

Around the World

Switzerland

SWITZERLAND: CRIMINAL LAW /FRAUD /MANIPULATION OF SOCCER GAMES

*Discussion of Decisions
SK.2012.21 and SK.2012
.33 dated November 13,
2012 by the Swiss Federal
Penal Tribunal*

☞ Cheating at gambling;
Football matches; Fraud;
Offences; Sportspersons;
Switzerland

Facts

A, B and C are soccer players who played in Switzerland's Challenge League (the second highest league) in 2009. In the course of the international criminal investigations regarding betting/game manipulation by a group of people around Ante Sapina, A, B and C were accused of manipulating games or assisting others to manipulate games for money as well as of attempting to do so. Pursuant to the investigation results of the Swiss Federal Prosecution Office, in 2009, six games of the Swiss Challenge League were either successfully manipulated or such manipulation was attempted. A admitted to have been involved in the manipulation or manipulation attempt of five games while B and C contested their alleged involvement regarding two and one game(s), respectively. A was indicted for commercial fraud (partially by aiding and abetting the main perpetrator, partially as an accomplice of the same), while B and C were indicted for aiding and abetting commercial fraud.

Held

All three defendants were acquitted by the Swiss Federal Penal Tribunal (FPT).

Mainly, the FPT argued in its rationale that the indictment brief by the Federal Prosecution Office (FPO) did not contain all the information needed; this despite the fact that the FPT had previously returned said brief to the FPO for supplementation with more information, namely by specifying the person who was the victim of the alleged fraud. As this did not happen to the satisfaction of the FPT, the FPT did not hear the cases.

However, as the cases were of general interest, the FPT still provided a rationale on how it would have decided the case had it been provided with the information which finally was lacking. Even though A had admitted his actions, the FPT would have acquitted all three defendants.

Fraud is described by art.146 of the Swiss Penal Code (SPC) as the "malicious misleading of another person by false representation or dissimulation of facts, or by malicious reaffirmation of the error of another, with the intent of unlawfully enriching himself or another, and thus causing the deceived person act detrimentally against his own or another's property".

Based on this, the FPT identified a problem in the fact that the bets were placed over the internet and that the FPO had not managed to establish that the specific bet providers indeed employed individuals who verified every single bet concerned. Rather, it remained possible that the bets were automatically accepted by a computer system and that there was no individual at all who could have been deceived (on the un-manipulated nature of the game on which the bet was placed and on the genuineness of the intention of the betting person).

The FPT went on to state that even if there had been an individual involved with the acceptance of the bet by the bet provider, this would not generally have led to the consequence that a fraud was committed. Even in that situation, it would have been possible that such an individual could have been part of the fraud scheme and, therefore, he or she would not have

been deceived by the bets. The FPO would, therefore, have had to go as far as establishing that the specific individual who accepted a certain bet for the bet provider did not know that the game on which the bet was placed was planned to be manipulated.

Discussion

This decision leaves a bad aftertaste and sends an unwelcome signal to the ruthless and influenceable. Someone who is unfamiliar with the details of the SPC most certainly cannot understand why a soccer player who admitted to the manipulation of several games for money can be fully cleared of any charges and walk free. Moreover, this decision seems like an invitation to manipulate games in Switzerland—as long as the directives given by the decision are followed, i.e. as long as bets are placed through bet providers which offer automatic betting without the involvement of an individual which is misled, the manipulations are not criminally punishable. It does not take much arguing that this does not only comply with the ideal of sportsmanship and fairness but also not with anyone's instincts on what is right and what is not.

For this reason, the authors of this article see a rather urgent need for action regarding the drafting and enacting of a criminal sanction for sports manipulation, notwithstanding the question whether there is an individual who is deceived. While it is true that, realistically, it will be difficult if not impossible to fully put globally acting betting criminals out of operation, it would be careless not to react to the decisions discussed above. These decisions were a huge set-back in the prosecution of those who finally enable such criminals to know in advance how a game will end. It is up to the Swiss Parliament to enact legislation which prevents others from walking free in similar situations.

The Swiss Federal Council has, in a report of November 7, 2012 on the issue of the fight against corruption and game manipulation in sports, also referred to situations like the one at hand. It has expressed its desire for the introduction of new criminal offences which are supplementary to the offences stated in the law so far, possibly to introduce sports fraud as a specific criminal offence. However, in the same 70-page report, the Swiss Federal Council has also identified a number of other issues which should be analysed and improved. The authors of this article hope that the Federal Administration will—namely in the light of the two discussed decisions which were not yet rendered when the aforementioned report was published—put an emphasis on the elaboration of a criminal offence forbidding game manipulation and that the Swiss Parliament will enact the administration's suggestion with priority. It would be a shame if the FPT would have to render more decisions like the ones discussed above.

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