

ЗАРУБЕЖНОЕ ПРАВО

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**Sports Liability of Football Clubs for Spectators' Behavior:
Art. 12, Art. 14 of the Code of Sports Justice of the Italian
Football Federation (F. I. G. C.) and para. "e" of the Art.
16 (2) of the UEFA Disciplinary Regulations***E. Guseinova*¹, *A. A. Kashaeva*², *I. A. Vasilyev*³¹ Independent researcher,
Via Duino, 18 (RA), Ravenna, 48122, Italy² Independent researcher,
28, Zavodskaya st., Morshansk, Tamboskaya obl., 393955, Russian Federation³ Saint Petersburg State University,
7–9, Universitetskaya nab., St. Petersburg, 199034, Russian Federation

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Disciplinary regulations of the national associations are under their discretion and not directly governed by UEFA. The Italian Football Federation approach differs by its own original classification of the inappropriate spectators' behavior matters. In particular, Art. 12 of the Code of Sports Justice establishes the liability for introducing in the sport facilities any images, inscriptions, symbols, emblems and other materials that contain insulting, offensive, threatening or inciting violence words and phrases, as well as for chants, shouts and other manifestations of obscene, offensive, threatening or inciting violence acts, while according to Art. 14 the clubs are liable for violent acts of spectators committed inside and around the stadium area (when they are directly related to the spectators' misbehavior inside the stadium) in case the acts constitute a threat to public safety or a threat of causing serious harm to one or more individuals¹. Furthermore, the Code establishes the unique system of mitigating and exempting from liability circumstances. The authors did the research of the sports legal practices of the aforementioned jurisdictions. Thus, it is useful to compare the provisions of both, the Code and UEFA Disciplinary Regulations. The obtained results could be interesting for RFU Disciplinary Regulations since it is constituted mostly by the Russian public legislations.

¹ Hereinafter all cited F. I. G. C. Regulations are given in connection with the official Federazione italiana giuoco calcio cite. Accessed 1 March, 2018. <https://figc.it>.

Keywords: disciplinary liability of football clubs, spectators' behavior, the strict liability of football clubs for spectators' behavior, The Italian Football Federation, Code of Sports Justice, UEFA, Disciplinary Regulations.

1. Introduction. The Italian Football Association in art. 12 (3) of the Code of Sports Justice (hereinafter “the Code”) establishes liability of football clubs for introducing in the sport facilities any images, inscriptions, symbols, emblems and other materials that contain insulting, offensive, threatening or inciting violence words and phrases, as well as for chants, shouts and other manifestations of obscene, offensive, threatening or inciting violence acts, including those actions that are directly or indirectly involve offense, denigration or insult for reasons of territorial origin. Furthermore, art. 12 like several other articles of the Code (particularly, art. 11 reviewed by us in the previous publication (Guseinova and Vasilyev 2017), establishes the obligation of the clubs to warn spectators about the liability of football club for the inappropriate acts of affiliated spectators. The characteristic of this article regarding the liability of clubs is also corresponds its title “Violent acts prevention”, as it's supplemented in statements of art. 13 with some **general grounds for exemption from the liability or reduction of the sanction**. By virtue of this statement, the club needs to prove the existence of at least three circumstances specified in paras. “a” — “e” art. 13 (1) of the Code² in order to eliminate the responsibility for any improper conduct of clubs' own spectators, whereas any one of them could be a mitigating excuse. In comparison, the UEFA Disciplinary Regulations (hereinafter “the Disciplinary Regulations, the Regulations”) wasn't formulated as precisely as the Code. According to its approach, the UEFA's judicial bodies have a discretion to make their own decisions in increasing or reducing of sanctions (listed in art. 6 (1) of Regulations) taking account of both aggravating and mitigating circumstances under the open list system (that results from art. 23 (3) of the Regulations — “on the basis of the circumstances of the specific case”).

2. Main text. Let us examine the circumstances listed in paras. “a” — “e” art. 13 (1) of the Code.

Firstly, in case the club uses the managing and controlling model which is effective in preventing such inappropriate conduct as violent acts in sports venues on a permanent basis and that is adequately staffed and funded (para. “a”). Periodically, the similar mitigating circumstance is employed in the arguments of the clubs participating under the Regulations of UEFA. An example is the **Apollon Limassol**³ club case, in which the Control, Ethics and Disciplinary Body has taken the position according to which the fact, whether the club had no previous disciplinary record for a racist behavior of its own spectators, was not relevant to recognition it as a mitigating circumstance, *since this is*

² a) la società ha adottato ed efficacemente attuato, prima del fatto, modelli di organizzazione e di gestione della società idonei a prevenire comportamenti della specie di quelli verificatisi, avendo impiegato risorse finanziarie ed umane adeguate allo scopo; b) la società ha concretamente cooperato con le forze dell'ordine e le altre autorità competenti per l'adozione di misure atte a prevenire i fatti violenti o discriminatori e per identificare i propri sostenitori responsabili delle violazioni; c) al momento del fatto, la società ha immediatamente agito per rimuovere disegni, scritte, simboli, emblemi o simili, o per far cessare i cori e le altre manifestazioni di violenza o di discriminazione; d) altri sostenitori hanno chiaramente manifestato nel corso della gara stessa, con condotte espressive di correttezza sportiva, la propria dissociazione da tali comportamenti; e) non vi è stata omessa o insufficiente prevenzione e vigilanza da parte della società.

³ Hereafter all cited UEFA Regulations and UEFA's judicial bodies decisions are given in connection with the official UEFA cite. Accessed 1 March, 2018. <https://www.uefa.com/insideuefa/disciplinary>.

no more than a general expected behavior of the club (hereinafter, italics by co-authors)⁴. Another important example of the such approach is found in the cases of **Ferencvárosi T. C.**⁵ and **Legia Warszawa S. A.**⁶ clubs. Both cases have spectators been reviewed by the Appeal Body which emphasized that taking effective measures to combat spectators' misconduct is *the general obligation for all clubs* participating under the auspices of UEFA and can't, therefore, be considered as a mitigating circumstance either (1) for club's company against spectators' misconduct or (2) for using steward. In the latter, it's necessary to remember that employment of stewards is a mandatory obligation of organizing football club according to the UEFA Safety and Security Regulations.

Secondly, if the club collaborates with police and local authorities actively and effectively in order to take preventive measures against the misbehaving spectators as well as to identify them (para. "b"). According to the UEFA's judicial bodies in the **Ferencvárosi T. C.**⁷ club case, *any measures taken to identify this spectators*, even if carried out with the involvement of police of the relevant state, *don't constitute by itself a mitigating circumstance*. The club's intention to identify the supporter may only lead into an opportunity of submitting civil claims against him, but this is not applicable to establishment of the fact of presence or absence of the spectators' misbehavior as grounds for bringing clubs to sports (disciplinary) liability.

Thirdly, an immediate adoption of all the necessary measures to remove all the images, inscriptions, symbols, etc., to terminate choirs, shouts and other manifestations of violence and obscene for reasons of territorial origin (para. "c"). An example is found in the **Ostia Mare Lido Calcio**⁸ club case, when club's staff has notified the police about finding a banner with an inappropriate content around the stadium, but the latter ordered staff to leave a banner in place to identify potential offenders, who had put it up⁹.

Having assessed club's staff actions the Appeal body¹⁰ considered them reasoned to reduce an amount of sanction on the grounds of the actions taken by the club on suppressing prohibited acts, particularly, recognized them as a mitigating circumstance. Compared to the Code, we should note, that the UEFA Regulations have the one and only one mitigating circumstance explicitly indicated in art. 23 (3) of the Disciplinary Regulations: the immediate reaction of the host club on the spectators' misconduct, listed in para. "e" art. 16 (2) of the Disciplinary Regulations. Meanwhile, the characterization of "the immediate reaction" as a mitigating circumstance still remains the right within the discretion of Control, Disciplinary and Ethics Body.

⁴ Apollon Limassol. Decision of 13 February 2014. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2014/2015. January 2014 — June 2014; Decision of 11 September 2015. FC Midtjylland. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2015/2016. July 2015 — December 2015.

⁵ Ferencvárosi T. C. Decision of 3 February 2015. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2015/2016. January 2015 — June 2015.

⁶ Legia Warszawa S. A. Decision of 3 February 2015. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2015/2016. January 2015 — June 2015.

⁷ Ferencvárosi T. C. Decision of 3 February 2015. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2015/2016. January 2015 — June 2015.

⁸ Hereafter all cited Italian judicial bodies' decisions are given in connection with the official Federazione italiana giuoco calcio cite. Accessed 1 March, 2018. <https://figc.it>.

⁹ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. Ila Sezione Comunicato Ufficiale. № 112/CSA (2014/2015). 28.05.2015.

¹⁰ Corte Sportiva d'appello (hereinafter referred as "the Appeal body").

For instance, this rule has been the subject of both disputes, the **Saint Johnstone FC**¹¹ and **FC Zürich**¹² cases. In both cases the Judicial body recognized as a mitigating circumstance the fact that host club had reacted immediately on the spectators' misbehavior and got a banner with an inappropriate content removed. At the same time, the circumstance mentioned in art. 23 (3) of the Disciplinary Regulations applies to the actions of the host club while reactive on spectators' acts that fall within the scope of para. "e" art. 16 (2) of the Regulations.

Fourthly, the manifestation of a proper conduct by other spectators as well as their rejection of violent acts happened during the match (para. "d"). In some cases of practice of the UEFA judicial bodies¹³, clubs tried to declare the manifestation of a proper conduct of their major part of spectators as a mitigating circumstance, nonetheless, the position of the judicial bodies was strict and unbending. Thus, the rationale of its statement was based on allegations that other spectators' behavior does not result from clubs' actions, and even if being considered in this manner, still, *the work and cooperation with clubs' own spectators are a natural duty of any club* competing under the UEFA Regulations.

Fifthly, unless it is determined any absence or insufficiency of the preventive or controlling measures by the club with regard to spectators' behavior (para. "e"). The circumstance mentioned is similar with the respect of its meaning to the conditions for exempting a host club from sports (disciplinary) liability, cited in art. 16 (1) of the Disciplinary Regulations. According to latter, the host club is liable for incidents of any kind and may be subject to disciplinary measures and directives unless they can prove that they have not been negligent in any way in the organization of the match¹⁴. Yet, the example of the UEFA rules given above is applicable only to the host club, whereas the subjects under the para. "e" of art. 13 (1) of the Code includes both clubs participating in the matches. The present difference results from the purpose of application of the art. 13 of the Code in a situation of the club's liability for spectators' behavior, regulated by art. 12 of the Code (the "strict" liability), while art. 16 (1) of the Disciplinary Regulations is used in cases of violations of safety and security Regulations during the games, which have binding force only for the host club according to the UEFA Safety and Security Regulations (a fault-based liability which is the opposite of strict liability). This kind of argumentation was appeared in the case of **Frosinone Calcio**¹⁵ club, when the Appeal body after the examination of the first instance decision confirmed the approach of the latter of non-applicability of the para. "e" of art. 13 (1) of the Code to the case. The court continued its reasoning by highlighting that the violation occurred was a repeated one, therefore, the club had demonstrated inadequate preventive and controlling measures, although it had been taking some preventive

¹¹ Saint Johnstone FC. Decision of 10 October 2014. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2014/2015. July 2016 — December 2016.

¹² FC Zürich. Decision of 13 October 2016. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2016/2017. July 2016 — December 2016.

¹³ E. g., VfL Borussia Mönchengladbach. Decision of 19 May 2015. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2015/2016. January 2015 — June 2015; Decision of 19 May 2016. Liverpool FC. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2016/2017. January 2016 — June 2016.

¹⁴ "Host clubs and national associations... are liable for incidents of any kind and may be subject to disciplinary measures and directives unless they can prove that they have not been negligent in any way in the organisation of the match".

¹⁵ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. Ia Sezione Comunicato Ufficiale № 136/CSA (2015/2016) 18.05.2016.

measures, e.g. an additional number of stewards compared to the game, when the previous violation taken place. Therefore, this situation attested to inefficiency of the prevention policy taken by the club regarding the spectators' behavior as well as to the need to implement a more effective control mechanism. It should be noted that ascertainment of the absence of the fault of the club manifesting in the sufficiency of preventive and control measures taken by the club regarding the spectators' conduct is not in contravention of the principle of "strict liability". This contradiction might arise in case the absence of the fault of the club, and therefore, the presence of the sole circumstance from the para. "e" of art. 13 (1) of the Code, would exempt the club from the sports (disciplinary) liability for spectators' misconduct. In the existing regulation model, the Code requires to ascertain three mitigating circumstances in order to release the club from liability, that is in line with the "strict liability" based on the non-releasing from liability policy and with the absence of the club's fault.

The legal practice of the UEFA judicial bodies also shows us the interpretation of the club's actions in order to take the necessary preventive and controlling measures regarding the behavior of spectators. For example, in the case of the **MFK Košice**¹⁶ club, the Appeal body took position on the application of para. "e" of art. 16 (2) of the Disciplinary Regulations, regardless of the level of security measures taken by the host club. This conclusion refers to bringing to sports (disciplinary) liability the host club for the behavior of spectators on the basis of this rule.

Consequently, the sufficiency of the "preventive or controlling measures regarding the spectators' behavior" envisaged in the Code as a mitigating circumstance differs from the approach presented in UEFA practice, according to which one should not expect a reduction of the sanction after the security measures taken by the host club even at the highest level. The inappropriate behavior of club's spectators entails liability of this club, in respect to security measures, which in fact have demonstrated an inefficiency. At the same time, the legal practice of the UEFA judicial bodies does not demonstrate consistency in this question. For example, we can refer to the case decision of **Manchester United FC**¹⁷, in which the club's efforts in spectators' work and, especially, before matches of historical competitors were recognized as a mitigating circumstance. Thus, in the aforementioned dispute the judicial body assessed the actions of the club in terms of the criterion of the adequacy of preventive measures in order to prevent inappropriate spectators' behavior.

As we have noted, art. 13 of the Code can be used not only to establish mitigating circumstances by the judicial body, but also **to decide on the exempting the club from liability**. Still, in Italian legal practice there are attempts to expand this list by other circumstances. For instance, in the **Frosinone Calcio**¹⁸ club case, the judicial body rightly did not accept the club's argument about the architecture of a certain stadium as preventing the observance of the requirements of the Code: it is impossible to control spectators in the area between the tribunes and the field. The concept of having a combination of three circumstances is unique for regulating the sports (disciplinary) liability of clubs and does not constitute an evolution of the legal ideas of the Disciplinary Regulations. Referring

¹⁶ MFK Košice. Decision of 10 October 2014. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2014/2015. July 2014 — December 2014.

¹⁷ Manchester United FC. Decision of 19 May 2016. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2016/2017. January 2016 — June 2016.

¹⁸ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. Ia Sezione Comunicato Ufficiale № 136/CSA (2015/2016) 18.05.2016.

to the statements of the Regulations¹⁹, it can be established that the club can be exempted from liability for the inappropriate behavior of spectators only in case of absence of such behavior or it is impossible to prove the contrary under the standard of “comfortable satisfaction”²⁰. Therefore, the approach determined by the Code is an example of judicial fiction at the existence of the general principle of “strict liability” and is not opposed to it. Earlier, we addressed to the reasons of “strict liability” and referred to consistent practice of the Court of Arbitration for Sports (hereinafter — CAS) and the judicial bodies of UEFA, who consider it the only possible way both to encourage clubs to work systematically with their spectators, and to oust inappropriate behavior outside of football events (Vasilyev and Kashaeva 2017).

Liability for violent acts: art. 14 of the Code of Sports Justice. Art. 14 of the Code refers to the liability of clubs for violent acts committed by their own spectators. As follows from para. 1 of this article²¹, clubs are liable for **violent acts of spectators committed inside and around the stadium area (when they are directly related to the spectators’ misbehavior inside the stadium) in case the acts constitute a threat to public safety or a threat of causing serious harm to one or more individuals.** In the statements of art. 14 it is also regulated the issue about club’s liability in the case of repeated commission of violent acts by spectators. The recidivism (only if the previous sanction was a warning) or in the case of the “particularly serious” nature of the violent act, all these aforementioned engage tightening liability for clubs by applying one or more sanctions provided under art. 18 (1) paras. “d” — “f” of the Code²². At the same time, as it follows in art. 14 (3) of the Code²³, the presence of several previously issued warnings obliges the judicial authority to apply the sanction under para. “f” art. 18 of the Code for a period of at least two days. Recognizing the act’s nature “particularly serious” allows judicial body additional applying of sanction of para. “g” art. 18 (1) against the club.

Art. 14 (5) of the Code establishes a **special regime for exempting the club from liability or reduction of the sanction.** So, unlike the five statements presented in art. 13 and applicable only to violations under art. 12 (1), it suffices to prove at least one of the circumstances listed in paras. “a”, “b” art. 13 (1) of the Code to exempt the club from liability. Analogically, either the two circumstances aforesaid can be recognized as a mitigating circumstance by a judicial body. Since para. “a”, “b” do not refer to the issue on the absence of club’s fault, this approach of the Italian Football Federation also does not contradict the principle of “strict liability”.

The application of paras. “a”, “b”, art.13 (1) of the Code as mitigating circumstances in case of misconduct under art.14 (1) of the Code is demonstrated in the case decision of the **S. F. Aversa Normanna**²⁴ club. The Appeal body noted that what happened at the match

¹⁹ Art. 8 of the UEFA Disciplinary Regulations.

²⁰ Art. 24 (2) of the UEFA Disciplinary Regulations.

²¹ *Le società rispondono per i fatti violenti commessi in occasione della gara, sia all'interno del proprio impianto sportivo, sia nelle aree esterne immediatamente adiacenti, quando siano direttamente collegati ad altri comportamenti posti in essere all'interno dell'impianto sportivo, da uno o più dei propri sostenitori se dal fatto derivi un pericolo per l'incolumità pubblica o un danno grave all'incolumità fisica di una o più persone.*

²² *d) obbligo di disputare una o più gare a porte chiuse; e) obbligo di disputare una o più gare con uno o più settori privi di spettatori.*

²³ *Qualora la società sia stata diffidata più volte e si verifichi uno dei fatti previsti dal comma 1, si applica la sanzione della squalifica del campo non inferiore a due giornate.*

²⁴ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. IIa Sezione Comunicato Ufficiale № 010/CSA (2015/2016) 07.08.2015.

proves the ineffectiveness of the club's model for prevention of spectators' behavior, as required by para. "a" art. 13 (1) of the Code. The mere fact of the penetration of spectators into the locker room was enough, which already testifies against the adoption of proper security measures and indicates a small number of stewards attracted by the club. Moreover, the steward assistance to the spectator, who has poured water over the arbitrator from one side, with the inaction of other stewards and members of the club's security staff from the other side, all these was rightly recognized as an aggravating circumstances. Cumulatively, these facts demonstrate the inapplicability of the provisions of para. "b" art. 13 (1) of the Code: the club has not proved its collaboration with police and other local authorities in connection with the organization of the match, it is rather reversely. Meanwhile, the collaboration between the club management and police regarding the organization of the match was not in itself a mitigating circumstance, since it is the natural obligation of the club. UEFA considers the collaboration of clubs and police in the same context²⁵, and highlights it out as a mitigating circumstance only in rare cases²⁶, then pointing out the outstanding level of security measures taken during the match. S. F. Aversa Normanna Club argumentation about the absence of negative consequences for the match due to the spectators' misconduct also cannot be taken into account since such a circumstance is not presented under the provisions of art. 13 of the Code. At the same time, the presence of negative consequences, expressed, for example, into the suspension or forced early completion of a game, would be reasonably considered as an aggravating circumstance by the judicial bodies.

The application of the Code. The formulation of art. 12 (3) of the Code makes it difficult to identify when the spectators' misconduct took place, that is why we should refer to legal analogy. But here arises the complexity since other articles governing clubs' liability for spectators' behavior show different approaches. On the one hand, art. 11 (3) of the Code²⁷ indicates the stadium as a place where spectators commit discriminatory acts (Guseinova and Vasilyev 2017). On the other hand, the statements of art. 14 (1) of the Code confirm the stadium itself and around as the places of commission of violent acts. However, when applying such a clear provision, discrepancies arise. For example, in the case of the **Juventus F. C.**²⁸ club, the violent acts inside the bar and at the stadium parking committed after the match were presented by the club as being committed by spectators outside the stadium and, therefore, are not the grounds for the club's sports (disciplinary) liability. Nevertheless, the judicial body took the definite position according to which

²⁵ Dundalk FC. Decision of 10 October 2014. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2014/2015. July 2014 — December 2014.

²⁶ Manchester United FC. Decision of 19 May 2016. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2016/2017. January 2016 — June 2016.

²⁷ Le società sono responsabili per l'introduzione o l'esibizione negli impianti sportivi da parte dei propri sostenitori di disegni, scritte, simboli, emblemi o simili, recanti espressioni di discriminazione. Esse sono altresì responsabili per cori, grida e ogni altra manifestazione che siano, per dimensione e percezione reale del fenomeno, espressione di discriminazione. In caso di prima violazione, si applica la sanzione minima di cui all'art. 18, comma 1 lett. e). Qualora alla prima violazione, si verificano fatti particolarmente gravi e rilevanti, possono essere inflitte anche congiuntamente e disgiuntamente tra loro la sanzione della perdita della gara e le sanzioni di cui all'art. 18, comma 1, lettere d), f), g), i), m). In caso di violazione successiva alla prima, oltre all'ammenda di almeno euro 50.000,00 per le società professionistiche e di almeno euro 1.000,00 per le società dilettantistiche, si applicano congiuntamente o disgiuntamente tra loro, tenuto conto delle concrete circostanze dei fatti e della gravità e rilevanza degli stessi, le sanzioni di cui all'art. 18, comma 1 lettere d), e), f), g), i), m) e della perdita della gara.

²⁸ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. Comunicato Ufficiale № 62/TFN — Sezione disciplinare (2015/2016) 22.03.2016.

clubs are liable for the violent acts of spectators both inside and around the stadium. In aforementioned case, the bar as well as the stadium parking, were on the territory next to the stadium and the violent acts were committed after the match. The given dispute has also demonstrated that inappropriate acts of spectators under the statements of art. 14 (1) of the Code, can be committed both before, during or after the match²⁹. Noteworthy, that the formulations of the application of provisions used in art. 11 (3) and art. 12 (3) are almost identical. But how should we understand the “stadium”? The Code does not define this term, so we need to turn to judicial practice, in which we want to highlight the appeal decision in the case of the **Ostia Mare Lido Calcio**³⁰ club. In this case, the club’s spectators fastened a banner containing offensive remarks about the football association at stadium the parking before the match, and chanted chants similar in content during the match. As the club appealed, the banner was located on the area outside the control of the club, outside the stadium. However, the judicial body in this dispute recognized the stadium parking as the **club’s area of the liability** for the offensive behavior of their spectators, as cited in art. 12 (3) of the Code. Considering the effect of the provision of art. 12 (3) of the Code, primarily, in territory, this decision allows to clarify its effect in time, pointing the spectators’ misconduct committed before the match³¹. That also means, as it follows from the wording “before, during, after the match” used in sports Regulations, the effect of this article after the match. In turn, the statements of art. 16 (1) of the Disciplinary Regulations, which determine the liability of clubs for the organization and safety of sports events, indicate the application of this statement before, during and after the matches both, inside and around the stadium. As noted in the legal practice of the UEFA judicial bodies, the effect of art. 16 (1) of the Regulations in time and space, by analogy, applies to the provisions of art. 16 (2), the provisions of which encompass the clubs’ sports (disciplinary) liability for the various spectators’ behavior.

Direction of the spectators’ behavior. The acts of spectators covered under the para. “e” art. 16 (2) of the Disciplinary Regulations are not considered by UEFA as the acts against a particular person or particular group. According to para. “e” art. 16 (2), it is forbidden the use of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, particularly messages that are of a political, ideological, religious, offensive or provocative nature, **regardless against whom they are used, both, against a person or a group of people**. According to para. 3 art. 12 of the Code offensive spectators’ behavior is analogically against a wide range of subjects and not exclusively against persons as conditional “victims” of the inappropriate act. The latter may be legal entities, public authorities. In particular, there are several decisions in the legal practice of judicial bodies where the offensive behavior of spectators was against the football association³², its members-territorial associations³³,

²⁹ E. g., U.S.D. Cavese 1919 Club case. Federazione Italiana Giuoco Calcio. Corte Sportiva d’appello. Ila Sezione Comunicato Ufficiale № 120/CSA (2014/2015) 05.06.2015.

³⁰ Federazione Italiana Giuoco Calcio. Corte Sportiva d’appello. Ila Sezione Comunicato Ufficiale. № 112/CSA (2014/2015) 24.12.2014.

³¹ Football Club Paolisi 992 Club case, see: Comunicato Ufficiale № 118 19.05.2016.

³² A. C. Pavia Club case, see: Federazione Italiana Giuoco Calcio. Corte Sportiva d’appello. Ila Sezione Comunicato Ufficiale № 090/CSA (2014/2015) 16.04.2015; дело клуба Galluccese Calcio, see: Comunicato Ufficiale № 134 23.06.2016.

³³ E. g. Football Club Paolisi 992 case, see: Comunicato Ufficiale № 118 19.05.2016; дело клуба S.S. Nola 1925. См. Comunicato Ufficiale № 121 26.05.2016.

confronting club³⁴. For instance, in the case of the **Ostia Mare Lido Calcio**³⁵ club, the judicial body recognized the football association as an appropriate subject for which offensive behavior could be focused, and brought the club to sports (disciplinary) liability for the spectators' behavior, under art. 12 (3) of the Code³⁶. In **Football Club Paolisi 992**³⁷ case, the judicial body assessed the banner shown during the match by the club's spectators containing offensive statements not addressed to other spectators, players, officials of the confronting club, or to the football association as a whole, but to the regional sports organization — Comitato Regionale Campani. Offensive behavior towards the sports organization, according to the judicial body that heard the case, corresponds the body of the inappropriate act, cited in the aforementioned provision³⁸.

Judicial assessment of the duration of the spectators' behavior. According to the decision of **the Football Club Paolisi 992**³⁹ case the judicial body confirmed the club is liable for the spectators' behavior according to art. 12 (3) of the Code, despite the fact that the banner was demonstrated by spectators within a few minutes before the start of the match. The similar position was demonstrated by the Appeal instance in the **Ostia Mare Lido Calcio Club**⁴⁰ case, in which the club's staff was ready to remove the banner with offensive content immediately after its appearance, but did not do this on demand of law enforcement officers who wanted to identify the potential offenders. As a result, the club was liable under art. 12 (3) of the Code on the grounds of the appearance of a banner with inappropriate content. In the **Frosinone Calcio**⁴¹ club case, the Appeal instance directly emphasized: there is no doubt that the spectators' behavior, even if it lasts only a few minutes, falls within the remit of art. 12 (3) of the Code. The short duration of the offensive spectators' conduct (in the particular case — “spit”) did not constitute the ground for exempting the club from liability, as well as in another case against the **Frosinone Calcio**⁴² club. *Thus, the duration of manifestation of a banner with offensive content cannot be grounds for exempting the club from sports liability*⁴³. And, as follows from the above case, the judicial body did not recognize the *fact that the spectators were quickly wrapping the banner as a mitigating circumstance*. These actions of the club mean only the fulfillment of the natural duty to prevent the inappropriate behavior of their own spectators.

The aforesaid assessment of the duration of the banner demonstration generally corresponds to the **practice of the UEFA judicial bodies**. For instance, when the Appeal body reviewed of the **Croatian Football Federation's**⁴⁴ claim, the UEFA judicial body attached

³⁴ Pescia Club case, see: Comunicato Ufficiale № 27 17.11.2016. Campionato Juniores Regionali.

³⁵ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. Ila Sezione Comunicato Ufficiale. № 112/CSA (2014/2015) 28.05.2015.

³⁶ Football Club Paolisi 992 case, see: Comunicato Ufficiale № 118 19.05.2016; Gallucese Calcio Club case, see: Comunicato Ufficiale № 134 23.06.2016.

³⁷ Comunicato Ufficiale № 118 19.05.2016.

³⁸ S. S. Nola 1925 Club case, see: Comunicato Ufficiale № 121 26.05.2016.

³⁹ Comunicato Ufficiale № 118 19.05.2016.

⁴⁰ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. Ila Sezione Comunicato Ufficiale. № 112/CSA (2014/2015) 28.05.2015.

⁴¹ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. Ia Sezione Comunicato Ufficiale. № 136/CSA (2015/2016) 18.05.2016.

⁴² Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. Ia Sezione Comunicato Ufficiale. № 130/CSA (2015/2016) 13.05.2016.

⁴³ Gallucese Calcio Club case, see: Comunicato Ufficiale № 134 23.06.2016.

⁴⁴ FK Kukësi. Decision of 17 September 2015. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2015/2016. July 2015 — December 2015.

no legal importance as mitigating circumstance to the fact that the discriminatory banner had been demonstrated briefly. In the practice of the UEFA judicial bodies, periodically, as in the case of **the Hungarian Football Federation**⁴⁵, there is an argument regarding a short chant, but this fact was not evaluated as a mitigating circumstance. In another example, in the **Beitar Jerusalem FC Club**⁴⁶ case, the argument about the aspiration of the majority of club's spectators to remove the discriminatory banner was recognized irrelevant by judicial body, as the principle of "strict liability" was applied and *the appearance of the banner with inappropriate content was the only thing on value*. However, "spectators' aspiration" was not evaluated by the commission as a mitigating circumstance, thereby, not interpreting as a mitigating circumstance the approach of the manifestation by other spectators their rejection of violent acts happened during the match.⁴⁷

Identification of the spectator-offender as a condition for bringing the club to liability. In the **Serpentara Bellegraolevano**⁴⁸ case, the club-appellant referred to the lack of evidence of the inappropriate acts committed by its own spectators: performing violent or throwing pyrotechnics to the opposite sector. This reference was relevant since it was impossible to identify those actors. According to the club's position, the identity of the spectators was not established by the first instance and, as a result, their affiliation to the club was not proved. Particularly, even the Commissioner presented at the match said that he was not next to the incident. However, the Appeal instance did not accept the club's argument, since to bring the club to liability under art. 14 (1) *it is not necessary to require the identification of the supporter who committed the violent act* and it is sufficient to establish only *his presence in the sector of one of the teams*, that was confirmed by the report of the law enforcement authorities. Despite the different description of the inappropriate acts, the reports of authorities contained an indisputable indication of the damage caused to the barriers in the particular sector where the spectators of the club-appellant were located. Judging by the broken barrier, as only they could throw pyrotechnics into the neighboring sector. The conclusion about the absence of relevant requirements in spectators' identification was previously confirmed in general according to the **Pol. Olympia Agnonese Club**⁴⁹ case, in which the judicial body made a decision on the grounds which proved the fact of violence by some club's spectators against one of the arbitrators. In another case⁵⁰, the judicial body that heard the case answered negatively to the question whether the requirements to possession of season ticket by the supporter, a potential violator, is a necessary condition for bringing the club to liability, or not, under art. 14 (1) of the Code. It should be noted that this is the way how the concept of the objective liability of clubs is implemented, the concept under art. 4 (3) of the Code based on the existence of the event of the offense. At the same time, it is the club obligation to disprove the in-

⁴⁵ Hungarian Football Federation. Decision of 26 November 2015. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2015/2016. July 2015 — December 2015.

⁴⁶ Beitar Jerusalem FC. Decision of 23 July 2015. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2015/2016. July 2015 — December 2015.

⁴⁷ Art. 13 (1) (d) Code of Sports Justice.

⁴⁸ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. IIIa Sezione Comunicato Ufficiale. № 009/CSA (2015/2016) 07.08.2015.

⁴⁹ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. IIIa Sezione Comunicato Ufficiale. № 092/CSA (2014/2015) 16.04.2015.

⁵⁰ Juventus F.C. Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. Ia Sezione Comunicato Ufficiale. № 007/CSA (2015/2016) 03.08.2015

formation contained in the reports of representatives of the Italian police. By analogy, the burden of proof is upon the club to disprove any information contained in the report of UEFA officials, including the absence of affiliation of the spectators with the club, according to the Disciplinary Regulations⁵¹.

The proportionality of the sanctions. In the case of the **Serpentara Bellegraolevano di Olevano Romano**⁵² club, the club-appellant claimed that the violations were two separate events committed by the minority of spectators. Moreover, the rest of the spectators distanced themselves from the inappropriate acts and did not support them. Therefore, as follows from the position of the club, they took all the necessary measures, according to the paras. “a”, “b” art. 13 (1) of the Code, but such mitigating circumstances were not considered by first instance. According to the position of the club, this was largely since the referee did not include in his report the fact that most spectators did not participate in inappropriate acts and thus prevented the first instance to fully assess the offense. In addition, the club brought two precedent solutions (regarding the Cagliari / Roma match dated 10/25/2012⁵³ and regarding the Torino / Juventus⁵⁴ match dated 04/27/2015) and, according to its position, they had the precedent setting nature and could be extended to the current dispute as **the examples of proportionate sanctions**. Therefore, the club appealed to the disproportion of the sanctions and the need for its liberalization. However, the Appeal body indicated that the mitigating circumstances were not proven, as they *were not contained in the reports of the match officials and were not supported by any evidence* by the club since it is its burden of proof. Thus, in the absence of mitigating circumstances, the sanction applied by the judicial body was proportionate. In the **Juventus F. C.**⁵⁵ club case, the Appeal body, considering the issue of proportionality of the sanctions imposed on the club for violation of art. 14 (1) of the Code, pointed out three circumstances that should be considered in the decision-making process on matters related to sanctions. These circumstances are not listed in the provisions of paras. “a”, “b” art. 13 (1) and therefore are not mitigating, but can be considered in a particular dispute while making a decision. Firstly, the guest-club status; secondly, the spectator-violator did not have a club’s subscription; thirdly, the club actively collaborated with the public authorities during the investigation. On the other hand, as noted in the dispute, certain circumstances may be considered as aggravating, the list of which is not presented in the Code, and influence the tightening of the sanction. This circumstance, for example, was the focus of the inappropriate acts of spectators against young football players towards whom the maximum attention should be shown, stressed judicial body.

In another case about the application of art. 14 (1) of the Code club **U.S.D. Cavese 1919**⁵⁶ appealed to the need to apply a mitigating circumstance under para. “b” art.

⁵¹ Art. 38. Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

⁵² Federazione Italiana Giuoco Calcio. Corte Sportiva d’appello. IIIa Sezione Comunicato Ufficiale. № 009/CSA (2015/2016) 07.08.2015.

⁵³ Com. Uff. n. 72 25.10.2012. Сезон (2012/2013).

⁵⁴ Federazione Italiana Giuoco Calcio. Corte Sportiva d’appello. Ia Sezione Comunicato Ufficiale. № 007/CSA (2015/2016) 03.08.2015.

⁵⁵ Federazione Italiana Giuoco Calcio. Corte Sportiva d’appello. Ia Sezione Comunicato Ufficiale. № 007/CSA (2015/2016) 03.08.2015.

⁵⁶ Federazione Italiana Giuoco Calcio. Corte Sportiva d’appello. Ila Sezione Comunicato Ufficiale. № 120/CSA (2014/2015) 05.06.2015.

13 (1) of the Code. It also referred to the fact of the regular course of the match, with the exception of the alleged spectators' conduct. However, the Appeal body pointed out that the club did not prove the mitigating circumstances and that the *absence of other incidents that impede the match time* could not be *interpreted as a mitigating circumstance*. The spectators' conduct, expressed in the massive use of pyrotechnics and its repeated throwing onto the field, necessitated suspending the game, and at the end of the match, the spectators threw an empty plastic bottle towards the opposite club's footballer. As the judicial body stressed, in aggregate, such acts of club's spectators led to a proportionate choice of sanctions for violation of art 14 (1) of the Code, as pyrotechnics created a threat to the health of other spectators (about the risks of the spectators' behavior see also: Horton 2003).⁵⁷

Differences between articles 11, 12, 14 of the Code of Sports Justice. The correct application of the statements of art. 14 (1) versus art. 11 (1) was demonstrated in the case of the club **Massese**⁵⁸. Spectators of this club shouted offensive expressions on grounds of race and color of skin towards the arbitrator, also they were "defecating" on him when he passed to the under-stands premises (for the peculiarities in the applying of the anti-racism art. 14 UEFA Disciplinary Regulations see: De Vlieger 2016). As it was noted by the judicial body, the characterization of aforementioned actions in the aggregate cannot be considered under art. 11 of the Code, and, against the arguments of the club, such behavior is under art. 14 of the Code. The case of the club **Frosinone Calcio**⁵⁹ is the example where the application between art. 14 (1) and art. 12 (3) of the Code is distinguished. As noted by the judicial body, the provisions of art. 12 (3) of the Code are applied to spectators' behavior, since the nature of acts under art. 14 (1) requires that behavior threaten to public safety or a threat of causing serious harm to one or more individuals. In this case, the important thing is not that the "spit" was not a violent act, but it is the fact that *such actions could not cause serious harm, and it did not create a threat to public safety*. One of the issues of the application of art. 12 (3) of the Code is the extension of its effect to offensive other people on grounds of territorial origin by the spectators, which is expectedly cause difficulty in distinguishing art. 12 (3) of the Code from art. 11 (3) of the Code, establishing the club's liability for discriminatory spectators' behavior. In the **U.S. Cremonese**⁶⁰ case decision, an Appeal body considered the elements of discriminatory behavior and offensive behavior. Thus, the demonstration of the banner "shameful Comasco" (the name of the opposite club) and obscene chanting *cannot be considered as discriminatory behavior*: although the actions are inappropriate, they are not aimed at discriminating any subject on a certain basis. As a result, the Appeal body qualified the actions of the spectators as an offensive behavior, and as the subject to liability under art. 12 (3) of the Code. As can be observed, the judicial body appreciated the demonstration of the banner by the spectators and their obscene chanting as "vulgar", "boorish" behavior. And if such a conclusion with regard to chanting is indisputable, based on the provision art. 12 (3) of the Code, the characterization of the banner "shameful Comasco" as an offensive behavior, from our point of

⁵⁷ About risks of the spectators' behavior see also David Horton. 2003. "Rethinking Assumption of Risk and Sports Spectators." *UCLA Law Review*: 51, 339–376.

⁵⁸ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. IIIa Sezione Comunicato Ufficiale. № 009/CSA (2015/2016) 07.08.2015.

⁵⁹ Federazione Italiana Giuoco Calcio. Corte Sportiva d'appello. Ia Sezione Comunicato Ufficiale № 136/CSA (2015/2016) 18.05.2016.

⁶⁰ Corte Di Giustizia Federale. Sezioni Unite. Comunicato Ufficiale. № 179/CGF (2013/2014) 20.01.2014.

view, may raise certain questions. As we noted in one of our previous papers (Guseinova and Vasilyev 2017, 97–88), in the **Aosta Calcio 511**⁶¹ case, the use of the word “rabbit” on a banner was considered by the judicial body both, neither discriminatory and offensive spectators’ conduct, since this word only describes cowardly person and it is not oriented to his derogation or belittling. The model for assessing the presence in the spectators’ actions of sports (disciplinary) offenses provided by art. 11 (3), art. 12 (3) of the Code, which was demonstrated by the Appeal bodies, can be extended onto the analysis of the word combination “shameful Comasco”. Perhaps, the decision against the **U. S. Cremonese** club resulted from a totality of manifestation of the banner with an ambiguous content and obscene chanting of spectators. In the absence of the latter, the position of the judicial body could be the opposite: an obscene chant grounds the “shameful” characterization of the Comasco club and confirmed the offensive, provocative nature of the banner. As known, para. “e” art. 16 (2) of the UEFA Disciplinary Regulations prevent spectators from using of gestures, words, objects or any other means to transmit any message that is not fit for a sports event, in particular, with political, ideological, religious, offensive, provocative nature. That defends clubs, club’s officials and, in general, a wide range of actors from damaging their business reputation, honor and dignity by a banner with non-discriminatory and offensive content. Only the purpose of damaging the business reputation of the club can be traced in the use of the “shameful Comasco” banner by the spectators in that case. However, the football association does not amend the provisions of the Code along with the example of para. “e” art. 16 (2) of the Disciplinary Regulations, thereby, leaving this issue in the field of discretionary powers of their judicial bodies, in particularly, an assessment of the content of chants, banners and other forms of expression by spectators. Thus, in the decision on the case of the **U. S. Cremonese** club, it was exactly the damage to the club’s reputation caused both, by the spectators’ banner and the obscene chant, that cumulatively allowed to establish the body of the sports offense under art. 12 (3) of the Code — an offensive behavior.

In connection with the aforementioned quest for effective criteria for distinguishing discriminatory, offensive, violent spectators’ conduct and the articles 11, 12, 14 of the Code correspondingly, it’s interesting to review the position of Valerio Onida, the honorary chair of the Constitution court of Italy since 1996 till 2005, on application of art. 12 (3) of the Code (offensive spectators’ behavior) (Bonomi and Pavich 2015). As he concerns, we can’t consider any banner with a political content demonstrated inside the stadium as a provocation to discriminating, offensive and violent acts. It is quite reasonable that if we are talking about a racist banner or an offensive banner, then the spectator can be prohibited access to sporting events. Nevertheless, **in the case of a demonstration of a political banner, the use of the ban would be an unreasonable restriction of the freedom of speech and expression** guaranteed by the provisions of the Italian Constitution.

3. Conclusions. 1. The approach of the Italian Football Federation, expressed in the statements of the Code, means delimiting the clubs’ liability for any obscene, insulting, offensive, threatening or violent spectators’ conduct from the violent acts of spectators that constitute a threat to public safety or a threat of causing serious harm to one or more

⁶¹ Federazione Italiana Giuoco Calcio. Corte Sportiva d’appello. IIIa Sezione Comunicato Ufficiale. № 166/CSA (2015/2016) 23.06.2016.

individuals. The motivation of this legal approach is linked both, to the varying levels of danger of the spectators' behavior and to the direction on the violent acts "prevention", i.e. as a preventive mechanism and an encouragement of clubs to work with their spectators.

2. Art. 13 of the Code contains an exhaustive list both, of the grounds for exemption from liability and mitigating circumstances (paras. "a" — "e" art. 13 (1), used in cases of clubs' liability for the spectators' behavior under art. 12 of the Code. The originality of the normative football association's approach is that the allocation of the burden of proof at least three of the listed circumstances on the club to exempt it from liability for spectators' misconduct under art. 12 of the Code. The mitigating may be any of the five circumstances listed in the art. 13 (1) of the Code. In turn, art. 14 (5) of the Code introduces yet another interpretation of the grounds for exemption from liability and requires to prove one of the circumstances under paras. "a" and "b" art. 13 (1) of the Code. Any of these circumstances may be recognized by a judicial body as a mitigating circumstance. As a result, this approach totally differs from other national regulations, for instance, the Russian Football Union (RFU) one (for more details, see: Vasilyev and Kashaeva 2017; Vasilyev, Izmalkova and Khalatova 2018).

3. The use of a wide range of circumstances as mitigating (paras. "a", "b", "d", "e" art. 13 (1) of the Code) under the provisions of the Code is not perceived by the practice of the UEFA judicial bodies. Despite the intention of clubs to argue the use of similar circumstances, the UEFA bodies do not recognize such claims as valid. Among the circumstances that mitigate the clubs' liability according to art. 13 (1) of the Code, only para. "c" (an immediate adoption of all the necessary measures to remove all the images, inscriptions, symbols, etc., to terminate chants, shouts and other manifestations of violence and obscene for reasons of territorial origin) allows to make an analogy with the regulation of UEFA, art. 23 (3) of the Disciplinary Regulations, controlling for application of the latter exclusively to the host club.

4. The legal practice of the UEFA judicial bodies is inconsistent in the reduction of the sanctions on the basis of measures taken by the host club to work with spectators before the high-risk match, demonstrating both, decisions in favor or against recognizing such a circumstance as a mitigating one.

5. The concept of "stadium" under art. 12 (3) of the Code is considered by judicial bodies in the context of para. "e" art. 16 (2) of the UEFA Disciplinary Regulations. In turn, art. 14 (1) of the Code expressly refers to the place of the violent acts as inside and around the stadium.

6. The offensive spectators' behavior is aimed, according to art. 12 (3) of the Code, on a particular person or particular group, repeating what it has been already cited in para. "e" art. 16 (2) of the UEFA Disciplinary Regulations.

7. The application of art. 12 (3) of the Code in terms of the impact of the duration of the demonstration of banner with inappropriate content on the clubs' liability corresponds, in general, to the practice of the UEFA judicial bodies under para. "e" art. 16 (2) of the Disciplinary Regulations.

8. The practice of Italian judicial bodies in identification of the spectator-offender (about the description of the identification process see: Ramazanoğlu 2012) issues is being systematized in the context of decisions of the UEFA judicial bodies. They repeatedly

emphasized⁶² that the supporter is not a person who purchased a ticket but the one committed inappropriate to the match acts that is the ground to the club's liability according to art. 16 (2) of the Disciplinary Regulations.

9. The list of "exceptional" (firstly, the "mitigating") circumstances is not presented in the Disciplinary Regulations, but these circumstances, along with mitigating circumstances listed in art. 13 of the Code, impact on the proportionality of the sanctions applied to clubs. The UEFA Disciplinary Regulations presupposes only one mitigating circumstance applicable to inappropriate behavior under para. "e" art. 16 (2) of the Regulations (see also Van Kleef 2014). Other "exceptional" circumstances are discretionarily establishing by the UEFA judicial bodies, in contrast to the approach of the Italian Football Federation, which lists mitigating circumstances by the principle of a closed list under art. 13 of the Code. From our point of view, this legal implementation of sports regulations is reasonable for the purpose of the sports law, which is built up by the sporting judicial bodies.

10. The spectators' behavior may be qualified according to art. 12 (3) of the Code, instead of art. 14 (1) of the Code, in case the club proves that this action could not cause serious harm to one or more individuals, and it did not constitute a threat to public safety.

11. To our mind, the bodies of the Italian Football Federation that judging cases concerning the application art. 12 (3) of the Code, in the absence of prohibition of the demonstration non-sports-related information by spectators, still strive to prevent the supporters' misconduct by their practice and to apply sanctions to clubs in case of potential encroachment on business reputation, honor, dignity of subjects associated with football activities.

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⁶² Croatian Football Federation. Decision of 17 September 2015. Case Law Control, Ethics and Disciplinary Body & Appeals Body. Season 2015/2016. July 2015 — December 2015.

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Authors' information:

Elmyra Guseinova — elmira.luda@hotmail.com

Anastasia A. Kashaeva — n.kashaeva2012@mail.ru

Iliia A. Vasilyev — PhD, Associate Professor; i.vasilev@spbu.ru