

FIFA AND ETHICS

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Abstract: *The present study elucidates the fundamental factors that underlie corruption within the FIFA organization. These factors comprise the organizational framework, deficient accountability mechanisms, insufficient internal controls and disciplinary measures, and the self-serving and socially irresponsible conduct demonstrated by the leadership of the organization. Furthermore, this study examines the tactics employed by FIFA to address ethical misconduct within its respective entities. Finally, there is a presentation and analysis of two cases regarding the breach of the FIFA Code of Ethics which were appealed before CAS.*

Keywords: *FIFA, Sport Governance, Code of Ethics, Ethics Committee, CAS*

Introduction

Since ancient times, the framework of sport has been constructed on the moral principles of all those participating, as they are also expressed in the Olympic Statutes and particularly, in the Olympic Charter¹. According to Caillois, the clean and pleasant face of sport has virtually always been subject to different types of distortion as a result of the advantages that one might enjoy in addition to the physical, mental, and moral pleasure that participation in the game brings (p.43 - 46)². Caillois bases his argument on the fact that the advantages that one might enjoy, in addition to the physical, mental, and moral pleasure that participation in the game brings, are always present. According to Konstantinidis and Panagiotopoulos (2020), the substantial commercialization of contemporary sport attracts a wide range of stakeholders, many of whom have dubious motivations for participating in the sport industry³. This has resulted in the ever-increasing frequency of the phenomenon known as corruption in sports, which has

1. International Olympic Committee (2019). *Olympic charter*. International Olympic Committee, p.11

2. Caillois, R. (2001). *Man, play, and games*. University of Illinois press.

3. Konstantinidis, K. & Panagiotopoulos P. D. (2020) Manipulation of sport competition: an ex-

been brought about by the aforementioned. In recent years, the subject of sport governance, and more especially good governance in sport, has been pushed to the forefront of the discourse among academics and practitioners working in the field of sport administration. This is due to the fact that both of these groups are involved in the administration of sports. As a response to high-profile scandals in sports, such as the FIFA bribery case and the Russian doping crisis, as well as greater societal concerns about governance, this interest has emerged in recent years. These challenges are not fresh, nor are they exclusive to the activities of international sport organizations. On the other hand, when taken as a whole, they suggest that there is a fundamental fault in the way that international sports federations are controlled. This is the conclusion that can be drawn from looking at all the factors together. There has been a breakdown in coordination between relevant sporting and other actors, and governments have failed to regulate or control potentially harmful activities⁴. Additionally, there has been a failure to establish decision-making or control processes that are fair, transparent, and effectively implemented. At the same time, concerns about ethical and moral conduct are pertinent in every aspect of social life. The contemporary sports industry's global and commercial character, coupled with its sustained expansion, has engendered an appealing milieu for individuals with non-sporting or unsophisticated motives to participate in the sector and endeavor to derive financial gain from it. The correlation between economic growth and corruption growth is a well-established phenomenon. Administrative corruption concerns the governance, organization, and management of sporting entities, encompassing activities such as bribery, illegal payments, and patronage⁵. The issue of corruption in sports is multifaceted and significant. Based on documented instances, it is plausible that nearly all individuals who participate in sports may be implicated in some form of corrupt activity⁶. Research has indicated that a variety of individuals, including athletes, coaches, trainers, sponsors, agents, managers, referees, executives, sports officials, journalists, bettors, and veteran players, may be involved in instances of corruption⁷. This study presents the primary factors

amination of individual decision making and moral behavior development *International Sports Law Review Pandektis*, 13 (1-2).

4. Henry, I., & Lee, P. C. (2004). Governance and ethics in sport. *The business of sport management*, 25-41.

5. Jennings, Andrew. (2006). *Foul!: The secret world of FIFA: Bribes, vote rigging and ticket scandals*. London: Harper Sport.

6. Spapens, T., & Olfers, M. (2015). Match-fixing: The current discussion in Europe and the case of the Netherlands. *European Journal of Crime, Criminal Law and Criminal Justice*, 23(4), 333-358.

7. Van Der Hoeven, S., De Waegeneer, E., Constandt, B., & Willem, A. (2019). Match-fixing:

contributing to corruption within FIFA, including its organizational framework, deficient accountability mechanisms, inadequate internal controls and disciplinary measures, and the self-serving and socially irresponsible behavior exhibited by the organization's leadership⁸⁹¹⁰, and discuss the ways FIFA manages ethical distortion within its organizations.

FIFA

In May of 2015, numerous FIFA executives were arrested on suspicion of taking bribes, engaging in fraudulent activity, and laundering illicit funds. They were suspected of having been involved in the shady practices of acquiring World Cup stadiums, marketing rights, and media rights via corrupt ways. The financial losses that have been experienced because of fraudulent activities over the course of the previous twenty years are estimated to amount to a total of \$150 million. The World Cup cost Brazil \$15 billion, the majority of which went towards funding educational and social projects in the host country. It has been noted that corrupt practices have dramatically hijacked a major percentage of the country's scarce resources. Allegations have been made that the site of the World Cup may have been affected by the exchange of illegal money at some point during the selection process. Since Joseph "Sepp" Blatter became president of FIFA in 1998, the organization has been plagued with allegations of unethical business practices. The development of corruption within FIFA has been ascribed to a variety of causes, including its organizational structure, insufficient accountability mechanisms, weak internal control, and disciplinary systems, as well as the self-interest and social irresponsibility shown by the organization's administrators. Among these considerations is also the fact that FIFA is the world governing body for football. There is a lot of cause for worry about the influence that the institutional structure of FIFA has on the unethical behavior of its administrative staff and the subsequent development of corrupt practices because of this. According to the functional structure of the organization, the FIFA Congress, executive committee, and general secretariat are responsible for the organization's overall management. The FIFA Congress is the organization's representative body in the legislative process. According to the statement, there are a total of 210 member organizations that are affiliated with six different confederations. The President,

Moral challenges for those involved. *Ethics & Behavior*, 1-19.

8. Boudreaux, C. J., Karahan, G., & Coats, M. (2016). Bend it like FIFA: corruption on and off the pitch. *Managerial Finance*, 42(9), 866-878.

9. Pielke Jr, R. (2013). How can FIFA be held accountable?. *Sport management review*, 16(3), 255-267.

10. Bandeira, R. E. (2016). FIFA: For the Game or for-Profit. *New Eng. L. Rev.*, 51, 423.

eight Vice-Presidents, and fifteen other members make up the Executive Committee, which is the arm of government that is responsible for executive decisions. Following each iteration of the Football World Cup, congress votes to choose a new president. The confederations and associations, on the other hand, are responsible for choosing 15 committee members and the vice presidents. The general secretariat of FIFA is the third department inside the organization, and it is responsible for managing FIFA. Zurich is home to the organization's staff of four hundred people, all of whom are based there. According to FIFA, the general secretariat is responsible for the administration of FIFA's finances, international relations, the FIFA World Cup, and other FIFA football tournaments. FIFA has a reputation for inadequately assuming accountability. According to Pielke's analysis¹¹, the hierarchical, supervisory, financial, budgetary, legal, or market accountability systems at FIFA do not hold the president and executive committee of the organization responsible in any way. The reform proposal presented by Sepp Blatter in 2011, aimed at safeguarding FIFA's paramount interests, was substantially diluted. The absence of accountability can be attributed to two main factors. The Federation International de Football Association (FIFA) is an international non-governmental organization that was established in compliance with Swiss legislation. Prior to May 2015, the Swiss regulatory bodies did not exert significant oversight over FIFA. The Swiss government's recent actions aimed at preventing corruption within FIFA appear to have been influenced by the Department of Justice in the United States, which took action regarding its territory. It is hoped that the ongoing legal proceedings will exert enough pressure on the International Olympic Committee to improve its governance¹². The recently bolstered ethics committee at FIFA is deemed a requisite measure, however, it falls short of being adequate. The fundamental issue at hand pertains to devising a suitable mechanism for aligning incentives that would facilitate effective and efficient governance. FIFA possesses the capacity to impose penalties on sovereign states that engage in the surveillance of football associations. This objective can be achieved by disallowing eligibility for participation in the World Cup. The FIFA organization enforces a regulation that mandates national football federations to uphold their political autonomy, thereby prohibiting any form of governmental influence or control over them. Moreover, the research on public choice theory posits that the association between FIFA and Switzerland can be elucidated by the phenomenon of regulatory capture. According to the capture theory, governmental entities are unlikely to regulate a particular organization as it may not align with their own interests. Regulatory bodies primarily function to aid the agency rather than to exercise authority over it. As per Swiss legislation,

11. Pielke Jr, R. Ibid p. 259 - 262

12. Ibid p.263 - 264

FIFA is obligated to produce a yearly financial statement and undergo audits. The concept of capture is applicable. Even while Switzerland keeps an eye on FIFA, the possible drawbacks outweigh the advantages. If Switzerland were to exert control over FIFA, any football teams associated with FIFA might theoretically face financial fines. Economists could refer to FIFA's rules as a "public good." There are two types of public goods. It's crucial that there be no aspects of competition in the act before it's consumed. When one country benefits from FIFA regulation, it does not come at the expense of another. Second, there must be no barriers to entry when it comes to consumption. The second feature implies that citizens of a nation may nonetheless enjoy life even if they are unable to contribute to the common good financially. Given these conditions, it's only natural for some countries to "free ride" on the complaints of others by filing complaints with FIFA even though they have no need to do so themselves. As a result of free riding, Switzerland has less of an incentive to monitor FIFA in a uniform way. Some member countries may be reluctant to assume responsibility for supervising FIFA due to the free rider problem. It is the rent-seeking attitude of FIFA's member nations that lies at the root of the organization's corruption problem. This is the third explanation for why corruption exists. Investing in sports facilities has been the subject of several economic impact studies.

FIFA Code of Ethics

In general, a code of ethics furnishes unambiguous directives for employees to adhere to, thereby mitigating perplexity or ambiguity when confronted with ethical dilemmas. Simultaneously, a well-crafted code of conduct has the potential to foster confidence among an organization's stakeholders, including customers and the general public, by showcasing the organization's commitment to ethical conduct and its expectation that its staff adheres to elevated ethical standards. Moreover, it can foster a culture of ethical conduct within an organization by establishing unambiguous anticipations and repercussions for unethical conduct. The implementation of ethical decision-making and conduct can potentially mitigate legal or regulatory risks by establishing a structured framework. The establishment of clear standards of behavior can promote accountability and hold individuals responsible for their actions if they violate these standards¹³. Nonetheless, a contentious discourse exists regarding the efficacy of said codes and their reception among constituents of the institution. As per FIFA, it holds a distinct obligation to preserve the authenticity and standing of football on a global scale. FIFA is committed to safeguarding the reputation of football, particularly that of FIFA, against any potential risks or damages arising from illicit,

13. Bromley, P., & Orchard, C. D. (2016). Managed morality: The rise of professional codes of conduct in the US nonprofit sector. *Nonprofit and Voluntary Sector Quarterly*, 45(2), 351-374.

unethical, or immoral means and procedures. The Code of Ethics is reflective of the fundamental principles. These principles establish the essential core values governing behavior and conduct both within FIFA and in relation to external entities. Individuals subject to this Code are expected to demonstrate their endorsement of the principles and goals of FIFA, as well as those of the confederations, associations, leagues, and clubs, and to avoid engaging in any conduct that may be detrimental to these aspirations and objectives. It is imperative for individuals to acknowledge and honor the importance of their commitment to FIFA, as well as the confederations, associations, leagues, and clubs associated with it. They must conduct themselves with honesty, dignity, respectability, and integrity when representing and interacting with these entities. It is imperative that they uphold the fundamental principle of equitable conduct in all facets of their duties. Individuals are expected to take on social and environmental obligations¹⁴.

FIFA Ethics Committee

In the same token, the FIFA Ethics Committee is a constituent component of FIFA's tripartite judiciary. The system is structured into two distinct chambers, namely the Investigatory Chamber and the Adjudicatory Chamber. The responsibilities of the entity in question are governed by a number of authoritative texts, with the FIFA Code of Ethics being of particular significance. The other judicial entities of FIFA consist of the Disciplinary Committee and the Appeal Committee. The primary function of the Investigatory Chamber is to scrutinize possible infringements of the FIFA Code of Ethics. The Investigatory Chamber holds the discretion to conduct investigations at any given time. In cases that appear to have sufficient evidence, the chamber is obligated to initiate investigations. The chamber is obligated to provide notification to all relevant parties regarding the commencement of an investigation unless such disclosure would impede the investigative process. The methods employed for investigation encompass written inquiries and interviews conducted with the involved parties and other witnesses.[6] In the event of a need for inquiry, multiple members of the chamber may conduct investigations, and such investigations may be supplemented by the involvement of external entities. Upon the conclusion of an inquiry, the chamber issues a conclusive document to the Adjudicatory Chamber. In the event that novel and significant information pertaining to an inquiry is discovered, the chamber retains the ability to initiate a renewed investigatory procedure. The Adjudicatory Chamber is tasked with the responsibility of scrutinizing the findings of the Investigatory Chamber and deciding as to whether to pursue or terminate a particular case. The Adjudicatory Chamber possesses the authority to remand a report back to the Investigatory Chamber or conduct supplementary inquiries

14. FIFA (2019). *Code of Ethics*

autonomously. Upon examination of the Investigatory Chamber's report and any additional inquiries deemed necessary, the Adjudicatory Chamber disseminates a report to all relevant parties and solicits their respective statements. Furthermore, it is incumbent upon the Adjudicatory Chamber to ultimately determine suitable penalties. The imposition of sanctions should be in accordance with the three fundamental documents that govern the behavior of individuals associated with FIFA. The aforementioned documents comprise the FIFA Code of Ethics, the FIFA Disciplinary Code, and the FIFA Statutes. Sanctions can encompass a spectrum of disciplinary measures, ranging from mild admonishments and rebukes for minor instances of misconduct to enduring prohibitions on engaging in any football-associated pursuits on a global scale¹⁵.

Cases of Breach

CAS 2021/A/8256 Issa Hayatou v. FIFA

Facts

Issa Hayatou served as the President of CAF for 29 years. During his tenure, CAF entered a partnership with LS (Lagardère Sports), which allowed for commercial exploitation and broadcasting rights to all CAF events from 2008 to 2016. The agreement had a minimum consideration of \$150 million, and LS had a preferential option to renew for a further eight years. On 24 December 2014, CAF proposed to LS that they exploit all events until 2028 with a minimum consideration of USD 1 billion. The agreement also included a right of first refusal for the period between 2029 and 2036. Additionally, PS (Presentation Sports) approached CAF with a view to acquiring broadcasting rights for the Middle East and North Africa through a public tender. Next, the Egyptian Competition Authority (ECA) has accused CAF of violating competition conditions due to the absence of a procedure to ensure free and fair competition. Additionally, CAF has shown total disregard for awarding contracts to LS's competitors, even though serious bids were submitted by PS, resulting in an abuse of control by LS. Furthermore, CAF's consolidated sale of all direct broadcasting rights with no differentiation based on periods, seasons, means of transmission or locations due to LS's preference without objective reason, despite other competitors being present, has also come under scrutiny. The Competition Commission of the Common Market for Eastern and Southern Africa (COMESA) has noted the lack of an open, transparent, and impartial bidding process for the award of CAF's brokerage and trading rights. It is important to strike a balance between protecting investors and promoting the competitive process through exclusivity. How-

15. FIFA (2023). *Code of Ethics*

ever, the right of first refusal clauses in the agreements has a distorting effect on CAF's competitive service delivery, which needs to be addressed. In 2018, the Egyptian Courts passed a judgment against Hayatou and El Armani regarding the monopolistic practices of CAF's allocation of broadcasting rights. By signing an agreement in 2017-2028 with LS, CAF gave them the exclusive rights to exploit all possible viewing platforms including television, internet, and mobile phones for all CAF events. It was discovered that no proper competitive procedure was ever carried out, and this conduct was found to be detrimental to competition. A fine of 1 billion Egyptian Pounds was imposed, which was later reduced to 200 million after appeal. The agreement's duration could potentially extend from 2029-2036, leading to a situation where LS would have exclusive commercial rights to CAF matches from 2008 to 2036. Despite the expressed disapproval of some Executive Committee members, CAF signed the 2017-2028 contract with LS one day later on September 28th, 2016.

Ruling

Before the Court of Arbitration for Sport (CAS) hearing, Mr. Hayatou contended that there was no legal basis to impose any sanction against him. He believed that Article 15 did not meet the "*predictability test*" as it referred to vague and broad concepts. Therefore, the provision was not precise enough to serve as a basis for imposing sanctions. Furthermore, he argued that both the offence and sanctions were not specific enough. According to Mr. Hayatou, the concept of "*duty of loyalty*" should follow Swiss law, which he had not violated since he did not pursue private gains. The panel conducted an analysis to determine if Article 15(1) FCE offers a legally sound and unambiguous foundation. Regarding this matter, it is worth noting that the language used in the provision lacks clarity with regard to the specific behavior that is expected to be avoided. Nevertheless, the Panel concludes that it is not necessary to establish precise legal limits for this provision. The Panel has determined that there is inadequate evidence to support the claim that Mr. Hayatou breached Article 15 (1) FCE, despite the provision being explicit enough to potentially penalize a violator of the "duty of loyalty," regardless of whether the stance of the Appellant or FIFA is adopted. The charges against him involve the lack of a bidding process, ignoring of the higher value bid, hiding a letter from the Egyptian competition authorities, and CAF's exposure to national authorities' sanctions. FIFA could not establish that Mr. Hayatou acted "in a manner that is prejudicial to CAF's interests or likely to damage its reputation."

In particular, the Court found that CAF's lack of a tender or bidding process did not breach fiduciary duty. Additionally, the evidence did not suggest that Mr. Hayatou was responsible for the decision not to consider the purchase further, as he relied on his personal experience in the market. The disregard of the offer submitted by PS also did not constitute a breach of fiduciary duty to CAF,

as business decisions cannot be assessed by supra-regulatory authorities. As a result, the Court could not substitute its own discretion for that of sports officials and managers who are in the best position to make such decisions. Moreover, FIFA did not adequately document because the concealment of a letter from the Egyptian competition authorities was Mr. Hayatou's personal fault, so he cannot be held responsible for the late report. Finally, since no specific conduct amounting to a violation of Article 15(1) has been established, Mr. Hayatou cannot be sanctioned under the Code.

CAS 2019/A/6669 Sayed Ali Reza Aghazada v. FIFA

Facts

Mr. Sayed Aghazada served as the Secretary General of the Afghanistan Football Federation (AFF) from 2012 to 2019. In November 2018, serious allegations of mistreatment of female athletes by male officials of the Federation were made public, including mental, physical, and sexual abuse, and unequal treatment. These allegations were particularly highlighted by Mr. Keramuddin Karim, who was president of the AFF between 2005 and 2018, and a former member of the FIFA Ethics Committee. Following these allegations, an investigation was opened by the investigative department in accordance with article 59 of the FIFA Code of Conduct. The Prosecutor General of the Islamic Republic of Afghanistan assigned a committee to investigate these allegations on December 10th, 2018. Five AFF officials, including Mr. Keramuddin and Mr. Aghazada, were suspended by the Attorney General. Although the AFF denied all allegations, FIFA had enough evidence to proceed with the case. The judicial panel found Mr. Keramuddin guilty of abusing his position and sexually abusing several female athletes, violating the code of conduct and imposed a sentence of a lifetime ban on participation in any football-related activity, national and international, and a fine of 1,000,000 Swiss francs. Mr. Aghazada was also informed of the initiation of the investigation procedure against him for possible violations of Articles 13, 15, 17, 23 and 25 of the Code. However, he was repeatedly unable to attend a hearing due to a ban on leaving the country. It is important to note that the relevant events took place from 2013 onwards before the 2019 version of the Code came into force. Article 3 provides that the Code applies to offenses whenever they occurred, provided that they were punishable at the time they were committed. However, the penalty imposed may not exceed the maximum penalty in force at the time of their commission (*lex mitior*).

Ruling

Mr. Aghazada has been charged with multiple violations of the Code (Article 11), which are formalized in both the 2012 and 2018 versions. The Trial Chamber has examined the various versions of the provisions and concluded

that the 2018 Code is the mildest in terms of the sanction that can be imposed for a violation of these provisions. The 2018 Code provides for a minimum fine of 10,000 Swiss francs for the relevant offenses (Articles 17 and 23), as well as a general maximum ban for two years and a specific maximum ban of five years against specific cases. Therefore, the 2018 Code seems to be more lenient for the defendant in accordance with the *lex mitior* principle. Mr. Aghazada had a proven involvement in the women's football activity of the federation, and he had a duty to protect, respect, and safeguard the integrity and personal dignity of all AFF members, both players, and officials. However, he had knowledge of the incidents of harassment and abuse in which Mr. Karim was involved, and he had a proven record of preventing female athletes from reporting the incidents outside the AFF. Despite being the employee to whom the victims went for assistance, Mr. Aghazada did not take any action to investigate or control the conduct involved. The behavior of Mr. Aghazada towards the female victims of sexual abuse is deeply concerning. Advising them to leave their country or "make money" from their pain and suffering shows a complete lack of empathy and disregard for their wellbeing. His actions of preventing the victims from reporting these serious violations are against all principles of protection. As a result, the Chamber found that Mr. Aghazada violated Article 23 para. 1 of the 2018 Code. Furthermore, the Trial Chamber also found a violation of Article 24 of 2012 Code on the breach of the duty to report the facts. It is important to note that a person who has an obligation to report need not have full knowledge of all the facts of the case or understand all its legal consequences. Reasonable suspicion of potential misconduct or witness of potential misconduct is sufficient. Despite this, Mr. Aghazada remained passive and failed to report the conduct in question to FIFA or other authorities, inside or outside football. In fact, he even took action to protect and conceal it. Mr. Aghazada filed an appeal with CAS, claiming that he was unaware of the abuse suffered by the female members of the national team and that he could not protect them. However, CAS found it difficult to accept that he did not know about the numerous incidents as he claimed. CAS granted anonymity to the witnesses (victims) called by FIFA to testify at the hearing. Ultimately, CAS held that even if Mr. Aghazada's breaches could not be proved by direct evidence, the overwhelming evidence allowed for the conclusion that he was guilty. The behaviour of Mr. Aghazada, who advised female victims of sexual abuse to leave the club and their country or to "make money" from their pain and suffering and prevented them from reporting these serious violations, shows a complete lack of empathy and goes against every principle of protection. The Trial Chamber found that Mr. Aghazada violated Article 23 para. 1 of the 2018 Code due to his conduct. Moreover, the Trial Chamber also found a breach of Article 24 of the 2012 Code for failing to report the facts. It is essential to note that a person obligated to report need not have full knowledge of all the facts or understand all legal consequences but must have a reasonable

suspicion of potential misconduct or witness potential misconduct. Despite this, Mr. Aghazada not only remained passive but even took action to protect and conceal the incidents in question. Mr. Aghazada filed an appeal with CAS, claiming unawareness of the abuse suffered by the female members of the national team and, thus, could not protect them from Mr. Karim's crimes. However, CAS granted anonymity to the witnesses (victims) called by FIFA to testify at the hearing and found it challenging to accept Mr. Aghazada's claims of ignorance of the numerous incidents. CAS concluded that, even if Mr. Aghazada's breaches could not be proven by direct evidence, the overwhelming evidence allowed for the conclusion that he was guilty.

Conclusions

The international football governing bodies have been observed participating in numerous unethical practices, all of which have been documented. Since 2015, the Federation Internationale de Football Association (FIFA) has been making efforts to enhance the effectiveness of its regulatory procedures to establish a robust safeguarding mechanism against misconduct. The decision has led to certain revisions being made to the Code of Conduct due to the resulting circumstances. Empirical evidence supports the notion that the efficacy of the Code is contingent upon the favorable reception of its principles among its affiliated constituents, in conjunction with the caliber of the Code's content and the proficiency of the organization's leadership. Moreover, the efficacy of the Code is contingent upon the caliber of the Code per se. However, it has been demonstrated by recent occurrences that the restricted investigative authorities of FIFA hinder the equitable and efficient execution of justice.