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FAIR PLAY AND CONTRACTUAL PRACTICES IN CONTEMPORANEITY

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ABSTRACT

The Fair Play Financial is a control that UEFA has created in favor of having a more ethical football, with more balanced competitions, that the financial power interferes in the sport spirit of the soccer. In view of this situation, this study has as a research problem to investigate the influence of financial fair play in contemporary contractual practices, highlighting football competitions. The principle of good faith in its application in this current context in order to balance demands and make these competitions fairer, emphasizing ethics in sport and achieving a greater balance. Therefore, a bibliographic review approach based on texts on the subject, books and studies in the area of Civil Law and Contracts was used. And finally concluding the importance of this discussion in order to bring more beauty to sports competitions, in which teams are more balanced and the results will surprise the general public.

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INTRODUCTION

Football gets most of the space dedicated to and sports in the news diaries. It so happens by the fact that football was becoming increasingly important in Brazilian society, and such growth was in such a magnificent way that currently already is considered a "national disease" (BEZERRA, 2010). In the last two decades, the development of broadcasting technologies have expanded the scope and increased the income levels. In 2010, UEFA (Union of European Football Federations) announced a set of regulations, known as Financial Fair Play (FFP), designed to bring discipline and rationality to European football clubs (PETERS; SZYMANSKI, 2014). The controversial aspect of the FFP regulations and the balancing rule, which limits the team's spending on player salaries and transfers to their earned income directly funded by the team owners, which is a major source of funding for a number of clubs. upscale with benefactor owners (PEREZ, 2017). It should be noted that financial fair play is bound to cement the competitive advantages of top teams because it essentially imposes the position of clubs that are funded by wealthy investors. The findings make the justification of balance rule in balancing problems competitive. It is argued here, so that, unlike the limits wage the sports regime American who escaped the sanction of competition law, FFP rules that restrict spending likely and entrarão in conflict with competition law of the Union European (PETERS; SZYMANSKI, 2014).

Simon *et al.* (2015) points out that the team winning not can be considered the best pois there are many Deeds s that end up helping so d esigual to a team win. For this the system of governance of football Europe is hierarchical, at times described as one pyramid, where the organs International (UEFA and FIFA) focuses m If the top, and below them are their associations national, with leagues professionals and their clubs members, and below, is If all one series of activities amateur and recreational, and these are conspicuous by balance competitive and demand, following rules or standards unspoken that are what make the ethics of football. In However, there are cases set res of lines and boundaries ethical. On this discussion, consider r to is typical as the values and ways of living of society, bringing with respect to the contract of employment strategies of preserving the dignity of labor, but, what you see now is that the capitalism and the principles dess the society highly consumerist during years only abused the recurs the existing s in it bother co m the development of the same, seeking only the profit and the end in itself same. The Ethics of Sport explores the assumptions and values of nature moral in competitions and their connection with both the theory ethics as with the dile but moral concrete. Such violations of rules mean that one or more participants not complied with the rules or not recognized properly the equality of opportunity needed s to ensure one race fair. Thus, ess and study material for analyzing primarily the fair play in football and, further m and nt, the question of good faith, to then discuss the Themed single addressed.

The play fair financial in football

Fair Play, an expression born in 1896 during the first Olympics in Athens by the organizer of the Baron de Coubertin Games, which idealized the philosophy of fair play. According to UEFA, Financial Fair Play provides a structure that prevents clubs from falling into ever-increasing debt while ensuring competition based only on their own resources (BOSQUETTI *et al.*, 2015). Moreover, Financial Fair Play is based on a sports philosophy as recently published in UEFA's "Eleven Key Values of Sport", which attracts an ongoing debate about how financial fair play can trigger some asymmetrical adjustments between clubs and leagues, leading to changes in competitiveness, bringing more balance and probably to a new scenario of more equal dispute in European football (MOREIRA; PESTANA, 2008). By way of example, current European football is basically an oligopoly of about ten clubs (including FC Barcelona, Real Madrid, Manchester United, FC Chelsea, Manchester City, Bayern Munich, Paris Saint-Germain and others called "Untouchables" by Deloitte) (BOSQUETTI *et al.*, 2015). These developments are designed to threaten financial stability and distort the competitive balance not only between clubs but also between leagues in European football. In order to ensure long-term financial stability and restore competitiveness and balance, the UEFA Executive Committee has approved a series of reforms aimed at strengthening the organization in the coming years (UEFA 2011a). For example, from the 2013/14 season onwards, all clubs had to comply with the new rules and requirements in order to obtain a license, the prerequisite for participation in the UEFA Champions League (UEFA 2010a). Competition and regulation of professional sports is a hotly debated subject, and competition in professional sports leagues is quite different from competition in regular markets, and this strictly implies a zero-sum game for participants.

The victory of a team always means another defeat. And in the final ranking of a season each position is assigned only once, that is, there is only one champion and the position of a team can fall, regardless of how well it plays (BRITO *et al.*, 2011). Since competitors always excel in winning, competitors tend to be at higher risk. As a result, professional goals in football clubs typically gain prestige and success rather than make a profit. This is further exploited by fans, sponsors and the media putting short-term pressure on clubs (BOSQUETTI *et al.*, 2015). Such a situation is a moral and ethical danger between a club and its staff who pursue different interests and play a crucial role in this regard. All this would lead to excessive investment behavior, resulting in a kind of debt fallacy, since not all teams can succeed simultaneously (MOREIRA; PESTANA, 2008). At least some of them are unable to refinance their initial investments due to low income. In an unregulated league this could end in a club insolvency leading to unjustified discontinuation of games, especially during the course of a competition (Rubio and Carvalho 2005). Conversely, those teams who were successful in the competition and can qualify -If the League European or Champions League receives much higher revenue. They can use additional income to invest in new players, making them an even stronger team that will probably be able to retrain the following year. In this way, a self-sustaining upward spiral is triggered by initial success (BOSQUETTI *et al.*, 2015). In the long run, this process can end up dominating some teams by predetermining the championship and making it less interesting. As a result it generates fans and spectators -

followed by the media and sponsors - farther and farther from football, leading to lower aggregate revenue for the league as a whole (MOREIRA; PESTANA, 2008). As a result, there is a conflict inherent between clubs chasing their own interests and trying to be as well successful as possible at the expense of other clubs competing in opposition to the league as a whole, whose interests common is to ensure a campeonato attractive in order maximize profit (PETERS; SZYMANSKI, 2014). This kind of competition is sometimes called "associative competition," indicating the conflict between individual rationality and collective in professional sports leagues which is similar to a "common resource" which tends to be excessively used until depleted and therefore need be protected by specific regulation that discusses competition in professional sports leagues (BRITO *et al.*, 2011). It can be concluded that such competition needs to be regulated in order to prevent a common commercial base from doing business from sport. A specific regulation can be considered as trading solution whose allocation must be within the "core" in order to be stable. The "core" is a concept used in game theory to solve coalition games and is defined as the set of all payment distributions for which no subcoalition would be better off with a deviation (SIMON *et al.*, 2015). As has been shown, professional sports leagues tend to cause market imperfections for two reasons: First, competitive equilibrium is inherently unstable and successful clubs can improve by generating dominance that leads to oligopoly in football. Second, "positional" competition similar to a "rat race" implies a biased incentive for participants to take too much risk (BOSQUETTI *et al.*, 2015). Therefore, regulation may be necessary at least from a theoretical standpoint to remedy market failure presumably occurring in a professional sports league. That is why there are goals of Fair Play Finance which are: to introduce more discipline and rationality in club soccer funding; reduce pressure on wages and transfer rates and limit the inflationary effect; as well as encourage clubs to compete within their revenues; encourage long-term investments in youth, sector and infrastructure; ensuring that clubs settle their obligations in a timely basis (UEFA 2010b).

Fair Play is expected to have a significant and lasting impact on the competitive balance between clubs and leagues because the burden of adjusting the new regulation is asymmetrically distributed. As regulatory change will affect the leagues as a whole, but also hit some clubs more strongly than others, Financial Fair Play will not only change the competitive balance between major European clubs, but also within national leagues (SIMON *et al.*, 2015). Brito *et al.* (2011) pointed out that in general, Fair Play will lead to an intentional redistribution of revenue causing a reallocation of inputs (players, for example). Due to stricter regulations in the championships, the Financial Fair Play not only has an impact on competitively balance the among the leading clubs in Europe, but also at national level between the clubs in a the league. As a result Financial Fair Play primarily aims to restore the competitive balance between the top clubs rather than helping the poorest achieve their national champions (PETERS; SZYMANSKI, 2014). Therefore, on behalf of balance within the sport business and in search of remedy the imperfections of the market and prevent one domain uncontested for some clubs, press up the principle of good faith in the practice contract with function interpretative protecting thus the exercise of rights subjective so not there abuses, rather than good-faith acts in favor of preventing one conduct of behavior, not founded in ethics, and it

passes - to have more transparency, discourages ing to disloyalty.

The principle of good faith in contractual practices

Given the decline of the model policy of liberalism and its values, the basis of the law of contracts developed one dimension objective, resulting in the resurgence of one series of mechanisms to control the autonomy and ease private. Among these mechanisms are duties that are based on Roman law, the high ethical value that underlines the control of contractual rights (Leite, 2010). As Generoso (2010) Good faith is a principle that should prevail in relations contract, having three functions essential, first brings the criteria for the interpretation of the contract or the declaration of von tade of contractors, or acts as a source of duties instrumental, secondary or attachments or acts as a limitation on the exercise of subjective rights. Each part must act honestly and in good faith during the process of hiring. Basically, a party cannot take any action that hinders the purpose of the contract. For the owners of companies that deal co m the sale of goods, good faith requires behavior honest and compliance with the standards commercial reasonable in negotiating fair in with Ércio. A basic example of good faith is that a person will only enter into a contract that they believe in good faith that they will be able to fulfill (FIUZA, 2006). If one party fails to violate the covenant of good faith and trade fair, violating the contract, they will be responsible for any damages that occur. For example, if the other party tampere with assets you should receive, they may have to repay you and pay for any lost profits or other consequential damages incurred as a result of the breach (GENEROSO, 2010). Besides that, if the other party does not have one performance substantially because not acted in good faith, their obligations arising out of the contract likely to be canceled. If this happens, remind itself that problems substantial of performance are complicated and other factors will be taken into consideration. At However, if part of the contract has been executed, you probably still will be responsible for the payment of the good or service that you actually received (Leite, 2010). As Venosa (2012) good faith subjective not to be despised, it will depend on the judge and the analysis of each case, but in accordance with the interpretation of laws and doctrine should prevail always a good- faith objective having in view the foresight the social code 2002 brings so latent. And identifies that the objective good faith in art. 4 22 of the CC of 2002, and highlights its difference from subjective good faith. Where the subjective is illustrated in situations where the person thinks his intention is correct, considering the degree of science or psychological aspect. As required by Fiuza (2006, p. 410/411) :

Good faith is subjective in internal beliefs, knowledge s and unknowns, internal convictions. It basically consists in the ignorance of adverse situation. Those who buy from non-owners unknowingly act in good faith in the subjective sense. Objective good faith is based on objective facts. It is based on the conduct of the parties, who must act with correctness and honesty, corresponding to the trust placed in each other. The parties must have objective reasons for trusting each other. Thus, it is noted that good faith is part of the state of mind of an individual that the encourages the practice one business that bring security, highlighting the finalistic character arising from that proposed in the contractual relationship. Whereas those who pactuam make an appointment and in this context the need to act with loyalty and cooperation, respecting the

interests mutual and the success of the agreement. For De Farias (2008) to own jurisprudence makes relations between the abuse of right to the principle of good faith objective, and highlights that one who acts with abuse of right did not act in good faith and that the business not to thrive as the agreed by parts.

Of the follow-up of the good faith principle

The good faith objeti va has one function interpretative and one function that creates duties attachments, or of protection. As says about the functions that define the exercise of rights subjective, these are conspicuous that the rights subjective of parts not be imposed way of abuse without that with this there is any form of devaluation of the person human (GAGLIANO, SON, 2017). The good faith acts in favor of preventing the exercise of rights subjective when these can generate damage abusive to contractors. Thus the "good faith comes -If the conduct of behavior, which should be connected directly to the means and ends, striving for faithful implementation agreed between parties, considering the intentions shrouded in business, regarded as one of the conditions fundamental of effective ethics, highlighting the its basis of transparency in the contract (GENEROSO, 2010). The prohibition to contradict the own behavior, designed in expression venire contra factum proprium, or Stoppel in countries of law customary, is one of the concepts that aim to protect one commitment with loyalty. The core of the prohibition to contradict the own behavior, therefore, is to avoid behaviors that conflict with demonstrations earlier mind agreed (FIUZA, 2006).

The concept of law Roman of venire contra factum proprium and Stoppel, as mechanisms designed to protect the relations of confidence, triggered by two behaviors different from the same person : an original conduct of that person (factum proprium), and contradictory subsequente comportamento, with one difference of time: so that the interest of another party who relies in good faith on first conduct may be adversely affected by subsequent conduct (Leite, 2010). It is therefore a mechanism that was created to discourage the disloyalty and promote any other tasks ligad the the good faith and is even quoted in some cases the Court International of Justice, and n otavelmente, she adds the prohibition of behavior inconsistent, highlighting that the one who negotiated should not act in contradiction always observing the objective good faith (ALMEIDA, 2010). At However, venire contra factum proprium not should be seen in the perspective of an incentive unlimited for consistency in behavior human because, in principle, behavior incipient not have consequences legal. So more specific, something has one effect cool only with the emergence of one position contradictory subsequent to the first act which is based on good faith. For it that this maximum raises the prohibition of behavior disloyal, but not must serinferido as one expression of whim for consistency excessive or estritarazão (DE FARIAS, 2008). In fact, the nature dynamics typical of s societies of mass show concept invariable that the well-being is the freedom of the person may mud to r his position to face the new and the unknown. From front to this reality, the understanding of a venire modern and appropriate contra factum proprium permei to any attempt to contain the excessive demonstration of behavior inconsistent that prejudi who the other, without implying one limitation disproportionate to exercise individual of rights (FIUZA, 2006). Thus, venire contra factum proprium comes to reinforce the idea that legal relations are centered on trust, loyalty and

fulfillment of their expectations. Prohibit the behavior disloyal, or *venire contra factum proprium*, it comes from one premise legal that comes from the trust and, therefore, from the point of view of good faith, and such prohibition of behavior unfair comprises not only the annulment of acts performed, but also limits the exercise of individual rights (Leite, 2010). Such a prohibition of unfair behavior, or *venire contra factum proprium*, is justified as the protection of legitimate expectations, which is used as the element that confers this axiological legal premise of content, in order to avoid only inconsistent behavior but, above all, the way the violation of one assumption of trust (ALMEIDA, 2010). Thus, the maximum here spelled out that the individual does not can exercise one right itself contradicting one behavior before proposed, for the trust and loyalty are duties that should arise from the principle of good faith objective, deposited when it launders one contract (FIUZA, 2006). For Schreiber (2018) highlights the imposing tance of development of classical Euro Usula general good faith objective, for it to control the Army cio of rights private, prescribing behavior, not ignoring the intent or the negligence. Thus, the good faith objective apre sen ta one fe itin more modern and more intense than the own abuse of law, and to them that cites m to jurisprudence of a case of right of famil was based on the *venire contra factum proprium*, good faith should be considered for va ity of business.

The *supressio* is regarded as one resignation, which is tacitly a right not exercised in virtue of passing the time by its holder. When the person is in erte is considered presumably that she resigned. There may impose one action for breach of clauses contract based on payment made in another location but it had as bad faith, applying - if the *supressio* (GAGLIANO, SON, 2017). The expression *tu quoque* originated from the dialogue between Emperor Julius Caesar and Marcus Junius Brutus when the latter stabbed the former: "tu quoque, Brutus, tu quoque, mi fili?" Which in literal translation means "even you" and denotes a feeling of surprise mixed with disappointment for inconsistent behavior. So, how it is possible that up to you (*tu quoque*), which is involved in acts that created one expectation well - founded and legitimate the other person, now comes dishonor what you had made previously (SHADOW, 2014). Carlos Roberto Gonçalves (2014) points out that the one who violated the contractual clause or something that the law signed cannot demand from the counterparty the behavior that he did not observe. *Tu quoque* is a term that is invoked to express that no one who violates a norm can derive benefits that derive from unfair behavior of his own. Although the expression *tu quoque* is employed in philosophy and rhetoric as one argument of nature fallacious or of one the thesis inconsistent, from the point of view legal, the term consolidates different criteria of evaluation for situations substantially identical. Therefore, *tu quoque* comes as an offshoot of good faith, highlighted in the theory of proper acts that results from situations of one of the parties having violated their agreed upon duty (ALMEIDA, 2010). To compare *tu quoque* and *venire contra factum proprium*, may -If noted one factor markedly similar identified by one contradiction observed in one particular conduct. In However, the difference between *tu quoque* and *venire contra factum proprium*, is associated with the coexistence of different criteria of evaluation for situations similar. In other words, the disgust of disloyalty and malice seems to stand out more sharply in *tu quoque* than in *venire contra factum proprium* (SOMBRA, 2014).

Good faith and financial flair play in soccer

Faced with the exorbitant spending of some combined with political and economic interests, UEFA has implemented financial fair play that covers demands such as disallowing default, controlling spending, encouraging good faith in contracts and sustainable investment. The "financial fair play" is very currently observed in large expenditures in hiring injuring the compet itividade (Simon *et al.*, 2015). So the good faith imp ns in a way that there are equivalent conditions of competition between teams, for equality and balance. Football torn to -If more attractive when the result is not expected or predictable, and therefore the actions in favor of balancing both the South American football and specifically the Brazilian is far from fomenter foreign investment that enchants many fans, but in Europe brought such problems (PETERS; SZYMANSKI, 2014). For this material is by applying good princess ípios of management of sport, shoes ed in good faith, improving thus the health financial of teams. Neto (2017, p. 3) highlights that:

The aspect positive in football the clubs of Brazil : the factor balance. Just seeing the champions national in the last decade and the classified for the tournament continental. In neighboring Argentina, realize -if the same. Will always be a club that has more investments, others not so much, but this difference is small near the clubs of the first league of France, in which a few have a lot and others many have very little. Consequence of this ? Imbalance. Good for football ? No !

With all this material up by effecting one work for equality grounded in good faith, to raise the competitiveness and balance the soccer finances and argues If the FFP is the perfect way to protect the status quo of the threat of clubs like City and PSG, which were pushed to the top of the game by billionaire investors (BRITO *et al.*, 2011). The Association of European clubs established by the biggest clubs in Europe, had an interest in a closed shop and to prevent more sheikhs and oligarchs invaded the top of European football, as did Ro man Abramovich and Sheikh Mansour said Ouriel Daskal, referring to the Chelsea and city owners, told CNN (BOSQUETTI *et al.*, 2015).

Their reasoning is that it has disrupted the market and has a corrosive effect on it, added Daskal, who wrote for The Bliezzard and a number of major newspapers. UEFA President Michel Platini " wanted " to counter financial doping. However, the main benefactors of FFP are those who have more money than others (PETERS; SZYMANSKI, 2014). There are regulations on spending and foreign income (from the pockets of the rich), but there are no regulations on income - media rights, transfer markets, cash awards, and income on the journey (BRITO *et al.*, 2011). So what happens now is that clubs that have money can make more money and thus make more money. This has resulted in a widening gap between the haves and have-nots, which is far more disturbing and corrosive than financial doping. The FFP fine is a joke. It does not count as defeat and Man City and PSG can continue to spend and stay in the Champions League (BOSQUETTI *et al.*, 2015). But there are reservations within the game with Platini's desire to impose politics across European football, although clubs are slowly adjusting to the idea. At first, some clubs were outraged at the proposals, but now the FFP which was i ntroduzida the beginning in 2009, and began properly in 2011 with clubs that qualified for the competitions d UEFA they

need to prove that they do not have late payments to other clubs, their players and social / tax authorities throughout the season (BRITO *et al.*, 2011). The plan allowed losses of up to \$ 55.5 million during the 2011-12 and 2012-13 harvests, which would be reduced to £ 37 million between 2015 and 2018. According to the rules, there are several areas of FFP-free spending, including spending on youth development and infrastructure. The creation of the CFCB, the Club Financial Control Body, allows UEFA to monitor the finances of all clubs participating in its championships (SIMON *et al.*, 2015). People are now slowly getting involved with everyone and may not be so resistant. On the one hand, it is positive because it makes clubs behave more responsibly. But it is the true justice of the concept that is debatable because it gives certain clubs advantages - no doubt about that. It makes it difficult for smaller teams because to be profitable you have to succeed on the field. Thus, the vicious circle that para have more success you have to spend and if you g astar and become well - successful, will bring more money, more sponsors, attract crowd larger es and sell more vacancies (Bosquetti *et al.*, 2015.). In this sentrido press by the ethics and values moral, involving good faith and strategies of preservation of equality and balance, seeking to keep er the beauty of football as with petition and no means aimed at only the profit and the end in itself same, by this fair play financeito Atrua in favor of effecting greater equality of opportunity to secure one race fair (PETERS; SZYMANSKI, 2014).

Final considerations

Was seen in this study, as in sport, particularly football, can give space to demands corrupt guided the contractual imbalance, exorbitant investments that ends m taking the beauty of sport competitions. In Europe it is more common due to the amount of money invested in teams over the last decades, which has developed with the best players in the world, but which makes the dispute far from equitable or even. Therefore, it was seen that the UEFA created a set of rules taken as Financial fair play seeking to give greater d disciplina and rationality to the teams and their signings, bringing a balance rule, improving competition, retringindo spending exorbitant, giving certain limits such situations, because the situation really was more than latent teams was already winning championships in a row and remain well improve s because investment and wealth of the same front of others. With the sheer amount of business that surrounds football, Financial Fair Play (FFP) is regarded as the fair game of finance that strives for balancing team negotiations to make the sport unbalanced competitive where the teams with the most money lead ever. Good faith need emerges as defining the lines and ethical boundaries, being a kind of dignity preservation strategy and in those cases providing greater equality of opportunity and a dispute over just acting on behalf dess and balance within the professional sport. With Fair play, the UEFA started to monitor the finances of all clubs participating in its competitions demonstrating the need for supervision in the field of sports to prevent misuse, p rincipalmente in hiring, which should be based on ethics and values morals, encompassing good faith and preserving equality and balance. Thus, it is concluded that the Financial Fair Play comes p a ra bring a more competitive teams, giving a position of the clubs more equal even if they have great influence of investors rich, limiting these so it is not unbalanced such competitions. Good faith and its developments are crucial and decisive in this context to

support the ethics and morals of the same and impose salary limits and contracting, that according to the rules, UEFA just improving the system of government defining football lines and ethical boundaries.

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