Global Campus
Europe

UPPSALA UNIVERSITY

European Master's Programme in Human Rights and Democratisation
A.Y. 2023/2024

Putting racism offside

An evaluation of the case law of the Royal Belgian Football Association's National Chamber for the fight against Discrimination and Racism

Author: Jan Devriendt
Supervisor: Prof. Friberg Sandra

Word Count Declaration: 26.209 words

Abstract

This thesis researches the functioning of the National Chamber against Racism and Discrimination (NCDR or Chamber), which is a global first of its kind. It aims to tackle the issue of racist speech in football, a major challenge that football faces today. First, the frameworks regarding racist speech are examined, both the ones designed for football and non-football contexts. Second, the case law of the NCDR is analyzed, addressing trends and things that stand out. Then, this analysis is put in light of the discovered frameworks, to evaluate the functioning of the Chamber. The result is that the NCDR does a very good job overall in respecting its regulations, both literally and in their spirit. However, there is some room for improvement. This is further addressed in the last chapter, which contains some proposals on how the Chamber can achieve this enhancement.

A big thank you goes out to

My fellow EMA students for not only becoming friends, but also inspiring me

With a special thanks to Sebastião, Vasil, Giorgia and Adriana

The EMA team for designing and supporting this program

Sandra for supervising this thesis

Riona for the company on a Swedish adventure

Anna-Sara and Malin for a warm welcome in said country

Inès and Samia for their cooperation

My family and girlfriend for always believing in me

Contents

The ugly side of the beautiful game ... 1
A fascinating case study through a human rights lens ... 1
The issue of racism ... 3
The search for a solution ... 5
Delimitations ... 7
Research questions ... 8
Methodology ... 9

Sources regarding racist speech in football ... 11
Racist speech ... 11
Dealing with racist speech… ... 14
… in Belgium ... 14
… internationally ... 17
… in football and sports in general ... 22
An overview of the racist speech framework ... 29
The "general" framework ... 29
The "sports and football" framework ... 31
Different situations require different solutions ... 33

An analysis of the case law of the NCDR ... 39
Legal background ... 39
The regulations of the RBFA ... 39
Other documents ... 42
A case of the NCDR at first look ... 44
Statement of Facts ... 45
Defense of the parties ... 45
Assessment by the NCDR ... 46
Conclusion ... 49
The cases of the NCDR at second look ... 49
Statement of Facts ... 49
Defense of the parties ... 50
Assessment by the NCDR ... 54
The NCDR's sanctions ... 59
Conclusion ... 66

Evaluating the case law of the NCDR ... 67
The NCDR's application of the law ... 67

Following the letter of the law ... 68
Following the spirit of the law ... 71
The conformity of the regulations and their application ... 75
Applying the ECHR's framework ... 75
Art. 6 ECHR and the right to a fair trial ... 80
Art. 13 ECHR and the right to redress ... 89
Conclusion ... 91

Recommendations for the NCDR ... 93

Conclusion ... 97

Bibliography ... 99

Abbreviations

BCAS	Belgian Court of Arbitration for Sport
CAS	Court of Arbitration for Sport
CERD	Committee on the Elimination of Racial Discrimination
CFREU	Charter of Fundamental Rights of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRI	European Commission against Racism and Intolerance
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
FIFA	International Federation of Football Associations
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant
NCDR	National Chamber in the fight against Discrimination and Racism
RBFA	Royal Belgian Football Association
UEFA	Union of European Football Associations

The ugly side of the beautiful game

THIS RESEARCH – The present thesis originates from a love for the beautiful game, as it is often called. Yet, it has an undeniably dark side as well. The examples are numerous and range from corruption in federations[1] to human rights violations caused by the organization of big tournaments[2]. This research aims to address another issue, which is one of the main battles the sport is currently facing, the fight against racism. The chosen case study is not an arbitrary one, as the Royal Belgian Football Association (RBFA or Association) has a response to this problem that is a worldwide pioneer.

A fascinating case study through a human rights lens

THE FOOTBALL ECO-SYSTEM – Being one of the world's biggest sports[3], football makes up an interesting microcosm to study human behavior and the influence of regulations and their enforcement. Not only do people, like players or fans, react more pronounced than they probably would in a less exciting, nervous, and tense environment, but they also

[1] See for example Sahiba Gill, Edouard Adelus and Francisco De Abreu Duarte, 'Whose Game? FIFA, Corruption and the Challenge of Global Governance' (2019) 30 European Journal of International Law 1041.
[2] See for example Mohammad Hanaan Alfarizi, Kirthie Rubini Morgan and Manuel Campos Lago, 'Human Rights Abused in Qatar: FIFA Puts World Cup More Than Lives?' (2023) 4 Jurnal Penegakan Hukum dan Keadilan 27.
[3] This is argued in multiple types of research, see for example Philipp Bohm, Andreas Kästner and Tim Meyer, 'Sudden Cardiac Death in Football' (2013) 31 Journal of Sports Sciences 1451.

agree to follow a set of rules laid down by their national football association.

FOOTBALL VS SOCIETY – This interaction has some interesting characteristics, that set it apart from the regular citizen-government relationship that is usually studied in human rights research. First, as just mentioned, the circumstances in which the players react are different than day-to-day life, provoking more emotional reactions. Second, the fact that they agree to follow the football association's rules by signing up as a member instead of being born into it as is the case with society, means that the football association has more legitimacy to restrict the rights of its members and thus can go further than a government could go. Their clubs and members can however not exercise control over the decision-makers in this private institution, as they are not democratically composed. From a certain point of view and in some situations, they thus find themselves at the mercy of their respective football association.

FOOTBALL IS SOCIETY – It comes as no surprise that such a big sport also resembles society in many ways. After all, participants in football games, both by playing or watching, are at the same time members of society. Likewise, players and supporters engage with each other and with their counterparts from the other team. Like real life, they can share the same interests and work together to achieve them, or desire opposite outcomes and compete with each other.

The issue of racism

RACISM IN SOCIETY – Racism is undeniably present in our modern-day societies. According to the High Commissioner for Human Rights of the UN, it occurs daily to millions of people across the globe and destroys lives and communities.[4] Its presence is as old as the hills, as it was already around in the Middle Ages[5], and can even be traced back to classical antiquity[6].[7] Although there were reasons to believe that racism could gradually fade away after the Second World War, this turned out to be a pipe dream.[8] Some even argue that racism is now more present than ever and identify particular causes, like the COVID-19 pandemic[9] or the rise of populism[10]. Anyhow, this issue's prevalence is undisputed and confirmed in multiple reports.[11] Unsurprisingly but relevant to this research, Belgium is no exception to this.[12]

---

[4] <https://www.ohchr.org/en/racism> Accessed 13 July 2024.

[5] See M Lindsay Kaplan, *Figuring Racism in Medieval Christianity* (Oxford University Press 2019).

[6] See Benjamin H Isaac, *The Invention of Racism in Classical Antiquity* (Princeton University Press 2004).

[7] On the history of racism in general, see Manfred Berg and Simon Wendt (eds), *Racism in the Modern World: Historical Perspectives on Cultural Transfer and Adaptation* (1. paperback ed, Berghahn 2014).

[8] Michel Wieviorka, 'The Seeds of Hate' (1996) 3 The UNESCO courier: a window open on the world 10, 10.

[9] See for example Melanie Coates, 'Covid-19 and the Rise of Racism' [2020] BMJ 369; Edita Hasković, 'The Rise of Racism and Xenophobia During the COVID-19 Pandemic as an Expression of Their Centuries-Old History – A Sociological and Security Aspect' (2022) 22 Kriminalističke teme 45.

[10] See for example Ruth Wodak, 'The Rise of Racism — An Austrian or a European Phenomenon?' (2000) 11 Discourse & Society 5.

[11] Regarding the situation in Europe, see for example European Union Agency for Fundamental Rights, 'Being Black in the EU - Experiences of People of African Descent' (2023); European Network Against Racism, 'Shadow Report on Racial Discrimination in Europe 2016-2021' (2024).

[12] Freddy Merckx and Liz Fekete, 'Belgium: The Racist Cocktail' (1991) 32 Race & Class 67.

RACISM IN FOOTBALL – As mentioned before, society's issues can also be found in football. Here too, the presence of racism does not need a lot of introduction. Both general media[13] and specialized reports[14] keep complaining about the situation. Even recently during Euro 2024, the English football team faced racist fan chants in their opening game against Serbia.[15] Additionally, the appearance of racism has evolved in football too, as it has also invaded the digital world.[16]

WHY RACISM IS PROBLEMATIC – Needing even less explanation than the presence of racism are the detrimental effects of racism on its victims. In general, it can impact people's physical[17] and mental health[18], cause social isolation[19], and lower self-esteem[20]. In football specifically, racism can limit opportunities[21] or even cause players to stop playing[22].

---

[13] See for example Dylan Donnelly, 'Birmingham and AFC Wimbledon Players Report Racist Abuse from Opposition Fans' *Sky News* (4 February 2024) <https://news.sky.com/story/birmingham-and-afc-wimbledon-players-report-racist-abuse-from-opposition-fans-13063772> accessed 13 July 2024.

[14] See for example Kick It Out, 'Kick It Out Year Report 22-23'.

[15] 'UEFA Investigating Racism towards England Players' *BBC News* (17 June 2024) <https://www.bbc.com/sport/football/articles/c0jjy31pv1po> accessed 13 July 2024.

[16] Christos Kassimeris, Stefan Lawrence and Magdalini Pipini, 'Racism in Football' (2022) 23 Soccer & Society 824, 826–829; Kevin Hylton and others, 'Dear Prime Minister, Mr Musk and Mr Zuckerberg! [2024] International Review for the Sociology of Sport; Daniel Kilvington and others, 'Investigating Online Football Forums: A Critical Examination of Participants' Responses to Football Related Racism and Islamophobia' (2022) 23 Soccer & Society 849.

[17] See for example David R Williams, 'Race, Socioeconomic Status, and Health The Added Effects of Racism and Discrimination' (1999) 896 Annals of the New York Academy of Sciences 173.

[18] See for example M Schouler-Ocak and others, 'Racism and Mental Health and the Role of Mental Health Professionals' (2021) 64 European Psychiatry 1.

[19] See for example Nalini Junko Negi and others, 'The Solitude Absorbs and It Oppresses: "Illegality" and Its Implications on Latino Immigrant Day Laborers' Social Isolation, Loneliness and Health' (2021) 273 Social Science & Medicine.

[20] Amber J Johnson, 'Examining Associations between Racism, Internalized Shame, and Self-Esteem among African Americans' (2020) 7 Cogent Psychology.

[21] George B Cunningham, 'The Under-Representation of Racial Minorities in Coaching and Leadership Positions in the United States' in Steven Bradbury, Jim Lusted and Jacco Van Sterkenburg (eds), *'Race', Ethnicity and Racism in Sports Coaching* (1st edn, Routledge 2020) 9.

[22] See for example 'Non-League Player Quits Football as a Result of Racist Abuse in Cup Final' *The Guardian* (5 April 2019)

WITH GREAT POWER… – Clearly, this pressing issue needs to be addressed. Furthermore, the players and clubs that signed up with a football association not only have to abide by its rules regarding racism, but they also have a legitimate expectation to be able to enjoy the game they love without being exposed to racial discrimination.

The search for a solution

… COMES GREAT RESPONSIBILITY – Unsurprisingly, these issues caused many reactions within these football associations. However, also bigger human rights institutions got involved. In Europe, the European Commission against Racism and Intolerance (ECRI)[23] and the European Union (EU)[24] both implemented initiatives regarding the issue. Moreover, both organizations teamed up with the Union of European Football Associations (UEFA), an organization setting out the policing guidelines for its national member associations, to tackle hate speech in football.[25] Within the football landscape, the UEFA[26] and the International Federation of Football Associations (FIFA)[27] also took action.

FOOTBALL ASSOCIATIONS – One of the actors best positioned to deal with the issue, given their familiarity with the national context and their powerful position, and having a big responsibility, are the national football associations. It has become common practice for these associations

---

<https://www.theguardian.com/football/2019/apr/05/non-league-player-quits-football-as-a-result-of-racist-abuse-in-cup-final> accessed 13 July 2024.

[23] ECRI, 'General Policy Recommendation N°12 on Combating Racism and Racial Discrimination in the Field of Sport'.

[24] Parliamentary question - P-000182/2024(ASW) 2024.

[25] <https://tackleproject.eu/en/> Accessed 13 July 2024.

[26] See for example UEFA's ten-point plan on racism as mentioned in Art. 45.04 UEFA Safety and Security Regulations 2019.

[27] See for example FIFA's 'No Discrimination' campaign on <https://inside.fifa.com/social-impact/campaigns/no-discrimination> Accessed 13 July 2024.

to put in place campaigns and regulations to fulfill this task.[28] Typically, they have an educational purpose or aim to raise awareness. However, sometimes they contain a more repressive section as well, which is the case in the Belgian campaign.

THE NCDR – The anti-discrimination action plan of the RBFA is titled “Come Together” and was launched in 2021.[29] In addition to more traditional measures like awareness initiatives and training programs, it established the National Chamber in the fight against Discrimination and Racism (NCDR or Chamber). This tribunal receives referee reports, official complaints, and reported cases of racism and decides whether the prohibition to discriminate has been violated, including the possibility of imposing sanctions.[30] The NCDR, being the first tribunal of this type worldwide, has already handled over 150 cases in each of its first two seasons.[31]

TIME FOR RESEARCH – The combination of this tribunal as a global first and the importance of the topic of racism in football asks for research. Studying football’s response to racism through such a measure also opens up an interesting new angle, since previous studies have very rarely taken a legal approach. Examining the workings of the NCDR allows this focus on legal questions, like addressing methods of redress and questions around sanctioning and procedural safeguards.

---

[28] See for example <https://www.englandfootball.com/articles/2023/Nov/09/Enough-is-Enough-launches> Accessed 13 July 2024; <https://www.figc.it/en/figc/mission-and-governance/values/> accessed 13 July 2024; <https://www.knvb.nl/themas/sportiviteit-en-respect/diversiteit/aanvalsplan-tegen-racisme-en-discriminatie> accessed 13 July 2024.
[29] <https://www.rbfa.be/en/cometogether> Accessed 13 July 2024.
[30] <https://www.rbfa.be/en/cometogether/national-chamber-fight-against-discrimination-and-racism> Accessed 13 July 2024.
[31] ibid.

Delimitations

This master's thesis studies football's legal response to racism and, more specifically, examines the functioning of the newest initiative in this regard by the RBFA, i.e. the NCDR. A few limitations are made in this study and thus should be mentioned.

First, the study will only focus on a specific part of the legal response to racism, that is the NCDR established by the RBFA. This means that other legal instruments and institutions will not be dealt with, for example, criminal courts or mediation proceedings. The only exception to this is when these are used by the Chamber in its judgment, as is for example the case with some decisions of the Court of Arbitration for Sport (CAS) or the Belgian Court of Arbitration for sport (BCAS).

The next limitation is of a temporal nature. This research will use primary sources, i.e. judgments, from the 2022-2023 season, so between September 2022 and June 2023. The reason for this is that this is the most recently completed season of judgments. As this offers over 150 decisions, there is no need to include the NCDR's rulings from its first season, also given the required extent of this research.

Finally, only cases dealing with racism will be studied, thus neglecting the other forms of discrimination that, sadly, also happen on football pitches. This is justified by the fact that these other discrimination grounds only account for less than 30 cases in total, with the most common ground being sexuality in 13 cases. This number of cases does not allow proper comparative research, as the sample size is too limited.

Research questions[32]

After this introduction into the issue, the following central research question is apt:

> "Is the handling of cases of racism in Belgian football by the NCDR in compliance with the current human rights framework and good practices, and if not, how can the NCDR improve its functioning?"

This is an evaluative-recommendatory research question. As mentioned before, in order to formulate an answer to this question, it will be split into multiple sub-research questions, which will contribute to answering the central research question.

The first sub-research question is a descriptive one, that will outline the current human rights framework in this topic. This is an important step, since the current practice of the NCDR will be reviewed in light of this.

> "Which national and international documents contain good practices and offer guidelines on the fighting of racism in football?"

The second sub-research question is also a descriptive question, aiming to get a better understanding of the NCDR and the way it deals with cases of racism in football. Since this institution is the main focus of this study, it is important to get a good inside in its functioning.

> "How does the NCDR treat racism cases?"

Thirdly, there will be an evaluative research question, which assesses the practices of the NCDR in light of the currently applicable human rights framework, bringing together sub-questions 1 and 2.

---

[32] This section is based on Lina Kestemont, *Handbook on Legal Methodology: From Objective to Method* (1st edn, Intersentia 2018).

> "Is the practice of the NCDR in compliance with the rights and duties flowing from the current human rights framework?"

The final sub-question will be recommendatory and depends largely on the answers found in the previous sub-question. Even more so, it can only be answered if the answer to sub-question 3 is negative.

> "How can the NCDR become more in line with the applicable human rights standard?"

Methodology[33]

Having formulated the relevant research questions, this chapter will describe how an answer will be found to each of them. This research will start by analyzing multiple sources, with case law from the NCDR being the most important one. Apart from this, also other legal sources, like primary law and writings from legal scholars will be used.

The central research question entails in the first place an evaluation of the current NCDR practice in light of the human rights framework. If this evaluation shows that there is room for improvement, some recommendations will be made. The goal of this research after all is to offer some suggestions to improve the NCDR's practice.

The first sub-question is descriptive and will be answered through a literature study researching the relevant legal norms that influence the human rights situation of the topic, like human rights treaties and national norms. Both general sources and sources specifically designed for

[33] This section is based on ibid.

sports and football will be examined. This allows for a comparison to be made between both frameworks.

Answering the second sub-question will be done through an empirical study, i.e. a caselaw analysis of all the racism cases the NCDR processed in the season of 2022-2023. The obvious first step is filtering the relevant cases from the cases regarding all forms of discrimination. Hereafter, I will analyze what legal provisions were used, what the main arguments of the parties were, what the reasoning of the court was, and which sentence was passed. This will be done by reading every case and schematizing the relevant elements. The outcome of this analysis will be used to paint a picture of the NCDR's case law.

Next, the third sub-question, evaluating the practice of the NCDR, will make use of evaluation criteria. These criteria will be distilled from the first sub-question and will be formulated by the relevant and applicable human rights sources.

Finally, the last sub-question will be answered if the answer to the third sub-question shows that there is room for improvement. If so, concrete recommendations will be made in order to fulfill this potential. These recommendations will be based on the shortcomings seen from a human rights perspective and will also be inspired by the good practices found in the first sub-question.

Sources regarding racist speech in football

OVERVIEW – In this first chapter, a contextual overview will be given concerning national, international, and sport-specific approaches to racist speech. First, there will be a short introduction to the term “racist speech”. Then, the different sources that have an impact on the treatment of racist speech will be listed. Third, the content of these documents will be discussed in light of this research project and an inspirational framework will be distilled from them to assess the workings of the NCDR. Lastly, a conclusion will follow, containing an answer to the first descriptive sub-research question.

Racist speech

IMPORTANCE OF FREE SPEECH – Freedom of speech is widely considered one of the most fundamental rights and a prerequisite for a well-functioning democratic society.[34] In general, three main justifications are mentioned in the literature.[35] The first argument is that this freedom is a

---

[34] Eric Barendt, *Freedom of Speech* (2nd edn, Oxford University Press 2007) 1; Amal Clooney, ‘Introduction’ in Amal Clooney and David Neuberger (eds), *Freedom of speech in international law* (1st edn, Oxford University Press 2024) 2; Dario Milo, *Defamation and Freedom of Speech* (Oxford University Press 2008) 1; William Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press) 450–451.

[35] Barendt (n 34) 6–21; Koen Lemmens and Jogchum Vrielink, ‘“De censuur kan nooit worden ingevoerd”: vrijheid van meningsuiting en hate speech als uitdagingen voor het EHRM en de Belgische rechtspraktijk’ in SWE Rutten, Elles Ramakers and Mariken Lenaerts (eds), *Recht in een multiculturele samenleving* (Intersentia 2018) 173–175.

basic requirement for the possibility of self-expression and personal development. Second, freedom of speech contributes to truth-finding and knowledge acquisition. The final argument that is traditionally mentioned is its importance for democracy, both for the general population and for politicians. Another proof of its importance is the inclusion of freedom of speech in many treaties and other human rights sources. To give a few examples, it is listed in the European Convention on Human Rights (ECHR)[36], the International Covenant on Civil and Political Rights (ICCPR)[37], the Charter of Fundamental Rights of the EU (CFREU),[38] and the Belgian Constitution[39]. In other words, such an important freedom must enjoy a high level of protection and some caution when it is interfered with.

AND YET … – Although the previous doesn't necessarily give this impression, it is common for the freedom of speech to get limited.[40] For example, the ICCPR allows restrictions if necessary "*for respect of the rights or reputations of others*".[41] In a similar fashion, the ECHR also contains a list of instances where the freedom of speech can be limited.[42] Also, art. 17 ECHR on the abuse of rights can be applied to cases of clear hate speech, thus limiting freedom of speech.[43] It goes to show that in specific situations, limits are necessary, even for such a crucial freedom.

---

[36] Art. 10 ECHR.
[37] Art. 19 ICCPR.
[38] Art. 11 CFREU.
[39] Art. 19 Belgian Constitution.
[40] Barendt (n 34) 117; Schabas (n 34) 467–480.
[41] Art. 19, 3, a ICCPR.
[42] Art. 10, 2 ECHR.
[43] Lemmens and Vrielink (n 35) 183–187; Schabas (n 34) 478.

A DEFINITION FOR HATE SPEECH – Defining hate speech deserves a thesis of its own, as it is a term that can cover many situations and can be interpreted in several ways. Looking at it from a legal point of view, it can encompass expressions that are clearly not protected by the freedom of speech, expressions where the presence of any protection would depend on the context, and expressions that are protected, although morally reprehensible.[44] An example of the first category is someone inciting others to commit genocide, which is prohibited by the Genocide Convention.[45] Regarding the last category, it must be reiterated that freedom of speech also protects expressions that "*offend, shock, or disturb*", as mentioned by the European Court of Human Rights (ECtHR).[46] It is for situations like this, that organizations, ranging from universities to sports associations or regular workplaces have provisions that forbid this type of "legal" hate speech for their students, members or employees.

RACISM SPECIFICALLY – Racist speech is clearly a form of hate speech, with racist slurs being a classic example. However, as mentioned before, these slurs are often not punished by law and are protected by freedom of speech, unless some conditions are fulfilled, like inciting violence.[47] The question of whether these expressions deserve to be protected, falls outside of the scope of this thesis. Nevertheless, they are often penalized by organizations, as racist slurs have become more and more common.

---

[44] Tarlach McGonagle, 'The Council of Europe against Online Hate Speech: Conundrums and Challenges' (2013) Expert paper for the Council of Europe 4.
[45] Art. III, c Genocide Convention.
[46] *Handyside v the United Kingdom* [1976] European Court of Human Rights Application no. 5493/72 [49].
[47] See the following section, starting on page 14.

CONCLUSION – The importance of free speech is uncontested, but it doesn't take away the need to set limits in certain situations. An area in which this can be the case is hate speech. However, some types of hate speech remain under the legal radar for several reasons and are still protected by the freedom of speech, with racist speech being an important example for this research. For these situations, organizations have taken matters into their own hands, by adopting regulations and penalizing this "legal" hate speech.

Dealing with racist speech…

OVERVIEW – Having introduced the issue of hate speech and more specifically racist speech, this section zooms in on the current ways in which racist speech is dealt with. It will start with an overview of the Belgian national system, followed by some international mechanisms and documents that are in place. Finally, the provisions regarding racist speech within the football eco-system itself will be discussed.

… in Belgium

AN INTERNATIONAL PUSH – Belgian anti-racism developments started after it ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1975, accompanied by a declaration restricting the application of Article 4 in favor of the freedom of expression.[48] A few years later, in 1981, Belgium finally

[48] Stijn Deklerck and others, 'Limits of Human Rights Protection from the Perspective of Legal Anthropology' in Bert Keirsbilck, Wouter Devroe and Erik Claes (eds), *Facing the Limits of the Law* (Springer Berlin Heidelberg 2009) 378.

implemented its conventional obligations by enacting the Antiracism Act.[49] This law, updated in 2007, combats discrimination based on nationality, race, skin color, origin, or ethnicity.[50]

EARLY STAGES OF THE ANTIRACISM ACT – At the beginning, the Act was a criminal law, that prohibited several discriminatory acts and introduced certain restrictions on the freedom of speech.[51] The criminal acts concerning racist speech listed in the act were inciting racial hatred, violence and discrimination, and demonstrating an intention to undertake these acts, which were both punished with relatively low sanctions.[52]

EVOLUTION – However, in the eighties and nineties, the rise of extreme right-wing parties caused a shift towards a different approach.[53] One side of this new approach was the enactment of new legislation, for example, the Holocaust Denial Act[54] in 1995.[55] On the other side, amendments were made to the original legislation, broadening the scope, introducing new charges, and reinforcing and adding sanctions.[56] Interesting to note is that, while other antidiscrimination laws where decriminalized and shifted more to civil law, the Antiracism Act was given more broader restrictions to the freedom of speech.[57] To summarize, the

---

[49] Antiracism Act 1981.
[50] Art. 4, 4° ibid.
[51] Deklerck and others (n 48) 379.
[52] ibid.
[53] ibid 380; Marie Spinoy and Jogchum Vrielink, 'Straffe discriminatiebestrijding? De rol van het strafrecht bij daden van discriminatie' in Julie Ringelheim and others (eds), *Redynamiser la lutte contre la discrimination* (Larcier/Intersentia 2023) 4.
[54] Holocaust Denial Act 1995.
[55] Deklerck and others (n 48) 380.
[56] Spinoy and Vrielink (n 53) 5; Jogchum Vrielink, *Van Haat Gesproken? Een Rechtsantropologisch Onderzoek Naar de Bestrijding van Rasgerelateerde Uitingsdelicten in België* (Maklu 2010) 108.
[57] Deklerck and others (n 48) 381.

development of the Antiracism Act is characterized by increased criminalization, with a primary emphasis on racist speech.[58]

PENALIZING HATE SPEECH – Currently, the criminal provisions in the Antiracism Act that are relevant for this research are the prohibition of incitement[59] and the prohibition of dissemination[60]. For both situations to be punishable, the law requires the expressions to be made publicly, since otherwise they cannot incite anyone to act or disseminate ideas. According to both parliamentary documents and case law of the Belgian Constitutional Court, the crime to incite requires a specific intent coming from the actor, so he knowingly incites others to act upon his words.[61] This specific intent is also required for the crime to disseminate, which must spread widely the idea of inferiority.[62] The obvious overlap between these two crimes, which are also often treated together in court cases, has at least burred the border between both, and according to some even caused the disappearance of the crime to disseminate as an autonomous crime.[63]

ROLE OF THE VICTIM – An element of the Antiracism Act that is often overlooked, is the possibility it introduces to complain compensation for moral and pecuniary damages.[64] This way, it also introduces a

[58] ibid 382.
[59] Art. 20 Antiracism Act.
[60] Art. 21 ibid.
[61] [2009] Belgian Constitutional Court n° 17/2009, B.67.2; [2004] Belgian Constitutional Court n° 157/2004, B.49; Proposal to amend the Antiracism Act of 1981 [n° 51-2720/1] 61; Lemmens and Vrielink (n 35) 151.
[62] (n 61), B.74; Lemmens and Vrielink (n 35) 155.
[63] Dajo De Prins, 'Het Grondwettelijk Hof en de federale discriminatiewetten' in Christian Bayart, Stefan Sottiaux and Sebastien Van Drooghenbroeck (eds), *Actualités du droit de la lutte contre la discrimination: Actuele topics discriminatierecht* (die Keure 2010) 32.
[64] Art. 16 Antiracism Act.

victim's perspective, acknowledging that a racist insult can have a serious mental impact on the victim.

CONCLUSION – In order for racist speech to be punished in Belgium under the Antiracism Act, certain conditions need to be fulfilled. The two most important ones are that the hate speech must occur in public, i.e. in the proximity of an audience, and that the speaker must have a special racial intent. Apart from this, the general tendency has been one of increased criminalization, steering away from civil law. Finally, in the Antiracism Act, there is also attention to the victim's perspective and the mental damage that occurs as a result of racist speech.

… internationally

SEVERAL SOURCES – Multiple international documents aim to combat hate speech. In this section, an overview will be given of the most important ones for this research's objective.

ICERD – As the most far-reaching initiative in this list, the ICERD requires member states to install criminal laws to punish certain expressions, while other treaties typically demand expressions to be only prohibited by law.[65] In 2013, the Committee on the Elimination of Racial Discrimination (CERD) published a General Recommendation on the topic of racist hate speech.[66] Two elements of this document deserve to be highlighted. First, the Committee highlights that some contextual factors should be taken into account when assessing dissemination and incitement, among which the reach of the speech is important, taking

[65] Art. 4 ICERD; McGonagle (n 44) 6.
[66] CERD, 'General Recommendation N° 35 on Combating Racist Hate Speech'.

into account the nature of the audience.[67] Unsurprisingly, this and other conditions for inciting and inseminating, are in line with the above-mentioned Antiracism Act since it is the Belgian transposition of this treaty. As a final remark, the CERD seems to lean more towards alternative measures, like educational efforts, to deal with racist speech and complement the traditional criminal law approach.[68]

ECHR – Establishing a human rights framework in a European context would not be complete without paying attention to the most influential current European human rights treaty, the ECHR. The departure point for the ECtHR in cases of racist speech is the freedom of speech set out in Art. 10 of the Convention. What's immediately interesting is that Art. 10 only offers the possibility but doesn't put the obligation on its member states to restrict the freedom of expression in favor of hate speech.[69] As mentioned before, these cases are treated both under Art. 10 itself, as well as the abuse of rights article, Art. 17.[70]

THE ECHR APPLIED[71] – To begin with, the ECtHR considers tolerance and respect for human dignity and equality the foundations of a democratic society, making them a possible reason to restrict freedom of expression in cases of hate speech.[72] To then assess whether a certain expression will or will not benefit from the protection under art. 10, the

[67] ibid 5, para 15.
[68] ibid 8 and 9; McGonagle (n 44) 6.
[69] Jacob Mchangama and Natalie Alkiviadou, 'Hate Speech and the European Court of Human Rights: Whatever Happened to the Right to Offend, Shock or Disturb?' (2021) 21 Human Rights Law Review 1008, 1020.
[70] See page 12.
[71] The cases cited in this paragraph and the next paragraph were found in Registry of the European Court of Human Rights, 'Key Theme - Article 10 Hate Speech' (2024).
[72] *Savva Terentyev v Russia* [2018] European Court of Human Rights Application no. 10692/09 [65].

Court looks both at the expression's nature[73] and context[74]. In its own words, the Court describes its approach as "*highly context-specific*".[75] Regarding the use of Art. 17 ECHR on the abuse of rights, these hate speech cases will only fall within its scope on an exceptional basis and in very extreme cases, namely when the aim of the expression is clearly contrary to the values set out in the ECHR.[76] Another article used by the ECtHR is Art. 8 ECHR on the right to private life, since comments reinforcing negative stereotypes of a certain group can, when reaching a certain level, impact someone's feelings of self-confidence and -worth, thereby affecting his private life.[77]

ECTHR'S CONTEXTUAL APPROACH – Coming back to the Court's context-specific approach when deciding if certain expressions fall under the freedom of expression, several elements are interesting in light of this research. First, the ECtHR looks at the content of the expression itself. While offensive language may be deemed incompatible with the freedom of expression, the use of "vulgar phrases" in and of itself is not decisive to fall outside of the freedom's protection.[78] Second, the intent of the speaker is important in the court's evaluation. More specifically, the Court will more likely find no violation of the freedom of expression if the comments contain a clear incitement to hate, discrimination, or

---

[73] *Perinçek v Switzerland* [2015] European Court of Human Rights Application no. 27510/08 [229].
[74] *Savva Terentyev v. Russia* (n 72) para 66.
[75] *Mariya Alekhina and others v Russia* [2018] European Court of Human Rights Application no. 38004/12 [221].
[76] *Perinçek v. Switzerland* (n 73) para 114.
[77] *Aksu v Turkey* [2012] European Court of Human Rights Application nos. 4149/04 and 41029/4 [58].
[78] *Savva Terentyev v. Russia* (n 72) para 68.

violence.[79] Lastly, the Court will consider the likelihood of the harm caused by the expression. This can be affected by the social background against which statements are made[80], by the form and the amount of publicity of the expression[81], by the identity of the speaker[82], or by the presence and size of an audience[83].

FCNM – Another document from the Council of Europe is the Framework Convention for the Protection of National Minorities (FCNM). It contains a provision obliging the member states to "*encourage a spirit of tolerance*" and to "*protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic identity*".[84] In this way, it stimulates its signatories to protect people from hate speech. However, since Belgium only signed this treaty and did not ratify it, it will not be discussed further.

RECOMMENDATION N° 15 – The last initiative from the Council of Europe that will be examined is a recommendation from the European Commission against Racism and Intolerance.[85] This recommendation on combating hate speech contains several guidelines, like providing support for victims of hate speech.[86] Also, member states should support self-regulation by private institutions, with sports associations

---

[79] *Belkacem v Belgium* [2017] European Court of Human Rights Application no. 34367/14 [33]; *Féret v Belgium* [2009] European Court of Human Rights Application no. 15615/07 [70].
[80] *Perinçek v. Switzerland* (n 73) para 205.
[81] *Lilliendahl v Iceland* [2020] European Court of Human Rights Application no. 29297/18 [39].
[82] *Baldassi and others v France* [2020] European Court of Human Rights Application no. 15271/16 [70].
[83] *Vejdeland and others v Sweden* [2020] European Court of Human Rights Application no. 1813/07 [56].
[84] Art. 6, Framework Convention for the Protection of National Minorities 1995.
[85] ECRI, 'General Policy Recommendation N°15 on Combating Hate Speech'.
[86] Recommendation 5, ibid.

explicitly named as an example.[87] More specifically, they should be encouraged to adopt a code of conduct containing anti-hate speech provisions and to establish a complaint mechanism.[88] Considering hate speech more generally, there should be a clear legal regime establishing responsibility for hate speech, when it is intended or can be expected to incite violence, intimidation, discrimination, or hostility, while at the same time respecting the freedom of speech.[89] Finally, member states should also take action in these cases of hate speech in a public context through criminal law.[90]

HATE SPEECH IN THE EU – The final document of this section is coming from the European Union, which is emerging as another human rights protection institution in Europe. Its hate speech regulation is laid down in a Framework Decision from the Council.[91] At the basis is the obligation for member states to make punishable publicly inciting to violence or hatred for reasons of race, color, or ethnic origin.[92] By punishable, the Council is referring to "*effective, proportionate and dissuasive criminal penalties*".[93] On the other hand, the Framework Decision explicitly mentions that it does not affect the obligation to respect freedom of expression, nor that it requires member states to act in contradiction with it.[94] Apart from this document, the Commission recently adopted a Communication aiming to include hate speech into the list of crimes

[87] Recommendation 6, ibid.
[88] Recommendation 6, a and f, ibid.
[89] Recommendation 8, ibid.
[90] Recommendation 10, ibid.
[91] Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law 2008.
[92] Art. 1, 1a ibid.
[93] Art. 3, 1 ibid.
[94] Art. 7, ibid.

listed in Art. 83 of the Treaty on the Functioning of the EU.[95] However, this initiative has not yet been acted upon by the European Parliament and the Council.

… in football and sports in general

OVERVIEW – After having discussed the Belgian and international sources regarding hate speech, this final section will examine the initiatives specifically drafted for the issue of racism in football. To start, two initiatives from the Council of Europe will be reviewed. Afterward, the regulations from football associations will be discussed. Finally, two documents from the Belgian legal system will be addressed.

THE REVISED EUROPEAN SPORTS CHARTER – The authoritative document guiding member states of the Council of Europe in their national sports policies is the European Sports Charter, revised in 2021.[96] Among the aims of the Charter are ensuring that human rights are protected in sports, that ethical conduct and behavior are strengthened through sports, and that the integrity of sports organizations is safeguarded.[97] Interestingly, the Charter considers the role of public authorities in sports policy mainly as complementary to the actions taken by sports organizations, which are the government's main partners.[98] Coming back to the 'values-based sport' approach, all stakeholders must respect

[95] Communication from the Commission to the European parliament and the Council - A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime 2021 [COM(2021) 777].
[96] Recommendation of the Committee of Ministers to member States on the Revised European Sports Charter 2021 [CM/Rec(2021)5].
[97] Art. 1, para 2 ibid. This also referred to by the Council of Ministers as protecting and developing 'values-based sport'.
[98] Art. 3 and 4 ibid.

human rights and fundamental freedoms in their activities.[99] More specifically, this should include a policy of zero tolerance, among many other elements, a for all forms of violence and discrimination.[100] Finally, the European Sports Charter is accompanied by a complementary code of ethics.[101] Relevant to this research is the described responsibility for sports organizations to publish clear guidelines on ethical issues and to make sure unethical behavior is appropriately sanctioned.[102]

RECOMMENDATION N° 12 – In addition to the earlier mentioned Recommendation N°15 on hate speech, the ECRI also published a recommendation on the issue of racism in sports.[103] When contextualizing the recommendation, the Commission points out the rise in racist expressions at sporting events, in particular in football, and that initiatives for combating racism are often focused on fan behavior and hooliganism, while racist acts are also committed by athletes and staff members.[104] First, there should be specific legislation tackling racism in sports, including a clear definition of racism and a prohibition of specific forms of racism.[105] The Commission clarifies that the law should penalize public incitement to violence, hatred or discrimination, and public insults.[106] Also, remedies should be available for victims of racism, and sports clubs and federations should be able to be held responsible for racist

---

[99] Art. 6, para 1 ibid.
[100] Art. 6, para 2d ibid.
[101] Recommendation of the Committee of Ministers to member States on the revised Code of Sports Ethics 2010 [CM/Rec(2010)9].
[102] Objective 10.1, ibid.
[103] ECRI, 'General Policy Recommendation N°12' (n 23).
[104] ECRI, 'Explanatory Memorandum to General Policy Recommendation N°12 on Combating Racism and Racial Discrimination in the Field of Sport' 4, nos. 30 and 31.
[105] Para 5, a and b ECRI, 'General Policy Recommendation N°12' (n 23).
[106] ECRI, 'Explanatory Memorandum to General Policy Recommendation N°12' (n 104) 14, no. 33.

acts committed during their events.[107] In this matter, the ECRI emphasizes that these effective remedies are of central significance and that sports organizations and clubs have a special responsibility to keep racism out of sports.[108] Furthermore, sports federations and clubs should be invited to recognize racism as an important issue and demonstrate their commitment to combat it, establish internal mechanisms to deal with cases of racism, and adopt disciplinary and awareness-raising measures.[109] Examples of these disciplinary measures are expelling spectators from stadiums, imposing fines, and ordering games to be played behind closed doors.[110] Finally, also athletes and coaches should be reminded to abstain from racist behavior and report it if it does occur.[111]

FIFA – At the top of the world's football pyramid is FIFA, the organization comprising all national football associations and the six regional confederations. As already pointed out, these big organizations tend to have some type of moral code, also containing provisions on racist speech.[112] In FIFA's Disciplinary Code, this can be found in Art. 15. This article starts by stating that "*[a]ny person who offends the dignity or integrity of [...] a person or group of people through contemptuous, discriminatory or derogatory words or actions on account of race, skin colour, ethnicity, nationality [...] shall be sanctioned with a suspension*

---

[107] Para 5, f and h ECRI, 'General Policy Recommendation N°12' (n 23).
[108] ECRI, 'Explanatory Memorandum to General Policy Recommendation N°12' (n 104) 16, nos. 37–38.
[109] Para 10, a, b and c ECRI, 'General Policy Recommendation N°12' (n 23).
[110] ECRI, 'Explanatory Memorandum to General Policy Recommendation N°12' (n 104) 19, no. 61.
[111] Para 11, a and b ECRI, 'General Policy Recommendation N°12' (n 23).
[112] See page 13.

[...] or any other appropriate disciplinary measure".[113] It also stipulates that clubs and associations face disciplinary measures if their supporters engage in this behavior, like fines or games without spectators.[114] Furthermore, it encourages associations to develop action plans to deal with racist speech, including educational activities like communication campaigns.[115] Finally, it contains some rights for victims, like sending a victim statement or launching an appeal against the judiciary body that treats his complaint.[116]

UEFA – One of FIFA's regional confederations, and also the one that the RBFA is affiliated with, is UEFA. As expected, its so-called disciplinary regulations contain a very similar antiracism provision. So, all clubs, their members, and their players face a sanction if they insult "*the human dignity of a person or group of persons on whatever grounds, including skin colour, race, [...]*".[117] Furthermore, it also has rules on the club's responsibility for their supporters[118] and the possibility to impose alternative measures[119].

RBFA – Following the descent down the football pyramid, we arrive at the regulations of the RBFA. In a similar way to both previous documents, this code deals with racist speech coming from its members. These regulations will be examined more in-depth later in this thesis

---

[113] Art. 15, para 1 FIFA Disciplinary Code 2023.
[114] Art. 15, para 2 ibid.
[115] Art. 15, para 3 ibid.
[116] Art. 15, para 4 ibid.
[117] Art. 14, para 1 UEFA Disciplinary Regulations 2022.
[118] Art. 14, para 2 ibid.
[119] Art. 14, para 5 ibid.

when discussing the provisions that the NCDR directly relies on in its judgments.[120]

FOOTBALL ACT – Lastly, two normative documents need to be mentioned as initiatives tailored to the needs of the issue of racism in football. The first one is the so-called Football Act from 1998, which poses obligations on organizers of football games regarding the safety of spectators and goods, including preventing misbehavior from the fans.[121] One of its provisions sanctions all those who "*incite to assault and battery, hate or anger vis-à-vis one or multiple persons*".[122] An important caveat is that this provision only applies if one of the clubs present plays in the first or second national division.[123] It also has similar requirements as the Antiracism Act[124], with a first example being the public nature of the speech in order to influence the behavior of others.[125] However, as for the required intent, there are different interpretations among Belgian's highest courts.[126] While the Constitutional Court follows its previous case law concerning the Antiracism Act by requiring the same specific intent[127], the highest Administrative Court sees no reason why this specific intent would be required.

CIRCULAR OOP 40 – The final football-oriented measure is the circular OOP 40, which contains guidelines regarding discriminating and racist

[120] See page 39 and following pages.
[121] Art. 3 Act concerning safety at football games 1998.
[122] Art. 23 ibid.
[123] Art. 19 ibid.
[124] Verwijzen naar eerdere passage
[125] The Belgian Constitutional Court also interpreted this inciting-requirement in line with the Antiracism Act, see [2010] Belgian Constitutional Court n° 140/2010, B.7.1.
[126] Paul Borghs, 'Aanzetten tot discriminatie vereist niet altijd bijzonder opzet' (2019) 413 Nieuw Juridisch Weekblad 899, 900.
[127] (n 125), B.7.3.

expressions and chants during football games and addresses clubs, players, staff members, spectators, and more.[128] It mentions the clubs' responsibility for their employees, their obligation to raise awareness amongst their fans, and the importance of the role of the RBFA.[129] More specifically, it has specific guidelines for clubs, like banning racist symbols and banners, including appropriate provisions in their regulations, and communicating the club's anti-racism policy.[130] As for the RBFA, the circular envisages a supporting role to help the clubs in the execution of their anti-racism policies.[131] Finally, an interesting part of the document for this research is the establishment of a threshold for hurtful, racist, and discriminating expressions, accompanied by examples.[132] However, this will be covered when examining the provisions that are directly used by the NCDR, since it is mentioned in almost all its judgments.[133]

CONCLUSION – These sources are clearly different from the earlier examined national and international ones, not specifically drafted with football in mind. The biggest difference, looking at it from a racist speech point of view, is the different starting point and emphasis that lies at the basis. Instruments coming from a more general human rights background start from the idea of freedom of speech, which can only be limited in certain situations and under specific conditions. This section showed another way of thinking, starting from an a priori

[128] Circular OOP40 concerning guidelines on hurtful, racist and discriminating expressions and chants as a result of football games 2007 ll 2 and 3.
[129] ibid 4, 1 and 5.
[130] ibid 6, a, 2 and 4.
[131] ibid 6, f.
[132] ibid 5.
[133] See page 43.

prohibition of certain expressions, focusing less on ensuring freedom of speech. These different approaches will be explored further in the next chapter when constructing a framework for dealing with racist speech.

An overview of the racist speech framework

OVERVIEW – In this section, a conclusion will be drawn from all the foregoing in this chapter. In the first place, the national and international initiatives to combat hate speech outside of sports and football will be put together. The same will be done for the sports- and football-oriented initiatives afterward. Then, the main differences between the two regimes will be addressed and explained.

The "general" framework

INTENT – One of the central elements in hate speech provisions is the focus on the speaker's intent.[134] In other words, a racist intent has to be proven to be found guilty of committing hate speech. As seen in the previous sections, this intent can vary in substance, like requiring a special intent or a more general one, but in any case, some form of intent is required. This makes it so that comments that may be perceived as racist, will not be deemed hate speech in some cases, for example, because the speaker was ignorant of the connotation of the term used. The question of whether he should have known it thus becomes irrelevant.

CONTEXT – Another recurring element is the importance of the context in which the comment is made. One of the clearest examples of this is the context-specific approach of the Strasbourg Court.[135] In court cases, context can be both an aggravating and a mitigating factor, with a tense social background being an example of the first one. As for context as a mitigating factor, this can occur when the racist comment happened

[134] See for example page 16 on the requirement of intent in the Belgian legal system.
[135] The contextual approach of the ECtHR was discussed on pages 19 and 20.

out of a sudden emotion, or as a reaction to another comment. This way, this can come down again to the absence of racist intent, as discussed in the previous paragraph.

HARM – Next, the main aim of tackling hate speech is to prevent harm, physical or emotional, that can arise as a consequence of the statements. It then comes as no surprise that the likelihood of this harm actually occurring also plays a role when determining if a certain comment must be regarded as hate speech and thus must be prohibited.[136] This has again some links with the two previous elements, the intent of the speaker and the context of the comments. Consequently, someone holding a speech in front of a big audience with a clear racist intent will have a way higher chance of being considered hate speech than a racist comment made as a distasteful joke in a friend group. This will especially be the case if there is an explicit call to action and a high likelihood that people from the audience will act upon it.

FREEDOM OF SPEECH – The common thread in all general human rights instruments is, unsurprisingly, the balancing exercise with the freedom of speech. Moreover, this proportionality test starts with a desire to safeguard freedom of speech as much as possible. Addressing hate speech then becomes a subordinate question, with preserving free speech as an ever-present thought running in the back of the head. It is thanks to this balance, that the previously addressed elements become so important since they can justify or reject an interference with the freedom of speech. The following quote from the ECtHR is a nicely put synthesis

[136] This is also illustrated by the ECtHR's approach, see pages 18-20.

that sums up this section and the attitude of the general human rights framework regarding hate speech:

> The Court stresses that not every remark which may be perceived as offensive or insulting by particular individuals or their groups justifies a criminal conviction […]. Whilst such sentiments are understandable, they alone cannot set the limits of freedom of expression. It is only by a careful examination of the context in which the offending, insulting or aggressive words appear that one can draw a meaningful distinction between shocking and offensive language which is protected by Article 10 of the Convention and that which forfeits its right to tolerance in a democratic society.[137]

The "sports and football" framework

A BEHAVIORAL GUIDANCE OBJECTIVE – The objective of racist speech regulation in sports is clear: keep out every racist comment. By doing so, these regulations refrain from a "rights approach" and lean more towards influencing the behavior of its members. For example, this is showcased by the values-based sports approach mentioned in the European Sports Charter. The issue is looked at more from an ethical point of view as well as a way to impart norms and values to live together in a society, as opposed to a more self-centered approach in which a lot of emphasis is put on personal autonomy and less attention is going to the effect of exercising one's right.

VICTIM-ORIENTED – Although it was argued in the last paragraph that these documents don't take on a "rights approach", this must be nuanced since these regulations were drafted in the first place from a concern about the rights of the victims of these comments, like their right to human dignity and non-discrimination. By contrast, the speaker's

[137] *Savva Terentyev v. Russia* (n 72) para 69.

rights are given much less attention, and there is not much weight put on the freedom of speech.

FOCUS ON CONTENT – Another clear pattern coming back in the different sources is the importance of what is exactly said, making questions of how, when, and why less relevant.[138] This way, an ignorant comment that was not meant to cause harm can be deemed to be a violation of the regulations, purely based on the content of the remark. Consequently, this means less work for judges who rely on these provisions, since they don't have to investigate other factors, like contextual ones, in depth.

DESIGNED FOR A SPORTS SITUATION – Finally and obviously, these sources are designed for specific circumstances, namely sports in general or even football-specific situations. An example of this football-specific approach is the objective responsibility of clubs for racist comments made by their fans. The cause for this legal regime can be found in the special role sports can play in society, which has its unique benefits but also challenges. Regulating hate speech is a way to contribute to both the fairness principle and the aim to provide self-fulfillment through sports, as mentioned in the Code of Sports Ethics:

> The Code of Sports Ethics has solid historical and philosophical foundations. It has two underlying principles: fairness and sport as an arena for individual self-fulfilment. Fairness refers to practising a sport while faithfully respecting the rules of competition, and to providing everyone with an equal chance of taking part in sport. Sport should be practised according to fair play, be free of discrimination and be an activity for all. Moreover, sport should be an arena for self-fulfilment in which everyone is given the opportunity for self-development and self-control according to their

[138] See for example the FIFA and UEFA regulations, discussed on pages 24 and 25.

> potential and interests. In this way, sport can become an important ethical and cultural factor in society.[139]

Different situations require different solutions

OVERVIEW – The final section of this chapter on the legal sources regarding racist speech will consist of three parts. In the first part, the differences between the general framework and the regulations for sports and football specifically will be discussed. Second, these differences will be put in a broader context, explaining why a different regime is needed for situations in sports and football. Finally, a conclusion will be drawn for this chapter.

Differences

"I DIDN'T MEAN IT" – Not all racist comments are an accurate representation of how the speaker feels. For example, he may not be aware of what the word means or that the word is not acceptable anymore, or the comment can be provoked by a preceding event and be made on impulse. This is why in general hate speech legislation, the intent of the speaker is examined and needs to be proven racist. After all, how can someone commit an offense of racist speech if he is not racist? The sports and football framework seems to follow a different logic. Accordingly, the racist element is not found in the intent of the speaker, but rather in the words that he used. Thereby, legally speaking, the speaker's intent loses almost all its relevance.

[139] Objective 1, Recommendation of the Committee of Ministers to member States on the revised Code of Sports Ethics (n 101).

“YOU HAVE TO PUT IT IN ITS CONTEXT” – Related to the question of intent, is the broader concept of context. No expression happens in a vacuum or appears out of thin air. There is always a speaker, an addressee, a message, and a plethora of elements surrounding them. Racist comments can be made in a confidential setting or public, among friends or strangers, and jokingly or in all seriousness. Again, these details matter a lot in general cases of racist speech and can be the difference between a conviction and an acquittal. Similar to the lack of interest in the speaker’s intent, the context is also disregarded to a large extent in the sports and football framework. If racist wording is used, the context will not be of any use in the speaker’s defense. If anything, context can only be an aggravating factor, for example, when the comment is made in the presence of children.

“MY COMMENTS CAUSED NO HARM” – The objective of general provisions on racist speech is to protect society from possible harm. In other words, the main reason to intervene is to prevent people from getting hurt by others who are influenced by the speaker’s comments. A classic example is the case of some sort of rally in which some leader stirs up already present feelings of racism among like-minded spirits, who then act upon their thoughts. Seen from another perspective, this also means that the absence of the possibility of such harm occurring can be an argument for not considering something as hate speech or for providing a milder sentence. Like the two previous elements, the role this plays in hate speech regulations in sports and football is way more limited.

“WHAT ABOUT MY FREEDOM OF SPEECH?” – Following the previous paragraph, racist speech can, to say the very least, offend someone.

However, in principle, offending someone is not forbidden in everyday life. In the famous wordings of the Strasbourg Court, everybody must enjoy the freedom of speech, during which they can choose to use words that "*offend, shock, or disturb*".[140] This freedom of speech, which is one of the foundations of our society, serves as the starting point when drafting racist speech legislation. In doing so, every proposed restriction will be seen as a way to restrict this crucial freedom and should thus be extremely well motivated. Even if it starts from the most noble intentions, like protecting people from being discriminated, it must withstand this proportionality test. While these sources start from a concern about the preservation of the freedom of speech, the starting point of racist speech regulation in sports and football is a different one. This is because of the important role of sports in society, its possible impact on people's lives, and the difference in the relationship between a government and its citizens, and a sports organization and its members. It is not a case of undermining this important freedom, but more so prioritizing other preoccupations. By prioritizing people not getting hurt and keeping the sports environment clean of racism, including any possible ambiguities, a different approach can be justified, including for example restrictions purely based on content. So, while joining a sports organization and accepting its regulations containing a racist speech clause, the member does not sign away his freedom of speech but rather accepts a differently-orientated proportionality test.

[140] *Handyside v. the United Kingdom* (n 46) para 49.

Why a different framework is needed

OVERVIEW – From the above, the differences in regime and also the cause for these differences are already mentioned. However, to keep this thesis as connected with "real-life situations" as possible, two examples will be discussed that point out exactly why and when this other solution is needed.

SITUATION 1 – As a first example, let's take a regularly occurring situation in football, a tackle that hits the opposing player instead of hitting the ball, thus constituting a fault. This action can cause frustration and provoke a reaction, especially if it is not noticed by the referee, for example, because the player is hurt or he sees a promising attack dismantled. Let's say the affected player makes such a comment towards the tackling player who is from North Africa, and says "*You Arab, go back to your country*".[141] Going further in this hypothesis, imagine that this speaker lives in a very diverse neighborhood, and is known for having many friends from diverse cultural backgrounds and ethnicities, including people of Arab origin. In other words, he does not seem racist at all and doesn't normally act out of racist intent. Also, no one except the tackling player hears the comment that is made. If the victim would want this commenter to be convicted for his words, all these elements combined make for a difficult case if studied under the regular hate speech regulations. To begin with, the special racist intent would be difficult to prove, given the speaker's reputation and the fact that it was an impulsive reaction to a situation. Second and context-wise, these words were said in a one-to-one situation, without any audience, in a

[141] Example inspired by real-life cases of the NCDR.

football game that is maybe emotionally charged. This type of context would be deemed rather "lightweight", especially compared to examples of political rallies or speeches spread through social media, and would thus make it harder to justify a limitation of freedom of speech. Finally, because of this context, the risk of any further harm, outside of the psychological consequences for the direct victim, is limited. Since no one else heard these words, there is no chance of people perceiving this as an incitement to use violence, for example. In short, this situation would likely not lead to a conviction for racist speech, even if it hurt the addressee. In a football situation, this would be very different given its content-based approach. Independent of any evidence problems, the speaker can be convicted, disregarding all the other elements, purely based on the racist nature of his words.

SITUATION 2 – The second imaginary situation which is also sadly inspired by real-life cases, is of a similar comment but made by a supporter instead. However, coming from a stand where many supporters have gathered, it is impossible to determine who was the speaker. So, one of the crucial elements in general hate speech legislation, the special racist intent, cannot be proven and a conviction would seem unlikely. On the other hand, another specificity of the football framework, outside of the content-based approach, is the objective responsibility of clubs. This way, the club can be convicted for the words of their fans, again purely based on the content and without having to identify the particular supporter.[142]

[142] That is, if the supporter clearly supports that team.

Conclusion about the racist speech framework in sports and football

BETTER FOR VICTIM AND ASSOCIATION – As seen in this chapter, racist speech in sports and football is dealt with differently compared to regular situations. This comes as no surprise. After all, different situations require different solutions. As demonstrated, victims of racist speech in football situations risk being left behind when applying the general framework to their situation. This is an important observation since they too are in a specific position by joining the football association as a member. While the emphasis lies often on the speaker binding itself to a stricter obligation to respect the rights of others under the federation's regulations, the same can be said for the victim. Indeed, when becoming a member, he expects to be able to play football without being discriminated against and to enjoy this higher level of protection from racist comments than in his day-to-day life. This different framework is not only desirable for the victim but also for the federation itself. Since deciding cases based on these types of rules requires less time and resources, for example, because it is not needed to look at the speaker's intent, it makes it manageable for a football federation, not a fully-fledged judicial power, to take on this task.

An analysis of the case law of the NCDR

CHAPTER OVERVIEW – In this chapter, the second sub-research question will be answered by analyzing the cases of the NCDR. The first part will contain an overview of the legal framework that is used by the NCDR in its judgments. Next, the elements that these judgments contain and how they are structured will be discussed. The third part will consist of a second look at these cases as a whole and will display some trends and particularities.

Legal background

OVERVIEW – The legal provisions that the NCDR relies upon directly in its cases, will be listed here. First, the relevant articles from the RBFA's regulations will be highlighted. Then, the other sources will be covered. It is important to introduce these here, as the understanding of the Chamber's decision-making building blocks allows further research into its functioning.

The regulations of the RBFA

JURISDICTION OF THE NCDR – **Art. B2.55** introduces the special jurisdiction for the NCDR at first instance, namely in cases that violate the provisions about discrimination.

CONDITIONS FOR ADMISSIBILITY – Regarding the admissibility of cases brought before the NCDR, there are two important provisions. First, art. **B11.29** stipulates the general limitation period for all complaints and claims, which is 2 years. Second, art. **B11.23** contains the formal requirements of these claims, which entail an establishment of the facts, the necessary signatures, and a transfer to the registry.

AUTHORITY OF THE REGULATIONS – As a general provision establishing the authority of the RBFA's regulations, **art. B3.10** specifies that clubs and their members must act in accordance with these regulations, and the regulations of the FIFA and the UEFA. **Art. B11.134** then states that all actions in violation of the regulations can be sanctioned.

TITLE 11, SECTION 12.4 – The provisions relating to discrimination can be found in Title 11 of the RBFA's regulations, with discrimination being one of the so-called "special violations" in part 12.4. It contains provisions on sanctions, obligations of clubs, ways to report discrimination, and other things. The relevant provisions for this thesis will be discussed below.

GENERAL ANTI-DISCRIMINATION PROVISION – **Art. B11.234** contains the general provision on the prohibition of discrimination for all clubs, members, and non-affiliated persons. Its protected grounds are based on the Belgian legally protected grounds, including nationality, race, skin color, and ethnicity. Remarkable about this article is that it "*can be sanctioned without any intention*". So, when judging cases of racism, the NCDR can disregard the presence or absence of the accused's intentions. Finally, it mentions the situations when this prohibition is deemed to be violated. This includes verbal and non-verbal statements

that are hurtful or insulting, inciting others to discrimination, segregation, hate, or violence, and displaying discriminatory texts, symbols, chants, gestures, banners, or statements on and around a club's premises.

OBLIGATIONS OF CLUBS AND THEIR STRICT LIABILITY – The next relevant article contains the obligations of the clubs. **Article B11.237** contains some obvious obligations like prohibiting discriminating statements and taking adequate action against persons violating the prohibition of discriminating. Apart from this, it establishes a high level of responsibility for the clubs. Not only are they jointly responsible for the respect of their statutes by their supporters, containing an obligatory anti-discrimination clause, but they also face a strict liability for the actions of their supporters and members. Moreover, this liability principle is confirmed by the regulations of UEFA[143] and FIFA[144], as well as by other provisions in the RBFA's regulations[145].

SANCTIONS IN CASE OF DISCRIMINATION – The sanctions that clubs, members, and non-affiliated persons face for discriminatory actions, are, in this order, laid down in **Art. B11.238**. First, it clarifies the possibility of alternative measures, and that the sanctions can be applied cumulatively. Clubs risk games without supporters or even a ban on playing games at their premises. Members risk suspensions ranging from 6 months to 2 years, possibly partly or fully on probation, or suspensions from 3 months to a year if they are under 16. If the member is a so-called "non-playing member", a fine can be added to the

[143] Art. 16.2 UEFA Disciplinary Regulations.
[144] Art. 8.1 FIFA Disciplinary Code.
[145] See for example Art. B11.199 RBFA Regulations 2024.

suspension. In case of recidivism, the sanction can be a deregistration. Finally, if applicable, the member can lose the right to function as an official of the Association or referee. Lastly, the non-affiliated person can be sanctioned with a "refusal of affiliation", ranging from 6 months to 2 years, which automatically becomes a definitive refusal in case of recidivism.

Other documents

CASE LAW OF CAS – The CAS is an international independent arbitration court that decides both cases in first instance in its 'Ordinary Arbitration Division' as well as appeals against final decisions of sports organizations in the 'Appeals Arbitration Division'.[146] A CAS case that is omnipresent in cases of the NCDR is an appeal of the Federación Mexicana de Fútbol Associatión against a decision of FIFA's Disciplinary Committee.[147] The subject of the matter is the chant "eeeh puto" by Mexican fans during the game, which FIFA qualified as discriminatory. The NCDR refers to the decision of the Court emphasizing its finding on the relevance of the speaker's intent and the strict liability of clubs and associations, affirming the FIFA disciplinary code:

> The CAS Panel in charge of this matter has reached the conclusion that the intention of the Mexican fans when shouting the Chant was not to offend or discriminate any specific person. However, even if those expressions and words were not used with the intention to discriminate or offend any specific players to which they were addressed, they could still be considered discriminatory or insulting in nature and should not be tolerated in football stadiums. Therefore, considering that the description of the conduct prohibited under the FIFA Disciplinary Code (FDC)

---

[146] Despina Mavromati and Matthieu Reeb, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials* (Kluwer Law International 2015) 6.
[147] *Federación Mexicana de Fútbol Asociación v FIFA* [2017] CAS 2016/A/4780 and 2016/A/4788.

> merely requires the use of "insulting words", irrespective of the intention of the offenders or whether the target of the words felt insulted or not, the Panel has found that the Chant shouted by the Mexican supporters was to be considered as an "improper conduct" of spectators under Art. 67 of the FDC, and thus that the FMF was liable for this conduct.[148]

CASE LAW OF BCAS – The BCAS has a function similar to the CAS, but is based on Belgian's national level. Here too, the NCDR mentions one case very often in its judgments, which involves discriminatory chants shouted by supporters of the football club of Kortrijk. The accused club argues that there is no racist intent, that a strict liability is impossible since sentences need to personal, and that the comments were protected by freedom of speech.[149] The part that is repeated frequently by the NCDR is the response of the BCAS regarding the intent-argument, stating that to judge whether a statement is an insult, one needs to investigate whether the statement is insulting in common speech.[150] To clarify, the CBAS reiterates that no special intent is needed, and that it suffices that the concerned supporters knew or should have known that their chants were hurtful.[151]

CIRCULAR OOP 40 – This circular, which was introduced before[152], occurs in almost all of the cases decided by the NCDR. More specifically, the Chamber uses the part of the circular where a threshold is determined.[153] In other words, it uses this document to determine whether a

---

[148] 'Media Release - The Court of Arbitration for Sport (CAS) Cancels Two Fines Imposed on the Mexican Football Federation and Imposes Warnings in Their Place' <https://www.tas-cas.org/fileadmin/user_upload/Media_Release__English__4780_4788.pdf> accessed 13 July 2024.
[149] *Federation's Prosecutor v KVK and RBFA* [2020] BCAS 169/20 [IV.3.3.].
[150] ibid IV.4.2.
[151] ibid IV.4.3.
[152] See pages 26 and 27.
[153] Circular OOP40 concerning guidelines on hurtful, racist and discriminating expressions and chants as a result of football games l 5.

certain expression can be considered racist or not.[154] It does so by reciting the content of the circular, which stipulates three situations that are not accepted. These are inciting others to discriminate or use violence against a person or group because of race, skin color, or ethnicity, giving publicity to his intent to discriminate for these reasons, or inciting hate and violence against one or multiple persons. Examples include jungle/monkey sounds and other hateful comments like "dirty Jew, go back to Israel".

A case of the NCDR at first look

BUILDING BLOCKS – This section will deal with the general structure and elements of a typical case in front of the NCDR dealing with racist behavior. These cases all follow the same structure, starting with formalities that are not relevant to this research, like in which game the facts happened and the parties present at the hearing. The first material part of the judgment deals with the facts and history, followed by the positions of the parties. In this part, the views of the prosecutor and, depending on the type of accused party, the club, the player(s), supporter(s), and/or staff member(s), are summarized. The structure of the Chamber's cases is relevant to look at, as it differs from the formats used by regular courts.

The biggest part of the judgment consists of the assessment of the NCDR of the case. First, the admissibility is dealt with. Hereafter, the court recites the applicable legal framework, including the tolerance

[154] In its judgments, the NCDR considers this instrument as "indicative".

limit concerning racist comments and chants. The next part of the judgment is the assessment of the facts by the court. If the court finds a violation, it is followed by the establishment of an appropriate sanction. Finally, there is the conclusion of the court, consisting of an acquittal or conviction with a sanction.

Statement of Facts

FACTS AND HISTORY – Like most legal cases, the judgment of NCDR starts with a recapitulation of the facts that gave rise to the issue. It begins with the reason why the case ended up in front of the court, usually the referee's report or a complaint of a victim or witness. This is usually followed with an extra statement of this person when asked for further clarification. Also, the accused player, staff member, or club often sends in a statement with their version of the facts. The length and extensiveness of the statement of facts depends from case to case and on the willingness of the persons involved to cooperate.

Defense of the parties

PROSECUTOR'S POSITION – There seems to be no fixed order between the positions of the prosecutor and the defendants, but let's examine the prosecutor's perspective first. In the vast majority of cases, the prosecutor will consider the facts to be proven and ask for a prosecution for the concerned offenses based on the corresponding provisions. Often, he reiterates some principles in his claim, like the strict liability of clubs or the irrelevance of the speaker's intent. Finally, the prosecutor expresses his opinion on the desirability of an alternative measure to replace a classic sanction.

ACCUSED'S POSITION – The accused can be a player, a staff member, or a supporter, and includes very often also a club because of the strict liability principle. They can deny or admit the accusations, contest or accept the facts, and present their arguments to defend themselves.

Assessment by the NCDR

ADMISSIBILITY – First, the NCDR assesses the case's admissibility. It starts with examining whether the action was brought in accordance with the formal requirements and whether the admissibility is contested. Second, the competence of the NCDR in first instance is confirmed based on Art. B2.55. Then, the chamber checks if the case was lodged at the registry within the time limit which is two years[155], and if the case meets the formal requirements laid down in Art. B11.23. If all these conditions are satisfied, the chamber rules the case to be admissible and proceeds further.

LEGAL FRAMEWORK – In every judgment[156], the NCDR reiterates the legal framework that applies in cases of racist speech during football games. The starting point is the central anti-discrimination provision in the regulations of the RBFA, Art. B11.234, complemented by the second paragraph of Art. B11.237, which forbids discriminating messages coming from clubs and every person that they can exercise authority over. Then the chamber mentions that every club member needs to comply with the regulations[157] and that violations can be sanctioned[158]. Lastly, it repeats two central principles that impact their decisions. The

[155] Art. B11.29 RBFA Regulations.
[156] I assume for informational and educational purposes.
[157] Art. B3.10 RBFA Regulations.
[158] Art. B11.134 ibid.

first is the irrelevance of intent, referring again to Art. B.11.234, the judgment of the CAS against the Mexican Football Federation[159], and the case of the Kortrijk supporters before the BCAS[160]. Finally, the strict liability for the clubs is mentioned, referring again to the case law of the BCAS[161], the FIFA Disciplinary Code[162], and Art. B11.237.

THRESHOLD – After the legal framework, the threshold regarding comments and chants is outlined. It includes an introductory text about the value sports bring to society, the risk of supporting turning into negative attitudes towards the other team and the effects discriminating comments can have on victims. Then, as far as establishing an actual threshold for racist speech, the relevant part of Circular OOP 40[163] is reproduced word for word, including the non-exhaustive list of examples. Otherwise, nothing more is mentioned regarding the establishment of a threshold.

ASSESSMENT OF THE FACTS – In this focal point of the judgment, the NCDR decides whether the facts are proven and therefore also whether the accused is guilty or not. It starts with a synthesis of all the elements that were addressed before in the judgment. Then, if it considers the facts proven, it convicts the accused based on Art. B11.234, 1° and 3°. In these cases, the chamber consistently mentions the association's zero-tolerance policy when it comes to racist comments.

---

[159] *Federación Mexicana de Fútbol Asociación v. FIFA* (n 147), see pages 42 and 43.
[160] *Federation's Prosecutor v. KVK and RBFA* (n 149), see page 43.
[161] See for example ibid, IV.4.5; *Federation's Prosecutor v KRC Genk and RBFA* [2020] BCAS 173/20, IV.4.5; *Federation's Prosecutor v RSC Anderlecht and RBFA* [2020] BCAS 174/20, IV.4.5.
[162] Art. 16.2 FIFA Disciplinary Code.
[163] See pages 26-27 and 43-44.

DETERMINATION OF A SANCTION – If the complaint is found to be well-founded, an appropriate sanction is imposed. There are multiple types of sanctions, depending on whether they are imposed on players, staff members, clubs, or supporters. According to Art. B11.27, clubs can face general disciplinary sanctions[164] for the racist behavior of their supporters, notwithstanding the special sanctions for verbal violence[165]. The general disciplinary sanctions[166] are a reprimand, blame, fine[167], suspension, or even deletion, complemented by the possibility of alternative measures[168]. If the club doesn't take any disciplinary measures regarding the persons involved, the chamber can impose sanctions based on Art. B11.238, which includes the exclusion of its supporters for the next game or even the order to play the game on neutral ground. The sanctioning of players and staff members, members of the Association, face special disciplinary sanctions for discrimination as laid down in Art. B11.238, which is a suspension for 6 months to 2 years, possibly (partly) on probation, complemented with the possibility of opting for alternative measures. Finally, if the accused is not a member of the RBFA, which is the case for most supporters, the possible sanction for discrimination is a refusal of affiliation for 6 months to 2 years.[169]

---

[164] Title 11 RBFA Regulations.
[165] Art. B11.198 and following ibid.
[166] These sanctions are listed in Art. B11.140 ibid.
[167] The fines for clubs are capped depending on the level it is playing at, according to Art. B11.151 ibid.
[168] Art. B11.141 ibid.
[169] Art. B11.238 ibid.

Conclusion

FOR THESE REASONS… – Every judgment ends with a summary of the decision, reiterating the chamber's assessment of the charges, and the grounds it uses to sentence or acquit the accused party or parties. Also, it contains the duration and modalities of the punishment. Finally, it mentions how to appeal the decision and contains the signatures of the members rendering the judgment.

The cases of the NCDR at second look

OVERVIEW – This section will follow the same structure as the previous one, starting with the statement of facts and ending with the conclusion of the judgment. However, now that the different sections of the verdict have been explained, this part explores the tendencies that can be found in the judgments from the 2022-2023 season.

Statement of Facts

FACTS AND HISTORY – The section where the facts are established varies a lot. There doesn't seem to be a clear trend when it comes to this first part, as it differs from case to case. While in some cases[170] many pages are dedicated to it, in other cases[171] less than a page is needed. These cases with long factual sections often contain multiple written

[170] See for example *TW Waimes Faymonville - DG* [2022] NCDR Case 24/22-23; *K Bevel FC* [2022] NCDR Case 140/21-22; *Fc Lebbeke - TV - KE* [2022] NCDR Case 157/21-22.
[171] See for example *Vilvoorde City - GL* [2022] NCDR Case 9/22-23; *Marloie Sport - supporter* [2023] NCDR Case 103/22-23.

declarations clarifying or responding to the initial referee report or claim, coming from clubs, members, non-members, or referees.

Defense of the parties

PROSECUTOR'S POSITION – One of the main tasks of the prosecutor is helping the court by proposing a proportionate sanction. In the judgments rendered during the 2022-2023 season, there was quite some variation in the suggested sentences. To start with, sometimes this position was rather vague. For example, when the prosecutor only asked for a sanction in conformity with Art. B11.237 on the club's strict liability[172] or Art. B11.238 which contains the list of all possible sanctions for discrimination[173]. There are instances where the position was even more inconclusive, like asking for a "strict sanction"[174], a "heavy" fine[175], or even leaving it to the wisdom of the NCDR altogether because of doubt[176]. This last part may seem to indicate that the prosecutors had difficulties asking for an acquittal of the accused, which is not the case. For example, in some cases, the prosecutor asked for an acquittal because of doubt[177], because the comment was not racist[178], because of a misunderstanding[179], or because of a lack of proof[180]. Also, there are

[172] See for example *FCT Melle - MM* [2023] NCDR Case 97/22-23; *JS Isièroise* [2023] NCDR Case 94/22-23.
[173] *VC Mortsel OG - MA* [2023] NCDR Case 68/22-23; *FC Genappe - player* [2023] NCDR Case 111/22-23; *FC Havre - supporters* [2023] NCDR Case 150/22-23.
[174] *K FC Sint-Joris Sp - KSC Blankenberge* [2022] NCDR Case 13/22-23.
[175] *SK Vlezenbeek - K VK Kester-Gooik - players* [2023] NCDR Case 121/22-23.
[176] *BOKA United - player* [2023] NCDR Case 139/22-23; *Erpion-Lacs de l'Eau D'Heure (interim decision)* [2023] NCDR Case 167/22-23.
[177] See for example *Futsal Project Aarschot* [2023] NCDR Case 112/22-23; *K Boechoutse VV - player* [2023] NCDR Case 158/22-23; *Lommel SK - Racing White Daring Molenbeek - Maazi* [2023] NCDR Case 76/22-23.
[178] *Vilvoorde City - G.L.* (n 171); *JD* [2022] NCDR Case 32/22-23; *Park Houthalen - E Louwel - ME* [2023] NCDR Case 73/22-23.
[179] *RU Auderghem - player* [2023] NCDR Case 129/22-23.
[180] *ZVC Solona Ranst - players* [2023] NCDR Case 163/22-23.

instances where the prosecutor asked the court to requalify the facts, into inappropriate statements[181] or threats[182].

This being said, the prosecutor presented a clear preference for one of the sanctions listed in Art. B11.238 in the vast majority of the cases. In some cases, his suggestion even included a certain amount[183] or duration in case of suspensions[184] or refusals of affiliation[185], or even the option to impose the sanction (partly) on probation[186]. The relationship between the chamber and the prosecutor seems to be very good, as the suggested sanction or outcome is mostly followed by the NCDR.[187] Another sign of this good understanding is a case that was adjourned to let the prosecutor further carry out his investigative duties.[188]

Finally, the prosecutor also has his say when it comes to alternative measures. Whenever the NCDR thinks of imposing these measures, it will not only ask for the willingness of the accused, but also inquire the opinion of the prosecutor. In the large majority of cases, the prosecutor will express his approval regarding a possible alternative measure. However, sometimes he explicitly opposes alternative measures for a

---

[181] *KFC Poppel - player (interim decision)* [2023] NCDR Case 134/22-23; *KVV Zelzate - player* [2023] NCDR Case 138/22-23; *Sp Grote Brogel - players* [2023] NCDR Case 162/22-23.
[182] *Deurne OB - player* [2023] NCDR Case 83/22-23.
[183] See for example *FC Gerpinnes* [2022] NCDR Case 10/22-23; *FC INT Jandrain-Jandrenouille* [2023] NCDR Case 61/22-23; *FC Daknam* [2023] NCDR Case 91/22-23.
[184] See for example *KVC AA Rekem - RV* [2022] NCDR Case 149/21-22; *DR* [2022] NCDR Case 153/21-22; *Fc Lebbeke - T.V. - K.E.* (n 170).
[185] See for example *HIH Hoepertingen - supporter* [2023] NCDR Case 145/22-23; *Sporting Club Duffel - supporter* [2023] NCDR Case 107/22-23; *KFC Kersken-Haaltert - SCE Aalst - supporter - delegate* [2023] NCDR Case 88/22-23.
[186] See for example *KSK Wenduine - MD* [2022] NCDR Case 31/22-23; *FC Gerpinnes* (n 183); *Olsa Brakel - player* [2023] NCDR Case 156/22-23.
[187] Examples of exceptions are *K Bevel FC - player* [2023] NCDR Case 102/22-23; *Futsal Project Aarschot* (n 177).
[188] *KFC Meulebeke (interim decision)* [2023] NCDR Case 165/22-23.

certain player[189], supporter[190], staff member[191], or club[192]. The reasons for this refusal are varied, like the absence of a sufficient sense of guilt[193], the seriousness of the comment[194], previous convictions[195], the (arrogant) attitude of the accused[196], minimalization of the comment[197], the accused not wanting to take responsibility[198], or the fact that previous alternative measures were not executed[199]. There was even an instance where the prosecutor looked beyond alternative measures and emphasized the importance of reconciliation.[200]

ACCUSED'S POSITION AND DEFENSE – It will come as no surprise that, when the facts are established, the most common defense of the accused person is that he had no racist intent.[201] Sometimes, this is reinforced by statements like the accused mentioning that he lives in Africa for 6 months a year[202] or that 80% of his friends are of foreign origin[203]. Clubs also like to reiterate that they cannot be racist and thus cannot be convinced for racist speech for multiple reasons, like having a team comprised of multiple nationalities[204] or having pamphlets against racism[205].

---

[189] *Boutersem United - LV* [2022] NCDR Case 34/22-23; *Sporting Heide Linder - JV* [2023] NCDR Case 80/22-23.
[190] *RFC Wiersien - supporter* [2023] NCDR Case 110/22-23.
[191] *SK Vinderhoute - coach* [2023] NCDR Case 125/22-23; *KVC AA Rekem - R.V.* (n 184).
[192] *SK Vlezenbeek - K VK Kester-Gooik - players* (n 175); *Olsa Brakel - player* (n 186).
[193] *Boutersem United - L.V.* (n 189); *KFCVW Hamme - OT* [2023] NCDR Case 69/22-23.
[194] *D.R.* (n 184).
[195] *FC Gerpinnes* (n 183); *Beerschot VA - CJ* [2022] NCDR Case 17/22-23.
[196] *SK Vinderhoute - coach* (n 191); *Sporting Heide Linder - J.V.* (n 189).
[197] *KFC Katelijne-Waver - GM* [2023] NCDR Case 64/22-23.
[198] *FC Daknam* (n 183).
[199] *K Bevel FC - player* (n 187); *SK Vlezenbeek - K VK Kester-Gooik - players* (n 175).
[200] *Wolvertem Merchtem - member* [2023] NCDR Case 137/22-23.
[201] On the importance of the speaker's intent in cases of racist speech, see page 33.
[202] *D.R.* (n 184).
[203] *FCA Gent - BV* [2022] NCDR Case 2/22-23.
[204] *Fc Lebbeke - T.V. - K.E.* (n 170); *KFC Diest - DG* [2022] NCDR Case 41/22-23.
[205] *SK Rummen* [2022] NCDR Case 44/22-23.

Apart from this intent-argument, other reasonings are presented as well. Common examples of the behavior of accused players are straight up denial[206], to begin with, complemented by the presumption of innocence[207], and that their original non-racist words were misheard[208]. An example of an original defense of a player is that he donated his monthly allowance to an anti-racism initiative.[209] The arguments used by staff members and supporters were also in line with these tendencies.

When clubs defend themselves against accusations of racist speech, they also tend to refer to the absence of a racist intent[210]. However, the most common defensive arguments are that the club hasn't heard the alleged comments[211], and/or expresses doubts about the facts[212]. Another frequent line of defense is that the club already took action against the offender(s). Examples of these actions include banning[213], removing[214] or educating[215] supporters, suspending players[216] or making them referee

---

[206] See for example *KD -RG* [2022] NCDR Case 6/22-23; *SK Pepingen-Halle - City Pirates Antwerpen - JE - PV - ES* [2022] NCDR Case 33/22-23; *KFC Haren - BS* [2022] NCDR Case 37/22-23.
[207] *FCA Gent - B.V.* (n 203).
[208] See for example *VC Mortsel OG - M.A.* (n 173); *KSC Wielsbeke - player* [2023] NCDR Case 117/22-23; *RFC De Gilly - player* [2023] NCDR Case 122/22-23.
[209] *Coach* [2023] NCDR Case 106/22-23.
[210] See for example *KVC AA Rekem - R.V.* (n 184); *FC INT Jandrain-Jandrenouille* (n 183); *FC Poesele - player* [2023] NCDR Case 132/22-23.
[211] Especially in cases against supporters, like *KVC Booischot* [2022] NCDR Case 3/22-23; *TW Waimes Faymonville - D.G.* (n 170); *KVE Aalter* [2022] NCDR Case 29/22-23.
[212] See for example *All Hautes Fagnes - supporter* [2023] NCDR Case 92/22-23; *VCOG Stasegem - supporter* [2023] NCDR Case 89/22-23; *KRC Genk - supporter* [2023] NCDR Case 95/22-23.
[213] *Lierse Kempenzonen - supporter* [2023] NCDR Case 157/22-23; *JS Fizoise* [2023] NCDR Case 47/22-23; *R Aywaille FC - supporter* [2023] NCDR Case 136/22-23.
[214] *KSV Geraardsbergen* [2023] NCDR Case 63/22-23; *R. Aywaille FC - supporter* (n 213).
[215] This happened in two cases concerning professional football, see *Beerschot - VA* [2023] NCDR Case 75/22-23; *Lommel SK* [2023] NCDR Case 66/22-23.
[216] See for example *KFC Nijlen - player* [2023] NCDR Case 130/22-23; *FCH Sint-Pauwels - DL* [2023] NCDR Case 65/22-23; *FC Genappe - player* (n 173).

youth games[217], and firing a staff member[218]. More positive examples of actions were implementing the RBFA's action plan[219], appointing persons with an integrity function[220], and organizing an informative meeting for all teams[221].

ADMISSIBILITY – Only three of the studied cases were declared inadmissible by the NCDR, all because of the non bis in idem principle, since the accused was already punished for his offense. In the first case, which was about inappropriate supporter chants, the club had already agreed to a settlement with the Sports Committee of the RBFA.[222] The defendants in the two other cases were a player who the Flemish Football Association already suspended[223], and a supporter who was banned for three years[224]. In both cases, this didn't prevent the NCDR from still sanctioning the clubs based on their strict liability.

Assessment by the NCDR

LEGAL FRAMEWORK – The legal background mentioned in every case is already discussed.[225] When examining all the cases of the NCDR during the 2022-2023 season, two other additions were found. First, in some cases, there was extra context given regarding the strict liability as laid

---

[217] *AL* [2023] NCDR Case 90/22-23; *VC Mortsel OG - M.A.* (n 173); *K Bocholter VV - player* [2023] NCDR Case 79/22-23.
[218] *KVV Thes Sport Tessenderlo - coach* [2023] NCDR Case 104/22-23.
[219] See for example *Wolvertem Merchtem - member* (n 200); *VCE Houtem* [2023] NCDR Case 133/22-23; *SV Grasheide* [2023] NCDR Case 140/22-23.
[220] *CS Pays Vert Ostiches-Ath* [2022] NCDR Case 11/22-23; *KFC Zammel* [2022] NCDR Case 154/21-22; *Fc Lebbeke - T.V. - K.E.* (n 170).
[221] *SK Vlezenbeek - K VK Kester-Gooik - players* (n 175).
[222] *GS Bree-Beek* [2022] NCDR Case 1/22-23.
[223] *FC Poesele - player* (n 210).
[224] *Lierse Kempenzonen - supporter* (n 213).
[225] See pages 46-47.

down in Art. B11.199.[226] Second, in two cases where professional football teams were involved, on top of Art. B11.199, other sources[227] on strict liability were mentioned as well.[228]

THRESHOLD – Similar to the legal framework, the threshold for establishing racist speech is the same in every judgement.[229] During the review of the judgements, no variations were found.

ASSESSMENT OF THE FACTS – When examining the facts, the NCDR often has to deal with discussion about what really happened. The document which is looked at first and has the most authority, is the referee's report. Consequently, this document is often used to establish the facts in contested cases.[230] Interestingly, the referee's report has also been used in this manner in a case where the referee didn't hear it himself but mentioned other people hearing it.[231] In some cases, the referee report was complemented by a victim's statement[232], a witness statement[233], or both[234]. This doesn't mean that the facts cannot be proven without a referee report, as the NCDR also established the facts based only on a

[226] There are only examples dated before 2023, like *KFC Rapide Wezemaal* [2022] NCDR Case 4/22-23; *KVK Beringen - KB* [2022] NCDR Case 16/22-23; *KESA Bottelare* [2022] NCDR Case 35/22-23.
[227] *PSV Eindhoven v UEFA* [2003] CAS 2002/A/423; *Standard de Liège v RBFA* [2017] BCAS 93/16, 4.2.3.4; *Standard de Liège v RBFA* (BCAS), 5.2.2.
[228] *Beerschot - VA* (n 215); *Lommel SK* (n 215).
[229] This threshold was explained earlier, see page 47.
[230] See for example *K FC Sint-Joris Sp - KSC Blankenberge* (n 174); *US Beauraing 61* [2023] NCDR Case 144/22-23; *Deurne OB - player* (n 182).
[231] See for example *VC Mortsel OG - M.A.* (n 173).
[232] See for example *Fc Lebbeke - T.V. - K.E.* (n 170); *KFCVW Hamme - O.T.* (n 193); *KFC Eppegem* [2023] NCDR Case 119/22-23.
[233] See for example *Peruwelz FC - VP* [2023] NCDR Case 98/22-23; *FC Havre - supporters* (n 173); *HIH Hoepertingen - supporter* (n 185).
[234] See for example *SK Rummen* (n 205); *Sporting Heide Linder - J.V.* (n 189); *FC Veldegem - MC - GM* [2023] NCDR Case 48/22-23.

victim's[235] or witness' statement[236], or both[237]. Another way the chamber tries to accommodate the evidentiary problems is by looking for elements that make someone's statement more believable. For example, if someone can no longer gain any competitive advantage, this will be an argument to award a higher value to their testimony.[238] However, when an accused player tried to reverse this reasoning by using the argument that his team won and therefore it would be improbable for him to have made a racist remark, the NCDR didn't follow him.[239]

EVIDENCE IN FRONT OF THE NCDR – These evidentiary difficulties present themselves especially in the situation where there are no witnesses outside of the victim and the perpetrator, the so-called word-against-word situations. In general law, the victims in these cases risk being left behind without redress, since a lack of evidence will favor the defendant. After all, everyone is presumed to be innocent until proven guilty.[240] This was also invoked by a defendant who was acquitted by the NCDR.[241] Coming back to the word-against-word situations, several interesting cases in this regard show the difficulties the chamber faces in these instances. To begin with, the wording of "word-against-word" was used in four cases. In two of them, the NCDR found no violation. In the first case, the prosecutor presented the argument that the filing of a complaint itself is a strong sign to believe the accusation.[242] However,

---

[235] *K.D. -R.G.* (n 206); *Futsal Project Aarschot* (n 177).
[236] *VC Mortsel OG - M.A.* (n 173).
[237] *KFC Rapide Wezemaal* (n 226); *JS Isièroise* (n 172).
[238] See for example *KFC Rapide Wezemaal* (n 226); *KVE Aalter* (n 211); *KSK Wenduine - M.D.* (n 186).
[239] *RUS Binche - NQ* [2022] NCDR Case 44/22-23.
[240] This presumption of innocence can be found in multiple human rights treaties, see for example Art. 6, para 2 ECHR.
[241] *FCA Gent - B.V.* (n 203).
[242] *Electro Niemegeers - United* [2022] NCDR Case 155/21-22.

the defendant was acquitted, albeit for many other reasons, like the non-presence of the affected club and the victim.[243] The second case had the same outcome, with the defendant being acquitted based on similar arguments that had nothing to do with the "word-against-word" aspect of the case.[244] In the two last cases, the defendant was found guilty. However, here again, other reasons were found to convict the accused. In both cases, the NCDR avoided the evidentiary problem since the accused did not contest to have made other comments, which the chamber also found to be racist.[245] Lastly, the victim being visibly affected by the alleged comment, like crying, was also used to make the accusation more believable.[246] Nonetheless, this clear reaction of the victim is not always enough to prove the facts.[247]

CASES OF NO VIOLATION – As mentioned, the NCDR didn't find a violation in some cases. In 27 out of the 120 studied racism cases, the chamber concluded that there hadn't been any infringement. One of the most common reasons was that the comments had not been proven.[248] Another reasoning linked to this is the acquittance because of reasonable doubt.[249] Regarding the referee, cases have been considered ill-founded partly because he did not hear the comments himself[250],

---

[243] ibid.
[244] *KSC Wilskracht Hofstade - AC* [2022] NCDR Case 151/21-22.
[245] *FC Veldegem - M.C. - G.M.* (n 234); *KRC Genk - supporter* (n 212).
[246] *SK Rummen* (n 205); *KFC Poppel - player (interim decision)* (n 181). This last case was adjourned because the victim was not present. Generally speaking, these situations tend to lead to the NCDR deciding that there has been no violation, but in this instance, this was not the case because of the victim's reaction.
[247] *BOKA United - player* (n 176).
[248] See for example *Electro Niemegeers - United* (n 242); *KSK Wenduine - M.D.* (n 186); *Erpion-Lacs de l'Eau D'Heure (interim decision)* (n 176).
[249] See for example *All Hautes Fagnes - supporter* (n 212); *RFC De Gilly - player* (n 208); *K Boechoutse VV - player* (n 177).
[250] *FCA Gent - B.V.* (n 203).

because his report didn't mention the facts[251] or had been successfully contested[252], or because he was not present[253]. Furthermore, the importance the NCDR puts on presence is clear in other cases, where no violation was found partly due to the absence of the victim[254], witness[255], and/or affected club[256]. In two cases where the alleged comments were not specified, the chamber also found no breach of the regulations.[257]

MORE CASES OF NO VIOLATION – Finally, there are some straightforward cases where no violation was found. For example, there was a case where a supporter asked the referee to count "*the black ones*", which was not deemed racist since one of the teams was wearing black shirts and there was no black player on the pitch.[258] In another similar example, the comment "*you dirty black one*" was not found racist since it was directed to a white referee wearing a black shirt.[259] Similar misunderstandings happened when sounds were wrongly interpreted as monkey sounds[260] or words coming from a back player were misheard as being racist towards black persons[261]. Other cases were declared ill-founded since it was unclear who made the comment[262], or if the speaker

---

[251] *Electro Niemegeers - United* (n 242).
[252] *FCA Gent - B.V.* (n 203); *BOKA United - player* (n 176).
[253] See for example *RFC Baulet* [2022] NCDR Case 14/22-23; *FC Kosova Schaerbeek - EO - AC* [2023] NCDR Case 59/22-23; *All Hautes Fagnes - supporter* (n 212).
[254] *KFC De Kempen Tielen-Lichtaart* [2023] NCDR Case 143/22-23; *K Boechoutse VV - player* (n 177).
[255] *ZVC Solona Ranst - players* (n 180).
[256] See for example *K Sp Club Blankenberge Sportief - GN* [2022] NCDR Case 51/22-23; *KSC Wielsbeke - LW* [2023] NCDR Case 74/22-23; *KSC Wielsbeke - player* (n 208).
[257] *FC Landen - DC - RR* [2022] NCDR Case 152/21-22; *Sportkring Sint-Niklaas - player* [2023] NCDR Case 60/22-23.
[258] *Park Houthalen - E. Louwel - M.E.* (n 178).
[259] *KVV Zelzate - player* (n 181).
[260] *J.D.* (n 178).
[261] *RU Auderghem - player* (n 179).
[262] *Lommel SK - Racing White Daring Molenbeek - Maazi* (n 177).

belonged to one of the two teams[263]. A last obvious example is a case where a player was acquitted since there was a video proving that he couldn't have been the one to make the respective comment.[264] Nonetheless, these unfounded cases remain few compared to the number of successful complaints.

The NCDR's sanctions

DETERMINATION OF A SANCTION – In the cases where a violation is found, the final task for the NCDR is deciding on a just punishment. As explained before, the possible sanctions differ depending on the capacity of the accused and are listed in the RBFA's regulations[265], and the chamber is helped by its prosecutor[266] who proposes a type of punishment in most cases. In the following paragraphs, an overview of the sentencing practices of the NCDR will be given.

SANCTIONING CLUBS – Since clubs are sanctioned most often, because of the principle of strict liability[267], they will be addressed first. As mentioned before, there are multiple possible sanctions from which the Chamber can choose.[268] In most of the studied cases, an alternative measure was imposed, sometimes complemented by other types of sanctions. The overwhelming majority of the imposed alternative measures concerned implementing the RBFA's Come Together action plan for combating racism and discrimination[269], posing multiple

[263] *KVC Booischot* (n 211).
[264] *KSC Wielsbeke - L.W.* (n 256).
[265] See pages 41, 42 and 48.
[266] See page 45 on the role of the prosecutor
[267] On this principle, see page 41.
[268] See pages 41, 42 and 48.
[269] For more information, see <https://www.rbfa.be/en/cometogether> Accessed 13 July 2024.

obligations on football clubs like hanging posters and following training.[270] In a few cases, the NCDR considered other alternative measures more effective. Examples are following an education in the Royal Museum for Central Africa[271] or Caserne Dossin[272], organizing an event around the topic of discrimination and racism[273], or setting up a movie session to watch the documentary "FC United" about racism in Belgian football[274]. More costly alternative measures were imposed on professional clubs, like starting a campaign and educating supporters[275], creating a social media campaign[276], or coming up with an action plan[277]. All these measures are systematically accompanied by a suspended fine depending on the completion of the alternative measure[278] or, less often, a game without supporters instead.[279] In a few cases, the NCDR only opted for these more traditional sanctions and imposed fines[280],

---

[270] See for example *KFC Rapide Wezemaal* (n 226); *JS Fizoise* (n 213); *RFC Thulin* [2023] NCDR Case 154/22-23.
[271] See for example *Wolvertem Merchtem - member* (n 200); *K Minderhout VV - player* [2023] NCDR Case 151/22-23; *K Bevel FC - supporter* [2023] NCDR Case 160/22-23.
[272] These barracks were used in the Second World War to facilitate the deportation of over 25.000 Jews. Examples of cases where this alternative measure was ordered are *KVV Thes Sport Tessenderlo - coach* (n 218); *SV Grasheide* (n 219); *KSC Dikkelvenne - player* [2023] NCDR Case 142/22-23.
[273] *SK Pepingen-Halle - City Pirates Antwerpen - J.E. - P.V. - E.S.* (n 206).
[274] *KFC Nijlen - player* (n 216).
[275] *Lommel SK* (n 215).
[276] *Lierse Kempenzonen - supporter* (n 213).
[277] *Beerschot VA - C.J.* (n 195).
[278] See for example *Jeunesses Oleyennes Réunies - AC* [2022] NCDR Case 27/22-23; *FC Wezel Sport - delegate* [2023] NCDR Case 115/22-23; *KSV Schriek - supporter* [2023] NCDR Case 161/22-23.
[279] See for example *Beerschot - VA* (n 215); *K Bevel FC - player* (n 187); *SK Vlezenbeek - K VK Kester-Gooik - players* (n 175).
[280] See for example *Deurne OB - player* (n 182); *RFC Wiersien - supporter* (n 190); *Visé BMFA - player* [2023] NCDR Case 135/22-23.

sometimes partly[281] of fully[282] suspended, or games without supporters[283], possibly partly on probation[284].

CASES OF NO SANCTIONS FOR CLUBS – In some cases, clubs did not receive a sanction, even though a violation was found. Two different situations can be distinguished. In the first type of cases, the NCDR did not mention the club's strict responsibility at all. It concerned cases where a player insulted another player[285], a staff member insulted a player[286], or a staff member used a racist slur directed against a supporter[287]. Although these are only a handful of cases, it is unclear why they are treated differently since they do not stand out for any particular reason to similar cases. In the second group of cases, the Chamber acknowledged the principle of strict liability but motivated why it opted not to apply it. In three very similar cases, the club of a player who insulted an opponent was not sanctioned because of its constructive and serious attitude and because it had already obliged the player to referee youth games.[288] Another case had the same outcome, but the club had also suspended the player concerned.[289] In the final case, a supporter repeatedly made racist comments towards players.[290] No sanction was imposed on the club by the NCDR, referring to its exemplary attitude,

---

[281] *TW Waimes Faymonville - D.G.* (n 170); *Athènes Sport Ressaix - MT* [2023] NCDR Case 81/22-23; *FC Daknam* (n 183); *Sp. Grote Brogel - players* (n 181).
[282] *SK Rummen* (n 205); *FC INT Jandrain-Jandrenouille* (n 183); *Boutersem United* [2023] NCDR Case 155/22-23.
[283] *KFC Haren - B.S.* (n 206); *Futsal Project Aarschot* (n 177); *VCE Houtem* (n 219).
[284] *K FC Sint-Joris Sp - KSC Blankenberge* (n 174); *Marloie Sport - supporter* (n 171).
[285] *TC* [2022] NCDR Case 148/21-22; *K.D. -R.G.* (n 206); *YL* [2023] NCDR Case 96/22-23.
[286] *D.R.* (n 184); *Coach* (n 209).
[287] *JD* [2022] NCDR Case 8/22-23.
[288] *K FC GW Amel - FP* [2022] NCDR Case 158/21-22; *K WS Lauwe - MD* [2022] NCDR Case 20/22-23; *A.L.* (n 217).
[289] *SK Herdersem - DM* [2023] NCDR Case 52/22-23.
[290] *R. Aywaille FC - supporter* (n 213).

which included different initiatives involving refugees, and the fact that it had removed and banned the supporter.

SANCTIONS FOR PLAYERS – About half of the time a player was sanctioned for violating the RBFA's regulations, some alternative measure was involved. Unlike the outcomes for clubs where it mostly opted for the Come Together action plan, the NCDR used more variation in alternative measures here. This being said, active participation in this action plan was imposed on players in a handful of cases.[291] Other measures included writing a paper on racist speech in football[292] or on the FC United documentary[293], sending an apology letter to the victim[294], and refereeing youth games[295]. The education in the Caserne Dossin[296] and the Royal Museum for Central Africa[297] was also imposed on players. Also, combinations of multiple alternative measures were used.[298] Suspensions were not only used as a secondary measure in case the alternative one was not executed but also on their own.[299] These suspensions all lasted for 6 months, with one exception[300], and were typically partly on probation. In only one case where the facts were established to be racist, the player escaped a sanction because of his apologies

[291] See for example *Boutersem United - L.V.* (n 189); *KFC Diest - D.G.* (n 204); *KFCVW Hamme - O.T.* (n 193); *SK Vlezenbeek - K VK Kester-Gooik - players* (n 175).
[292] *T.C.* (n 285); *K FC GW Amel - F.P.* (n 288).
[293] See for example *K WS Lauwe - M.D.* (n 288); *Boutersem United - L.V.* (n 189); *FC Veldegem - M.C. - G.M.* (n 234). This documentary is already mentioned on page 60.
[294] *FC Landen - MR* [2023] NCDR Case 43/22-23.
[295] *Athènes Sport Ressaix - M.T.* (n 281); *K Bocholter VV - player* (n 217).
[296] *KSC Dikkelvenne - player* (n 272). See also page 60.
[297] *K Minderhout VV - player* (n 271). See also page 60.
[298] See for example *K WS Lauwe - M.D.* (n 288); *FC Landen - M.R.* (n 294); *K Bocholter VV - player* (n 217).
[299] See for example *K.D. -R.G.* (n 206); *Deurne OB - player* (n 182); *Visé BMFA - player* (n 280).
[300] In this case, the duration of the suspension was one year, see *FCH Sint-Pauwels - D.L.* (n 216).

towards the player and because his club already sanctioned him by making him referee some youth games.[301]

SANCTIONS FOR STAFF MEMBERS – Unsurprisingly, the sanctions for staff members follow the same tendencies as the sentences for players. Alternative measures were used, like writing 3 pages on the FC United documentary and the Pro League brochure[302] or organizing a movie night for "Mandela: Long Way to Freedom" and writing a paper[303]. Furthermore, apart from the active participation in the Come Together action plan[304], suspensions were imposed.[305]

SANCTIONS FOR SUPPORTERS – The final category of sanctions is found in the convictions of supporters not affiliated with the RBFA. Because of the nature of the relationship between the Association and this type of person, it is not possible nor feasible to sanction him with an alternative measure, fine or suspension. Instead, Art. B11.238 stipulates that these people can be sanctioned by a refusal of affiliation for 6 months to 2 years.[306] The NCDR only opted for this minimum[307] and maximum[308] duration, with one exception[309]. Additionally, there is one case about a supporter who is a member of the RBFA, who is suspended instead.[310]

---

[301] *A.L.* (n 217).
[302] *KFCHO Kalken - GV* [2022] NCDR Case 19/22-23.
[303] *Jeunesses Oleyennes Réunies - AC* [2022] NCDR Case 27/22-23.
[304] *KVC AA Rekem - R.V.* (n 184); *KFCHO Kalken - G.V.* (n 302); *Jeunesses Oleyennes Réunies - A.C.* (n 303).
[305] See for example *KVV Thes Sport Tessenderlo - coach* (n 218); *SK Vinderhoute - coach* (n 191); *Wolvertem Merchtem - member* (n 200).
[306] See pages 41 and 42.
[307] See for example *KVK Beringen - K.B.* (n 226); *VCOG Stasegem - supporter* (n 212); *HIH Hoepertingen - supporter* (n 185).
[308] See for example *Sporting Club Duffel - supporter* (n 185); *R. Aywaille FC - supporter* (n 213); *KSV Schriek - supporter* (n 278).
[309] *Marloie Sport - supporter* (n 171).
[310] *TW Waimes Faymonville - D.G.* (n 170).

REASONING FOR (NO) SANCTION – Lastly, it is interesting to look at the reasons impacting the NCDR when it sanctions these clubs and persons. First, elements that influence the NCDR's decision positively, are the proactive attitude[311] or the exemplary behavior[312] of a club, the clean record of a club[313] or player[314], or the fact that a player apologized and was already punished by getting a red card[315]. On the negative side, the Chamber considered the bad history of a club[316] or player[317], and the fact that a club tried to defend an inappropriate comment as permissible[318]. Other negative arguments are the youthfulness of the players in the case of an adult supporter[319] or youth trainer[320] misbehaving, and the severity or seriousness of the facts[321]. Regarding the amount or duration of the penalty, the NCDR argued in one case that a fine shouldn't be too low because of its preventive function[322], and opted for the maximum sanction in other cases because of a lack of sense of guilt and cooperation[323], and an arrogant and aggressive attitude towards the referee[324]. As for alternative measures, apologies and displaying a sense of guilt influence the Chamber positively.[325] Elements hurting the decision to opt for alternative measures are similar to the aforementioned arguments, like the

[311] *A.L.* (n 217).
[312] *R. Aywaille FC - supporter* (n 213).
[313] *FC INT Jandrain-Jandrenouille* (n 183); *Lommel SK* (n 215).
[314] *SK Pepingen-Halle - City Pirates Antwerpen - J.E. - P.V. - E.S.* (n 206); *Olsa Brakel - player* (n 186).
[315] *A.L.* (n 217).
[316] *K FC Sint-Joris Sp - KSC Blankenberge* (n 174).
[317] *KFC Haren - B.S.* (n 206).
[318] *Lommel SK* (n 215).
[319] *SK Rummen* (n 205).
[320] *SK Vinderhoute - coach* (n 191); *Wolvertem Merchtem - member* (n 200).
[321] *Sporting Heide Linder - J.V.* (n 189); *KSV Schriek - supporter* (n 278); *K. Bevel FC - supporter* (n 271).
[322] *FC INT Jandrain-Jandrenouille* (n 183).
[323] *Sporting Club Duffel - supporter* (n 185).
[324] *Deurne OB - player* (n 182).
[325] *KVC AA Rekem - R.V.* (n 184).

seriousness of the offense[326], an arrogant and aggressive attitude towards the referee[327], and the bad history of the club[328]. Negative arguments related to the nature of alternative measures are the absence of the party[329] or its lack of credibility[330].

[326] See for example *D.R.* (n 184); *FC Genappe - player* (n 173); *VCE Houtem* (n 219).
[327] *FCH Sint-Pauwels - D.L.* (n 216); *SK Vinderhoute - coach* (n 191).
[328] *VCE Houtem* (n 219).
[329] *Athènes Sport Ressaix - M.T.* (n 281); *Deurne OB - player* (n 182); *RFC Wiersien - supporter* (n 190); *FS Kids MD Erembodegem - Real Zuip't Al Burst* [2023] NCDR Case 149/22-23.
[330] *FC Genappe - player* (n 173).

Conclusion

INTERESTING TENDENCIES – After introducing the structure and content of a judgment of the NCDR, the focal point of this chapter is the third and last section where a bigger picture of these judgments is painted. This big picture demonstrates some similarities, like the legal framework or the threshold for racist speech, but also some interesting differences between cases, for example, in the imposed sanctions.

READY FOR THE NEXT STEP – This chapter has offered an in-depth analysis of all the cases regarding racism that were rendered in the 2022-2023 season, thereby answering the second sub-research question. This analysis, together with the discussion of the relevant frameworks of the previous chapter, enables the next step. This follow-up will take place in the next chapter, where these trends will be discussed further and evaluated in light of the first chapter's framework.

Evaluating the case law of the NCDR

OVERVIEW – In this third chapter, the NCDR's case law, including the previously discovered tendencies, will be evaluated. First, the application of the regulations by the NCDR will be studied, including attention to practical difficulties. Second, the conformity of these regulations and their application will be reviewed taking into account the rights of the parties before the Chamber. In doing so, this chapter will answer the evaluative sub-research question.

The NCDR's application of the law

OVERVIEW – In this first section of the chapter, the working of the NCDR will be evaluated in a practice-oriented way. To be more precise, the functioning of the Chamber when it is applying legal sources will be discussed. So, the question that will be answered is whether the NCDR is applying these regulations the way they are meant to be used. The first subsection will straightforwardly deal with this question by comparing the provisions and their application side by side. In the second subsection, this question will be looked at more broadly, examining whether the four characteristics typically found in racist speech frameworks in sports and football can be distinguished in the Chamber's judgments.

Following the letter of the law

A PLETHORA OF PROVISIONS – As discussed before, the legal sources used by the NCDR are not limited to the Regulations of the RBFA.[331] For example, the Chamber also relies on the case law of the CAS and BCAS, Circular OOP 40, and the FIFA Disciplinary Code. Taken together, these documents provide some clear rules the NCDR must take into account when deciding cases.

TECHNICAL PROVISIONS – To begin with, the technical requirements, that is to say, the rules on jurisdiction and admissibility, have to be respected by the Chamber.[332] First, there is not much to say about its competence, since it hasn't had to declare itself incompetent to treat any of the studied cases. Unsurprisingly, its clearly described jurisdiction is also challenged very rarely.[333] The same cannot be said regarding the admissibility of the NCDR's cases, since this has been challenged successfully in a handful of cases.[334] However, these were all instances where the principle of non bis in idem was applied without much ado, as explained earlier.[335] Also, two cases were considered partly inadmissible because a specific aspect of the case had no connection with the racist events that led to the case.[336]

[331] On the sources used by the NCDR, see pages 39-44.
[332] See page 46.
[333] See for example *SK Pepingen-Halle - City Pirates Antwerpen - J.E. - P.V. - E.S.* (n 206); *Marloie Sport - supporter* (n 171).
[334] *GS Bree-Beek* (n 222); *FC Poesele - player* (n 210); *Lierse Kempenzonen - supporter* (n 213).
[335] See page 54.
[336] *FC Landen - D.C. - R.R.* (n 257); *SK Pepingen-Halle - City Pirates Antwerpen - J.E. - P.V. - E.S.* (n 206).

ANTI-DISCRIMINATION PROVISION – Central in the NCDR's case law is the general anti-discrimination clause of the RBFA's Regulations.[337] The Chamber strictly applies this article, considering the protected grounds and punishable conduct, but especially the disregard for the accused's intent. In an illustrative case[338] in this regard, the NCDR faced two players who were denying the accusation of making racist insults such as "monkey" towards a player of African origin. However, they admitted to having made other comments which were not racist in their view. These included references to his physical appearance, including his baldness and big nose, and that he could run faster because of his "brown genetics". The Chamber then showed its reasoning by first stating that these comments are racist and second, underlining that the intent of both players is "*totally irrelevant*". With this consistent behavior, the NCDR not only applies Art. B11.234, but also respects the FIFA Disciplinary Code and the case law of the CAS and BCAS.

STRICT LIABILITY – Following the structure of the Regulations, the next relevant article is Art. B11.237 about the strict liability of clubs.[339] This principle is omnipresent in the NCDR's decisions and has led to many sanctions. However, contrary to the previous paragraph, this rule is not always applied consistently. While clubs were held responsible in the great majority of cases where a violation was found, there are a few cases where the Chamber ignored their responsibility. This is not to be confused with instances where the NCDR motivated why not to apply

---

337 Art. B11.234 RBFA Regulations. See pages 40 and 41.
338 *FC Veldegem - M.C. - G.M.* (n 234).
339 See pages 40-41.

this principle in a certain case.[340] The cases without any apparent reason to sanction clubs for violations of their members or supporters were already highlighted in the previous chapter.[341] Although it only concerns six cases, this remains an inconsistent application of the RBFA's Regulations.

SANCTIONS – When the NCDR imposes sanctions on clubs, players, staff members, or supporters, it complies with the rules laid down in Art. B11.238. More specifically, clubs are sanctioned with a supporters ban and fines, players and staff members with a suspension, and supporters with a refusal of affiliation. Additionally, alternative measures are possible for all these groups and are very commonly ordered by the Chamber. The consistency of these sanctions and their motivation will be addressed later.[342]

THRESHOLD – The final source that is applied by the NCDR is Circular OOP 40, establishing a threshold for racist comments.[343] It suffices to be short about this since the Chamber itself doesn't address it, apart from mentioning it in every judgment. So, it is not clear how the NCDR exactly applies this document, but its decisions are in line with it so it seems to fulfill an indicative function, as is indicated by the Chamber.

CONCLUSION – All in all, the NCDR is doing a good job in applying the regulations it has to respect. Generally speaking, it does it consistently, as illustrated by its clear position on the speaker's intent and its

[340] See for example *K WS Lauwe - M.D.* (n 288); *SK Herdersem - D.M.* (n 289); *R. Aywaille FC - supporter* (n 213).
[341] See page 61.
[342] See page 80 and following pages.
[343] See pages 43-44.

decisions on this matter. Nonetheless, it should be noted that in six cases where a violation was found, clubs escaped a sanction without an explanation from the Chamber, which is an unfortunate stain on an otherwise very solid performance.

Following the spirit of the law

BEHAVIORAL GUIDANCE – The first characteristic of racist speech frameworks in sports and football is its noticeable objective to influence the behavior of its subjects, in a more profound way than general legislation. This element is certainly noticeable throughout the NCDR's judgments. To begin with, its rulings have a clear educational function. This is evident by the number of legal sources included verbatim in its decisions, like Art. B11.234 and Circular OOP 40. Another display is the introductory part in every judgment before discussing Circular OOP 40, about the importance of values in sport, its relationship with society, and the risks and effects of discrimination on victims.[344] Apart from these formulations that are used by default, the Chamber also uses some occasions to speak out on a particular topic when it arises. An illustration of this is a case where a club's wait-and-see attitude was explicitly criticized by both the prosecutor and the NCDR itself, referring to the proactive attitude it expects from its clubs.[345]

VICTIM-ORIENTED – Secondly, the regulations on racist speech in sports and football tend to be more thoughtful of the victim's perspective.[346] This too can be said from the attitude of the NCDR. To begin with, the

[344] See page 47.
[345] *Zandvliet Sport* [2022] NCDR Case 12/22-23.
[346] More on the rights of victims later, see page 89 and following pages.

high rate of convictions shows that it makes an effort to do justice and stand up for the victims. An illustration of this is a case that was adjourned because the victim could not be present.[347] The attention victims get in the judgments is most visible in how the Chamber deals with evidence. For example, in a case where the referee did not hear the racist comment, the "*immediate and fierce*" reaction of the victim, together with other elements, still made it possible for the NCDR to consider the facts proven.[348] Also, the general authority of the referee's report, which is also upheld by the Chamber[349], benefits the victim, since it is virtually impossible for the accused to challenge it. However, it cannot set the evidence requirements too low, as it risks violating the rights of the accused. In one case where the conviction was mostly based on statements of the victim and his teammates[350], the NCDR was later overruled by the BCAS since this didn't amount to objective evidence.[351] Another case that shows how the BCAS is reaching the limits of what is possible, is a typical word-against-word case, where the referee did not hear anything, the victim filed a complaint afterward, and the accused denied everything.[352] Although the prosecutor tried to argue that the victim could no longer gain any competitive advantage when filing the claim and should thus be believed, the NCDR had to declare the case unfounded because of a lack of evidence.

[347] *KFC Poppel - player (interim decision)* (n 181).
[348] *SK Pepingen-Halle - City Pirates Antwerpen - J.E. - P.V. - E.S.* (n 206).
[349] Only in two cases the referee report was succesfully challenged. See *FCA Gent - B.V.* (n 203); *BOKA United - player* (n 176).
[350] *Fc Lebbeke - T.V. - K.E.* (n 170).
[351] *X v RBFA* [2023] BCAS 274/22 and 275/22.
[352] *KSK Wenduine - M.D.* (n 186).

FOCUS ON CONTENT – Another big difference between general racist speech legislation and its counterpart in football and sports is the attention of the content of the comment instead of the intention behind it.[353] As mentioned before, the NCDR implements this consistently in its case law.[354] Another example to illustrate this, is a case where the NCDR imposed an alternative measure on a young player although he did not know the exact meaning of the racial slur he used.[355] This is a typical example where the requirement of intent would make a condemnation hard to obtain.

DESIGNED FOR A SPORTS SITUATION – Finally, the legislation that the Chamber uses is clearly designed for the specific situation of football. So, a logical follow-up question is whether the working of the NCDR also shows that it functions well within this sports-specific situation. The positive answer to this question can be supported by numerous elements. To begin with, the easy accessibility of the Chamber allows victims to complain without excessive formalism. Furthermore, the judgments are concise and are structured well, with attention to the educational function of the Association.[356] Above all, it uses the offered legal mechanisms to do justice while keeping the workload manageable for a non-judicial organization. These mechanisms include the authority of the referee's report, the irrelevance of the speaker's intent, and the clear and easy to work with Regulations. They all can decrease the workload of the NCDR and are also used by it to do so.

---

[353] See page 32.
[354] See page 69.
[355] *SK Herdersem - D.M.* (n 289).
[356] On the educational component of judgments, see page 47.

CONCLUSION – As was the case for the letter of the law, the NCDR does well in following the spirit of the law. The multiple traits that characterize how racist speech is addressed in a sports and football context are demonstrated by the way the Chamber applies its legal sources. The only nuance that must be made is a realist one, being that it is not possible to seek the best outcome for the alleged victim at all costs since this can lead to harming the rights of others.

The conformity of the regulations and their application

OVERVIEW – The last part of this chapter on the evaluation of the NCDR's case law consists of a broader view of the NCDR and the rules it applies. It will look at this mechanism as part of the grand human rights protection system that an individual can turn to when he feels his rights are or risk being violated. Taking this approach, two potential points of improvement can be distinguished. Before doing so, the first subsection will argue why the ECHR's framework can be applied to the NCDR and its functioning. Doing so allows the second and third sub-sections, containing potential human rights concerns, to be discussed using this framework.

Applying the ECHR's framework

THE ECHR – The importance and influence of the ECHR, described by some as the most effective human rights regime on the planet[357], goes without saying. Whenever a human rights situation in Europe is discussed, the Convention is always around. An example of this inevitability can be found in this thesis when the freedom of speech and racist speech frameworks were discussed.[358] As will be demonstrated in the following paragraphs, applying the ECHR's framework directly to the working of the NCDR is quite unrealistic from a strictly legal point of view. However, an argument will be made as to how the ECHR can be applied in a more inspirational way instead.

---

[357] Helen Keller and Alec Stone Sweet, 'The Reception of the ECHR in National Legal Orders' in Helen Keller and Alec Stone Sweet (eds), *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (1st edn, Oxford University Press 2008) 3.
[358] See pages 18-20.

SPORTS AND THE ECHR – When talking about the relationship between dispute resolution in sports and the ECHR, two recent cases are authoritative. The first case chronologically is Mutu and Pechstein v. Switzerland[359] which concerned a professional football player and a professional ice skater whose sanctions for drug use were confirmed by the CAS[360]. They argued that this tribunal violated their rights to a fair trial enshrined in Art. 6 ECHR because it was not independent nor impartial, and the hearing was not public.[361] What is relevant for this thesis, is the question of whether this court can be considered as a tribunal established by law, as described in Art. 6 ECHR, and therefore has to respect the procedural safeguards in that article. The Strasbourg Court responded in the affirmative even though the CAS is an emanation of a private-law foundation, referring to its full jurisdiction regarding any question of fact or law in the context of its disputes, and that it is based on norms of law and follows an organized procedure.[362] Furthermore, the Swiss Federal Court, which also functions as the court of appeal for the CAS, has always considered the decisions of the CAS as comparable to judgments of a national court.[363]

The second ECHR case is against Turkey and involved a professional football player, a professional referee, and several amateur football players.[364] They were all penalized by the Arbitration Committee of the Turkish Football Federation and complained about multiple procedural

---

[359] *Mutu and Pechstein v Switzerland* [2018] European Court of Human Rights Application nos. 40575/10 and 67474/10.
[360] On the CAS, see page 42.
[361] *Mutu and Pechstein v. Switzerland* (n 359), paras 51-52.
[362] ibid, para 149.
[363] ibid, para 149.
[364] *Ali Riza and others v Turkey* [2020] European Court of Human Rights Application nos. 30226/10, 17880/11, 17887/11, 17891/11 and 5506/16.

shortcomings.[365] The relevant question for this research is whether these disputes are determining their civil rights and obligations or criminal charges, and therefore making Art. 6 ECHR applicable. Since both the professional player and the referee seek to claim rights of a pecuniary nature stemming from a contractual relationship, they fulfill the requirement of civil rights and obligations.[366] However, the three amateur football players found themselves in a different situation. First, their claim didn't involve criminal charges, since the Engel criteria[367] were not met, partly because the severity of the possible penalty was not sufficient.[368] Additionally, they could not demonstrate that the dispute was pecuniary since they were amateur players, so it was decided that it didn't involve their civil rights and obligations.[369] As a result, these players could not invoke the procedural safeguards of Art. 6 ECHR.

WHY IT CAN'T BE APPLIED – To begin with, the combination of the CAS's jurisdiction, procedures, and recognition by ordinary courts is not present in the case of the NCDR. So, chances are small that the ECtHR would consider the Chamber as a tribunal established by law. Secondly, although the NCDR looks more like the court in the Turkish case as it is also established by a football federation, this route will not succeed either. The main problem here is that almost all the cases in front of the NCDR relate to amateur players, amateur staff members,

---

[365] ibid, para 4.
[366] ibid, paras 159-160.
[367] These criteria are used by the Court to determine whether the applicant was the subject of a criminal charge, see *Engel and others v The Netherlands* [1976] European Court of Human Rights Application nos. 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72, para 82.
[368] *Ali Riza and others v. Turkey* (n 364), paras 153-154.
[369] ibid, para 155.

and supporters. Combining these cases shows that it is very unlikely for a party before the NCDR to be successful in Strasbourg.

WHY IT CAN BE APPLIED – Leaving this legal reality aside, there are plenty of reasons to apply the ECHR's provisions to the working of the NCDR. First, the RBFA's Regulations introduce a separation of powers, including a judiciary/disciplinary power[370] in which the NCDR is considered a special court with its own competences[371] that rules based on clear and publicly available legal provisions[372]. The Chamber also replaces the ordinary judicial system, except in cases where the law does not allow it, as every member of the RBFA automatically agrees to this form of compulsory arbitration.[373] Additionally, its decisions can be appealed on all points at the BCAS[374], as shown earlier[375]. This appearance of the Chamber as a genuine tribunal is also reinforced by its use of legal principles[376] like reasonable doubt[377] and non bis in idem[378]. Furthermore, the status of the NCDR was not rejected by a party in any of the studied cases.[379] All these elements combined show why it would not be absurd or unreasonable to argue that the Chamber, with all its resemblance to a "real" judicial tribunal, could benefit from the guidance of the ECHR's principles.

---

370 Art. B2.4 RBFA Regulations.
371 Art. B2.55 ibid.
372 Art. B11.234 and following ibid.
373 Art. B1.17 ibid.
374 Art. B11.104 and B11.105 ibid.
375 *Fc Lebbeke – T.V. – K.E.* (n 170), see page 72.
376 *SK Pepingen-Halle - City Pirates Antwerpen - J.E. - P.V. - E.S.* (n 206) illustrates how the NCDR does not just apply any legal principle, as it argued that a criminal law principle like the irresistible impulse cannot suddenly be transferred into disciplinary law.
377 See page 57.
378 See page 54.
379 The only case that came close to a contestation was *Olsa Brakel - player* (n 186), in which the club warned the NCDR for a loss of support because of its hearings during working hours.

WHY IT SHOULD BE APPLIED – Lastly, this leads to the arguments about why the NCDR could benefit from using the ECHR's provisions, and thus why they should be applied. The primary reason can be found in the spirit in which the Chamber was founded. Its mission and functioning are undeniably embedded in a human rights philosophy, aiming to address the issue of racism and discrimination in football and to protect the human dignity of every person in and around football.[380] With the ECHR being such an important and influential document, its use can benefit the NCDR and the RBFA in achieving its human rights goals. Unsurprisingly, the Chamber has already referred to the ECHR in two cases involving professional clubs, by quoting a case where the BCAS confirms that the RBFA's regulations are in line with the principles of the Convention.[381]

CONCLUSION – In this section, an argument has been made to apply the ECHR's framework to the working of the NCDR. Following the ECtHR's case law, it was noted that this application is not self-evident from a strictly legal point of view. However, it was also demonstrated that the application of the Convention to this private law regulatory body, as it is described in the Regulations[382] and its case law[383], would not be ridiculous. On the contrary, it would make sense to do so, given its raison d'être.

---

[380] On the RBFA's website, the NCDR is described as a central and crucial actor in the establishment of an inclusive environment for everyone, see <https://www.rbfa.be/en/cometogether/national-chamber-fight-against-discrimination-and-racism> Accessed 13 July 2024.
[381] *Beerschot - VA* (n 215); *Lommel SK* (n 215).
[382] Art. B11.2 RBFA Regulations.
[383] *SK Pepingen-Halle - City Pirates Antwerpen - J.E. - P.V. - E.S.* (n 206).

Art. 6 ECHR and the right to a fair trial

INCONSISTENT SANCTIONS – The first point of improvement for the NCDR is inspired by Art. 6 ECHR on the right to a fair trial. In this regard, two points of concern can be raised. First, there sometimes is a lack of motivation, both when the Chamber decides whether to impose a sanction or not, and when it determines the nature, length or duration of the sanction. Second, there seem to be some inconsistencies and unclarities about the purpose of alternative measures and how they are used. Both concerns will be addressed in the following paragraphs.

Mediocre motivation

LACK OF MOTIVATION – To begin with, the NCDR doesn't always motivate all its decisions in its judgments. The importance of a court displaying its reasoning has been confirmed by the ECtHR both in criminal law[384] and civil law[385] and is crucial to preserve the parties' right of defense. The following examples will demonstrate that there is room for improvement in this matter.

EXAMPLE NO.1: STRICT LIABILITY – As discussed when evaluating its compliance with the letter of the law, the NCDR decided in a few cases not to withhold the strict liability of the clubs in question, without any reasoning.[386] Of course, this does not immediately affect someone's right of defense when just looking at these cases. However, when looking at them as part of the whole body of case law it affects other clubs

[384] See for example *Moreira Ferreira v Portugal (No 2)* [2017] European Court of Human Rights Application no. 19867/12, para 84.
[385] *Suominen v Finland* [2003] European Court of Human Rights Application no. 37801/97.
[386] See page 61.

because they are almost always being held responsible without particular reasoning. For example, a wording that is often used is that the Chamber "*considers it desirable*" to sanction the concerned club.[387] This lack of explicit motivation would not be an issue if it would concern established case law of the NCDR to apply this principle. However, as sometimes this responsibility is not applied without giving explicit reasons[388], its application in all the other cases is not justified by a consistent behavior of the Chamber and thus makes proper reasoning desirable.

EXAMPLE NO. 2: "APPROPRIATE SANCTION" – A second example of the NCDR coming up short in its motivation, is when it decides on the height or duration of sanctions. This can be illustrated by a case where a player made a racist comment directed at two opponents, which the player continued to deny.[389] After the Chamber considered the facts proven and in violation of Art. B11.234, a sanction had to follow. First, it explained that because of this lack of sense of guilt demonstrated by the player's denial, it opted not to apply an alternative measure. Then, it continued stating that it considered a suspension of 6 months, of which 2 months is effective and 4 months is suspended, to be an "*appropriate sanction*", without further explanation. Again, this would not need further explanation if this combination of 2 and 4 months is used all the time, but this is not the case. It is unclear why the NCDR did not

---

[387] See for example *KVE Aalter* (n 211); *K Bocholter VV - player* (n 217); *KFC Nijlen - player* (n 216).

[388] There are some exceptions where the NCDR motivates why it doesn't apply the strict liability. See for example *K FC GW Amel - F.P.* (n 288); *K WS Lauwe - M.D.* (n 288); *SK Herdersem - D.M.* (n 289).

[389] *FCT Melle - M.M.* (n 172).

opt for other combinations, like 1 + 5 months[390], 3 + 3 months[391], or 4 + 2 months[392] as it did in other cases, creating a perception of arbitrariness.

UNEQUAL TREATMENT – The previous example introduces a consequence of this incomplete motivation, as cases that seem similar sometimes have other outcomes, which becomes problematic when this different treatment is not justified in the NCDR's reasoning. In the next paragraphs, this will be illustrated by three concrete examples. As a disclaimer, two cases are of course never completely identical, but the following cases share some relevant similarities that cannot be ignored.

EXAMPLE NO. 1: CLUBS – The first comparison of two cases concerns the strict liability of clubs. However, as opposed to the previous part, this time the choice not to apply this principle to the clubs is not the issue, as this was sufficiently explained. Both cases are about clearly racist insults by members of the clubs, in the first case a youth player[393] and in the second case a staff member[394], which were not contested. Both situations, being so evident, prompted the clubs to take action. Whereas the player had to referee youth games on Saturdays for one season, the staff member was immediately fired. In the player's case, the NCDR decided not to condemn the club, as it had taken its player's action seriously and reacted quickly and proportionately. Yet, in the case of the staff member, the Chamber also applauded the club's intervention, referring explicitly to the immediate dismissal and its constructive attitude, but still imposed an alternative measure. So, while both cases were

[390] See for example *SK Vlezenbeek - K VK Kester-Gooik - players* (n 175).
[391] See for example *Fc Lebbeke - T.V. - K.E.* (n 170).
[392] See for example *K.D. -R.G.* (n 206).
[393] *K FC GW Amel - F.P.* (n 288).
[394] *KVV Thes Sport Tessenderlo - coach* (n 218).

adequately motivated by themselves, the difference in outcome cannot be explained by looking at both judgments. After all, firing a staff member does not seem to give a less clear message about the club's anti-racism policy than the measure imposed on the player.

EXAMPLE NO. 2: PLAYERS – The second example relates to the previous one, as it also involves players being sentenced by their clubs because of racist comments. In two very similar cases involving youth players, the clubs took clear action. In the first case, the player apologized to the victim after the game, discussed the situation with his club afterward, and had to referee two youth games.[395] Likewise, the player in the second case apologized to the victim and was sentenced to refereeing 5 youth games.[396] Moreover, his club followed its anti-racism policy, meaning that its youth coordinator had a personal conversation with the player and his father, informed the team about the club's position in these cases, and urged the other youth trainers to do the same with their teams. In this last case, the player was still sentenced to an alternative measure on top of having to referee, despite the NCDR's references to his genuine sense of guilt and the fact that he apologized again to the victim during the hearing. By contrast, the Chamber decided not to impose any extra sanction on the player in the first case. In its reasoning, it points to the club's proactivity in its pedagogical task and the apologies of the player. It concludes that it wishes to encourage the good practices of clubs and players who recognize their errors and do everything possible to address them. Here again, the same reasoning can be

---

[395] *A.L.* (n 217).
[396] *K Bocholter VV - player* (n 217).

found in both cases, but the outcome is different without a clear explanation.

EXAMPLE NO. 3: PLAYERS – Less striking, but still a noticeably different outcome can be found in the two last cases that will be addressed. They both regard players who denied the accusation of having made a racist comment towards an opponent. Nonetheless, the NCDR considered the facts to be proven and determined a punishment. In both cases, it decided against an alternative measure given the absence of a sense of guilt, as both players kept denying the allegations. In the first case, the Chamber ruled that a suspension of 6 months, of which 3 months suspended, would be an "*appropriate sanction*"[397], without further explanation.[398] A similar reasoning is given in the second case by simply referring to an appropriate sanction, leading to a suspension of 6 months.[399] However, here only two months were on probation. Although this is only a minor difference, it remains unclear as to why the NCDR opts for a different treatment and how it comes to a decision on the length of these suspensions due to the absence of an in-depth explanation.

CONCLUSION – In summary, motivation is key, and less motivation means less (legal) certainty. The first area where the NCDR can improve in this regard is by not settling for a general explanation like "considering something an appropriate sanction" without further explanation, or by starting to address the potential responsibility of a club consistently. Second, by paying more attention to this duty to motivate, the

[397] This wording has been discussed before. See page 81.
[398] *Fc Lebbeke - T.V. - K.E.* (n 170).
[399] *K.D. -R.G.* (n 206).

appearance of arbitrariness in similar cases can be eliminated. In the end, no two cases are exactly alike, and the Chamber likely takes some of these small differences into consideration when ending up with different sanctions. Nevertheless, if it does not mention these elements in its decisions, this is unclear to its legal subjects.

SIDENOTE – As a little afterthought on this section about the right to a fair trial and the rights of defense, the impact of the NCDR's "evidence policy" on the defendants must also be acknowledged. As previously discussed, the type and amount of evidence needed to consider the facts proven is lower compared to most ordinary courts, which can be justified because of the specific context.[400] Anyway, like a flawed motivation, this too can have an impact on the rights of the defendant. Yet, it will not be dealt with any further, simply because this evidentiary system can be justified and is in favor of the victims who find themselves in a vulnerable position, whereas a lack of motivation seems harder to justify and does not benefit any of the parties.

Ambiguous alternatives

THE NCDR IS A FAN – As discovered in the case law analysis, the NCDR does not hesitate to impose alternative measures when it sees fit.[401] According to the RBFA's Regulations, they can replace a regular sanction only after an adversarial hearing and if the party agrees.[402] They have a preventive[403] or restorative character and aim to promote the sportive

[400] See page 57.
[401] See page 59 and following pages.
[402] Art. B11.142, para 1 RBFA Regulations.
[403] For example, in *FC Veldegem - M.C. - G.M.* (n 234), the alternative measure is described as a serious warning for the future.

values or the common interest in football.[404] Although they are regularly used by the NCDR, it does not always do it consistently.

WHY ALTERNATIVE MEASURES ARE USED – The nature of the Chamber, established with a clear goal of making Belgian football more inclusive and respectful, is fully in line with the practice of alternative measures. So, it doesn't really come as a surprise that the NCDR often makes use of these educational alternatives, as they are called on the RBFA's website.[405] The different functions of the alternative measures mentioned in Art. B11.142, combined with the discretionary powers of the Chamber in this regard and the fact that such a measure can partly or fully replace a regular sanction, leads to a lot of variation. They also make these alternative measures an appealing and flexible instrument to use. However, the other side of the coin is that this poses a challenge for the NCDR in terms of securing consistency throughout its judgments.

WHEN ALTERNATIVE MEASURES ARE USED – A big part of this challenge to be consistent entails making sure that it differs between cases where it opts for alternative measures and cases where it does not. At first glance, the typical situation where alternative measures are granted is when a player is genuinely sorry about the events, has apologized to the victim, recognizes the seriousness of the situation, and shows a constructive attitude.[406] It appears to be a favor to the defendant, who escapes more severe sanctions like a fine or suspension and gets the chance to educate and develop himself. However, this idea of an alternative measure being a courtesy is difficult to reconcile with some

---

[404] Art. B11.124, para 2 RBFA Regulations.
[405] (n 30).
[406] On the arguments the NCDR uses to impose alternative measures, see page 51.

decisions of the NCDR. Examples are a case where the prosecutor asks for an alternative measure for a club that has already been convicted 17 times for the behavior of its supporters[407], or another case where the prosecutor justifies an alternative measure by referring to issues regarding racism in the past[408]. Likewise, the Chamber has granted alternative measures to a club that did not display any sense of guilt at the hearing and even minimized and contested the facts[409], or to a club that had issues with racism among its supporters before[410]. These consistencies also happened in the opposite direction. For example, an alternative measure was not granted to a player who admitted to having used a racist slur and apologized to the victim who accepted his apologies.[411] The NCDR justified this simply by referring to "*the circumstances*".

HOW ALTERNATIVE MEASURES ARE USED – This last paragraph will again link the practice of alternative measures with the duty to motivate. The previous paragraph showed that the decision to grant or reject alternative measures can benefit from reliable and consistent motivation to prevent confusion. The same is true for how these measures are applied in practice. Similar to when it imposes regular sanctions like suspensions, the NCDR does not always motivate why it chooses a specific measure, or how it determines its size. For example, the essay about FC United sometimes had to be 2 pages[412] and at other times 3 pages[413]. This may seem a negligible difference, but this again can lead to suspicions

[407] *KFC De Kempen Tielen-Lichtaart* (n 254).
[408] *Sporting Heide Linder - J.V.* (n 189).
[409] *VCOG Stasegem - supporter* (n 212).
[410] *FC Moreda Uccle* [2023] NCDR Case 124/22-23.
[411] *Y.L.* (n 285).
[412] *K WS Lauwe - M.D.* (n 288); *KFCVW Hamme - O.T.* (n 193); *SK Herdersem - D.M.* (n 289); *FC Landen - M.R.* (n 294).
[413] *Boutersem United - L.V.* (n 189); *FC Veldegem - M.C. - G.M.* (n 234).

regarding arbitrariness, especially when not duly motivated. The same can be said about the use of alternative measures as the "main sanction" with a regular sanction suspended until the execution of the measure[414] or using them next to such a regular sanction[415]. Both methods, which for the record are allowed by the RBFA's Regulations[416], are both used but lack a clear line. Again, this all comes down to a sometimes too simplistic reasoning of the Chamber.

CONCLUSION – To conclude, more attention to its consistency and motivation would also benefit the NCDR's policy regarding alternative measures. Otherwise, it risks being perceived as stricter in some cases and more lenient in others, without a clear reason why. The use of these measures is a good thing, and their functional and flexible nature allows them to be applied in a variety of situations. However, this still must be done in a motivated and consistent manner in order to respect the right to a fair trial. This being said, the Chamber does a very good job overall. So, to answer the third sub-research question, the NCDR's practice is mostly in line with the discussed frameworks, although there is room for improvement. This answer allows the final sub-research question to be addressed, diving deeper into these potential improvements.

---

[414] See for example *T.C.* (n 285); *FC Wezel Sport - delegate* (n 278); *KFC Nijlen - player* (n 216).
[415] See for example *Sporting Heide Linder - J.V.* (n 189); *Coach* [2023] NCDR Case 106/22-23; *SK Vlezenbeek - K VK Kester-Gooik - players* (n 175).
[416] Art. B11.124 RBFA Regulations.

Art. 13 ECHR and the right to redress

THE VICTIM'S PERSPECTIVE – The other article that can inspire the NCDR to do even better is Art. 13 ECHR, containing the right to an effective remedy. As mentioned before, a characteristic of the response to hate speech in football which is also apparent in the working of the NCDR is that it adopts less of an individual rights approach and more of a community-centred one.[417] This is not to say that it disregards the rights of victims, as is shown by its evidence policy, for example.[418] Nonetheless, the victims' rights can be even more considered.

THE QUESTION OF COMPENSATION – A first point of improvement that can be drawn from the ECHR is also apparent in other hate speech mechanisms, like the Belgian Antiracism Act. Although mainly containing criminal provisions aimed at the defendant, it also contains provisions on the possibilities for victims to claim damages, which includes compensation for psychological damage.[419] A similar system cannot be found in the decisions of the NCDR. As mentioned on its website, the primary mission is to shape "*an exemplary accessible, and respectful Belgian football that embraces everyone*".[420] So, while this obviously means that it will have to protect the rights of the individual victims, it does so for a higher cause, which is the improvement of the Belgian football environment. By looking at it this way, it is not surprising that it does not have a mechanism to award compensation to victims. However, taking inspiration from other sources like the ones mentioned, an

---

417 See pages 71 and 72.
418 See pages 56 and 57.
419 See pages 17 and 18.
420 <https://www.rbfa.be/en/cometogether/national-chamber-fight-against-discrimination-and-racism> Accessed 13 July 2024.

argument could be made to also include a similar system in the workings of the Chamber.

ATTENTION TO THEIR OPINION – Another point which is tied to this, is the position of the victim during a case before the NCDR. They sure are involved, which is illustrated by the large number of cases containing a victim's statement.[421] Another time when the victim is discussed in the decisions, is when the Chamber looks at the reaction of the victim as a way to support the establishment of the facts in case of their contestation.[422] However, their involvement seems to be mostly limited to these evidentiary issues. It can be interesting for the NCDR to reflect on other situations where the input of the victim can be valuable. In a way, it does already do this occasionally. For example, an element it has taken into account when determining an appropriate sanction is the fact that the apologies of the defendant had been accepted by the victim.[423] However, this only happens very rarely, and the participation of victims can certainly be more regular and well-structured.

CONCLUSION – The decisions of the NCDR are in the first place focused on the offender, who has to be educated and/or punished in order to improve the condition of Belgian football. While this definitely benefits actual and potential victims, the Chamber can include their position more in its decision-making process. For example, it looks at the impact of the words on the victim only when establishing whether the facts have taken place or not. As soon as this threshold is reached, the

---

[421] See for example *K.D. -R.G.* (n 206); *KFC Eppegem* (n 232); *Futsal Project Aarschot* (n 177).
[422] See page X. (EVIDENCE IN FRONT OF THE NCDR)
[423] See for example *Y.L.* (n 285).

situation of the victim is rarely discussed further. In conclusion, the NCDR's attention to the victim can thus be described as limited, especially when compared to other human rights mechanisms.

Conclusion

INSPIRATION FOR IMPROVEMENT – This chapter discussed two main areas in which the NCDR can improve, taking inspiration from the ECHR. First, the right to a fair trial can be guaranteed better by focusing more on consistency in its judgments. It can do so by paying attention to its motivation and providing more clarification about its policy regarding alternative measures. Second, although this may not come naturally to the Chamber given its raison d'être, it can put more emphasis on the victim in its case law. In the studied cases, it has only done so in a limited number of cases and areas, leaving the potential benefits of their participation on the table.

Recommendations for the NCDR

OVERVIEW – This last chapter continues where the previous one left off. It will offer proposals for the areas where the NCDR can improve, as found in the previous chapter. First, it will provide some suggestions to address the concerns regarding motivation and alternative measures. Then, some potential ways in which the Chamber can enhance the involvement of victims of racist speech.

ATTENTION TO MOTIVATION – The most straightforward recommendation for the NCDR is to simply pay more attention to motivation. By settling for vague words like "appropriate" or merely referring to the circumstances to justify its sanctions, it misses opportunities to clarify itself and give the members of the RBFA more insight into its decision-making process. Whereas the educational parts about the importance of values in sports take up a considerable amount of space in the judgments[424], there are typically only a few paragraphs reserved for the Chamber's specific reasonings. A concrete example of how the NCDR could lengthen these paragraphs is by referring to its past cases and discussing the similarities or differences that explain a different or similar outcome. This would not only benefit the Chamber's motivation but also potentially improve its consistency throughout its decisions.

[424] See page 47.

INDICATIVE GUIDANCE – Another tool to help the NCDR in this regard can be an increase in the guidance that is offered by the Regulations. The more discretionary the powers of the Chamber are, as is particularly the case for alternative measures, the more in-depth reasoning is required. On the other hand, this means that the more indicative the Regulations are, the less a sanction needs to be motivated on top of referring to the concerned provision. For example, the NCDR often imposes the maximum fine on a club, which depends on the level the club plays at according to Art. B11.151. Another established concept in the football environment are the so-called "indicative tables".[425] This instrument is used to determine a sanction whenever the Association offers a settlement to a member or club. [426] For example, in the case of non-verbal misbehavior of a professional player, insults will give rise to a proposal between 1 and 4 games of suspension, while threats or spitting will lead to 2 to 6 games. Although only an illustration, a similar concept could be drafted not for settlements, but for the decision-making process of the NCDR. It could take into account several factors, like the wording used or the specific circumstances. This would again simplify the motivation process for the Chamber, which can replace a large part of its justification by referring to such a table.

---

[425] See Book B, Attachment 4 of the RBFA Regulations.
[426] Art. B11.149 ibid.

USE ITS CREATIVITY – The creativity of the NCDR has already been praised when discussing its use of alternative measures.[427] The final proposal would be for the Chamber to use its innovative talent to seek more possible ways to satisfy the victim's need for redress. For example, they too could be involved in the case of alternative measures, especially given their conciliatory nature. They could perhaps also express their agreement or disagreement to the imposing of such measure, as is done by the prosecutor. Another idea is to give them the possibility to come up with alternative measures themselves or ask for their opinion on the various measures already available. Regarding the possibility of compensation, the nature of the NCDR does not seem to allow such a mechanism. However, here again, out-of-the-box solutions can be looked for. For example, all fines imposed in cases of racism or discrimination can be collected and used to fund anti-discrimination projects of the RBFA or clubs or offer psychological aid to victims.

INTERESTING DEBATES AHEAD – Although the NCDR does a very good job overall, it can always try to do better. In this chapter, some ideas were provided to help the Chamber in this undertaking. If it chooses to embark on such a journey, it can benefit from discussing its attention to motivation, the potential of the indicative tables, and the involvement of victims.

[427] See page 59 and following pages.

Conclusion

FRAMEWORK – In the first chapter, the racist speech frameworks were discussed, both general ones and the ones designed specifically for sports or football. The main differences that were found for this last category, are their aim to alter persons' behavior, their orientation to the victim's side, the focus on the content, and its application in sports situations.

ANALYSIS – This was followed by a second chapter, diving deep into the NCDR's cases regarding racism. Many trends were found within the over 150 cases that were studied. Some early question marks were raised, concerning the application of the strict liability of clubs, for example. These trends were further discussed in the next chapter.

EVALUATION – Combining both the framework distinguished in the first chapter and the information from the second chapter, the third part of this research connected the two. First, the practices of the NCDR were found to be mostly in compliance with the regulations it had to respect, with small nuances. Then, some inspiration coming from the ECHR was discussed. This showed that the Chamber can be more attentive when it comes to its motivation and consistency, and that the positions of victims can be improved.

PROPOSALS – These last findings became more tangible in the last chapter, where suggestions were made that can enhance the working of the NCDR even further. This included focusing on motivation, using mechanisms similar to the indicative tables, and several creative ways to include victims more.

TASTES LIKE MORE… – The final verdict is that the NCDR can be evaluated positively and thus should be continued to roll out. Not only should it aim to improve itself further, it can also inspire similar initiatives in other countries, maybe even leading to an ECHR-like system with a higher court at the level of UEFA or FIFA to safeguard consistency. In football, every goal starts with a first pass. Although this tribunal is not the first attempt to fight racism in football, it is the first of its nature. Moreover, it surely has the potential to prove to be a decisive pass, leading to the goal of a racist-free football.

Bibliography

Alfarizi MH, Morgan KR and Lago MC, 'Human Rights Abused in Qatar: FIFA Puts World Cup More Than Lives?' (2023) 4 Jurnal Penegakan Hukum dan Keadilan 27

Barendt E, *Freedom of Speech* (2nd edn, Oxford University Press 2007)

Bohm P, Kästner A and Meyer T, 'Sudden Cardiac Death in Football' (2013) 31 Journal of Sports Sciences 1451

Borghs P, 'Aanzetten tot discriminatie vereist niet altijd bijzonder opzet' (2019) 413 Nieuw Juridisch Weekblad 899

Clooney A, 'Introduction' in Amal Clooney and David Neuberger (eds), *Freedom of speech in international law* (1st edn, Oxford University Press 2024)

Coates M, 'Covid-19 and the Rise of Racism' [2020] BMJ 369

Cunningham GB, 'The Under-Representation of Racial Minorities in Coaching and Leadership Positions in the United States' in Steven Bradbury, Jim Lusted and Jacco Van Sterkenburg (eds), *'Race', Ethnicity and Racism in Sports Coaching* (1st edn, Routledge 2020)

De Prins D, 'Het Grondwettelijk Hof en de federale discriminatiewetten' in Christian Bayart, Stefan Sottiaux and Sebastien Van Drooghenbroeck (eds), *Actualités du droit de la lutte contre la discrimination: Actuele topics discriminatierecht* (die Keure 2010)

Deklerck S and others, 'Limits of Human Rights Protection from the Perspective of Legal Anthropology' in Bert Keirsbilck, Wouter Devroe and Erik Claes (eds), *Facing the Limits of the Law* (Springer Berlin Heidelberg 2009)

Gill S, Adelus E and De Abreu Duarte F, 'Whose Game? FIFA, Corruption and the Challenge of Global Governance' (2019) 30 European

Journal of International Law 1041

Hasković E, 'The Rise of Racism and Xenophobia During the COVID-19 Pandemic as an Expression of Their Centuries-Old History – A Sociological and Security Aspect' (2022) 22 Kriminalističke teme 45

Hylton K and others, 'Dear Prime Minister, Mr Musk and Mr Zuckerberg! : The Challenge of Social Media and Platformed Racism in the English Premier League and Football League' [2024] International Review for the Sociology of Sport

Isaac BH, *The Invention of Racism in Classical Antiquity* (Princeton University Press 2004)

Johnson AJ, 'Examining Associations between Racism, Internalized Shame, and Self-Esteem among African Americans' (2020) 7 Cogent Psychology

Kaplan ML, *Figuring Racism in Medieval Christianity* (Oxford University Press 2019)

Kassimeris C, Lawrence S and Pipini M, 'Racism in Football' (2022) 23 Soccer & Society 824

Keller H and Stone Sweet A, 'The Reception of the ECHR in National Legal Orders' in Helen Keller and Alec Stone Sweet (eds), *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (1st edn, Oxford University Press 2008)

Kestemont L, *Handbook on Legal Methodology: From Objective to Method* (1st edn, Intersentia 2018)

Kilvington D and others, 'Investigating Online Football Forums: A Critical Examination of Participants' Responses to Football Related Racism and Islamophobia' (2022) 23 Soccer & Society 849

Lemmens K and Vrielink J, '"De censuur kan nooit worden ingevoerd": vrijheid van meningsuiting en hate speech als uitdagingen voor het EHRM en de Belgische rechtspraktijk' in SWE Rutten, Elles Ramakers and Mariken Lenaerts (eds), *Recht in een multiculturele samenleving* (Intersentia 2018)

Mavromati D and Reeb M, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials* (Kluwer Law International 2015)

McGonagle T, 'The Council of Europe against Online Hate Speech: Conundrums and Challenges' (2013) Expert paper for the Council of Europe

Mchangama J and Alkiviadou N, 'Hate Speech and the European Court of Human Rights: Whatever Happened to the Right to Offend, Shock or Disturb?' (2021) 21 Human Rights Law Review 1008

Merckx F and Fekete L, 'Belgium: The Racist Cocktail' (1991) 32 Race & Class 67

Milo D, *Defamation and Freedom of Speech* (Oxford University Press 2008)

Negi NJ and others, 'The Solitude Absorbs and It Oppresses: "Illegality" and Its Implications on Latino Immigrant Day Laborers' Social Isolation, Loneliness and Health' (2021) 273 Social Science & Medicine

Schabas W, *The European Convention on Human Rights: A Commentary* (Oxford University Press)

Schouler-Ocak M and others, 'Racism and Mental Health and the Role of Mental Health Professionals' (2021) 64 European Psychiatry 1

Spinoy M and Vrielink J, 'Straffe discriminatiebestrijding? De rol van het strafrecht bij daden van discriminatie' in Julie Ringelheim and others (eds), *Redynamiser la lutte contre la discrimination* (Larcier/Intersentia 2023)

Vrielink J, *Van Haat Gesproken? Een Rechtsantropologisch Onderzoek Naar de Bestrijding van Rasgerelateerde Uitingsdelicten in België* (Maklu 2010)

Wieviorka M, 'The Seeds of Hate' (1996) 3 The UNESCO courier: a window open on the world 10

Williams DR, 'Race, Socioeconomic Status, and Health The Added Effects of Racism and Discrimination' (1999) 896 Annals of the New

York Academy of Sciences 173

Wodak R, 'The Rise of Racism – An Austrian or a European Phenomenon?' (2000) 11 Discourse & Society 5

WEBSITES

<https://www.ohchr.org/en/racism> Accessed 13 July 2024

<https://tackleproject.eu/en/> Accessed 13 July 2024

<https://inside.fifa.com/social-impact/campaigns/no-discrimination> Accessed 13 July 2024

<https://www.englandfootball.com/articles/2023/Nov/09/Enough-is-Enough-launches> Accessed 13 July 2024

<https://www.figc.it/en/figc/mission-and-governance/values/> Accessed 13 July 2024

<https://www.knvb.nl/themas/sportiviteit-en-respect/diversiteit/aanvalsplan-tegen-racisme-en-discriminatie> Accessed 13 July 2024

<https://www.rbfa.be/en/cometogether> Accessed 13 July 2024

<https://www.rbfa.be/en/cometogether/national-chamber-fight-against-discrimination-and-racism> Accessed 13 July 2024

CASES OF THE NCDR

AL [2023] NCDR Case 90/22-23

All Hautes Fagnes - supporter [2023] NCDR Case 92/22-23

Athènes Sport Ressaix - MT [2023] NCDR Case 81/22-23

Beerschot - VA [2023] NCDR Case 75/22-23

Beerschot VA - CJ [2022] NCDR Case 17/22-23

BOKA United - player [2023] NCDR Case 139/22-23

Boutersem United [2023] NCDR Case 155/22-23

Boutersem United - LV [2022] NCDR Case 34/22-23

Coach [2023] NCDR Case 106/22-23

Coach [2023] NCDR Case 106/22-23

CS Pays Vert Ostiches-Ath [2022] NCDR Case 11/22-23

Deurne OB - player [2023] NCDR Case 83/22-23

DR [2022] NCDR Case 153/21-22

Electro Niemegeers - United [2022] NCDR Case 155/21-22

Erpion-Lacs de l'Eau D'Heure (interim decision) [2023] NCDR Case 167/22-23

FC Daknam [2023] NCDR Case 91/22-23

FC Genappe - player [2023] NCDR Case 111/22-23

FC Gerpinnes [2022] NCDR Case 10/22-23

FC Havre - supporters [2023] NCDR Case 150/22-23

FC INT Jandrain-Jandrenouille [2023] NCDR Case 61/22-23

FC Kosova Schaerbeek - EO - AC [2023] NCDR Case 59/22-23

FC Landen - DC - RR [2022] NCDR Case 152/21-22

FC Landen - MR [2023] NCDR Case 43/22-23

Fc Lebbeke - TV - KE [2022] NCDR Case 157/21-22

FC Moreda Uccle [2023] NCDR Case 124/22-23

FC Poesele - player [2023] NCDR Case 132/22-23

FC Veldegem - MC - GM [2023] NCDR Case 48/22-23

FC Wezel Sport - delegate [2023] NCDR Case 115/22-23

FCA Gent - BV [2022] NCDR Case 2/22-23

FCH Sint-Pauwels - DL [2023] NCDR Case 65/22-23

FCT Melle - MM [2023] NCDR Case 97/22-23

FS Kids MD Erembodegem - Real Zuip't Al Burst [2023] NCDR Case 149/22-23

Futsal Project Aarschot [2023] NCDR Case 112/22-23

GS Bree-Beek [2022] NCDR Case 1/22-23

Handyside v the United Kingdom [1976] European Court of Human Rights Application no. 5493/72

HIH Hoepertingen - supporter [2023] NCDR Case 145/22-23

JD [2022] NCDR Case 8/22-23

JD [2022] NCDR Case 32/22-23

Jeunesses Oleyennes Réunies - AC [2022] NCDR Case 27/22-23

JS Fizoise [2023] NCDR Case 47/22-23

JS Isièroise [2023] NCDR Case 94/22-23

K Bevel FC [2022] NCDR Case 140/21-22

K Bevel FC - player [2023] NCDR Case 102/22-23

K Bevel FC - supporter [2023] NCDR Case 160/22-23

K Bocholter VV - player [2023] NCDR Case 79/22-23

K Boechoutse VV - player [2023] NCDR Case 158/22-23

K FC GW Amel - FP [2022] NCDR Case 158/21-22

K FC Sint-Joris Sp - KSC Blankenberge [2022] NCDR Case 13/22-23

K Minderhout VV - player [2023] NCDR Case 151/22-23

K Sp Club Blankenberge Sportief - GN [2022] NCDR Case 51/22-23

K WS Lauwe - MD [2022] NCDR Case 20/22-23

KD -RG [2022] NCDR Case 6/22-23

KESA Bottelare [2022] NCDR Case 35/22-23

KFC De Kempen Tielen-Lichtaart [2023] NCDR Case 143/22-23

KFC Diest - DG [2022] NCDR Case 41/22-23

KFC Eppegem [2023] NCDR Case 119/22-23

KFC Haren - BS [2022] NCDR Case 37/22-23

KFC Katelijne-Waver - GM [2023] NCDR Case 64/22-23

KFC Kersken-Haaltert - SCE Aalst - supporter - delegate [2023] NCDR Case 88/22-23

KFC Meulebeke (interim decision) [2023] NCDR Case 165/22-23

KFC Nijlen - player [2023] NCDR Case 130/22-23

KFC Poppel - player (interim decision) [2023] NCDR Case 134/22-23

KFC Rapide Wezemaal [2022] NCDR Case 4/22-23

KFC Zammel [2022] NCDR Case 154/21-22

KFCHO Kalken - GV [2022] NCDR Case 19/22-23

KFCVW Hamme - OT [2023] NCDR Case 69/22-23

KRC Genk - supporter [2023] NCDR Case 95/22-23

KSC Dikkelvenne - player [2023] NCDR Case 142/22-23

KSC Wielsbeke - LW [2023] NCDR Case 74/22-23

KSC Wielsbeke - player [2023] NCDR Case 117/22-23

KSC Wilskracht Hofstade - AC [2022] NCDR Case 151/21-22

KSK Wenduine - MD [2022] NCDR Case 31/22-23

KSV Geraardsbergen [2023] NCDR Case 63/22-23

KSV Schriek - supporter [2023] NCDR Case 161/22-23

KVC AA Rekem - RV [2022] NCDR Case 149/21-22

KVC Booischot [2022] NCDR Case 3/22-23

KVE Aalter [2022] NCDR Case 29/22-23

KVK Beringen - KB [2022] NCDR Case 16/22-23

KVV Thes Sport Tessenderlo - coach [2023] NCDR Case 104/22-23

KVV Zelzate - player [2023] NCDR Case 138/22-23

Lierse Kempenzonen - supporter [2023] NCDR Case 157/22-23

Lommel SK [2023] NCDR Case 66/22-23

Lommel SK - Racing White Daring Molenbeek - Maazi [2023] NCDR Case 76/22-23

Marloie Sport - supporter [2023] NCDR Case 103/22-23

Olsa Brakel - player [2023] NCDR Case 156/22-23

Park Houthalen - E Louwel - ME [2023] NCDR Case 73/22-23

Peruwelz FC - VP [2023] NCDR Case 98/22-23

R Aywaille FC - supporter [2023] NCDR Case 136/22-23

RFC Baulet [2022] NCDR Case 14/22-23

RFC De Gilly - player [2023] NCDR Case 122/22-23

RFC Thulin [2023] NCDR Case 154/22-23

RFC Wiersien - supporter [2023] NCDR Case 110/22-23

RU Auderghem - player [2023] NCDR Case 129/22-23

RUS Binche - NQ [2022] NCDR Case 44/22-23

SK Herdersem - DM [2023] NCDR Case 52/22-23

SK Pepingen-Halle - City Pirates Antwerpen - JE - PV - ES [2022] NCDR Case 33/22-23

SK Rummen [2022] NCDR Case 44/22-23

SK Vinderhoute - coach [2023] NCDR Case 125/22-23

SK Vlezenbeek - K VK Kester-Gooik - players [2023] NCDR Case 121/22-23

Sp Grote Brogel - players [2023] NCDR Case 162/22-23

Sporting Club Duffel - supporter [2023] NCDR Case 107/22-23

Sporting Heide Linder - JV [2023] NCDR Case 80/22-23

Sportkring Sint-Niklaas - player [2023] NCDR Case 60/22-23

SV Grasheide [2023] NCDR Case 140/22-23

TC [2022] NCDR Case 148/21-22

TW Waimes Faymonville - DG [2022] NCDR Case 24/22-23

US Beauraing 61 [2023] NCDR Case 144/22-23

VC Mortsel OG - MA [2023] NCDR Case 68/22-23

VCE Houtem [2023] NCDR Case 133/22-23

VCOG Stasegem - supporter [2023] NCDR Case 89/22-23

Vilvoorde City - GL [2022] NCDR Case 9/22-23

Visé BMFA - player [2023] NCDR Case 135/22-23

Wolvertem Merchtem - member [2023] NCDR Case 137/22-23

X v RBFA [2023] BCAS 274/22 and 275/22

YL [2023] NCDR Case 96/22-23

Zandvliet Sport [2022] NCDR Case 12/22-23

ZVC Solona Ranst - players [2023] NCDR Case 163/22-23

ECtHR CASES

Aksu v Turkey [2012] European Court of Human Rights Application nos. 4149/04 and 41029/4

Ali Riza and others v Turkey [2020] European Court of Human Rights Application nos. 30226/10, 17880/11, 17887/11, 17891/11 and 5506/16

Baldassi and others v France [2020] European Court of Human Rights Application no. 15271/16

Belkacem v Belgium [2017] European Court of Human Rights Application no. 34367/14

Engel and others v The Netherlands [1976] European Court of Human Rights Application nos. 5100/71, 5101/71, 5354/72 and 5370/72

Féret v Belgium [2009] European Court of Human Rights Application no. 15615/07

Lilliendahl v Iceland [2020] European Court of Human Rights Application no. 29297/18

Mariya Alekhina and others v Russia [2018] European Court of Human Rights Application no. 38004/12

Moreira Ferreira v Portugal (No 2) [2017] European Court of Human Rights Application no. 19867/12

Mutu and Pechstein v Switzerland [2018] European Court of Human Rights Application nos. 40575/10 and 67474/10

Perinçek v Switzerland [2015] European Court of Human Rights Application no. 27510/08

Savva Terentyev v Russia [2018] European Court of Human Rights Application no. 10692/09

Suominen v Finland [2003] European Court of Human Rights Application no. 37801/97

Vejdeland and others v Sweden [2020] European Court of Human Rights Application no. 1813/07

CAS AND BCAS CASES

Federación Mexicana de Fútbol Asociación v FIFA [2017] CAS 2016/A/4780 and 2016/A/4788

Federation's Prosecutor v KRC Genk and RBFA [2020] BCAS 173/20

Federation's Prosecutor v KVK and RBFA [2020] BCAS 169/20

Federation's Prosecutor v RSC Anderlecht and RBFA [2020] BCAS 174/20

PSV Eindhoven v UEFA [2003] CAS 2002/A/423

Standard de Liège v RBFA [2014] (BCAS)

Standard de Liège v RBFA [2017] BCAS 93/16

BELGIAN CASES

[2004] Belgian Constitutional Court n° 157/2004

[2009] Belgian Constitutional Court n° 17/2009

[2010] Belgian Constitutional Court n° 140/2010

LEGAL DOCUMENTS

Act concerning safety at football games 1998

Antiracism Act 1981

Belgian Constitution

Communication from the Commission to the European parliament and the Council - A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime 2021 [COM(2021) 777]

CERD, 'General Recommendation N° 35 on Combating Racist Hate Speech'

CFREU

Circular OOP40 concerning guidelines on hurtful, racist and discriminating expressions and chants as a result of football games 2007

Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law 2008

ECHR

ECRI, 'Explanatory Memorandum to General Policy Recommendation N°12 on Combating Racism and Racial Discrimination in the Field of Sport'

ECRI, 'General Policy Recommendation N°12 on Combating Racism and Racial Discrimination in the Field of Sport'

ECRI, 'General Policy Recommendation N°15 on Combating Hate Speech'

FIFA Disciplinary Code 2023

Framework Convention for the Protection of National Minorities 1995

Genocide Convention

Holocaust Denial Act 1995

ICCPR

ICERD

Parliamentary question - P-000182/2024(ASW) 2024

Proposal to amend the Antiracism Act of 1981 [n° 51-2720/1]

RBFA Regulations 2024

Recommendation of the Committee of Ministers to member States on the revised Code of Sports Ethics 2010 [CM/Rec(2010)9]

Recommendation of the Committee of Ministers to member States on the Revised European Sports Charter 2021 [CM/Rec(2021)5]

UEFA Disciplinary Regulations 2022

UEFA Safety and Security Regulations 2019

REPORTS

European Network Against Racism, 'Shadow Report on Racial Discrimination in Europe 2016-2021' (2024)
European Union Agency for Fundamental Rights, 'Being Black in the EU - Experiences of People of African Descent' (2023)

Kick It Out, 'Kick It Out Year Report 22-23'

Registry of the European Court of Human Rights, 'Key Theme - Article 10 Hate Speech' (2024)

NEWSPAPER ARTICLES

Donnelly D, ‘Birmingham and AFC Wimbledon Players Report Racist Abuse from Opposition Fans’ *Sky News* (4 February 2024) <https://news.sky.com/story/birmingham-and-afc-wimbledon-players-report-racist-abuse-from-opposition-fans-13063772> accessed 13 July 2024

‘Media Release - The Court of Arbitration for Sport (CAS) Cancels Two Fines Imposed on the Mexican Football Federation and Imposes Warnings in Their Place’ <https://www.tas-cas.org/fileadmin/user_upload/Media_Release__English__4780_4788.pdf> accessed 13 July 2024

‘Non-League Player Quits Football as a Result of Racist Abuse in Cup Final’ *The Guardian* (5 April 2019) <https://www.theguardian.com/football/2019/apr/05/non-league-player-quits-football-as-a-result-of-racist-abuse-in-cup-final> accessed 13 July 2024

‘UEFA Investigating Racism towards England Players’ *BBC News* (17 June 2024) <https://www.bbc.com/sport/football/articles/c0jjy31pv1po> accessed 13 July 2024