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A football field is not a lawless area: Swiss Federal Tribunal, 5 March 2019, decision 6B_52/2019

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by Stéphanie Neuhaus-Descuves

The Swiss Supreme Court, composed of five judges (landmark decision), confirmed in its decision 6b_52/2019 from 5 March 2019 the condemnation of a young football player who injured an opponent in a junior game facing FC Richmond and SC Düringen in May 2016 for assault through negligence (Article 125 of the Swiss Criminal Code).

The tackling player, a student from Fribourg who had not distinguished himself by the hardness of his game until then (only six yellow cards in nearly 200 games), had destroyed the ankle of his opponent in the 15th minute of the game. Evacuated by ambulance, the injured football player, former newcomer and young talent of the Swiss football, had filed a criminal complaint two months later.

For this action, the referee had sanctioned the offending player with a yellow card. He had considered his gesture - an outstretched leg tackle, 10 to 15 centimeters off the ground - as dangerous, even if it had not been done intentionally. Since the beginning of the procedure, the tackling player has always claimed to have played the ball, which he also assures to have touched after having swept the support leg of his opponent. According to him, his unfortunate intervention was therefore part of the action. He admitted later though that his action was maybe dangerous. Not to mention that the tackling player received a second yellow card during the same game, again for dangerous playing...

According to the Swiss Supreme Court, the violation of the playing rules, which have been also edicted to protect the integrity of the players, must be described as serious. "In these circumstances", writes the High Court, "it cannot be admitted that the injured party would have accepted a bodily injury as an inherent risk in the practice of football. In criminal law, the decisive factor is not that the violation of the rules of the game is sanctioned by an exclusion or by a warning."

In this case, the five Federal judges considered the young tackling player as guilty to have breached the legal duty of care, by tackling without regards of the consequences - and in particular the injuries - that could result for his opponent. The sentence of 40 hours of community service with a two-year suspension of the execution, which has been pronounced at the beginning of 2018 by the first instance and confirmed in November 2018 by the second instance (Cantonal Court of Fribourg), is therefore final.

The young footballer victim of this guilty tacking in 2016 still suffers from the consequences of his ankle fracture. He had to give up the promising football career he was dreaming of and just had started with the Young Boys club in Bern. He cannot even walk or jog without pain anymore.

As a conclusion, the Federal judges confirmed in a landmark decision that the risk accepted by the players by joining a football game does not include the gross or voluntary violation of the rules of the game. The Swiss Supreme Court sanctions therefore only players who have injured the physical integrity of their opponents by violating seriously the rules of the game, and not any simple violation of the rules of the game even if a yellow card is given.

I am therefore particularly satisfied with the judgment of the Swiss Supreme Court. On the one hand, it is a moral victory for my client, who could not proceed to play football and enjoy his professional career in this sport but is recognized as a victim of the dangerous game of an opponent. On the other hand, as a specialized attorney in sports law and liability law, I must admit that a clear principle has been laid down by the Swiss Supreme Court, which has also clearly distinguished the concepts of criminal law from those of the playing rules. I do not expect or fear the invasion of the criminal law in sports matters, because I am confident that such a case represents an exception. At the end, it has to be remembered that a football field is not a lawless area.

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