The NOC and Sports Confederation of Denmark’s New Regulations Against Match-Fixing - From a legal perspective

Mads Boesen, Legal Advisor
introduction

May 4 2013

first mover

Direct effect

61 member federations

> 9,000 clubs

> 1,900,000 members
Agenda (legal key issues)

Defining match-fixing
and the prohibited conduct

Legal status of the regulations
Standard of proof and the duty to co-operate

Persons covered (liable)
Jurisdiction issues

Sanctions
Proportionality – aggravating/mitigating matrix

Due process - fair trial
disciplinary proceedings in the noc denmark sports community
Definitions - and the prohibited conduct (1/2)

Manipulation of Sports Competitions (match-fixing) Article 4(1)

Similar unethical conduct Articles 6-8

Abuse of insider information

betting on your own competition

certain improper gifts
MATCH-FIXING

"AN ARRANGEMENT ON AN IRREGULAR ALTERATION OF OR IMPACT ON THE COURSE OR RESULT OF A SPORTS COMPETITION OR ITS INDIVIDUAL EVENTS IN ORDER TO OBTAIN AN ADVANTAGE OR A GAIN FOR ONESELF OR FOR OTHERS AND TO REMOVE ALL OR PART OF THE UNCERTAINTY NORMALLY ASSOCIATED WITH THE COURSE OR RESULT OF SPORTS COMPETITIONS. SUCH ACTIONS MAY INCLUDE [...]"

(INSPired by the Council of Europe’s Preliminary Draft Convention (EPAs (2012) 27rev))

**Prohibited conduct (MONEY) (art. 5(1))**

**Definition (ART. 4(1))**
Legal status  (1/4)

Private law sports rules  article 2

**Noc Court of appeal** principles of civil procedure, cf. case 1/2004

**CAS**  “...To adopt a criminal standard [...] is to confuse the public law of the state with the private law of an association ...” (CAS 98/211 B)

**ECHR**  “...The fact that an act which can lead to a disciplinary sanction also constitutes a criminal offence is not sufficient to consider a person responsible under disciplinary law as being “charged” with a crime...” (ECHR ; Müller-hartburg v. austria, Application no. 47195/06, para. 44)
STANDARD OF PROOF

ARTICLE 29

"The Match-Fixing secretariat must prove that the regulations have been breached. The standard of proof is higher than the mere balance of probabilities, but less than proving beyond a reasonable doubt that the regulations have been breached."
Cf. Wada-code art. 3.1 and CAS 2009/A/1920, para. 85:

“The Panel is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the relevant facts “to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made””
DUTY TO CO-OPERATE  ARTICLES 27-28

NOTIFY (CALL THE HOTLINE)

GIVE EVIDENCE (TESTIFY)

DISCLOSE INFORMATION

TELL THE TRUTH
Members (e.g. athletes)

Representatives (e.g. board members & athletes on the national teams)

Other participants (e.g. referees)
Sanctions
ARTICLES 12-26

Temporary or permanent suspension
Penalty or other pecuniary sanction
Withdrawal of prize money or similar gifts of any kind
Disqualification (cancellation) of results achieved or similar sports disciplinary sanctions

NO STANDARD SANCTION (CASE-BY-CASE)

PROPORTIONALITY ARTICLE 12(2)

THE AGGRAVATING/MITIGATING MATRIX ARTICLES 22-26
Due process - fair trial
ARTICLES 32-58

TWO-TIER SYSTEM
MATCH-FIXING TRIBUNAL AND NOC COURT OF APPEAL

INDEPENDENT BODIES
UNBIASED MEMBERS

EXPERTISE
E.G. JUDGES & LAWYERS

CIVIL LAW PRINCIPLES
CF. THE DANISH ADMINISTRATION OF JUSTICE ACT