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Video assistant referees: a view of the Bundesliga trial

The use of video assistant referees ('VAR') in football is currently controversial. The discussion about the use of VAR within the sport has been brought to the fore as a result of the trials of the technology taking place in high profile leagues such as the German Bundesliga and the Italian Serie A, which have been accompanied by significant media interest. Although many details surrounding the application and standards relating to such technology still appear to be open to change, certain problems have arisen, particularly relating to the acceptance of VAR by supporters and players. Dr Christoph M. Giebel, Partner at Juricity Rechtsanwälte, provides details of the current trial of VAR being carried out in Germany, explains his views on the criticisms being voiced against the use of VAR within football and highlights the factors he believes will be essential to the success of VAR in the future.

Introduction

Hardly a matchday passes in the German Bundesliga without a VAR intervention in which individual match situations are heavily criticised, and the whole VAR system is being questioned by some critics. Polemics directed against the VAR system have even resulted in a supporter filing a criminal complaint against one of the VARs for alleged fraud. Recently, 47% of 219 Bundesliga football players responded to a survey conducted by the sports magazine *Kicker* that they would endorse abandoning the VAR system¹.

The tensions surrounding VAR were exacerbated in autumn 2017 by a public discussion about purported bullying, abuse of power and a lack of transparency in the German referee system. This culminated in alleged accusations that the former VAR project

lead and FIFA referee Hellmut Krug had unduly interfered in individual VAR decisions². Without these allegations having been clarified in a substantiated manner, Hellmut Krug was replaced as head of the elite referee committee of the German Football Association (Deutscher Fußballbund - 'DFB') and as VAR project lead upon a recommendation of the DFB Ethics Committee. Against this background, VAR is currently struggling for acceptance within the game.

It is also still undecided as to whether VAR will be used during the FIFA World Cup in Russia in the summer. The International Football Association Board ('IFAB') and subsequently FIFA are not expected to reach a final decision on the matter before March 2018. The beginning of the second half of the current Bundesliga football season may therefore

turn out to be a significant litmus test for VAR in the run-up to the 2018 FIFA World Cup, especially following UEFA's rather reserved position towards the introduction of VAR in the near future.

Key issues

The main points of contention in the VAR debate are the following:

Trigger events for VAR intervention/ assessment standard

The current trial phase of VAR in Germany is taking place according to a framework that has been defined by the IFAB. There are only four trigger events ('key match-changing situations') in which the VAR may intervene in a match and request that the on-pitch referee double-check their initial decision, which are³:

- Goals scored,

The assessment standard for VAR intervention is the occurrence of a 'clear error' in regards to the referee's initial decision.

continued

- Penalty incidents,
- Direct red cards, and
- Mistaken identity of a player.

The assessment standard for VAR intervention is the occurrence of a 'clear error' in relation to the referee's initial decision. This limited scope of trigger events and the standard of a certain obviousness of the error are convincing and command a restrictive interpretation. They correspond to the VAR's current objective of being merely a tool for helping the main referee in decision-making, but not to replace or overrule them. Moreover, the flow of match play is thus not unduly impaired. An attempt by the DFB to slightly soften the standard of clear error in the sense of 'strong doubts' as to the correctness of the referee's decision being sufficient for VAR intervention has proven not to be successful. A corresponding interim DFB instruction to the referees⁴ led to a surge in the number of VAR interventions, which were almost unanimously rejected by all parties involved.

As pertinent as the conceptual approach of the IFAB may be, it is clear that considerable effort is still required to arrive at a set of best practices and a uniform interpretation of the standards. The football federations have been called upon to create groups of use cases and interpretation guidelines for further concretising the standards. These efforts may take years of continuous refinement and training of the participating referees.

Structure of decision-making/operational setup

At the moment, VAR is more of a technical aid than a genuine decision-making authority. As a cognitive intermediate step, it is still necessary that a human

being sees the events in person. Even if further automation and immediate intervention by artificial intelligence seems to be conceivable in the not too distant future, the way VAR is currently working is not objectionable. The pure fact that parallel assessments and discretionary powers of different types of referees interoperate does not lead to increased uncertainties, but rather operates in the sense of a more mature assessment governed by a four-eyes principle.

However, a frequent objection to the current application of VAR within football is that the VAR is not present in the stadium, but rather follows the events remotely from a central media centre (in the German example: located in Cologne). It is argued that the VAR should be in the stadium in order to directly follow the match and perceive its atmosphere. This argument is hardly convincing. In terms of the VAR's specific purpose of closely monitoring and analysing video materials, I believe that it is of no concern where the video referee is actually located. The possibility to view the playing field directly would not provide any advantage to the VAR. On the contrary, the spatial separation of the VAR strengthens its independence and allows decisions to be made as freely as possible from direct influence and intimidation on the spot.

Protection against harmful interference by third parties: technical and organisational measures

In the spirit of corporate governance in sport, appropriate risk management through the federations also requires the implementation of technical and organisational measures in order to reduce the risk of manipulation, in particular with regard to betting fraud and match-fixing. This also applies to the IT systems being

used and the VARs themselves.

The federations have to implement sophisticated IT security in order to prevent targeted manipulations such as hacking, denial-of-service attacks or even real-time manipulation of the relevant video materials. Moreover, organisational health must be ensured in the federations' underlying the referee system. Potentially unfavourable relationships and dependencies must be contained. A system of checks and balances must be applied to promote the independence of the VAR. Specific whistleblowing or ombudsman facilities should be considered with a view to further mitigating the risk of manipulation, in order to give the referee and VARs meaningful opportunities to notify attempts of undue influence of internal or external origin.

Managing the acceptance of spectators and sports participants

The success of VAR will largely depend on ensuring its acceptance among spectators and sports participants. This requires a transparent and easily understandable decision-making process that comes to a clear result within the shortest possible time. The transmission of the scene on stadium screens accompanied by a brief verbal explanation via loudspeakers appears to be most appropriate to achieve that effect. It seems that the alternative model of an explanation provided to the spectators via short text messages, which FIFA is currently considering, is unlikely to be successful. Writing meaningful notes adapted to the particular case would likely slow down the decision-making and could even promote misinterpretation.

In order to increase acceptance among those directly involved in sport, the move to grant each team a right to

Valve rescinds support of Filipino eSports tournament over regulation of players

Major US video game developer and distributor, Valve Corporation, announced on 4 January 2018 its decision to rescind its support of the Galaxy Battles 2018 eSports tournament to be held in the Philippines this month due to “unreasonable infringements on the privacy of players,” brought about by the legal requirement that players must acquire an ‘E-Gamer License’ to participate in eSports competitions in the country. It is suspected that Valve’s decision was prompted by an objection to the Government Games and Amusements Board’s (‘GAB’) requirements regarding the drug testing of players.

eSports players are recognised in the Philippines as professional athletes, and the GAB has set specific legal requirements regarding applications for a licence to play eSports, which include medical requirements and proof of drug tests. “We have to remember that the drug test requirement comes with the territory of being recognised as a professional athlete - a status that some eSports players had asked the GAB to bestow on them in order to provide them with an athlete visa for tournaments held abroad,” said Mickey Ingles, Associate at Ingles Laurel Calderon and Professor of Sports Law at Ateneo de Manila University. “Professional athletes from other sports like basketball and football go through the same drug tests in order to protect the integrity of sports. Treating eSports players as professional athletes will ultimately benefit eSports, even if the GAB imposes certain regulations. Looking at the bigger picture, similar treatment will only legitimise eSports’ status as a sport and its players as athletes.”

The Government of the Philippines issued a statement shortly after Valve’s announcement, which did not refer to Valve’s decision directly but provided clarification as to why there is a drug testing requirement for professional eSports players in the Philippines, which stated: “This drug testing requirement is in place for safety and health reasons as well as for the protection of the integrity of the games [...] For Galaxy Battles in January 2018, the GAB has allowed the organizers to merely submit the original drug results taken in their country and a copy of the facilities license/permit/accreditation from their government.”

The move by Valve, which it describes as its decision to “rescind the tournament’s Major designation” (which reportedly included sponsorship of the tournament, contribution to the prize money and the issuance of qualification points for future Pro Circuit Major Galaxy Battles tournaments), has prompted concern over the possible stifling of the eSports industry. The GAB’s statement addresses this concern, “For our part, our local athletes have embraced this rule as part of their commitment as professional athletes. So as to the local scene, we are confident that the number and scale of events will continue to grow. We can only hope that all stakeholders will appreciate drug testing as an undeniable part of professional sports in the Philippines and the world.” Ingles, however, considers it likely that Valve’s actions will impact the development of eSports in jurisdictions outside of the Philippines. “It is likely, especially if we see an exodus of sponsors and events. Market forces always play a part in regulation. If more sponsors follow suit, that’ll impose pressure on other jurisdictions to adjust their own regulations,” comments Ingles.

issue a certain number of challenges whereby potential violations of the rules may proactively be subjected to a closer examination through the VAR and the referee (e.g. exercised through pressing a button on a terminal device or by directly addressing the fourth official) could also be considered. This would be similar to the model of coach challenges practiced in the US National Football League (‘NFL’) signalled by throwing a red flag onto the field⁵.

Conclusions

VAR is just one element in a wider and sustainable trend towards the use of modern technology and data analytics in sport. I believe that VAR promotes transparency and equity in sport and reflects the significant economic importance of professional sport. Therefore, and irrespective of substantial room for improvement, the introduction of VAR is a positive step forward. If the football federations can safeguard certain framework conditions as outlined above, VAR will become a valuable tool for minimising the risk of blatant mistakes in the game. It would be welcome if IFAB and FIFA decide to use VAR in the upcoming 2018 FIFA World Cup in Russia.

1. Kicker, issue No. 4/2018, dated 8 January 2018, p. 10 (note: 42% of the players support maintaining VAR, 11% did not comment).
2. For a brief summary of the matter, see faz.net, dated 6 November 2017, Fußball-Videobeweis: Krug als Projektleiter abgesetzt, available at goo.gl/jmYsAv
3. IFAB, Video Assistant Referees (VARs) Experiment, Principles No. 2 and 3, available at goo.gl/qbg1ht
4. See the excerpt from the DFB’s letter to its referees, dated 25 October 2017, published by Kicker, available at goo.gl/j13T1y
5. Rule 15, Section 2, Article 1 of the 2017 Official Playing Rules of the NFL.