



To: **Secretaries/Chief Executive Officers of Unions and Regional Associations in Membership of the IRB**

From: **Hugh H. Penman
Head of Council & Member Services**

Date: 30th March 2005

Re: **Special Meeting of Council – Tuesday 5th April 2005
IRB Regulations 4,17 and 22 – Proposed Amendments**

I refer to my previous letter regarding the above and now enclose the responses from Unions in relation to the proposed amendments to Regulations 4,17 and 22 as set out in the agenda for the Special Meeting of Council to be held on 5th April 2005.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Hugh Penman', written in black ink.

**Hugh H. Penman
Head of Council & Member Services**

SCOTTISH RUGBY UNION

IRB SPECIAL MEETING OF COUNCIL

1

REGULATION 4 - PLAYER STATUS, PLAYER CONTRACTS AND PLAYER MOVEMENT

**COMMENTS ON UPDATE ON CURRENT RESEARCH AND PRELIMINARY
PROPOSALS FOR POSSIBLE AMENDMENT**

This Union approves the 5 decisions required by Council.

We would also comment however that the SRU has difficulty in passing comment as it has no knowledge of nor experience of player compensation issues; that some items are included which are very difficult to implement in Europe, some being probably unenforceable; that the suggested alternative scheme is probably more straightforward; that there will be huge variations in the costs of developing players; should it be up to Unions to demonstrate that they have a system in place to develop players and what the costs are so that the IRB can categorise and have fixed figures for the Unions in the different classes i.e. a variable fixed fee across the different classes.

We would also suggest that when a clearance form comes from a player's present Union, it should come with details of the disciplinary and anti-doping record; the SRU has previously suggested a global IRB site for all disciplinary and anti-doping offences, whereas at present a Union is only given details of any term currently being served; we also propose that the 'standard form' referred to in the definition and included in Appendix 1 to Regulation 4 be amended by adding 8, '8. Details of all past sendings off and anti-doping offences including the sanction applied, if any.'



I A L H
21.3.05

MEMORANDUM

DATE: 22/03/05
TO: IRB COUNCIL
FROM: Peter Rowles – Head of Rugby Services
SUBJECT: Regulation 4

The Australian Rugby Union offers the following advice to the IRB Council regarding proposed investigations and changes to Regulation 4.

Section 1

ARU supports further investigation of the proposed International “bands” policy to be conducted in conjunction with Member Unions. ARU seeks to be involved in this investigation through the High Performance Unit.

Section 2

ARU supports ongoing research into alternative compensation calculation formula. Again ARU seeks to be involved in this research.

Section 3

1. ARU approved changes to Regulation 4.3
2. ARU approves of the revised definition of “Clearance” in section 4.4 (b) as set out in the IRB Council Papers.

Regards,



Peter Rowles
Head of Rugby Services
Australian Rugby Union

McNamara, Myra

From: Reception Desk [DCater@WRU.CO.UK]
Sent: 22 March 2005 11:55
To: Penman, Hugh
Cc: Martyn Rees
Subject: Special Meeting of the Council - Tuesday 5 April 2005

Morning Hugh

Your circular dated 22 February refers.

The papers were considered by members of this Union's Regulatory Committee and the only observation related to the proposal examining the feasibility & costs of establishing a central register of players disciplinary decisions and in particular, if the proposal is approved, why it is necessary to backdate the request to 1.1.05 rather than from the date the proposal is expected to be approved ie 5 April 2005

X

Many thanks

Martyn Rees
22.3.05

SCOTTISH RUGBY UNION**IRB SPECIAL MEETING OF COUNCIL**

3

REGULATION 17 - ILLEGAL AND FOUL PLAY**COMMENTS ON CONSIDERATION OF VARIOUS ISSUES ARISING,
INCLUDING A NUMBER OF PROPOSED AMENDMENTS**

This Union approves the 16 decisions and recommendations/decisions required by Council.

We would also comment on 2.21 that the Chairman must be appointed on the merit-based system, but it is not necessary to appoint the 2 other members of the panel on that system, all 3 members of the panel however requiring to be neutral; and on 3.5 that there should be a global central register of suspensions for disciplinary and anti-doping offences.



IALH
21.3.05

MEMORANDUM



DATE: 22/03/05
TO: IRB COUNCIL
FROM: Peter Rowles – Head of Rugby Services
SUBJECT: Regulation 17

IRB Regulation 17 – Illegal and/or Foul Play April 2005 IRB Special Council Meeting

Foreword

Please see below for ARU response in relation to the proposed changes to IRB Regulation 17 and the related IRB pilot merit based scheme.

Please note that in addition to the responses outlined below, the ARU proposes that a 360 degree rigorous review takes place at the completion of the pilot merit based scheme.

This review should be conducted by the IRB, Judicial Officers/Chairmen, Appeal Officers/Chairmen and Union administrators.

Section 1 – Review of Judicial Personnel Requirements

1.12 Approval of revised Regulation 17.7.1 (c)(iv) and 17.17.1 (c)(v), set out in Part A of Schedule 1.

Summary:

In the case of a Disciplinary Committee being appointed, the two remaining members to be appointed are from a neutral company.

ARU: Reject that the two remaining members are from a neutral country (cost).

1.13 Approval of revised Regulation 17.7.2 set out in part B of Schedule 1.

Summary:

- Appeal Committee to be appointed as opposed to Appeal Officer.
- All 3 Appeal Committee to be from a neutral country.

ARU: Accept that an Appeal Committee to be appointed as opposed to an Appeal Officer.

ARU: Accept that the Chairman be from a neutral country, provided any appeal hearing can be facilitated via telephone or video conference.

ARU: Reject that the two remaining members of an Appeal Committee are from a neutral country.

1.14 It is proposed that any modifications to Regulation 17 approved by Council become effective as at 1 May 2005.

ARU: Reject that any modifications are made effective as at 1 May 2005.

ARU: Proposes that any modifications are made effective as at June 1 2005. May 1 is in the middle of the Super 12 Tournament.



Section 2 – Implementation of the Merit Based Appointment System for Judicial Personnel.

2.18 Council is asked to confirm if the matches set out in Schedule 2, Part B should be included within the merit based scheme.

Summary:

- Part B outlines the games in the end of season European Tour by Australia, New Zealand, South Africa and Argentina.
- Part A outlines the games in the end of season tour by France and Italy to Argentina, South Africa and Australia.
- **NB: Decisions Required by Council in Section 2, there is no reference to approving the games in Part A. An oversight?**

ARU: Accepts that the matches as set out in Schedule 2, Part B should be included within the merit based scheme.

ARU: IRB to confirm that matches as set out in Schedule 2, Part A are included within the merit based scheme.

2.19 Council is asked to confirm and/or ratify, as appropriate, the merit based appointment scheme for all matches in the forthcoming British and Irish Lions Tour of New Zealand as set out in Schedule 2, Part C.

ARU: Accepts that the matches as set out in Schedule 2, Part C should be included within the merit based scheme.

2.20 The approval of the Judicial and/or Appeal Panel personnel appointments set out in Schedule 3.

ARU: Accept the personnel appointments as set out in Schedule 3, except for The IRB Judicial Panel Chairman who should not also be a Judicial/Appeal Chairman/Officer. This is a conflict of interest.

2.21 Clarification if Disciplinary Committees are to be covered within the merit based scheme, whether appointments will be confined to Disciplinary Committee Chairmen appointees and not the other members of the Disciplinary Committee.

ARU: Accept that Disciplinary Committees are to be covered in the merit based scheme.

ARU: Accept that appointments will be confined to Disciplinary Committee Chairmen and not the other members of the Disciplinary Committee.

2.22 Confirmation of the presumption towards Judicial Officer appointments and approval of the proposed Regulation 17.7.1(c)(i).

“A Judicial Officer or, subject to the approval of the Participating Unions in the match concerned, a Disciplinary Committee”

ARU: Rejects the above proposed Regulation 17.7.1(c)(i). It should read as outlined below:

“A Disciplinary Committee or, subject to the approval of the Participating Unions in the match concerned, a Judicial Officer”.

2.23 Council is requested to approve the equalization mechanism set out in Schedule 4.

Summary:

Tier 1 countries (10) split the costs of travel and accommodation for IRB Appointees.

ARU: Accept the equalization mechanism.

2.24 Council is asked to approve the following modifications to Regulation 17 to facilitate the merit based scheme.

Current Regulation 17.2.1

“For matches played in accordance with the disciplinary procedures set out in this Regulation 17, subject to the provisions of Regulation 17.2.4, the responsibility for the appointment of the relevant disciplinary bodies and disciplinary personnel....”

New Regulation 17.2.4

The IRB may appoint relevant disciplinary personnel for Matches designated by Council as forming part of the pilot IRB judicial appointment scheme. Where appropriate in Regulation 17, where the IRB makes such appointment, references to Host Union appointment should be read accordingly.

New Regulation 17.7.3

Where IRB appointments are made under the merit based scheme referred to in Regulation 17.2.4, notwithstanding Regulation 17.7.1 and 17.7.2, the IRB shall determine the person (s) to be appointed and make the appointment of the independent Citing Commissioner, Judicial Officer and Appeal Officer or Appeal Committee for the Match concerned. The IRB is not required, in making such appointments, to seek the agreement of the Unions participating in the Match.

- ARU: Rejects the modification to Regulation 17.
- ARU: Proposes that the modification to Regulation 17 should include Judicial Chairman (as well as Judicial Officer) and Appeal Committee Chairman.
- ARU: Proposes that the amendment to Regulation 17 read as follows:

New Regulation 17.7.3

Where IRB appointments are made under the merit based scheme referred to in Regulation 17.2.4, notwithstanding Regulation 17.7.1 and 17.7.2, the IRB shall determine the person (s) to be appointed and make the appointment of the independent Citing Commissioner, Judicial Officer/Chairman and Appeal Officer or Appeal Committee **Chairman** for the Match concerned. The IRB is not required, in making such appointments, to seek the agreement of the Unions participating in the Match.

- 2.25 Depending on other changes approved by Council to Regulation 17 and/or other matters arising, it may be necessary to make consequential and/or related adjustments to Regulation 17 to implement the merit based scheme or other issue arising out of this paper and Council is asked to approve such consequential and/or related adjustments and/or modifications.

- ARU: Rejects that the changes/amendments are automatically approved.
- ARU: Proposes that council approve/reject any changes/amendments after a thorough consultative process has been undertaken.

Section 3 – Examination of the Feasibility and Costs of Establishing a Central Register of Disciplinary Decisions

3.5 The approval of the creation of a Central Register of decisions without visual clips, including disciplinary decisions from all international matches involving tier two unions and above, European Rugby Cup and Super 12 matches.

- ARU: Accepts the creation of a Central Register of decisions.

3.6 It is proposed that a request for decisions be made to Unions and Tournament organizers as appropriate for disciplinary decisions from 1 January 2005, when the revised Regulation 17 came into effect.

- ARU: Accepts the request to Unions and Tournament organizers for disciplinary decisions be made.

Section 4 – Ancillary Matters Including an Update on Communications with the FFR in Relation to Potential Issues which may Impact on the Implementation of Certain Disciplinary Matters In France.

4.24 Necessarily the issues raised by the FFR give rise to complex legal argument, a number of which are summarized above. However, in the first instance, Council should identify its preferred global position and then, as appropriate, require further relevant legal analysis to be undertaken as to whether such position unreasonably exposes the IRB to the prospect of successful legal challenge.

- ARU: Accepts that the current global position stands i.e. suspensions at a Tournament or International match filter down to all levels of the game.
- ARU: Accepts that further relevant legal analysis is to be undertaken.

Section 5 – Ancillary Matters

5.4 It is recommended that the current approach that allows each case to be considered on its own merits be maintained, but that consideration may need to be given to Council reconfirming its policy on the unacceptability of Match Official abuse.

ARU: Accepts that the current approach to Match Official abuse be maintained.

5.5 Council is asked to approve the proposed amendment in paragraph 5.5 above.

Summary:

Change in numbering to a regulation to make it accurate in a cross referencing.

ARU: Accepts the proposed change.

Regards,



Peter Rowles
Head of Rugby Services
Australian Rugby Union



PROPOSAL TO REFORM IRB RULE 17.29

IRB/FFR/LNR meeting
Saturday 12 February 2005
London

Further to a penalty inflicted on Mr. Richard Nones by the appeal committee of the European Rugby Cup (ERC) in December 1999, the FFR (French Rugby Union) immediately warned the International Rugby Board (IRB) of the legal problems posed by the application of sanctions ordered by international organizations in French territory and on the occasion of organized national competitions.

Since that date, in many letters and at many meetings, the FFR and the National Rugby League (LNR) have constantly drawn the attention of the IRB to the difficulties that may arise concerning the applicability, in the national territory, of sanctions imposed by international bodies, and, generally, concerning the principle of non-severance of sanctions set forth in IRB Rule 17.29.

It has been systematically stressed that this system and its application are in contradiction with the principles governing the organization of French sport, the rules relating to disciplinary procedures, and French law.

Although the IRB has carefully reviewed these arguments, it has not wished, so far, to officially contemplate a change of its regulation in such matters.

The rapid changes of the economic and legal context now make a debate on this issue within the IRB Council inevitable. The consequences of this regulation largely exceed the strictly French framework today:

- the professionalizing of Rugby and of the players creates new stakes likely to trigger court disputes and a quest for challenges of national and international unions;
- changes in the case law of the European Union could lead to a challenge of part of the international rules in the field of sports.

For all these reasons, the IRB found it necessary to request the drafting of a study concerning the theme of severance of sanctions and the submission of proposals at its next Council meeting, which will be held in April 2005.

In this context, the purpose of the present study is, first, to identify the causes which, today, lead to challenges of the legitimacy of Rule 17.29 (1), the risks that the FFR, the LNR and the international Rugby bodies will quite certainly be facing because of the growing judicialization of these matters (2), and then to propose an alternative allowing the international bodies to preserve the basic principles of Rugby while retaining a strong and deterrent disciplinary power which complies with the law and is, therefore, permanent (3).

1 - CHALLENGE OF THE LEGITIMACY OF RULE 17.29

While the French rugby bodies naturally wish to comply with international rugby rules, they are today in a situation where these rules create many practical and legal implementation difficulties.

Due to the development of professionalism, the system in effect seems hardly suitable, and legal challenges of its legality can only increase.

While the principle of non-severance could be perfectly justified in the context of a strictly amateur sport, the legitimate objective that Rule 17.29 sought to embody, i.e. the preservation of equity in athletic competitions and the protection of fair play, **can cause its legitimacy to be challenged from the strictly sport-related (1.1) and from the legal (1.2) points of view.**

1.1 – CHALLENGE OF THE ATHLETIC LEGITIMACY OF ARTICLE 17.29

The purpose of international athletic rules is to set the principles of organization of international competitions and of competitions organized by the different national bodies by ensuring, at each level, the equality of the participants and the observance of principles considered as fundamental. Among the latter, the struggle against violence and the observance of the rules constitute a fundamental principle of the organization of rugby.

Quite obviously, the French rugby bodies fully endorse these principles, which are all the more justified as rugby is, by essence, a contact sport which thereby is distinguished from other major team sports.

All the same, there is no choice but to note that this goal is made more fragile today, and even likely to be jeopardized by the practical application of Rule 17.29 in its current wording.

By way of illustrations based on concrete cases with which the FFR and the LNR have been faced, the Disciplinary Committee of the LNR, which has met about twenty times since 2001 in order to see to the application of Article 17.29 and to the transposition of sanctions levied by an international disciplinary body (ERC, IRB or Six Nations Committee), has noted many difficulties which show unfair distortions of this regulation, regardless of the fact that it is supposed to ensure equity:

1.1.1 – Delayed communication of the decisions made by international organizations

The transmission of disciplinary files by the Six Nations Committee, the IRB or the ERC is not always made spontaneously, and the LNR has sometimes received them only belatedly and with difficulty.

While it is considered that any decision rendered by an international disciplinary body must be transposed under French law in order to be applicable, it is not possible for French bodies to contemplate summoning the registered player and following the procedure specified by the disciplinary rules in the absence of a document attesting the decision of the concerned international organization.

Illustration

During the 2003 Rugby World Cup, Serge BETSEN, a Biarritz Olympique player, was summoned to appear by the commissioner further to an incident that occurred during the France / England match of 16 November 2003. The player, after being heard by the Disciplinary Committee of the RWC, was suspended for a period of six weeks, a decision confirmed on appeal. The French Disciplinary Committee, as well as the player and its club, were sent the official notice of this ruling only on 16 December 2003, i.e. several weeks after the decision was rendered.

In a letter to the President of the LNR, the club asked that the matter be referred to the Committee *"in order to have the grounds of this decision assessed according to the principles and rules of procedure and competence set forth in the texts in force, a requirement found in the CNO SF settlement proposal of 6 April 2000."*

Since the decision was notified by the FFR to the LNR on 16 December 2003, the Disciplinary Committee had to summon the player to appear in extreme urgency at its meeting of 18 December with a view to ruling on the extension of the sanction pronounced by the IRB to national professional competitions. Pursuant to the disciplinary Regulation, the Committee ordered the temporary suspension of the player until the date of the hearing.

This delayed communication of the IRB's decision could have had, if the player had not been injured, extremely damaging effects on the progress of club competitions (Championship and European Cups). It would have been difficult to bar the player from taking part in matches that took place during this period since the decision of the IRB had not been transmitted.

1.1.2 – Absence of consistency of penalty scales

A comparative study, for each type of breach, of the scale of penalties applied by the ERC or the IRB and by the LNR brings significant discrepancies to light. This distortion between penalty scales is likely to result in a challenge of the decisions rendered in the event of a dispute.

Illustration

On two occasions during the same season, the Disciplinary Committee of the LNR was faced with problems of harmonizing the scales of different organizations when hearing players suspended by the disciplinary bodies of the ERC and the IRB.

- European Cup: Extension of a penalty of 14 days imposed by the disciplinary body of the ERC on grounds of "agitation", even though the characterization of "agitation" does not correspond to a suspension for 14 days in the Disciplinary Regulation of the LNR (but to an automatic suspension for 10 days).
- Six Nations Tournament: Extension of a penalty of 23 days imposed by the commissioner even though the characterization of "kicking of a player on the ground" does not correspond, in the Disciplinary Regulation of the LNR, to a sanction equivalent to that pronounced by the initial disciplinary body (from 100 days to striking off the rolls).

These divergences between scales create a real practical and technical problem for the members of the Committee, who, in the context of new disciplinary proceedings before the competent national bodies as per the conditions specified by the national Rules, are under a duty to transpose a penalty which does not match, in the national scale, the breach in question, and which, consequently, may seem inconsistent with the sanctions pronounced previously (and sometimes during the same meeting) against a player penalized in the national Championship.

Hence, the Committee has the feeling of "not being consistent with its own case law", and the decision could therefore be challenged since it differs for identical facts. Moreover, that a penalty should differ according to the competition during which the facts occurred is obviously unfair.

1.1.3 – Temporary suspension of the player pending a hearing before the Disciplinary Committee of the LNR

Since the 2000/2001 season, the Disciplinary Committee of the LNR has pronounced the temporary suspension of a player pending the hearing to which he is summoned with a view to the ruling on the extension of the sanction.

This practice allows one to "make up" for the absence of automatic application in French law of a decision rendered by an international disciplinary body, but it is only a "superficial" solution used upon receipt of the notice of the international decision, since the Disciplinary Committee of the LNR has not been able to examine the file or to study the concrete facts.

Illustration

On 18 January 2002, the Disciplinary Committee called Ismaïla LASSISI, a Castres Olympique player, to appear at its meeting of 30 January 2002 with a view to ruling on the extension to national professional competitions of a sanction pronounced against him by the ERC further to the Castres / Munster match of 12 January 2002.

On 24 January, the ERC's Appeal Committee, to which the matter had been referred by the player in the meantime, rendered a decision with immediate effect cancelling the decision of the initial body and allowing the player to take part in official competitions. Therefore, the summons issued by the LNR Committee no longer had any reason to exist.

The temporary suspension of the player pending the hearing was pronounced by the Disciplinary Committee in order to ensure the effective effect of the international sanction. Therefore, the player was suspended between 18 and 24 January 2002 although the sanction was finally cancelled on appeal.

The mechanism of temporary suspension, the only legal solution for reconciling the observance of the IRB rules and of the rules of ordinary law, may lead to situations in which the player is suspended in the French Championship pending his hearing by the Disciplinary Committee of the LNR, even though the sanction initially levied by the international body is cancelled or reduced by the latter's appeal committee.

1.1.4 – Improper use of national procedures

Any decision made by an international disciplinary body must be transposed in national law in order to be applicable.

Each country follows the procedure specified in its Regulation for ruling on the extension of the decision made by the disciplinary body of an international organization (summons to appear, observance of the rules of the defense, examination, procedure of appeal against the decision, etc.), but, since the rules differ between one union and the other, this system is a source of inequity in the sport.

Illustration

In 2002, an English player was summoned to appear before the Disciplinary Committee of the RFU following a championship match. Further to this summons, he was suspended for 21 days, i.e. two matches with his club and one match of the Six Nations Tournament, France / England. Since the club appealed from the initial decision in the name of the player, he was allowed to resume play for a few days in the absence of effective application of the suspension, as the appeal deferred the sentence.

Conversely, since 2000, French international players have not been able to play matches with the French team on account of a strict application of the rules.

The necessity to follow the national procedure when transposing a sanction taken by an international body can create differences between players, including international players likely to play against each other, during the transposition procedure. In fact, it is possible to imagine that two players of different nationalities may be penalized during a given European Cup, Six Nations Tournament or even World Cup match, and that contrary national rules apply to them, thus creating a surprising and "unsportsmanlike and unfair" situation.

1.1.5 – Unfair consequences of the athletic sanction of a registered player accounted for in numbers of days

Since the 1999/2000 season, the international rules providing that the sanctions pronounced against a registered player apply to all competitions for a given period trigger a recording of the sanction in numbers of days, not in numbers of matches.

As of the 1999/2000 season, the FFR has applied a regulation compatible with that of the ERC or of the IRB.

This accounting method can create inequitable situations depending on the calendar.

Illustration

It is easy to imagine that, depending on the calendar of a competition, the same sanction levied against players of different clubs may not have the same impact on the athletic level.

For instance, the impact of a given sanction against a Welsh player and an English player will not have the same scope, depending on the calendar of competitions in which the player is to take part with his club or even with his union.

All these examples illustrate the difficulties generated by the practical application of the principle of non-severance. The multiplication of such incidents cannot be accepted in a context where the economic stakes attached to the professional character of the activity cannot tolerate this type of "uncertainty".

1.2 – CHALLENGE OF THE LEGAL LEGITIMACY OF ARTICLE 17.29

The international federal rules were created in order to ensure the regularity of athletic competitions and also to harmonize the international application of the texts; however, they can be legally imposed only to the extent that their application does not contravene the applicable national laws, and, in the member countries of the European Union, the Community laws.

A player suspended by the competent committee of the IRB in the context of international matches (European Cup matches with his club or caps in his national Union) may not, under Rule 17.29, for the entire period of his suspension, play either in international matches or in matches organized by a national association or union, such as "Top 16" or "Pro D2" championship matches in France.

This mechanism of non-severance of the sanctions also applies in other circumstances (from the national to the international level) if one refers to Article 17.29 of the IRB Regulations, in particular:

"If a player is suspended from playing by his Union or other appropriate disciplinary body, the suspension shall be effective immediately. The player may not play the Game anywhere during the period of suspension."

Thus, in the event of a disciplinary sanction imposed on a national level, this sanction would prevent the concerned player from taking part in any rugby competition whatsoever, and therefore from playing either in international matches or in another national championship.

While this regulation maintains a strict parallelism of forms and procedures, one must nevertheless note the potential distortions of a regulation which is somewhat Manichean in its principle and

damaging in its application to all parties involved in rugby, as well as the risks linked with a challenge of its conformity with applicable legal rules.

The arguments in support of a challenge of the legal legitimacy of Rule 17.29 are of two kinds – its incompatibility with French law and the high risk of its contravening Community law.

1.2.1 – INCOMPATIBILITY WITH FRENCH LAW

This argument has already been developed with the IRB on the occasion of the Nones case. Although an exchange was initiated with the Ministry of Youth, Sports and Associative Life in the presence of the IRB, it appeared that the difficulty could be overcome only by modifying the French legal system as a whole and for all sports, which, obviously, was and still is out of the question.

Consequently, one must refer to the French legal and regulatory system in order to grasp the difficulty created by Rule 17.29.

- Consequences of the delegation of powers granted to the FFR

The FFR benefits from a delegation of powers granted to it by the Ministry of Youth, Sports and Associative Life under the law of 16 July, 1984, as amended, in connection with the organization and promotion of physical and athletic activities.

This delegation confers upon the FFR a monopoly of the organization of rugby in French territory. Concerning professional sport, the abovementioned law provides that the exercise of the initial disciplinary power is delegated to the professional league when it exists. This is the case in rugby, as the FFR has delegated this power to the LNR.

Concerning the exercise of the disciplinary power in general and the application of international sanctions in particular, this delegation has several consequences, which flow from each other:

- Only the FFR and the LNR may pronounce a disciplinary sanction against a registered player, applicable in French territory and on the occasion of matches organized by the latter;
- An international sanction has no direct effect in French territory if it is not levied by the FFR or the LNR;

- Therefore, the FFR or the LNR must impose a sanction on the athlete penalized by the International organization if such sanction is to be effective in the national territory;
- This sanction pronounced by the FFR or the LNR must strictly follow the applicable disciplinary procedure.

- Disciplinary procedure applicable under French law

The exercise of the disciplinary power by the delegated Unions is strictly regulated (décret No. 2004-22 of 7 January 2004). Its application must abide by the principle of protection of the rights of the defense.

This principle, which, incidentally, is found in the Convention of the Rights of Man, has several effects on the disciplinary procedure applicable under French law:

- Obligation to summon the registered player to a hearing 15 days beforehand,
- Obligation to inform him that he may be represented and/or assisted,
- Obligation to inform him that he may peruse the documents in the file,
- Obligation to give the athlete the means to present and argue his defense,
- Obligation for the disciplinary body to strictly verify the reality of the facts subject to blame,
- Obligation for the disciplinary body to pronounce a sanction proportional to the offense;
- Lastly, obligation for the disciplinary body to state the grounds for the decision rendered.

The internal disciplinary procedure, indispensable on the national level to enforce a suspension of international origin, must give rise to a new examination of the substance of the facts subject to blame¹.

If this procedure is not followed, the sanction would be liable to cancellation by the administrative courts. The FFR and the LNR could be penalized for their actions.

1.2.2 – RISK OF CONTRADICTION OF COMMUNITY LAW

¹ Such was the interpretation adopted by the judge: *"The sanctions imposed on national athletes by international sport federations, private associations governed by the law of the State in which they are headquartered, are enforceable under internal law only to the extent that the national sport federations, in the context of the public service mission delegated to them [...] decide to ratify them with a view to having them produce legal effects in the French judicial system"* Administrative Court of Grenoble, 19 June 2001 (suspension of Christelle Guignard by the International Ski Federation).

In view of the possible review of the subjection of this rule to community law by means of a dispute brought before a judge, it seems necessary, before ruling on the solution which might be adopted, to state the reasoning followed in similar matters in the past.

1.2.2.1. Nature of the regulation in dispute

Could the mechanism of non-severance of sanctions be characterized as a "purely sport-related rule" by the Community judge?

On this point, one must refer to the reasoning followed in the Meca-Medina and Majcen case (Case T 313/02) judged on 30 September 2004 by the High Court of the European Communities (along the lines of the Walrave, Deliège and Lehtonen cases):

"The prohibitions dictated by these provisions of the treaty do not concern purely sport-related rules, i.e. rules concerning issues that are of interest only to sport, and, as such, alien to the economic activity. In effect, such regulations, which pertain to the character and the sphere specific to athletic events, are inherent in the organization and the satisfactory progress of athletic competitions and may not be considered as setting a limit to Community rules."

However, according to this same case law of the HC, the limitation of the scope of application of the provisions of the treaty by the international regulation of sport "must nevertheless be restricted to its own purpose" (implicitly: to a purely sport-related purpose).

Due to the evident repercussions of the application of the principle of non-severance of sanctions between national and international competitions, particularly by means of the effect of a disciplinary sanction pronounced in one competition on a decisive match in another competition (e.g.: a suspension for three matches pronounced following a match between national teams or the semi-final of a European competition between clubs which would deprive the team of the concerned player during decisive matches of a domestic championship), it appears that such a regulation is not alien to the economic activity.

As such, it would constitute a potential obstacle not only to the economic activity of the employing club, which could then invoke a loss of opportunity linked with the application of this principle, but also of the player, who could as a result lose a variable portion of his compensation.

Lastly, the very principle of this automatic regulation ignores the economic independence of the flows generated by each of the competitions – national and international. Furthermore, the probability is, in certain cases, that the application of the principle has a chain of consequences for an employing club:

- loss of opportunity for the club involved in the final phases of the national championship because it has not been able to use one or more of its players,
- absence of qualification for a European competition the following year.

Hence, the rule of non-severance of the sanctions seems to us, whether it is considered as a merely sport-related rule or not, to be subject to the control of the Community judge mainly as regards its conformity with the provisions of the treaty in matters of freedom of competition (arts. 81 ff.)

- either as a sport-related rule exceeding its specific purpose
- or as a rule that is not "merely sport-related".

In both cases, the judge would apply a control of proportionality.

1.2.2.2 The foreseeable sanction via the control of proportionality exercised by the Community judge

In his conclusions relating to the Delière case of 11 April 2000 (CJEC Cases C 51-96 and 191-97), attorney general Georges Cosmas indicated: "*Community law grants authorities in the field of sport a limited power of self-management and self-regulation of non-economic matters relating to the specific nature of sport*", and also "*[...] measures which, without introducing a discrimination, are justified by imperious necessities in the public interest, lend themselves to the achievement of the objective sought and are not excessively restrictive compared to the necessity to achieve this goal, are not contrary to Community law.*"

In this regard, during the control of proportionality of the rule of non-severance of sanctions between competitions, **the judge would quite certainly make a comparison between the systems existing in the different comparable team sports.**

In the other two major sports (football and basketball), the principle of non-severance was renounced in favor of a balanced, proportional and adjustable rule.

The principle of severance of the international and national sanctions in force in these sports may quite logically be supplemented, on a case by case basis, by requests for extension of the penalties pronounced on the international level to national sanctions and vice versa (e.g., in basketball, the decision of the legal and disciplinary committee of the National Basketball League in the Steven Key case, "definitively" striking off a player guilty of use of a false passport, together with the request for extension of the penalty to FIBA World, 2002).

Therefore, the Community judge may consider that the objective sought by the IRB (e.g. struggle against brutality, guaranteeing the observance of fair play) when dictating this regulation is admissible, but that the means applied are disproportionate, in light, in particular, of the potential obstacles to the exercise of their profession (in the club) that players might invoke if they were suspended further to facts generated during matches of national teams, and in light, also, of the probable complaints of player-employing clubs penalized much more broadly than the national squad (episodic matches) "on behalf" of which the foul was committed (in case of a sanction penalizing the behavior of a player wearing the national jersey).

2 – CONSEQUENCES OF A CHALLENGE

In a context of exacerbated judicialization of the athletic fact, the loss of athletic and legal legitimacy seems to us to be a major factor begging disputes of Rule 17.29 before the national and even the international courts.

The risks of involvement of the liability of the national and international rugby bodies would therefore be quite real, with, in addition to the possible sanction by the applicable law (disproportionate regulation), the items of indemnification susceptible to be attached to the damage(s) caused by Rule 17.29.

On the latter point, the actions challenging the legality of the IRB rule would be accompanied by claims for indemnification of the damage sustained.

While the valuation of potential indemnifications is a hazardous exercise which necessarily varies with each case, it remains that the number of parties likely to institute such actions (on the side of both players and employing clubs) as well as the increase of the economic stakes generated by the professionalizing of rugby would inevitably add a major financial risk to the probable challenge of one of the rules of the IRB.

In order to limit this risk, we propose the introduction of a reform of the system in effect which would make it possible to ensure the observance of the basic principle of equity of organized competitions while strictly complying with legal constraints.

3 - RECOMMENDED SYSTEM

3.1 SYSTEMS APPLICABLE TO OTHER MAJOR SPORTS

As mentioned previously, the international or continental Federations managing major team sports, including Football, Basketball or Volleyball, in particular, have adopted systems differing from that in effect in Rugby.

In Football, the applicable system provides for a strict partitioning of the sanctions applied. A difference is made according to the competition, its organizer, and the phase in connection with which the sanction is pronounced.

Sanctions, including suspensions, in particular, are effective only for the competition on the occasion of which they have been pronounced.

A player suspended on the occasion of a European Cup match with his club will serve his penalty during that same competition. Consequently, he may take part in any other competition, national or international, between clubs or national teams.

3.2 ADVANTAGE OF THESE SYSTEMS

These systems applicable to other sports have several advantages:

- Avoiding the debate of the effects and focusing on the punishment of fouls instead
- Ensuring and reinforcing the legitimacy and efficacy of the sanctions pronounced
- Avoiding the legal problems explained above, generated by the confrontation of different systems and legal rules
- Avoiding a systematic identical transposition which is quite difficult to apply
- Avoiding disputes and the involvement of national and/or international judges in such sport-related matters
- Avoiding the risks of liability of the national and/or international unions.

3.3 PROPOSALS

In view of the reasons set forth above and of the growing number of cases, it is necessary to modify, as soon as possible, the system currently applicable within the IRB and the other international rugby bodies (ERC, Six Nations Committee).

The goal is to enable these bodies to exercise a stronger and more deterrent power on the occasion of the competitions they organize while ensuring the legal conformity of the contemplated system so as to limit the consequences of the growing phenomenon of judicialization of sport-related issues.

To achieve these goals, the FFR proposes:

- **That a partitioning of the disciplinary sanctions pronounced by the different competent bodies be organized. Thus, sanctions will produce effects only in the competition on the occasion of which they have been pronounced.**
- **That some thought be given to the harmonization of the scale of sanctions on the basis of the IRB regulation.**
- **That in certain particularly serious cases, the IRB may ask the National Union with which the penalized player is registered (or vice versa) for the application of a specific disciplinary procedure, the purpose of which is to extend the sanction. In such a case, there would no longer be any automatic sanction but an automatic application of the procedure.**

Lastly, one should stress a point which seems quite fundamental to us concerning the importance of a strong disciplinary power in preserving the values and the image of rugby, to which we are all particularly attached.

Contrary to first appearances, the introduction of a system of severance of sanctions de facto induces a strengthening of the disciplinary power of each national and international body.

Let us take the example of a player penalized with his club on the occasion of a European Cup match. Today, this player may serve all or part of his penalty during the domestic competition in which this club takes part and may therefore, quite probably, play with his club again in the European Cup during the next season.

However, with the rule of severance of penalties, this player would quite certainly be exposed to the risk of not playing in the European Cup for a longer period. It would therefore be in the interest of the club and of its player not to be exposed to a disciplinary sanction.

The same logic applies at all levels, to national team competitions or to domestic competitions.

The severance of sanctions helps to reinforce the disciplinary power and constitutes a positive step in preventing reprehensible acts.

REFLECTIONS RELATING TO EXTENSION PROCEDURE

The objective is to ensure a strong and long term disciplinary power based on the principle of competition specific sanction it is therefore necessary to reflect on the proposed non-systematic extension procedure.

1 Condition for implementation

The extension could be envisaged once the acts that justify the sanction constitute a “**characterised violence of a particular gravity**”. This notion must be precisely defined so that such categorisation is not depending only on the disciplinary bodies’ subjectivity. (See Example).

Characterised violence could be defined by:

- the category of the infraction
- and/or the importance of the suspension pronounced by the disciplinary body.

2 Implementation

In practice, there may be two situations:

(1) If the sanction is pronounced by a national body for acts committed within a domestic competition, such sanction may be extended once the international competitions regulations provide for that “any player suspended by his/her Union of origin or any disciplinary body for a characterized act of violence he/she committed may not participate in the international competition in question for the duration of the suspension.”

Then the extension must be requested by the national union. Should the international authorities observe that the national unions are not requesting the extension of the effects of the decision which should have an international repercussion, the international authorities may decided to initiate an extension procedure.

For the extension to be granted, the following conditions are required to be met:

- the Person sanctioned has been properly cited before the national disciplinary body
- the Person sanctioned had the opportunity to present his/her case
- the Person sanctioned has been properly notified
- the decision complies with the regulations of the international competition(s) concerned
- the extension is not contrary to public order or accepted standards of good behaviour.

(2) If the sanction is pronounced by an international institution’s disciplinary body, such sanction shall be extended by the Union of origin of the player as to apply in national competitions. In order to avoid difficulties relating to application, such extension shall be requested by the international institutions concerned.

Before any such extension request, each Union shall implement the extension procedure in compliance with the applicable legal framework.

The implementation of this extension procedure requires the sanctions scheme to be harmonised beforehand.

Example to support the reflections

1.1 Category of the infraction:

The violence factor could be determined on the fact of “acting on someone or making him/her act against his/her own will, using force or intimidation”. In this case, infractions that could be extended could be taken off the list, i.e. infractions relating to:

- indiscipline (simple failure to comply with rules of conduct)
- dangerous play (consequence of an illegal act committed without the intention to intimidate or harm the opponent)

The terms “Indiscipline” and “Dangerous Play” do not appear in the IRB recommended sanctions but are true to reality for any sporting fixture.

Thus, the following infractions may not be subject to extension as it is established they may not be qualified as “violence”, **save for particular gravity (See 1.2)**:

- trip
- dangerous or early tackle
- attack or block a player who has just kicked the ball
- obstruction to a player who does not carry the ball
- create a gap in the scrum to create an aggressive contest
- raise the opponent in front row
- collapse a scrum

Such infractions indeed are failures to comply with common laws of the Game **and may be qualified as misconduct but are usually free of any violent intention.**

However, it may be considered that other infractions in the IRB sanctions may potentially be considered as “violent acts” **insofar as they result from a deliberate intention to harm the opponent and are in principle subject to important suspension (See 1.2).**

- punch
- stamp or trample on an opponent
- kick an opponent
- headbut
- knee
- bite
- eye gouge
- grasp/squeeze testicles
- abuse towards match officials
- physical abuse against match officials

- spit at a player or official
- racist abuse against an opponent

Note: All these infractions relate, in the current LNR system, to infractions that constitute “act of violence”, “verbal infraction” and “against the Game’s superior interest”.

1.2 Suspension

The system established by the IRB as of 1 January 2005 stipulates in the definition of the sanction for each infraction:

- a minimum sanction
- a maximum sanction
- a minimum standard (norm)
- a maximum norm

To set a threshold for the implementation of an extension, one needs to determine the duration of the suspension from which there is a case of “characterised violence”.

The difficulty is that maximum and minimum sanctions provided for by this system may be modulated according to mitigating or aggravating factors.

However, the average norm (“mid range”) of all the infractions in question above is **3 to 4 months**.

Such length of suspension could therefore be the threshold from which, for an infraction deemed to be “violent”, the sanction made by an international body would reveal a “characterised violent factor” with the ensuing consequences for extension to other competitions.

This threshold allows to exclude off the extension field most of the frequent and common sanctions.

Finally, a purely regulatory definition of the extension criteria would not cover all cases and it could be envisaged that in the event of a doubt or of an act that is not provided for in the list of infractions, the crucial factor would be the existence of a deliberate intention to harm the opponent (criteria appreciated considered in the decision).

SCOTTISH RUGBY UNION

IRB SPECIAL MEETING OF COUNCIL

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REGULATION 22 - ARTIFICIAL PLAYING SURFACES

COMMENTS ON CONSIDERATION OF PROPOSED AMENDMENTS

This Union approves the recommendations on page 2 re sections 10, 11, 12, 13.

We would also comment that the monitoring process should apply to both playing and training; that information derived by Unions who are monitoring artificial pitches in their countries should be shared with the IRB and all other Unions, the monitoring Unions being obliged to report to the IRB thereon; and that there should also be a clear method of monitoring so that consistent reports come back.



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21.3.05