's membership rights from unlawful infringements by the association (...). The objective of Article 75 CC lies in enabling all parties concerned (the association itself, the members and third interested parties) to obtain clarity about the binding effect of an association's decision within a reasonable deadline (...)."

³⁶ On particularities of CAS proceedings compared to the respective appeal proceedings in front of State Courts see CAS 2008/A/1705, Grasshopper v. Alianza de Lima, at para. 21 *et seq.* See also *infra* section 9.

Apart from these mandatory provisions of Swiss association law, further limitations may result, in particular, from individual personality rights³⁷ or from Swiss Competition Law.³⁸

3.3 *Applicability of Principles of Criminal Law?*

Many disciplinary sanctions undoubtedly have a punitive character, and they often also have the purpose of deterring other stakeholders from committing disciplinary violations in the future. As such, they have a certain similarity to sanctions imposed under criminal law. Accordingly, the question may arise whether standards of Swiss criminal law are applicable also to the imposition of disciplinary sanctions and/or to disciplinary proceedings within a sports federation.

However, according to the jurisprudence of the Swiss Federal Tribunal (SFT), disciplinary sanctions are, in principle, of a civil law nature. Accordingly, the SFT holds that their imposition is not to be tested against standards applicable in criminal law proceedings, such as the presumption of innocence or the principle of *in dubio pro reo*. Likewise, guarantees awarded under the European Convention on Human Rights (ECHR) for criminal proceedings are not directly applicable to disciplinary proceedings of a sports federation established as an association under Swiss law.³⁹

3.4 *Summary*

An association established under Swiss law enjoys considerable legal autonomy to enact internal rules and regulations and to sanction violations of these rules. As a consequence, for the Swiss Football Association (and its divisions), the privately enacted rules and regulations constitute the main legal framework for disciplinary proceedings and for the sanctioning of disciplinary infringements. There are only relatively few mandatory provisions of Swiss law, which limit this fundamental autonomy. Most importantly, however, statutory Swiss law provides for a mandatory right of Appeal against final decisions rendered by an association. On the other hand, even if disciplinary sanctions may have a significant punitive character, criminal law principles are, as a general rule, not applicable in disciplinary proceedings.

³⁷ Article 27 and 28 CC.

³⁸ See, in particular, Article 7 of the Federal Act on Cartels and other Restraints of Competition concerning prohibited market practices of dominant undertakings.

³⁹ SFT, decision 4A_448/2013 of 27 March 2014, at para. 3.3., with reference to the decisions 4A_488/2011 of 18 June 2012; 4A_612/2009 of 10 February 2010 2; 5P.83/1999 of 31 March 1999; 4P.217/1992 of 15 March 1993; decision 119 II 271 *et seq.* (unpublished consideration).

4. *Regulatory Framework*

From among the rules and regulations enacted by the SFV and its divisions, the following provisions and Regulations are particularly relevant in the context of disciplinary matters:

- (i) Article 78 et seq. of the SFV Statutes;
- (ii) The Disciplinary Regulations of the SFV (DR SFV);⁴⁰
- (iii) The Competition Regulations of the SFV (CR SFV);⁴¹
- (iv) The Procedural Regulations for Instances of the SFL (PR SFL);⁴²
- (v) Regulations on Disciplinary Proceedings of the SFL (RDP SFL);⁴³
- (vi) The Security Regulations of the SFL (SR SFL).⁴⁴

5. *Disciplinary Bodies*

5.1 *Overview*

The general provisions concerning the organization and structure of the disciplinary bodies existing within the SFV can be found within the SFV Statutes.⁴⁵ According to Article 82 para. 1 of the SFV Statutes, the competencies to prosecute and sanction disciplinary infringements are shared between the SFV and its divisions.

5.1.1 *Disciplinary Bodies of the SFV*

As a principle, the SFV and its divisions (and the sub-divisions/regional associations) each have jurisdiction to prosecute and sanction disciplinary infringements of their “own” officials, players and of the clubs (and their members, players and officials) that participate in their respective competitions and championships.⁴⁶ Accordingly, the SFV Statutes state that the divisions (and sub-divisions / regional associations) shall establish and define their own organs, which are competent to prosecute and sanction disciplinary infringements,⁴⁷ and they shall also each define the proceedings before such organs.⁴⁸

In practice, this means that the organs of the SFV primarily deal with matters of amateur and women’s football.⁴⁹ Within the SFV, the primary

⁴⁰ German: *Rechtspflegeordnung*.

⁴¹ German: *Wettpielreglement*.

⁴² German: *Verfahrensreglement für die Rechtsanwendungsbehörden der SFL*.

⁴³ German: *Reglement über das Disziplinarverfahren der SFL*.

⁴⁴ German: *Sicherheitsreglement der SFL*; see *infra* section 6.3.3.

⁴⁵ Article 82 SFV Statutes.

⁴⁶ Article 82 para. 1 SFV Statutes.

⁴⁷ Article 82 para. 5 SFV Statutes; Article 1 para. 4 DR SFV.

⁴⁸ Article 1 para. 4 DR SFV.

⁴⁹ The jurisdiction of the SFV, however, also extends to the Swiss Cup competition, as this competition is organized by the SFV; see, for instance, the decision of the Control and Disciplinary Commission of the SFV of 2 March 2016 concerning a Cup match between two clubs of the SFL.

competence to prosecute and sanction disciplinary infringements lies with the “Control and Disciplinary Commission”⁵⁰ as first instance and with the “Appeals Tribunal” as appeal instance.⁵¹

5.1.2 Disciplinary Bodies of the SFL

As mentioned, the SFL has its own bodies and organs with jurisdiction to take decisions regarding disciplinary incidents during football games of the highest (“Super League”) and second-highest (“Challenge League”) leagues in Switzerland.

The SFL has established the following instances competent to issue disciplinary sanctions:

- (i) A Disciplinary Judge for Match Operations;⁵²
- (ii) A Disciplinary Judge for Security Issues;⁵³
- (iii) The Disciplinary Commission SFL;⁵⁴
- (iv) A Single Judge of the Disciplinary Commission SFL;⁵⁵ and
- (v) The Appeals Tribunal SFL.⁵⁶

5.2 Competencies

5.2.1 Control and Disciplinary Commission of the SFV

The Control and Disciplinary Commission (CDC) of the SFV has jurisdiction to deal with all disciplinary cases arising out of the Statutes or Regulations of the SFV, which do not fall under the jurisdiction of another organ of the SFV, of an organ of a division, sub-division or a regional association or, respectively, which surpasses their respective disciplinary competence.⁵⁷ In addition, the CDC has jurisdiction in all cases (*i.e.* also if such a disciplinary infringement occurs on the level of a division or sub-division of the SFV) concerning violent assaults against

As mentioned, professional male football in Switzerland is otherwise organized, in principle, by the Swiss Football League (SFL). Accordingly, disciplinary matters on this level primarily fall under the jurisdiction of the respective organs within the SFL. *See infra* section 5.1.2.

⁵⁰ Article 82 para. 2 SFV Statutes.

⁵¹ *See also* Article 90 SFV Statutes and Article 32 para. 1 DR SFV. In addition, the “Technical Commission” is competent to withdraw diplomas from coaches and instructors and the “Referees’ Commission” has certain competencies in relation to referees; Article 82 para. 2-4 SFV Statutes; Article 32 para. 2 DR SFV. These two latter Commissions are, however, not addressed more in detail in this article.

⁵² German: *Disziplinarrichter im Spielbetriebswesen*.

⁵³ German: *Disziplinarrichter im Sicherheitswesen*.

⁵⁴ German: *Disziplinarkommission SFL*.

⁵⁵ German: *Einzelrichter der Disziplinarkommission SFL*.

⁵⁶ German: *Rekursgericht SFL*.

⁵⁷ Article 35 para. 1 DR SFV, according to which, in addition, the allocation of further competencies based on the Statutes or regulations of the SFV remains reserved.

referees and/or assistant referees, with the exception of cases in which a suspension of up to 10 matches or 3 months is imposed.⁵⁸ The President of the CDC or a Vice President can decide a matter as Single Judge if the sanction is limited to a reprimand, a fine up to CHF 10,000 or to a suspension of up to four games. In case of urgency, a Single Judge can also decide on all other matters.⁵⁹

5.2.2 Appeals Tribunal of the SFV

The Appeal Tribunal of the SFV has jurisdiction to deal with appeals against decisions of the Control and Disciplinary Commission, the Technical Division, and the Referees' Commission, provided that the applicable provisions do not define a decision as final.⁶⁰ The President of the Appeal Tribunal or a Vice President can decide as Single Judge in cases where the facts and the law are clear, in cases of urgency,⁶¹ on Appeals against decisions of a Single Judge of the Control and Disciplinary Commission, on Appeals against decisions of the Technical Commission or the Referees' Commission (in the limits of the competence of a CDC Single Judge).⁶²

5.2.3 Disciplinary Judge for Match Operations of the SFL

The Disciplinary Judge for Match Operations of the SFL, or his/her Deputy, has jurisdiction to deal, as a Single Judge, with disciplinary infringements of players, coaches or assistance coaches, which can be sanctioned by means of a "Disciplinary Order",⁶³ with the exception of infringements of the Security Regulations of the SFL and its implementing Regulations.⁶⁴ The Disciplinary Judge for Match Operations can issue, without holding a hearing, a reprimand, a suspension of up to four matches and/or a fine of up to CHF 2,000 against a player, a coach or an assistant coach.⁶⁵

⁵⁸ Article 83 para. 1 and 2 SFV Statutes; see also the decision of the Disciplinary Commission of the SFL of 24 September 2015 concerning an attack of a player against a referee and the decision of the Control and Disciplinary Commission of the SFV of 1 September 2016 concerning a very serious physical assault against a referee.

⁵⁹ Article 36 para. 1 DR SFV.

⁶⁰ Article 35 para. 2 DR SFV, according to which, in addition, the allocation of further competencies based on the Statutes or regulations of the SFV remains reserved.

⁶¹ Cases of urgency are deemed to exist, in particular, in cases of disciplinary infringements on the occasion of matches of the Swiss Cup; Article 36 para. 3 DR SFV.

⁶² Article 36 para. 2 DR SFV.

⁶³ German: "Disziplinarverfügung". See below section 7.2.2b) concerning the prerequisites and procedures to issue a Disciplinary Order.

⁶⁴ Article 3 para. 1 DR SFL. See, on this topic, *infra* section 6.3.3.

⁶⁵ Article 3 para. 2 DR SFL.

5.2.4 Disciplinary Judge for Security Issues of the SFL

The Disciplinary Judge for Security Issues, or his/her Deputy, has jurisdiction to pass decisions, as a Single Judge, on violations of the Security Regulations of the SFL and its implementing Regulations, which can be adjudicated by means of a Disciplinary Order.⁶⁶ The Disciplinary Judge for Security Issues can impose a reprimand or a fine of up to CHF 2,000 against natural persons and a fine of up to CHF 10,000 against clubs.⁶⁷

5.2.5 The Disciplinary Commission of the SFL

As a general rule, the Disciplinary Commission of the SFL has jurisdiction to deal with all disciplinary matters delegated by the SFV to the SFL, unless a matter falls within the jurisdiction of one of the aforementioned Disciplinary Judges.⁶⁸

In particular, it has jurisdiction to deal with the following matters:⁶⁹

- (i) Cases concerning a re-play of matches, protests and matches lost by forfeit in accordance with the Competition Regulations of the SFL;
- (ii) Unsportsmanlike behavior;
- (iii) Security Infringements;
- (iv) Violations of the rules concerning the protection of minors;
- (v) Cases reported to it by the Committee of the SFL or by other organs and commissions of the SFL (in particular cases related to the registration/qualification of players and cases concerning licensing and transfers);
- (vi) All other matters about which it gains knowledge.

The Disciplinary Commission can issue the full range of disciplinary sanctions provided for in the applicable regulations.⁷⁰

5.2.6 The Single Judge of the Disciplinary Commission of the SFL

The President or Vice President of the Disciplinary Commission of the SFL, or any other Commission Member designated by the President, has jurisdiction to decide on Objections⁷¹ against decisions rendered against Disciplinary Orders⁷² in Match Operations. The Single Judge can issue the same disciplinary sanctions as a Disciplinary Judge.⁷³

⁶⁶ Article 4 para. 1 DR SFL. See below section 7.2.2b) concerning the prerequisites and procedures to issue a Disciplinary Order.

⁶⁷ Article 4 para. 2 DR SFL.

⁶⁸ Article 6 para. 1 DR SFL.

⁶⁹ Article 6 para. 2 DR SFL.

⁷⁰ Article 6 para. 3 DR SFL.

⁷¹ German: *Einsprache*.

⁷² On Disciplinary Orders see *infra* section 7.2.2b).

⁷³ Article 5 para. 2 DR SFL; for the available sanctions see Article 3 para. 2 and Article 4 para. 2 DR SFL.

5.2.7 The Appeals Tribunal of the SFL

The Appeals Tribunal of the SFL has jurisdiction to deal with Appeals against decisions of the Disciplinary Commission of the SFL or of its President acting as Single Judge.⁷⁴

6. Disciplinary Regulations: Substantive Rules

6.1 Overview: Regulatory Framework

The fundamental and most important substantive and procedural rules concerning the sanctioning of disciplinary infringements are established in the Disciplinary Regulations of the SFV.⁷⁵ This general framework applies to all proceedings before bodies and organs of the SFV, but also before bodies of the SFL or other divisions.⁷⁶

6.2 General Duties of Clubs towards the SFV

Based on their legal position as members of the SFV, Swiss football clubs have certain general obligations towards the SFV, notably:⁷⁷

- (i) To act in a loyal manner towards the SFV;
- (ii) To abide by the rules and decisions which are binding based on the SFV Statutes and to ensure that the members, players and officials of each club equally abides by them;
- (iii) To participate in the competitions organized by the SFV and its divisions (including sub-divisions) in compliance with the applicable rules;
- (iv) To pay the statutory membership fees to the SFV, its divisions and the regional federations and to respect all other financial obligations vis-à-vis these organizations;
- (v) To comply with all other obligations arising out of rules and decisions of the SFV and its divisions (including sub-divisions), which are binding based on the SFV Statutes.

A violation of these general obligations may result in disciplinary sanctions as provided in the SFV Statutes.⁷⁸ Furthermore, clubs, which do not respect their financial obligations towards the SFV, its divisions or regional federations can, based on the prerequisites established in the statutes and regulations of the SFV, be subject to a so-called boycott.⁷⁹

⁷⁴ Article 7 para. 1 DR SFL.

⁷⁵ Article 1 para. 2 DR SFV.

⁷⁶ Article 2 para. 1 DR SFV. One must note, however, that the organisation of the respective bodies and organs of the various divisions of the SFV and the applicable procedural framework is defined on a division level; *see supra* section 2.

⁷⁷ Article 16 para. 1 SFV Statutes.

⁷⁸ Article 16 para. 2 SFV Statutes.

⁷⁹ Article 16 para. 3 SFV Statutes. *See*, on this topic, *infra* section 6.4.8.

6.3 Disciplinary Infringements

6.3.1 General Principles

The general, substantive disciplinary rules in Swiss football are established in Article 5-12 of the Disciplinary Regulations of the SFV.

As a fundamental principle, these regulations provide that unsportsmanlike behaviour, violations of the rules of the game and infringements of the statutes, regulations, decisions and directives of the SFV, its divisions and sub-divisions are subject to disciplinary sanctions.⁸⁰ The disciplinary sanctions provided in the SFV Statutes can be imposed on clubs or on any other person subject to the Disciplinary Regulations for infringements before, during or after a match as well as for infringements committed outside a competition, insofar as there is a sufficient link to the statutory purpose of the SFV.⁸¹

As a further principle, the DR SFV establishes that disciplinary infringements are sanctioned both in cases of intent as well as in cases of negligence, unless a provision of the DR SFV states otherwise.⁸² An attempted disciplinary infringement is equally subject to disciplinary sanctions, which can however be milder.⁸³ Furthermore, the intentional inducement to, or assistance in, a disciplinary infringement can equally be subject to a sanction,⁸⁴ whereas the competent organ may reduce the sanction.⁸⁵

With regard to security incidents, the DR SFV establishes the principle that all clubs are responsible for the behaviour of their members, players, officials and fans.⁸⁶ As a principle, persons present in the guest sector of a stadium are considered as supporters of the visiting club, unless proven otherwise. All other spectators are considered as supporters of the home club, unless proven otherwise.⁸⁷ Home clubs are responsible for order and security within a stadium before, during and after a match. They are liable for incidents of all kind and can be subject to disciplinary sanctions and they can be ordered to comply with specific directives, unless they can prove that the organizational measures taken were in compliance with all applicable provisions and that they were, under the given circumstances, appropriate in quality and quantity.⁸⁸

Furthermore, still within the general principles, the DR SFV states that violations of the rules of the game, unsportsmanlike behaviour on the pitch and improper behaviour towards players and match officials are sanctioned by the

⁸⁰ Article 5 para. 1 DR SFV.

⁸¹ Article 5 para. 2 DR SFV.

⁸² Article 6 DR SFV.

⁸³ Article 7 DR SFV.

⁸⁴ Article 8 para. 1 DR SFV.

⁸⁵ Article 8 para. 2 DR SFV.

⁸⁶ Article 9 para. 1 DR SFV.

⁸⁷ Article 9 para. 2 DR SFV.

⁸⁸ See *infra* section 6.3.3 concerning specific Security Regulations enacted on SFL level.

referee with match penalties (yellow card, two yellow cards and red cards).⁸⁹ The match penalties imposed by the referee on the pitch are final and cannot be reviewed by the disciplinary bodies of the SFV, its divisions and sub-divisions.⁹⁰ The disciplinary consequences of such a match penalty, however, can be reviewed by the disciplinary body competent as first instance, if the match penalty was based on an obvious error, *e.g.* in the person of the player (against which a match penalty was imposed).⁹¹

Finally, the DR SFV establishes limitation periods as follows:⁹²

- (i) 2 years for incidents on the pitch or in its immediate vicinity;
- (ii) 20 years for all cases of bribery and corruption;
- (iii) 5 years for all other incidents.

In case proceedings are opened or if any other instruction is given to promote such proceedings, the limitation period is interrupted.⁹³ The limitation period begins to run anew with every interruption. However, prosecution is no longer possible if the aforementioned periods are exceeded as follows:⁹⁴

- (i) Double the standard limitation period for incidents on the pitch or in its immediate vicinity;
- (ii) In all other cases: 1.5 times the standard limitation period.

6.3.2 *Infringements*

a) *Principles of Conduct*

Prior to listing all specific disciplinary infringements, the DR SFV establishes fundamental principles of behaviour, by which all persons subject to the DR SFV must abide.⁹⁵ All persons subject to the DR SFV must behave in a loyal and sportsmanlike manner and with integrity.⁹⁶

In particular, the following actions violate these principles:⁹⁷

- (i) Active or passive bribery or attempted (active or passive) bribery;

⁸⁹ Article 10 para. 1 DR SFV.

⁹⁰ Article 10 para. 2 DR SFV. This is in line with the principle upheld also in case law of CAS, according to which so-called “*field of play decisions*” are reviewed by CAS only under very exceptional circumstances. *See*, for instance, CAS OG/16/28 Behdad Salimi & NOCIRI v. IWF, at para. 35: “*CAS jurisprudence has consistently reaffirmed that CAS Arbitrators do not overturn the decisions made on the playing field by judges, referees, umpires or other officials charged with applying the rules of the game unless there is some evidence that the rule was applied arbitrarily or in bad faith (...)*”; *see also* CAS OG 00/13 Mendy v. AIBA; CAS OG 96/006, De Lima & Brazilian Olympic Committee v. International amateur Athletic Federation (IAAF); CAS 2004/A/727.

⁹¹ Article 10 para. 3 DR SFV.

⁹² Article 12 para. 1 DR SFV.

⁹³ Article 12 para. 2 DR SFV.

⁹⁴ Article 12 para. 3 DR SFV.

⁹⁵ Art 13 DR SFV.

⁹⁶ Article 13 para. 1 DR SFV.

⁹⁷ Article 13 para. 2 DR SFV.

- (ii) The abuse of sporting events for manifestations without any sporting character;
- (iii) Actions which damage the reputation of football and, in particular, of the SFV;
- (iv) To disregard decisions and instructions of competent organs, commissions or other authorities of the SFV, its divisions and sub-divisions;
- (v) To disregard instructions of a referee or other match officials;
- (vi) Failing to participate in a match or failing to do so in a timely manner;
- (vii) To cause a match to be interrupted or abandoned or being responsible for such an incident;
- (viii) To register a player on the match sheet, who is not eligible to play;
- (ix) To behave in an insulting manner or to otherwise violate fundamental rules of decency;
- (x) To knowingly make false statements as witness or expert in proceedings before an organ, commission or another body of the SFV, its divisions or sub-divisions;
- (xi) To intentionally violate someone's physical integrity, to damage goods or property or to otherwise behave in an unsportsmanlike manner.

b) Integrity of Matches

Natural persons and legal entities which are subject to the DR SFV have to refrain from any behaviour, which is capable of damaging, or which damages, the integrity of matches or competitions organized by the SFV, its divisions or by the regional federations. These persons and legal entities must fully cooperate at all times with the SFV, its divisions and with the regional federations in their efforts to prevent such actions and, as the case may be, discover and punish them.⁹⁸

In particular, the following actions are deemed to violate these obligations:

- (i) To act in a manner, which violates the SFV Statutes and which aims at influencing the course and/or the result of a match or competition, to gain an undue advantage for oneself or for a third person;
- (ii) To participate directly or indirectly in betting or similar activities in connection with official games of the SFV, its divisions or of regional federations or to have direct or indirect financial interests in such activities;
- (iii) To use or disseminate information which is unknown to the public, to which a person has access through his/her function in football, and which is capable of damaging, or which damages, the integrity of matches or competitions organized by the SFV, its divisions or regional federations;
- (iv) To fail to immediately and without being requested to do so inform the competent organization (SFV, division, regional federation) in case a person is contacted with the intention of involving that person in actions, which aim at influencing the course and/or the result of a match or competition;

⁹⁸ Article 13^{bis} para. 1 DR SFV.

- (v) To fail to immediately, and without being requested to do so, inform the competent organization (SFV, division, regional federation) in case a person gains knowledge about behaviour in the sense of Article 13^{bis} DR SFV;
- (vi) To promise, offer, make, demand or accept any contributions or other advantages with the purpose of manipulating a match.

In this respect, one must note also that Article 135 of the Competition Regulations of the SFV (CR SFV) contain a provision with a similar content.⁹⁹ This provision prohibits, in essence, that clubs, their members, players and officials promise, offer, give, demand or accept any form of contributions, advantages or gifts in order to influence the outcome of a game (so-called prohibition of “*third party bonuses*”).¹⁰⁰

In application of these provisions, severe penalties were already imposed on various players, who offered a financial compensation to players of another team, in case they would win their match against a third team (which would have helped the team of the accused players secure promotion to a higher league). The two players, which were considered to be the main perpetrators of the infringement, were sanctioned with suspensions for twelve matches each.¹⁰¹ However, these sanctions were significantly reduced on Appeal, *i.e.* to two suspensions and a fine for each player.¹⁰²

c) *Discrimination*

Whoever denigrates or discriminates a person or group of persons in whatever manner because of their colour, race, religion or ethnicity in a way, which violates human dignity, is subject to disciplinary sanctions.¹⁰³ Likewise, a club whose supporters act in such a manner is subject to disciplinary sanctions without it being required that the club is at fault.¹⁰⁴ Extremist ideological propaganda of any kind is prohibited before, during and after a match, and it is equally subject to disciplinary sanctions based on the aforementioned principles.¹⁰⁵

d) *Brawl*

Players and officials, who participate on or outside the pitch in a physical assault in which at least three persons are involved, commit a brawl and are subject to disciplinary sanctions.¹⁰⁶ Whoever is involved only to defend against an attack, to

⁹⁹ See the decision of the Disciplinary Commission of the SFL of 14 August 2015, at para. 7.

¹⁰⁰ Article 135 para. 1 CR SFV. This prohibition only does not apply to such bonuses awarded by clubs to its own players and officials; Article 135 para. 2 CR SFV.

¹⁰¹ Decision of the Disciplinary Commission of the SFL of 14 August 2015.

¹⁰² Decision of the Appeals Tribunal of the SFL of 16 September 2015, in particular at para. 6.5.

¹⁰³ Article 15 para. 1 DR SFV.

¹⁰⁴ Article 15 para. 2 DR SFV.

¹⁰⁵ Article 15 para. 3 DR SFV.

¹⁰⁶ Article 16 para. 1 DR SFV.

defend others or trying to separate the involved persons, shall not be sanctioned.¹⁰⁷

e) Provocation

Players or officials who provoke spectators during a match or who publicly incite violence or hostility are subject to disciplinary sanctions. In case such actions are committed via mass media or, on a match day, inside a stadium or in the immediate vicinity of a stadium, the imposed sanction shall be increased.¹⁰⁸

f) Threat or Coercion

Players and officials who issue grave threats against match officials or who impose pressure on a match official by means of force, threats or in any other manner with the intention to influence the match official to take (or to avoid taking) a specific decision are subject to disciplinary sanctions.¹⁰⁹

g) Abuse of Official Documents

Players and officials, who create or use a falsified document in the context of a football-related activity, are subject to disciplinary sanctions.¹¹⁰

h) Disciplinary Measures Against Clubs

In addition to the above, the disciplinary sanctions provided in the Statutes of the SFV can be imposed on clubs in the following cases:¹¹¹

- (i) The team, members, players or officials violate the general principles of conduct;¹¹²
- (ii) The team behaves incorrectly, for instance if a referee imposes match penalties against at least 5 different players in the same match. In Futsal competitions, the relevant number of players is 3.

Furthermore, disciplinary sanctions can be imposed on clubs in case their supporters behave in an incorrect manner, whereas fault of the club is not a prerequisite.¹¹³ This applies notably in the following constellations:¹¹⁴

¹⁰⁷ Article 16 para. 2 DR SFV.

¹⁰⁸ Article 17 DR SFV.

¹⁰⁹ Article 18 DR SFV.

¹¹⁰ Article 19 DR SFV.

¹¹¹ Article 20 para. 1 DR SFV.

¹¹² Article 13 DR SFV; *see supra* section 6.3.2a).

¹¹³ *See*, in this respect, the decision rendered by the Appeals Tribunal of the SFL on 11 July 2014, at para. 7 *et seq.*, which clarifies the following aspect with regard to the supporters of the away team: Although the away club bears a strict liability for its own supporters, incidents involving these supporters may also trigger a sanction against the home team, which still bears the overall responsibility for security in the stadium.

¹¹⁴ Article 20 para. 2 DR SFV.

- (i) Violence against persons or property;
- (ii) The use of pyrotechnic devices;
- (iii) Throwing of objects on to the pitch or into the spectators' area;
- (iv) Dissemination of messages of all kind which are not sports-related, in particular such of a political, insulting or provocative content, by means of gestures, images, the use of words or other means.
- (v) Invasion of the pitch;¹¹⁵
- (vi) All other infringements of order and discipline, which are observed within the stadium.

6.3.3 Security Regulations of the SFL

On the level of the SFL, *i.e.* for the level of professional male football in Switzerland, specific Security Regulations (SR SFL) have been enacted.¹¹⁶ The SR SFL applies to all matches of the SFL championships as well as to friendly games, which are held in a stadium of an SFL club and in which at least one SFL club participates.¹¹⁷ They equally apply to matches of the Swiss Cup insofar as clubs of the SFL are concerned.¹¹⁸

The purpose of the SR SFL is to highlight the most important security obligations of SFC clubs, which must be complied with when organizing matches.¹¹⁹ The list of organizational measures and obligations contained in the SR SFL is, however, expressly defined as not exhaustive.¹²⁰

As a principle, the SR SFL states that clubs are obliged to guarantee safety and security before, during and after matches.¹²¹ The home club must take all safety measures, which are necessary under the particular circumstances. The visiting club is equally obliged to take all measures, which can be reasonably expected to prevent damaging actions of its supporters.¹²² The scope of the required security measures depends notably on the following criteria:¹²³

- (i) The significance of the match in question (game between top teams; derby, decisive match, the result of which could decide the championship or promotion/relegation);
- (ii) An expected high number of spectators;
- (iii) The relationship between the supporters of the teams involved (*e.g.* if supporters of the visiting team are known to be violent);

¹¹⁵ See *supra* footnote 114.

¹¹⁶ Security Regulations of the SFL, German: *Sicherheitsreglement der SFL*.

¹¹⁷ Article 1 para. 1 SR SFL.

¹¹⁸ Article 12^{bis} para. 2 of the Regulations of the Swiss Cup; see decision of the Control and Disciplinary Commission of the SFV of 2 March 2016, at para. 8.

¹¹⁹ Article 2 para. 1 SR SFL.

¹²⁰ Article 2 para. 2 SR SFL.

¹²¹ Article 3 para. 1 SR SFL.

¹²² Article 3 para. 2 SR SFL.

¹²³ Article 3 para. 3 SR SFL.

(iv) The atmosphere during previous games of the teams involved and possible incidents that occurred during such a previous game.¹²⁴

The SR SFL furthermore state the various security measures that a club must take prior to a game, e.g. to organize the security personnel,¹²⁵ ticket sales,¹²⁶ how security checks at the entrance must be carried out,¹²⁷ how sectors must be assigned to spectators¹²⁸ and several additional measures.¹²⁹ Equally, the SR SFL defines what measures a club must take during a game. They concern, for instance, the stadium speaker,¹³⁰ cooperation with the police,¹³¹ and stadium exits.¹³² Finally, the SR SFL establish specific requirements for away matches of a club, for instance that the person in charge of security for the visiting club must take certain coordinating measures with the home club¹³³ and that, depending on the number of visiting supporters, they must be accompanied by specific personnel of the visiting team (security personnel, so-called “escorting personnel” etc.).¹³⁴

In case the obligations arising out of the SR SFL are violated, the Disciplinary Commission of the SFL shall act *ex officio* or upon notification.¹³⁵ Interestingly, in case the prohibition of discrimination pursuant to the FIFA Disciplinary Code is violated, the SR SFL refers to the sanctions available under the respective provisions of the FIFA Disciplinary Code.¹³⁶

6.3.4 Licensing Regulations of the SFL

The SFL has enacted a detailed set of Licensing Regulations. Article 26 of the Licensing Regulations of the SFL (LR SFL)¹³⁷ establishes the possibility to impose sporting sanctions in case of violations of licensing requirements or violations of the respective obligations of clubs.

In particular, the Disciplinary Commission of the SFL can impose sanctions for the following infringements:¹³⁸

¹²⁴ See, for instance, the decision rendered by the Appeals Tribunal of the SFL on 11 July 2014, at para. 6, where it was considered that it was “*beyond doubt that the game (...) presented a particularly high risk (...) already because of the notoriously bad behaviour of the fans of (...) and, in particular, because after this game the championship trophy would be delivered to the club (...)*”.

¹²⁵ Article 6 SR SFL.

¹²⁶ Article 7 SR SFL.

¹²⁷ Article 8 SR SFL.

¹²⁸ Article 9 SR SFL.

¹²⁹ See Article 10 SR SFL.

¹³⁰ Article 11 SR SFL.

¹³¹ Article 12 SR SFL.

¹³² Article 13 SR SFL.

¹³³ See Article 18a para. 1 SR SFL.

¹³⁴ See Article 18a para. 3 SR SFL.

¹³⁵ Article 5 SR SFL.

¹³⁶ *Ibid.*

¹³⁷ German: *Reglement der Swiss Football League für die Lizenzerteilung.*

¹³⁸ Article 26 para. 1 LR SFL.

- (i) A club does not submit the required licensing documentation despite having been put on notice;
- (ii) A club submits falsified or obviously incorrect licensing documents;
- (iii) A club violates decisions that have been rendered against it;
- (iv) A club violates its informational duties;
- (v) A club violates the Licensing Regulations in any other manner.¹³⁹

For such disciplinary matters, the Disciplinary Regulations of the SFV (DR SFV) and the Procedural Regulations of the SFL (PR SFL) find application. The Disciplinary Commission can impose the sanctions provided in the DR SFV. In particular, it can impose fines and deduct up to 12 points. It can also enforce relegation against a club. In case a club submits falsified documents and by doing so obtains a license, a deduction of 12 points is mandatory.¹⁴⁰

6.3.5 Doping

The Regulations of the SFV or the SFL do not contain specific anti-doping provisions. Article 21 DR SFV and Article 87 of the SFV Statutes refer to the so-called “*Doping Statute*” of the Swiss Olympic Association, including its implementing regulations. According to these provisions, anti-doping rule violations are sanctioned by the Disciplinary Chamber of the Swiss Olympic Association pursuant to its own procedural regulations.¹⁴¹

6.4 Sanctions

6.4.1 General Remarks

Pursuant to the DR SFV, the disciplinary instances can impose disciplinary measures (disciplinary sanctions/penalties) and give so-called Instructions.¹⁴² Disciplinary measures are sanctions for disciplinary infringements, whereas several disciplinary measures can be combined.¹⁴³ Instructions, on the other hand, have the purpose of ensuring the execution of disciplinary measures and/or they can induce the concerned person or party to a certain behaviour.¹⁴⁴

¹³⁹ See, in this respect, the decision of the Disciplinary Commission of the SFL of 15 March 2016, according to which 2 points were deducted from a club for having violated obligations arising out of the LR SFL. Subsequently, based on a decision of the Disciplinary Commission of 27 April 2016, the license of the same club was withdrawn for having repeatedly violated various provisions of the LR SFL, notably the club’s informational duties towards the licensing instances.

¹⁴⁰ Article 26 para. 2 LR SFL.

¹⁴¹ The respective Regulations can be downloaded at www.antidoping.ch.

¹⁴² Article 22 para. 1 DR SFV.

¹⁴³ Article 22 para. 2 DR SFV.

¹⁴⁴ Article 22 para. 3 DR SFV.

6.4.2 Sanctions Against Clubs

The following disciplinary sanctions can be imposed on clubs:¹⁴⁵

- (i) Reprimand;
- (ii) Fine (of a maximum amount of CHF 1,000,000);¹⁴⁶
- (iii) Annulment of results;
- (iv) Defeat by forfeit;
- (v) Withdrawal of points in a championship;
- (vi) Forced relegation to a lower league;
- (vii) Exclusion from one or several on-going or future competitions;
- (viii) Withdrawal of titles;
- (ix) Reduction of the spectator capacity;
- (x) Partial or full ban of spectators from a match;
- (xi) Holding a match in a neutral venue;
- (xii) A boycott for a determined or undetermined period;¹⁴⁷
- (xiii) Withdrawal of a club's license.

6.4.3 Sanctions Against Natural Persons

The following sanctions can be imposed on natural persons:¹⁴⁸

- (i) Reprimand;
- (ii) Fine (of a maximum amount of CHF 100,000);¹⁴⁹
- (iii) Suspension of a player for a defined number of match days or for a determined or undetermined period of time;
- (iv) Suspensions of an official for a defined number of match days or for a determined or undetermined period of time;
- (v) Ban of a particular stadium;
- (vi) Withdrawal of awarded diplomas or licenses;
- (vii) A boycott for a determined or undetermined period.¹⁵⁰

In addition to the disciplinary sanctions mentioned above, the competent disciplinary organ can additionally order a charitable activity for the benefit of football.¹⁵¹

¹⁴⁵ Article 23 para. 1 DR SFV.

¹⁴⁶ Article 23 para. 2 DR SFV.

¹⁴⁷ See, on this topic, *infra* section 6.4.8.

¹⁴⁸ Article 24 para. 1 DR SFV.

¹⁴⁹ Article 24 para. 3 DR SFV.

¹⁵⁰ See, on this topic, *infra* section 6.4.8.

¹⁵¹ Article 24 para. 2 DR SFV.

6.4.4 Sentencing / Determining the Sanction

When determining the type and level of the imposed sanction, the competent disciplinary body assesses objective and subjective circumstances.¹⁵² It can combine various disciplinary measures, and it takes into consideration mitigating and aggravating factors. Unless stipulated otherwise in the DR SFV, as a principle, each sanction requires fault, i.e. intent or negligence.¹⁵³

In case of several infringements, the sanction is determined in accordance with the most severe infringement, with an increase in the sanction, which is appropriate under the specific circumstances of each case.¹⁵⁴ If, in the view of the disciplinary instance, information provided by a person subject to a disciplinary sanction decisively contributed to the discovery of a disciplinary infringement, the disciplinary instance may, at its own discretion, reduce the sanction or entirely refrain from imposing it.¹⁵⁵

Finally, the DR SFV contains a table, listing the standard number of suspensions for disciplinary infringements committed on the pitch.¹⁵⁶ The standard number of suspensions ranges from a suspension for 1 match day (e.g. for a second yellow card received during a match) up to a suspension for 5 match days (e.g. for racist behaviour or threats against the referee).¹⁵⁷ For specific situations, e.g. in case disciplinary infringements are discovered only afterwards in TV images, the number of suspensions can be fixed on a case-by-case basis.¹⁵⁸

In addition, in case of extraordinary circumstances, the standard number of suspensions can be increased or reduced, whereas the general provisions concerning sentencing remain reserved.¹⁵⁹ In this respect, it must also be noted that a disciplinary sanction can also be imposed in case a referee did not notice grossly unsportsmanlike behaviour of a player and for this reason did not take any field of play decision about such behaviour.¹⁶⁰

¹⁵² See, decision of the Disciplinary Commission of the SFL of 24 September 2015 concerning a violent assault of a player against the referee. The decision holds, at para. 9, as follows: “*There was no provocation, as the player did not react, but act. In addition, actions of a referee can hardly be considered as a provocation. The fact that the accused was in an excited/emotional state of mind due to what was happening on the pitch is understandable, but it cannot be taken into account as a mitigating factor, because this argument could be invoked in all cases. Also the fact that the player, after the relevant incident, wanted to apologize personally and through the media with the referee cannot by itself serve as a mitigating factor. However, taking into account the good repute of the player, the sanction shall not be aggravated*”.

¹⁵³ Article 25 para. 1 DR SFV.

¹⁵⁴ Article 25 para. 2 DR SFV.

¹⁵⁵ Article 25 para. 3 DR SFV.

¹⁵⁶ Article 14 DR SFV. The list of standard suspensions also applies, insofar as practicable, to persons exercising an official function on the occasion of a match. These are persons present on the pitch or in the technical zone (coaches, physiotherapists, referees etc.); Article 14 para. 4 DR SFV.

¹⁵⁷ Article 14 para. 1 DR SFV.

¹⁵⁸ *Ibid.*

¹⁵⁹ Article 14 para. 2 DR SFV.

¹⁶⁰ Article 14 para. 3 DR SFV.

6.4.5 Probationary Period

The following sanctions against club can (fully or partially) be subject to a probationary period:¹⁶¹

- (i) Reduction of the stadium capacity;
- (ii) Closure of a part of the stadium;
- (iii) Stadium ban.

The probationary period is of at least one year and of three years as a maximum. It can be suspended, if the sanctioned club ceases to be subject to the disciplinary power of the SFV, its divisions or sub-divisions.¹⁶² In case an additional infringement is committed during the probationary period, the disciplinary instance competent for this additional infringement shall execute also the initial disciplinary sanction, together with the sanction for the additional infringement.¹⁶³

6.4.6 Entry Into Force

As a principle, suspensions of players enter into force immediately after the respective decision has been rendered by the first instance, and they are enforceable immediately.¹⁶⁴ The respective decisions are published on working days (Monday to Friday) until 12.00 on the website of the SFV (www.football.ch).¹⁶⁵

In particular, suspensions imposed based on a direct red card enter into force automatically.¹⁶⁶ All other disciplinary sanctions enter into force and are enforceable once the deadline of appeal has elapsed.¹⁶⁷ Unless otherwise provided in the DR SFV, legal remedies do not have any suspensive effect.¹⁶⁸

6.4.7 Pardon

In cases of suspensions against players or officials and in cases of boycotts, which are imposed for an undetermined period of time, the concerned person can submit a request for pardon to the Central Board of the SFV after a period of three years.¹⁶⁹

¹⁶¹ Article 26 para. 1 DR SFV.

¹⁶² Article 26 para. 2 DR SFV.

¹⁶³ Article 26 para. 3 DR SFV.

¹⁶⁴ Article 27 para. 1 DR SFV.

¹⁶⁵ Article 27 para. 2 DR SFV.

¹⁶⁶ See Article 78 para. 3 DR SFV, pursuant to which an exclusion of a player from a match through a direct red card automatically triggers a suspension for the immediate next official match.

¹⁶⁷ Article 27 para. 3 DR SFV.

¹⁶⁸ Article 27 para. 4 DR SFV.

¹⁶⁹ Article 28 DR SFV.

6.4.8 Boycott

The DR SFV provides for the possibility to impose a so-called boycott against a club or against a natural person.¹⁷⁰ In essence, a boycott means a ban from any football-related activity within the SFV.

A boycott can be imposed for several reasons. Clubs can request a boycott of one of its members either for unsportsmanlike behaviour,¹⁷¹ in which case the request for boycott must be lodged within 30 days after knowledge has been gained of the respective infringement.¹⁷² Likewise, such a request for boycott can be lodged in case financial obligations towards the club are disrespected.¹⁷³ A boycott can be imposed on a club, upon request, if the club is in default with its financial obligations towards the SFV, a division, a regional federation¹⁷⁴ or towards another club.¹⁷⁵

A failure to respect financial obligations consists of failing to pay the financial contributions as provided by the applicable Statutes or as determined by the competent general assembly, failing to pay fines or other monies determined by the competent organ of a federation. A request for boycott of a club against one of its members is possible only if the statutes of the respective club so provide.¹⁷⁶ In any event, a request for boycott for failing to respect financial obligations can be lodged only after 14 days after an unsuccessful notice of default, and it must be submitted at the latest within one year after the financial obligation has arisen.¹⁷⁷

In case a boycott is imposed against a natural person, this person is prohibited from participating in all official and friendly matches of the SFV and from exercising any activity in a club or an organ of a federation.¹⁷⁸ In addition, no transfer requests are treated if they concern a person under boycott.¹⁷⁹ If a boycott is imposed on a club, the concerned club is banned from participating with all its teams in all official and friendly matches of the SFV and from participating in all other events organized by the SFV, its divisions and sub-divisions. During a boycott, no transfer or registration requests of the concerned club are processed.¹⁸⁰ In addition, in case a boycott is imposed for failing to respect financial obligations, the

¹⁷⁰ Article 29-31 DR SFV. *See also* Article 88 SFV Statutes.

¹⁷¹ For instance, a boycott of an unlimited time has been imposed against a player for a severe physical attack against a referee; *see* the decision of the Control and Disciplinary Commission of the SFV of 1 September 2016.

¹⁷² Article 29 para. 1 DR SFV.

¹⁷³ *Ibid.*

¹⁷⁴ The DR SFV speaks of financial obligations towards a “*region*”, which must however likely be understood as referring to a “*regional federation*”, as the term *region* is nowhere else used in the DR SFV.

¹⁷⁵ Article 29 para. 2 DR SFV.

¹⁷⁶ Article 29 para. 3 DR SFV.

¹⁷⁷ Article 29 para. 4 DR SFV.

¹⁷⁸ Article 30 para. 1 DR SFV.

¹⁷⁹ Article 30 para. 2 DR SFV.

¹⁸⁰ Article 30 para. 3 DR SFV.

competent organ must deduct three points from the first team of the concerned club in its respective championship.¹⁸¹

A boycott against a club or natural person for failing to respect financial obligations ceases to be in effect on the third working day after the due amount has been paid.¹⁸² In case of a boycott for an undetermined period of time based on unsportsmanlike behaviour, a request for pardon pursuant to Article 28 DR SFV can be made.¹⁸³

Requests for boycott fall under the jurisdiction of the Control and Disciplinary Commission of the SFV. Against the respective decisions of the Control and Disciplinary Commission of the SFV, an appeal can be lodged with the SFV Appeals Tribunal. The appeal proceedings are governed by the DR SFV's standard provisions.¹⁸⁴

7. *Disciplinary Regulations: Procedural Rules*

7.1 *Procedures before the Bodies of the SFV*

7.1.1 *General Rules*

a) *Independence and Challenge*

As a general principle, all disciplinary instances within the SFV are independent. The members of a disciplinary body are only bound to the regulations of the SFV, subsidiarily applicable state law (as provided in Article 4 DR SFV¹⁸⁵) and their conscience.¹⁸⁶

Members of a disciplinary instance must recuse themselves if they are personally affected or if their division or sub-division¹⁸⁷ is directly affected by disciplinary proceedings.¹⁸⁸ If the grounds for recusal are subject to dispute, the President of the concerned disciplinary instance or one of his/her Deputies renders a final decision on the recusal.¹⁸⁹

Parties can challenge one or several members of a disciplinary instance in the following circumstances:¹⁹⁰

(i) A ground for recusal exists as described above;

¹⁸¹ Article 30 para. 4 DR SFV.

¹⁸² Article 31 para. 1 DR SFV.

¹⁸³ Article 31 para. 2 DR SFV. *See supra* section 6.4.7.

¹⁸⁴ Article 29 para. 5 DR SFV. *See infra* section 7.1.3 for details concerning the appeal proceedings.

¹⁸⁵ *See supra* section 3.

¹⁸⁶ Article 37 DR SFV.

¹⁸⁷ The DR SFV uses the term “*sub-organisation*”, but it can be assumed that this refers to a sub-division within the DR SFV, as the term sub-organisation is nowhere else used in the DR SFV.

¹⁸⁸ Article 38 para. 1 DR SFV.

¹⁸⁹ Article 38 para. 2 DR SFV.

¹⁹⁰ Article 38 para. 3 DR SFV.

- (ii) A member of a disciplinary instance appears biased in relation to a party or to the matter at stake;
- (iii) A member of a disciplinary instance has acted, in the same matter, already as a witness or expert or he/she will be asked to act as such.

The DR SFV states that a challenge against a member of a disciplinary instance must be submitted “*within five days after having learned of the composition of the disciplinary instance or immediately after having gained knowledge of the ground for challenge*”.¹⁹¹

Unfortunately, this wording is not entirely clear as it leaves open whether a challenge should still be possible after this five day-deadline has elapsed. Should it not be the case, this could lead to unsatisfactory results, in particular if grounds for challenge becomes known only after this deadline. In the author’s view, a reasonable construction of this provision would therefore be as follows: Once the composition of the disciplinary panel is known, there is a five day-deadline to submit a challenge against one of its members. After this deadline has elapsed, a challenge is still possible if the grounds for challenge become known only then, provided, however, that this challenge is raised immediately. For this, it appears reasonable to apply a time limit of one working day.

In case of a challenge, the President of the relevant instance renders a final decision on the challenge. If the President him-/herself is challenged, a Vice President renders the decision. In case this decision is subject to an appeal, the disciplinary body continues its proceedings, unless the higher instance orders a suspension.¹⁹²

In any event, it is prohibited for parties to disciplinary proceedings to contact members of the disciplinary instance to seek a favourable treatment. Members of the disciplinary instance are obliged to refrain from any private influence.¹⁹³

b) Parties, Notification of Documents, Language

The parties to disciplinary proceedings are defined as follows:¹⁹⁴

- (i) The accused person or the party which is directly affected (club, member of a club, player or official);
- (ii) If a natural person is accused, also that person’s club, unless the club refrains from constituting itself as a party.

A party is considered as directly affected if a disciplinary measure has direct implications on it.¹⁹⁵ In appeal proceedings, also the previous instance is considered a party.¹⁹⁶ All parties can seek legal representation.¹⁹⁷

¹⁹¹ Article 38 para. 4 DR SFV.

¹⁹² Article 38 para. 5 DR SFV.

¹⁹³ Article 38 para. 6 DR SFV.

¹⁹⁴ Article 39 para. 1 DR SFV.

¹⁹⁵ Article 39 para. 2 DR SFV.

¹⁹⁶ Article 39 para. 3 DR SFV.

The disciplinary instances within the SFV correspond via regular mail, fax and/or email.¹⁹⁸ All clubs have to deposit a postal address, electronic address or a fax number with the SFV, to which formal notifications are made. It is also possible to choose a legal domicile.¹⁹⁹ Oral and written disciplinary proceedings are held in one of the official languages of Switzerland,²⁰⁰ i.e. in German, French or Italian.²⁰¹ If a party cannot master one of these languages, it is possible to use the services of an interpreter in oral proceedings, which is appointed by the respective President. The costs for interpretation are borne by the SFV.²⁰²

c) Convocation, Hearings and Provisional Measures

The President convenes his/her own disciplinary instance. However, it is also possible to take circular resolutions.²⁰³

In case a party is questioned in a hearing or if other questioning takes place, minutes are recorded. If required, such questioning can be recorded and archived. All files and records of the proceedings are destroyed five years after the formal closure of the proceedings.²⁰⁴

If a party disturbs the ordinary course of a hearing, a reprimand or, in case of recidivism, a fine of CHF 2,000 can be imposed. It is also possible to exclude a party from a hearing.²⁰⁵ Such measures can, however, only be applied to natural persons. With the exception of a reprimand, all measures must be recorded on the file with a brief motivation. No appeal is possible against such measures.²⁰⁶

The President of a disciplinary body or one of his/her Deputies can issue provisional measures, insofar as this is required for the proper administration of justice or to uphold sporting discipline. It is not required to hear the parties beforehand.²⁰⁷ A provisional measure can be in effect for a maximum period of 60 days only. In exceptional cases, the President or one of his/her Deputies can extend it by 30 days. In any event, the duration of a provisional measure is charged against a final sanction.²⁰⁸ In case a provisional measure is ordered, an appeal can be lodged with the President or one of the Vice-Presidents of the Appeals Tribunal, who will render a final decision.²⁰⁹

¹⁹⁷ Article 46 para. 1 DR SFV.

¹⁹⁸ Article 40 para. 1 DR SFV.

¹⁹⁹ Article 40 para. 2 DR SFV.

²⁰⁰ Article 41 para. 1 DR SFV.

²⁰¹ See Article 4 of the Swiss Constitution. The fourth official language of Switzerland (Romansh) is only very rarely used in formal proceedings.

²⁰² Article 41 para. 2 DR SFV.

²⁰³ Article 42 para. 1 DR SFV.

²⁰⁴ Article 42 para. 2 DR SFV.

²⁰⁵ Article 43 para. 1 DR SFV.

²⁰⁶ Article 43 para. 2 DR SFV.

²⁰⁷ Article 44 para. 1 DR SFV.

²⁰⁸ Article 44 para. 2 DR SFV.

²⁰⁹ Article 44 para. 3 DR SFV.

d) *Time Limits*

All deadlines and time limits run from the second day after the respective communication has been sent, where as the post mark (stamp), the date of the fax sending report or the email transmission is decisive. A deadline or time limit has been complied with if the due procedural act has been performed on the last day of the deadline or, respectively, if the correspondence is received by this day. In case the last day of the deadline is a Saturday, Sunday or a recognized public holiday in the respective Canton of Switzerland, the subsequent working day is considered the last day of the deadline.²¹⁰

Upon reasoned request, deadlines can be extended by the respective President,²¹¹ with the exception of deadlines that are established by Regulation.²¹² All deadlines under the DR SFV are suspended over Easter and Christmas.²¹³

e) *Decisions*

Decisions are taken by a simple majority among the members of the respective panel. No member may refrain from taking a vote. In case of a tied vote, the President has a casting vote.²¹⁴ All members are bound by a strict confidentiality obligation.²¹⁵

Decisions may be published by the Central Secretariat of the SFV.²¹⁶ The divisions and sub-divisions decide independently about a possible publications of the decisions rendered by their respective instances.²¹⁷

7.1.2 *Specific Provisions for Proceedings before the Control and Disciplinary Commission*

Proceedings before the Control and Disciplinary Commission of the SFV (CDC) are initiated *ex officio*, in particular based on official reports or upon notification.²¹⁸ A notification to the CDC is possible only within 10 days after the incident, which shall be notified. Submitting a notification does not grant any legal position as a party nor the right to submit evidence.²¹⁹

As a general rule, the CDC performs a summary analysis of the relevant facts and proceedings are held in writing. The CDC mainly bases its findings on

²¹⁰ Article 47 para. 1 DR SFV.

²¹¹ Article 47 para. 3 DR SFV.

²¹² Article 47 para. 4 DR SFV.

²¹³ See Article 47 para. 5 DR SFV.

²¹⁴ Article 48 para. 1 DR SFV.

²¹⁵ Article 48 para. 2 DR SFV.

²¹⁶ Article 49 para. 1 DR SFV.

²¹⁷ Article 49 para. 2 DR SFV.

²¹⁸ Article 51 para. 1 DR SFV.

²¹⁹ Article 51 para. 2 DR SFV.

official reports, the veracity of which is presumed.²²⁰ Provided that this does not unduly prolong the proceedings, the CDC may take into account additional documents in its possession and conduct evidentiary proceedings.²²¹

The CDC orders a full examination of a case by the concerned division or sub-division in the following cases:²²²

- (i) Assaults against referees and assistant referees;
- (ii) in all other cases where the CDC deems it necessary.

In these cases, the accused person must have the possibility to express her position orally or in writing. The investigating body can take all evidentiary measures available in Appeals proceedings.²²³ Exceptionally, the CDC can itself hold a hearing and question the parties.²²⁴

The CDC renders one of the following decisions:²²⁵

- (i) Closure of the proceedings;
- (ii) Imposition of a disciplinary sanction.

The decision is notified to the concerned parties in writing by regular mail, fax or email, whereas a publication on the Internet²²⁶ remains reserved.²²⁷ In case disciplinary sanctions are imposed, the decision contains a short summary motivation, an operative part as well as an instruction on the right to appeal. The instruction on the right to appeal must designate the legal remedy, the appeal instance, the applicable deadline, the required advance of costs and the relevant payment details.²²⁸ In case a decision is final and not subject to an appeal, this must be expressly stated in the decision.²²⁹

In cases where a disciplinary sanction is imposed, the costs of the proceedings and of a possible investigation are charged to the party on which the sanction is imposed. In all other cases, the SFV bears the procedural costs,²³⁰ whereas costs, which are triggered by the abusive behaviour of a party can be charged to this party.²³¹

²²⁰ However, this principle does not fully apply if it is stated in a report itself that it may not be entirely exhaustive or fully accurate; *see* the decision of the Control and Disciplinary Commission of the SFV of 2 March 2016, at para. 6, according to which the fact established in a security report cannot be considered "*tel quel*" as accurate.

²²¹ Article 52 DR SFV.

²²² Article 53 para. 1 DR SFV.

²²³ Article 53 para. 2 DR SFV.

²²⁴ Article 53 para. 3 DR SFV.

²²⁵ Article 54 para. 1 DR SFV.

²²⁶ Article 27 para. 1 DR SFV; *see supra* section 6.4.6.

²²⁷ Article 54 para. 2 DR SFV.

²²⁸ Article 54 para. 3 DR SFV.

²²⁹ Article 54 para. 4 DR SFV.

²³⁰ Article 55 para. 1 DR SFV.

²³¹ Article 55 para. 2 DR SFV.

7.1.3 *Specific Provisions for Proceedings before the Appeals Tribunal of the SFV*

a) *General Remarks*

The Appeals Tribunal of the SFV (AT) has jurisdiction to deal with Appeals against all decisions of the CDC, of the Technical Division and of the Referees' Commission, insofar as the respective rules do not designate a decision as final.²³²

An Appeal is possible against decisions of the CDC or of another instance of the SFV, except for the following decisions:²³³

- (i) A reprimand;
- (ii) Suspensions for one match day and in cases of the automatic suspension following a direct red card;²³⁴
- (iii) Sanctions or measures imposed for disturbing a hearing;²³⁵
- (iv) Decisions concerning the results of matches of the Swiss Cup competition;
- (v) All other cases in which the applicable Regulations qualify a decision as final.

Where a previous instance imposes several disciplinary measures, an appeal is possible if already one of the disciplinary measures can be appealed. In such a case, the AT reviews the entirety of the measures imposed.²³⁶

If an appeal is filed, the AT President immediately notifies the Central Secretariat, the previous hearing body and the committee of the division or sub-division concerned.²³⁷

b) *The Right to Appeal*

A party has a right to appeal if it is directly affected by the decision under appeal.²³⁸ In case a member, player or official of a club is affected, the respective club can lodge an Appeal only with the written consent of the affected person.²³⁹ An appeal submitted by a club must be duly signed by a person having signatory power in accordance with the statutes of the club.²⁴⁰

²³² Article 56 para. 1 DR SFV.

²³³ Article 56 para. 2 DR SFV.

²³⁴ See Article 78 para. 3 DR SFV, pursuant to which an exclusion of a player from a match through a direct red card automatically triggers a suspension for the immediate next official match.

²³⁵ See Article 43 DR SFV and *supra* section 7.1.1c).

²³⁶ Article 56 para. 3 DR SFV.

²³⁷ Article 60 para. 4 DR SFV.

²³⁸ Article 57 para. 1 DR SFV.

²³⁹ Article 57 para. 2 DR SFV.

²⁴⁰ Article 57 para. 3 DR SFV.

c) *Suspensive Effect*

As a general rule, an appeal has a suspensive effect, with the exception of the first official game following the decision about a suspension.²⁴¹ The AT President or one of the Vice Presidents can lift the suspensive effect of the appeal.²⁴²

d) *Deadline and Appeal Fees*

The appeal must be submitted, in written form and with a motivation, within five days with the Central Secretariat of the SFV, for the attention of the AT.²⁴³ Within this deadline, an advance of costs in the amount of CHF 500 must be paid. During the proceedings, additional advances of costs may be charged if it turns out that the first advance will not be sufficient to cover all procedural costs.²⁴⁴ The deadline to submit an appeal cannot be extended. Failure to meet this deadline results in the appeal not being heard.²⁴⁵

e) *Content of the Appeal and of the Answer to the Appeal*

Appeals must contain a request for relief, a motivation and a designation of all the exhibits and evidence, which must equally be submitted insofar as possible.²⁴⁶ Furthermore, the decision under appeal must equally be submitted and, if applicable, the envelope in which this decision was notified.²⁴⁷ In case there are formal flaws in this respect, an additional deadline of 3 days can be granted by the AT President within which these flaws must be remedied.²⁴⁸

If an appeal is submitted in due time and form, the AT President forwards it to the counterparty/counterparties. The President determines a time limit, within which the Answer to the Appeal must be submitted. Within the same deadline, the previous instance must produce the entire case file.²⁴⁹ Subsequently, the AT President can set a further deadline for the Appellant to submit a *replica*.

²⁴¹ This exception does not apply in cases of an automatic suspension following a direct red card; Article 58 para. 1 DR SFV. See also Article 78 para. 3 DR SFV, pursuant to which an exclusion of a player from a match through a direct red card automatically triggers a suspension for the immediate next official match.

²⁴² Article 58 para. 2 DR SFV.

²⁴³ Article 59 para. 1 DR SFV.

²⁴⁴ Article 59 para. 2 DR SFV.

²⁴⁵ Article 59 para. 3 DR SFV.

²⁴⁶ Article 60 para. 1 DR SFV.

²⁴⁷ Article 60 para. 2 DR SFV.

²⁴⁸ Article 60 para. 3 DR SFV.

²⁴⁹ Article 61 para. 1 DR SFV.

f) *Evidentiary Proceedings*

The AT takes evidence in relation to facts, which are relevant for its decision. The parties have the right to submit evidentiary requests.²⁵⁰

In particular, the following means of evidence are possible:²⁵¹

- (i) Official reports, the veracity of which is presumed;
- (ii) Files of the CDI or of another previous instance;
- (iii) Examination of witnesses or experts;
- (iv) Questioning of the parties;
- (v) Visual inspection;
- (vi) Other files or documents;
- (vii) Expert opinions;
- (viii) Recordings (audio and video).

The AT President decides about the taking and consideration of evidence. If further evidentiary requests are submitted after the evidentiary proceedings, the AT immediately renders a final decision on these requests.²⁵² With regard to the questioning of witnesses, it must be noted that as a principle, all persons subject to the DR SFV must abide by a request to them to act as witness, and they must produce all relevant documents in their possession.²⁵³ The DR SFV also provides for the possibility of anonymous witness statements.²⁵⁴

g) *Conduct of the Procedure*

As a general rule, Appeal proceedings are conducted orally.²⁵⁵ The parties participate in the proceedings until the deliberations.²⁵⁶ Upon a reasoned request, the AT President can allow a party not to participate. The AT can also decide or deliberate in the absence of a party.²⁵⁷

In general, each party has the right to make two pleadings, whereas the AT President determines their order.²⁵⁸ Furthermore, all parties have the right to access the file or make copies at their own expense.²⁵⁹

²⁵⁰ Article 64 para. 1 DR SFV.

²⁵¹ Article 64 para. 2 DR SFV.

²⁵² Article 64 para. 3 DR SFV.

²⁵³ Article 65 para. 1 DR SFV. *See also* Article 65 para. 2 DR SFV, pursuant to which witnesses must specifically be informed about the disciplinary consequences of a false witness statement.

²⁵⁴ *See* Article 65bis and 65ter DR SFV.

²⁵⁵ Article 67 para. 1 DR SFV. In appeal proceedings in front of a Single Judge or, in general, if no evidentiary proceedings are required, the proceedings can also be held in writing; Article 68 DR SFV.

²⁵⁶ Article 67 para. 2 DR SFV.

²⁵⁷ Article 67 para. 3 DR SFV.

²⁵⁸ Article 67 para. 4 DR SFV.

²⁵⁹ Article 66 DR SFV.

h) Scope of Review and Decision of the Appeals Tribunal

The AT carries out a *de novo* review of the facts and the law.²⁶⁰ The AT decides either to confirm, modify or annul the decision under appeal, whereas the AT is not bound by the requests for relief of the parties.²⁶¹ A *reformatio in peius*, i.e. a modification of the decision under appeal to the detriment of the appealing party is also possible.²⁶² In case of serious procedural flaws, the AT can also remit the case back to the previous instance.²⁶³

The decision of the AT is notified orally with a short motivation. At the latest on the subsequent day, the operative part of the decision must be notified in writing (via regular mail, email or fax).²⁶⁴ The written reasoning of the decision must be delivered within 30 days or, respectively, within 60 days in written proceedings.²⁶⁵

Decisions of the AT enter into force upon written notification of the operative part.²⁶⁶ They are final, with the reservation of the possibility to lodge an Appeal before the Court of Arbitration for Sport pursuant to the respective provisions of the SFV Statutes.²⁶⁷

i) Costs

The costs of the proceedings consist of the expenses of the AT, calculated on a flat-rate basis. They have to be borne by the parties in accordance with the outcome of the decision and based on reasonable discretion.²⁶⁸ Costs, which have been caused by the abusive behaviour of a party, can be charged directly to the respective party.²⁶⁹

7.1.4 Correction and Revision

Clerical mistakes and other obvious mistakes in a decision can be corrected at all times by the competent instance.²⁷⁰ Proceedings which have been formally closed can be re-opened upon request or by office (so-called *Revision*) if significant new facts or evidence are discovered, which have not been known at the moment

²⁶⁰ Article 70 para. 1 DR SFV.

²⁶¹ Article 70 para. 2 DR SFV.

²⁶² Article 70 para. 3 DR SFV.

²⁶³ Article 70 para. 4 DR SFV.

²⁶⁴ Article 72 para. 1 DR SFV. See Article 72 para. 2 DR SFV for the required content of the operative part.

²⁶⁵ Article 72 para. 3 and 4 DR SFV.

²⁶⁶ Article 73 DR SFV.

²⁶⁷ Article 56 para. 4 DR SFV; see *infra* section 9.

²⁶⁸ Article 71 para. 1 DR SFV.

²⁶⁹ Article 71 para. 3 DR SFV.

²⁷⁰ Article 74 DR SFV.

when the respective decision was taken.²⁷¹ A request for Revision must be lodged with the instance, which rendered the respective decision, within 10 days after having gained knowledge of the pertinent facts, however at the latest within 4 years after the entry into force of the decision.²⁷²

7.2 *Procedures before the Bodies of the SFL*

On the level of the SFL, two regulations are relevant for disciplinary proceedings. General procedural rules are established in the Procedural Regulations for Instances of the SFL (PR SFL).²⁷³ In addition to this, more specific provisions for disciplinary proceedings are established in the Regulations on Disciplinary Proceedings of the SFL (RDP SFL).²⁷⁴

The subsequent considerations give an overview on the most important provisions contained in each of these Regulations. Since many of these provisions are, in essence, similar to the rules existing at SFV level, they are presented in a rather summary way.

7.2.1 *General Procedural Rules*

a) *Procedural Principles*

The PR SFL establishes general procedural principles, which apply (subject to more specific provisions established in other Regulations²⁷⁵) to proceedings in front of all instances of the SFL.²⁷⁶ Special provisions concerning Appeal proceedings remain reserved.²⁷⁷

The general procedural rules of the PR SFL concern similar matters as established in the DR SFV for proceedings within the SFV. They establish fundamental principles, such as the principle of independence for disciplinary instances,²⁷⁸ and they define certain organizational matters.²⁷⁹ They furthermore

²⁷¹ Article 75 para. 1 DR SFV.

²⁷² Article 75 para. 2 DR SFV.

²⁷³ German: *Verfahrensreglement für die Rechtsanwendungsbehörden der SFL*.

²⁷⁴ German: *Reglement über das Disziplinarverfahren der SFL*.

²⁷⁵ Article 1 para. 1 PR SFL.

²⁷⁶ The SFL has established the following instances, to which the PR SFL applies: The Licence Commission, the Appeal Instance for Licenses, the Disciplinary Judge, the President of the Disciplinary Commission acting as Single Judge, the Disciplinary Commission, the Transfer Commission and the Appeals Tribunal; *see* Article 2 para. 1 PR SFL.

²⁷⁷ Article 1 para. 2 PR SFL.

²⁷⁸ Article 3 PR SFL.

²⁷⁹ For instance, it is not possible to be, at the same time, a member of two or more legal instances of the SFL (Article 5 PR SFL). The PR SFL also define the number of members and the composition of the legal instances of the SFL; *see* Article 6 and 7 PR SFL.

define how proceedings are to be conducted,²⁸⁰ the language of the proceedings,²⁸¹ and how decisions are taken.²⁸² Moreover, similar to the DR SFV, all members of the legal instances of the SFL are bound by strict confidentiality obligations,²⁸³ whereas a publication of decisions is possible in defined circumstances.²⁸⁴ Finally, the general procedural rules also define how decisions and files shall be archived.²⁸⁵

b) Conduct of Proceedings

The PR SFL contains several provisions defining how proceedings in front of instances of the SFL shall be conducted.²⁸⁶ Again, similar to the principles applicable to proceedings on the SFV level, these provisions concern, for instance, how an instance of the SFL must examine its jurisdiction,²⁸⁷ when its members must recuse themselves,²⁸⁸ how a party can challenge a member of an instance²⁸⁹ and how such challenges must be dealt with.²⁹⁰ The instances within the SFL can equally issue all types of provisional measures they deem necessary.²⁹¹

c) Parties and Fundamental Rights

In proceedings before legal instances of the SFL, every natural person or legal entity whose rights or obligations could be directly affected by a decision that needs to be rendered, or each person that would have a right to lodge an Appeal against such a decision is considered as a party.²⁹²

The PR SFL awards fundamental procedural rights to all parties, such as the right to equal treatment and the right to be heard, including the right to have access to the file, the right to present evidence, to participate in evidentiary proceedings and to receive a motivated decision.²⁹³ Furthermore, every party can be represented by a jurist, lawyer or by a qualified auditor.²⁹⁴ Clubs can furthermore be represented by a member of their organs or by an employee.²⁹⁵

²⁸⁰ Article 9 PR SFL.

²⁸¹ Proceedings are held in German, French or Italian; Article 12 para. 1 PR SFL.

²⁸² Article 10 PR SFL.

²⁸³ Article 11 para. 1 PR SFL.

²⁸⁴ See Article 11 para. 3 and 4 PR SFL.

²⁸⁵ Article 13 PR SFL.

²⁸⁶ Article 14-21 PR SFL.

²⁸⁷ Article 15 PR SFL.

²⁸⁸ Article 16 PR SFL.

²⁸⁹ Article 18 PR SFL.

²⁹⁰ Article 19 and 20 PR SFL.

²⁹¹ Article 21 PR SFL.

²⁹² Article 22 PR SFL.

²⁹³ Article 24 PR SFL.

²⁹⁴ Article 25 para. 1 PR SFL.

²⁹⁵ Article 25 PR SFL.

d) *Deadlines and Submissions*

All parties must take the required procedural actions within the applicable deadlines, which can either be established by Regulation or by the respective instance.²⁹⁶ A deadline is deemed to have been complied with if a submission is filed, on the last day of the deadline, with a Swiss post office, if it has been received by the competent SFL instance on its fax machine or in the inbox of the official email address.²⁹⁷ SFL disciplinary bodies deem that parties have complied with a deadline if a submission is made, within the deadline, to the wrong instance of the SFL.²⁹⁸

Also for proceedings on SFL level, one must note that deadlines established by regulation cannot be prolonged.²⁹⁹ Deadlines that have been set by an SFL instance can be prolonged, provided that prior to the expiry of the deadline, a reasoned request is made.³⁰⁰

Finally, in proceedings before SFL instances, it is also possible that a missed deadline is restored if a party can demonstrate that it (or its representative), without being at fault, was prevented from acting within the applicable deadline.³⁰¹ The request to restore a deadline must be made within 5 days after the reason, which prevented the party from acting, has ceased to exist.³⁰²

Submissions must be made in one of the official languages of proceedings before SFL instances.³⁰³ They must contain the requests for relief, the relevant facts, evidence and evidentiary requests as well as a legal reasoning. Evidence which is already at the disposal of the parties must be attached to the submission, insofar as possible. Finally, submissions must be duly signed.³⁰⁴

In case of formal flaws (*e.g.* missing signature, missing Power of Attorney, etc.), a short deadline is imposed to correct the flaw, together with the warning that in case of failure to remedy the flaw, the submission will not be admitted.³⁰⁵ In case a submission is not filed in one of the official languages, it is sent back to the filing party together with a request for translation and an identical warning.³⁰⁶

²⁹⁶ Article 29 para. 1 PR SFL.

²⁹⁷ Article 29 para. 2 PR SFL.

²⁹⁸ Article 29 para. 3 PR SFL.

²⁹⁹ Article 31 para. 1 PR SFL.

³⁰⁰ Article 31 para. 2 PR SFL.

³⁰¹ Article 32 para. 1 PR SFL.

³⁰² Article 32 para. 2 PR SFL. In this respect, one must note that a restoration of a deadline is only possible if the procedural action, which shall be taken within the restored deadline, can still have an influence on the outcome of the proceedings.

³⁰³ Article 33 PR SFL; *see also* Article 12 para. 1 PR SFL.

³⁰⁴ Article 33 PR SFL. *See, in this respect,* the decision of the Appeals Tribunal of the SFL of 22 April 2016, according to which the Appeals Tribunal did not hear an appeal because it was not duly signed by the person(s) having signatory power.

³⁰⁵ Article 34 para. 1 PR SFL.

³⁰⁶ Article 34 para. 2 PR SFL.

e) *Evidentiary Proceedings*

The PR SFL contains detailed provisions concerning the taking of evidence in proceedings before the SFL instances.³⁰⁷ These provisions address topics such as the permitted means of evidence,³⁰⁸ minutes of evidentiary proceedings,³⁰⁹ the parties' duty to cooperate,³¹⁰ rules concerning the questioning of parties or witnesses,³¹¹ the possibility to produce anonymized witness statements,³¹² expert opinions,³¹³ document production³¹⁴ and similar.³¹⁵

f) *Deliberation, Decision and Costs*

The deliberations among the members of an SFL instance take place under exclusion of the parties and, as a principle, immediately after the oral hearing.³¹⁶ It is possible that the operative part is communicated orally with a short reasoning.³¹⁷ In case no evidentiary proceedings are necessary, it is also possible to pass a decision by way of circular.³¹⁸

All parties invoking an instance of the SFL must pay an advance of costs in the amount of CHF 1,000.³¹⁹ In principle, the SFL instance determines the costs of the proceedings.³²⁰ In this respect, it must be noted that in disciplinary proceedings, a club is jointly and severally liable to pay the costs charged to its members, players or officials.³²¹

7.2.2 *Specific Rules for Disciplinary Proceedings*

The Regulations on Disciplinary Proceedings of the SFL (RDP SFL) contain only relatively few provisions altering or amending the above-described regulatory

³⁰⁷ Article 35-49 PR SFL.

³⁰⁸ Permitted means of evidence include: questioning of parties and witnesses, expert opinions, documents, on-site inspection, recordings (audio and video) and all other relevant means of evidence; Article 36 para. 1 PR SFL. The competent instance may refrain from accepting irrelevant evidence; Article 36 para. 2 PR SFL.

³⁰⁹ Article 37 PR SFL.

³¹⁰ Article 38 PR SFL.

³¹¹ Article 39-41 PR SFL.

³¹² Article 42-43 PR SFL.

³¹³ Article 44 PR SFL.

³¹⁴ Article 45 PR SFL.

³¹⁵ See, for instance, Article 46 PR SFL concerning on-site inspection, Article 47 PR SFL concerning audio and video recordings as well as Article 48 PR SFL concerning the closure of evidentiary proceedings.

³¹⁶ Article 51 para. 1 PR SFL.

³¹⁷ Article 51 para. 1 PR SFL.

³¹⁸ Article 51 para. 2 PR SFL.

³¹⁹ Article 53 para. 1 PR SFL.

³²⁰ Article 52 para. 1 PR SFL.

³²¹ Article 52 para. 2 PR SFL.

framework specifically for disciplinary proceedings.³²² As mentioned, for all aspects not covered in the RDP SFL, the general regulatory framework for proceedings before SFL instances applies.³²³

At the outset, the RDP SFL reiterates that disciplinary instances of the SFL can only impose the sanctions as provided in the substantive rules of the DR SFV.³²⁴ With regard to procedural rules, the following considerations highlight the most important specificities of disciplinary proceedings within the SFL.

a) *Deadline to Initiate Proceedings*

In principle, first-instance disciplinary bodies of the SFL can initiate proceedings *ex officio* or upon notification.³²⁵ However, there are deadlines that have to be complied with: The Disciplinary Judge for Match Operations, for instance, does not enter into matters, which are notified to him/her or about which he/she gains knowledge more than one business day after the respective incident.³²⁶ All other disciplinary instances do not enter into cases, which are notified to them and/or about which they gain knowledge more than 5 business days after the respective incident.³²⁷ These deadlines, however, do not apply in cases in which, in the ordinary course of events, an instance could not have gained knowledge of the relevant incidents within the aforementioned time limits.³²⁸

b) *Disciplinary Orders*

Under the RDP SFL, Disciplinary Judges of the SFL can issue a so-called Disciplinary Order, if the facts appear sufficiently clear and if the sanction to be imposed still falls under the jurisdiction of the Disciplinary Judge.³²⁹ In other words, Disciplinary Orders can be rendered as follows.

In Match Operations, a Disciplinary Order can impose a reprimand, a suspension of up to four matches and/or a fine of up to CHF 2,000 against a player, a coach or an assistant coach.³³⁰ In security matters, by means of a Disciplinary Order, a reprimand or a fine of up to CHF 2,000 can be imposed against natural persons and a fine of up to CHF 10,000 against clubs.³³¹

³²² See, in particular, Article 8-21bis RDP SFL.

³²³ Article 8 para. 1 RDP SFL; see also Article 1 para. 1 RDP SFL.

³²⁴ Article 8 para. 2 RDP SFL; see *supra* section 6.3.

³²⁵ Article 9 para. 1 RDP SFL. The Committee of the SFL, all other instances and Commissions as well as the Secretariat of the SFL must transmit, without being requested to do so, all the referee reports and other evidence, which may indicate a disciplinary infringement, to the competent instance of the SFL; Article 9 para. 2 RDP SFL.

³²⁶ Article 10 para. 1 RDP SFL.

³²⁷ Article 10 para. 2 RDP SFL.

³²⁸ Article 10 para. 3 RDP SFL.

³²⁹ Article 13 para. 1 RDP SFL.

³³⁰ Article 3 para. 2 DR SFL.

³³¹ Article 4 para. 2 DR SFL.

A Disciplinary Order is rendered without a hearing or other further procedural steps, *i.e.* in principle “unilaterally” by the Disciplinary Judge. It must contain the identity of the person concerned, the relevant facts, the legal assessment of these facts, the sanction imposed, and a ruling on costs.³³² A Disciplinary Order must also indicate the available legal remedies, and it must mention that in case no legal remedy is taken, the Order becomes legally binding.³³³

c) *Objections Against Disciplinary Orders*

While Disciplinary Orders rendered in security matters are final,³³⁴ Disciplinary Orders in Match Operations can be subject to a so-called objection.³³⁵ The player, coach, assistant coach or club concerned can raise such an objection within 2 days as from notification of an order.³³⁶ The objection must be lodged in writing with the Disciplinary Judge.³³⁷ The Disciplinary Judge must then immediately transfer the case file to the President of the Disciplinary Commission.³³⁸ An objection has a suspensive effect, with the exception of the suspension for the first game following a decision imposing such a suspension.³³⁹ However, the President of the Disciplinary Commission can also lift the suspensive effect entirely in case of an evident abuse of the right to file an objection.³⁴⁰

In case an admissible objection is filed, the President of the Disciplinary Commission, a Vice President or another member of the Disciplinary Commission designated by its President, renders a decision on the objection. If required, further evidence may be taken.³⁴¹ The person rendering a decision on the objection is not bound by the facts and the legal assessment contained in the Disciplinary Order,³⁴² and within the competence of the President of the Disciplinary Commission, a sanction can be increased.³⁴³ In case the President of the Disciplinary Commission (or, respectively, the person adjudicating the objection) concludes that the warranted sanction surpasses the respective competence, the case must be transferred to the Disciplinary Commission as a whole.³⁴⁴

³³² Article 13 para. 2 RDP SFL.

³³³ Article 13 para. 4 RDP SFL; *see also* Article 16 RDP SFL, which states that if no admissible Objection is raised against a Disciplinary Order, such Order shall be binding and enforceable.

³³⁴ In practice, this means that such decisions would have to be appealed directly before CAS; *see infra* section 9.

³³⁵ Article 14 para. 1 RDP SFL.

³³⁶ Article 14 para. 2 RDP SFL.

³³⁷ Article 14 para. 3 RDP SFL.

³³⁸ Article 15 para. 1 RDP SFL.

³³⁹ Article 17 para. 1 RDP SFL.

³⁴⁰ Article 17 para. 2 RDP SFL; *see also* Article 17 para. 3 RDP SFL, according to which the provisions of the PR SFL concerning suspensive effect find application *per analogiam*.

³⁴¹ Article 19 para. 1 RDP SFL.

³⁴² Article 19 para. 3 RDP SFL.

³⁴³ Article 19 para. 5 RDP SFL.

³⁴⁴ Article 19 para. 6 RDP SFL.

7.2.3 Appeal Proceedings within the SFL

In principle, decisions of the Disciplinary Commission and of the respective Single Judges are subject to an Appeal in front of the Appeals Tribunal of the SFL,³⁴⁵ with the exception of the following decisions:³⁴⁶

- (i) Decisions, which are designated as final in the applicable regulations;
- (ii) A reprimand, a fine of up to CHF 2,000 against natural persons, a fine of up to CHF 10,000 on clubs, a suspension of one game or sanctions imposed for a yellow card;
- (iii) The closure of proceedings;
- (iv) The decision to lift the suspensive effect in case an objection is filed against a Disciplinary Order.

In principle, the PR SFL award the right to lodge an appeal against a decision to every natural person or legal entity that is directly affected by a decision and that has a legitimate interest in modifying or annulling the decision.³⁴⁷ An appeal must be lodged within five days as of notification of the underlying decision.³⁴⁸ Within the same deadline, the advance of costs in the amount of CHF 1,000³⁴⁹ must be paid.³⁵⁰

The following grounds for Appeal can be invoked:

- (i) A violation of the law;³⁵¹
- (ii) The previous instance exceeded or abused its discretion;³⁵²
- (iii) A violation of statutory or regulatory provisions;³⁵³
- (iv) The previous instance has incorrectly established the facts of the case.³⁵⁴
- (v) Visual inspection;
- (vi) Other files or documents;
- (vii) Expert opinions;
- (viii) Recordings (audio and visual).

The appeal must contain the decision under appeal, a motivation, the requests for relief and, if applicable, new facts and new evidence and/or evidentiary requests. It is, however, not admissible to present new facts or evidence if the Appellant abusively omitted to present these facts or this evidence before the previous instance.³⁵⁵ The appeal cannot contain requests for relief different from

³⁴⁵ Article 7 para. 1 RDP SFL.

³⁴⁶ In practice, this means that such decisions have to be appealed directly before CAS; *see infra* section 9.

³⁴⁷ Article 58 para. 1 PR SFL.

³⁴⁸ Article 59 para. 1 PR SFL. Appeals against a denial of justice are possible at all times; Article 59 para. 3 PR SFL.

³⁴⁹ Article 53 para. 1 PR SFL.

³⁵⁰ Article 59 para. 2 PR SFL.

³⁵¹ Article 60 para. 1 PR SFL.

³⁵² *Ibid.*

³⁵³ Article 60 para. 2 PR SFL.

³⁵⁴ Article 60 para. 3 PR SFL.

³⁵⁵ Article 61 para. 1 PR SFL.

those submitted before the previous instance.³⁵⁶ In principle, an appeal has a suspensive effect, unless for the first official game following a decision imposing a suspension.³⁵⁷ For important sporting reasons, the instance rendering the decision under Appeal and/or the Appeal instance can lift the suspensive effect of a (possible) Appeal.³⁵⁸

Once a valid and admissible Appeal is filed, the Appeal instance reports to the previous instance and sets a deadline of 5 days, within which the previous instance may file its comments and within which it must produce the case file.³⁵⁹ The previous instance may also re-consider its decision within the deadline to submit its comments.³⁶⁰

The Appeal instance renders a new decision on the matter at stake³⁶¹ within 10 days after the deadline to file submissions or comments has expired.³⁶² It can modify the decision under Appeal to the detriment of the Appellant, however only if it notifies this to the Appellant beforehand and gives him a deadline to file his comments or withdraw the Appeal.³⁶³

7.2.4 Revision

Instances of the SFL revise their decisions *ex officio* or upon request of a party if new significant facts or evidence is discovered, unless these could have been invoked already in the proceedings that led to the respective decision.³⁶⁴ However, such a revision is not possible if a decision has already been enforced and if a new decision would not have any legal or practical effect.³⁶⁵

A request for revision must be lodged within 10 days as from gaining knowledge of the new facts or evidence with the instance that has rendered the respective decision, however at the latest within one year after the decision at stake has entered into force.³⁶⁶ Exceptionally, such a request can also be lodged after one year, provided that a disciplinary sanction has been imposed which at that time has not yet been executed.³⁶⁷

³⁵⁶ Article 61 para. 3 PR SFL.

³⁵⁷ Article 63 para. 1 PR SFL.

³⁵⁸ Article 63 para. 2 PR SFL. In case the previous instance lifts the suspensive effect, this effect can again be granted by the President of the appeal panel; Article 63 para. 3 PR SFL.

³⁵⁹ If no comments are submitted by the previous instance, it is presumed that the previous instance renounces to its respective right; Article 64 para. 2 PR SFL.

³⁶⁰ Article 64 para. 3 PR SFL.

³⁶¹ Article 66 para. 1 PR SFL.

³⁶² Article 67 para. 1 PR SFL.

³⁶³ Article 65 PR SFL.

³⁶⁴ Article 68 para. 1 PR SFL.

³⁶⁵ Article 68 para. 2 PR SFL.

³⁶⁶ Article 68 para. 3 PR SFL.

³⁶⁷ Article 68 para. 4 PR SFL.

8. *Enforcement*

The disciplinary regulations of the SFV or the SFL contain relatively few provisions dealing specifically with the enforcement of decisions. The subsequent considerations therefore highlight only the fundamental principles and selected particular issues.

As a general rule, disciplinary decisions are enforceable once they enter into legal effect.³⁶⁸ Decisions of the disciplinary instances of the SFV are enforced by the Central Secretariat of the SFV.³⁶⁹ It can equally assign the enforcement to a division or sub-division.³⁷⁰ Decisions rendered by instances of the divisions or sub-divisions are enforced directly by the respective division or sub-division.³⁷¹

When a suspension is imposed, the suspension is enforced specifically within a defined competition, *e.g.* within the national championship or within the Swiss Cup competition.³⁷² Suspended officials may attend a match only on the stands/tribune. The official must not enter the technical zone in a stadium nor the locker room of the team.³⁷³ Finally, the DR SFV establishes that in case a fine (or similar financial sanction) is imposed on a member, player or official of a club, the clubs are jointly and severally liable for the payment thereof.³⁷⁴

9. *Appeals to the Court of Arbitration for Sport (CAS)*

For all civil law disputes in matters between the SFV, one of its divisions, a sub-division, club, member, player and/or an official, the jurisdiction of the ordinary State Courts is excluded in favour of arbitration before the Court of Arbitration for Sport (CAS) in Lausanne.³⁷⁵ This general arbitration clause applies also to provisional measures.³⁷⁶ It is expressly prohibited, under threat of disciplinary sanctions,³⁷⁷ to seek recourse from a State Court, unless this allowed by mandatory state law or FIFA Regulations.³⁷⁸

All decisions of the SFV, its divisions and sub-divisions can only be appealed against before CAS. The deadline to submit a Statement of Appeal³⁷⁹ is 10 days as from the notification of the decision under Appeal.³⁸⁰ As a principle, an

³⁶⁸ Article 83 DR SFV.

³⁶⁹ Article 76 para. 1 DR SFV.

³⁷⁰ Article 76 para. 2 DR SFV.

³⁷¹ Article 76 para. 3 DR SFV.

³⁷² Article 77 para. 1 and 2 DR SFV. *See also* Article 80 DR SFV.

³⁷³ Article 81 DR SFV.

³⁷⁴ Article 85 DR SFV.

³⁷⁵ Article 92 para. 1 SFV Statutes.

³⁷⁶ Article 92 para. 2 and Article 93 para. 4 SFV Statutes.

³⁷⁷ Article 95 para. 2 SFV Statutes.

³⁷⁸ Article 95 para. 1 SFV Statutes.

³⁷⁹ *See* Article R47 of the Code of Sports-related Arbitration and Mediation (CAS-Code).

³⁸⁰ Article 93 para. 1 SFV Statutes.

Appeal before CAS has no suspensive effect, unless such effect is awarded by CAS.³⁸¹

Appeal proceedings before CAS are governed by the Code of Sports-related Arbitration and Mediation (CAS-Code).³⁸² Only CAS Arbitrators who have their domicile in Switzerland can be competent to hear such disputes submitted to CAS.³⁸³

10. Summary and Conclusion

Disciplinary proceedings within the Swiss Football Association (SFV) and its divisions, notably within the Swiss Football League (SFL), are subject to a detailed set of regulations.

Most importantly, the competencies to deal with, and possibly sanction, disciplinary infringements are separated between the SFV and the SFL. While the former mainly deals with disciplinary infringements on an amateur level and for women's football, the latter's judicial bodies are competent to hear disciplinary matters arising out of professional male football in Switzerland.

For this reason, there are a relatively high number of different judicial bodies within the SFV and, in particular, within the SFL. In addition, the various judicial bodies have again separated competencies for various types of disciplinary infringements. This may make the identification of the competent instances difficult, and it requires particular attention in practice. The same applies when a legal challenge shall be brought against a disciplinary decision, in particular because certain decisions of lower instances may already be defined as final and not subject to further legal remedies within the SFV or, respectively, the SFL. In addition, the procedural rules in front of the various instances may be subject to specificities in certain respects, which again requires particular attention from a practical perspective.

On the other hand, the substantive disciplinary rules are defined in a uniform way in Regulations of the SFV, and they apply in principle to all levels and types of Swiss football. Therefore, the substantive assessment of disciplinary infringements is uniform, and it conforms to the most common disciplinary rules existing in other countries or on an international level. A particularity of Swiss football, however, is the possibility to impose a so-called "boycott" against a club or a player. A boycott essentially consists of a ban to take part in any football-related activity, and it can be imposed, *e.g.*, for a failure to respect certain financial obligations or for grossly unsportsmanlike behaviour.

Finally, all final decisions rendered in disciplinary matters within the SFV or the SFL are subject to appeal before the Court of Arbitration for Sport (CAS).

³⁸¹ Article 93 para. 3 SFV Statutes; *see*, in this respect, Article R37 CAS-Code, where the applicable prerequisites for provisional measures and/or a stay of execution are codified.

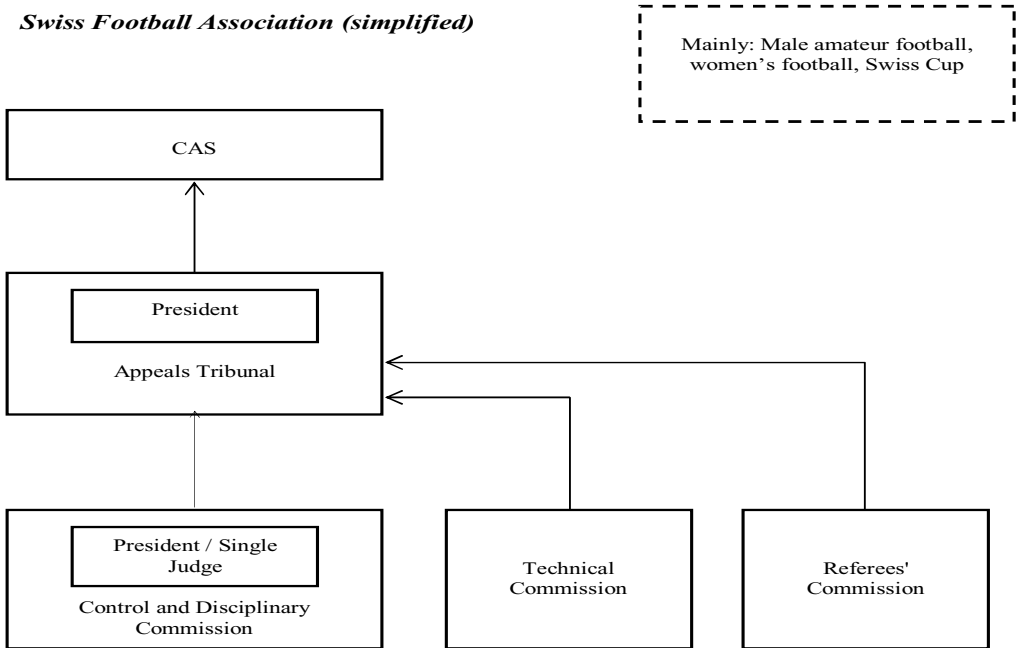
³⁸² Article 94 para. 1 SFV Statutes.

³⁸³ Article 94 para. 2 SFV Statutes.

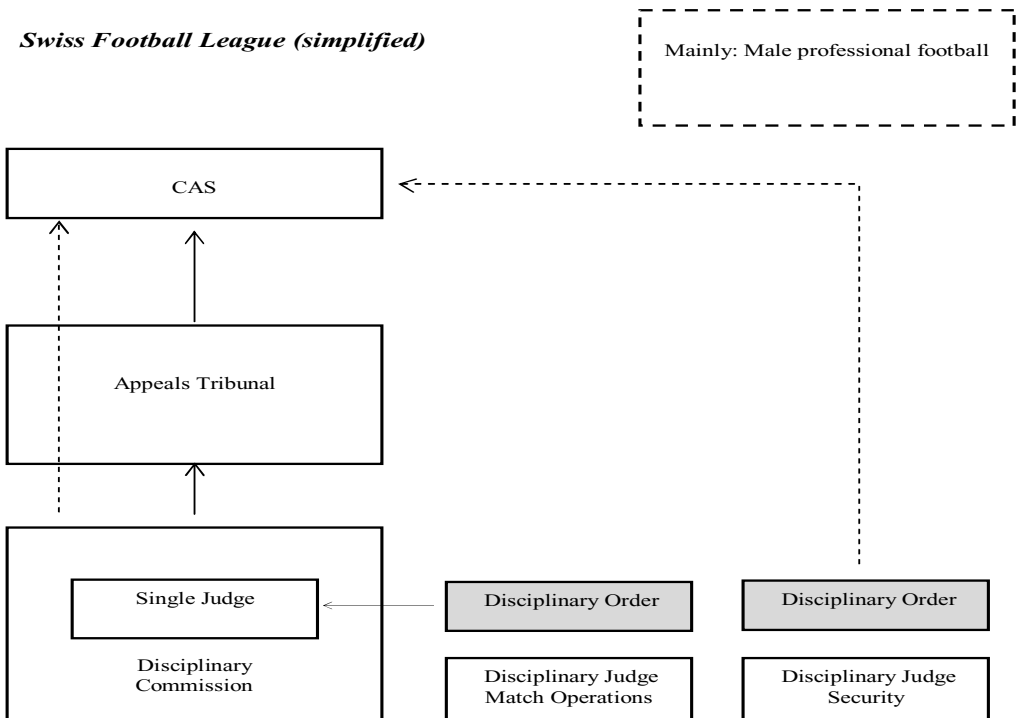
This ensures that also the decisions rendered on a national level are ultimately subject to an internationally uniform review by the supreme appellate instance in international sports.

Annex: Overview on the Disciplinary Bodies

Swiss Football Association (simplified)



Swiss Football League (simplified)



DISCIPLINARY PROCEDURES IN TURKISH FOOTBALL

by S. Kemal Kapulluoğlu*

Introduction

In Turkey, as in many countries, Football is at the forefront of public interest and scrutiny. This attention focuses mainly on matches, player transfers, clubs in financial difficulty, and referee performances. Disciplinary procedures and outcomes are obviously also very frequently discussed and criticized.

Therefore, protecting the game has become quite a challenge. In addition to threats observed worldwide, inappropriate chants, corridor and referee dressing room safety, in and out of confrontations between fans, and social media infringements are recurrent concerns in Turkey. However, at this point, it is worth mentioning that discriminatory acts are relatively rare in Turkish football. While there are a few recorded minor and personal discriminatory actions, there are no documented public discriminatory offenses.

By way of background, the Turkish Football Federation (hereafter “TFF”) is not an association but a *sui generis* entity created by a statute: “Law on the Establishment and Duties of Turkish Football Federation” (hereafter the “Law”). This statute also grants the TFF the authority to enact and enforce disciplinary regulations.¹

The TFF’s Disciplinary Regulations are quite similar to FIFA’s Disciplinary Code. There are, however, additional articles that specifically addresses specific local conduct, such as inappropriate chants, acts of club executives against referees, and inappropriate public announcements.

The creativity of the aggressors, the severity of the incidents coupled with the media attention it receives, forces the TFF to act quickly and sometimes amend regulations even during the season.

Some Disciplinary Committees, notably the Professional Football Disciplinary Committee (PFDK), are more competent to handle disciplinary issues because their regulations are wider in scope than TFF’s Football Disciplinary Regulations (hereafter “FDT”).²

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¹ Article 15 of Law No. 5894.

² www.tff.org/Resources/TFF/Documents/TALIMATLAR/Futbol-Disiplin-Talimati.pdf (FDT).

Although the TFF Football Competition Regulations and the TFF Status and Players' Transfer Regulations also refer to certain disciplinary sanctions that have to be decided by PFDK, this chapter will mainly focus on the FDT regulations.

Finally, it is worth mentioning that under the Turkish Constitution, the TFF Appeals Committee's decisions on disciplinary matters are final and binding and may not be appealed to a court of law:

*“Decisions of Sports Federations on management and discipline of sport activities can only be appealed to mandatory arbitration. Appeals Committee decisions are final and recourse against these decisions to a judicial body is not permitted”.*³

1. The Federation

The Turkish Football Federation was established in 1923; its autonomy has been recognized by law.

The TFF's highest body is the General Assembly, which, among others, adopts the Statutes and elects the President and the Executive Committee of the TFF.

The President is the legal representative of TFF. He proposes the chairpersons and the members of the Committees to the Executive Committee for approval and appoints the General Secretary. In a case of the President's death or resignation, an election must take place within three months to fill the vacancy.

The Executive Committee consists of 15 members, which also includes the President. Its duties consist of appointing the Disciplinary and Appeals Committee members and chairperson, enacting Regulations and registering match results.

The organizational structure of the TFF consists of the Emergency Committee, Legal Committees, the Audit Committee, the Executive Committee and the General Secretary.

The TFF Legal Committees are, Dispute Resolution Committee, Disciplinary Committees, Club Licensing Committee, Ethics Committee, and, of course, the Appeals Committee.

Finally, Local Committees are established in each city and are charged with defining forbidden materials to sports venues, identifying forbidden zones, determining appropriate behaviour, preserving sports venues, deciding the appropriateness of chants and controlling speech that may incite violence.

³ Article 59 para. 3 of Turkish Republic Constitution.

2. *General Principles*

In general, disciplinary sanctions are imposed on clubs and individuals who do not abide by the TFF's regulations and decisions, respect the rules on fair-play, or observe the Laws of the Game.⁴

More specifically, sanctions may be imposed on the following natural and legal persons: clubs, their presidents, honorary presidents, executives and employees, match officials, amateur and professional players, coaches, match and players' agents/intermediaries, supporters, any individual who has a role in a game or an organization, and any other person who has a duty in Football.

In recent case law, some members of TFF Executive Committee were considered as "other people that have a duty in Football" and were banned from football.⁵ In the first case, an Executive Committee member was banned for unsporting behaviour in the corridors to the Referees' Dressing Room. And in the second case, an Executive Committee member was banned for unsporting declaration via mass media.

In the course of a disciplinary proceeding, parties have a right to be heard.⁶ Generally, there is prior notice and an opportunity to respond in writing. The relevant disciplinary committee then decides based on documents on file without holding a formal evidentiary hearing. In exceptional circumstances, and at the sole discretion of the Committee, a formal hearing may be held.

Witness testimony, expert opinions, voice and video recordings are all admissible evidence. In addition, there is a rebuttable presumption that facts contained in a match official's report are accurate and are thus also admissible as evidence.⁷ However, admissibility of all evidence is at the sole discretion of the Disciplinary Committee.⁸

3. *Sanctions and Responsibility*

Unless otherwise specified, actor's state of mind is irrelevant when imposing a sanction. Deliberate and negligent conduct is punished alike.⁹

Sanctions that may be imposed include: an official warning, reprimands, fines, stripping of titles, taking back awards, expulsions, dressing room and substitutes' bench bans, match suspension, stadium bans, suspension from carrying out certain functions, suspension of the license, withdrawal of the license, transfer ban, stadium closure, playing a match behind closed doors, match forfeiture, deduction of points, and finally, relegation to a lower league.

⁴ Article 4 FDT.

⁵ AC Decision E. 2015/241, K. 2015/240 and E. 2016/429, K.2016/430.

⁶ Article 73 FDT.

⁷ Article 76 FDT.

⁸ Article 75 para.2 FDT.

⁹ Article 5 FDT.

Moreover, Clubs may additionally be held vicariously liable for violations committed by their players, presidents, honorary presidents, executives, employees, members, stewards, and supporters.¹⁰

In addition, Clubs are expected to abide by regulations pertaining to the organization and security of the game.

Clubs are primarily responsible for ensuring order and security in the stadium and its immediate surroundings. Consequently, clubs are accountable for every incident that may occur before, during and after the game.

If the underlying infringement is violence or insult, and if it is not possible to identify the perpetrators, then sanctions will be imposed on the club to which the aggressors belongs or supports.¹¹

Disciplinary measures can either increase or decrease due to the particular set of circumstances surrounding the case. Incidentally, mitigating circumstances may decrease sanctions by up to one-half, while aggravating circumstances may increase them by that much. For example, whereas sanctions imposed due to an infringement caused by incitement may decrease sanctions by up to one third, it may increase by up to fifty per cent for repeat offenses.¹²

Anyone involved in any infraction of the rules is held responsible and is considered a perpetrator. In that case, the Disciplinary Committee will take into account the degree of guilt and involvement before imposing sanctions.

In the case of attempts to commit an offense, the appropriate sanction must be reduced by up to half. There are however two exceptions to this rule. First, while the proper sanction for forgery and falsification is relegation to a lower league, attempted forgery and falsification results in a 3-12 points deduction. Second, while the appropriate sanction for match fixing is a life-time ban, attempted match fixing results in a three-year suspension.

4. *Time Limits*

Generally, the statute of limitations (hereinafter “SOL”) on commencing an action over disciplinary violations is five years, which starts running from the day of the infraction.¹³ Some exceptions to the general rule are for violations that have occurred before, during or after a match, and for violations that have taken place on the pitch or in its immediate surroundings; in these cases, the SOL is merely one year. By contrast, influencing game results is never subject to a time bar. Consequently, an action may be commenced at any time. Finally, once found guilty, sanctions must be enforced within five years.¹⁴

¹⁰ Article 6 FDT.

¹¹ Article 7 FDT.

¹² Article 11 FDT.

¹³ Article 14 FDT.

¹⁴ Article 15 FDT.

5. *The Federation Disciplinary Bodies*

Football Disciplinary Regulations oversees three different types of Disciplinary Committees, namely the Professional Football Disciplinary Committee, the Amateur Football Disciplinary Committee,¹⁵ and Local Disciplinary Committees.¹⁶

The Professional Football Disciplinary Committee and the Amateur Football Disciplinary Committee are made up of a chairperson and its six members. Both committees' chairpersons and members are nominated by the President and then appointed by TFF's Executive Committee.

The Chairperson, Deputy Chairperson and the Secretary of each committee must hold a law degree. The rest of the members must be appointed from among former referees, coaches, and players. The president and committee members serve the same term.

The Local Disciplinary Committees are made up of a chairperson, and minimum two or maximum four members. The chairman and all the members are nominated by the Amateur Activities Committee and are appointed by the President. They decide cases in accordance with the sporting activities.

The Professional Football Disciplinary Committee has jurisdiction over the infringements committed by clubs, players, club representatives and officials, match officials and other individuals who have a duty in Professional Football.

The Amateur Football Disciplinary Committee has jurisdiction over infringements committed by Clubs, Players, Club Representatives and officials, match officials, and other individuals who have a duty in amateur football competitions which lead to a national title; it also has jurisdiction over some major violations that do not fall under the purview of the Local Disciplinary Committees.

Finally, the Local Disciplinary Committees have concurrent jurisdiction over infringements committed by Clubs, Players, Club Representatives and officials, match officials and other individuals who have a duty in amateur football activities played in the relevant city.

6. *Responsibilities of clubs, players and those registered with the Association*

In general, clubs and individuals must comply with the principles of fair play, the Laws of the game, and TFF regulations and decisions.

In addition to the above-mentioned general responsibilities, Home Clubs are also responsible for order and security in the stadium and its immediate surroundings; they are also liable for any breach perpetrated by its Players, Presidents, Honorary Presidents, executives, employees, members, stewards, and its fans.

¹⁵ Article 2 FDT.

¹⁶ Article 66 FDT.

7. *Procedures*

The Investigation starts with the receipt of match officials' report by the TFF and is carried out by Disciplinary Investigators appointed by the President.

Once an infringement is reported, the Disciplinary Inspector sends a petition, along with the match officials' reports and evidence, to the Disciplinary Body and to the relevant Club and or to the relevant individual. Thereafter, they must answer the petition within 48 hours. Official holidays have no effect.

Disciplinary Inspectors hold a law degree and are employed by the TFF full-time. Their task is to examine match officials' reports, complaints, and media reports to determine any potential disciplinary regulation violation. Then, they submit their findings to the relevant deciding body for further investigation.

If the individual in question is a referee or a match official, the relevant committee (Referees' Committee, Representatives' Committee) should evaluate the reports prior to the start of the investigation by the Disciplinary Inspector.

The Committee must render its decision within three days from the completion of the investigation.

The Committee cannot annul or alter a decision taken by the referee. However, the Committee can decide against punishing a Player when the referee has mistaken the player's identity in showing a red card.

Provisional measures may be taken by the Executive Committee, designated officials by the President, Disciplinary Inspectors, Disciplinary Committees, and the Appeals Committee. These interim orders may be issued to avoid an imminent risk of irreparable harm; and are subject to a showing of a prima facie breach. In a case of a send-off (red card), the Disciplinary Inspector must decide the appropriateness of a provisional measure.

The Committee's findings are immediately communicated to the TFF General Secretariat and the relevant Club and/or the individual.

Upon request by a party, the Committee communicates the grounds for the decision.

Both the sanctioned party and the Disciplinary Inspector have a right to appeal the decision to the Appeals Committee within seven days of receiving notice of it. Lifetime bans are evaluated by the Appeals Committee ex-officio.

AFDK and PFDK decisions can be appealed to the Appeals Committee in accordance with the procedure given by the Appeals Committee Regulations. An appeals do not have a suspensive effect.¹⁷

An appeal can be lodged within seven days from the notification of the written decision or the notification in the nature of a written decision and the appeal fee has to be paid.¹⁸

Decisions are passed with a simple majority of the members present and in case of an equality of votes the chair has the tie-breaking vote.¹⁹

¹⁷ Article 89 FDT.

¹⁸ Article 7 TKT.

¹⁹ Article 12 TKT.

The Committee has one month from the appeal to decide the dispute.²⁰

Appeals Committee decisions are final and are not subject to a confirmation of an administrative or judicial body. Recourse to an administrative or judicial body is not permitted subject to the rules on the declaration of decisions, ratification of material mistakes and reconsideration provisions of Civil and penal procedure Laws.²¹

Relevant individuals, clubs, or investigation bodies can request reconsideration after a legally binding decision from the Disciplinary Committee in case the evidence is found to be fabricated, new evidence is obtained, or a more favourable regulation came in to force before the execution of the decision.²²

8. *Failure to comply*

In the case of a failure to comply with a decision or a provisional measure, players will be suspended for four to twelve matches; club representatives will be fined and sanctioned double the initial amount; and officials and other individuals will be fined and suspended for four to twelve games.

Football Match Regulation Provisions are reserved for the cases in which the nature of the noncompliance violates other provisions.

Disciplinary sanctions are inapplicable when a party to a contract fails to comply with decisions rendered in a contractual dispute. Instead, the prevailing party may make a written request that TFF applies a ban on registering new Players until the outstanding amount is satisfied.

9. *Enforcement rules*

a. *Special Provisions of enforcement*

The specified number of game suspensions must be served within the same match category. The League, Turkish Cup, and the Super Cup games are deemed to be of the same category when applied to professional players.

And in a case of amateur players, senior and junior categories are considered to be of the same category. Thus, an amateur, cannot be fielded at a match of another age category before serving his suspension.

If the season ends before an amateur player serves his suspension, he must serve the remainder, either in the upper or the lower age category of games that are still being played and for which he is eligible.

Players who are suspended for a specified number of games are nevertheless allowed to take part in friendly matches.

If a sanction is imposed for a breach that took place during a friendly match, it must be served in an official match. However, if the player has

²⁰ Article 13 TKT.

²¹ Article 14 TKT.

²² Article 91 FDT.

breached, but has not yet been sanctioned by the Disciplinary Committee, he may still take part in the next official match.

If a match is abandoned or forfeited, the sanction is considered to have been served.

b. Yellow cards

If a player accumulates four yellow cards in the same category of matches, he will be disqualified from taking part in the subsequent match.

If a Player is shown a direct red card after having received a yellow card first, or an indirect red card for two yellow cards, the first yellow card will be disregarded when considering the so called “four yellow cards rule” stated above. The same rules apply in amateur leagues. Finally, for the purpose of the “four yellow cards rule” yellow cards are not carried over to the next season.

c. Sent Offs

Players who are sent off by the referee are automatically suspended from participating in the following match, and cannot play a game until the sanction is served.

Players who are shown a red card and subsequently sanctioned by the Disciplinary Committee are immediately disqualified from taking any part in any match until the sanction is completely served within the relevant category of matches. However, even where the Disciplinary Committee has not yet acted, a player who was shown a red card or expelled from the pitch may still not take part in any subsequent game or serve any function in it.

In order to properly enforce a match suspension, the Player must be registered with a Club and the relevant license procedures must be completed.

d. Suspension for a specified number of matches or for a specified or unspecified period;

A suspension imposed for more than three years will bear the same consequences as a life-time ban. In addition, suspended Players may neither be listed for a game nor receive any accreditation.

In the case of a sent off during a friendly game abroad, the organizing federation or confederation will have jurisdiction, and their disciplinary rules shall apply. If the TFF deems it appropriate to do so, it may gather all the evidence received by the organizing body and conduct its own investigation. However, any verdict it reaches will be without prejudice to the validity of the decision taken by the relevant National Federation or the Confederation.

e. Ban on taking part in any football-related activity

Individuals banned from taking part in any football-related activities are enforced quite literally. Said individuals are prohibited from participating in matches in any capacity. For example, a banned individual may not referee a game, serve in any official capacity with the TFF, hold an executive position at a Club, and may not even enter the stadium. When serving a time suspension, the time period between seasons does not count toward serving the suspension. Lastly, sanctions against Club Presidents may not be enforced during the Play-Off Final, Turkish Cup Final, or the Super Cup Final games.

f. Ban from dressing rooms and substitutes' bench

Persons banned from entering dressing rooms are deemed to be prohibited from entering the corridors as well. Persons banned from the bench, are not allowed on the team's bench before, during and until fifteen minutes after the end of the game and may not communicate with anyone on the bench.

g. Playing a match without spectators

A club ordered to play a match without spectators is allowed to have only 25 spectators on its side.

If the visiting team's spectators are not banned, their supporters cannot exceed 5% of the stadium's total capacity.

If the ban coincides with a final game, the sanction will be postponed until the next match.

Sanctions here must also be served within the relevant category. Note, however, unlike match suspensions for professional Players in the context of a game played behind closed doors, League games and Turkish Cup games are deemed different categories.

Sanctions imposed by the Disciplinary Committee and subsequently upheld by the Appeals Committee can neither be lifted nor altered.

10. Infractions

10.1 Rules of the game

Article 43 of the TFF Disciplinary Regulations regulates serious foul play and violent conduct. Specifically, it imposes 2-4 match suspensions for serious foul play, and 3-6 match suspensions for violent conduct.

TFF deviates from FIFA's systematic approach regarding the rules of the game. Thus, it did not adopt its detailed provisions. For example, FIFA's Disciplinary Code article 46 has a list of minor infractions. Such offenses do not fall under the jurisdiction of any disciplinary body in Turkey. In fact, the referee evaluates such violations and decides them right there on the pitch.

The major infringements listed under article 47 of FIFA Disciplinary Code such as the serious foul play, violent conduct and spitting, using offensive, insulting or abusive language and/or gesture are regulated by Article 41 FDT.

10.2 Disorderliness at matches and competitions

10.2.1 Misconduct against opponents, match officials and other individuals

For serious foul plays, the appropriate sanction is a 2-4 match suspension; for violent conduct, it is 3-6 match suspension (Article 43).

In the case where the opponent's goal or goal opportunity is wrongfully prevented, the appropriate sanction is allowing the opponent a free or a penalty kick. The deliberate handling of the ball is punishable by a one match suspension (Article 94 para. 5).

10.2.2 Spitting, Assault and Brawl

Spitting at an opponent is sanctioned with a 4-6 match suspension while spitting at match officials is sanctioned with an 8-12 match suspension.

Generally, assault are sanctioned with a 5-match ban but if a match official is assaulted, the sanction will be for 10-15 games.

In the case of a brawl, the perpetrators will be sanctioned with 3-5 games.

10.2.3 Team Misconduct

Disciplinary measures may also be imposed on clubs. This will be the case where the referee cautions or expels at least six players or expels at least three players of the same team, either before, during or after a match. Disciplinary measures may also be imposed where several players or officials from the same team threatens, harasses, insults match officials or inappropriately objects or uses unlawful force on match officials.

10.2.4 Inciting hatred and violence

Those who incite violence, provoke or insult spectators, match or club officials or the TFF either publicly or via mass or social media will be sanctioned as follows:

Players are suspended for two to four matches in addition to paying a fine; club officials are banned from taking part in any football-related activities for 45 to 120 days; coaches and other club members are banned from entering the dressing rooms and the substitutes' bench for three to seven matches in addition to paying a fine.

10.2.5 Offensive and discriminatory behaviour

Anyone who offends a person's dignity by insulting his race, religion or national origin will be sanctioned accordingly. If the perpetrator is a Player, he will be suspended 4-8 matches. If the offender is a club executive, in addition to paying a fine, they will be banned from taking part in any football-related activities for 45-90 days. If the perpetrator is an official, he will be suspended 4-8 matches and will also be required to pay a fine.

In case of severe or repeated offenses, the team will be subject to one or more of the following: playing behind closed doors, stadium closure, point deduction or expulsion.

Chants concerning ethnical or regional differences are forbidden. The relevant Club will be sanctioned with a fine.

10.2.6 Forgery and falsification

If, anyone involved, in football-related activities, forges a license or an eligibility document, falsifies an official license or a document or uses a forged or falsified license or a document to mislead TFF or other authorities will be sanctioned as follows:

A player will be suspended 1-3 years; a club official will be banned from taking part in any football-related activities for 1-3 years. But, if the falsified document concerns anything other than a license or is not relevant to eligibility, the sanction will be reduced by fifty per cent. However, in severe cases, the team may be expelled from competing or relegated to a lower league.

A Club may also be held liable for such an infringement, and a fine may be imposed. And in some cases where the Club is entitled to an award, the Committee may order its return.

10.2.7 Influencing the result of a game

Influencing match results and paying incentive bonuses contrary to regulations and moral principles is forbidden. Those who act contrary to these principles will be banned for life.

If a Club executive commits the infringement, the Club will be relegated to a lower division.

In cases where the acts amount to a mere attempt, a 1-3 year ban will be imposed. The relevant club will be sanctioned with penalties listed in the regulation. But if the violation is severe, the sanction will not be less than a 12-point deduction. If the act is betting related, then it is considered a serious breach and penalties will be increased accordingly.

10.2.8 *Receiving a yellow or red card on Purpose*

Players who deliberately receive a yellow or a red card will be banned from two matches.

10.2.9 *Security of referees' dressing rooms and corridors*

Non-accredited club officials may not enter the referees' dressing rooms or the corridors. Those who do will receive a ban for 30 to 60 days.

Individuals other than Players and Coaches who breach the principles of sportsmanship or assaults, threatens, or verbally offends referees will be sanctioned with at least three months ban.

11. *Conclusions*

Considering the number of decision each week taken by the Disciplinary Committees it is quite clear that the regulations in force and application of sanctions are not sufficient to safeguard the game.

Supporters do not refrain from infringements when their Clubs are sanctioned due to their acts. Even Club executives fail to abide by the Regulations even when sanctions are imposed on them and their Clubs.

Despite the fact that a special law for the establishment of the national football association (TFF) was enacted in Turkey, another legislation for prevention of violence and disorder in sports (The Law no. 6222) was passed in 2011 and the application of e-ticket which enables the authorities to track each individual go attends a match, number of disciplinary breaches in Turkey keep increasing instead of being smothered.

It may be unjust to state that Disciplinary Regulations of TFF and the law no. 6222 are inadequate. But, since the supporters of clubs keep infringing disciplinary regulations in national games while they endeavour not to commit any violations in UEFA matches, that fact, though anecdotal may be indicative of the inadequacies of the TFF Disciplinary regulations.

In the light of these facts, objective and preventive application of the legislation is required.

As a conclusion, the reduction of violence and disorder in sports and the prevention harm caused by that violence and disorder seem unlikely unless the football clubs, the TFF, and public authorities work cooperatively and in determinedness.

PART III

COMPARATIVE ANALYSIS

DISCIPLINARY PROCEDURES IN FOOTBALL: A COMPARATIVE ANALYSIS

by *Michele Colucci* and *Marc Cavaliero*

The importance of disciplinary regulations in sport is a necessary result of two factors. The first is the continuous growth of the economic and financial dimension of football as an entertainment business. The second is a direct consequence of the possible intervention of national ordinary courts, who would review the decisions taken by the disciplinary bodies, in order to ensure that the fundamental rights of parties are protected.

Actually, disciplinary sanctions may have a dramatic financial and/or sporting impact on sports stakeholders, who may be therefore tempted to call for the intervention of the ordinary law justice to review the sports judges' decisions.

Sports associations ought to safeguard the autonomy of their domestic disciplinary systems, and, therefore, they are compelled to implement and follow disciplinary rules and procedures in order to ensure the fairest judgments to all their members. With the natural limitations due to the specificity of sport, in general, disciplinary procedures present more and more similarities with ordinary law procedures.

The analysis of the regulatory framework of FIFA, 6 regional confederations, and 19 national federations highlights the following issues:

- (i) the nature and standards of the disciplinary bodies, rules and proceedings in order to, on the one hand, guarantee a fair process and, on the other hand, to pass decisions in a timely manner in direct relation with the needs of the competitions;
- (ii) the autonomy of sports associations and their interaction with ordinary law and justice;
- (iii) the need for a gradual harmonization among the various international and national systems.

1. Nature and standards of disciplinary bodies, rules, and proceedings

Fair proceedings are the essence for a credible judicial disciplinary system.

In light of their autonomy, sports federations are allowed to set up the rules governing their disciplinary bodies and the relevant procedural provisions.

Although the autonomy has the merit of adapting the rules to the national realities, it also causes a variety of substantial provisions, proceedings requirements, and differences in identifying infringements and sanctions to apply.

With the exclusion of **France's** rigid application of its *Code for Sport* to sports and football federations in regulating their activities, all the other disciplinary systems are in principle the result of the autonomous regulatory power of sports associations.

The history, the subjection of sports stakeholders under associative justice, and the recognition received by the legal orders wherein they operate, have promoted a balanced and structured disciplinary framework of some football federations while others have adopted less rigorous regimes of substantial and procedural rules.

1.2 *Legal Frameworks*

Disciplinary provisions may be framed in different legal instruments. However, it is common that all disciplinary bodies find the source of their jurisdiction and competence in the Statutes of their respective associations.

Football associations may choose to adopt a disciplinary code (**CAF, FIFA, OFC, UEFA**, and, quite recently, **CONMEBOL**) or even to not adopt a code at all (as for **CONCACAF**, a disciplinary code will soon enter into force) and make reference to the FIFA rules.

They can also adopt a specific code of ethics (**FIFA, OFC, Greece, Qatar**) or decide to merge disciplinary and ethics violations within the same code (**UEFA, AFC**).

CAF, OFC and some national associations (such as **Qatar**) opted for disciplinary codes, which mirror in an extensive way the FIFA Disciplinary Code.

Current disciplinary codes in force within some confederations or national associations are the result of several modifications over the years responding to the evolution of customs (**UEFA, CONMEBOL, CAF** authorize communication of documents and/or notification of decisions via electronic mail) or to a consolidation of jurisprudential rules, which underline, if need be, the important role played by the internal judicial bodies or CAS.

In particular, **UEFA, the AFC** and also the football federation in **Mexico** have decided to insert in their respective disciplinary codes a more precise range of sanctions in relation to several infringements codifying as such years of case law.

1.3 *Disciplinary Bodies*

One can think that the disciplinary bodies of international and national associations look very similar. This is partially correct. A closer and sharper look will emphasize very interesting points of differentiation.

The existence of a multi-branch/multi-section structure with independent organs to administer disciplinary rulings is indispensable to serve a fair and just process to all stakeholders and to limit the intervention of ordinary law jurisdictions.

In that regard, the football disciplinary bodies have seen a steady, structured development towards a complete judicial organization, which sometimes mirrors the state criminal legal systems (**Germany**) with first instance organs, appeal bodies and a supreme body to decide in the last resort (**Greece, Italy, Portugal**).

Wherever the football associations' regulations foresee the direct involvement of clubs and athletes' representatives in the relevant disciplinary bodies (such as in **The Netherlands**), or when federations can offer an exhaustive, complete judicial decision-making process (**Switzerland**), the call for ordinary courts' review is extremely rare because the stakeholders tend to be satisfied with the internal process and the decisions taken by the internal disciplinary bodies. In fact, the **Swiss** disciplinary system is very well structured and articulated through the national federation, its subdivisions, and the league on the basis of a clear definition of the competencies among the different bodies.

A similar structure exists in **Germany** with a federal association and the the Länder associations, which offer a complex but complete justice organisation with a very rare intervention of the ordinary judges. The German peculiarity is that the supreme review body is an arbitration committee, to which the stakeholders are obliged to refer their disputes in last instance once the parties have exhausted all the sports justice channels.

On the contrary, in **Brazil**, where sports justice enjoys constitutional recognition and its organisation is regulated by national law, several bodies exist depending on the level (regional or national) of the competition in the context of which an infringement needs to be prosecuted. This can lead to a four-instance process with a last instance before the CAS even with regard to purely national matters.

In contrast, in **Italy** the parties to a disciplinary proceeding are not allowed to lodge an appeal to CAS.

It is then interesting to observe that although the **South Africa** association's statutes stipulate that the decision taken by the national arbitration tribunal are final and binding, the parties may still lodge an appeal with CAS.

The same plenitude of disciplinary bodies at various levels, for amateurs and professionals, within federation and leagues, is typical of big federations in countries like **China** but also **England, Italy, Portugal, and The Netherlands**.

Finally, **UEFA** and **AFC** have specifically established bodies with jurisdiction to determine the eligibility of a club to participate in continental club competitions

1.3.1 Appointment and powers

Members of the disciplinary organs may be appointed in different manners.

They can be elected by the Congress, i.e. the Supreme body of the association (**FIFA, AFC** as from 2019, **Argentina, Japan**), they can be appointed by the President of the executive body upon proposal of the national associations (**CONMEBOL**) or they can be appointed by the Executive Committee (**OFC**), and then ratified by the Congress (**CONCACAF, UEFA**).

In practice, although we can question whether the nature of the appointing authority is relevant or not, it is of utmost importance that impartiality and independence of the disciplinary bodies are preserved. That is the reason why most of the systems – if not all – provide that disciplinary bodies cannot be composed of members already belonging to another body within the same federation. Some associations (**FIFA, Argentina**) have implemented integrity checks that members need to pass prior to their proposal for elections or appointments.

In fact, without any doubt, impartiality and independence are the two fundamental pillars that should define the proper and fair functioning of any disciplinary system. These are the indispensable qualifications of a disciplinary body, which had to earn and keep confidence and trust from not only the parties subject to its jurisdiction but also from the fans and anyone interested or concerned with football.

In that regard, some confederations and associations (**AFC, FIFA, UEFA, The FA**) expressly dictate that their disciplinary judges must be independent and impartial. Thus, the disciplinary bodies shall not take any instructions from any other body. It is interesting to note that the President, the Executive Committee or the Secretary General of **UEFA** or **AFC** are entitled to request the opening of disciplinary proceedings.

In countries such as **South Africa** there may be some concerns in terms of independence since the members of disciplinary bodies and of the Federation Arbitration Tribunal are appointed exclusively by the League and the Federation without any involvement of the players' representatives.

Finally, it is also common to find in the respective regulations, express mention that (at least) the Chairman and Deputy Chairman shall have legal qualification (**Croatia, Portugal, Qatar, Switzerland, The Netherlands, and Japan** (the latter only with regard to the appeal body)).

1.3.2 Prosecutorial and judicial powers

In many federations (**FIFA** – as far as disciplinary proceedings are concerned – **CAF, OFC, CONCACAF, Mexico, Japan, Qatar**) disciplinary bodies execute both prosecutorial and judicial powers. This means that the investigations will be led by the (Chairman of) the body that will pass the decision. The judicial organ will be assisted by a secretariat or members of the administration of the respective association. **AFC** and **CONMEBOL** opted for a *disciplinary unit* as an independent internal body that provides support to its judicial bodies for the execution of their tasks. On the contrary, other federations (such as **Brazil, England, France,**

Germany, Greece, Italy, Spain, and The Netherlands) separate neatly the prosecutorial powers from the adjudicatory ones in administering disciplinary procedures. Similarly, within **UEFA** a Disciplinary Inspector holds prosecutorial powers and is independent from the UEFA judicial bodies. This is also the case in respect of the **FIFA Ethics Committee**, which is divided into two Chambers, the investigatory and the adjudicatory chamber.

Wherever a separation of powers occurs, prosecutors are entitled to open disciplinary proceedings, conduct the investigation, submit and defend the case before the relevant judicial authority. A right to appeal is also often conferred to these prosecutors (**UEFA**, Investigatory Chamber of the **FIFA Ethics Committee**).

In all international and national federations, disciplinary bodies and/or prosecutors can initiate proceedings *ex officio*. The only striking exception is **Croatia** where any disciplinary action can be initiated either upon receipt of a complaint from a member of the football association or upon receipt of a note on a match report by a referee or other official match delegate.

In some associations, then, the scope of disciplinary bodies' power can be very broad to overlap private life aspects of the stakeholders.

In **China**, for instance, they can start a disciplinary proceeding and impose sanctions on any football stakeholder that might endanger "*any football-related activity*" as foreseen by the Federation's regulations. Likewise, in **England** the FA could sanction a participant for "bringing the game into disrepute".

In the same perspective in **The Netherlands** the prosecutor has a very broad power in order to protect the interests of the federation and the interests of football in general.

2. *Disciplinary Procedures*

Sports Federations establish their disciplinary rules allowing them to reach fast results through swift proceedings so that the regularity and continuity of the hugely followed championships are not disrupted. For instance, **CAF** Disciplinary Regulations establish that investigations shall be limited in time and not exceed 6 months. Interestingly, to ensure expeditious proceedings, **Mexico** implemented a platform, where match reports are uploaded immediately after the match and access is granted to the Disciplinary Committee as well as to the interested clubs. (*Match day Monitoring*).

In doing so, and while there is a clear need for fast decisions, the sports associations strive to adopt all necessary measures to protect the fundamental rights of the parties in line with due process.

Both the need for expeditious proceedings and the protection of the parties' rights are essential to ensure the credibility of the sports system. In this regard, the "right to be heard" principle constitutes the basis of **all** disciplinary systems within international and national associations.

Moreover, the right to be heard can assume an oral or a written form.

There are sports associations such as **The Netherlands** providing in principle an oral hearing. In **Russia** the relevant bodies always conduct oral hearings before ruling on sanctions. Where in some federations (**Italy** and **Germany**) the parties can defend their position also orally at least before an appeal body, in others such a right is exercised primarily in writing-oral hearing constituting the exception (**UEFA**, which provides for a hearing if justified by exceptional circumstances, **FIFA**, **Qatar**, **South Africa**).

As a general rule, the hearings within the disciplinary proceedings are not public. Nevertheless, **France**, **Brazil**, and **The Netherlands** offer three major exceptions in this context: the **French** system is provided by the relevant ordinary law showing its supremacy over sports law while in **Brazil** the transparency is part of the principles included into the Brazilian Code of Sports Justice by the National Sports Council, belonging to the executive branch of the government. In **The Netherlands**, the hearings are in principle public, unless the disciplinary body deems it not appropriate, and the decisions are published on the association's website.

In principle, international and national federations keep the disciplinary proceedings and decisions confidential.

Nevertheless, transparency has become an important corollary to assess on the one hand the independence and impartiality of the judicial bodies but also to draw attention and increase awareness on the policies implemented. Therefore, **UEFA** decided to make public all its disciplinary decisions. Others (**AFC**, **FIFA**, **Mexico**, or **CONMEBOL** to a lesser extent, since it does not have clear rules on publication) issue media releases to inform the public about their (most notable) decisions.

Transparency enhances comprehension and awareness of the system, ensures equality of treatment, increases the accountability of the decision-making bodies, and should be a path – that can be expressed in different forms – towards which all associations should be heading.

Efforts deployed by the sports associations to build up an exhaustive, fair and efficient justice system are eased by the fact that the right to remain silent (also known as the *Miranda warning* in criminal law) is not granted in sports disciplinary proceedings.

In fact, defendants are in principle obliged to co-operate with the disciplinary bodies by providing any information or documentation they may require. The reason for this may be found in the very nature of the sports associative disciplinary processes, which do not enjoy investigative powers of a public criminal authority. That is why the parties (clubs, players, officials etc.) being (direct or indirect) members of a private association have the duty to support and co-operate actively to the correct implementation of the federations' rules. This is also the reason why all sports regulations refer to the duties of fairness, loyalty and ethical behaviour, which members must honour.

Actually, some organisations expressly establish this obligation, in the form of a fairly general clause stipulating that players must fully co-operate with the federation in establishing facts of a case (**FIFA, UEFA**).

Some federations, such as **Italy** but also **Qatar**, classify the refusal to co-operate as a disciplinary offence and impose sanctions accordingly: in the first country, the exclusion of member from the federation or from a given competition until he fulfils his/her obligation is provided for; in the second country, the judicial body may, after warning the member, impose a fine and/or other sanctions deemed necessary to facilitate their collaboration (similar as **FIFA**).

The onus for proving that an offence has been committed lies in principle with the disciplinary body (**FIFA**) or with the prosecutors (**UEFA, Brazil, Italy, The Netherlands, South Africa**). In any event, it remains with the associative organ. In other words, a party does not have to prove its innocence, with the exception of doping.

Each federation allows its disciplinary bodies to make use of the full range of available evidence both on their own initiative or at the parties' request.

Some federations (**China**) explicitly set no limits to the parties or simply do not apply strict rules (**South Africa**) for the production of evidence in order to support their arguments.

In general, the parties have the right to adduce evidence, particularly in the form of witnesses and documents (**FIFA**). In this context, **CONMEBOL** requires that declarations of parties or witnesses be transcribed.

This right to produce evidence is not absolute, since judges can refuse to admit evidence that is not considered relevant for the purposes of the proceedings or would violate human dignity (**CAF, CONMEBOL, FIFA, OFC**).

Some associations (**AFC, FIFA, UEFA**) provide for the possibility for witnesses to testify anonymously under very strict rules, as this constitutes, generally speaking, a restriction to the right to be heard. Such a possibility has been used in match-manipulation or sexual harassment cases.

More importantly, the standard of proof applied in disciplinary sports proceedings is the one of "comfortable satisfaction" which is lower than the "proof beyond a reasonable doubt" required in criminal law proceedings but higher than the mere balance of probabilities of civil proceedings.

3. *Disciplinary offences and sanctions*

Football associations have a huge margin of discretion in determining and classifying disciplinary offences with regard to the misconduct of players, clubs, officials, and sometimes even third parties such as supporters in accordance with their own rules and regulations.

Disciplinary sanctions are, in principle, of civil law nature. Accordingly, standards applicable in criminal law proceedings would not to be applicable *strictu sensu* to sports federation.

Nevertheless, there is a consensus that certain component of the principle *nulla poena sine lege*, which prohibits the imposition of penalties not expressly provided for by law, are also applicable to disciplinary provisions and proceedings in the context of sports judicial system. Moreover, disciplinary systems may grant decision-making bodies a certain amount of autonomous appreciation for the nature and quantum of penalties.

In **Italy**, for instance, any breach of obligations, duties, morality, ethics or sports ethics may constitute a disciplinary offence, without the need for further specification.

In the same way, the principle of fair play in **England**, and more generally, in all federations, is so wide reaching that it provides a blanket approach in respect of all possible punishable offences and persons involved in the game at any level. Such an approach would not fit in criminal proceedings.

On the contrary, the **Brazilian** federation has assimilated most of the modern principles of criminal law. As a result, Brazilian disciplinary bodies can sanction a member only if a precise and valid provision of the relevant disciplinary code is violated.

Moreover, a strict principle of legality applies in the Brazilian disciplinary system in the sense that, for each and very violation, consequences are clearly listed and detailed. The same applies to **Portugal**.

Warnings, reprimands, fines, disqualifications for one or more matches, suspension (even for life), withdrawal of the prize(s) won, loss of matches, are common to all disciplinary systems.

In particular, some of them **Argentina, Brazil, Croatia, France, Germany, Greece, Qatar, Switzerland, South Africa, Turkey** foresees a very detailed list of infringements and apply the relevant sanctions. When determining the sanctions in **The Netherlands** the prosecutor and the disciplinary bodies apply some guidelines.

In general, *fair play* is the general principle which should guide everybody in sport on and off the pitch. Therefore, any conduct against such a principle is duly sanctioned.

In **China and South Africa**, the respective football federations have a great discretionary power to sanction those who commit unethical practices. Moreover, the disciplinary code defines and punishes not only the actually committed infringements but also mere attempts to commit an offence.

In **Japan**, rules and sanctions covering ethical violations are quite different due to the national history, traditions and culture. In fact, this seems to be the only country where a player can be sanctioned for misdemeanours he commits even off the pitch in his own private life.

Several sports associations (**Brazil, China, Croatia, Japan, Russia, South Africa, Switzerland, Turkey**) provide specific sanctions against *forgery and falsification* according to the seriousness of the offence. CAF, which has been confronted on several occasions with acts of forgery provides for a serious minimum sanction.

Fight against corruption and match-fixing is expressly regulated in **Brazil, China, Croatia, Germany, Greece, Japan, Qatar, South Africa, Switzerland**, heavy sanctions (even ban for life in **Turkey**) can be given to the offenders and to the clubs they belong to (such as relegation to a lower category). In **Italy** and in **Greece** the relevant disciplinary rules state a general presumption of liability for clubs, which objectively benefit from match-fixing cases, even if the persons, who have committed the criminal acts, are not formally affiliated with the clubs.

In **Qatar**, the Financial Control Regulations have been introduced in order to limit club's expenditure and its violations may trigger heavy sanctions on clubs. Interestingly, the decisions taken by the Financial Control Committee in first instance cannot be appealed before the federation judicial bodies but directly to the Qatar Sports Arbitration Tribunal.

In countries such as **Argentina, China, Croatia, England, Germany, Greece, Italy, Qatar, Russia, South Africa, Switzerland, or Mexico**, clubs are presumed responsible and therefore are sanctioned for their supporters' conduct before, during and after the match, both inside and outside the stadiums.

In **the Netherlands** in principle clubs are presumed to be responsible for their fans' conduct but the clubs are not always sanctioned because the prosecutor takes into account every measure the club has taken to prevent this conduct.

All **Confederations** provide for the same principle, which has been constantly confirmed by CAS. As far as sanctions are concerned, while **FIFA, CAF, OFC** do not see the possibility for a partial closure of stadium, **AFC, CONMEBOL, UEFA, Mexico** do provide for such a solution. **CONMEBOL** also decided to impose bans on supporters of a team to attend away-matches.

The review of the national regulations has brought to our attention more noticeable, interesting forms of sanctions.

In **Brazil**, following the biblical principle of the law of retaliation (an eye for an eye) in case of *violent play or physical aggression*, if the injured player remains unable to practice football as a consequence of the offence, the footballer offender may remain suspended until his victim recovers fully and is able to return to train. However, this biblical sanction has been mitigated since the time-period of the suspension is limited to a maximum term of 180 days.

In **China**, in case of a *brawl* on the pitch involving groups of players and other persons, if it is impossible to identify the offenders, the hosting club or association will be sanctioned. However, in the final event that the offenders are finally identified, the sanction may be reduced or even cancelled.

It is quite interesting to note that in **Qatar**, anyone who tried to prevent a fight, shielded others or separated those involved in a brawl is not subject to punishment.

In **The Netherlands**, specific bodies are set up and specific provisions on *sexual harassment* aiming at protecting the rights of the victims are adopted.

Sexual harassment is punished in the event of intent, guilt, negligence or carelessness.

The rules on sexual harassment apply to all affiliates and specifically to supervisors in football, so as to prevent them abusing their position. Sexual harassment includes offences under the Criminal Code, but a sanction under the federation's regulations is without prejudice of a possible sanction under the Criminal Code, and *vice versa*. Interesting to note is that an anonymous report of sexual harassment will not be processed and the examination of the alleged victim and witnesses anonymously is not possible. Furthermore, specific disciplinary bodies, in first instance and in appeal, are competent to adjudicate cases concerning sexual harassment.

In **Switzerland**, the federation can even impose a sort of *boycott* against a club or a player which essentially consists of a ban to take part in any football related activity, and it can be imposed, e.g., for a *failure to respect certain financial obligations or for grossly unsportsmanlike behaviour*.

Finally, in order to provide an efficient solution to straightforward disciplinary matters, the **AFC** introduced a streamlined administrative procedure in one of its latest amendments of the Disciplinary Code. Effectively, the administrative procedure allows a party to accept a reduced sanction in exchange for a prompt admission of guilt ('*plea-bargaining*' system). Subject to the relevant competition regulations, the Secretariat may offer an "administrative resolution" to a party prior to the opening of disciplinary proceeding.

4. *The relationship between sports law and ordinary law systems*

Sports law is the law of national or international private associations, which enjoy the general, constitutional rights of free association, free speech and collective action. However, the exercise of these rights and the large autonomy of governments are grounded on the fundamental obligation to comply with the superior ordinary laws, in particular with public order. This means that the domestic rules of the above-mentioned football associations cannot infringe the state laws and fundamental rights in governing their own organizations.

In other words, this juridical link between the two orders, the private sports law and the public policy laws constitutes the ground, justifying the ordinary judges' review of any decision taken by the football judicial bodies, whenever a party considers it is infringing a fundamental right.

So, we can say that the sports law autonomy is limited insofar as it cannot disregard the sovereign laws of the country. These are the reasons for which we experience in **Italy** and in **South Africa** the growing interventions of ordinary justices in reviewing the judicial sports decisions when they touch constitutionally protected rights of the federations' members, or the disciplinary violations configures, also, a crime punished by the State Laws.

4.1 Exclusive jurisdiction of sports organizations

Rules of the game are technical rules that ensure the smooth running of sports competitions.

The rules of the game, including the disciplinary provisions governing actions on the pitch and the stadium sporting activities, are in principle removed from the scrutiny of ordinary courts, both at national and international level, as it has been made clear by the European Commission and the Court of Justice of the European Union in the famous *Meca-Medina* case in 2006.

In **Brazil**, the country's constitution grants exclusive competence to the sports disciplinary bodies to rule on sports matters (even though ordinary courts may be addressed – after exhaustion of all instances of sports justice – for the determination of eventual civil consequences).

In **Croatia**, in line with the principle of autonomy of sport, it is expressly prohibited to challenge a decision of a sports body before ordinary courts.

Finally, in **China** sporting decisions have not been challenged before the ordinary courts. However, this is not expressly prohibited in any law or regulation.

4.2 Exclusive jurisdiction of Ordinary Courts

A sports offence can have a dual nature: a purely criminal one and a sporting disciplinary one.

Ordinary courts have exclusive jurisdiction in criminal matters linked with sport activities. This means that disciplinary bodies or arbitration tribunals have no competence at all in criminal offences.

Nevertheless, it may happen that criminal authorities and sports disciplinary bodies may work simultaneously or even co-operate and interact as it is the case in **Italy**, **Germany**, and **South Africa** following the recent sports justice reform. They can investigate the same facts and offences such as doping and match-fixing and, to reach obviously different decisions in the light of the relevant pertinent penal and disciplinary rules.

4.3 Ordinary Courts as appeal instances in disciplinary proceedings

Sports stakeholders are entitled to appeal disciplinary decisions before Ordinary Courts.

According to **Swiss law** any member of a private association can challenge its decision before a Court for a violation of the law or of the association's rules and statutes. In this framework, rules and decisions of the association's disciplinary bodies can be scrutinized in the light of the relevant state law provisions. However, such disputes can be removed from the jurisdiction of ordinary courts if a valid arbitration clause or agreement is concluded.

Similarly, in **Germany** the decisions of the DFB disciplinary bodies are generally not subject to review by ordinary Courts. Instead, a statutory permanent arbitral tribunal is competent to review those decisions. For professional football, the jurisdiction of the permanent arbitral tribunal is established through contractual agreements. Strong similarities between the German law on criminal procedure and DFB disciplinary law ensure that the rights of affected parties and procedural guarantees are protected in a coherent and comprehensive manner. All deviation from these high standards are justified by the broad competences of sports federations to regulate their internal affairs and the typical challenges of sporting competitions particularly regarding the prevention of violence and unethical behaviour.

In **Brazil**, ordinary courts may only be called in sports disciplinary matters, after all the national and international football disciplinary bodies have intervened (included the CAS as the case might be).

In **Greece**, the ordinary judges have frequently intervened in sports justice matters and, in particular, in the enforcement of disciplinary decisions against clubs that did not comply with the final decisions of the Greek football federation judicial bodies and awards of the Court of Arbitration and/or were found to be in violation of the federations's regulations.

In particular, the football authorities are forbidden from enforcing a decision of the sports judicial bodies and from applying the imposed sanctions against a club, until the ordinary courts take a final decision on the appeal advanced by the relevant clubs.

In **Italy**, following a landmark decision of the Constitutional Court, the competences of ordinary, administrative and sports judges, are divided in the following order:

1. Ordinary judges deal with economic matters;
2. Administrative judges decide on the damages deriving from a sports disciplinary decision to a given a party and they are not allowed to deal its substance;
3. Sports disciplinary bodies are exclusively competent to deal with purely sporting rules.

In the field of disciplinary sanctions, a minority of sports legal systems privilege direct appeals to the ordinary courts, instead of arbitration tribunals.

This is the case of **France**, where disciplinary decisions are of an administrative nature and, as such, are reviewed by the administrative courts upon appeal by the parties, leaving no room for arbitration.

Similarly, in **Spain**, the disciplinary procedure is complex and has two diverse instances following a dual track: the "sporting track" governed by the football disciplinary bodies while the "administrative track" is managed by the Higher Council for Sports and the Administrative Court of Sport.

The coexistence of both dimensions (private-public) constitutes the main feature of the Spanish disciplinary system and it underlines the strong connection

between the public law and the sporting disciplinary law. However, this interaction causes important disputes between federations and public authorities such as the Higher Council for Sports.

In **England**, the jurisdiction of the ordinary courts in football cases, though very rare, cannot be excluded. In fact, the English disciplinary rules provide for Arbitration as ultimate jurisdiction stage. However, under sections 67 and 68 of the Arbitration Act 1996, the parties can call for judicial intervention whenever they consider that a “serious irregularity” – such a flawed and unlawful decision – has been administered in the course of an arbitration and disciplinary procedure, or a matter of substantive jurisdiction. It is also true that in England, there is little prospect of a sports disciplinary body’s decision being overturned unless truly extraordinary circumstances occur, although there is a route for appeal under section 69 of the same act, based on a question of law arising out of the award made in proceedings.

A similar review procedure also applies in **South Africa**, subject to the very limited review grounds and only when a “serious irregularity” is alleged.

In **The Netherlands**, a disciplinary decision can only be challenged before ordinary courts after the competent sports bodies have made their decision. Furthermore, the ordinary court has only, in principle, the authority to execute a test of reasonableness. In other words, to test if the rules of the football federation have been applied in a correct way.

5. *Harmonisation*

Football federations have adopted a variety of disciplinary regulations. Such a variety mirrors the differences and specificities among national sports systems. However, since the different national federations operate under the unitary framework provided by FIFA, we wonder whether it is necessary, appropriate, and realistic to envisage the harmonization of these systems. And if so, to what degree and in what terms?

In fact, it appears quite unfair to have a multiplicity of sanctions and a range of their intensity for a club or athlete in the disciplinary regulations worldwide. The difference in sanctions for players and clubs between two different federations within the same regional confederation in a national competition may have a strong impact on the competitiveness standard of a team’s participation in a continental or international competition.

The need for a gradual convergence concerns also other rules drawn up by sports organisations with regard to standards of behaviour, rules of disciplinary proceedings or rules determining the sanctions applicable to disciplinary offences.

Such a degree convergence becomes necessary in order to protect the integrity of competitions against offences having an international dimension such as doping, corruption, and match fixing.

Effective action against such behaviour requires internationally harmonised regulations to be implemented. This is the case of the WADA code for doping and some international covenant, like the one adopted by the Council of Europe on match-fixing.

In contrast, the homogenisation of the tasks and composition of organisations' disciplinary bodies does not seem essential.

The simplest mechanism of a minimum level of harmonisation may require that an international federation lay down compulsory rules for its affiliated national federations. Those rules may then be directly applicable or may be transposed into the national federations' regulatory instruments. This is, actually, what FIFA has done through the adoption of its disciplinary code, as it contains a list of rules that must be incorporated into national federations' regulations.

In certain cases, affiliated federations have no autonomous room to legislate and must include the provisions laid down in the code word for word pursuant to art. 146, paragraph 2, of the FIFA Disciplinary Code provides for. This is the case for instance in cases of discrimination or provisions in relation to doping.

In other cases, national associations could choose their own wording and implementation measures provided they transpose the international rules in order to ensure that their own disciplinary rules are in line with the other federations.

Finally, where the organisation of disciplinary proceedings is concerned, it is not necessarily desirable to have harmonisation. Some federations may, for example, confine themselves to a single body when national law does not oblige them to have an appeals body as well as a first level of jurisdiction. The structure does not really matter as long as the principles of a fair proceeding are safeguarded.

Conclusions

The analysis shows that international and national football associations mostly apply the principles of independence and impartiality.

Likewise, some federations separate neatly the prosecutorial powers from the judicial ones mirroring the State law systems.

Furthermore, sports disciplinary procedures become increasingly judicial in nature. This development is surely substantial progress towards better protection of the sports stakeholders and their fundamental rights.

Most football associations have emulated the ordinary law procedures, applying the main procedural guarantees of a due process based on the rule of law. Such development does not exclude arbitration as conclusive dispute settlement to ensure the fastest and impartial resolution of litigations to the clubs and players.

As a matter of fact, sports stakeholders enjoy adequate safeguards in the majority of the systems under review that make the proceedings similar to those of the ordinary courts. The positive or negative impact of convergence of the sports law in general and, disciplinary rules in particular, towards the ordinary law is obviously determined by the effective implementation of the rule of law in a given country.

In fact, while this tendency is becoming more widespread, there are still some appreciable differences among legal systems, and therefore, among sports federations.

Finally, we are convinced that for global issues such as doping, match-fixing, forgery, and falsification, the highest degree of homogenization is necessary.

As for the sanctions to apply to the same offences in different associations' disciplinary codes, more harmonisation is desirable in order to reduce any negative impact on competitions and eliminate disparities among the sports stakeholders.

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