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The double-eagle goal celebration: a legal or rather a socio-political issue?

At a 2018 FIFA World Cup group stage match on 22 June 2018, Switzerland were, at 51 minutes, 0-1 behind Serbia at the Kaliningrad stadium. Granit Xhaka scored with a powerful long range shot to make it 1-1, and celebrated his goal by joining his thumbs together and spreading his fingers to imitate the Albanian double-eagle. After Xherdan Shaqiri had run free from his opponents in the last minute of the game and scored the match winning goal to finish at 2-1, he did the same - he took off his jersey and spread his fingers to show the audience the double-eagle. A resulting FIFA investigation led to three Swiss players being fined and issued a warning for a violation of Article 57 of the FIFA Disciplinary Code. Debate arose as to whether, instead, they were in breach of Article 54 of the FIFA Disciplinary Code, and therefore subject to a two-game ban. Dr. Andrés Gurovits, Partner at Niederer Kraft Frey, discusses how the FIFA Disciplinary Code was applied in this matter, and the socio-political issues the goal celebrations consequently raised.

The players' celebrations triggered a fierce and emotional public discussion in Switzerland. As to whether Xhaka and Shaqiri, both of whom have Kosovo-Albanian parents, could celebrate a goal for the Swiss national team with a gesture that stands as a symbol for the home of their parents. The debate surrounding this celebration was quickly compounded by concerns that FIFA might investigate the incident and suspend the two players from the last group game against Costa Rica, which would determine Switzerland's entry into the round of 16, as well as the possible round of 16 itself. This fear was justified, as Article 54 of the FIFA Disciplinary Code provides that anyone who provokes the general public during a match will be suspended for two matches.

Shortly after Switzerland's match against Serbia, FIFA opened an investigation against Xhaka and Shaqiri, and against the Swiss captain, Stephan Lichtsteiner, who, after the team had scored 2-1, also took the opportunity to show the double-eagle.

Legal issues to be examined by FIFA

For FIFA, the primary question was whether these celebrations constituted a provocation of the public within the meaning of Article 54, or an unsporting behaviour or a violation of fair play within the meaning of Article 57 of the FIFA Disciplinary Code. The difference between these two sanction standards was a point of importance for the involved players and the Swiss national team.

While Article 57 of the FIFA Disciplinary Code provides that anyone who insults someone in any way, especially by using offensive gestures or language, or who violates the principles of fair play, or whose behaviour is unsporting in any other way may be subject to sanctions in accordance with Art. 10 et seq. (e.g. warning, reprimand, fines, etc.), while anyone provoking the general public during a match is, in accordance with Article 54 of the FIFA Disciplinary Code, to be suspended for two matches (and sanctioned with a minimum fine of CHF 5,000).

In connection with the FIFA investigation, members of the Swiss delegation contended that the double-eagle was a spontaneous reaction, an act in

effect, and thus nothing severe. They further explained that, when the Swiss anthem was played before the match, and for the duration of the match, the Swiss players were constantly booed by the predominantly Serbian fans.

It was posited that this behaviour was not easy to be subjected to, especially for the players with a family background from the Kosovo-Albanian region. Therefore, according to the Swiss delegation, this reaction was a human and emotional, but not a political reaction. It was also argued on the Swiss side that FIFA would create a major problem for itself if it were to suspend the players for provocation, because in future it would have to investigate any gesture on the football pitch that could in any way have a political or religious context. This would lead to many new and complicated cases.

Legal assessment

The FIFA Disciplinary Committee rendered its decision quickly, before Switzerland played Costa Rica. The decision was not made public. According to the Swiss Football Association's ('ASF-SFV') media release, FIFA found the players to have committed an unsporting offence within the meaning of Article 57 of the FIFA Disciplinary Code and fined Xhaka and Shaqiri CHF 10,000, and Lichtsteiner CHF 5,000 respectively. In addition, warnings were issued for unsporting behaviour. The Swiss delegation's fears that the players might be suspended and thus be missing in the important last group match against Costa Rica (and, in the event of qualifying, for the round of 16) did not come true. For the Swiss team, this was the most important consequence of FIFA's decision.

By applying Article 57 of the Disciplinary Code, and not Article 54, FIFA has clarified that, in its view, the double-eagle celebration is not, in principle, a political sign capable of provoking the public within the meaning of Article 54 of the FIFA Disciplinary Code. In the context of the relevant moments of the game, the players' actions were considered unsporting and a violation of fair play. As a result of the lenient sanction under Article 54, the Swiss team avoided a ban of three important players. From a legal point of view, the matter has been settled and there is

nothing substantial to add to FIFA's decision. It is interesting and worth mentioning, however, that this incident has led to a heated discussion in Switzerland about socio-political issues, in particular the integration of sportsmen and women from immigrant backgrounds, with a previously unknown severity and intensity.

Heated socio-political debates

The catalysts for this debate were statements by the Secretary General of the ASF-SFV who, when the team was still in Russia, proposed that Swiss politicians should consider whether they still want dual nationalities in Switzerland, and that the ASF-SFV could consider promoting only footballers who renounce a second nationality. Against the backdrop that the majority of the Swiss national team players have a migration background, and that Switzerland currently has a share of foreigners of almost 25%, the reaction to this controversial proposal was strong. Due to criticism, the ASF-SFV was quickly forced to take countermeasures and put the statements of its Secretary General into perspective. In a press release of 7 July, the ASF-SFV commented as follows (translated):

- "The Swiss football association has never spoken out against multiple citizenships or dual citizenship.
- The statements in question stem from an approximately one-hour meeting between the Secretary General and journalists after the World Cup group matches in Togliatti (Russia, home of the Swiss Team Base Camp during the 2018 FIFA World Cup).
- The association regrets the impression that it is against dual citizens or multiple nationalities and is not behaving correctly or even discriminating against dual citizens in Switzerland.
- The most serious aspect is that footballers who already play for Switzerland are coming to the fore. Especially, those footballers who have just given their all for the country again at the World Cup in Russia and before whom the association always protected when there were debates about their identification.
- In this context, two main questions are at the centre of the association's interest: how can the association protect the international players even better from events such as the

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World Cup group match between Serbia and Switzerland on 22 June 2018? And: how can the association be even more concerned that, after cost-intensive support by the association, top young footballers of several nationalities only appear for Switzerland's senior national team?

- These questions have been the subject of repeated discussions in various departments of the association for years. Various ideas were discussed, including the possibility of examining adjustments to the relevant FIFA regulations or the idea of signing players to the senior national team at an early stage (for example, by signing contracts or renouncing multiple citizenships when recruiting or including young footballers in the training programmes). However, no such decision has been made so far.
- The association wants to provide even better support to players who play for titles for Switzerland with U-teams, but then, at the age of 22, are often exposed to considerable pressure because they are supposed to play for another country - and possibly against Switzerland.
- The association still does not want to neglect the promotion and training of those young footballers who do not have a second home country to choose from.
- Essentially, the association wishes a fair and respectful treatment of its national players and less black-and-white painting, i.e. a lot of praise when they play successfully, but accusation of lack of identification when things do not go according to plan.
- The association continues to promote integration and inclusion at all levels.
- The association deeply regrets that dual citizens felt discredited and disavowed after the interview. The

integration and promotion of all footballers, regardless of their origin and nationality, is a fundamental guiding principle of our association.”

The author's point of view

In the author's view, it was an appropriate move of the ASF-SFV to issue the above statement in an attempt to de-escalate the debate. However, not only will the discussion about possible cultural divides within the national team continue in the future, but there is also the possibility that players with a migration background in Switzerland, that have been trained as professional players in Switzerland, will join the team of their parents' home country once they have turned 22 and are about to join the Swiss national team.

This problem naturally concerns not only Switzerland, but also other smaller national associations of states which, due to their economic prosperity, have a high proportion of inhabitants with a migration background. However, it seems questionable whether the football associations can find a satisfactory and conclusive answer to this question with their rules and regulations. Ultimately, it is also a question of family relationships and thus of the heart. Young players may also be under gentle or stronger pressure to choose the team of their country of origin. Persuasive work of the associations could lead to more satisfactory results than strict regulations.

In this context, the players' decision to celebrate their goals by showing the double-eagle could be seen as harmful. In a late edition of the online version of the *Neue Zürcher Zeitung* of 22 June 2018, a comment was found which states that Shaqiri and Xhaka are among the most talented players of the Swiss national team. They won the

match against Serbia with two goals for their team. They have demonstrated technical skills that hardly any other player in the Swiss team has. But their political sensibility and social awareness may not keep pace with their footballing qualities. They should have let their football speak for itself that night, but they talked with their hands during the celebration with a cultural code that the Serbian spectators in the stadium and on TV had to perceive as unsporting.

As players with a Kosovar background, they formed the Albanian double-headed eagle with their fingers in a game that was so charged that it was considered a high risk game.

The Swiss delegation in Russia elegantly avoided this issue before the match against Serbia by ignoring all political undertones, and the players should have kept it that way on the field. Xhaka wanted his jubilation to be understood as a gesture of thanks to all the people who had always supported him. That's what he said in an interview. But what I feel the two players have actually done is this: they fueled a discussion that was thought to be over or at least mitigated, namely that there was a cultural rift running through the team; showing the Albanian double-headed eagle was seen as an expression of this. In November 2014, the Swiss national team's players' council had, therefore, decided not to make such gestures in the future.

At the time, the players' council concluded that from then on there would be no such problems anymore. It is feared that this new action has given a new and lasting impetus to this discussion and that it will continue to accompany the Swiss national team for a long time to come.