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AN INTERNATIONAL AND COMPARATIVE ANALYSIS

Marc Cavaliero and Michele Colucci (eds.)

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**DISCIPLINARY PROCEDURES
IN FOOTBALL**

AN INTERNATIONAL AND COMPARATIVE ANALYSIS

Marc Cavaliero and Michele Colucci (eds.)

M. Auletta, M. Bambaci, C. Bertrand, M. Cavaliero, S. Civale, M. Cockburn, M. Colucci, A.J. Davani, L. Ferrer, P. Fida, E. García, V. Garza Valenzuela, R. Hack, K. Harima, B. Haslinger, S.K. Kapulluoğlu, J. Kitching, N. Klein, J. Kleiner, N. Kok, J. Leal, S. Malvestio, E. Mazzilli, M. Motta, M. Nan, J. Nicolau, L. de Oleza, J. Paepke, D.K. Parmar, V. Smokvina, J. Van Gaalen, A. Visnovsky, O. Zadubrovskiy, K. N. Zemberis, D. 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, 1 October 2017

Marc Cavaliero and Michele Colucci

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.

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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.

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).

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.

DISCIPLINARY PROCEDURES IN BRAZILIAN FOOTBALL

by *Stefano Malvestio** and *Marcos Motta***

1. Introduction¹

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 *Maracanaço* 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

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 goals 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).

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:

TEASER

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/.

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%20juin%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=JORFTEXT00000711624&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).

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.

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.

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.

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.

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*