



## FC Twente sanctioned for violating the KNVB Licensing Regulations

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→ Royal Dutch Football Federations (KNVB) – National Regulations  
– Disciplinary litigation – Financial control – Club licensing – TPO

KNVB Licensing Committee, 26 May 2016  
KNVB Appeals Committee, 17 June 2016  
Middle-Netherlands District Court, 15 July 2016,  
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After the 2015/2016 season of the Eredivisie (the highest division in Dutch professional football), legal proceedings, with FC Twente being at the centre of all the attention, kept a grip on Dutch professional football. Proceedings before the Licensing Committee and the Appeals Committee of the Dutch FA (the KNVB) as well as the Middle-Netherlands District Court were required to give clarity on whether FC Twente would be competing in the Eredivisie in the 2016/2017 season.

### Factual Background

In December 2013, FC Twente and Doyen Sports<sup>3</sup> discussed the possibility of entering into certain contracts, giving FC Twente the possibility to invest in its squad and Doyen Sports the possibility to profit financially from future transfers of certain players of FC Twente.<sup>4</sup>

In February 2014, the Licensing Committee of the KNVB (the Licensing Committee) ordered that the draft contracts between FC Twente and Doyen Sports be amended. Apparently, the KNVB was of the opinion that Doyen Sports would acquire influence in the transfer policy of the club. The Licensing Committee then approved the amendments submitted by FC Twente.<sup>5</sup>

In November 2015, after FC Twente had already been sanctioned by the KNVB for financial malfunctioning, documents appeared online on the website of

Football Leaks,<sup>6</sup> containing agreements between FC Twente and Doyen Sports including a side-letter that was not known by the Licensing Committee at that point.<sup>7</sup>

On 15 December 2015, after the Licensing Committee had examined the newly surfaced documents, the Licensing Committee found FC Twente to have violated the KNVB Licensing Regulations by having deliberately misled the Licensing Committee in respect of contracts concluded with Doyen Sports. The Licensing Committee decided to provisionally revoke the license of FC Twente, to exclude it from participation in European football for three seasons and to impose a fine of EUR 45,250 on it for having withheld the side-letter to the respective contracts from the Licensing Committee therewith violating the KNVB Licensing Regulations (the December Decision).<sup>8</sup>

FC Twente was informed that its license to participate in professional football would be revoked, unless it would fully cooperate with an independent investigation into the structure of the club in the following months. It was mainly this particular statement that

resulted in all the confusion that followed.

After the December Decision was rendered and during the investigations that followed, new burdensome information to the detriment of FC Twente surfaced.<sup>9</sup> This new information comprised evidence that additional violations of the Licensing Regulations were committed by FC Twente before the December Decision was rendered and could therefore not have been (fully) taken into account by the Licensing Committee in rendering its decision.

### Regulatory framework of the KNVB Licensing Regulations

The KNVB Licensing Regulations stipulate that the license holder shall provide the KNVB with all the necessary information and documentation and the license holder needs to continuously meet all the licensing requirements throughout the duration of the license.<sup>10</sup> The license holder is further required to immediately report to the Licensing Committee any change of circumstances which may be of interest in the assessment of whether the

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<sup>3</sup> Doyen Sports is a sports industry company based on Malta. Its activities include investing in football players and clubs [www.doyensports.com/aboutus](http://www.doyensports.com/aboutus)

<sup>4</sup> For a more extensive background on FC Twente, Doyen Sports and their interrelationship, See D. KOOLAARD, *FC Twente sanctioned by KNVB Licensing Committee in relation to Doyen-contracts*, in *Football Legal* # 5 (June 2016), p. 82 (with further references).

<sup>5</sup> 'Licentiecommissie bestraft FC Twente', KNVB press release, 15 December 2015, last accessed on 5 September 2016, [www.knvb.nl/nieuws/betaald-voetbal/licenties/15464/licentiecommissie-bestraft-fc-twente](http://www.knvb.nl/nieuws/betaald-voetbal/licenties/15464/licentiecommissie-bestraft-fc-twente)

<sup>6</sup> <http://footballleaks.livejournal.com/> (currently suspended)

<sup>7</sup> 'Tijdljn: de crisis bij FC Twente', KNVB press release, 7 April 2016 (updated), last accessed on 5 September 2016, [www.knvb.nl/nieuws/betaald-voetbal/licenties/17625/tijdljn-de-crisis-bij-fc-twente](http://www.knvb.nl/nieuws/betaald-voetbal/licenties/17625/tijdljn-de-crisis-bij-fc-twente)

<sup>8</sup> 'Licentiecommissie bestraft FC Twente', KNVB press release, 15 December 2015 [www.knvb.nl/nieuws/betaald-voetbal/licenties/15464/licentiecommissie-bestraft-fc-twente](http://www.knvb.nl/nieuws/betaald-voetbal/licenties/15464/licentiecommissie-bestraft-fc-twente)

<sup>9</sup> 'Tijdljn: de crisis bij FC Twente', KNVB press release, 7 April 2016 (updated)

[www.knvb.nl/nieuws/betaald-voetbal/licenties/17625/tijdljn-de-crisis-bij-fc-twente](http://www.knvb.nl/nieuws/betaald-voetbal/licenties/17625/tijdljn-de-crisis-bij-fc-twente)

<sup>10</sup> Art. 9, par. 1, sub a and b of the KNVB Licensing Regulations



licensing requirements are met.<sup>11</sup> The information and documentation to be provided by the license holder shall be complete and correct to the knowledge of the license holder or that it could reasonably be expected to have at the time of providing such information.<sup>12</sup>

In the event of non-fulfilment of its obligation to provide information and data under the KNVB Licensing Regulations, the Licensing Committee is competent to sanction a license holder with either the revocation of the license or a fine of EUR 45,250 or a combination of thereof.<sup>13</sup> No other options such as relegation or the conclusion of a settlement agreement are provided for.

## The different legal proceedings

### FC Twente's proceedings before the Licensing Committee

*FC Twente* appeared to be dedicated to clean up the legacy of the past and to change direction. *FC Twente* apparently fully cooperated with the investigations of the KNVB during the months following the December Decision and worked on the club's financial and administrative health.

The facts that arose during the investigations gave reason for the Licensing Committee to follow-up on its December Decision. It found that *FC Twente* had not only withheld information regarding additions to the contracts it concluded with *Doyen Sports* in late 2013, it also had withheld important information regarding transfers of its players *TADIC* and *CORONA*, and payments towards its player *ENGELAAR*. Regarding *TADIC* and *CORONA*, documents were drawn up and provided to the Licensing Committee with the aim of misleading the Licensing Committee. With respect to *ENGELAAR*, financial commitments or obligations were not or not correctly incorporated in the accounts.<sup>14</sup> The Licensing Committee noted in this regard that already on 15 December 2015, officials of *FC Twente*

were (partially) familiar with the respective information and that internal deliberations about this information had taken place, which was referred to in general, non-alarming wording.<sup>15</sup>

On 26 May 2016, the Licensing Committee rendered its decision, whereby *FC Twente's* license was revoked.<sup>16</sup> However, *FC Twente* was admitted to participate in the lowest division of professional football on a new license.<sup>17</sup> It shall be noted in this regard that the second tier of professional football - the *Jupiler League* - is the lowest division in professional football in the Netherlands. This particular measure had no legal basis in the KNVB Licensing Regulations.

The Licensing Committee took into account the regulatory framework of the Licensing Regulations, *i.e.* that it had only two possibilities to sanction *FC Twente* for its repeated violation of the regulations. The Licensing Committee further admitted that it was not possible to place *FC Twente* in the next lower professional division as of the following season on the basis of the applicable regulatory framework.<sup>18</sup> The Licensing Committee considered however that the severity of the violations should be reflected in the sanction that was to be imposed on *FC Twente*. The Licensing Committee deemed it important that it only became clear after 15 December 2015 how systematic the pattern of intentional violation of the Licensing Regulations and deception of the Licensing Committee had been. In this perspective, a fine of EUR 45,250 was considered to be a disproportionately light sanction. The Licensing Committee noted that if it had known of the pattern of systematic of non-ethical conduct of *FC Twente* on 15 December 2015, it would without doubt have already then unconditionally revoked *FC Twente's* license.<sup>19</sup>

Therefore, the Licensing Committee felt compelled and competent to rule that *FC Twente's* license to compete in the highest division of Dutch professional football was to be revoked, because it had deliberately misled the Licensing Committee as well as created an unbalance in the level-playing field between the clubs in the *Eredivisie*.<sup>20</sup> This notwithstanding, although the violations of the Licensing Regulations would justify an unconditional revocation of the license, the Licensing Committee deemed it important that *FC Twente* had worked hard to change the direction of the club and much had already changed for the better.<sup>21</sup> A plain revocation of the license would probably have disastrous consequences for *FC Twente*, its employees, its investors, its supporters and professional football in the region. Therefore, the Licensing Committee granted *FC Twente* at the same time as a license to compete in the lowest tier of Dutch professional football so that the club could continue its business.<sup>22</sup>

According to the Licensing Committee, this combination of the sanction and the reduction of consequences thereof through the readmission of *FC Twente* to professional football was considered justified by the specific circumstances.<sup>23</sup> The Licensing Committee expressed its awareness of having tested the limits of the Licensing Regulations with this combination of sanctioning and immediate readmission.<sup>24</sup> As a consequence of *FC Twente's* relegation, the football club *De Graafschap* that relegated from the *Eredivisie* on sporting grounds, would remain in the *Eredivisie*.

*FC Twente* did not accept the Licensing Committee's ruling and appealed the decision to the Appeals Committee of the KNVB (the Appeals Committee).

### FC Twente's summary proceedings before the Dutch civil court

In the meantime, *FC Twente* also instigated summary proceedings before the Middle-Netherlands District Court. *FC Twente* claimed, in essence, that the KNVB should be prohibited to revoke *FC Twente's Eredivisie* license or alternatively to order the KNVB to comply

<sup>11</sup> Art. 9, par. 2 of the KNVB Licensing Regulations

<sup>12</sup> Art. 9, par. 3 of the KNVB Licensing Regulations

<sup>13</sup> Art. 11, par. 1 of the KNVB Licensing Regulations in conjunction with Art. 12, par. 2, sub c of the KNVB Licensing Regulations

<sup>14</sup> KNVB Appeals Committee, 17 June 2016, § 7.19 [www.knvb.nl/downloads/bestand/4988/commissie-van-beroep-vonnis-fc-twente](http://www.knvb.nl/downloads/bestand/4988/commissie-van-beroep-vonnis-fc-twente)

<sup>15</sup> Considerations of the KNVB Licensing Committee's proposed decision, 18 June 2016, § 4 [www.knvb.nl/downloads/bestand/4240/overwegingen-licentiecommissie-fc-twente](http://www.knvb.nl/downloads/bestand/4240/overwegingen-licentiecommissie-fc-twente)

<sup>16</sup> It must be noted that the Licensing Committee, before issuing its decision, was required to consult the central council of players for a non-binding advice on the proposed decision. The central council of players advised against the decision to revoke *FC Twente's Eredivisie* license and grant *FC Twente* a license to participate in the second division, but the Licensing Committee neglected the advice and rendered the decision nonetheless.

<sup>17</sup> Considerations of the KNVB Licensing Committee's proposed decision, 18 June 2016, § 14 [www.knvb.nl/downloads/bestand/4240/overwegingen-licentiecommissie-fc-twente](http://www.knvb.nl/downloads/bestand/4240/overwegingen-licentiecommissie-fc-twente)

<sup>18</sup> *Ibid.*, § 9

<sup>19</sup> *Ibid.*, § 11

<sup>20</sup> *Ibid.*, § 2 and 11

<sup>21</sup> *Ibid.*, § 12 and 13

<sup>22</sup> *Ibid.*, § 13

<sup>23</sup> *Ibid.*, § 14-16

<sup>24</sup> *Ibid.*, § 17



with the December Decision, since *FC Twente* complied with the conditions specified therein. *FC Twente* claimed alternatively that the KNVB should be prohibited to comply with the decision to revoke the *Eredivisie* license or to be prohibited to comply with the decision to revoke the *Eredivisie* license, insofar as necessary until a binding judgment in the substantive proceedings brought by *FC Twente* was rendered.

*FC Twente* maintained that it could not be sanctioned for violations that happened before 15 December 2015 as it fully cooperated with the investigations to the malpractices at the club in accordance with the December Decision. The domestic judge did not adhere to *FC Twente's* interpretation of the December Decision and noted that its actions were not in accordance with the duty to inform the KNVB under the KNVB Licensing Regulations.<sup>25</sup>

Importantly, the court held that the December Decision and subsequent correspondence during the period of investigations did not amount to a legitimate expectation for *FC Twente* that irregularities that took place before the December Decision would no longer be sanctioned.<sup>26</sup>

The court decided that it could not be sustained that the KNVB, after balancing all the interests involved, was not reasonably able to reach its measure of 26 May 2016. In this regard, the court took into consideration that an association like the KNVB has a certain discretion to balance the interests at stake, which shall in principle be respected by a judge.<sup>27</sup> The court further deemed it important that the Licensing Committee took into account the interests of *FC Twente* and its employees, its investors and supporters and the fact that *FC Twente's* readmission to professional football has financial advantages for *FC Twente*, which would allow for *FC Twente* to make a clean sweep.<sup>28</sup>

In light of the above, the conclusion in the summary proceedings was that it was not deemed likely that it would be concluded in the substantive proceedings that the Licensing Committee could not in reasonableness decide as it did.<sup>29</sup> The

requested injunctive relief was therefore dismissed.<sup>30</sup>

### ***FC Twente's proceedings before the Appeals Committee***

After the summary judgment of the Middle-Netherlands District Court was issued, *FC Twente* proceeded with the appeal of the decision of the Licensing Committee to the Appeals Committee of the KNVB. The Appeals Committee evaluated *FC Twente's* appeal in full.

The Appeals Committee noted that the revocation of the license would be an appropriate sanction in the present case, even if this would lead to the bankruptcy of *FC Twente*.<sup>31</sup> However, importantly, and contrary to the decision of the Licensing Committee, it held that legitimate expectations were aroused that *FC Twente* would retain its license if it would fulfil certain requirements, such as full cooperation with the investigations to the malpractices within *FC Twente* and the issuance of a so called 'clean sweep statement', in which *FC Twente* declared that it had revealed all the malpractices from the past before the Licensing Committee.<sup>32</sup> According to the Appeals Committee, by issuing the 'clean sweep statement', legitimate expectations were aroused on the side of *FC Twente* that the license would not be revoked due to known malpractices from the past.<sup>33</sup>

The Appeals Committee noted that the decision of the Licensing Committee to revoke *FC Twente's* license is based on the issues concerning the footballers *TADIC*, *CORONA* and *ENGELAAR*.<sup>34</sup> In this respect, the Appeals Committee considered that the issues concerning the transfers of *TADIC* and *CORONA* were anyway already known to the Licensing Committee before the 'clean sweep statement' was required.<sup>35</sup>

The Appeals Committee further considered that following the revocation of the license, the issuance of a new license for the *Jupiler League* cannot be equated with the legitimate expectations that the license would not be revoked, because the Licensing Regulations do not

provide for such measure, this measure was never applied before, and this measure was not announced to *FC Twente* in a timely manner.<sup>36</sup>

Nevertheless, the Appeals Committee further considered that *FC Twente's* legitimate understanding did not concern other possible sanctions than the revocation of the license. Taking into account the severity and the repetitive character of the violations, the maximum fine of EUR 45,250 was imposed on *FC Twente* for each of the issues concerning *TADIC*, *CORONA* and *ENGELAAR* (i.e. three times EUR 45,250).<sup>37</sup>

Furthermore, the Appeals Committee reproached *FC Twente* for having inadequately supervised the investigations (*FC Twente* was ordered to oversee the investigations itself), to ensure the suggested completeness of the investigations and that it failed to report directly and transparently towards the Licensing Committee.<sup>38</sup> The process of establishing the truth and making a clean sweep were key for retaining the license. The Appeals Committee concluded that *FC Twente's* conduct had caused a restriction of the width and depth of the investigations, which was therefore to be assessed as an issue concerning the information and reporting requirements under the Licensing Regulations. The Appeals Committee concluded that an additional fine of EUR 45,250 was an appropriate sanction for this violation in the specific circumstances of the case.<sup>39</sup>

Consequently, *FC Twente* retained its license to compete in the *Eredivisie* but instead faced a fine of EUR 181,000 in total (i.e. four times EUR 45,250) for violations of the KNVB Licensing Regulations.

### ***De Graafschap's summary proceedings before the Dutch civil court***

*De Graafschap*, the club that finished 16<sup>th</sup> in the *Eredivisie* in the 2015/2016 season and would normally be relegated on sportive grounds, had an interest in the sense that if *FC Twente* had lost its license to play in the *Eredivisie* during the 2016/2017 season, *De Graafschap* would be the club to take *FC Twente's* position and would thus remain in the *Eredivisie*.

<sup>25</sup> Middle-Netherlands District Court, 10 June 2016, ECLI:NL:RBMNE:2016:3107, § 4.12

<sup>26</sup> *Ibid.*, § 4.21

<sup>27</sup> *Ibid.*, § 4.24-4.26

<sup>28</sup> *Ibid.*, § 4.27

<sup>29</sup> *Ibid.*, § 4.27

<sup>30</sup> *Ibid.*, § 4.28

<sup>31</sup> KNVB Appeals Committee, 17 June 2016, § 8.1 [www.knvb.nl/downloads/bestand/4988/commissie-van-beroeop-vonnis-fc-twente](http://www.knvb.nl/downloads/bestand/4988/commissie-van-beroeop-vonnis-fc-twente)

<sup>32</sup> *Ibid.*, § 8.2

<sup>33</sup> *Ibid.*, § 7.27

<sup>34</sup> *Ibid.*, § 7.28

<sup>35</sup> *Ibid.*, § 7.28

<sup>36</sup> *Ibid.*, § 7.29

<sup>37</sup> *Ibid.*, § 8.4

<sup>38</sup> *Ibid.*, § 8.10

<sup>39</sup> *Ibid.*, § 8.11



Disappointed with the decision of the Appeals Committee in favour of *FC Twente*, *De Graafschap* requested the KNVB to be admitted to the *Eredivisie* for the 2016/2017 season. According to *De Graafschap*, the Licensing Committee had acted negligently, particularly in respect of the expectations aroused by means of the December Decision, leading to *FC Twente* retaining its license and thus being eligible to compete in the *Eredivisie*. Moreover, *De Graafschap* maintained that the KNVB erroneously held that a fine would be an appropriate sanction.<sup>40</sup>

After the KNVB had dismissed such request, *De Graafschap* instigated summary proceedings. *De Graafschap* claimed admittance to the *Eredivisie* for the 2016/2017 season in addition to the 18 teams that were already admitted on sporting merit.<sup>41</sup> *De Graafschap* maintained that *FC Twente's* admittance to the *Eredivisie* was unjustified and that the Appeals Committee's decision hereto would not be upheld in substantive proceedings that would, according to *De Graafschap*, be finalised during the 2016/2017 season. Since such decision during the season would lead to chaos and in order to mitigate damages beforehand, *De Graafschap* sustained that it would have to be admitted to the *Eredivisie*.<sup>42</sup>

The court noted in its decision that *De Graafschap's* claim did not concern a suspension of the Appeals Committee's decision. Neither did *De Graafschap* claim for *FC Twente* being removed from the *Eredivisie*.<sup>43</sup> Furthermore, the court, contrary to *De Graafschap's* arguments, expressed serious doubts as to whether substantive proceedings would be finalised during the 2016/2017 season. The "chaos" as expected by *De Graafschap* would thus be not probable and there would therefore be no reason to ensure in advance that the *Eredivisie* remains "in balance" as maintained by *De Graafschap*.<sup>44</sup>

Admitting an extra club to the *Eredivisie* would also cause substantial practical problems for both the *Eredivisie* and the *Jupiler League*. Namely, all fixtures for the upcoming season would have to be re-determined.<sup>45</sup> Since the court found that the requested provisional measure would

not be enforceable on practical merit, the relief sought by *De Graafschap* was dismissed.<sup>46</sup>

## Analysis

First of all, it must be noted that the exclusion of *FC Twente* to compete in any European Cup competition for three consecutive seasons and the fine of EUR 45,250 as imposed on it by the Licensing Committee by means of the December Decision remain in force and are not overturned by any of the decisions discussed above.

It shall further be noted that the discussed proceedings before Dutch adjudicatory entities merely relate to *FC Twente's* compliance and lack thereof with the KNVB Licensing Regulations. The actual substance of the contracts between *FC Twente* and *Doyen Sports* were to be reviewed by FIFA with respect to the alleged influence of *Doyen Sports* in the transfer policy of *FC Twente*. In fact, on 29 March 2016, *FC Twente* was sanctioned by FIFA with a EUR 170,000 fine for *Doyen Sports'* influence in its transfer policy.<sup>47</sup>

As to the substance, it is interesting to see that the Licensing Committee and Appeals Committee came to a different conclusion as to the sanctioning of *FC Twente* for violating the Licensing Regulations. The difference lies in a dissimilar assessment of the possible consequences of the violations that surfaced after the December Decision in the specific circumstances of the matter, but that occurred already before the December Decision.

Although the Appeals Committee concurred on several aspects with the reasoning of the Licensing Committee, the Appeals Committee interpreted the "clean sweep statement" differently. According to the Appeals Committee, the issuance of the "clean sweep statement" created legitimate expectations on the side of *FC Twente* that the violations revealed in the period between December 2015 and April 2016 would not be taken into consideration in the

evaluation of retention of the license, whereas the Licensing Committee did take these violations into account.<sup>48</sup>

The Licensing Committee assessed all newly arisen facts as one violation of the respective provisions of the Licensing Regulations after the December Decision, whereas the Appeals Committee also took into account what legitimate expectations the "clean sweep statement" had aroused and whether certain malpractices were disclosed before the issuance of the "clean sweep statement". Consequently, both the Licensing Committee as well as the Appeals Committee agreed that the newly arisen facts could be used to impose additional sanctions on *FC Twente*, the Appeals Committee was however of the understanding that such new violations could not lead to a revocation of the license, because *FC Twente* had been "promised" that it would maintain its license if it would fully cooperate with the investigations.

One may wonder whether this stance of the Appeals Committee is not overly favourable towards *FC Twente* and detrimental to its competitors. The *venire contra factum proprium*-approach of the Appeals Committee would in principle only be applicable if one were of the understanding that the Licensing Committee was fully aware of all violations at the time of issuing the December Decision. According to the Middle-Netherlands District Court in the summary proceedings filed by *FC Twente*, no legitimate expectations were given to *FC Twente* that any possible previous violation would no longer be sanctioned. Notwithstanding this, the Appeals Committee came to a different conclusion.

With the benefit of hindsight, it would arguably have been more prudent for the Licensing Committee to add another precondition for the issuance of a license in its December Decision. Besides requiring the full participation of *FC Twente* in the investigations, *FC Twente* could have been warned that the issuance of a license would be at risk if new violations would be found during such investigation. In the opinion of the authors it cannot be that any malpractice of *FC Twente*, no matter the severity, could no longer justify a withdrawal of *FC Twente's* license.

<sup>46</sup> *Ibid.*, § 4.9

<sup>47</sup> 'Tijddlijn: de crisis bij FC Twente', KNVB press release, 7 April 2016 (updated) [www.knvb.nl/nieuws/betaald-voetbal/licenties/17625/tijddlijn-de-crisis-bij-fc-twente](http://www.knvb.nl/nieuws/betaald-voetbal/licenties/17625/tijddlijn-de-crisis-bij-fc-twente).

See also: 'Several clubs sanctioned for breach of third-party influence, third-party ownership rules', FIFA Media release 29 March 2016 [www.fifa.com/governance/news/y=2016/m=3/news=veral-clubs-sanctioned-for-breach-of-third-party-influence-third-par-2772984.html](http://www.fifa.com/governance/news/y=2016/m=3/news=veral-clubs-sanctioned-for-breach-of-third-party-influence-third-par-2772984.html)

<sup>48</sup> 'Tijddlijn: de crisis bij FC Twente', KNVB press release, 7 April 2016 (updated) [www.knvb.nl/nieuws/betaald-voetbal/licenties/17625/tijddlijn-de-crisis-bij-fc-twente](http://www.knvb.nl/nieuws/betaald-voetbal/licenties/17625/tijddlijn-de-crisis-bij-fc-twente)

<sup>40</sup> Middle-Netherlands District Court, 15 July 2016, ECLI:NL:RBMNE:2016:3953, § 2.10

<sup>41</sup> *Ibid.*, § 4.1

<sup>42</sup> *Ibid.*, § 4.1

<sup>43</sup> *Ibid.*, § 4.5

<sup>44</sup> *Ibid.*, § 4.7

<sup>45</sup> *Ibid.*, § 4.8



It is interesting to note that during the above-mentioned events, the KNVB announced on its website that as of the 2017/2018 season the Licensing Committee would have the possibility to impose the sanction of relegation on a club acting in violation of the KNVB Licensing Regulations.<sup>49</sup> The range of sanctions is therewith broadened so that in a possible future case like *FC Twente's*, the Licensing Committee will have more tailored means to sanction a club. In the opinion of the authors, this is to be welcomed as the gap between a revocation of license to participate in any of the two professional leagues on the one hand and a fine of EUR 45,000 on the other are too far apart and prevent adjudicating bodies from imposing a sanction that is proportionate in view of the specific violations committed and other relevant circumstances.

As for *FC Twente*, the club may not be fully financially healthy and still needs to improve its situation in this regard, but managed to stay in the *Eredivisie* and proved to be on the right track. The fine of EUR 181,000 as imposed on *FC Twente* by the Appeals Committee is to be seen as a serious sanction, yet not insuperable for *FC Twente*.

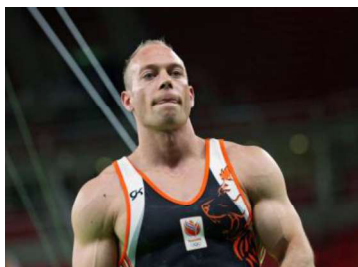
Finally, the above proceedings also show in general that domestic courts are reluctant to interfere in the policy of the KNVB. The decision of the Licensing Committee was confirmed by a civil court, but nevertheless overturned on appeal. This suggests a certain appreciation of domestic courts for the autonomy of sports governing bodies, which is to be welcomed by the football community in the Netherlands.

## The consequences of the VAN GELDER-decision on football

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→ Football dispute – Disciplinary litigation

District Court of Gelderland, 12 August 2016,  
C/05/306681/KG ZA 16-347



*Dutch gymnast Yuri VAN GELDER was expelled from the Olympic Games in Rio de Janeiro by the Dutch Olympic Committee for violating the team's code of conduct after a drink-fuelled night out. It also occurs in football that clubs may impose disciplinary measures against a player in case of misbehaviour. This mostly happens on the basis of vague contractual terms or internal disciplinary regulations of the club, just like the clause included in the athlete-agreement of VAN GELDER.*

## Facts and circumstances

*Yuri VAN GELDER* is a Dutch professional gymnast who participated in the 2016 Rio Olympics. On 6 August 2016, *VAN GELDER* qualified for the finals of the component "rings", which was set to take place on 15 August 2016. After having qualified for the finals, *VAN GELDER* went, with the permission of the chef de mission, to the Holland *Heineken* House (the Dutch national Olympic hospitality house), in order to celebrate his results. However, the coach of *VAN GELDER* told *VAN GELDER* by *Whatsapp* that he should be back at the Olympic Village at midnight and that he should not drink any alcohol. *VAN GELDER* replied, saying that he would be back one hour late and asking if that was ok. The coach said that *VAN GELDER* should watch himself since representatives of the Dutch National Olympic Committee (NOC\*NSF) would also be at the Holland *Heineken* House. *VAN GELDER* replied saying thanks and it would be fine. The coach replied saying that *VAN GELDER* had to train the next

morning and that he should let him know when he had arrived at the Olympic Village. *VAN GELDER* did not reply.

*VAN GELDER* arrived at the Olympic Village at 05:08. After having left the Holland *Heineken* House, *VAN GELDER* went to a nightclub in Rio (according to himself just to pick up someone). Therefore, against team rules, *VAN GELDER* left the Olympic Village without the permission of the chef de mission and his coach and drank alcohol that evening (according to himself only 4/5 glasses of beer). He missed the next day's training after waking up at about 15:00.

The next day, 8 August 2016, the NOC\*NSF decided that, after having discussed the matter with *VAN GELDER*, he was dismissed from the Dutch team for the remainder of the 2016 Rio Olympics. Therefore, *VAN GELDER* could not participate in the finals of the rings set to take place on 15 August 2016. The NOC\*NSF sent *VAN GELDER* home by airplane on the same day. Furthermore, the NOC\*NSF withdrew *VAN GELDER* from the finals by informing the *Fédération Internationale de Gymnastique* (FIG). *VAN GELDER*'s place in the finals was subsequently immediately given to another athlete.

Certain legal aspects are pertinent to comprehend the situation. In order to participate in the 2016 Rio Olympics, an athlete is required to sign an athlete-agreement. In the wake of the proceedings related to the German speed skater *Claudia PECHSTEIN*, arguably the content of such athlete-agreement has to be scrutinised in more detail in order to ensure that it does not entail any excessive commitment from the athlete or otherwise contravenes national law provisions or public policy aspects. In the relevant athlete-agreement it was stated, inter alia, that *VAN GELDER* was bound by the international regulations of the IOC (International Olympic Committee), OCOG (Organising Committees for the Olympic Games) and WADA (World Anti-Doping Agency). Furthermore, it stated, that the NOC\*NSF is one the one hand required to make every effort in order to provide the athletes with the best possible options to prepare for the Olympics and (if the athlete makes it to the Olympics) to let him participate as successfully as possible. On the other hand, athletes have to make every effort in order to deliver the maximum sporting performance, both in their preparations for the Olympics and during the Olympics. An athlete must conduct himself in a manner befitting a member of the Dutch team and as may be expected from a

<sup>49</sup> 'Licentiecommissie kan degradatie als straf opleggen', KNVB press release, 25 May 2016 [www.knvb.nl/nieuws/betaald-voetbal/licenties/18537/licentiecommissie-kan-degradatie-als-straf-opleggen](http://www.knvb.nl/nieuws/betaald-voetbal/licenties/18537/licentiecommissie-kan-degradatie-als-straf-opleggen)