

I. Facts of the Case

1. The elements set out below are a summary of the relevant facts, as established by the Protests Board (the "Board") in the course of the present proceedings. While the Board has considered the protest as submitted by Hibernians FC (the "Protesting club") in these proceedings, the present decision refers only to those matters it considered necessary to explain the Board's reasoning.
2. The Protesting club and Hamrun Spartans FC (hereinafter, the "Respondent club") are members of the Malta FA, which in turn is a member of FIFA. As a result, the Protesting club and Respondent are subject to and bound by the applicable rules and regulations of FIFA.
3. Mr Christian Rutjens (hereinafter, the "Player") is a professional football player. On 4 August 2021, the Player registered in Malta with Floriana FC. This information is verified from the Player's profile in the Association's football management system.
4. On 12 December 2022, the Player was sent off in the 79th minute of the BOV Premier League 22/23 match between Hibernians FC and Floriana FC. This information is confirmed by the Official Match Report.
5. On 13 December 2022, the Disciplinary Commissioner sanctioned and consequently suspended the Player for three (3) matches. The Disciplinary Commissioner's Decisions as approved and confirmed on 13th December 2022 can be accessed [online](#)¹.
6. On 17 December 2022, Floriana FC played their BOV Premier League 22/23 fixture against Pieta Hotspurs FC. In accordance with the information obtained from the Official Match Report, the Player did not feature in Floriana's match sheet for this match, and hence served his first match from his three-match suspension.
7. On 3 January 2023, the Player was released from Floriana FC. This information is verified from the Player's passport in the Association's football management system. This is further confirmed in the FIFA International Transfer Certificate and the Transfer Matching System (TMS) report, which show that the player was de-registered from Floriana FC on the said date. At this point, the Player had only served one match from his three-match suspension. It is noted that in the said TMS Report, the field 'Disciplinary Sanctions' is marked with 'No'.
8. On 9 January 2023, the Player registered with Calcio Foggia 1920 in Italy. This information is confirmed in the FIFA International Transfer Certificate and the TMS report.

¹ The Disciplinary Commissioner's Decisions as approved and confirmed on 13 December 2022 can be accessed from the following [link](#).

9. On 14 January 2023, the Player was included as a substitute but did not feature in the match between Virtus Francavilla and Calcio Foggia 1920. This information is corroborated with the Official Match Report acquired from the LEGA PRO.
10. Subsequently, the Player featured in a number of matches for Calcio Foggia 1920. This information is available from public databases.
11. The Player was transferred to Romanian club AFC Chindia Targoviste in September 2023. He was eventually de-registered from the club on 12 January 2024 and registered with Hamrun Spartans FC on the 18 January 2024. This information is confirmed in the Player's Profile in the Association's football management system. In both transfers, the respective TMS report did not indicate any pending disciplinary sanctions.
12. On 20 January 2024, the Protesting club played a match against the Respondent club in the 2023/2024 BOV Premier League (hereinafter, the "Match"). The Player started the match as a substitute and entered the field on play on the 78th minute. This information is confirmed in the Official Match Report and is also publicly available on the Malta FA [Match Centre](#)².
13. According to Respondent club's Start List, as confirmed on 20 January 2024 at 12:49:45 CET, the following players were listed on the match sheet:

" ...

1 Bonello Henry (79181), 13.10.1988 GK
4 Borg Steve (82289), 15.05.1988 C
7 Montebello Luke (101859), 13.08.1995
10 Mbong Joseph (Essien) (92350), 15.07.1997
12 Prsa Roko (143883), 16.02.1996 CRO
14 Freitas Da Silva Elionay (151216), 23.05.1997 BRA
23 Duranovic Uros (151221), 01.02.1994 MNE
25 Bruno Domingos Ederson (129931), 21.08.1989 BRA
91 Marcelina Emerson (95072), 24.02.1991 BRA
94 Camenzuli Ryan (81244), 08.09.1994
98 Do Nascimento Torres Jonny Robert (143884), 18.05.1998 BRA

22 Marchetti Federico (151509), 07.02.1983 ITA GK
3 Vella Kian (107076), 11.08.2005
5 Scicluna Kean (109034), 12.09.2006
9 Bugeja Felipe (108356), 10.03.2006
17 Nenov Yulian Rumenov (151219), 17.11.1994 BUL
19 Zerafa Joseph (79884), 31.05.1988
27 Bjelicic Ognjen (143885), 29.07.1997 SRB

² Match information is available on the Malta FA Match Centre, which can be accessed from the following [link](#).

28 Corbalan Juan Carlos (92095), 03.01.1997
30 Paintsil Seth (151220), 20.05.1996 GHA
33 Rutjens Christian (138914), 05.01.1998 ESP
92 Zammit Trezeguet (107315), 04.11.2005
..."

14. Any other relevant facts shall be referenced further below, as necessary.

II. Summary of the proceedings before the Protests Board

15. On 23 January 2024, the Protesting club filed its grounds for protest. In its statements, the Protesting club essentially argued the following:

- The Protesting club states that the Respondent club violated Article 20 (ii) of Section IX (Disciplinary Procedures and Sanctions)³ since the Player should not have been fielded, as the Player had still to serve the suspension imposed by the Disciplinary Commissioner on the 13th December 2022.
- Consequently, the Protesting club states that that the Respondent club made use of a 'non bona fide' player, and in line with Article 9(vi) of Section V (Competition Rules)⁴ the Protesting club requested to be awarded the three (3) points and that a three-nil (3-0) result shall be recorded, as stipulated in Article 39 of Section V (Competition Rules).
- Considering the above, the Protesting club requested to:
 - i. Be declared to have won the Match, as stipulated in Article 64(l) of the Malta FA Statute (Section I)⁵.

16. On 24 January 2024, the Respondent club requested a copy of the International Transfer Certificate sent by the Malta FA to *Federazione Italiana Giuoco Calcio* (Hereinafter "FIGC") in January 2023 which refers to the request via FIFA TMS of Calcio Foggia 1920 for the Player. The ITC, together with supporting documents, were provided by the Association to both Protesting club and Respondent club.

17. On 25 January 2024 the Respondent club sent a letter to the Malta FA to communicate that, without prejudice to these proceedings, they would not field the Player in their next fixture, pending the outcome of this Protest.

18. On 30 January 2024, the Protesting club requested a copy of the Official Match Report of the match between Calcio Foggia 1920 and Virtus Francavilla, which was played on

³ Section IX (Disciplinary Procedures and Sanctions) of the Malta FA can be accessed from the following [link](#).

⁴ Section V (Competition Rules) of the Malta FA can be accessed from the following [link](#).

⁵ Section I (Statute) of the Malta FA can be accessed from the following [link](#).

the 14 of January 2023, and in which the Player was included. The Official Match Report was provided by the LEGA PRO and sent by the Association to both Protesting and Respondent club.

19. The Board held a hearing on 1 February 2024 at the Malta FA HQ, in Ta' Qali, H'Attard.
20. Any other arguments of the parties shall be addressed further below, insofar as they are relevant.

III. Protests Board's competence and admissibility of the protest

21. Article 64 paragraph 1 of the Malta FA Statute (Section I) provides that: *"The Protests Board shall be competent to determine a protest lodged by a Member Club which had taken part in a competitive match organised by the Association and the Club requests either that the match in question be replayed or that the match in question is declared to have been won by the Club submitting the protest. [...]"*
22. The Protestant lodged its grounds for protest by the deadline specified in Article 64(4) of Section I and in the written form required by the same provision. In addition, the club instructed the Association to deduct the applicable fee of €1,500 (as per Article 64 paragraph 4 (d)) from its club account with the Association.
23. The Board has jurisdiction to decide on the present protest and it considers the protest as admissible. The Board may therefore consider its merits and re-examine the case in full, as per Article 64 paragraph 7, which provides that: *"The Board is empowered to regulate its own procedure and is empowered to hear not only that evidence which is produced by the parties involved in the protest, but also other evidence which it may deem relevant."*

IV. Legal considerations of the Protests Board

A. The legal framework

24. Article 12 paragraph 1 (a) of the Malta FA Statute (Section I) provides that Members are obliged *"to comply fully with the Statutes, regulations, directives and decisions of the Malta FA, UEFA and FIFA at all times [...]"*
25. In particular, the following provisions are relevant to this case:
 - Article 9 (i) of the Competition Rules (Section V), provides that: *"Only "bona fide" players are permitted to play in competitive matches"*. Article 9 (ii) provides the definition of a 'bona fide' player.

- Article 20(iii)(c) of the Players' and Club Officials' Disciplinary Code (Section IX), provides that: *"The Commissioner shall not take into account any claim that the player and/or his Club were unaware of the original suspension or of the regulations."*
- Article 12 of the FIFA Regulations on the Status and Transfer of Players (RSTP), provides that: *"Any disciplinary sanction of up to four matches or up to three months that has been imposed on a player by the former association but not yet (entirely) served by the time of the transfer shall be enforced by the new association at which the player has been registered in order for the sanction to be served at domestic level. When issuing the ITC, the former association shall notify the new association via TMS of any such disciplinary sanction that has yet to be (entirely) served."*

B. In the case in hand

26. Bearing the above in mind, the relevant issues to be considered by the Board are:

- i. The applicability of Article 20(ii) of the Players' and Club Officials' Disciplinary Code (Section IX);
- ii. The matches in which the Player had to serve the two (2) remaining matches suspension;
- iii. The eligibility of the player for the match in question.

i. The applicability of Article 20(ii) of the Players' and Club Officials' Disciplinary Code (Section IX);

27. The Protesting club referred to Article 20(ii) of the Players' and Club Officials' Disciplinary Code (Section IX), which state that: *"If such suspension cannot be served in any competition of the Association or of the Member Association or of the Affiliated Association concerned, as the case may be, during the same season, then the suspension shall be served in the first competition of the same Association or of the Member Association or of the Affiliated Association concerned, as the case may be, for which the player will be eligible to play during the next season."*

28. The Board is of the view that Article 20(ii) of Section IX is applicable in instances where a suspension cannot be served during the same season of the same Association.

29. Moreover, the Board is of the opinion that as soon as the Player registered with Calcio Foggia 1920, the Article in question was therefore no longer applicable since the Player was no longer registered with the same Association. At the point in which the Player was transferred internationally, the applicable regulations are those of FIFA.
30. Consequently, the Board finds that all arguments submitted by the Protesting club concerning Article 20(ii) of the Players' and Club Officials' Disciplinary Code (Section IX) are to be dismissed as the rule is not applicable following the Player's registration with the FIGC.
- ii. The matches in which the Player had to serve the two (2) remaining matches suspension.
31. The Protesting club maintained that the Player was included on the match sheet of the first match, following his registration with Calcio Foggia 1920, against Virtus Francavilla. This information is confirmed in the Official Match Report acquired from the LEGA PRO.
32. The Protesting club argued that suspensions are not a 'menu', and therefore a player cannot choose when to serve a suspension.
33. Finally, the Protesting club argued that the Player did not serve the two (2) remaining matches suspension imposed by the Disciplinary Commissioner on the 13th December 2022 and therefore was ineligible to play in the Match.
34. Whilst the Board acknowledges the Protesting club's argument that in principle a player cannot choose when to serve a suspension, the Board also noted the Respondent club's argument that, the Player had not been included in the squad for a number of matches during his time at Calcio Foggia 1920 and also later at AFC Chindia Targoviste. The matter on when the suspension should have been served is provided for in the FIFA Regulations on the Status and Transfer of Players which, in Article 12(1), states that "*Any disciplinary sanction of up to four matches or up to three months that has been imposed on a player by the former association but not yet (entirely) served by the time of the transfer shall be enforced by the **new association** at which the player has been registered in order for the sanction to be served at domestic level.*" [bold added for emphasis only]
35. Nonetheless, as noted further below (article 44), the Board recognises that the Association failed to "notify the new association via TMS of any such disciplinary sanction that has yet to be (entirely) served". The Board has taken into consideration this failure, as hereunder explained.

36. In the opinion of the Bord, the cited FIFA provision is clear in its determination that the obligation in terms of enforcement of such pending disciplinary sanctions lies with the new association, and henceforth here it is clear that the suspension should have been enforced in Italy by the FIGC. The Commentary on the RSTP (Chapter 3, Article 12)⁶ establishes that this is done via TMS as part of the administrative procedure governing the transfer of players between member associations, specifically, when the ITC is issued.

iii. The eligibility of the player for the match in question

37. The Protesting club contended that the Respondent club was or ought to have been aware of the Player's suspension. It argued that the case was publicly reported in media.

38. Moreover, the Protesting club argued that the Player himself must have been aware of his suspension. Nonetheless, the Protesting club maintained that, in any case, the Respondent club ultimately bears the responsibility for the players fielded in a match.

39. The Protesting club referred to Article 20 (iii) (c) of the Players' and Club Officials' Disciplinary Code (Section IX), which state that "*The Commissioner shall not take into account any claim that the player and/or his Club were unaware of the original suspension or of the regulations.*"

40. Furthermore, the Protesting club referred to CAS 2012/A/3013 SFA v. FIFA, award of 4 March 2013⁷, where the SFA argued that it was not duly notified of a suspension imposed on a player. In this case, all arguments submitted by the SFA concerning the notification of the confirmation letter were dismissed as the confirmation letter was duly notified to the SFA and the SFA was informed of the suspension automatically imposed on the player for the next official match with the national team of Sudan (para. 41 and 43 of the award).

41. The Protesting club also referred to CAS 2013/A/3360 FCF v. FIFA, award of 31 January 2014⁸, where the FCF argued that FIFA modified its website after the match of 24 March 2013 had been forfeited, by removing the red card given to the player on that match. The Board notes that, in contrast to the case at hand, the dispute addressed in this award concerns the actual validity of the suspension.

⁶ Commentary on the RSTP accessible [here](#).

⁷ CAS 2012/A/3013 SFA v. FIFA, award of 4 March 2013 accessible [here](#).

⁸ CAS 2013/A/3360 FCF v. FIFA, award of 31 January 2014 accessible [here](#).

42. The Board notes that while partly addressing issues relating to notification of a suspension, neither of the cited CAS Awards concerns the obligation to enforce a suspension of one Association over another.
43. In this regard, it is pertinent to quote further from Article 12 (l) of the FIFA RSTP which states that *"When issuing the ITC, the former association shall notify the new association via TMS of any such disciplinary sanction that has yet to be (entirely) served."*
44. From the FIFA International Transfer Certificate and the Transfer Matching System (TMS) report of the player's transfer from Floriana FC to Calcio Foggia 1920, the Board verified that the Association failed to *"notify the new association via TMS of any such disciplinary sanction that has yet to be (entirely) served"*. Indeed, in the course of these proceedings, the Association conceded that this was an administrative error. The Board is of the opinion that it is imperative that the Association improves all internal procedures to ascertain that the information conveyed through TMS reports is correct, and to eliminate as far as possible any such occurrences.
45. The Board took into account the objective of Article 12 paragraph 1 of the FIFA RSTP, which serves primarily to make sure that a player serves the punishment in its entirety despite the international transfer. Henceforth here the matter of the original suspension, and the question as to the manner that this had to be observed was a matter for the Italian federation, the FIGC.
46. The Board also notes that the engagement of the Player by the Respondent club is also an International Transfer and so the matter has to be seen and understood within the parameters and rules of the Rules of international Transfer as established by FIFA. The Board also notes that as per Paragraph 2.2 of Annexe 3 of the FIFA Regulations on the Status and Transfer of Players (RSTP), the use of the TMS is mandatory for associations and clubs, and this is meant to provide certainty in all aspects of international transfers.
47. It is clear that no pending disciplinary sanctions were indicated in the TMS Reports of the player's transfer from Calcio Foggia 1920 to AFC Chindia Targoviste and later from the latter club to Hamrun Spartans FC. It is this latest transaction that according to FIFA RSTP Article 12(l) puts the responsibility of enforcing a pending disciplinary sanction on the Malta FA.
48. The Board considers that the Malta FA, and consequently the Protests Board, when analysing the eligibility or otherwise of the Player following his latest transfer to the Respondent club, have to look at the matter in accordance with the FIFA Rules, which Rules, give prevalence to the TMS. The latest applicable TMS Report on the player, that is the TMS report available to the Respondent Club at the time of the player's engagement, showed that there were no Sanctions on the player. The Board noted

also the evidence brought forward by the Respondent Club evidencing that they relied on, amongst other things, the said TMS.

49. On this basis and for the above stated reasons, it cannot be concluded that the Player was ineligible for the Match of the 20 January 2024.

50. In accordance with the foregoing, the Board decides that the protest is to be dismissed.

V. Costs

51. Article 64 paragraph 11 (c) of the Malta FA Statute⁹ provides as follows:

"[...] The deposit shall be refunded or forfeited in whole or in part at the discretion of the Board if the protest is not upheld."

52. In the present case, considering that the protest is not being entertained, it is considered justified to impose the costs of these proceedings, to be borne at the Protesting club's expense.

⁹ Malta FA Statute