

Sport Rächt

Haupt-ZF

Jahr: HS 2024

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Lehrbuch:

ZF von

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§ 1 Why Sports Law

I. Sport as a Business - The commercial success of sport

Pierre de Coubertin said

- Sport is nothing serious, just a tool of education
- Saves a nation from military humiliation; prepares for war
- It was amateuristic; there weren't any commercials, etc.

Radio and TV Broadcasting:

- Radio and TV have been massively crucial in the development of sports
- How it started: *In 1911 there was a game in Missouri and the people on the stands were mostly from Missouri. The people in Kansas didn't know the score, as it was normal that time. But one guy from Kansas put a blackboard in the centre of Lawrence, Kansas and got texted from a guy in the stands and noted the current score on the blackboard and the people were cheering*
- 1936: Summer Olympics the first Games to be televised (only in Germany)
- 1956: Winter Olympics the first Games to be televised worldwide
- New Developments:
 - o Colour TV
 - o Satellite TV
 - o Technological advancements
 - o Increase in the number of privately owned TV channels
 - o Increase in competition for the acquisition of broadcasting right

Huge increase since already 1990 in the amount of money that are paid for broadcasting rights (192K-8 Mio.)!

II. Sport as a legal field

1. Commercialisation
2. Codification
earlier the Olympic charta was 15 pages; nowadays about 80 pages
3. Legalisation (current phase)
increasing number of disputes

The legalisation of sport:

- Increased legalisation of the sports world ("Verrechtlichung")
- Commercial Work: marketing, sponsoring, broadcasting rights, merchandising
- In-House-Work: most football clubs in Germany, Italy, France have their own lawyers (CH not yet)
FIFA has about 130 lawyers; that was not the case 20 years ago
- Litigation & arbitration
- Increased sophistication: one of the first broadcasting right agreement was 12 pages; now f.e. the champions league agreement is 140 pages

IV
THE OLYMPIC GAMES

Eligibility

26 To be eligible for the Olympic Games a competitor must always have participated in sport as an avocation without material gain of any kind.

He can avail himself of this qualification :

a) If he has a basic occupation designed to ensure his present and future livelihood :

b) If he does not receive or has never received any remuneration for participation in sport :

c) If he complies with the rules of the International Federation concerned, and the official interpretations of this rule (see Eligibility Code).

§ 2 What is Sports Law today?

I. In a narrower sense

- The field of play rules:
the law of the game; how do you play; read the rules to not be excluded
- Disciplinary regulations:
f.e. international motorbike federation says what happens when you touch an other biker and he falls -> fine, penalty, ...
- Regulatory matters:
 - o *rules, that sometimes are issued by federations*
 - o *rules that are not there to decide how to play*
 - o *they are there to govern the sport, how a club must be runned, what structure...*
- *Player transfer rules issued by FIFA*
- Procedural regulations:
f.e. code of arbitration of Sports (ZPO of the CAS)
- Fundamental principles:
Olympic Charta -> regulating the bases of the Olympic movement

Example: The foul dispute of Franck Ribéry/Bayern Munich

- *Red card on the field: field of play decision
nothing Ribéry can do against it*
- *Next step: the case goes to the UEFA disciplinary body
that checks if there is an additional sanction – suspension? fine?
They look at the video and read the report of the referee and hear the lawyers of Ribery & Munich
then they decide*
- *Against this decision Ribéry can appeal the decision, because its not anymore a field of Play
decision; it is now a decision about disciplinary rules.*
- *He can appeal this decision again in front of the CAS*
- *And then again in front of the Swiss Tribunal Federation*

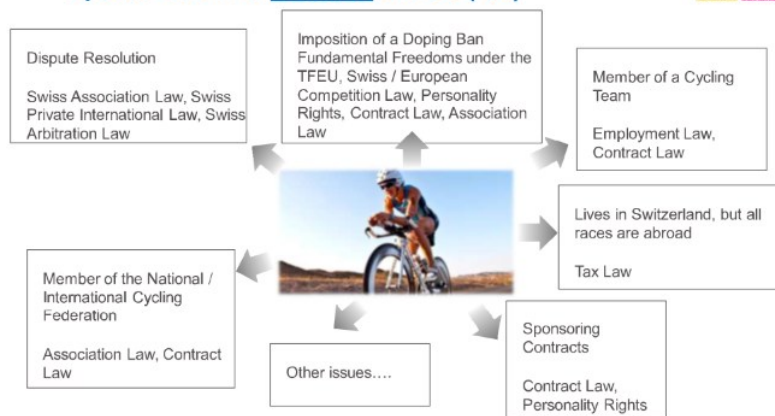
II. In a broader sense

- Human right & constitutional Rights
- Protection of personality
- Contract law; *you can defend yourself*
- Corporate law; *who can be the shareholder of a cycle team*
- Criminal law; *the case of Mr. McKim*
- Tax law; *Carlos Alcaraz is coming to Basel and gets 0.5 Mio. to participate; we gets the tax of this?*

Example: The sponsoring Dispute

- *There is a sponsoring Agreement in English and Italian
in Italian the Visibility is missing and they didn't agree which language prevails*
- *This is pure contract law in a specific sport context*
- *They found a solution 50/50*

Sports Law in a Broader Sense (2/2)



The dispute: Who is right?

„The Trademark XY will be affixed upon the race shirts of the athletes, visibly on the back of the sleeves“

„Il marchio XY verrà riprodotto sulle maniche davanti delle maglie da corsa dei corridori“

Which language prevails?

„The present contract is drawn up in English and Italian. In the event of disputes, the English text prevails“

„Questo contratto è stato redatto in Inglese e in Italiano. In caso di contraddizioni, il testo in italiano ha precedenza.“

§ 3 The international structures in Sports

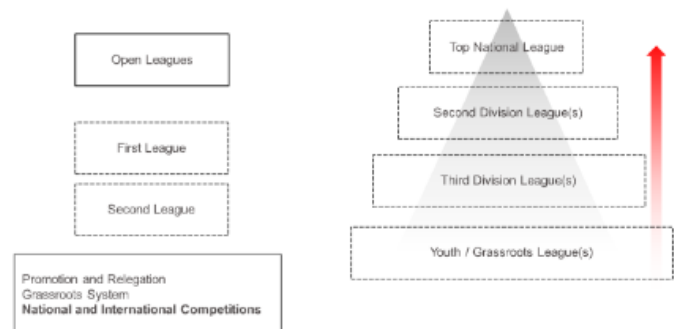
I. International Framework – Olympic family



- The Olympic movement is important
- IOC is at the top of the Olympic movement
- A group of individuals takes the important decisions (column on the right)
- FIFA: everybody is direct or indirect member of the same “family”

II. The European Model

- You can move from bottom to top
- No closed leagues
- Basically every player, skier, cyclist starts in a small association and can move
- This applies internationally
 - o Region of lucerne
 - o International competitions
 - o You qualify for a certain tournament while playing another competition



III. The North-American Model

- You have to wait and pay a lot to get in the closed leagues
- They do not have grass roots; they have a draft system; f.e. Chicago bulls have no junior teams
- The young players are just playing in the college sport; if you want to play organised sport; you have to go to high school/college
- The CEOs know how to plan financial because they can't relegate; no planning difficulties
- There is a salary cap in every league, but they are not in every league the same. That's an agreement how much can be spent on different things
 - o F.e.: the amount of all sold shirts are split for all teams, because NBA sells them;
 - o so they share the revenues
- Drafting System:
 - o You have to go to the club that has picked you or you can't play NBA for the next 3-5 years
 - o He can just negotiate the salary; that's it
 - o The drafting system has been regulated to enhance the level playing field the worst club will be normally first to choose new players
 - o The right to pick first can be transferred



- Only professional players can make money in the North-American System through sport. A college player doesn't receive one penny even though the matches are shown every weekend in TV; but they get a scholarship; they don't have to pay the tuition fee

IV. Which one is better?

EUROPEAN MODEL
<ul style="list-style-type: none"> • Open Leagues • Promotion and Relegation • Grassroots System • National and International Competitions



NORTH AMERICAN MODEL
<ul style="list-style-type: none"> • Closed Leagues • No Promotion / Relegation • Salary Caps / Collective Bargaining Agreements • Reverse-Order Draft • Clubs as Franchises of the League / Entry Fees

No System is purely perfect!
No System is better than the others!

V. Fundamental Principles in Sports law – One sport, One Internat. Federation

Olympic Charter, Art. 25:

In order to develop and promote the Olympic Movement, the IOC may recognise as IFs international non-governmental organisations governing one or several sports at the world level, which extends by reference to those organisations recognised by the IFs as governing such sports at the national level.

- If you want to participate at the Olympic games, you must be in a national federation recognised by the IOC; it happens that sports are not anymore recognised
- What would happen if a sport is governed by two ifs?
snowboard started to be important and therefore there was an international snowboard and an international skiing organisation. Now they are together one federation
- Boxing has traditionally been a sport that is badly managed
they have 4 different federations for professionals – it's a disaster!

§ 4 Why is Switzerland so important in international sports law?

A large number of international sport organisations are based in Switzerland (FIFA, IOC, UEFA, UCI, FIA, FIS, ...),
Why?

- I. **Neutrality & security** of Switzerland (back in time one of the only neutral & secure places)
- II. Central **geographical** position
centre of europa; but not anymore of the world because Africa and Asia got more important
- III. Quality of life (education, salaries, etc.)
- IV. Advantageous **fiscal** treatment; and
preferred tax treatment for NGO's
- V. **Swiss Law** is traditionally friendly and suits well to **non-profit** organisations
(UNESCO, RED CROSS, UNO, WADA, ITU, WIPO are based in Switzerland)

I. Why is Swiss law "friendly and suits well"?

- I. **Autonomy**
Huge autonomy to decide how to organise by myself
you are very free to establish your structure; huge positive element
autonomy means also something different; Government can not say anything to an association;
in some countries the minister of sport can decide who the coach of the nationalteam is
- this ensures neutrality and independence
- II. **Swiss Association Law** (Art. 60 et seqq. CC)
- III. **Constitutional Freedom of Association** (Art. 23 of the Swiss Constitution)

Further, the Arbitration law (= Schiedsgerichtsverfahren) is broad and flexible:

- Any dispute of financial interest may be subject to arbitration;
- Liberal case law with respect to the validity of arbitration agreements by reference;
- Authority of arbitral tribunals to order interim reliefs;
- Applicable law in international arbitration is generally the law chosen by the parties

In some countries you are prohibited to go to arbitration!

II. The Predominance of Swiss Law in Sport-related Dispute Resolution

FIFA-Statutes: Für das Schiedsgerichtsverfahren gelten die Bestimmungen des Reglements für das Schiedsverfahren des CAS. Das CAS soll in erster Linie die verschiedenen Reglemente der FIFA sowie ergänzend das Schweizer Recht anwenden.

Art. R45 of the Code of Sports-Related Arbitration and Mediation:

The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to **Swiss law**. The parties may authorize the Panel to decide ex aequo et bono.

- Substantive Swiss Law is of paramount importance in international sports dispute resolution
- Very often, disputes are resolved, at least indirectly or partially, based on Swiss Law

§ 5 Rules in Sports

I. What is Sport?

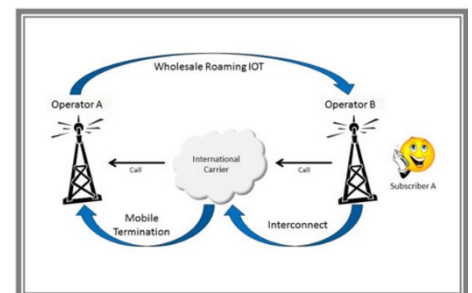
Is a race of a horse and a human Sport? Is boxing sport, if a man boxes against a woman? Is it still sport, when one football team has to start the game with one Player less than the other?

Definition: Sport is an activity involving [physical exertion and] skill in which an individual or team competes against another or others following the same rules.

- You got in most sports rules, even when they don't have rules to play a game. For example: Biker and Hiker have to follow rules, they are not allowed to hike in protected areas in the nature.
- In Sports law you talk a lot about sports that is defined like this definition

Without a system of rules in place in each sport, and without mechanism for enforcing those rules, sport could not exist.

- Two runners compete against each other who is gonna run faster from Lucerne to Rothenburg. There has to be someone that checks that nobody takes the train.
- We must use a system of rules and a system to enforce these rules; not just in Sport, also ...
 - o Family
 - o Traffic
 - o Phone [all the telecommunication companies must agree to some rules]

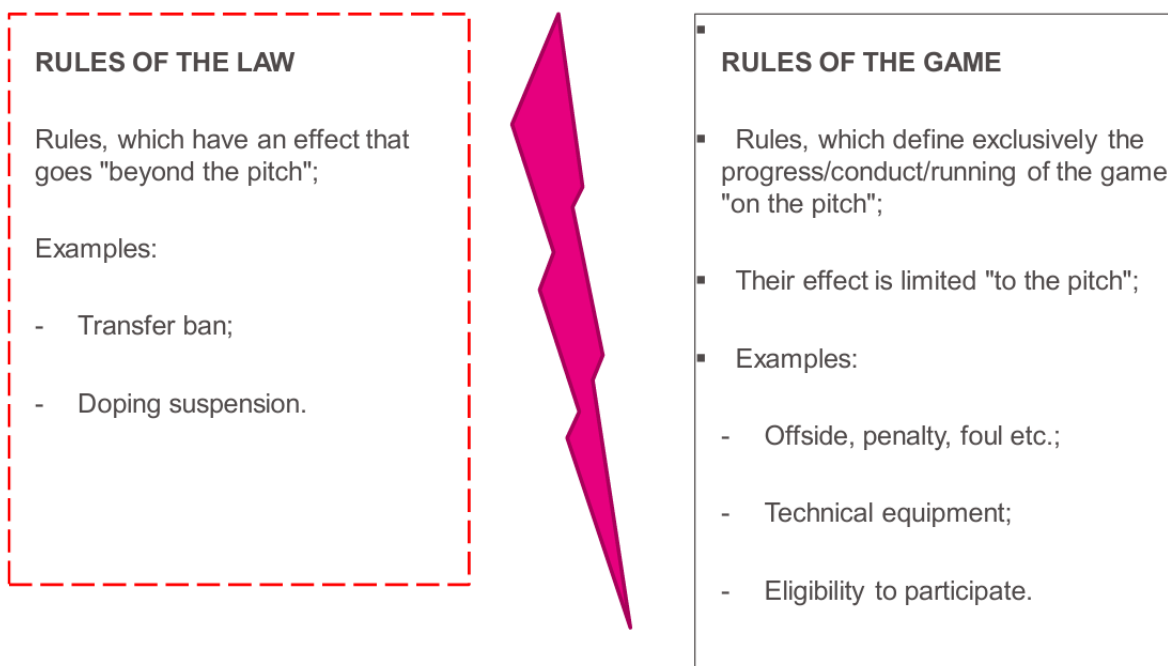


II. Field of Play Rules – The Laws of the Game

Laws of the game = How a particular sport is played on the field.

- Normally: the international Federation issues such rules
- Adopted afterwards by the national federations below the Ifs
- Exception: Golf rules are from St. Andrews Golf Club; Problem: no clear Pyramid structure

- Max Kummer started the Discussion that certain rules are not Rules of the Law, but Rules of the Game. By their nature, Rules of the Games should not be subject to judicial review!
- BSP: *In Gymnastics you get grades at the end of each exercise. The young lady at the Paris Olympics got a grade. Apparently one of the judges made a mistake; he gave the wrong amount of points. But in gymnastic you are allowed to challenge the rating within 60 seconds. The request was made 64 seconds afterwards; too late. This decision is a grey zone between field of play rules and rules of the law. The object of the appeal is the "seconds" decision, not de grade!*



III. Cases Rules of law v. Rules of the Game

1. BGE 103 Ia 410 (1977) – Ambri vs. ZSC

- Luca Rossetti, an ice hockey player, is supposed to be transferred from HC Ambri Piotta to ZSC;
- A dispute arises between the clubs as to whether the transfer has been validly completed and whether the player was eligible to play for the new club (ZSC);
- The dispute is submitted to the "Control Organ" of the Swiss Ice Hockey League, which renders a decision based on the applicable transfer regulations;
- Decision of the "Control Organ":
 - ♣ The transfer has been validly concluded;
 - ♣ ZSC has to pay CHF 30'000.
 - ♣ The player is eligible to play for ZSC.

Ambri Piotta:

- The decision of the Control Organ is an arbitral award;
- Appeal with the High Court of the Canton of Zurich.
- High Court of Zurich:
 - o Decisions of organs of sports federations, dealing only with the qualification (eligibility) of athletes to participate for one team or another, are no decisions on matters of civil law, and they are thus no "judgments";
 - o No jurisdiction *ratione materiae*.
 - o *At that time this was probably correct, nowadays no court would probably say the same!*
- Constitutional Appeal (Staatsrechtliche Beschwerde) to the Swiss Federal Tribunal
 - o Are transfer regulations "Rules of the Game" or "Rules of the Law"?

Considerations of the SFT:

- Acknowledgment in principle of the differentiation established by KUMMER;
- There are no clear dividing lines between rules of the game and rules of the law;
- Considerations of the High Court of Zurich were upheld, but tested only for arbitrariness. *confirmed the decision; but have doubts about the arguments*
- **However:**
 - o The delimitation between legally relevant operations and operations which are not subject to the law can be difficult if professional athletes are involved;
 - o Matters of employment law or personality rights can arise, but they were not invoked in these proceedings.

2. BGE 108 II 15 (1982) – Spectators throw bottles

During a football game between FC Zurich and FC Sion, a spectator throws a bottle against a player of FC Zurich and injures him. FC Zurich immediately lodges a protest with the referee. FC Sion wins the game 3:2. Subsequently, FC Zurich requests with the "Committee" of the Swiss National League that the game be declared won 3:0 by FC Zurich by forfeit, in application of the Competition Regulations of the Swiss Football Association;

- The Committee refuses to declare the game lost by forfeit, but imposes a sanction on FC Sion;
- FC Zurich initiates legal proceedings in front of State Courts, arguing (inter alia) that not declaring the match forfeit amounted to an unequal treatment and thus to a violation of membership rights;
- The Appellate Court of the Canton of Bern does not enter into the merits of the claim for a lack of jurisdiction; FC Zurich lodges an Appeal with the Swiss Federal Tribunal.

"This point of view would have as a consequence that every wrong decision of a referee in one single competition, deciding over success or defeat, could be seen as unequal treatment, and it would then be subject to judicial review from the perspective of a violation of (association) membership rights."

"However, the law cannot interfere to such an extent in the regulation of games and sports, without violating the vital nerve of games and sports."

"Rules which regulate the specific execution of a game on the pitch (...) cannot be assessed under civil law."

"The exclusion of certain areas of sports from the law finds its justification in the argument that a game would be pointless if it was constantly interrupted by one participant invoking a judge."

- For the application of these rules on the pitch, a referee is provided, who renders final decisions within the game;
- This applies even if the referee commits a mistake, which may influence success or defeat in this game;

- However, certain forms of misbehaviour on the pitch can be sanctioned also beyond this game and independent of the results of the game. These can be penalties which are linked to a rule of the game, but which are still different from it. Such penalties may be accessible for judicial review.
- Sanctions such as the one imposed in this case are not per se exempt from judicial review;
- Indication that the previous instance should have entered into the merits of the claim. However, the question was eventually left open because no unequal treatment could be demonstrated by FC Zurich.

3. BGE 119 II 271 (1993) – positive doping sample of a horse

- The horse of Mr. Gundel, a professional German horse-rider renders a positive doping sample.
- The rider and the horse are disqualified, prize money is withdrawn and a suspension is imposed;
- The horse-rider lodges an appeal at CAS, which partially upholds the sanctions;
- Considerations of the SFT in relation to the nature of the dispute:
- A withdrawal of prize money, a disqualification and a suspension undoubtedly affect the personal and economical sphere of a professional athlete;
- They go well beyond sanctions which are purely destined to ensure the correct course of play;
- They are true statutory penalties, affecting legal interests of the persons concerned;
- They are thus subject to judicial review.

IV. Athletes as Criminals?

1. Examples:

- Foul Gabet Chapuisat vs. Lucien Favre in 1985
Sanction : criminal fine of CHF 5K
- Kevin Miller vs. Andrew McKim in 2007
Sanction: 1.6 Mio compensation and 3 months jail sentence intentional and negligent assault
- Sandro Wieser vs. Gilles Yapi
1st Instance: 180 per day charge + CHF 10K fine
2nd Instance: FCZ withdraws complaint after appeal
- Raemy got fouled by Milan Skvaril in 2019
Raemy files a complaint with a criminal authority
Skvaril left CH to avoid procedure

2. Is a sanction appropriate?

Yes	No
<ul style="list-style-type: none"> - When it goes beyond consent - Intention to harm - (Big Injury) - Look at the action; not at the outcome not close to the ball not part of the play (f.e. boxing) 	<ul style="list-style-type: none"> - No, when there is consent - If fair - If compliant to the rules

3. The current jurisprudence – criminal liability for actions on the pitch

- Acts performed during participation in a sport are not automatically exempt from criminal law. And consent to play the game does not mean consent to be harmed at any level.
- Violations of Rules of the Game shall trigger sporting disciplinary consequences.
- Some violations may trigger also criminal consequences.
- Rather clear: cases in which the act was totally non-related to the game.
f.e. boxing: during the game its okay; after the gong it's a big violation
- Cases in which it can be proven that the offender had the intention to harm the other player/athlete; negligence can also be a reason; between intention & negligence = grey zone

Art. 125 Swiss Penal Code: Assault through negligence

1 Any person who causes injury to the person or the health of another through negligence is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

2 If the injury is serious, the offender is prosecuted ex officio.

Art. 125 StGB: Fahrlässige Körperverletzung

¹ Wer fahrlässig einen Menschen am Körper oder an der Gesundheit schädigt, wird, auf Antrag, mit Freiheitsstrafe bis zu drei Jahren oder Geldstrafe bestraft.

² Ist die Schädigung schwer, so wird der Täter von Amtes wegen verfolgt

4. The current jurisprudence – criminal liability für negligent assault

- **Negligent** -> The offender did not apply the due care and misjudged the consequences of his/her act or did not care about it.
- While it is true that there is a certain zone of risk that is permitted/validly accepted, the offender goes beyond that zone if he/she in the moment of the action because of his/her experience could and should have recognized the risk for the health of the other player.
 - o The normal careful athlete as reference.

- I. If the player/athlete violates a sporting rule the purpose of which is (also) to protect the health and prevent accidents, then a violation of the duty to care ("Sorgfaltspflicht") is presumed.
- II. If a sporting rule is violated willingly or grossly, no consent can be presumed on the side of the injured party.
- III. A "red card" is not a condition sine qua non!
- IV. Evidence? The problems of amateur sport, without TV....
- V. And if no criminal liable.... -> Civilliability still possible!

Example: *Hight stick is prohibited in ice hockey because it is dangerous; they're protecting the health of others. If a team violates the rule of 5 players on the pitch in ice hockey, there is a two-minute penalty given to this team because of too many players. This is a rule to protect equality, not the health.*

V. Field of play decisions: Review or no review?

1. The concept of Field of Play decisions

Should decisions of a referee, rendered in the course of a competition, be subject to judicial review?

The answer to this question shall be focused not so much on the rule, which is applied, but on the decision, which is rendered / appealed against. If we look carefully, we should not focus too much on the rule, that is violated, but what kind of decision is taken/ the decision that is rendered.

Example: Ribéry-Case or Gymnasts

- Gymnast athlete exercise & the grades are final did the protest come up 60 seconds afterwards or later? Internal body at the competition; against this you could have a review
- Ribéry: we have at first a field of play decision then a disciplinary sanction is not so much about what rule is violated



If every single decision of a referee would be appealable...

- Authority of referee would be harmed ☒ power to control the competition would be undermined
- Time requirements, fear of constant interruption
- Subjectivity in judging
- Technical aspects
 - For an amateur it probably looks all the same but a former diver sees a lot of differences
- Rewriting a sporting result after the event (problematic); referee should decide; no review at all
- Opening of floodgates

And...

- An athlete/player when entering into competition he/she has accepted that he/she should have the benefit of honest field of play decisions, not necessarily always correct ones.
 → So, in general: **NO REVIEW OF PURE FIELD OF PLAY DECISIONS**

2. Exceptions**a) Fraud, bad faith or corruption**

- o Courts or Tribunals shall interfere only if a field of play decision is tainted by fraud, bad faith or corruption
- o Example: 2002 Winter Olympics held in Salt Lake City, pairs' figure skating competition Yelena Berezhnaya & Anton Sikharulidze (RUS) v. Jamie Rae Salé & David Pelletier (CAN).
 - Everybody thought before the last exercise the Canadian team will win
 - The Russian overtook them in the last exercise because Marie-Reine Le Gougne gave them a fantastic grade and she gave the Canadians an extremely low grade
 - After the Grading she told Journalists: France is competing next week the individual competition and she hopes the Russians give them then as well a good grade
 - Canadians appealed it, it cant be true, that we lost a gold medal because of that
 - IOC found a good solution; both got a gold medal

b) Video

- o Review of Referee's Decision live:
 - Hawk eye
 - Video review, centralized system
- o VAR: the referee keeps his authority that way; but there are Problems:
 - Other view: final deciding power – authority of the field referee
 - Two class society – millions of tennis matches without hawk eye or referees. Its not everywhere the exact same way
 - Interruptions

§ 6 Enforcement of Sport Rules**I. A breach of rule must trigger a “sanction” – In Sport: disciplinary measures****Step 1: Sport Rules must exist!****Step 2: Participants in the Game must have agreed that the Rules are binding**

- In Order to be sure that this rules apply, you must be sure that this rules are applicable to athletes, players and teams; so there must be a binding nature to this rules
- General rules: f.e. in *Doping the federations copy paste the general rules*
- Participation form: fact that you accept the rules; everyone signs 1 before going to the Olympics
- References in the Statutes
- Agreement

Step 3: A violation triggers a certain procedure

- If we have the rules and we're sure that they're binding, there is a field of play sanction or a normal sanction afterwards
- F.e. financial fairplay situation when the team gets a sanction of points

- **Disciplinary Proceedings**
 - o Legal nature?
 - Civil procedure
 - Internal association matter
 - Freedom of Association to regulate its procedures
 - o Some limits?
 - The harder the sanction, the stronger the protection of the athlete
 - Right to be heard
 - Right to be treated equally
 - Legal basis for the sanction – no arbitrariness
 - Right to obtain a decision/ no denial of justice
 - o Disciplinary bodies = bodies that are specialised and neutral/independent

Athletes did not always have legal protection. Back in 2001 a player received a letter from FIFA: Dear Mr. Huggetobler, you did a doping test. You get a 5-match suspension (next 5 games of the national team). No details, and reasons! Nowadays that wouldn't be conceivable. You hear the players nowadays always before the decision and you tell them all the details and reasons.

Step 4: Legal review of disciplinary decisions

- We want a final decision to be appealable
- The high majority of IF have accepted the court of arbitration

II. Alternative models

1. Instead of disciplinary measures: contractual arrangements?

Reasons against it:

Reasons in favor:

Examples:

- Doping: acceptance of the sample result; auto-suspension, ...
- Financial fair-play: Settlement Agreement
- Contractual clause defining consequences of a violation

2. Instead of disciplinary measures: social pressure?

- Gentleman Agreements
- Collective Bargaining Agreements
- League Structure
- Team-internal fines
- Whistleblowing rules

§ 7 Resolution of Sports-related Disputes

I. How shall sports-related disputes be solved?

- Fighting, boxing and shooting is no solution!
- Dices: that Option has been used more often in the past. It is still used, but rarely. F.e. when 2 clubs have the same number of points, same number of goals, cards -> dices
- Mediator: f.e. mediating disputes between the NFL and the American football union. All the players are covered by a framework agreement. When they renew it, they want more and if they don't get it, they go on strikes. That's how the negotiation with the owners of the clubs work. In Europe its less effective, because our courts can also settle the matter. In Europa, the first instance often tries to mediate (with collective bargaining agreements)

II. Arbitral Tribunal vs. State Courts

Arbitral Tribunal	State Courts
<ul style="list-style-type: none"> - You have to decide that you go there instead of state court - There is consent that you go there - Not state law; established by themselves - chosen by arbitral institutions or parties 	<ul style="list-style-type: none"> - if you have a dispute/ you don't agree; it's always the state court - established by the state - elected by parliament

III. Arbitration in Sport: Advantages

Advantages of the sport arbitral tribunals:

- Simplicity
The state court isn't simple; there it can happen that you already missed 5 matches out of the 7 you got as a penalty. That doesn't happen if you're able to go to the CAS.
- International setting
it could happen that you have different clubs as parties (from 3 different countries) and different lawyers of those clubs (again 3 different countries); so with that many nationalities an Arbitration court is easier; because a normal state tribunal has a certain language to be spoken
- Specialisation
you'll have difficulties if it's the first time you speak about a complicated issue. For that reason, its good to have someone specialised.
- Equality
Equal treatment among the athletes, players, clubs, ... -> Playing level field/ is crucial
- Enforcement
easy and quick enforcement of decisions; allows a faster enforcement of the decision

IV. Arbitration: Requirements

1. Independence

- BGE 5P.362/2005: the parties do not renounce to an independent tribunal by conclusion of an arbitration clause
- May 2003 (Salt Lake City Olympics): CAS was recognised by Swiss Tribunal Fédéral as being independent vis-à-vis to the parties and, in particular, to the IOC; therefore. CAS' awards are considered to be equivalent to judgements of state courts.
- Independence and impartiality is even a bit more important where arbitration is mandatory.
- If you wanna participate the Olympic games you gotta accept a lot of rules mostly as well the arbitral clause
- F.e.: Elmar Gundel is sanctioned because of Horse doping (1 month). This was confirmed by the CAS and he appealed to the Tribunal Federal. They decided the CAS is independent and can be considered as a true arbitral tribunal – can therefore replace a state court.

2. Arbitrability ratione materiae

177 para. 1 PIL Disputes over which parties may freely dispose (BGE 119 II 271)



3. Arbitrability

Art. 75 CC: Decisions of an association can be appealed with the State Courts. Recognized by Swiss law and confirmed by the Swiss Federal Tribunal: associations can replace national courts with an arbitral tribunal.

No field of play decisions:

- Definition: decisions implying the application of the rules governing the playing of the particular game; Example: Coup de boule
- An arbitral tribunal shall generally not review field of play decisions:
Field of play decisions shall be left to field officials

In exceptional cases, field of play decisions may be reviewed, for instance in cases of blatant bad faith

- Applies only in exceptional cases
- Direct evidence of bad faith necessary, i.e. of a preference for, or prejudice against, a particular team or individual

→ *Segura Decision* [CAS OG 00/013: Sidney Olympics: racewalker Bernardo Segura vs IAAF]: CAS arbitrators do not review determinations made on the field by referees or other officials. One exception: application of rules in bad faith, e.g. as a consequence of corruption.

4. Agreement to arbitrate in sports; how to do it?

- Agreement: f.e. sponsoring agreement
- Arbitral clause in Statutes (by reference):
bspw. In case of any Art. 75 decisions you must go to arbitration
- Participation form: bspw. To participate the champions league (doppelt gemoppelt)
Olympic games: everybody signs it – also masseur, physio, etc.

An example: the DODÒ case:

- June 2007: Positive doping control of the player.
- July 2007: CBF suspends the player for 120 days.
- August 2007: Brazilian court cancels the 120 days' sanction.
- September 2007: FIFA and WADA appeal to CAS.
- September 2008: CAS accepts basically appeals (2-years sanction)
- Swiss Federal Tribunal confirms CAS decision.

Example (SV on the right):

- Swiss TF:
 - o FIFA rules are binding on the player
 - o Art. 1 of the CBF Statutes foresees that the players must comply with FIFA's regulations
"This global reference to FIFA's regulations, ... is sufficient to justify CAS jurisdiction"
- Own words: FIFA said you are bound to some rules. In those rules there is a clear reference to FIFA regulations; this is enough to justify CAS. We have a system of legal chain which is considered to be sufficient.
- BGer 4A_136/2024: The Tribunal federal confirme, you do not need a written agreement, also implicit is possible by accepting some rules.

Example BGE 133 III 235 (SV on the right):

- Swiss TF confirmed the validity of an arbitral clause by reference
- Swiss TF confirmed the validity of the "obligation" to submit matters to arbitration in order to favor the prompt settlement of disputes in sports-related matters by specialized arbitral tribunals presenting 27 sufficient guarantees of independence and impartiality.
- But the "price" is that an athlete cannot be asked to waive the right to appeal to the TF.
- TF says: all tennis players go to the same course
In the stupid ATP-Rules there was written that you can go to the CAS and then not to the TF that's not okay and that's why it was sent back to the CAS
- Yes, you can request and have a certain liberal approach, but 2 things:
 - o Independency
 - o Give parties opportunity to appeal to TF

- February 2005, in Acapulco, Mr. Guillermo Cañas tested positive for a prohibited substance (a diuretic); In August 2005 the player was suspended for two years by the ATP.
- Mr. Cañas appealed the decision to CAS.
- In May 2006, CAS rejected the Appeal and confirmed the decision, by reducing the sanction to 15 months.
- Mr. Cañas filed an Appeal with the Swiss Tribunal Fédéral.
- The Swiss TF accepted the Appeal.

V. Arbitration and sport: A success story

1. Importance is increasing

- Wide acceptance worldwide to submit sporting matters to arbitration;
- Increasing institutionalisation: CAS, BAT, America's Cup, ...
and also Dispute resolution mechanisms of North-American pro sports: mediation, baseball arbitration, ...
- Many advantages compared to ordinary State courts proceedings

2. Is arbitration important for sport?

Yes

- Arbitration in sport is growing,
- Has many advantages,
- But still needs hard work and engagement

3. Is sport important for arbitration?

Yes

- Rather new field
- Rather young, new international lawyers' community
- But still ist – and probably will remain – a relatively small field

§ 8 The Court of Arbitration for Sport

I. What is the CAS? = TAS

- Independent and specialised arbitral institutions
- Provides services for the settlement of sports-related disputes through mediation or arbitration
- With seat in Lausanne; because originally founded by the IOC that has the seat in Lausanne
- CAS came to life in 1984
- Since 1994 no tie anymore with IOC: The CAS is administrated by a board of 20 senior lawyers
- The CAS has approx. 350 arbitrators from approx. 95 countries
- Around 550-600 cases are registered by the CAS every year (this is a huge number of cases)
- Olympic sports have to recognise the CAS – that's why it's wide used in sports

**CAS as an
APPEAL Court**



**CAS as an
ORDINARY Court**

All the Olympic International Federations and several non-Olympic federations recognise the jurisdiction of the CAS

→ For appeals against decisions of a Sport Association or Federation

→ For disputes between a member and a Sports association or Federation

Two or more parties may decide to submit a sport-related dispute to CAS, for instance a commercial dispute regarding a sport sponsoring

From cycling, track and field to tennis (doping and match fixing), etc. there are a lot of sports the CAS is responsible for. Ice hockey not that much. Formula 1 and Moto GP do not recognise the CAS. Sailing/ the Americas Cup does not recognise the CAS; for doping issues they can nevertheless go to CAS.

II. The Ad hoc Divisions



In **1996**, the ICAS created a **CAS ad hoc division** with the task of settling finally and within a 24-hour time-limit any disputes arising during the Olympic Games in Atlanta.



This was repeated in **1998** (Nagano Games and Commonwealth Games in Kuala Lumpur), in **2000** (UEFA EURO and Sidney Games), **2002** (Salt Lake City and Commonwealth Games in Manchester), **2004** (UEFA EURO and Athens Games), **2006** (Torino games and FIFA World Cup), **2008** (UEFA EURO), **2010** (Vancouver Games and FIFA World Cup), **2012** (London + UEFA EURO **2012**, Rio **2016**, ...

- The IOC started to have worries about Atlanta, because in the US there were many crazy court decisions back in that time
- So they wanted a procedure to make really simple decisions within 24 hours.

III. Examples London 2012

1. The Peternell Case

3 days before the starting ceremony the case Peternell started:

- He competed in eventing (triathlon for horses) same horse
- Case started with tubby Reddy, CEO of south african olympic cometee
- November of the previous year, he moves to England with the horse and has a provisional horse
- Tubby reddy said he's not a south African, he's not real, we send another one
- He could not enter the Olympic because the south africa olympic committee has cancelled his accreditation
- He was by far the best of his country in that discipline
- They started the case 9 AM, finished by 8 PM, wrote it down by night; decided within 24h
- He could compete the olympic game
- Would have been just a random decision of the south african olympic comitee
- Without such a system, what should you do, he would probably not be able to participate

2. The Sailing Case

- Basically, all races had to be cancelled
- Then the first day counts, Spain won the races, therefore they are qualified for the final
- Russians filed the appeal
- Final 10 AM the day after, appeal 4 PM; they had to hurry
- But was quite clear
- Decision taken in 4-5h; Spain to the Final

IV. Q & A

What are the working languages of the CAS?

The procedures are conducted in English, French or Spanish. Under certain conditions, another language may be used.

How does one set the arbitration in motion?

The party wishing to submit a dispute to the CAS must send the CAS Court Office:

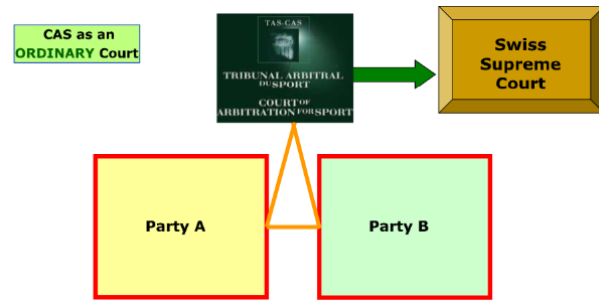
- A request for arbitration (ordinary procedure)
- Or a statement of appeal (appeals procedure)

V. How to get to CAS?

1. Way 1: Agreement

Cas as an ordinary Court:

2 or more parties may decide to submit a sport-related dispute to CAS, for instance a commercial dispute regarding a sport sponsoring.



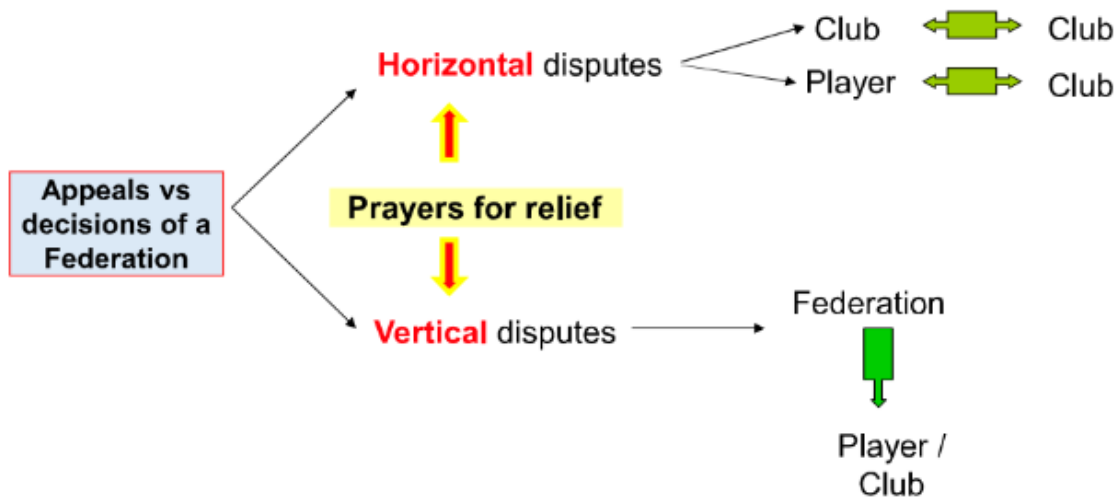
2. Way 2: Appeals



Judicial Bodies



VI. Functional distinction



- Majority of CAS cases horizontal disputes
- If you want to be entirely sure: you have to look at the prayers for relief (Rechtsbegehren)
- If you choose the wrong respondent - you lose the case
- Vertical dispute, you have to put the federation as respondent
- Some decision you have a mix, horizontal dispute and vertical element as well
- Respondent the other club and FIFA, if you miss that, good night!
- It's very important to have the right respondent!

typical case: Fenerbahçe excluded from champions league

- UEFA takes club B as a new club to CL
- Fenerbahçe not happy, file appeal
- We have to go back instead of Besiktas
- Appeal dismissed, because they forgot to put Besiktas as second respondent

VII. Disciplinary Enforcement of CAS awards

- Decision of FIFA: Club A and Player B are declared jointly liable and condemned to pay 100'000 UKP to Club C.
- Club A and Player B file an appeal with CAS against the FIFA decision.
- CAS award confirms the FIFA decision. [THIS IS FINAL]
- Time passes and no payment is made.
- Upon Request of Club C, FIFA opens a disciplinary procedure vs A & B:
Warning: If no payment, disciplinary measures will be taken.
- Time passes and no payment is made.
- Decision of the FIFA Disciplinary Committee: Fine, points deduction, relegation, ...
- Club A and Player B file an appeal with CAS against the 2ND FIFA decision.
[CAN ONLY LOOK AT THE DECISION OF THE FIFA DISCIPLINARY COMMITTEE]

The CAS Position:

- If first CAS award is final and binding, it cannot be challenged before CAS through a second appeal
 - ◇ The object of the second appeal can only be the review of the disciplinary decision.
- The failure to comply with a CAS award, in addition to the possible enforcement proceedings available at State level exposes a party affiliated with FIFA also to a possible disciplinary proceeding.

The Legal Basis:

- FIFA Disciplinary Code (2019), Art. 15:
Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS...
- Disciplinary consequences
 - Fines
 - Final deadline
 - Transfer ban
 - Deduction of points
 - Relegation to lower division
 - For individuals: ban on any football-related activity for a specific period
 - Other disciplinary measures

VIII. Enforcement of CAS awards via State courts**The Legal Basis:**

1958 – Convention on the Recognition and Enforcement of Foreign Arbitral Awards: the New York Convention

The Issues:

- Costs
- Timing
- Bankruptcies
- Formal requirements

IX. What beyond CAS?

Appeals against CAS awards [Art. 190 PIL]:

- Judicial recourse to the Swiss Supreme Court (i.e. Federal Tribunal) is allowed on a very limited number of grounds, such as:
 - lack of jurisdiction
 - irregular formation of the panel
 - violation of elementary procedural rules (e.g. violation of the right to be heard and of the principle of equal treatment of the parties)
 - or incompatibility with public policy ("ordre public").
- Only very few CAS awards overruled.
- Very often appeals to the Federal Tribunal only to "win time".
- Very often appeals are not only rejected, but even considered not admissible ("Nichteintreten").

X. Conclusion

- The special needs of sports-related disputes
- The special role of arbitration in sports
- The importance of specialised arbitral tribunals like CAS
- Everything is perfect? No for sure not! Can be faster!

§ 9 Fighting Abusive Financial Behaviours: Financial regulations in sport

	GP	W	D	L	P
Team A	10	7	0	3	21
Team B	10	6	2	2	20
Team C	9	5	2	2	17
Team D	9	4	2	3	14
Team E	10	4	2	4	14
Team F	10	4	1	5	13
Team G	9	2	5	2	11
Team H	9	3	1	5	10
Team I	9	1	6	2	9
Team J	9	0	1	8	1

	GP	W	D	L	P
Team A	16	11	2	3	35
Team B	16	8	6	2	30
Team C	0	0	0	0	0
Team D	16	7	7	2	28
Team E	16	7	4	5	25
Team F	16	6	5	5	23
Team G	16	5	5	6	20
Team H	16	5	4	7	19
Team I	16	2	6	8	12
Team J	16	0	3	13	3

	GP	W	D	L	P
Team A	16	11	2	3	35
Team B	16	8	6	2	30
Team D	16	7	7	2	28
Team E	16	7	4	5	25
Team F	16	6	5	5	23
Team G	16	5	5	6	20
Team H	16	5	4	7	19
Team I	16	2	6	8	12
Team J	16	0	3	13	3
Team C	0	0	0	0	0

- What if Team C went totally bankrupt in the middle of the season and disappeared;
- Not every team had played Team C and fixtures were left unfulfilled;
- The league therefore decides to expunge all the results for Team C;
- Less matches will be played which means less revenue for some clubs and increased financial risk;

I. Why?

- Improve the economic and financial capability of clubs, increasing their transparency and credibility;
- Place the necessary importance on the protection of creditors by ensuring that clubs settle their liabilities with players, social/tax authorities and other clubs punctually;
- Introduce more discipline and rationality in club football finances;
- Protect the integrity and smooth running of competitions;
- Encourage clubs to operate on the basis of their own revenues;
- Encourage responsible spending for the long-term benefit of the sport;
- Protect the long-term viability and sustainability of European club football.

if you go bankrupt it's because you have to many creditors to pay and too little money. All the financial regulations have in common that there are some deadlines that the clubs have to show that all debts have been paid. In football the idea was as well that the people get more rational. If all of these are possible good purposes, what about competitive balance? Why we don't do something that all the club have the same changes. Not always Celtic and rangers get champions.

II. Financial Regulations in Sport

- The North American model are all financial regulations
- All regulations help to achieve a competitive balance
- In Europe this is simply impossible because we have about 52 states and there is no bargaining agreement for all; rules are different in every country

III. Requirements for Financial Regulations in Sport

Is the restriction inherent to achieve a legitimate objective?

- Preserving the financial viability of clubs
- Maintaining competitive balance

Is the restriction proportionate?

- Is there a less restrictive alternative?
- Is it applied in a transparent, objective and non-discriminatory manner?

IV. The UEFA Financial Fair Play System

Volatility:

- Increased dependency from clubs from one guy
- If that one guy stops giving money, they would go bankrupt within one week
bspw. Constantin

Practise:

- 2000-2010: alarming increase of clubs that disappear (Xamax, Fiorentina, Parma, Leeds, ...)
- 2000-2010: Increase of situation of delayed payments (to players, other clubs, taxes, etc.)
- 2000-2010: Increase of "new owners"
- An example: in 2011, accounts review of 3000 squadre -> only 3% of investments for young teams and only 4% invested in stadia and infrastructure; the rest in salaries and transfer fees
- A lot of CL-Clubs have a lot of debts; new owners that could suddenly disappear

Fundamental principles:

- Break-even rule: you cannot spend more than what you earn.
- Some expenses and investments are "assets" and not "liabilities".
you can increase the amount to spend if you invest in infrastructure, youth sport and women sport, because it doesn't count to the original-spending-maximum.
- You cannot have open debts towards players, clubs, tax authorities.
If you have them, you cannot play CL, EL...
- Statement of accounts on a yearly basis, with interim reports.
- Reporting and Monitoring periods over more years.
- All filings made within a system of obtaining licenses.
- The instrument of the "Settlement Agreement".

The new Post-Covid era:

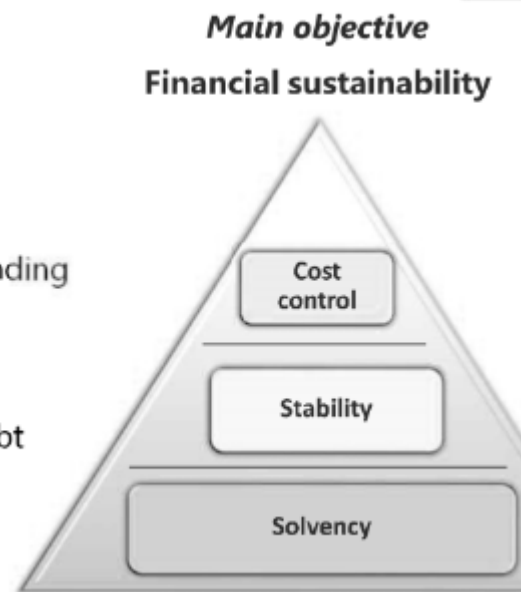
- Increase support for youth development;
- Further strengthen the development of women's football;
- Enhance implementation of football social responsibility policies;
- Alignment with recently approved Fifarules on loans of professional players;
- Increase professional requirements to help raise standards in coaching education, safety and security and match organisation;
- Improve transparency on legal group structure and ultimate controlling party;
- Improve protection of creditors and overall equity position of football clubs.

V. UEFA Club monitoring

UEFA Club monitoring

Proposed approach **3** pillars

- **Squad cost rule** - Ensure rationale spending and viable business in the long term
- **Football earnings rule** - Reinforce balance sheet and stop piling up of debt
- **No overdue payable rule** - Ensure protection of creditors



VI. Stability – Football earnings rule

- Enhanced version of the break-even rule– continue to be assessed over three years;
- Increased flexibility around annual losses
 - Acceptable deviation increased from €30M/ 3 years to €60M/3 years;
 - Introduction of an additional bonus €10M/year for clubs in a “good financial health”
- Deficit to be covered either with contributions or existing equity;
- Adjustments for youth development, women's' football, etc to be maintained however to be covered with existing equity or contributions;

VII. Cost Control – Squad cost rule

- Measure squad costs relatively to the operating revenues and transfer result of football clubs;
- Scope includes all players and head coaches;
- Limits spending on wages, transfers and agent fees to 70% of clubs revenues;
- Revenue to be assessed at fair value;
- Time period to cover the calendar year (includes summer transfer window);
- Timely assessment and identification of breaches;
- Strict financial and sporting sanctions.

VIII. Legal Assessment under EU Law

European Competition Law (Article 101 of TFEU):

- The FFP system will restrict economic behaviour of clubs;
- So Article 101 potentially engaged;
- This Article applies if certain conditions are met:
 - "An agreement between undertakings"
 - "Restricts competition in a market"
 - "Impact on inter-State trade" (in the EU)
- Some clubs say, this rules are restrictive, they regulate their financial freedom
- Article 101 says financial freedom is potentially restricted
- However, such rules are judged according to the Wouters test;
- In Wouters, the European Court held that certain rules adopted by the Bar of the Netherlands which prohibited multi-disciplinary partnerships between members of the Bar and accountants did not infringe Article [101] (1) of the Treaty, because such rules, despite restrictive effects, were necessary for the proper practice of the legal profession, as organised in the Netherlands;
- A similar approach was taken by the European Court in the Meca Medina case which concerned the application of EC Competition Law to anti-doping rules.


- Essentially, what the ECJ and European Commission considers are the following factors:
 - (i) the overall context of the rules in question and their objectives (intentions are good) and
 - (ii) whether any restrictive effects are inherent in the pursuit of the objectives and
 - (iii) whether the rules are proportionate to achieve these objectives.
- Financial stability of clubs is recognised as a legitimate objective (cf European Commission Communication on Sport 11 January 2011)
- Sports governing bodies have a legitimate interest in ensuring that the participants in the competitions which they organise are sufficiently robust (from a financial point of view) to make it through to the end of the event.
- Speaking on the subject of "Sport and European Competition Policy", a senior official of the European Commission has stated as follows:

"the rules for the organisation of sporting competitions (for example between clubs in the same championship) are very different from those for competition between industrial firms. For instance, it is essential that no clubs participating in an annual championship should drop out prematurely (for example because of business difficulties) as this would distort the final results."
- CAS2016/A/4492, Galatasaray v. UEFA: The FFP rules do not violate EU law

IX. Some practical FFP cases

1. Malaga CF v. UEFA

Facts: Malaga a European Club. *→ a lot of debts*

 As per 30 June 2012: substantial overdue payables, i.e. X EUR debts towards other clubs and towards social and tax authorities. As per 30 September 2012: still debts existing. *↳ several months in debt*

UEFA CFCB Decision: December 2012: decision of the UEFA Club Financial Control Body: fine and 1+ yrs exclusion from UEFA competitions. *you don't comply with our rules → too much debts*

Appeal to CAS: Dispute between Club and UEFA on whether amounts due by Club as per 30.09. are "overdue payables". *→ to tax + social authorities*

Club refers to *of Spain* national rules to claim that amounts due to tax and social authorities are not "overdue payables". *If I send a letter to tax - fines in Spain - you get debts practically due extension*

→ Annex VIII of the UEFA Club Licensing and Financial Fair Play Regulations
 UEFA rejects applicability of national law: equal treatment of all clubs → definition in FFP Rules applicable to all clubs. *↳ Definition what overdue payments are*


↳ important for equal treatment

International Sports Law – Session 3 Michele Bernasconi 81

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Rules define what overdue payment is

CAS Award:



Concept of "overdue payable" is defined in FFP rules and must be interpreted according to the UEFA rules, and not according to national law.

A payable is not overdue if creditor has agreed to extend deadline to pay in writing. A simple request made by Club is not sufficient. Such a written agreement/consent must be submitted by reporting date (30.03./31.05./30.09.) *↳ applies to everyone*

If creditor does not answer or sends its/his consent too late, no force majeure. Duty for debtor/Club to obtain written, signed consent in time.

Annex VIII of the UEFA Club Licensing and Financial Fair Play Regulations. 2 lit. b

Sanction is proportionate: fine EUR 300'000.-
 + exclusion 1 year from European competitions
 + exclusion of another year if by date X overdue payables still existing

2. PAE Giannina 1966 v. UEFA

Facts:



The Club does not disclose to UEFA the full amount of its debts.
As per 31 March 2012: substantial overdue payables, i.e. debts towards social and tax authorities.
On 28 May 2013, written agreement Club – tax authorities.

UEFA CFCB Decision:

26 June 2013: decision of the UEFA Club Financial Control Body: exclusion from UEFA 2013/2014 Europa League.

Grounds: - Breach of fair presentation requirement (Art. 47)
- Breach of duty, not to have overdue payables (Art. 50)

they did not disclose debts they had to find out on their own

Appeal to CAS:

1. Jurisdiction of CFCB;
2. Legal basis for decision;
3. No overdue payables;
4. No incomplete accounts.
5. Proportionality.

CAS Award:

CFCB had jurisdiction to render decision.
A payable is not overdue if creditor has agreed to extend deadline to pay in writing by a certain deadline (31.03./31.05./30.09.). Therefore, agreement of Club with authorities concluded in May is too late: "The matter of deadlines has to be considered under the principles of equality of treatment; it is a must to treat all the clubs and the national football associations the same way." (CAS 2008/A/1579) + Deadline "also serve the interests of legal certainty and security".

foreseen in rules

too late for the words deadline



Sanction is correct: if licence conditions are not fulfilled, club cannot be admitted to the competition: "Accordingly, there is no room for any test of proportionality."

Failure to disclose? No decision by CAS, because not necessary.

CAS recognise important so that rules have to be applied to all clubs + you can not bring stuff too late

3. FC Petrolul Ploiesti v. UEFA

Facts:



On 28.09.2012, Club establishes a Joint Venture with 3 partners.
On 21.01.2013, the JV enters a Cooperation Agreement with the City of Ploiesti, under which the City agrees to give money to the JV to pay the employees of the Club. *not exactly financial stability*

UEFA CFCB Decision:

20.12.2013: decision of the UEFA Club Financial Control Body: exclusion from UEFA competition + fine of EUR 50'000.

Dispute: must the money due by JV to employees of the Club be included in reporting perimeter (Art. 46bis FFP rules)?

Appeal to CAS:

1. JV not substantial;
2. Legal basis for double sanction;
3. Deadline to prove no overdue payables to short;
4. Fine not proportional;
5. Procedural irregularities.

5

reporting perimeter

UEFA tries: you can not only give us the information of the identity of the professionals not only right pocket - all pockets

CAS Award:

CAS procedure is de novo: procedural errors, if any, are cured.

JV must be included into the reporting perimeter: Art. 46bis (2): all entities in whose books the compensation paid to employees is accounted for.

JV immaterial? Burden of proof on Club, not on UEFA.

Term "immaterial" must be interpreted narrowly, because it is an exception of the reporting rule.

Sanction is correct: CAS has only to review if sanction would be evidently and grossly disproportionate. Combined sanction makes sense: reasonable fine and exclusion are proper deterrent. Fine alone would not work.

CAS case has "predominant economic nature" → not free of costs (Art. R64 CAS Code).



4. Besiktas JK v. UEFA

Facts:



Club has substantial overdue payables to many other clubs.
 Payables are open as per 31.03.2011 as well as per 30.06.2011 and 30.09.2011.

UEFA AB Decision:

30.05.2012: decision of the UEFA AB: exclusion from the next 2 UEFA competitions (2nd on probation) + fine of EUR 200'000 (100'000 on probation).

Grounds: Overdue payables concealed + misleading reports to UEFA + overdue payables are substantial

Appeal to CAS:

1. Amounts were disputed;
2. Unequal treatment;
3. Why National Federation (TFF) has not been sanctioned? *they also did a mistake*
4. Fine not proportional;
5. Procedural irregularities.

87

*Its not sufficient simply not pay
 - If you really want that its not overdue
 - you gotta go to court*

Liabilities

*10 Mio. to FCL
 5 Mio. to Borussia
 4 Mio. to Player XY*

If you want that this is not counted as 19 Mio. overdue

It is not established that I owe this money - but you gotta dispute

*In front of Cas vs. FCL
 In front of Fifa vs. Borussia*

CAS 2012/A/2824: Beşiktaş JK v. UEFA

CAS Award:



CAS procedure is de novo: procedural errors, if any, are cured.

It is not sufficient to "simply not pay". Claim must be (a) disputed and (b) Club must prove (burden of proof!) that the claim is manifestly unfounded (→ Annex VIII 1.d.).

Measures/sanctions against the Club are possible and licit independently on whether or not UEFA takes sanction also against the National Association (here: TFF).

Sanction is correct: No unequal treatment, no proportionality issue.

CAS looks at the matter from ① from square one

§ 10 Players Contracts

Why Football?

- Economic importance; *a lot of money is involved*
- Legal fields involved
 - Contract law
 - Employment law
 - IP Rights
 - EU law etc.
- Current developments
- Legal market

I. The Pre-Bosman Period

1. EU Law & Sport

EU law has challenged essential features of the sport framework

- Free movement of workers (Art. 45 TFEU)
 - No obstacles to free movement
 - No discrimination on grounds of nationality
- Competition law:
 - Anticompetitive practices (Art. 101 TFEU)
 - Abuse of dominant position (Art. 102 TFEU)
 - State aid rules (Art. 107 TFEU)
- (Indirect effect of other pieces of EU legislation)
also other legislation that are of importance (e.g. safety issues, ...)

2. EU Law & Sport: Walrave & Koch

UCI rules required pacer/stayer to have the same nationality in medium distance cycling competitions. Follow pacemakers on motorbike at that time rule, that pacer (motorbike) and stayer (cyclist) had to be of the same nationality. Was questioned, because Walrave and Koch had preferred a pacer of another nationality



Free movement & nationality-based discrimination

Decision 1974: ECJ --> European Court of Justice;

- Sport is subject to EU law in so far as it constitutes an economic activity
- Exception for national teams which are of "purely sporting interest" and "have nothing to do with economic activity», organizing the Euro or World Cup.
- EU law applies to sports rules whenever they have a cross-border impact within EU territory
- Pacers provided professional service, so they could rely on principle of non-discrimination
- So if only national competitions (pure sporting interest), then this rule would be okay; but not international -> then the non-discrimination rule applies
- UCI rules were considered to be fine

3. EU Law & Sport: Bosman v. UEFA at al.

Free movement & nationality-based discriminations



Two rules were declared illegal by the ECJ (in 1995)

- Limitation on number of non-national players in a club team (3+2 rule)
- End of contract transfer fees --> Under the old rule even if the contract was finished between Club B and Club A, Club B had to pay a transfer fee to Club A; even if he moved peacefully. This was the point of Bosman. He said because of this when I am a player, and my contract is over I have difficulties to find a new club.

Although not discriminatory, regulation found to constitute an obstacle to employment. Such obstacles are prohibited unless justified i.e. if (a) they pursue a legitimate objective and (b) they are proportionate to this objective. Encouraging training of young players and fostering competitive balance are indeed legitimate objectives.

The idea of this rule was by paying the old club was to encourage to train young players and to invest in those young players. However, this rule is not sufficient. It did not provide clear link between these objectives and the fees demanded and, as such, were contrary to the free movement of workers. After Bosman: If a player now moves to another club at the end of the contract, then their new club didn't have to pay a transfer fee.

II. The Post-Bosman Period

1. Home Grown Player Rules of UEFA

The Rule: In UEFA club competitions, 8 players (from a squad of 25) shall be "locally trained" (grassroot system)

- After very long negotiations, the EC gave the "green light" to the UEFA rule.
- EC (2008) rule does not entail any direct discrimination based on nationality and any indirect restriction on free movement is justified on the basis of encouraging local training (and not too many, just 8 out of 25)
- However, the impact of the rule is limited

2. The FIFA RSTP [Regulations on the Status and Transfer of Players]

1998 – 2001: 3-Year negotiation in Brussels

2001: Agreement by UEFA, FIFA and the EC -> the FIFA RSTP

M. Monti: "The new FIFA Rules find a balance between the players' fundamental right to free movement and stability of contracts together with the legitimate objective of integrity of the sport and the stability of championships."

4.10.2024: The European Court of Justice (ECJ) has ruled that some of FIFA's transfer rules are contrary to EU law.

Also es esch eifach so, dass de Bernasconi de Diarra case ned guet fend...also vorher hed jo ebe das System FIFA RSTP guet funktioniert, aber etz esch jo ebe am 4. Oktober de Diarra case gsi und das stellt denn halt s System so chli in frog und de Bernasconi fend das ned guet wel er ebe fend, die wo die Entscheidig gfällt hend send gar ned spezialisiert usw...



"Principles" incorporated into the new structure of the FIFA RSTP:

- Pacta sunt servanda: compensation for unilateral breach of contract (Art. 97 OR)
- Training compensation
 - > yes, some money must go from one club to the new club. They have to train young players
- Solidarity contribution --> similar as training compensation; social idea that even small clubs get some of the money because of a player. A lot of money is transferred
- Transfer windows --> period of time (4-5 weeks in summer, 3 weeks in winter).
- Maximum duration of contract

- Protection of minors --> Below 16 a player cannot go to a club in a different club.
- Status issues (amateur, professional,...); improved in the last 20 years

some principles in rules, that still remain valid **UNIVERSITÄT LUZERN**

1. -> pacta sunt servanda -> have to comply with contract (in sport, the same)
if breach contract, have to pay compensation for damage -> Art. 97 CO
2. some money must go to new club to club that trained -> idea, that clubs have to train young players

3. similar to training compensation (have to distinguish) -> training compensation has the idea/aim, that training of players must work solidarity contribution more with social idea -> even small Clubs must get some of the Money,

4. two Transfer windows: e.g. three weeks winter, 4 in summer...-> idea, if player has to change clubs -> can't happen anytime, must happen in this window
transfer window have value -> stability of competition -> clubs can't change their Team during competition (would happen without this rule)

5. rule that we do not have in employment law -> here with player maximum duration of contract -> can't have longer contract than 5 years with club (in employment law can have 15 years...-> only barrier 27 ZGB)

6. protection of minors -> 12 years african player, moved to China on road...-> rule: if below 18, can't go into new country
but: in treaty of european union-> there you can go to other country if at least 16 years -> FIFA: below 18 no Transfer, but in EU, than only below 16 not -> also wenn 16 ist, dann kann in EU in anderen Staat gehen

The FIFA RSTP

"Principles" incorporated into the new structure of the FIFA RSTP:

- compensation for unilateral breach of contract
- training compensation
- solidarity contribution
- transfer windows
- maximum duration of contract
- protection of minors
- status issues (amateur, professional, ...)
- etc.

16 7. status issues: undisputed part of this new rules

These FIFA RSTP has done a lot of good Things, a lot of Status issues solved, minor protected and Training compensation and solidarity contribution a lot of good for small countries

3. The Principles of the FIFA RSTP

a) Contractual Stability – Pacta sunt servanda

13: Respect of contract

A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement [have to fulfil the contract till the end, unless Agreement about earlier termination]

14 I: Terminating a contract with just cause

A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause [wichtige Gründe...]

17: Consequences of terminating a contract without just cause

The following provisions apply if a contract is terminated without just cause: In all cases, the party in breach shall pay compensation [VSS: valid contract]

Contract must be complied with!

Unilateral, unjustified breach of a contract by a player or a club

→ Not a **mutual** termination
(art. 13 FIFA RSTP)

→ Not a **justified** termination
(art. 14 and 15 FIFA RSTP)

→ Not a "termination" because
of a **non-valid** contract

→ A **breach** = **termination or serious violation** of a contractual duty that provides just cause for termination to the other party.

- Not a "termination" because of a non-valid contract --> existing employment contract between a club and a player
- Not necessarily only a termination; it's also the breach
f.e. not going back to the club or just leaving the country
- Player goes to a club and takes cocaine – it was found out by a doping test – this is a valid reason to terminate the contract -> player has to pay compensation because he was the party who breached the contract
- Player leaves the club because he's never played -> Art. 15

Breach of duty to provide services:

- Parties have agreed the amount in advance --> Art. 17 the amount due under art. 17 FIFA RSTP; Liquidated damages / buy-out clauses ("Konventionalstrafe")
- Issues of national law --> Reduction, validity at all?
- Parties have not agreed the amount in advance
- How to calculate? --> For the law of the country concerned; of the specific

Just Cause?

No general definitions in the FIFA Rules

CAS 2004/A/587

CAS 2006/A/1062

CAS 2006/A/1180

CAS 2006/A/1100

CAS 2007/A/1210

Just Cause admitted if the continuation of the contract cannot reasonably be expected from the party

Non-payment or late payment of salaries?

Just Cause admitted if :

- the amounts in question are not completely secondary,
- Club has no justification to retain monies and if
- player gives warning/notice prior to termination.

CAS 2006/A/1100

CAS 2006/A/1141

CAS 2006/A/1180

CAS 2006/A/1267

Since 2018, new Art. 14bis: Delay in paying 2 month salaries and reminder.

Breach of duty to provide services?

Just Cause admitted if

- player does not provide his services at all or not in time,
- player provides his services but not with his best efforts,
- player breaches duty of care.

CAS 2006/A/1082 & 1104

CAS 2006/A/1141

CAS 2005/A/876

Duty to occupy?

Just Cause admitted if

- club refuses to give the Player the possibility to train appropriately.

CAS 2007/A/1235&1243

CAS 2005/A/937

CAS 2005/A/909-912

- Breach of duty to provide services: if a player just disappears or was obviously not doing his best – *f.e. arriving late to the training, gaining weight, ...*
- Breach of employer: it's their duty to occupy the players; let them work. If I can prove that e.g. *club tells the Player that hes not entitled anymore to come to the trainingscenter -> club breached; player receives compensation*

The amount due under art. 17 FIFA RSTP

Parties have agreed the amount in advance	Liquidated damages / buy-out clauses Issues of national law? → Reduction, validity at all?
--	---

"In case either party terminates this Agreement prematurely and without just cause, the following net amounts become immediately due and payable:

- If it is the Club that terminates the Agreement: 6 months salary.
- If it is the Player that terminates the Agreement: EUR 5 Mio."

Sometimes:

"If it is the Club, an amount equal to any salary that is still unpaid."

The amount due under art. 17 FIFA RSTP

Parties have NOT agreed the amount in advance	→ To put the injured party in that position he/it would be in, had the contract be fulfilled properly (so-called "positive interest").
--	--

- Its kind of: Konventionalstrafe
- Can agree on everything; but excessive amounts can be reduced in swiss law
- Swiss law: it's possible to have different amounts if the club or the Player terminates the agreement
- We don't need an exact amount; if it's possible to calculate it, that's okay
- Principle: contract must be respected unless important reasons occur – if not, they have to pay compensation
- If not agreed: OR 97 (not directly) – look, what they would have had if fulfilled

b) Contractual Stability – Pacta sunt servanda: The amount due under Art. 17

How to calculate? Art. 17 para 1: With due consideration:

- For the law of the country concerned;
- Of the specificity of sport;
- And of any other objective criteria, including in particular:
 - The remuneration and other benefits due to the player under the existing and/or the new contract.
 - The time remaining on the existing contract up to a maximum of five years;
 - The fees and expenses paid or incurred by the Former Club (amortised over the term of the contract); and
 - Whether the contractual breach falls within the Protected Period as defined under the "Definitions" chapter in the FIFA Regulations.

Has the contract been breached during the protected period or not? The protected period are the first 2 years of a 5 year contract.

c) *Contractual Stability – Pacta sunt servanda: A real case*

CAS 2014/A/3626 Carmelo Enrique Valencia Chaverra v. Ulsan Hyundai

- 27.01.2010:** Carmelo Enrique Valencia Chaverra signs a contract with Ulsan Hyundai FC
- September/October 2010: accident during training. Player is injured.
- 12.10.2010:** 1st MRI test. Club doctors: only minor lesion ◊ "conservative" therapy.
- 20.10.-21.11.2010:** Valencia plays and trains with Ulsan.
- 03.01.2011:** After vacations, player comes back to Ulsan. He claims pain.
- 14.01.2011:** Medical exams. Ulsan' doctor: go ahead.
- 17.01.2011:** 2nd MRI test. Valencia's Doctor declares him unfit to play.

Dispute arises between the Player and the Club.

- 01.02.2011:** the Player terminates the Contract with Ulsan and returns to Colombia.
- 07.02.2011:** He undergoes surgery in Colombia.
- 28.02.2011:** The Club asks the Player to come back.
- 10.03.2011:** The Club terminates the contract.

- March 2011:** The Player files a claim with FIFA.
- May 2011:** The Club files a claim with FIFA.
- 04.10.2013/20.05.2014:** FIFA orders the Player to pay USD 400'000 to the Club.



JUST CAUSE for the Player to terminate the contract without notice?

→ Did the attitude of the Club with respect to the injury of Valencia justify the unilateral termination?

CAS 2014/A/3626 Carmelo Enrique Valencia Chaverra v. Ulsan Hyundai

JUST CAUSE for the player to terminate the contract without notice
 Did the attitude of the Club with respect to the injury of Valencia justify the unilateral termination?

For Player	For Club
<ul style="list-style-type: none"> • 400 K too much • Bad communication • Health issues and fears • Duty to take care • Bad faith? 	<ul style="list-style-type: none"> • Player just leaves • Formal duties

A termination brings a contract to an end, independently on whether there is just cause or not. The second "termination" by the Club is irrelevant

Was the termination by the Player justified?

- Just cause = any circumstances under which, if existing, the termination party can in good faith not be expected to continue the contractual relationship
- Burden proof? The player wants to terminate --> He has the burden of proof
- Player could in good faith fear for his future career and feel abandoned
- Both parties behaved in a way that led to the termination

A termination brings a contract to an end, independently on whether there is just cause or not. The second "termination" by the Club is irrelevant.

Was the termination by the Player justified?

- Just cause = any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the contractual relationship.
- Burden of proof? The Player wants to terminate ◊ He has the burden of proof.
- Panel is satisfied that the Player "was not inventing a problem", but Player was not able to proof that the medical treatment proposed by Club was unreasonable.
- Player could in good faith fear for his future career and feel abandoned.
- But Player has contributed to an exacerbation of the tensions, and the medical treatment offered by the Club allowed him to finish the season.
 - Both Parties behaved in a way that led to the termination.

~~first medical discussion -> first doctor said should have undergone surgery...~~

~~first: player terminated contract, than club -> termination of club irrelevant, because terminated contract can't be terminated again (therefore only question if termination of player justified)~~

~~what just cause is
burden of proof -> player has to proof that just cause to do it he not inventing the problem, he was concerned for his health -> so understanding for his behaviour (could stand to not trust treatment proposed by doctor of club)~~

~~However: Player also contributed to tension of dispute (he did not communicate really well)
if we look at it -> both sides did something that was not entirely correct -> both sides could have behaved better~~

~~in FIFA rules this Situation (where both breached-> both cause) not regulated
say: termination of player justified~~

~~Art. 17 not fully applicable (because this only if one contributed) but in Swiss law: Art. 337b Abs. 2 CO -> if both contributed, the Tribunal can terminate the financial consequences~~

~~so because no rule in FIFA rules, swiss law subsidiarily applicable~~

~~club not in bad faith -> because only did what doctor said~~

~~Appeal Arbitration -> one party chooses one arbitrator, the other one and court chairman/chairwoman~~

Therefore:

- Termination by Player was justified;
- But: just cause for termination was not the result of a unilateral wrong behaviour. For this reason, Art. 17 FIFA RSTP is not fully applicable.
- Swiss law applies: in such cases the Panel has to determine in its discretion the financial consequences of a termination without notice, taking into account all the circumstances of the case (art. 337b para. 2 CO).
- Appeal of Player partially accepted:
 - o no compensation due to the Club +
 - o unpaid salaries to be paid to Player.

d) Training Compensation

The rationale of FIFA Regulations:

- Encouragement of training of young players ("*train, don't buy only*")
- Improve solidarity among clubs ("*do not take profit from the work of others*")

When a player signs his first contract as a Professional:

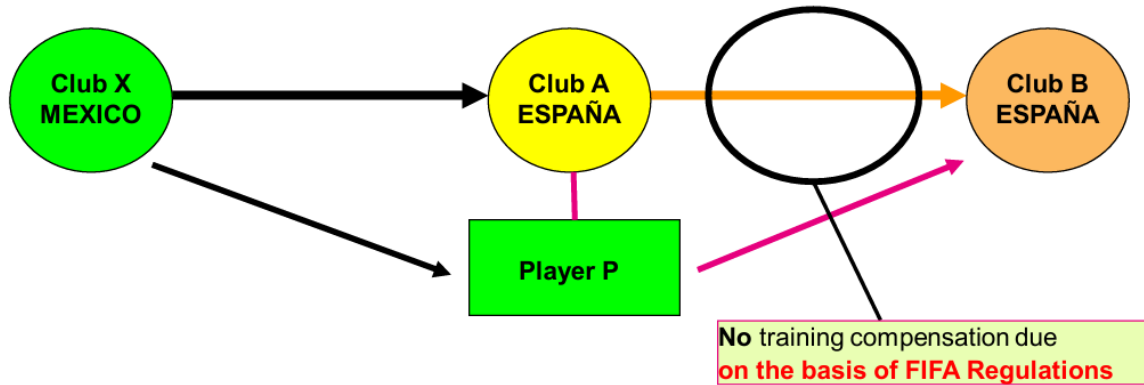
- **change of status** from amateur to professional, or
- On **each international transfer** of a Professional (men) until the end of the Season of his 23rd birthday
 - o Not important whether transfer takes place during or at the end of the contract between training club and player
 - o Training compensation ≠ Compensation for breach or "Transfer fee" or "Solidarity contribution"

4. National vs. International Transfers

a) 1st Example

1st Example

Player P is formed by the Mexican club X. At the age of 19 he is transferred to the Spanish club A. At the age of 21 he is transferred to the Spanish club B.

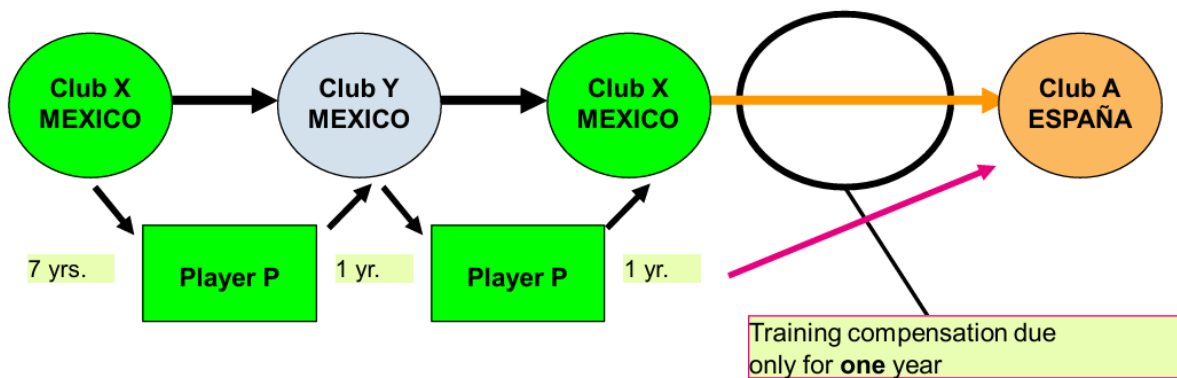


FIFA regulations are doing international regulations. In case of a national transfer there are no training compensation. If you change the club within the same country, it is not on basis of FIFA regulation.

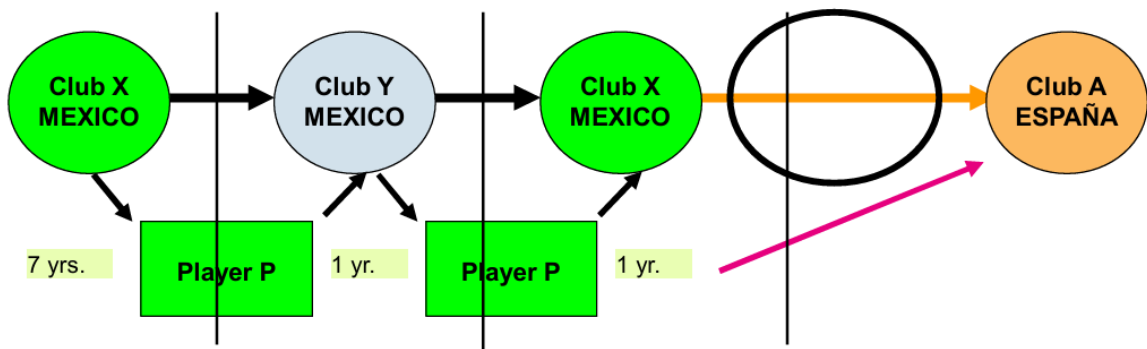
b) 2nd Example

2nd Example

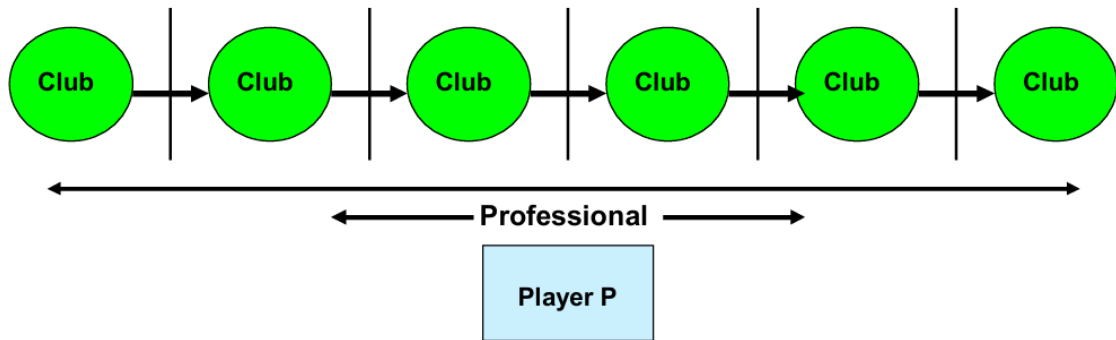
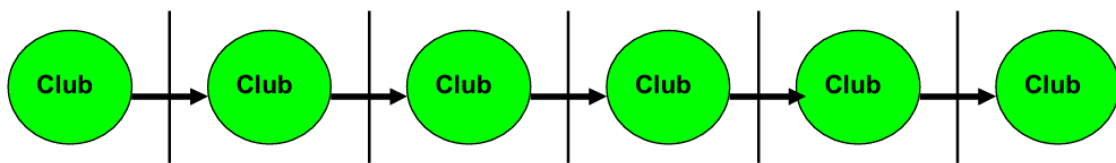
Player P is formed by the Mexican club X from the age of 12 to 19. At the age of 19 he is transferred to the Mexican Club Y. After one year, 20 years old, P goes back to X. After one year again, at the age of 21 he is transferred to the Spanish club A.



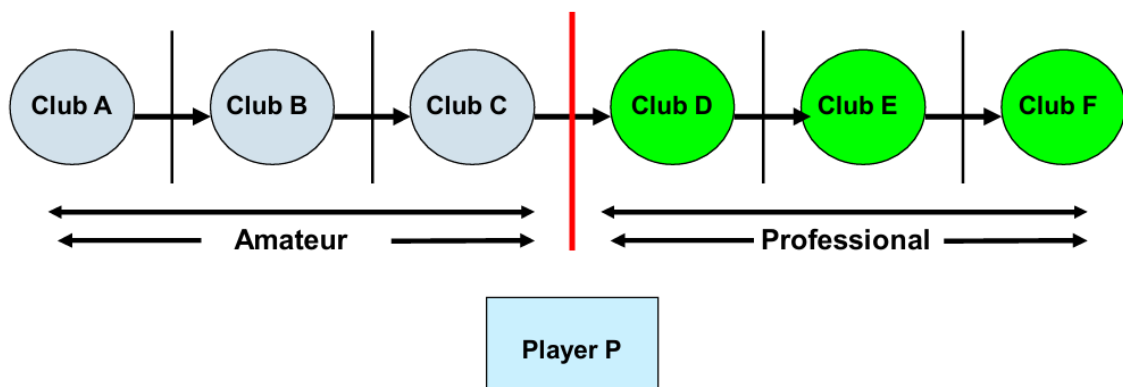
5. The segmentation principle



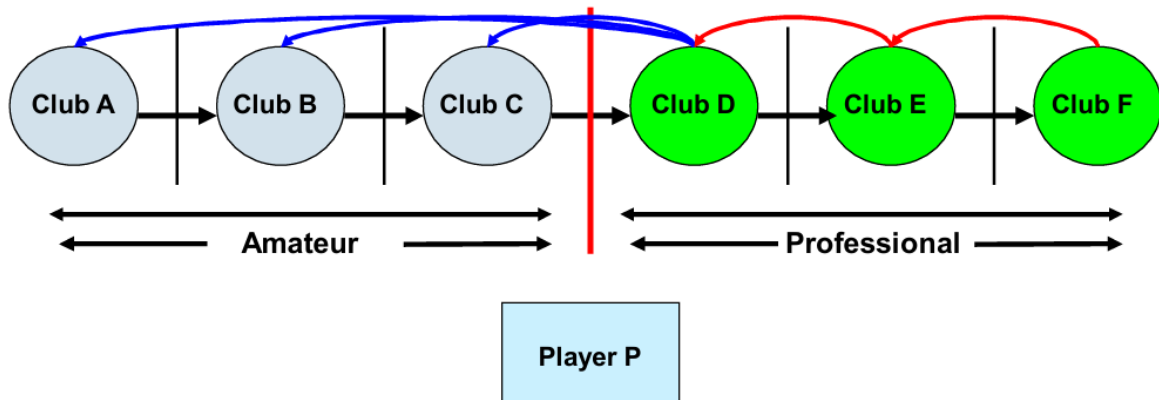
Training compensation is distributed pro-rata according to the years of training. For each transfer, only the Former Club for which the player was registered is entitled to training compensation (see art. 3 of Annex 4 of the FIFA Regulations).



But how it is with the first professional contract?



First professional Club has to pay all other amateur clubs in case of a status change. This is not the case if you have an international transfer. Later: if professional to professional -> only the former club has to pay (when international transfer)



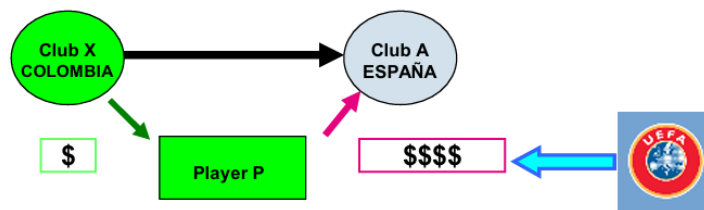
6. Calculation of the Training Compensation

Annex 4 FIFA Regulations, art. 4-5:
Principle: Training compensation is based on training costs.

- Not on the individual, concrete training costs of a certain club, but on the costs calculated and pre-determined at confederation level;
- Not on the costs of the confederation of the training club, but based on those of the confederation of the new club
 → Protection of countries that do generally form players.

But...

This means in other words that clubs which have the resources to hire football talent abroad, will be paying a foreign club according to their own "price" standards.



Price should not be incentive not to training players.

- in European club: maybe 40'000 (because life more expensive)
- in Africa: maybe 5'000 to train a young player

if the new club must pay to training club, not the amount of money old club has paid, but the amount of new club would have paid for training (because then would always go to other countries and take these players) -> this better because then European clubs also train young players because no financial advantage

so, if Player was in Africa and then to European club -> new club has to pay 40'000 to African club. If the costs in Columbia are very low and player goes to Spain -> Spanish club Pays the Colombian club the amount from Spain (UEFA)

Annex 4 FIFA Regulations, art. 4-5:

All clubs are classified into categories (1 to 4, some countries only 2 or 3 categories) and each confederation has established (and should review yearly) the costs for each category.

Categories:

Confederation	Category I	Category II	Category III	Category IV
AFC		USD 40,000	USD 10,000	USD 2,000
CAF		USD 30,000	USD 10,000	USD 2,000
CONCACAF		USD 40,000	USD 10,000	USD 2,000
CONMEBOL	USD 50,000	USD 30,000	USD 10,000	USD 2,000
OFC		USD 30,000	USD 10,000	USD 2,000
UEFA	EUR 90,000	EUR 60,000	EUR 30,000	EUR 10,000

7. Solidarity Contribution

a) The Rules

Art. 21 & Art. 1 Annex 5 FIFA RSTP

Solidarity Mechanism Solidarity contribution is to be paid when a professional player moves / is transferred during the validity of his contract, irrespective of the age of the player.

The new club shall distribute 5% of the total transfer compensation to all the clubs where the player has played between the age of 12 and 23.

Art. 1 FIFA RSTP

Solidarity contribution is payable only if the Player transfers between clubs belonging to different associations, i.e. an international transfer.

Art. 2 Annex 5 FIFA RSTP

Solidarity contribution is payable by the new club.

Training compensation is due with every international transfer solidarity contribution only if during the validity of the contract 5% of total Transfer compensation

difference: training compensation shall happen always

solidarity contribution also only international Transfer

so if pay 8 Mio. for a player (transfer fee) -> 5% ist distributed to all former Clubs between 12 and 23 (solidarity contribution is due when economic value)

so for small clubs -> at least some money from international transfer

e.g. transfer fee 10 Mio. (lets say player was at 4 Clubs) 5% of 10 Mio is 0.5 Mio.-> -> 125'000 per club (when assume Player was the same amount of time at each club -> if not the same amount of time, not same money) many Clubs did not ask for this money-> so from this 5% only about 40% -> FIFA made a system, where player are registered -> now it is automatically -> now things work better because of this system

b) The Zarate case

- Mauro Matías Zárate, born 1987, plays from '98 to '07 for Vélez.
- 23 June 2007: Transfer from Vélez to Al Saad SC (Qatar): 4-years contract: 07/08, 08/09, 09/10, 10/11. The contract foresees a EUR 20 Mio buy-out clause.
- April 2009: Lazio and Al Saad start negotiations for a transfer: no success. 42-27 April 2009: Player sends a termination letter to Al Saad, and declares to make use of the buy-out clause.
- 4 June 2009: Lazio and Player sign a 5-years contract.
- 5 June 2009: Lazio pays to Al Saad EUR 20 Mio as "compensation for termination notice Mauro Matías Zárate

The dispute:

- Vélez requests payment of solidarity contribution resulting from movement of Player from Al Saad to Lazio.
- Lazio opposes the request and argues that Zarate was not “transferred”
 - Not transfer fee; was only a “buy out clause”
- *Al Saad are happy they are not going to FIFA*
- *The dispute is between Lazio and Velez. Lazio and Al Saad don't have a successful transfer. We don't have a transfer fee. We should receive 10% of this 20 Millions. Lazio opposes the request and argues that Zarate was not "transferred"*
- *If a professional is transferred before the expiry of his contract, any club that has contributed to this education and training shall receive a proportion of the compensation paid to his former club*
- *Concept of Move*

Art. 21 FIFA RSTP Solidarity Mechanism

If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution)."
solidarity is a proportion -> Art. 21 is in favour of Lazio

Art. 1 Annex 5 FIFA RSTP 44

"If a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years. [...]"
move and not transfer -> not in favour of Lazio

CAS:

- Nature of transaction around Zárate is like a transfer.
- A "move" is a "transfer" in the meaning of the Solidarity mechanism if:
 - consent of club of origin
 - consent of club of destiny
 - consent of the player
 - price or value of transaction.
- All four conditions fulfilled, "move" of Zárate is a transfer, and 45 solidarity contribution must be paid.

Conclusion:

- The "name" of a transaction is irrelevant.
- Buy-out clauses cannot be abused to circumvent solidarity contribution.
- Neymar: there it's similar, but the amount was payed by Neymar and not from new club -> CAS said, it's the same -> whether it is the Player or the new club; it's not important who pays – there is a value attached to this move and both Clubs were consenting

8. Transfer of Minor Players**a) The Rules****Art. 19 FIFA RSTP Protection of Minors****A) Principle:**

International transfers of players under 18 are prohibited (both professionals and amateurs!).

B) Purpose: (CAS 2007/A/1403, RC Racing de Santander SAD vs Club Estudiantes de la Plata, para. 81)

- To protect minor players from abuse and mistreatment.
- To give legal certainty through consistent implementation

C) Only five exceptions:

- **Art. 19 Sec. 2 lit. a FIFA RSTP**
 - NO LINK WITH FOOTBALL: The player's parents move to the country in which the new club is located for reasons not linked to football.
if parents move from Finland to Switzerland [father is icehockey Player] -> Player can be registered from Finland to Switzerland, even if he is 14 years old, because it's not linked to Football
- **Art. 19 Sec. 2 lit. b FIFA RSTP**
 - EU/EEA: The transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between 16 and 18. In this case, the new club must fulfill the following minimum obligations:
 - adequate football education and training
 - academic and/or school and/or job education and/or training
 - all necessary arrangements for private life
 - confirmatory statement to other national association.
- **Art. 19 Sec. 2 lit. c FIFA RSTP**
 - BORDER LOCATIONS: The player lives no further than 50km from a national border and the club with which the player wishes to be registered in the neighbouring association is also within 50km of that border. The maximum distance between the player's domicile and the club's headquarters shall be 100km
from Konstanz to St. Gallen or. Chiasso to Como
- **Art. 19 Sec. 2 lit. d FIFA RSTP**
 - Refugees.
- **Art. 19 Sec. 2 lit. e FIFA RSTP**
 - Students, who move without parents to another country temporarily for academic reasons (max. 1 year), provided new club is purely amateur club
f.e. Erasmus-Programm

b) *The Muhic case*

- 1 October 2009: Player is 15. He travels to Germany for job training as Airport manager. He leaves in the apartment of his aunt.
- In 2010 Player joins Kickers Offenbach.
- 5 August 2010: Player is 16. German National Association, DFB, requests via TMS authorization to register the Player, based on art. 19 sec. 2 FIFA RSTP.
- 10 August 2010: FIFA Single Judge Players' Status refuses ITC.
- 10 August 2010: DFB files new request, based on hardship.
- 28 September 2010: FIFA Players' Status Subcommittee dismisses the request

- **Player:**
 - Move to Germany not linked to football [came because of the Job]
 - FIFA cannot limit freedom.
 - He lives with his aunt, and his mother comes to visit him very often.
 - Art. 19 sec. 2 lit. b applicable to Bosnia Herzegovina because of Stabilization Agreement.
- **FIFA:**
 - Art. 19 FIFA RSTP must be interpreted strictly.
 - "Hardship" cannot be an additional exception.
 - Unclear whether Player move was linked to football or not.
 - Unclear whether "parents" take care of him.
 - Art. 19 sec. 2 lit. b is not applicable to Bosnia Herzegovina .

- **CAS:**
 - An aunt is not, normally, a "parent" in the meaning of art. 19.
 - Art. 19 sec. 2 lit. b is applicable only to EU and EEA countries: Association Agreement with Bosnia Herzegovina is only trade agreement, no freedom of movement, so no space for analogy.
 - Hardship? No space for an additional exception. RSTP have been drafted and negotiated carefully. No reason to insert a new possible exception.
 - Rationale of art. 19: "The CAS Panel sees the need to apply the protection of minors strictly. Opening up the door to exceptions beyond those carefully drafted and included in the present text [of the RSTP] would unavoidably lead to cases of circumvention [....]."

Note: He did not come to Germany to work as an airport manager and not linked to football. He lives with his aunt and his mother comes to visit him very often

c) *Vada No. 1*

- Beginning of 2011: Player is 15. He travels to France, with his family, and joins Girondins de Bordeaux.
- Mai 2011: Fédération Française de Football (FFF) requests via TMS the authorisation to register the Player, based on art. 19 sec. 2 FIFA RSTP.
- 17 Mai 2011: FIFA Single Judge Players' Status refuses to authorise the international transfer, because it could not be excluded beyond doubt that the move of the player was in some way linked to football: *"...il ne pouvait être établi de manière claire et indubitable que les parents du joueur s'étaient installés en France pour des raisons qui n'étaient en aucune manière liées au football."*

- **Club:**
 - Move to France not linked to football: family's decision.
 - Club did not try to circumvent rules.
 - Younger and older brothers are allowed to play for Club.
 - Art. 19 sec. 2 lit. a FIFA RSTP is applicable.
- **FIFA:**
 - Art. 19 FIFA RSTP must be interpreted strictly.
 - Pre-existing relation between French Club and Club football development program in Argentina where player was registered.
- **CAS:**
 - Limits under art. 19 do not violate Swiss ordre public nor EU Law (see CAS 2008/A/1485, FC Midtjylland vs FIFA, para. 7.4; CAS 2005/A/955&956, C. and Cadiz vs FIFA and PFA, para. 7.2). Rationale of art. 19: Provision shall allow minor to follow the family, and not allow the family to follow the child.
 - Burden of proof lies with Club.
 - Link between Player and Club (and interest of Club in Player) pre-existing.
 - Interest of Player to play in new country is understandable, but irrelevant.

CAS:

"En outre, même si [la formation TAS] n'est pas insensible à la frustration compréhensible que ressentira Valentin Vada, la Formation doit constater que ce seul facteur humain ne saurait à lui seul autoriser à faire fi des règles strictes imposées par l'article 19 RSTJ. Tout au plus peut-elle émettre le vœu que le jeune Valentin Vada conservera sa motivation ainsi que son talent et qu'il saura développer ce dernier jusqu'à ce qu'il atteigne l'âge requis pour permettre à son club d'obtenir les autorisations nécessaires. En considérant les règles applicables, et en particulier celles applicables pour des joueurs européens, cette âge ne semble pas être situé trop loins dans le temps (...)"

7 March 2012: Right after his 16th birthday, the player and Girondins de Bordeaux sign a "Convention de Formation", containing a sporting and a scholar section.

9 March 2012: FFF enters the relevant information in TMS and submits a request for approval of the international transfer of the player, on the grounds that the player was 16 years old and that the transfer took place within the territory of the European Union or European Economic Area (the player holds an Italian passport).

FIFA Single Judge Players' Status refuses to authorise the transfer, since the transfer did not take place "within the territory of the European Union or of the European Economic Area".

- **Club:**
 - The exception of art. 19 sec. 2 lit. b RSTP applies, since the player has reached the age of 16 and holds an Italian passport; not purely "geographical" criterion.
 - The right of the player to pursue a sporting activity is protected by the principle of free movement within the European Union.
 - The impossibility to pursue such activity would violate the European Convention on Human Rights.
 - Submission of an additional document entitled "Protection des mineurs– Jurisprudence de la sous-commission de la Commission du Statut du Joueur".
- **FIFA:**
 - Importance of the principle to prohibit international transfers of minors.
 - Strict application of the exceptions foreseen in art. 19 RSTP.
 - Art. 19 sec. 2 lit. b RSTP exclusively refers to a geographical criterion.
 - The relevant transfer having occurred between Argentina and France, art. 19 sec. 2 lit. b RSTP does not apply (no transfer within the territory of the European Union or the European Economic Area).
- **CAS:**
 - Art. 19 sec. 2 lit. b RSTP does not refer to a nationality criterion therefore, the exception "EU/EEA" does not appear to apply.
 - However, the FIFA Commentary to the RSTP indicates that the exception of art. 19 sec. 2 lit. b RSTP was introduced in order to respect the principle of free movement of workers within the EU/EEA.
 - This intention must not be disregarded when applying art. 19 sec. 2 lit. b RSTP.
- **CAS:**
 - According to the internal document of FIFA, in the majority of cases, the nationality of a player is taken into account when assessing the question as to whether a transfer takes place "within the EU/EEA".
 - Therefore, there is a non-written exception contained in art. 19 sec. 2 lit. b RSTP for players holding the nationality of a member country of the EU/EEA (the player's new club must still meet the additional criteria regarding the scholar and sporting education (art. 19 sec. 2 lit. b, subparas. i-iv RSTP).
 - The request for authorisation of the international transfer must be approved.

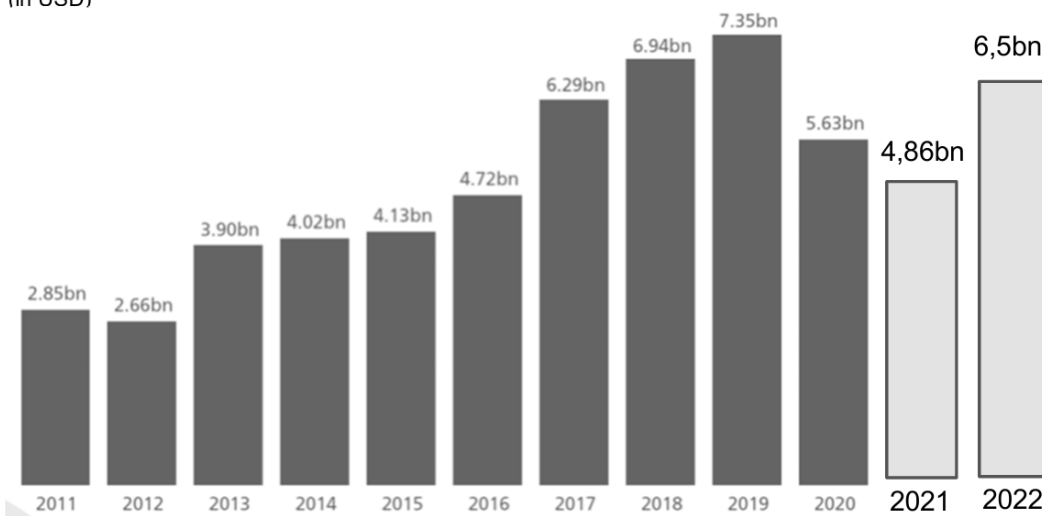
Note: FIFA Single Judge Players' Status refuses to authorise the international transfer, because it could not be excluded beyond that the move of the player was in some way strange

9. The football landscape has significantly evolved since 2001



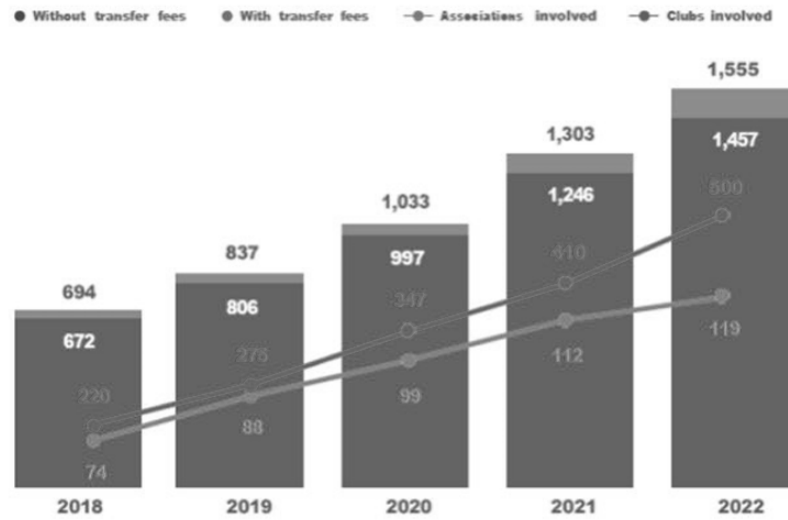
- Number of international transfers: more than 20'200 transfers
- In COVID a little reduction
- So in almost 10 years -> almost doubled it
- Amount of international tranfers is huge

Spending on Transfer Fees (in USD)



- Amount of spending did almost triple
- Huge amount of money spent on international transfers

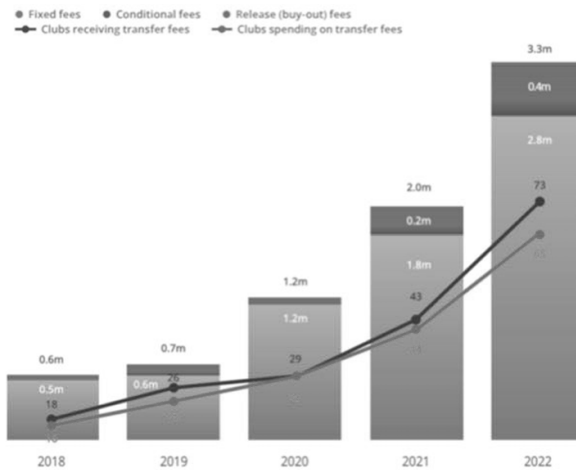
Number of international transfers of Women Players



- Even in only 4 years -> amount of transfer fees high

Transfer Fees of international transfers of Women Players

Figure 43: Transfer fees by year (USD)



§ 11 Doping

I. Comparison between Doping, Match Fixing and Hooliganism

- One common denominator: **strict liability**
 - o In **doping**: an athlete is responsible for what is found in his/her body. If there is something, then there is an anti-doping rule violation.
 - o In **match fixing**: a club or a team is responsible for the actions of its officials & players
 - o **Hooliganism**: a club or a team is responsible for the actions of its fans
- **Strict liability = liability without fault**
only in sport? No – product liability, liability for vehicles, animals, buildings, children, ...

II. Origin of Doping

- Doping is nothing new (it started already with the Greeks and Romans)
- At the Olympics 1904 Hicks almost died after taking a mixture of substances as doping

III. Tragedies and scandals

- 1886, Bordeaux-Paris: British cyclist Arthur Linton dies 2 months after his win. His brother and his team colleague will die soon as well,...
- 1960, Rome Olympic Games: Knud Enemark Jensen, a Danish cyclist, collapses and dies, live on TV.
- 12 June 1968, German boxer Jupp Elze dies after his match against Carlos Duran: Pervitin abuse.

Athletes dying after/during competition because they were taking substances

13 July 1967, Tour de France, the cyclist Tom Simpson dies while he ascends the Mont Ventoux: alcohol and amphetamines



And the others...

Seoul 1988
Ben Johnson



1992
Katrin Krabbe



2012
Lance
Armstrong



- Ben Johnson won the 100 meter-race and was then called positive for a substance, so he had to return his gold medal
- Katrin Krabbe was the first women called positive for doping
- Lance Armstrong with doping in highest level was taking a substance but did not get caught (kam mit Doping durch)
- Summer 1998: Tour de France and Festina scandal = Mass doping controls over different teams and the athletes did a sitting strike
- First World Conference on Doping in Sport in 1999
- First Law 2004 with the WADA-Code

IV. Challenge of Doping today

- Fitness-centres gave away substances to people wanting them to gain muscle
- Blood-doping applied to children in Germany, some years ago in a children camp
- Female athletes forced to get pregnant and abort afterwards, because doping-tests don't get positive during pregnancy

Doping – it is not only pro sports!



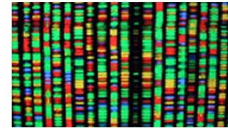
Doping – a huge business



Doping – Applied to children



Doping – A gene science



V. Why regulate Drug use in Sport?

- **Fairness:** not every athlete has the same access to substances
- **Health:** protection of health of athletes and especially young athletes, because it is not healthy (DDR Doping Program: 12-15K athletes; approx. 2K of death or long-term consequences)
Heidi Krieger became a man (Andreas Krieger) because she was forced to take so much testosterone and substances, that she turned into a man.
- **Ethics:** bad message to society because it might force drug-use in other fields
- **Group pressure:** athletes tend to take substances just because the others also do and they want to be able to play on the same level
- **In general:** Remember last Class -> EU law and Walrave & Koch v. UCI
- **Every limitation of rights is fine if it is**
 - o Necessary and
 - o Proportionate to achieve
 - o A legitimate sporting objective
- **Integrity** of the sport competition = Protection of the level playing field
- **Protection of the reputation of the athlete**
- **Protection of the spirit and essence of the sport**

VI. Anti-Doping History

WorldAthletics was the first sport organization to introduce some general rules prohibiting the use of stimulating drugs in 1928...

- ...but there is no report on any testing or enforcement of these rules.

Only in the late 1960s, following the deaths of Danish cyclist Kurt Jensen during the 1960 Rome Olympics and English cyclist Tony Simpson during the 1967 Tour de France due to amphetamine abuse, serious enforcement of those rules was initiated.

The creation of the IOC Medical Commission in 1961

- o 1967 IOC Session in Tehran
 - First list of prohibited substances
 - Sympathomimeticamines, central nervous stimulants, narcotics, antidepressants and major tranquillizers
 - Not included: Anabolic steroids or anabolic androgenic steroids (AAS)
- o The Committee of Ministers of the Council of Europe produced the first Anti-Doping Convention and international legal instrument with regard to doping in sports, in 1967.
 - The Anti-Doping Convention was later on adapted in 1989 and in 2002

VII. The WADA (AMA)

- Main Object: to promote and coordinate at international level the fight against doping
- 2004: The Wada-Code enters into force
- Since then 2009, 2015, 2021

The WADA (AMA)

Established in 1999
Swiss Foundation
HQ in Montreal, Canada



The square → customs and rules that define sport.
The color black → neutrality (referee's color).
The "equal sign" → equity and fairness.
Human touch → individuality of every athlete.
The color green → health and nature and the field of play.
"play true" → a guiding principle for all athletes.

1. Overview over the legislative layers



- Code is long, complex and detailed
- But still all of this documents are really important

2. The WADA Code

23.1 Acceptance of the Code
 23.1.1 The following entities may be Signatories to the Code: the International Olympic Committee, International Federations, the International Paralympic Committee, National Olympic Committees, National Paralympic Committees, Major Event Organizations, National Anti-Doping Organizations and other organizations having significant relevance in sport. [These entities shall accept the Code by signing a declaration of acceptance upon approval by each of their respective governing bodies]

Purpose:

- to protect the Athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes worldwide
- to ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping

VIII. What is Doping?

Mini-Break:

- Lying
- Try to avoid being tested
- Blood transfusion (= a method) -> includes prohibited methods
- A list with prohibited substances; its only prohibited when it is on the list
- Coffein f.e. is not illegal but it's on the prohibited list

Doping = the occurrence of one or more of the following anti-doping rule violations (ADRV)

- a. 1. Presence of a prohibited substance in an athlete's sample.
= typical!
- b. 2. Use or attempted use of a prohibited substance or method.
- c. 3. Refusing to submit to sample collection after being notified.
30' after being notified can be too long in football
- d. 4. Failure to file athlete whereabouts information & missed tests.
- e. 5. Tampering with any part of the doping control process.
trying to cheat -> bring clean urin with you -> typical case of tampering
- f. 6. Possession of a prohibited substance or method.
in the fridge of a team
- g. 7. Trafficking a prohibited substance or method.
- h. 8. Administering or attempting to administer a prohibited substance or method to an athlete.
- i. 9. Complicity in an ADRV.
- j. 10. Prohibited Association with sanctioned Athlete Support Personnel.
Dr. Fuentes helped athletes. He was caught and got sanctioned. If an athlete continues going to that doctor/sanctioned person
- k. 11. NEW! Acts to Discourage or Retaliate Against Reporting.

All on strict liabilities! 11 like in football!

1. What is a doping control test?

<ol style="list-style-type: none"> 1. Athlete Selection (by draw; Winnter; Podium) 2. Notification 3. Reporting to the Doping Control Station 4. Sample Collection Equipment 5. Your Sample 6. Volume of Urin (certain amount necessary) 7. Splitting this Sample 8. Sealing the Samples 9. Measuring Specific Gravity (how stable the sample is) 10. Completing your Doping Control Form

- There are mirrors in the toilet to limit the possibility of tampering
- Doping Control Officer is gonna look (to reduce tampering)

2. What is prohibited?

Prohibited List: The List identifying the Prohibited Substances and Prohibited Methods

Prohibited Method: Any method so described on the Prohibited List

Prohibited Substance: Any substance, or class of substances, so described on the Prohibited List

3. How can athlete be found? The Whereabouts!

If you are identified in a Registered Testing Pool (RTP), you must provide current and accurate whereabouts information, including your:

- home address
- training schedule and venues
- competition schedule
- regular personal activities such as work or school

Additionally, you have to specify a location and a 60-minute window each day where you can be sought for testing. Should you not be present at the specified location during the hour this could be declared a missed test. Even if you are not included in an RTP you could be requested to provide similar whereabouts information.

1 location for every day to be found for testing

f.e. judo
 Spitzensportler but not professional
 ↳ registered in official testing pool
 ↳ information 365 days/year

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↳ to change with the doctor
 ↳ have to prove it
 ↳ 2-3 failures okay before sanction

Verpflichtung
 Wimbledon Winner
 Roba go to dinner on Sunday
 athlete indicated Sunday back to CH, Monday back in CH

Police Officers went to CH; they knew she wouldn't be there

Jurisdiction started after official Wimbledon things
 ↳ Monday 11 AM
 ↳ go out of jurisdiction

How can athlete be found? The Whereabouts (iii)

35

- 3 Missed tests ADRV
 ↳ happens very quickly
 ↳ sleeping, car didn't start, guy ringing the door

↳ after two missed tests some athletes are not good anymore because they are always afraid of a third missed test

↳ there are 5 same cities indicated wrong address
 ↳ complicated

not only CH because it's important that the athlete does not know when in the city the test is in surprise

from 0-50 tests/year

↳ different by discipline/country (all about the money)

↳ Swiss Tennis Players a large amount of test

IX. Case 1: Vuskovic

- Vuskovic v. DFB & National Anti-Doping Agency of Germany (=NADA)
- NADA v. Vuskovic & DFB
- WADA v. DFB & NADA & Vuskovic

- Mario Vušković is a professional Croatian player. He plays for the German club Hamburg SV.
- 16 September 2022, out-of-competition doping control at the training grounds of his club. Analysis of the Player's A + B samples revealed the presence of rEPO (recombinant erythropoietin, a non-specified substance).
- 15 November 2022: start of the provisional suspension.
- On 30 March 2023: decision by the Sports Tribunal of the German Football Association (DFB) (the Challenged Decision): The Player is found to have committed an Anti-Doping Rule Violation (ADRV) and sanctioned with a two-year period of ineligibility.
- Three Appeals are filed against the Challenged Decision.

Three Appeals:

- Player: 0 instead of 2 years.
- NADO Germany: 4 instead of 2 years.
- WADA: 4 instead of 2 years.

CAS Award:

38 Appeals of NADO and WADA accepted: 4 years.

CAS Award:

- Appeals of NADO and WADA accepted: 4 years.
- Article 20(1) of the FIFA ADR: four-year period of ineligibility, unless the athlete can prove that the ADRV was not intentional.
- For various reasons, not least because Mario Vušković himself did not submit any mitigating factors that could be taken into account to reduce the four-year period of ineligibility, the Panel found that there was no reason to deviate from the application of the FIFA ADR and imposed a four-year period of ineligibility on the Player.

X. Case 2: Pogba

- Paul Pogba is a professional French player. He was under contract until Nov. 2024 with the Italian club Juventus FC.
- August 2023: Positive test (DHEA, classified under "non endogenous testosterone metabolites" by WADA).
- On 28 February 2024: decision by the National Anti-Doping Tribunal of NADO Italia (the Challenged Decision) in which the Player was found to have committed an Anti-Doping Rule Violation (ADRV).

CAS Award: Appeal of Player partially accepted.

- The decision rendered on 28 February 2024 by the Tribunale Nazionale Antidoping is amended as follows:
 - Mr Pogba is suspended for a period of eighteen (18) months commencing 11 September 2023.
 - The financial penalty of [XXX] is set aside.

CAS Panel in Media Release:

The CAS Panel based its decision on the evidence and legal arguments made that Mr Pogba's ingestion of DHEA, the substance for which he tested positive, was not intentional and was the result of erroneously taking a supplement prescribed to him by a medical doctor in Florida, after Mr Pogba had been given assurances that the medical doctor, who had claimed to treat several high level US and international athletes, was knowledgeable and would be mindful of Mr Pogba's anti-doping obligations under the World Anti-Doping Code.

§ 12 Match Fixing

Match Fixing has been called to be the new doping

- Strict liability on the one side
- On the other side: if you allow sports man, athletes, teams to fix results of a match; people will loose interest in this sport

I. What is Match Fixing?

Not a new phenomenon:

- It is said that the Ancient Olympics were almost constantly dealing with allegations of athletes accepting bribes to loose a competition and city-states which often tried to manipulate the outcome with large amounts of money.
- Corruption in Sport events in the new era (Fixing reported in cricket in England in the 19th Century).
- In Major League Baseball in the U.S. eight players were sanctioned for life because they fixed the 1919 World Series.

A Code?

- There is no anti match fixing code
- They tried to create one
- Action that fixes an outcome of a competition in advance that someone takes a benefit out of it
- *F.e.: I give you money that you lose your tennis match*
- The real problem is connected with live betting (result, what will be next – next game – next double fault)

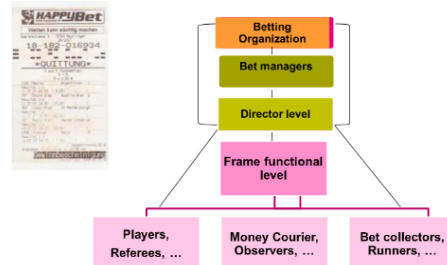
II. Match fixing: Modus operandi

A person that goes to a betting company and places a certain bet *f.e. mexico argentina 1:1 - but also emmenbrück vs. Rothenburg*. In many offers important matches & non-important matches

If you tell messi i give you 1000 if you loose; nothing happens; But if i tell Mr. Zosso from Emmenbrücke it could be interesting for him

If I know in advance that Mr. Zosso from Emmenbrücke does an own goal in the last 5'

- *I bet 20K on this scenario*



III. Consequences of Match Fixing

- Losses for the bet companies [& sporting competition]
- Loss of credibility and attractiveness of betting [& sporting competition]
- Clubs, Teams, etc.: Sporting damage, reputational damage, bankruptcy, ...
- Players, Referees, ...: Sporting damage, Criminalization, further risks, ...
- Fans may lose trust in Sport and athletes/players
- Sport loses as a whole attractiveness, with manifold consequences

IV. How to fight?

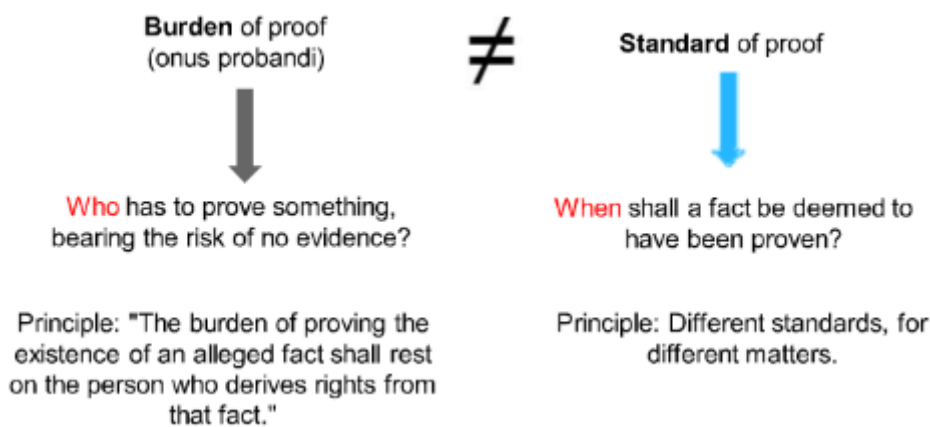
All betting companies offer the possibility to some data analysis companies to follow live the betting information. The data analysis company knows whether there is one person or 0.001% for the own goal of Emmenbrücke. When there is an atypical amount of money on a bet or so, they notice.

Suddenly a lot of money and bets and a win for one team with 4 goals. This was suspicion. Data analysis company sends warning to UEFA. It's not normal that so many people bet so much money on that. In this case we went to the referee, and this is what we know. Be careful what you do; we will monitor. What happens? 82 Minute - he gave a penalty 3:0. in the 89' he gave another penalty was definitely no penalty. The referee supposed to fly from Helsinki back home but he had to go to Nyon. Then he admitted it. They drohten him to kill his family. [He got banned to year; a lot milder than normal because of the Drohung]

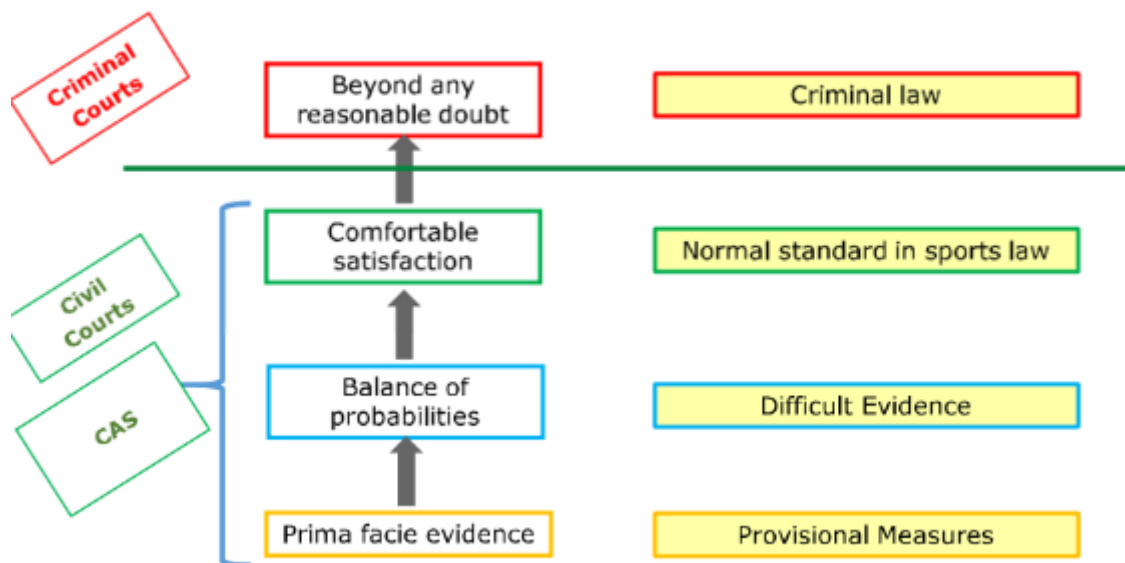
V. Basic Returning Elements in the work of the Panels in Match-Fixing and Corruption cases

- What happened?
- Burden of Proof & Standard of Proof
- Do the established facts constitute a Disciplinary violation?
- The Sanction:
 - o Spectrum of sanctions in the rules
 - o Mitigating factors
 - o Proportionality of the Sanction
- Typically, referees are sanctioned harder than players

VI. Burden vs. Standard of Proof



Standards of Proof



§ 13 Hooliganism [Strict Liability of Clubs; Liability for fans]

I. Fenerbahçe SK vs. UEFA



 21.02.2013: Fenerbahçe vs Bate Borisov

 Match UEFA Europa League

Match is played behind closed doors.

However....



fireworks attached to a structure fan said it from outside the stadium in the stadium

Clubs are strictly liable for misconduct of their supporters at a match. Content of Official Reports is presumed to be accurate (Art. 45 DR). Therefore, burden of proof is reversed: Club must prove the inaccuracy of the Reports.

Measures taken by Club (security personnel, etc.) can be taken into account only in respect of the proportionality of the sanction, "but are not circumstances that can serve as a ground for excuse or exculpation of the Club, as the strict liability rule as provided for by Article 6(1) of the UEFA DR applies."

Sanction is of disciplinary nature: no applicability of Art. 6(2) and 6 (3) ECHR. Strict liability principle does not violate Art. 6(1) ECHR, because its purpose is to be a deterrent.

II. Zenit St. Petersburg vs. FUR

Clubs are strictly liable for misconduct of their supporters at a match.

"Security obligations of a home club and the strict liability of a club for its supporters' behavior are two different elements which can lead to different sanctions."

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CAS 2013/A/3047 Zenit St. Petersburg vs. FUR

CAS Award

Clubs are strictly liable for misconduct of their supporters at a match.

Security obligations of a home club and the strict liability of a club for its supporters' behavior are two different elements which can lead to different sanctions.

Story: originally the home club was responsible for every thing in his stadium. They said that not for actions outside the stadium. Home club was obligated if you don't comply → sanctions.

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BOCA — RIVER

1. bus 2. ho

Bus got attacked from 8 River fans

Car to hospital

Confederation responsible

Is RIVER responsible for the actions of the fans (150m away of stadium) → YES

difficultly close to stadium

admit responsibility RIVER

↳ However, they agreed who is responsible from which part (sector was police)

↳ so the sanction RIVER was mild

Quite far away but close enough to justify a liability of river

Whether you play away or not you can be responsible for your fans

⇒ proximity is an argument

- close to stadium

↳ strict liability likely

§ 14 Hot Topics!

- Diarra won against FIFA
- Match fixing is the doping of the 21 century
- Suspension from Paul Pogba from 4 years to 18 months
- New Wild Card rule from FIS for Marcel Hirscher
- Van de Poel cycled on the sidewalk, actually not okay with the rules; probably field of play rules
- FIS vs. German ski association about marketing regulations/ tv rights

§ 15 Key take-Aways

I. Session 1

- Sports law in a broader sense: law applied against a sporting background
- Sports law in a narrower sense: Rules and regulations enacted by sporting private bodies
- From Amateurism to Pro Sports
Commercialisation and “Legalisation” of Sports
- Pyramidal system of sports – European Model vs. North-American Model
- Some fundamental principles:
 - o One Sport, One IF (to secure a good government of a certain discipline)
 - o The importance of Swiss law

II. Session 2

- Sport is an activity based on rules
- Some of these rules are – in principle – not reviewable by a judge or a court: field of play rules
Exceptions: fraud, bad faith, video review = exceptions by concept
- In sport since it is televised, you have images, you can’t keep things under cover
Criminal law aspects can be important; Muriel Furrer: there are no images – difficult to prove
- What happens on a field can ... land in Court
- A gross violation of a sporting rule may be considered a liable negligence
- Rules enforcement
 - o Disciplinary power of the event organiser
 - o Civil procedure
 - o Legal review

III. Session 3

- The importance of alternative dispute resolution system in sport
- Judgement and enforcement
- The value of financial stability and sustainability in sport
- Several systems, one aim

IV. Session 4

- The FIFA RSTP: A great example of lex sportiva
- Some future changes?
 - o Limitations of loans of players
 - o Clearing house
 - o Agents Regulations
- Also football and FIFA do some good things

V. Session 5 Part I

- The meaning of “doping”
- The nature of the fight against doping
If you have a new method to prevent from doping; they find a new method that the doping agency do not know at that moment and so its always a cycle
- The relevance of medical experts
- The relevance of lawyers
- The importance of the fight
- The difficulty of the fight

VI. Session 5 Part II

- Doping, match fixing, violence in the stadia
three big threats for sport
- If something is dangerous... it is the strict liability
 - o Liability for everything that is in your body
 - o Liability for your players, coaches, ...
 - o Liability for your fans
- Next sanctions...
control, education, prevention
sanctions alone do not solve the problem