

ARTICLE 21 FIFA DISCIPLINARY CODE: WHAT ARE THE BOUNDARIES OF FIFA'S COMPETENCE?

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ABSTRACT: Article 21 FIFA Disciplinary Code (FDC) is, arguably, the cornerstone of FIFA's private legal order. The provision attempts to secure the long-term stability of the system insofar as it has, generally speaking, the aim of safeguarding the respect of decisions rendered by sports deciding bodies on the basis of the set of rules which FIFA itself has drafted. At the same time, the provision has (at least indirectly) the additional aim of protecting the satisfaction of creditors, thus revealing a somewhat hybrid nature. This polyhedric rule, currently 11-paragraph long after a series of amendments and enrichments, includes mechanisms of 'indirect enforcement' of decisions rendered at national level, covers the 'enforcement' of settlement agreements concluded in the context of disciplinary proceedings already opened for failure to respect financial decisions, determines the consequences of a sporting succession for a debtor club and guarantees the 'enforcement' of CAS awards of the Appeals and Ordinary Division. The broad wording and multifaceted purpose of the provision inevitably leads to several interpretative discussions. The aim of this paper is attempting to define its scope of application (ratione personae and ratione materiae), also on the basis of FIFA and CAS jurisprudence, as well as discussing (what the Authors consider to be) still open issues.

L'articolo 21 del Codice disciplinare FIFA (FDC) è probabilmente la pietra angolare dell'ordinamento giuridico privato della FIFA. La disposizione cerca di garantire la tenuta a lungo termine del sistema in quanto ha, in generale, l'obiettivo di salvaguardare il rispetto delle decisioni prese dagli organi decisionali sportivi sulla base dell'insieme di regolamenti che la stessa FIFA ha redatto. Allo stesso tempo, la norma ha (almeno indirettamente) l'ulteriore obiettivo di tutelare la soddisfazione dei creditori, rivelando così una natura in qualche modo ibrida. Questa norma poliedrica, attualmente composta di 11 paragrafi a seguito una serie di emendamenti e arricchimenti, include meccanismi di "esecuzione indiretta" di decisioni rese a livello nazionale, copre l'"esecuzione" di accordi transattivi conclusi nell'ambito di procedimenti

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disciplinari già aperti per il mancato rispetto di decisioni finanziarie, determina le conseguenze di una successione sportiva per un club debitore e garantisce l'“esecuzione” dei lodi del CAS della Divisione d'Appello e Ordinaria. L'ampia formulazione e lo scopo multiforme della disposizione portano inevitabilmente a diverse discussioni interpretative. Il presente contributo ha l'obiettivo di tentare di definire il suo ambito di applicazione (ratione personae e ratione materiae), anche sulla base della giurisprudenza della FIFA e del CAS, nonché di discutere (quelle che sono considerate nell'opinione degli Autori) questioni ancora aperte.

Keywords: *FIFA private legal order – Article 21 FDC – Scope of application – ratione personae – ratione materiae – Article 3 FDC – Enforcement of decisions – CAS ordinary awards – Indirect enforcement.*

Ordinamento giuridico privato della FIFA – Articolo 21 FDC – Ambito di applicazione – Ratione personae – Ratione materiae – Articolo 3 FDC – Esecuzione delle decisioni – Lodi ordinari CAS – Esecuzione indiretta.

SUMMARY: 1. Introduction – 2. The nature of the proceedings and the scope of review of the FIFA Disciplinary Committee – 3. The scope of application of Article 21 FDC – 3.1 The scope *ratione personae* – 3.1.1 The interpretation of the CAS – 3.1.2 FIFA's own interpretation – 3.1.3 Open interpretative issues – 3.1.3.1 Article 3 FDC is the safest gatekeeper. Is it the most accurate? – 3.1.3.2 The status of the person seeking the enforcement – 3.2 The scope *ratione materiae* – 3.2.1 Decisions of a body, committee, a subsidiary or an instance of FIFA – 3.2.2 Decisions of the CAS (Appeal and Ordinary Division) – 3.2.3 Open interpretative issues – 3.2.3.1 The broad jurisdiction of the CAS Ordinary Division – 3.2.3.2 The (inter)national dimension of the dispute – 3.2.3.3 The indirect enforcement – 4. Conclusions

1. Introduction

At a time when it had not yet joined the system of international sports dispute resolution created by the Court of Arbitration for Sport (CAS), FIFA had already in place a mechanism attempting to ensure that 'sums of money' awarded by its associations tribunals were effectively paid to the beneficiaries. The provision of the FIFA Disciplinary Code (FDC) intended for this purpose was originally Article 70.¹

¹ Article 70 (Ed. 2002): "1. Anyone who fails to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA: a) will be sanctioned with a minimum fine of CHF 5,000 for failing to comply with the instructions issued by the body that imposed the payment (cf. Article 44 of the FIFA Statutes); b) will be given a final time limit by the judicial bodies of FIFA in which to settle the debt; c) if it is a club, it will be warned