

WORLD RUGBY

Judicial and Disputes Committee into complaints relating to a match on 18 March 2018 and the eligibility of players for the Rugby World Cup Qualifying Competition

Venue: The Royal Garden Hotel, Kensington

Date: Thursday 10th May 2018

Panel: Sir James Dingemans, Lex Mpati, Sir Peter Fraser

Secretary: Joyce Hayes

Attending: World Rugby: Alistair MacLean (General Counsel); Yvonne Nolan (Senior Legal Counsel); and David Carrigy (Head of Development and International Relations);
Rugby Europe: Jean-Jacques Zander (Head of the Legal Committee);
Federación Española de Rugby (“Spain”): Alfonso Feijoo (President); Eliseo Patrón-Costas (General Secretary); Jose Epalza (Vice-President); Donal Spring (Counsel, Daniel Spring & Company); Barra O’Sullivan (Counsel, Daniel Spring & Company); and Jamie Spring (Counsel, Daniel Spring & Company);
Rugby Union of Russia (“Russia”): Kirill Yashenkov (Vice-President); Kirill Kulemin (High Performance Manager); and Vasily Artemyev, Captain of Russian team;
Fédération Belge de Rugby (“Belgium”): Salvatore Zandona (President);
Federatia Romana de Rugby (“Romania”): Alin Petrache (President); Bogdan Muntean (High Performance Manager); and Dan Cristea (Counsel).

Decision

Introduction

1. There was a Rugby World Cup Qualifier (“RWCQ”) tournament for the Rugby World Cup 2019 (“RWC 2019”). This was played alongside and as part of the Rugby Europe Championship organised by Rugby Europe, although the position of Georgia was ignored for the RWCQ tournament because Georgia had already qualified for the RWC 2019 by reason of their finishing position in the pool stages of RWC 2015.
2. In one of the final matches Spain were playing Belgium in Belgium. If Spain won they would qualify. If Spain lost Romania, who were then in second place

in the table (behind Georgia) would qualify. A Romanian match official team had been appointed to officiate at the match. When the mathematics of the qualification process became clear Spain asked Rugby Europe to change the refereeing team. An official at Rugby Europe spoke with the proposed referee who confirmed that he was still content to referee the match. No change was made to the match officials.

3. The match was played on 18 March 2018 and Belgium won the match by a score of 18-10. Controversy arose about the performance of the referee, and issues were also raised by Spain about the dimensions of the pitch and the absence of what is referred to as a captain's run (which is a training session using the match pitch). Belgium highlighted that the performance of their team had been good and said that Spain had not played well for the majority of the match. Arrangements for the captain's run had changed at the last minute because a football match had meant that the facilities were no longer available.
4. Spain complained to World Rugby about the performance of the referee, the failure to replace the referee and the other matters pursuant to section 13.1 of the RWCQ Terms of Participation ("TOP"). The Rugby World Cup Competitions Manager referred the dispute to a Disputes Committee pursuant to section 13.3 of the TOP.
5. World Rugby's Independent Judicial Panel Chairman appointed the Panel to be the Disputes Committee.
6. In the meantime, World Rugby received complaints that various countries in the RWCQ tournament had fielded players who were not eligible to play either because there was no qualifying connection with the particular country, or because the player had already been "captured" by playing for another country. Issues were raised in relation to players from: Belgium; Spain; Romania; Russia and Germany. These issues required to be determined under Regulation 8 of the World Rugby Regulations.
7. World Rugby made various inquiries with the relevant Unions. In the event a Judicial Committee was required to adjudicate on the cases. The Panel were therefore also appointed by the Independent Judicial Panel Chairman to be a

Judicial Committee. The Panel therefore became a joint Disputes and Judicial Committee.

Procedure

8. All the relevant parties agreed to the appointment of the Panel as a Joint Disputes and Judicial Committee. The Panel gave directions providing for World Rugby and the relevant Unions to file and serve a round of submissions and to reply to the submissions filed by the other parties. In its reply submissions World Rugby made detailed submissions about points deductions for ineligible players and identified the mathematical consequences of those deductions. The Unions were given an opportunity to respond to those distinct submissions and they did so.
9. The Unions were given an opportunity to ask for an oral hearing, and the Unions did so. Arrangements were made and the hearing was listed for the evening of Thursday 10 May 2018. A draft timetable for the oral submissions was circulated. The hearing took place on 10 May 2018 in London and World Rugby, Rugby Europe and the Unions made oral submissions.
10. The Panel is very grateful to World Rugby, Rugby Europe, Spain, Russia, Belgium and Romania for all of their assistance at the hearing and for the excellent written and oral submissions.

The dispute relating to Belgium v Spain Match on 18 March 2018

The Panel has jurisdiction to set aside the result of the match

11. As noted above the qualification process for RWC 2019 is governed by the RWCQ TOP, the agreement that all Unions seeking to qualify for RWC signed. It is a condition of participation for any Union who seeks to qualify through the Qualification Process that the TOP is signed, demonstrating acceptance of its terms.
12. The TOP has within it a separate and free-standing disputes section, “Section 13 Disputes”. It is under this that the Panel was appointed as the Disputes Committee to deal with the RWCQ dispute. The disputes provisions within section 13 of TOP are in addition to the provisions of the World Rugby Regulations.

13. Section 13.1 of TOP gives the Rugby World Cup Ltd (“RWCL”) Competition Operations Manager the ability to refer “any complaint and/or dispute” to the Disputes Committee. This clause states:

“13.1 Where the RWCL Competitions Operations Manager (or the relevant Regional Association as applicable) considers, in his or its absolute discretion, that any complaint and/or dispute is of a nature which is appropriate to be referred to the Disputes Committee, then he may refer such matter to the Disputes Committee for determination by the Disputes Committee in accordance with Section 13.3 below.”

14. The Disputes Committee was appointed under section 13.3 of the TOP. That states at Section 13.3.3 “Powers and functions” as follows:

“(a) In relation to any dispute referred to the Disputes Committee, the Disputes Committee shall have power to determine all issues of any nature arising in connection with the conduct of the Qualification Process, including (but not limited to) disputes, disagreements or the interpretation or performance of these Terms of Participation between and among Participating Unions, Host Unions, World Rugby, Team Members, Referees, and all other persons, institutions and companies involved in the Qualification Process.

(b) The Disputes Committee may also carry out the following functions:

(i) to exercise such other powers as may be necessary and/or incidental to those set out herein, and/or

(ii) to hear and decide such other matters as RWCL may from time to time refer to the Disputes Committee for adjudication.”

15. The sanctions available to the Disputes Committee are identified at Section 13.3.5(a), headed “Sanctions”, and listed at items (i) to (vii). These include the following:

“(v) to cancel and/or vary the result of a Match and/or the points awarded in relation thereto; and

(vii) to impose such other punishment, penalty, restriction or other terms as it considers to be an appropriate sanction in the circumstances”.

16. The letter of appointment from World Rugby to the Disputes Committee dated 11 April 2018 in relation to the RWCQ tournament referred the Belgium v Spain dispute to the Panel for resolution. This reference was done jointly with reference to the Judicial Committee of the eligibility issues under Regulation 8 of the World Rugby Regulations. The joint reference was done for the reasons explained in the letter of appointment, namely transparency and in the interests of resolving all matters of dispute in one clear process. On page 2 of the letter of

appointment of 11 April 2018, the dispute in respect of the Match was identified in the following terms.

“On 18 March 2018, Belgium played against Spain in the Rugby Europe Championship (the “Match”). The teams’ participation in the Match was subject to the Participation Agreement for that tournament.... The Match also served as part of the Rugby World Cup 2019 (“RWC 2019”) Qualification Process and as stated above, was subject to the Rugby World Cup Qualifier TOP. On 20 March 2018, the Federacion Espanola de Rugby (the “FER”) wrote to World Rugby and Rugby Europe setting out a dispute in respect of the Match....and seeking various remedies, inter alia, the suspension of a decision on the team which qualified for RWC 2019 from the Rugby Europe Championship, a declaration that the result of the Match is null and void and a replay of the Match to be officiated by match officials from Unions other than Spain, Belgium or Romania.”

17. Further details of the dispute are also provided, including a summary of the five bullet points raised as issues by Spain in what the letter of appointment defined as the “FER Letter of Dispute” dated 20 March 2018. The FER Letter of Dispute is what initiated the Disputes Procedure within Section 13 of the TOP. Those five points are (in summary): 1. the neutrality of the match officials; 2. the manner in which Rugby Europe dealt with Spain’s concerns about the match officials; 3. the dimensions of the pitch; 4. the inability to access a “Captain’s Run”; and 5. the performance of the referee.

18. When this dispute was raised by Spain, the result of the Match was determinative of which team would finish in second place (behind Georgia, who had qualified for RWC 2019 in any event) and therefore qualification for RWC 2019. Spain seeks a declaration of, among other matters, “Cancellation of the Result of the Game and Repetition of the Game”, namely a replay. This position is supported by World Rugby, who submitted to the Panel that a replay should be ordered of the Match in order to preserve the integrity of rugby.

19. When the issue of the Panel’s powers to order a replay were explored with World Rugby during the oral hearing, reliance was placed by World Rugby not only on the terms of Section 13.3.5(a)(v) and (vii) (set out above), but also what amounted to ad hoc submission to the jurisdiction of the Panel by the parties, by their agreement to participate in the joint reference to the Disputes Committee and Judicial Committee. Although it is correct that there has been no express

reference to participation in the process by any of the parties being without prejudice to any challenge to jurisdiction (which is usually required) the Panel is not persuaded that there has been such “ad hoc” submission in this case. This is because the Unions were not invited to agree the powers of the Disputes and Judicial Committee. However, the Panel considers that the terms of Section 13.3 are sufficiently wide, as a matter of construction of its terms, to encompass the power to consider the dispute referred by Spain, and if applicable to order a replay. The “*power to determine all issues of any nature*” in Section 13.3.3(a) of the TOP is a wide description, and the ability “*to exercise such other powers as may be necessary and/or incidental*” under Section 13.3.3(b)(i) is similarly wide. Given the express sanctions available include the ability “*to cancel and/or vary the result of a Match*” and “*to impose such other punishment, penalty, restriction or other terms as is considers appropriate*” (considering elements of Section 13.3.5(v) and (vii) together) the Panel is of the view that it possesses the power to order a replay.

Result of the match stands

20. However even if the Panel does have jurisdiction to order a replay of the match, the issue of whether a replay should be ordered still needs to be determined. The five bullet points taken from Spain’s Letter of Dispute can be usefully categorised into two groups. The first two - the neutrality of the match officials, and how Rugby Europe dealt with Spain’s pre-match concerns – relate to the framework or process of appointment of referees. The second three – pitch dimensions, the lack of a “Captain’s Run”, and referee’s performance – are ex post facto considerations of what in fact occurred immediately prior to, and during, the Match itself.

21. World Rugby supported the position taken by Spain and submitted that the result of the match should be set aside and a replay ordered because, although there was no bias on the part of the match officials, the position in which the match officials had been placed meant that there was an appearance of bias on the part of the match officials, and Rugby Europe should have removed those match officials at the request of Spain.

22. World Rugby pointed to the analysis of the referee's performance carried out after the game (such an analysis is carried out with all international referees) which suggested that the referee's performance had been poor, not up to usual standards, and had focussed on refereeing one team and ignoring the other. Spain pointed to the "performance review" carried out in relation to the referee and noted the comment of one official from Rugby Europe that the referee had betrayed the trust that Rugby Europe had shown in him by not replacing him at Spain's request before the match.
23. Belgium pointed to the dynamics of the match itself, noting that Belgium had played well and Spain had not. Belgium submitted that there was no proper basis for interfering with the result of the match.
24. So far as the referee is concerned, we note the provisions of Regulation 17.17.2 on the status of the referee's decisions and the very proscribed circumstances in which the referee's decisions can be revised by, in those circumstances, a Disciplinary Committee. Regulation 17.17.2 provides:
- "The integrity of Law 6.5(a) of the Laws of the Game and the referee's position as sole judge of fact and law during the Match is unassailable. With the sole exception of Regulation 17.19.7 the referee's decisions on the field of play and their sporting consequences shall not be altered or overturned by a ruling of a Disciplinary Committee or Judicial Officer. The purpose of a subsequent review of an incident that occurred during a Match, by a Citing Commissioner and/or Disciplinary Committee or Judicial Officer, is to determine whether there should be any disciplinary sanctions applied for an act of Foul Play as provided for in Law 9."*
25. The principle that "*the referee's position as sole judge of fact and law during the match is unassailable*" is a core principle of rugby, as is the very limited jurisdiction of a Disciplinary Committee to overturn the decisions of referees made on the pitch after the game. We accept that if corruption or the bad faith of a referee is proved then the Panel would exercise the jurisdiction that it has (as explained above) to overturn the result of the game. However, the invitation to overturn a result because of the "appearance of bias" or because of the unsatisfactory way that Rugby Europe dealt with the proper request made by Spain to remove the match officials, is in our judgment not sufficient. This is because much more is required to set aside the decisions of the referee after the event, or to order a replay. Further, there is no precedent for a Disputes or

Disciplinary Committee to set aside the result of a match in such circumstances. Taking such a step would undermine the respect to which decisions of referees are entitled, absent corruption or bad faith.

26. There is no doubt that the appointment of neutral match officials in international matches is essential, and that the appearance of neutrality is also an important consideration as well as actual neutrality itself. However, the example given in the oral hearing by Belgium of an English referee taking charge of a Wales v Scotland match in the Six Nations Championship is an illustrative one. Such appointments within competitions such as the Six Nations are regular occurrences. Referees qualified to the necessary international standard are a relatively limited pool and it may not even be possible to appoint referees whose home Union is wholly unaffected by any possible permutation of the result of a particular match. If the use of a Romanian referee in the Belgium v Spain match was not permissible as a matter of principle, then arguments could be made that no referee from any Six Nations Union could referee any match between any other Unions in the Six Nations Championship because the result of a match might favour their home Union. Here, it is notable that the same referee in question in the Match also took charge of the Spain v Belgium fixture earlier in the qualification process without objection. The points won, or lost, as a result of that earlier fixture were of equivalent effect in the qualification process as those in the Match itself. There is a presumption of neutrality on the part of referees, and none of the individual circumstances of this case causes the Panel to rebut that presumption in this case. For all those reasons, the Panel decline to order a replay or otherwise to interfere with the result of the Match (save and in so far as it is affected by the outcome of the eligibility matters).

27. We do agree that the way in which Rugby Europe dealt with Spain's request for a change of match officials was not adequate. This is because Rugby Europe passed the decision to be made on to the match officials, which put the match officials in a very difficult position. It would have been much better for the game if Rugby Europe had, once the mathematics of the final matches of the competition become clear, changed the match officials. That, however, is a very

long way from saying that the Panel should overturn the result once it had been played and we have declined to do so.

The issues of eligibility: Belgium, Spain and Romania

28. Guideline 1 of the “Explanatory Guidelines on the Implementation of Regulation 8” explains the vital importance of Regulation 8 to the international game. It is to ensure that there is a “*genuine, close, credible and established national link with the country of the Union for which they have been selected. Such a national link is essential to maintain the unique characteristics and culture of elite international sporting competition between Unions*”.
29. Regulation 8 therefore requires that a player must have a proper connection with the selecting country, and provides that once a player has been captured as an international player by one Union, the player cannot then play for another Union. Both principles of Regulation 8 were engaged in the hearing before the Panel. Guideline 1 also records that “*the integrity of international matches between Unions depends on strict adherence to the eligibility criteria set out in the Regulations*”. Regulation 8 provides for the imposition of automatic financial sanctions, and permits the imposition of other sanctions.
30. Regulation 8 is not a new Regulation. We were taken through the various amendments which have been made to Regulation 8, and we are grateful to both World Rugby and Spain for the way in which those changes were explained in their submissions and supporting materials. At the material time Regulation 8 and 18.6 provided:
- “8.1 *Subject to Regulation 8.2 a player may only play for the senior fifteen-a-side national representative team, the next senior fifteen-a-side national representative team and the senior national representative sevens team of the Union of the country in which: (a) he was born; or (b) one parent or grandparent was born; or he has completed 36 consecutive months of residence immediately preceding the time of playing.*
- 8.2 *A player who has played for the senior fifteen-a-side national representative team or the next senior fifteen-a-side national representative team or the senior national representative sevens team of a Union is not eligible to play for the senior fifteen-a-side national representative team ...;*
- 8.5.1 *Regulation 8 is a strict liability offence and shall be construed in accordance with the principles of strict liability in English law. It is not, therefore, necessary that fault or intent on the part of a Union be shown in order for a breach of Regulation 8 to be established. Nor is lack of fault or intent on*

the part of a Union a defence to a breach of Regulation 8 ... Unions are responsible and accountable for the conduct of their players and all persons under its jurisdiction in relation to compliance with the provisions of Regulation 8 ... Each breach of Regulation 8 by a Union, howsoever arising, will result in a minimum fixed fine being imposed on the Union concerned. The minimum fixed fines for each breach of Regulation 8 are as follows: (a) for a Union that is represented on the Council £100,000 sterling; (b) for all other World Rugby member Unions £25,000 sterling ... In addition, other penalties as set out in Regulation 8.6 may also be imposed on the Union concerned.

8.5.2 In exceptional circumstances, a Union in breach of Regulation 8 may make submissions to the relevant disciplinary body ... as to why the Union should not be subject to the applicable minimum fixed fine. For the avoidance of any doubt, however, the relevant disciplinary body shall only be entitled to reduce the applicable minimum fixed fine ... where the Union is able to provide clear and indisputable evidence that truly exceptional circumstances exist and that the Union concerned had taken all necessary steps to comply with Regulation 8.

18.6 Upon finding a breach of the ... Regulations ... Judicial Committees shall be entitled to impose such penalties as they think fit. Such penalties may include, but shall not be limited to: ... (b) ... the cancellation of a match result and, where appropriate, the replaying of a match; the forfeiture of a match or matches and/or tie(s); the deduction or cancellation of points; the immediate or future expulsion or suspension from a tournament(s) or competition(s) ...”.

- 31.** It should be noted that the 36 months residence requirement changed in March 2018 so that as from 31 December 2020 either 60 consecutive months of residence is required or 10 years of cumulative residence. This demonstrates the importance attached by the international game to Regulation 8 and its principles.
- 32.** After the exchange of the written and oral submissions the matters in dispute in relation to eligibility had narrowed. The issues in relation to the players from Russia and Germany about whom questions had been raised had been resolved, and World Rugby accepted that there had been no breaches of Regulation 8 by either of those Unions. This meant that it was only the eligibility of certain players from Belgium, Spain and Romania that were issues before the Panel. The matches in which the relevant players had played were common ground, but it took some time to confirm the number of matches in which the players had played from the tables that had been produced for the hearing. Indeed it became apparent from a careful examination of those tables during the preparation of this judgment that the number of occasions on which one or more ineligible players had played had been over reported in the sense that matches in which more than one ineligible player had played had been counted twice. The Panel is very grateful to its secretary (Joyce Hayes) for assisting with the revised calculations,

which have been relied on below. As the parties have not had a chance to check these revised calculation of matches we will give World Rugby and the Unions until 4 pm on Wednesday 16 May 2018 to give notice of any miscalculation which it is contended is contained in the revised calculations. If the parties cannot agree the correct figures the Panel will consider written submissions on the revised calculations.

Belgium

- 33.** The position in relation to Belgium was common ground. It was common ground that Belgium had fielded 1 or more ineligible players. This occurred on 7 occasions as part of the Rugby Europe Championship. The 5 players involved were ineligible because neither they, nor their parents or grandparents, had been born in Belgium. As 1 of those 7 matches was against Georgia that meant that as far as the RWCQ tournament was concerned Belgium had fielded 1 or more ineligible players on 6 occasions. World Rugby submitted that there should be financial sanctions and a 5 points deduction for every occasion on which 1 or more ineligible players had been played. This would mean a 30 points deduction for Belgium in respect of RWCQ and 35 points deduction in respect of the Rugby Europe tournaments over the 2 year period. Belgium apologised for these breaches, noting that the relevant players had connections through great grandparents, which would have been sufficient to obtain rights under the immigration laws of Belgium. Belgium accepted that sanctions were inevitable but reported that it was a small Union with a limited budget of about 675,000 Euros, and that the effect of any financial sanction would be very significant. Belgium asked for any financial sanction to be wholly suspended.

Spain

- 34.** The position in relation to Spain was in dispute. World Rugby submitted that Spain had fielded 1 or more ineligible players on occasions in the Rugby Europe tournament. The revised figures show that 1 or more of these players played on 9 occasions in the Rugby Europe tournament. World Rugby submitted that the players were not eligible to play for Spain because although they had qualifying family connections with Spain, they had been captured by France by playing for France U20 against Wales U20 in March 2008 (in the case of Mathieu Belie) and for France U20 against Wales U20 in March 2012 (in the case of Bastien Fuster).

World Rugby contended that France U20 was France's "next senior fifteen-a-side national representative team" for the purposes of Regulation 8 at the material times in 2008 and 2012. As 1 of the 9 matches was against Georgia that meant that as far as the RWCQ tournament was concerned, Spain had fielded 1 or more ineligible players on 8 occasions. World Rugby submitted that there should be financial sanctions and a 5 points deduction for every occasion on which 1 or more ineligible players had been played. This would mean a 40 points deduction in respect of the RWCQ tournament and 45 points deduction in respect of the Rugby Europe tournaments over the 2 year period. Spain accepted that it had fielded the relevant players on the occasions. Spain however submitted that those players were eligible to play for Spain, on the basis of family relationships, and had not been captured by France. Spain submitted that this was because France had failed to follow the procedure for nominating their "next senior fifteen-a-side national representative team" because they had altered the nominations, when they had no power to do so. Spain submitted that a nomination of such a team lasted for 4 years under Guideline 6 of Regulation 8 and France therefore had no power to change the identity of its "next senior" team from its U-21 team in 2007 to the U-20 team in 2008.

- 35.** It is apparent that it is essential to know which is a Union's next senior fifteen-a-side National Representative Team to determine whether a player has been captured by another Union. Explanatory Guideline 6 is relevant. The material dates were March 2008 and March 2012. As at March 2008 and March 2012 Explanatory Guideline 6 provided:

"There should be no uncertainty over which team constitutes a Union's next fifteen-a-side senior National Representative Team since, as from January 1 2000, Unions are required to notify the IRB of the name of its nominated next senior fifteen-a-side National Representative Team. The team nominated remains the Union's next fifteen-a-side senior National Representative team for a period of 4 years. The identity of a Union's next senior fifteen-a-side National Representative Team can be verified with the Union concerned and/or the IRB" (underlining added).

- 36.** It appears, from the table of nominations of next senior national representative teams produced by Spain at the hearing that France had nominated France U20 in 2008 (we were told that nominations were made in January of each year) and France U20 in 2012. However Spain noted that although France had nominated

France A in 2003 until 2006 (inclusive) it had nominated France U21 in 2007. Although France had purported to nominate France U20 for 2008 Spain argued that it had not been entitled to do so, because the nomination of France U21 should have lasted up to 2011 (under the 4-year period). Similarly France had nominated France A in 2010 and that nomination should have lasted for 4 years. Therefore in the years 2008 (for Mr Belie) and 2012 (for Mr Fuster) the nominations of France U20 were not valid and neither had been captured.

37. Spain submitted that as Regulation 8 was a strict liability offence there should be a literal interpretation of Explanatory Guideline 6, and that when the IRB (now World Rugby) had decided at the Annual Meeting of Council that Explanatory Guideline 6 meant that the nomination lasted for a period of 4 years “*save where the Union advises the IRB of an amendment to its nominated NSNRT*” this was the wrong approach. The IRB should have said to France that the purported change of nomination was not valid. It was accepted that when Explanatory Guideline 6 had been amended with effect from 2013 that was valid but it could not affect the fact that neither Mr Belie nor Mr Fuster had been “captured” by France.

38. World Rugby submitted that the Council was no more than recognising the true meaning of Explanatory Guideline 6 when it declared that the nominations would continue unless and until they were changed, pointing out that other Unions had changed the nomination of the next senior national representative team within the 4 year period (for example Wales which nominated Wales A in 2003 and Wales U21 in 2004). World Rugby also pointed out that France U21 had ceased to exist in 2007 so that a change in nomination was required. World Rugby also pointed out that the list of next senior national representative teams had been published by World Rugby, was freely available on the World Rugby website, and that France had nominated France U20 in 2008 and 2012.

39. We accept that a literal interpretation of Explanatory Guideline 6, until it was amended in 2013, supports the proposition that the nomination by a Union of its next senior fifteen-a-side national representative team should last for 4 years. However such a literal interpretation made no rugby sense (or indeed common sense) because it was always possible that some next senior national

representative teams might cease to exist, and this occurred with the U21 sides. This meant the literal interpretation could not therefore have been the correct interpretation of Explanatory Guideline 6. It should also be noted that the wording of Explanatory Guideline 6 did not expressly address whether the nomination process removed the right to make another nomination in the 4 year period by saying “and no other nomination should be made in this period” or by saying “unless and until another nomination is made”. The Panel considers that it was implicit in Explanatory Guideline 6 that the nomination would last 4 years, unless another nomination was made by the Union in the interim. That this purposive and non-literal interpretation was the correct one was recognised by the IRB, and now World Rugby, by accepting a change of nomination of next senior national representative team before the expiry of the 4 year period. As Explanatory Guideline 6 made clear, it was World Rugby which had the list of the next senior national representative teams.

40. Therefore although we acknowledge the skill with which the argument on behalf of Spain was fashioned, we do not accept the literal interpretation was correct. It might also be noted that the list of next senior national representative teams published by World Rugby showed France U20 as the next senior national representative teams for 2008 and 2012 at a time before either Mr Belie or Mr Fuster were selected for Spain. In case of doubt Spain could have checked with World Rugby what was the correct position. Had that been done, there would have been no doubt that each player had been already captured by a team nominated by France for the purposes of the Regulation. We are satisfied that World Rugby’s submissions on the fielding of ineligible players by Spain are correct.

Romania

41. The position in relation to Romania was part common ground and part the subject of dispute. It was common ground that Romania had selected Sione Faka’osilea to play for Romania on 8 occasions in the Rugby Europe tournament. 2 of those occasions were matches against Georgia. It was common ground that he had played Sevens for Tonga and therefore had been “captured” by Tonga. If 5 points were deducted for every time the ineligible player was playing, this

would mean a 30 points deduction in respect of the RWCQ tournament and a 40 points deduction for the Rugby European tournaments over the 2 year period.

42. However Romania submitted that it had made all the relevant inquiries that it should have done, including with both the player and Tonga, and had shown “exceptional circumstances” within the meaning of Regulation 8.5.2 meaning that no financial or other sanction should be imposed on Romania. Romania relied in particular on the facts that: first the player had not said he had been captured after Regulation 8 had been explained to him; secondly databases on websites (one on ESPN and two on Wikipedia) had been checked and the player was not shown as having played for Tonga; thirdly Romania attempted to make contact with Tonga but could not do so, and obtained an email address from World Rugby. Romania had then emailed Tonga and had been told by Mr Fe’ao Vunipola, Chairman of the Tongan Rugby Union that the player “still qualify for Romania as requested”; fourthly Romania had sent in the team sheets to World Rugby who had not raised any issues about the eligibility of the player; and fifthly Romania had not breached this provision before and had made proper inquiries about other players, including one from Fiji.
43. World Rugby submitted that Romania should have made other inquiries and discovered that the player was not eligible. First, World Rugby said that whatever explanation had been given to the player about Regulation 8 must have been inadequate, because the player could not have forgotten that he played Sevens for Tonga. Secondly, World Rugby said that proper searches would have discovered the fact that the player had played Sevens for Tonga, and that inquiries could have been made with World Rugby. Thirdly, the team sheets had been sent in to World Rugby for media distribution purposes, and World Rugby had not been asked to verify the eligibility of the players, which was the responsibility of the Union. Fourthly, World Rugby said that the email from Fe’ao Vunipola referred to “our Ikalehati nor our Tonga A against any national team” but did not deal with the Tongan Sevens team. World Rugby accepted that there was no doubt that Romania and Tonga had acted in good faith in exchanging the emails, but the information that he still qualified for Romania was inaccurate. Fifthly, the fact that Romania had made proper inquiries in other cases did not excuse its failures in this case.

44. In our judgment Romania is not able to “*provide clear and indisputable evidence that truly exceptional circumstances exist and that the Union concerned had taken all necessary steps to comply with Regulation 8*”. This is because, as Romania put it (very fairly) in the course of its excellent written and oral submissions, Romania “admits that [the player] knew or ought reasonably to have known that he is not eligible to play for Romania. However, as per player’s own statements attached ... ‘I was never informed by the Rugby Union of Tonga that I will not be able to play for another national team due to my participation with the Tonga Sevens in the Sevens World Series ...’”. In the Panel’s judgment, this proves that the explanation about Regulation 8 given by Romania to the player before the player signed his declaration of availability must have been inadequate. This is because an adequate explanation would have meant that the player realised that he was not eligible because he had played international sevens. In circumstances where it was well known that Tonga had a Sevens team which had competed at the highest levels, Romania needed to ask the player whether he had played Sevens.
45. Secondly the failure to ask the player is not excused by the terms of the email received from Mr Vunipola of Tonga. It is clear that Mr Vunipola was acting in good faith in saying to Romania that the player could qualify for Romania, however it was not Tonga who had the relevant duty to make inquiries. Even if, as was shown by some press reports, the reference to “Ikaletahi” might refer to either, or both, of the national fifteen-a-side or the sevens team, the direct question should have been asked about whether the player had played Sevens for Tonga. Mr Vunipola would then have had to report that the player had played for the Tonga Sevens team.
46. Thirdly, if Romania had been in doubt about the situation it could have asked World Rugby about whether the player had played for any relevant Tongan national team.
47. In these circumstances the Panel recognises that Romania had made inquiries and taken some steps to ensure that it could select the player, but Romania had not taken all necessary steps to be entitled to rely upon Regulation 8.5.2.

Sanctions

Points deductions

48. The Panel was referred to a number of authorities, from World Rugby and national authorities, showing that when ineligible players have been selected sanctions have included: expulsion from the tournament (*Complaints by Spain against Russia* dated 22 January 2003); overturning the result of a match (*Tahiti Rugby Union* dated 21 March 2018 and *FC Grenoble Rugby* dated 31 December 2012); deducting all of the points earned when ineligible players were selected (*South African Rugby Football Union and Chavhanga* dated 27 May 2004); and deducting 5 points for each match in which an ineligible player has played (*Japan Rugby Football Union and Marsh* dated 29 June 2008). In RFU competitions a deduction of 5 points per ineligible player is the standard penalty provided for in the Regulations, although in *RFU v Exeter Chiefs* in 2011 a points deduction of only 2 points was made in the higher levels of the game.

49. We accept that in general terms it is undesirable to impose sanctions of: expelling a Union; overturning the result of a match; or imposing points deductions. This is because the result of a qualifying competition or tournament should be determined on the pitch and not by judicial committees after the tournament. However, fielding an ineligible player undermines the integrity of a competition, which it is vital to protect. It is not possible, and invidious, to attempt to make any meaningful assessment of the impact of a player on the game. This is because while some players score points other players prevent points being scored, and yet others provide inspiration to a team by their presence. Therefore the Panel considers, having regard to the previous decisions set out above, that there should be a points deduction for each occasion that an ineligible player played in the RWCQ competition and that the points deduction should be the maximum points (5 points) which were available to be won by the team. If more than one ineligible player was played the points deduction should remain at 5 points, because 5 points remained the maximum points which could have been won by the team. Restricting the points deduction to 5 points per match also avoids imposing a disproportionate sanction. Therefore the deductions referred to above in relation to the RWCQ tournament should be imposed on Belgium, Spain and Romania.

50. We were not invited to make any adjustments to increase the points awarded to the opponents in any of the matches by World Rugby or any of the other Unions and we have not done so.
51. We considered whether points should be deducted in the Rugby Europe Tournament given the substantial penalty that the deduction of points in the RWCQ tournament represents for each of the Unions affected, which means that the Unions will not qualify for RWC 2019. However the RWCQ tournament was played as part of the Rugby Europe tournament, we were not invited to treat the Rugby Europe tournament in a different way for the purposes of points deductions, and the distorting effect of fielding an ineligible player remains. Therefore the deductions of 5 points should be made for each Rugby Europe tournament match in which 1 or more ineligible player was played. As the tournament for 2017 had been completed and issues of relegation had been decided in that year, the points deduction should not be applied to the 2017 Rugby Europe tournament. The parties will need to agree the effect of this judgment on the Rugby Europe Championship 2018 table. If the parties cannot agree the panel will resolve this issue with the benefit of written submissions.

Financial penalty

52. World Rugby submitted that the financial sanctions were automatic and should be applied as follows: £125,000 for Belgium for 5 ineligible players; £50,000 for Spain for two ineligible players; and £100,000 for Romania for 1 ineligible player. The higher sum for Romania is provided for by Regulation 8.5.1 because Romania is a Union that is represented on the Council.
53. There is precedent for suspending the whole of the financial penalty in circumstances where the Union has limited means and has suffered the loss of participation in a tournament, see *Tahiti Rugby Union*. There is also precedent for suspending 80 per cent of the fine.
54. We are very conscious of the effect that failing to qualify for RWC 2019 will have on both Romania and Spain, and we were addressed at length on the possible effect on the game in each country. We were also conscious of the limited funds available to Belgium.

55. Given the practical effect of the points deduction on the Unions we have decided to suspend the whole of the financial penalty for a period of 5 years. This is to ensure that the overall sanction for fielding ineligible players remains proportionate. If any of the teams commit any further breaches of Regulation 8 over the 5 year period from the date of the judgment the whole of the suspended sum will become payable.

The players

56. Although issues of sanctions on players were referred to the panel it was agreed that these issues should not be dealt with at this stage. This was because of the need to deal with the qualification issues speedily and because of the need to allow players a fair opportunity to address the issues.

Other matters

57. The Panel wish to make it clear that it is of critical importance that the neutrality of match officials is not only observed, but seen to be observed. Apart from other considerations, it puts match officials in a very difficult (if not impossible) position if their own nationality becomes a potential issue in qualification tournaments, particularly for high profile and determinative fixtures such as the one between Belgium v Spain. Care should be taken to ensure that situations such as this are avoided in future, and Rugby Europe has explained that it has amended its procedures as a result of these events.

58. These disputes have shown that Unions acting in good faith can make errors about which players have a sufficient connection to the Union and which players have been captured by another Union. Consideration should be given to the way in which the importance of Regulation 8 might be emphasised to Unions, particularly to those Unions not represented on Council which might not have the administrative resources of other Unions. World Rugby might want to consider whether to maintain a database showing players who have been captured by Unions. Any steps which avoid the risk of qualification being determined off the pitch and not on it are desirable.

Conclusion

59. For the detailed reasons set out above: (1) we have not set aside the result of the match on 18 March 2018; and (2) we have found that Belgium, Spain and Romania fielded ineligible players in RWCQ and Rugby European games and determined that each Union should have deducted 5 points for each game in which an ineligible player or players played. We have imposed financial sanctions which are to be suspended for 5 years.

Sir James Dingemans
Lex Mpati
Sir Peter Fraser
15 May 2018