

(1) In *Benfica and Guimarães*,<sup>1</sup> Porto had been sanctioned with ineligibility for the 2008-09 Champions League season for having been found (with its Chairman) to be in violation of applicable eligibility regulations, which decision was overturned by the UEFA Appeals Body.<sup>2</sup> Among other preliminary issues, the Panel concluded that Benfica and Guimarães had standing to appeal to the CAS as clubs with rights affected by the appealed decision.<sup>3</sup> The Panel noted Article 1.04's inherently disciplinary and penal character based on effects of its prescribed penalty, making higher standards of protection a necessity.<sup>4</sup> Yet, not being a criminal court, interests would be evaluated per individual case, without automatic application of principles.<sup>5</sup> Here, the Panel was not satisfied that either the Chairman or Porto had undertaken illicit activity under Article 1.04<sup>6</sup> - Porto's not having challenged a lower forum's finding of guilt was held not persuasive,<sup>7</sup> and the decisions of judicial organs of the national federations not binding on UEFA or CAS, even if substantive findings of fact.<sup>8</sup>

(2) In *Pobeda*,<sup>9</sup> UEFA's CDB and Appeals Body had suspended FK Pobeda (the "Club") based on the actions of Mr. Zabrcanec, President and a player Mr. Zdraveski corresponding to unusually high sums bet on two games played in the Champions League.<sup>10</sup> Considering the case *de novo*, and noting that no applicable rules contained a provision on match-fixing,<sup>11</sup> the Panel concluded that match-fixing, being cheating that impacted integrity and particularly given the social significance of football, breached requirements of "*loyalty, integrity and sportsmanship*" under Article 5 of the 2004 Regulations.<sup>12</sup> The Panel noted that the regulatory body alleging the existence of facts constituting sanctionable actions had the burden to prove such conduct to the Panel's 'comfortable satisfaction' given (i) the nature of the conduct and seriousness of allegation made; (ii) the 'paramount' significance of fighting sport

<sup>1</sup> CAS 2008/A/1583 *Sport Lisboa and Benfica Futebol SAD ("Benfica") v. Union des Associations Européennes de Football, ("UEFA") and FC Porto Futebol SAD ("Porto")*; CAS 2008/A/1584 *Vitória Sport Clube de Guimarães ("Guimarães") v. UEFA and FC Porto Futebol SAD*, award dated July 15, 2008. [Note – Chronologically, the cases of TAS 98/185 *Royal Sporting Club Andrecht v. Union des Associations Européennes de Football*, award dated July 22, 1998 and TAS 2011/A/2528 *Olympiacos Volou v. UEFA* ("Olympiakos Volou") are not summarized here.]

<sup>2</sup> Article 1.04 of the Champions League Regulations for 2008-09 ("2008 Regulations") reading that no club had to "*not be or have been involved in any activity aimed at arranging or influencing the outcome of a match at a national or international level*" to be eligible to play the league, or could be denied admission for one year. The Chairman of Porto and Porto were sanctioned by the Portuguese Football Federation ("PFF"), based on which the UEFA's Control and Disciplinary Body ("CDB") consequently pronounced on eligibility under Article 1.04. The Chairman his PFF decision and sanction to the PFF's Council of Justice, which was pending during CAS proceedings, while Porto did not (playing the fine and taking the point deduction). Benfica and Guimarães were impleaded in Porto's appeal of the CDB decision to UEFA's Appeals Body as clubs impacted by Porto's ineligibility. The Appeals Body referred the case back to the CDB citing procedural violations, the Chairman's pending appeal before the Council of Justice which could also benefit Porto if admitted, and the irreversible nature of Article 1.04's penalty. This decision was appealed to the CAS – see pages 1 to 7 of the CAS award.

<sup>3</sup> See procedure prior to approaching CAS under footnote 2 above.

<sup>4</sup> Paras 34 and 45. The Panel cited examples such as retrospective application (as also enshrined in the Swiss Penal Code (under Article 2(1)) – para 39.

<sup>5</sup> The power to sanction was an expression of sports governing bodies' freedom to regulate their own affairs and not state's delegated power to prosecute criminal acts – para 41.

<sup>6</sup> Paras 48 and 49.

<sup>7</sup> As well as acceptance of the consequent penalty (a fine and point deduction which did not impact its qualification otherwise, with an appeal pending by its Chairman before another body, the admission of which would aid Porto's case as well) – para 50.

<sup>8</sup> The Panel considered the weight to be given the decision of the forum which was to hear the Chairman's appeal 'debatable' for a number of reasons - Para 51.

<sup>9</sup> CAS 2009/A/1920 *FK Pobeda, Aleksandar Zabrcanec and Nikolce Zdraveski v. UEFA*, award dated April 15, 2010.

<sup>10</sup> Para 2.

<sup>11</sup> Articles 5, 8 and 11 of the 2004 edition of the UEFA Disciplinary Regulations ("2004 Regulations"), and Article 52 of the 2004 UEFA Statutes, as that match-fixing was only implemented as an example of a breach in the 2008 version of the UEFA Regulations. Articles 8 and 52 required unsporting conduct to be met with disciplinary action, Article 5 required stakeholders to conduct themselves with "*loyalty, integrity and sportsmanship*" with examples including active and passive bribery or other conduct bringing UEFA into disrepute.

<sup>12</sup> Paras 17 to 20.

corruption; and (iii) the nature and restricted powers of investigation of the governing bodies.<sup>13</sup> UEFA proved to this standard, with expert witness testimony explaining betting patterns and others' attesting the accused's behaviour, that Mr. Zabrcanec was personally involved in fixing,<sup>14</sup> which was considered, in turn, adequate to sanction the Club under Article 11 of the 2004 Regulations.<sup>15</sup> The Panel confirmed the life-time ban for Mr. Zabrcanec (based on seriousness of his actions and consequences on football)<sup>16</sup> and the eight-year ban for the Club (given need for deterrence, internal vigilance/reporting and emphasizing club-wide consequences).<sup>17</sup>

(3) In O,<sup>18</sup> Mr. Oleg Oriekhov's life-time ban by the UEFA CDB and Appeals Body, as confirmed world-wide by the FIFA Disciplinary Committee,<sup>19</sup> was upheld by the Panel (emphasizing the need to reinforce federation decisions as long as legal and proportionate,<sup>20</sup> for a failure to report being contacted to fix a Europa League Group Stage match he refereed.<sup>21</sup> Based on his own admission, transcripts of intercepted calls, parallel interrogations in German criminal proceedings and witness statements the Panel concluded his proven deliberate failure to report violated Article 5<sup>22</sup> and Article 6 of the UEFA Referee Regulations,<sup>23</sup> with no finding of actual manipulation or money received needed.<sup>24</sup> Citing Pobeda on standard of proof, the Panel notably held that doping jurisprudence should inform fixing cases,<sup>25</sup> and those involved would use evasive means to not leave a trail.<sup>26</sup>

(4) In N and V,<sup>27</sup> UEFA's CDB issued suspensions and fines (confirmed by FIFA's Disciplinary Committee)<sup>28</sup> to a player (N) and a goalkeeper (V) of Debreceni VSC for not reporting being approached and acting in a way likely to manipulate a match.<sup>29</sup> Noting that for "*disciplinary responsibility*", evidence that "*a particular individual committed, by his actions and/or omissions a rule infringement*" was needed, facts for N and V were separately considered<sup>30</sup> applying prevalent burden and standard of proof in such cases,<sup>31</sup> and as applicable under private law at the place of the organization's domicile.<sup>32</sup> Adduced phone conversation and text message transcripts (confirmed in depositions in parallel criminal

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<sup>13</sup> Paras 25 and 26.

<sup>14</sup> Paras 50 to 54. The Panel was not however satisfied based on the facts adduced before it (by only one witness's retracted hearsay evidence and limited presence on the pitch) that Mr. Zdraveski was involved, acquitting him - paras 58 to 62.

<sup>15</sup> Under Article 11 of the 2004 Regulations – Paras 67 and 68.

<sup>16</sup> Paras 67 and 68 – sanctions were decided under Articles 14, 15 and 17 of the 2004 Regulations

<sup>17</sup> Paras 69 and 70.

<sup>18</sup> **CAS 2010/A/2172 Mr. Oleg Oriekhov v. UEFA award dated January 18, 2011.**

<sup>19</sup> Initially suspended under Article 32bis of the UEFA Disciplinary Regulations, applicable as referred to in Article 21.01 of the regulations of the Europa League 2009-10 and read with the UEFA General Terms and Conditions for Referees (Articles 13 and 14, "Referee Regulations").

<sup>20</sup> Lack of prior record of wrongdoing, refereeing skills, non-instigation of the fixing himself were all considered irrelevant as mitigating factors – para 44. The growth and severity of impact of fixing on UEFA, football and its perception, the level of competition, financial interests at stake, Mr. Oriekhov's individual seniority were considered – paras 45, 47, 49 and 50.

<sup>21</sup> As summarized on pages 1 to 7 of the CAS award.

<sup>22</sup> Of the applicable edition of the Regulations, see above in Pobeda.

<sup>23</sup> Requiring referees to behave in a "*professional and appropriate manner before, during and after their appointment and not accept any gifts worth more than CHF 200 from persons connected to matched for which they had been appointed*", with an obligation for a referee "*who is the target... ..of attempted bribery*" to notify UEFA immediately.

<sup>24</sup> Para 40.

<sup>25</sup> Para 20.

<sup>26</sup> Para 21.

<sup>27</sup> **CAS 2010/A/2266, N. and V. v. UEFA, award dated May 5, 2011.**

<sup>28</sup> Confirmed as applicable world-wide. The decisions were of June 2010, suspending N until December 31, 2011 (with a fine of EUR 700) and V until June 30, 2012 and fine of EUR 10,000; the Appeals Body imposed further costs of EUR 6,000.

<sup>29</sup> Under Article 5 of the 2008 edition of the UEFA Disciplinary Regulations, worded akin to prior editions – see pages 2 to 5.

<sup>30</sup> Para 15.

<sup>31</sup> Paras 17 and 18 - between balance of probabilities and beyond reasonable doubt with the Panel to be comfortably satisfied given the seriousness of allegations, bearing in mind corruption was, by nature, concealed as parties used evasive means to ensure no trail of wrongdoing was left.

<sup>32</sup> Disciplinary rules enacted were considered private law, making Article 8 of the Swiss Civil Code applicable here, and allowing the Panel to also base its decisions in natural inferences – para 19.

proceedings)<sup>33</sup> were relied on to establish V was contacted and failed to report,<sup>34</sup> but not N,<sup>35</sup> with no establishment of actual manipulation.<sup>36</sup> V's sanctions were found proportionate and N's appeal upheld, the Panel appreciating that federation discretion on sanctions was to be reviewed only when evidently and grossly disproportionate to the offence.<sup>37</sup>

(5) In Köllerer,<sup>38</sup> Mr. Daniel Köllerer, a professional tennis player was sanctioned with permanent ineligibility to play any event and fined USD 100,000<sup>39</sup> for inviting players to fix matches.<sup>40</sup> Applying the expressly stated standard of "*preponderance of evidence*" (fixing was more likely than not),<sup>41</sup> given no alternative applicable standard,<sup>42</sup> or contravention of national/international public policy,<sup>43</sup> the Panel stressed the lack of a universal minimum standard of proof for fixing, despite consistency being desirable and CAS's inability to harmonize the standard where specified.<sup>44</sup> A lower standard was not void for unconscionability, players consenting through signed contracts,<sup>45</sup> but the seriousness of the offences, warranted "*high degree of confidence in the quality of the evidence*".<sup>46</sup> On weighing witness testimonies from either side,<sup>47</sup> relying on recognition of the accused by voice<sup>48</sup> and lack of incentive to otherwise frame him, the Panel held it was more likely than not that Mr. Köllerer had attempted fixing even in unsuccessful.<sup>49</sup> It confirmed the life-time ban citing tennis' susceptibility to fixing (fewer athletes needing to be corrupted) and deterrent benefits of exemplary punishment<sup>50</sup> within UTACP's provisions,<sup>51</sup> but considered any additional financial penalties disproportionate, player livelihood already affected.<sup>52</sup>

(6) In Savic,<sup>53</sup> Mr. David Savic, a professional tennis player was sanctioned with permanent ineligibility to play any event and fined USD 100,000<sup>54</sup> for offering money to another player to fix match outcome.<sup>55</sup> The UTACP standard of preponderance of evidence, unless other applicable stated to the contrary, or it was incompatible with *ordre public*.<sup>56</sup> Witness testimony of the player approached, consistent before different fora, corroborated by phone/computer records and identification of voice (as in Köllerer) with no incentive/evidence to support for contended impersonation were used to infer Mr. Savic's liability.<sup>57</sup>

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<sup>33</sup> Particularly as subjects were unaware of the tapping and evidence was not collected through wrongdoing – para 34.

<sup>34</sup> Which violated Article 5's loyalty, integrity and sportsmanship obligations, with conduct brining sport into disrepute, with an atleast passive involvement in bribery – paras 23 to 25.

<sup>35</sup> Paras 35, 38 and 39.

<sup>36</sup> Para 36.

<sup>37</sup> Para 43. Appropriateness of sanctions were to be adjudged based on gravity of infringement and degree of guilt under Article 17 of the 2008 edition of the UEFA Disciplinary Regulations – para 81.

<sup>38</sup> CAS 2011/A/2490 *Daniel Köllerer v. Association of Tennis Professionals ("ATP"), Women's Tennis Association, International Tennis Federation and Grand Slam Committee*, award dated March 23, 2012.

<sup>39</sup> Page 2 of the award.

<sup>40</sup> In three of five times for which he was charged between 2009 and 2010, Anti-Corruption Hearing Officer ("ACHO", under the Uniform Tennis Anti-Corruption Program ("UTACP") of which all tennis governing bodies are members) under Articles D.1.d., e. and g. of the 2011 UTACP.

<sup>41</sup> Article G.3.a. of the UTACP.

<sup>42</sup> In Florida's state law (governing the UTACP), save for when punitive damages were imposed – para 6 and 29.

<sup>43</sup> Para 30.

<sup>44</sup> Para 29 – the UEFA's application of "comfortable satisfaction" was owing to the statutes applicable not mentioning a standard and so adjudicatory bodies deciding this standard would be applied.

<sup>45</sup> Paras 38 and 40.

<sup>46</sup> Para 62 – evidence considered in preceding paragraphs.

<sup>47</sup> Noting inconsistency based on witness proximity to the events, witness demeanor (including of Mr. Köllerer).

<sup>48</sup> To counter arguments of impersonation – para 57.

<sup>49</sup> Paras 38 and 40.

<sup>50</sup> Para 66.

<sup>51</sup> Section H.1.a. and Section G.4.a. which allowed for a "*maximum period of permanent ineligibility*".

<sup>52</sup> Mr. Köllerer's specific limited means, debt and lack of benefit from the charges noted – para 70 to 73.

<sup>53</sup> CAS 2011/A/2621 *David Savic v. Professional Tennis Integrity Officers*, award dated September 5, 2012.

<sup>54</sup> Under Articles D.1.c., d. and f. of the 2011 UTACP by the ACHO.

<sup>55</sup> See facts set out from para 2.1 to 2.14.

<sup>56</sup> Paras 8.4 and 8.6 - standard specified in Article G.3.a., the UTACP subject to law of the state of Florida

<sup>57</sup> Paras 8.11 to 8.29.

The life-time ban was upheld noting that though *stare decisis* was inapplicable and ACHO's retained discretion, comity demanded referring to relevant awards<sup>58</sup> and the Swiss Federal Tribunal's considerations that interests of a federation to protect integrity justified infringement of athlete privacy when such measures harmed development of those practicing the sport.<sup>59</sup> Additional financial penalties were considered disproportionate, player livelihood already affected.<sup>60</sup>

(7) In *Asif*,<sup>61</sup> Mr. Mohammad Asif, a professional cricketer was sanctioned by the ICC to seven years of ineligibility, two years suspended on commitment of no further breach,<sup>62</sup> for bowling deliberate no balls in a test match,<sup>63</sup> with parallel conviction by criminal courts.<sup>64</sup> Based on correspondence of on-field acts with the recordings, video evidence of Mr. Asif's form and execution, statistical data on bowling patterns, lack of alternative explanation for correspondence at critical times with agent involved in fixing, and the dearth of money found not being fatal as financial benefit need not be shown, his contentions were held contrary to evidence.<sup>65</sup> The Panel refused mitigation<sup>66</sup> to avoid benefit of lenience given a parallel proceeding twice,<sup>67</sup> considering also that life-time bans had previously been sanctioned by ICC and CAS.<sup>68</sup>

(8) In *Butt*,<sup>69</sup> Mr. Salman Butt, captain of the Pakistani cricket team involved in fixing allegations in *Asif* (above) was sanctioned for not reporting<sup>70</sup> (but not for actually fixing<sup>71</sup>) with ten years of ineligibility, five suspended on condition that he committed no further breach,<sup>72</sup> with parallel conviction by criminal courts.<sup>73</sup> The Panel upheld the sanction,<sup>74</sup> reiterating deference to a sporting body's expertise (like any other professional body) with deviation only in rare circumstances based on fact,<sup>75</sup> for disproportionality (not the case here given captaincy, prior such bans, his unchallenged establishment as 'ring-master', already granted leniency in parallel criminal proceedings, financial benefit being unrequired to establish the offence and irrelevant hence to sanction, and no apology issued<sup>76</sup>) or

<sup>58</sup> Such as Köllerer (above), and factors being proportionality of sanction to offence, use of deterrent life-time bans given damage/threat to integrity/image/fairness, seriousness of the offence, irrelevance of success in fixing.

<sup>59</sup> Paras 8.33, 8.34 and 9.2.

<sup>60</sup> Paras 8.36 to 8.38 and 9.3.

<sup>61</sup> **CAS 2011/A/2362 *Mohammad Asif v. International Cricket Council ("ICC")*, award dated April 17, 2013.**

<sup>62</sup> Of the ICC Code of Conduct's Article 2.1.1 which states that "*Fixing or contriving in any way or otherwise influencing improperly, or being a party to any effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any International Match or ICC Event ... shall amount to an offence by such Participant under the Anti-Corruption Code.*"

<sup>63</sup> Exact plays were executed on the field by Mr. Asif as arranged by an undercover reporter who offered one Mr. Majeed (an agent) sums of money to arrange so in the process collecting video and audio recordings of the exchange – see paras 1 to 20.

<sup>64</sup> Under the section 1 of the Prevention of Corruption Act, 1906, and of conspiracy to cheat at gambling under section 42 of the Gambling Act, 2005, where the English Criminal Court sanctioned him to a year's prison sentence on each count, to run concurrently, of which Mr. Asif served six months – paras 21 to 23.

<sup>65</sup> Paras 48 to 68.

<sup>66</sup> Requested on the basis of financial hardship and prison sentence for the same facts.

<sup>67</sup> The ICC having considered parallel sanctioning already - Paras 70 and 71.

<sup>68</sup> Para 76.

<sup>69</sup> **CAS 2011/A/2364 *Salman Butt v. ICC*, award dated April 17, 2013.**

<sup>70</sup> Under Article 2.4.2 of the ICC Code of Conduct.

<sup>71</sup> Under Article 2.1.1 of the ICC Code of Conduct.

<sup>72</sup> Paras 32 to 35.

<sup>73</sup> Under the section 1 of the Prevention of Corruption Act, 1906, and of conspiracy to cheat at gambling under section 42 of the Gambling Act, 2005, where the English Criminal Court sanctioned him to two years and six months for the former and two years for the latter (to run concurrently) of which Mr. Butt served seven months before release on license – paras 36 to 38.

<sup>74</sup> The only prayer being reduction of sanctions, Mr. Butt not contending liability, but arguing the Panel was not bound by the minimum sanction in the ICC Code (five years - irrational and disproportionate in his case) – paras 53 and 54.

<sup>75</sup> Paras 56, 57 and 60 – the Panel cited doping, English High Court and Court of Appeal jurisprudence.

<sup>76</sup> Pars 74 and 75.

irrationality (a high threshold, not met here given ICC's rationale for length relative to other code provisions, impact on game and prioritization of offences<sup>77</sup>).<sup>78</sup>

(9) In *Metalist*,<sup>79</sup> having been found guilty of fixing prior,<sup>80</sup> the UEFA Appeals Body and CDB disqualified the concerned club from the 2013-4 Champions League, based on proving fixing<sup>81</sup> by its official (and thus the club – by strict liability).<sup>82</sup> Among other issues<sup>83</sup> the Panel held that the Appeals Body was not bound by, or need not enforce a prior stayed proceedings,<sup>84</sup> if otherwise comfortably satisfied in its own determination<sup>85</sup> of fixing.<sup>86</sup> Evidence not otherwise admissible,<sup>87</sup> could be here, given effort made with limited means to find evidence, even if secured inappropriately (as long as within public policy limitations) to curb fixing.<sup>88</sup> The Panel upheld the sanction,<sup>89</sup> first, as proportionate or “*reasonably required in search of a justifiable aim*”, given the importance of fighting fixing, preserving confidence and integrity in sport, and deterrence,<sup>90</sup> burden to show disproportionality on the club.<sup>91</sup> Second, it was not discriminatory (equal treatment of same situations).<sup>92</sup>

(10) In *Besiktas*,<sup>93</sup> the UEFA CDB and Appeals Body held that qualified club Besiktas was ineligible for the 2013-4 Europa League season<sup>94</sup> based on its officials' involvement in fixing of the 2011 Super Lig final.<sup>95</sup> With regulations silent, burden of submitting and proof of fact law was attributed to the party invoking a right,<sup>96</sup> to Article 2.08's specified “comfortable satisfaction”, the Panel alluding to prior awards' consideration of seriousness of the allegations, incentive to conceal evidence, limited investigative abilities, and doping jurisprudence.<sup>97</sup> The seriousness or access to criminal investigations' evidence did not justify an increased burden of “beyond reasonable doubt”, the nature of proceedings being civil.<sup>98</sup> Article 2.08's eligibility determination was regulatory and not ‘sanctionary’, despite its effect, right of future disciplinary measures reserved,<sup>99</sup> and lack of clarity on direct/indirect involvement

<sup>77</sup> Paras 66 to 69.

<sup>78</sup> Paras 61 to 63 – irrationality required the sanction to be “*obviously or self-evidently unreasonable or perverse*”.

<sup>79</sup> **CAS 2013/A/3297 *Public Joint-Stock Company “Football Club Metalist” v. UEFA and PAOK FC*, award dated November 29, 2013.**

<sup>80</sup> Para 2.10 - CAS award in 2010/A/2267, 2278, 2279, 2280 and 2281 challenged before the Swiss Federal Tribunal (“SFT”) on August 12, 2013, in which stay was consequently granted (the club contending it needed to be observed in this proceeding as well) – para 2.13.

<sup>81</sup> Under para 2.04(g) of the 2012-15 Champions League Regulations, consisting of an “*activity aimed at arranging or influencing the outcome of a match at national or international level.*”

<sup>82</sup> See paras 1.1, 1.2, 2.2 to 2.5, 2.11 - the UEFA Emergency Panel consequently replaced them by PAOK FC in Champions League play-offs which decision was also sought to be appealed to CAS. The Panel also considered this issue, unrelated to fixing (non-joinder of Maccabi Tel-Aviv who would have replaced the club) – ultimately this was considered redundant given the dismissal of appeal – paras 8.44, 9.2 and 9.3.

<sup>83</sup> Such as a time bar – among other factual considerations, Article 2.05 was held to have introduced *lex specialis* to other UEFA Disciplinary Regulations of 2006 with its own limitation, agreed to on submission of an admission form, and alternatively, a fixing allegation could be brought under ‘bribery/corruption’ with a 20 year limitation – paras 8.18 to 8.23.

<sup>84</sup> In this case of the SFT, even if based on an initial assessment that the appeal was likely to succeed there.

<sup>85</sup> Here by evidence and prior decisions of the Football Federation of Ukraine and CAS – para 8.6

<sup>86</sup> Para 8.7 to 8.9

<sup>87</sup> In civil or criminal court under Swiss law.

<sup>88</sup> Paras 8.10 and 8.11.

<sup>89</sup> Without pronouncing on a probationary period or further sanctions – paras 8.35 and 8.36.

<sup>90</sup> Paras 8.25 and 8.26.

<sup>91</sup> Based on Article 8 of the Swiss Civil Code and CAS jurisprudence – paras 8.32 to 8.34.

<sup>92</sup> Mandatory under Swiss association law, and the sanction corresponded to Article 2.05 of the Regulations (ineligibility of one year) – paras 8.37 to 8.40.

<sup>93</sup> **CAS 2013/A/3258 *Besiktas Jimnastik Kulübü v. UEFA*, award dated January 23, 2014.**

<sup>94</sup> Under Article 2.08 of the Europa League Regulations, finding “*directly and/or indirectly involved, since ... 2007 in any activity aimed at arranging or influencing the outcome of a match at national or international level...*”

<sup>95</sup> See detailed facts from paras 1 to 29 – in 2012 parallel criminal convictions and sentence of one year and three months of imprisonment, a fine and other football related prohibitions had been issued as well.

<sup>96</sup> Here, the federation (UEFA), relying on Swiss and CAS jurisprudence - para 115.

<sup>97</sup> Paras 118 to 122.

<sup>98</sup> Evidence available due to cooperation and not independent investigative abilities - Paras 123 and 124.

<sup>99</sup> Para 127.

therefore not fatal.<sup>100</sup> Strict liability could be imposed on Besiktas for officials' acts, 'indirect' activity including anything unintended influencing a match in a non-sportive way, of which Besiktas could be assumed aware,<sup>101</sup> a mere attempt being adequate, even if not the only or dominant aim<sup>102</sup> and activity appearing licit, considering circumstances (if it influenced matches), need not be so.<sup>103</sup> Noting UEFA's ability to rely on other decisions without being bound,<sup>104</sup> club's sporting and financial interest in winning,<sup>105</sup> recorded conversations with indirect references to fixing and private meetings,<sup>106</sup> oral and written testimonies of those familiar with events and the suspected,<sup>107</sup> incentives to frame/lie and plausibility of alternative explanation, *inter alia*,<sup>108</sup> the Panel found the officials and club directly/indirectly involved and upheld sanctions.<sup>109</sup>

(11) In Fenerbahçe,<sup>110</sup> appeals to the CAS arose from UEFA's Appeal Body's decision which partially upheld the CDB's exclusion of club from the next three UEFA club competitions<sup>111</sup> (reducing it to two competitions<sup>112</sup>) for which they qualified finding multiple instances of fixing proven.<sup>113</sup> Among other preliminary issues considered,<sup>114</sup> the Panel held that UEFA had not violated the principle of *ne bis in idem* as alleged,<sup>115</sup> UEFA could initiate disciplinary proceedings for fixing under legality principles,<sup>116</sup> and clubs could be sanctioned even if evidence adduced was insufficient to sanction individuals (before or concurrently).<sup>117</sup> The Panel considered 'comfortable satisfaction' as the codified standard,<sup>118</sup> with Swiss law applicable where it was not (and hence it being an issue of substantive law, which factored in difficulty in establishing fact with evidence to ease or shift the burden, which was the case here<sup>119</sup>). Noting the civil standard of 'beyond reasonable doubt'<sup>120</sup>, CAS jurisprudence was observed as

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<sup>100</sup> As might have been required in a criminal provision, interpretation that allowed approximating *ratio legis* as close as possible was needed – paras 128 and 129.

<sup>101</sup> Paras 134 to 136, citing Article 5 of the UEFA Disciplinary Regulations (2008 edition) which speaks of when principles of conduct are considered breached.

<sup>102</sup> Para 138.

<sup>103</sup> Para 139.

<sup>104</sup> Decisions could “*corroborate, confirm, and/or supplement the impressions acquired and conclusions reached*” – para 205. Parallel convictions being evidentiary indicator of correctness of challenged decisions, and other decisions needing to be used carefully, with reasoning, and assessment of evidence used for each, particularly when the decision was no final – paras 141, and 146 to 151.

<sup>105</sup> Paras 152 and 154.

<sup>106</sup> The Panel noted the tendency of those involved in fixing to avoid using direct words, fearing being heard and meeting in private - paras 156 and 157, as well as paras 171 to 174.

<sup>107</sup> The latter to be considered with particular care – para 177.

<sup>108</sup> Paras 187 to 204.

<sup>109</sup> Paras 180, 181 and 186.

<sup>110</sup> CAS 2013/A/3256 *Fenerbahçe Spor Kulübü v. UEFA*, award dated April 11, 2014 (“Fenerbahçe”).

<sup>111</sup> Para 57.

<sup>112</sup> Para 68.

<sup>113</sup> Details of history of the fixing allegations are not summarized – available from paras 1 to 22 of the award.

<sup>114</sup> Only those subjectively considered specific to match-fixing are highlighted in the summary. To discuss.

<sup>115</sup> Para 160 to 164 and 167; both in connection with Turkish Football Federation decisions and UEFA's initial administrative eligibility considerations under Article 2.05 being different from disciplinary sanctioning (see also para 203). Yet, the Appeals Body had violated *res judicata* by deciding on merits surpassing those before the CDB, limiting CAS's award to CDB matters only - para 139.

<sup>116</sup> Match-fixing being an offence that could be sanctioned under the applicable regulations, UEFA having material and territorial scope to apply Champions League Regulations in national fixing cases as well – see paras 190 to 194, 199 and 216.

<sup>117</sup> Paras 245 to 247 – as part of the merits, the Panel also held that it was not necessary to identify which individual officer was engaged in the fixing (para 430) or the specific player on the team who had accepted the offer (para 481).

<sup>118</sup> By the UEFA CDB and Appeals Body consistently, being mentioned in Article 2.05, but not 2.06 of the UEFA Champions League Regulations – paras 272 and 273.

<sup>119</sup> Para 281. The Panel hence applied comfortable satisfaction to the extent they were convinced that the club was involved in fixing, burden lying with UEFA – para 282.

<sup>120</sup> Para 276.

‘inconsistent’,<sup>121</sup> flexible,<sup>122</sup> with varied reasons for departure from the normal civil standard<sup>123</sup> and thus not easy to follow.<sup>124</sup> The Panel considered wire-taps (each assessed for credibility)<sup>125</sup> of “*crucial importance*”,<sup>126</sup> adequate to draw inference from,<sup>127</sup> and corroborative to facts otherwise asserted.<sup>128</sup> Lack of suspicious on-field behavior noticed, and hence match-reports, or lack of financial records showing money transferred were not proof of no wrongdoing.<sup>129</sup> No evidence that the match was actually influenced<sup>130</sup> and or of effective change in the outcome was needed.<sup>131</sup> Considering convictions in Turkey criminal courts corroborative, CAS’s ability to convict even if court’s acquitted given lower standard of proof, made a contrary finding unlikely.<sup>132</sup> The Panel held that UEFA had not violated principles of equal treatment<sup>133</sup> or requirement to take into account mitigating circumstances.<sup>134</sup> Despite finding liability for fewer matches<sup>135</sup> and none for admission form defects,<sup>136</sup> two year ineligibility was held warranted.<sup>137</sup> With no guidance in applicable regulations on elements for sanctioning it used *de novo* powers, having made independent conclusions on procedure and merits with different results<sup>138</sup>; and the CAS’s used range of sanctions (akin to doping being between one and eight years)<sup>139</sup>, as guidance.<sup>140</sup>

(12) In Sammut,<sup>141</sup> based on parallel German criminal investigations, Mr. Kevin Sammut, a professional footballer was sanctioned with a life-time ban from any football related activity,<sup>142</sup> for deliberate on-field actions leading to loss of a match.<sup>143</sup> Applying ‘comfortable satisfaction’ given silence of applicable law<sup>144</sup> while mindful of nature of conduct, importance of fighting corruption, limited investigation

<sup>121</sup> Para 275.

<sup>122</sup> Ranging between a balance of probability and proof beyond reasonable doubt bearing in mind seriousness of the allegation – para 277.

<sup>123</sup> A comparison to doping jurisprudence, the purpose behind the provisions, restricted investigation capabilities (para 278), or the nature of corruption being such that parties would try to conceal their wrongdoing (para 279)

<sup>124</sup> Para 280 – the Panel mentioned that while all disciplinary proceedings were considered civil and it was typical that in civil proceedings, parties did not have access to investigative authorities as in criminal proceedings. The ordinary standard of ‘beyond reasonable doubt’ could then never be applicable. Therefore their lack of access could not be used as a justification to reduce the burden.<sup>124</sup>

<sup>125</sup> Para 294.

<sup>126</sup> See para 398.

<sup>127</sup> Stating – (“*from the two wiretaps above, the panel concludes...*”) – see para 383

<sup>128</sup> Para 385.

<sup>129</sup> Paras 298 and 299, also as analysed per match – see for example, para 439.

<sup>130</sup> Para 299.

<sup>131</sup> For example, see para 429 – where though the receipt of money was certain, whether the actions of the player on the field as a result thereof would change the final match result (win or loss) was not. Given the volume of the evidence considered and details in the awards analysis thereof, only the main findings are listed.

<sup>132</sup> Paras 541 to 544.

<sup>133</sup> Having issued sanctions for Article 5 violations previously – see paras 558 and 560.

<sup>134</sup> Such as the period of ineligibility already served (having been accounted for by UEFA’s Disciplinary Inspector previously) under Article 17 of the UEFA Disciplinary Regulations – see para 565.

<sup>135</sup> UEFA having adduced evidence for only four and not five before CAS – paras 270 and 297.

<sup>136</sup> Which could not be independently sanctioned as there was no legal basis for that – para 215.

<sup>137</sup> Paras 568 to 571 - two year period is usual for ‘standard’ offences, and the offences here were ‘particularly serious’ due to the number of matches, multiple involved high-ranked officials and top administration orchestrating the process, a sanction from the “*higher region of the spectrum*” was considered warranted. Yet, it could not go beyond the Appeals Body decision (‘*ultra petita*’ as UEFA has not filed an independent appeal against that), making two years appropriate – pars 577 and 578.

<sup>138</sup> Para 573, noting the “*evidently and grossly disproportionate*” standard of sanction in prior awards.

<sup>139</sup> Para 574.

<sup>140</sup> Para 572.

<sup>141</sup> CAS 2013/A/3062 *Kevin Sammut v. UEFA*, award dated May 28, 2014.

<sup>142</sup> By the UEFA Appeals Body (a violation under Article 5 obligations – above, sanctioned increased to life ban from ten years given by the CDB), two other accused players were let off as the allegations were not proven against them - paras 21 to 25. The Appeals Body requested FIFA to extend the ban world-wide – para 28.

<sup>143</sup> With the two accused persons in the German investigations one Mr. Cvrtak and one Mr. Sapina, who arranged to fix a match in the UEFA European Football Championships in Oslo between Malta and Norway identifying Mr. Sammut before UEFA and German authorities, with no money exchanged, but Mr. Sammut making a key error on field, with Maltese players getting a pay-out from betting gains of involved fixers – paras 1 to 14.

<sup>144</sup> Being the UEFA Disciplinary Regulations and Swiss Law – paras 89 and 90.

powers, seriousness of allegations, and parties tendency to conceal actions, the standard of proof was noted above civil ‘balance of probabilities’ but less than criminal ‘beyond reasonable doubt’.<sup>145</sup> The Panel concluded both that the match was fixed (corroborated by the anonymous letter and statement by an undisclosed person confirming the fixing,<sup>146</sup> suspicious betting patterns,<sup>147</sup> and certain witness testimony<sup>148</sup>), as well as Mr. Sammut being the person through whom it was fixed (noting that a witness’s criminal past did not have a bearing on credibility, but motivation to make false statements – as the players would have – did,<sup>149</sup> his specific identification as the player involved thrice<sup>150</sup> and on-field error<sup>151</sup>). Noting also both life-time and shorter bans awarded by federations, with CAS consistent in upholding life-time bans,<sup>152</sup> based on no proof of involvement in ‘actual implementation’ which was more relevant to sanctioning (an error not proving intent to allow a goal), the life-time ban was mitigated to 10 years ineligibility.<sup>153</sup>

(13) In Eskişehirspor,<sup>154</sup> UEFA’s Appeals Body<sup>155</sup> sanctioned the club with ineligibility for the 2014-5 Europa League based on findings of fixing against club officials/players.<sup>156</sup> The Panel found the Appeals Body’s holding ineligibility determination as disciplinary incorrect, with implications on applicable principles,<sup>157</sup> such measures not prejudicing consequent disciplinary sanction if justified.<sup>158</sup> UEFA was legally permitted to frame such distinctions, the admission form providing club consent to the rules.<sup>159</sup> The provisions were to be interpreted using *ratio legis* case by case, all potential acts<sup>160</sup> impossible to predict.<sup>161</sup> Any act, otherwise legal, could be one influencing match outcome, including bonuses from third parties to play well, in this case.<sup>162</sup> Burden of proof was held to be on UEFA as the party asserting facts, to a ‘comfortable satisfaction’ standard, which, absent explanation in the applicable law, meant “*greater than a mere balance of probability, but less than proof beyond reasonable doubt*” keeping in mind the seriousness of the offence.<sup>163</sup> Relying on wiretaps (presumed coded deliberately), secret meetings (drawing inference from their nature), timing and nature of connected acts,<sup>164</sup> corroborating parallel judgements (irrespective of whether final as evidence was considered anew)<sup>165</sup> and noting that

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<sup>145</sup> Paras 91 to 94.

<sup>146</sup> Para 18.

<sup>147</sup> Para 100.

<sup>148</sup> Para 157 – contrasting testimony was weighed and no incentive found for Mr. Cvrtak and Mr. Sapina (like the players would, of sanctions) to fabricate such allegations.

<sup>149</sup> Para 165.

<sup>150</sup> Paras 134, 136 and 166 – ancillary factors such as parallel criminal proceedings in Malta, substitution of the player during the game were not adequate to exonerate – paras 168 to 170.

<sup>151</sup> Para 171.

<sup>152</sup> Paras 177 and 178.

<sup>153</sup> A majority of the Panel concluded that hence only an offence under Article 5(2) of the UEFA Disciplinary Regulations, the ‘actual implementation’ more important in determining sanction, the on-field error not proving intention to allow the goal – paras 179 and 180.

<sup>154</sup> **CAS 2014/A/3628 *Eskişehirspor Kulübü v. UEFA*, award dated September 2, 2014.**

<sup>155</sup> Under Articles 2.09 and 2.08 of the Europa League Regulations – see para 8.

<sup>156</sup> In the context of Turkish Super Lig match-fixing involving Fenerbahçe - see paras 1, 4, 5, and 11.

<sup>157</sup> Citing CAS jurisprudence on the distinction – paras 97 to 100; implications were also noted – para 109.

<sup>158</sup> Paras 101 to 106 – the distinction was between Articles 2.08 and 2.09 with ineligibility possible to impose on non-fulfillment of various conditions, limitation periods also differing across the provisions.

<sup>159</sup> Paras 107 and 108.

<sup>160</sup> Article 2.08 involving broader and more generic passive and indirect roles (“*directly/indirectly involved*” or be implicated in an act) as opposed to an active role under Article 2.09 “*who acts in a way*” to “*exert an influence*”, “*with a view to gaining undue advantage for himself or a third party*” or directly do).

<sup>161</sup> Paras 111 and 112.

<sup>162</sup> Regulation of such bonus at a national level being irrelevant, as they constituted a breach of UEFA’s objective, exerted influence on competition, skewed player motivation, and could imply an undue advantage, infringing fair play – paras 114 to 119.

<sup>163</sup> Paras 121 to 124.

<sup>164</sup> Relying on prior awards, notably Besiktas, where this evidence was used to draw inferences – para 128.

<sup>165</sup> Paras 129 and 130.



evidence not otherwise admissible could be used given the purpose,<sup>166</sup> the Panel found matches fixed and the club liable through acts of its official, irrespective of culpability,<sup>167</sup> *nulla poena sine culpa* was particularly not applicable in context of an administrative measure.<sup>168</sup> Sanctions were upheld as justified, proportionate, connected to objectives, and not contrary to principles of law,<sup>169</sup> with factors such as lack of negligence or fault for mitigation irrelevant given the mandatory one year period and non-disciplinary nature.<sup>170</sup>

(14) In *de la Rica*,<sup>171</sup> Mr. Guillermo Olaso de la Rica, a professional tennis player was sanctioned<sup>172</sup> with ineligibility for any ATP event for five years, and a fine of USD 25,000.<sup>173</sup> The Panel held<sup>174</sup> that Skype messages were admissible based on chain of custody of the phone/computer, account verification, accuracy of content, transcripts having probative value, with corroborating witness statements, finding Mr. de la Rica could not cite lack of knowledge (given ATP's education and signed player agreements/rulebook) for violating reporting and corruption provisions,<sup>175</sup> with actual match loss not required to be demonstrated for corruption (though found evident through witness statements, evidence of agreement to receive money and discussion on how to lose).<sup>176</sup> The Panel refused to mitigate sanctions finding the match lost deliberately, with no desire to report,<sup>177</sup> noting that they were to be interfered with only if evidently and grossly disproportionate - here, both appropriate to the level of guilt and gravity of infringement which undermined fairness, on two counts, and knowingly undertaken.<sup>178</sup>

(15) In *Sivasspor*,<sup>179</sup> UEFA's Appeals Body<sup>180</sup> sanctioned the club with ineligibility for the 2014-5 Europa League based on findings of fixing against club officials/players.<sup>181</sup> On matters of definition of offences, interpretation of applicable provisions, burden and standard of proof, evidence considered admissible (with additional evidence from criminal investigations in Turkish criminal proceedings) and use of judgements, the Panel followed exactly the award of *Eskişehirspor*.<sup>182</sup> Even if fixing had been unproven in the match against *Fenerbahçe* prior, the Panel was not bound by that decision, or barred by *res judicata* to decide thereon.<sup>183</sup> The Panel confirmed ineligibility again on similar lines as *Eskişehirspor*, with liability for the club the liable through acts of its official,<sup>184</sup> irrespective of culpability, the club's economic and sporting benefit being inconsequential.<sup>185</sup>

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<sup>166</sup> The Turkish Criminal Court having rejected the wiretaps as fraudulent in one instance, and standard for admissibility considered lower than Swiss criminal or civil law – para 130.

<sup>167</sup> The coach being an 'official' as defined under the Europa League Regulations, who acted on behalf of the club, not a mere employee as contended by the club – paras 132 and 133.

<sup>168</sup> Para 136.

<sup>169</sup> Paras 137 and 138.

<sup>170</sup> Article 11 of the UEFA Disciplinary Regulations allowing for this could thus not be applied – paras 140 and 141.

<sup>171</sup> **CAS 2014/A/3467 *Guillermo Olaso de la Rica v. Tennis Integrity Unit* ("TIU"), award dated September 30, 2014.**

<sup>172</sup> By the ACHO under Article D.1.c (corruption offence) and D.2.a.i. (reporting obligation on being approached) of the 2010 UTACP, fine under Article H.1.a thereof.

<sup>173</sup> Suspension of the last 1 months of eligibility was possible on being directed to education/rehabilitation as seen fit, with payment of fine – paras 5 to 17.

<sup>174</sup> After determining contested procedural matters of ACHO jurisdiction and partiality, applicable law of Florida and investigations of the Tennis Integrity Unit consented to pursuant to the player agreement, limitation periods – see paras 73, 77, 78, 81 to 86, and 95, 96 and 99.

<sup>175</sup> Paras 110 to 112.

<sup>176</sup> The absence of evidence of a player's poor effort would not preclude sanctions under Rule E of the UTACP.

<sup>177</sup> Paras 116(a) and (b) – match lost due to money offered, not fear of threat as argued, and prior denial of being approached and a singular email to the TIU showing lack of desire to report.

<sup>178</sup> Para 122, sanctioned issued under Rule H.1.a. of the UTACP.

<sup>179</sup> **CAS 2014/A/3625 *Sivasspor Kulübü v. UEFA*, award dated November 3, 2014 ("*Sivasspor*").**

<sup>180</sup> Under Articles 2.09 and 2.08 of the Europa League Regulations, the CDB issuing a fine of EUR 300,000 – see para 19.

<sup>181</sup> Paras 1, 4, 5, and 17 to 20.

<sup>182</sup> Not described again in detail as the judgements are verbatim.

<sup>183</sup> That decision dealing with *Fenerbahçe's* officials the club's personnel – para 138 (j).

<sup>184</sup> Here the acts of the President, board member and players attracted Article 2.08 – paras 146 and 150.

<sup>185</sup> Para 147.

(16) In Vanakorn,<sup>186</sup> the Panel overturned the FIS'<sup>187</sup> four year world-wide suspension from FIS events of Ms. Vanessa Vanakorn for alleged manipulation<sup>188</sup> of four giant slalom 2014 winter Olympic qualifying events.<sup>189</sup> The Panel decided on Ms. Vanakorn's having standing<sup>190</sup> and recognized federations' ability to expressly choose standard of proof subject to national or international rules of public policy (particularly as for FIS it was the standard usually used in fixing awards<sup>191</sup>), and CAS's lack of authority to harmonize it across sports.<sup>192</sup> Seriousness of the offence would not elevate the burden, but necessitated higher confidence in quality of evidence.<sup>193</sup> The Panel found actions on field unproven,<sup>194</sup> and contrary to spirit, but not illegal under FIS rules, done with FIS knowledge and technical guidance with money paid not extraordinary.<sup>195</sup> No "deliberate circumvention of the law and illegal acts", were demonstrated to the comfortable satisfaction of the Panel.<sup>196</sup>

(17) In Panathiakos,<sup>197</sup> runners up Panathiakos challenged top finishing Olympiakos's provisional admission to the 2015-6 Champions League<sup>198</sup> on suspension of proceedings against them by the UEFA Appeals Body (where Panathiakos initially chose not to intervene<sup>199</sup>) pending proceedings on shareholder's involvement in fixing allegations in Greece,<sup>200</sup> the playoffs having commenced and Panathiakos eliminated by then.<sup>201</sup> The issue before the Panel was, if UEFA's Appeals Body was wrong in declaring Olympiakos eligible, Panathiakos had been able to demonstrate it was 'directly' or 'legally' affected (would replace them)<sup>202</sup> and thus had standing to sue.<sup>203</sup> Finding match-fixing (akin to licensing and fair-play) related eligibility, to be a separate prior admissions phase before the competition,<sup>204</sup>

<sup>186</sup> CAS 2014/A/3832 & 3833 *Vanessa Vanakorn v. Fédération Internationale de Ski ("FIS")*, award dated June 19, 2015.

<sup>187</sup> The FIS' Hearing Panel rendered this decision under Article 3.2.1 of the FIS Betting and other Anti-Corruption Violations Rules ("FIS BAC Rules") which deals with 'Manipulation of results'. Articles 3.2.4, 3.5.2 and 3.5.4 provide further offences connected to manipulation – see paras 80 to 82. Independently, the FIS Council, under Article 8.1 cancelled results of these competitions, noting that Ms. Vanakorn should not have qualified, asking the IOC to take further action as seen fit – para 26.

<sup>188</sup> Based on particulars such as event proximity to qualification deadlines, number of competitors, and event being Thai National Junior Championships with Ms. Vanakorn, the sole competitor from Thailand, aged 35 – paras 14 to 20.

<sup>189</sup> Para 3.

<sup>190</sup> Based on her legal interest established through continued desire to participate in FIS events (affected also through the point deduction and a pending IOC decision) and rehabilitating her reputation post Sochi 2014 – paras 61 to 64.

<sup>191</sup> Comfortable satisfaction being greater than the mere balance of probability but less than proof beyond reasonable doubt keeping in mind investigation powers being limited and difficulty in production of evidence given the likelihood of participants in fixing to conceal it – paras 90 and 91; and paras 96 and 97.

<sup>192</sup> Paras 92 and 93.

<sup>193</sup> Paras 94 and 98.

<sup>194</sup> Being irregular starts (inconsistent testimonies and absent key witnesses), asking competitors to ski slowly (proven but not proven connected to manipulation), result manipulation (errors noted, but unattributable to Ms. Vanakorn) – see paras 119 to 129.

<sup>195</sup> Paras 110 to 112.

<sup>196</sup> Paras 147 – 150. Additional factors contributing to the uncertainty that manipulation was the sole cause of irregularity/Mrs. Vanakorn's responsibility were variables such as weather, number of participants, the celebrity status of Ms. Vanakorn (as a violinist), the type of event (compromising seriousness), knowledge that the event was solely for her qualification, but yet within the limits of the rules – paras 141 to 146. On the other hand, the FIS Council's decision was upheld, as the competition as a whole was corrupt even if not attributable to Ms. Vanakorn – para 138.

<sup>197</sup> CAS 2015/A/4151 *Panathiakos FC v. UEFA and Olympiakos FC*, award dated November 26, 2015 (operative part of August 24, 2015).

<sup>198</sup> Under Article 4.02 of the applicable Champions League Regulations, being so recommended by the UEFA Ethics and Disciplinary Inspector to whom the UEFA General Secretary had referred the matter - paras 135, 137 and 138. The Panel discounted the lack of prayer for direct reinstatement before the CAS as inconsequential given that it ultimately found no standing to sue – para 136.

<sup>199</sup> Assuming significance given allegation of lack of *bona fides* by Olympiakos FC in Panathiakos FC's initial non-participation in Appeals Body proceedings – paras 24 to 27.

<sup>200</sup> See paras 4 to 23 – the charges were finally found unsubstantiated.

<sup>201</sup> Paras 28 and 29.

<sup>202</sup> In the 2015-6 Champions League based on under Article 4.08 or 81.01 of the UEFA Disciplinary Regulations.

<sup>203</sup> Under Article 62.2 of the UEFA Disciplinary Regulations – the requirement being such, to prevent ever other competitor from otherwise bringing action if 'affected'.

<sup>204</sup> Drafting of the Article 4 left it open to interpretation whether the replacement rule ended once the competition phase had commenced (as contended by UEFA and Olympiakos FC), the Panel emphasized that many parts of Article 4 did in fact specify whether they were intended to continue after the admission phase of competition, unlike Article 4.08 – paras 139 and 140.

Panathiakos was held to have no standing to sue,<sup>205</sup> there being no certainty of its selection as a replacement.<sup>206</sup>

(18) In Pakruojis,<sup>207</sup> on receiving fixing reports, and based on past fixing instances of on and off-field behaviour,<sup>208</sup> the LFF sanctioned Pakruojis and a player first with match disqualifications and a fine, reduced later to only a club fine, due to no evidence against the player to show ‘actual’ fixing.<sup>209</sup> Applicable regulations<sup>210</sup> allowed sanctions for both ‘actual’<sup>211</sup> and ‘presumed’ fixing, the latter needing evidence of fixing and suspicious connected player behaviour<sup>212</sup> to both be established to draw such inference<sup>213</sup> and applied only where the former was not satisfied, not merely because adequate evidence was not available,<sup>214</sup> the standard of evidence for both being ‘personal conviction’ or reasonable satisfaction of sanctioning bodies/CAS.<sup>215</sup> The Panel relied on the BFDS report (and the accompanying expert explanation and demonstrated betting abnormalities), undisputed expert analysis of on-field behaviour (circumstantial to statistics) with no plausible alternative explanation to conclude ‘presumed’ fixing.<sup>216</sup> Noting that it would “*not easily tinker with a well-reasoned sanction*”, and only where “*grossly disproportionate*”,<sup>217</sup> sanctions (EUR 4,500 fine for the club per match<sup>218</sup>) were confirmed.<sup>219</sup>

(19) In Skënderbeu,<sup>220</sup> UEFA’s declared ineligibility of Skënderbeu (based on BFDS reports of multiple fixed matches) to participate in the 2016-7 Champions League and costs of EUR 5,000<sup>221</sup> was confirmed by the Panel, noting that Article 4.02 allowed only for sanction of one year’s eligibility, here not disproportionate, illegal or contrary to public policy, based on the value-oriented objectives of such preliminary eligibility determination,<sup>222</sup> concluded to be purely administrative.<sup>223</sup> Based on consent in the admission form to the standard of comfortable satisfaction, being greater than a balance of

<sup>205</sup> With consequent questions of merits not requiring to be looked at thereafter – para 133.

<sup>206</sup> There being only a possibility of being in contention in the draw (usually between unqualified clubs to be last eliminated pre-playoff, Panathiakos FC having already qualified) and the impossibility to predict a UEFA Emergency Panel decision under Article 81.01 (for actions brought post commencement of competition phase) – see paras 141 to 145.

<sup>207</sup> CAS 2015/A/4351 *Vsl Pakruojis FK, Darius Jankauskas, Arnas Mikaitis, Sigitas Olberkis, Valdas Pocevičius, Alfredas Skroblas, Donatas Strockis, Diogo Gouveia Miranda, C.H. Alexandru and Taras Michailiuk v. Lithuanian Football Federation (“LFF”)*, award dated July 13, 2016.

<sup>208</sup> From the Gaming Control Authority of the Lithuanian Ministry of Finance and then the BFDS (which had led bookmakers to remove the game off the market) – paras 1 to 19.

<sup>209</sup> First by the Disciplinary and then Appeals Committee - see paras 1 to 19.

<sup>210</sup> Keeping with *tempus regit actum* the Panel applied the LFF Disciplinary Code applicable at the time of each match, and new regulations only where in favourable to the athlete (*lex monitor*) – paras 72 and 73.

<sup>211</sup> Article 44(1) of the applicable code – see para 81(i) of the award.

<sup>212</sup> Evidence of which could be adduced through expert analysis of behavior, rebuttable by the player under Article 56.7 of the applicable code.

<sup>213</sup> Article 44(3) and (5) of the older and new codes applicable – paras 81(i) and (ii) of the award.

<sup>214</sup> Para 91.

<sup>215</sup> Paras 83 and 84 – as actual and presumed infringement were *independent levels* of infringement, no sanction was imposed based on mere suspicion for *actual* infringement. Accordingly, the Panel held that *presumed* infringement did not run contrary to the European Court of Human Rights, the Lithuanian Constitution or public policy as contended – paras 87 and 88.

<sup>216</sup> Paras 91 and 92.

<sup>217</sup> Paras 98 and 99.

<sup>218</sup> Reduced to this figure by the Appeals Committee of the LFF, from EUR 6000 per match by the Disciplinary Committee of the LFF – para 26.

<sup>219</sup> Club’s strict liability under Article 44(6) and 44(7) following the positive findings under Articles 44(3) and 44 (5) of the respective codes.

<sup>220</sup> CAS 2016/A/4650 *Klubi Sportiv Skënderbeu v. UEFA*, award dated November 21, 2016.

<sup>221</sup> To be jointly paid by the Football Association of Albania – see paras 1, 5, 6, 8 and 9.

<sup>222</sup> Paras 109 to 113.

<sup>223</sup> Based on past CAS distinctions made between two stages of administrative and secondary disciplinary proceedings where sanctions could be for multiple years – paras 48 and 49. The Panel cited Sivasspor’s distinction stating for ‘broader and more generic’ administrative stages, it enough it a club “*has been directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level, whereas for the second stage a concrete and specific breach of the regulations is required*”, which were more ‘restrictive and accurate’ for sanctioning with a higher threshold – para 51.

probability but less than beyond reasonable doubt, mindful of the seriousness of the allegation,<sup>224</sup> the Panel found quantitative data sets of BFDS reports “*valuable evidence if corroborated by further evidence*”<sup>225</sup> (here by video footage of conduct<sup>226</sup> and that of betting operators<sup>227</sup>) and not a definitive in assessment of fixing by itself but when seen with qualitative expert analysis,<sup>228</sup> of indirect fixing through betting patterns,<sup>229</sup> noting also the similarity to evidence in doping matters.<sup>230</sup> The Panel concluded ‘indirect fixing’ despite no proven direct involvement and no direct culpability of the club needed.<sup>231</sup>

(20) In Phnom Penh,<sup>232</sup> Phnom Penh Crown Football Club’s denial of admission to the 2017 AFC Cup Playoff Qualifiers as winners of the Cambodian domestic league<sup>233</sup> based on FFC’s findings<sup>234</sup> of coaches’ proven involvement in manipulation<sup>235</sup> was upheld by the Panel, finding proceedings administrative without prejudice to any disciplinary measures, though the impact of disqualification felt punitive, this determination having implication on which forum could have validly made this decision.<sup>236</sup> The Panel concluded that the coaches’ proven offences could not be attributed here to the club as *motivated and aimed at furthering their own interests in a corrupt manner and not the interests of the [Appellant] Club*”, being the *actual or intended victim of their activity*.<sup>237</sup> Not following prior awards and noting need for case by case consideration,<sup>238</sup> non-joinder of league runners up was not considered fatal, a distinction made between interests and rights of third party clubs.<sup>239</sup>

(21) In Trabzonspor,<sup>240</sup> the runners up in the Turkish Super League 2010-11 season where fixing allegations were prevalent (TFF withdrawing Fenerbahçe from the Champions League),<sup>241</sup> sought declaration of the club as winners of the league, match annulment and point re-allocation which was

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<sup>224</sup> Para 64.

<sup>225</sup> Paras 79 and 98.

<sup>226</sup> Paras 75 and 76 - the lack of parallel criminal prosecution of the club, players and officials did not prove a lack of involvement in fixing and was not a precondition to declaring a club eligible, with BFDS data forming the basis for future prosecution in certain cases. Further, the second and third limb of evidence submitted by UEFA (being their own investigation findings and national/international perception, albeit already included in the BFDS report analysis) was not considered to not prejudice possible future disciplinary and/or criminal proceedings and unnecessary for this stage of determination - see para 107.

<sup>227</sup> Paras 99 to 101.

<sup>228</sup> Paras 85, 91 to 93, 95 and 97.

<sup>229</sup> Paras 96 and 97 – specific responsibilities need be attributed through BFDS evidence for it to be of value – para 105.

<sup>230</sup> Though no corresponding regulatory framework existed for BFDS – paras 82 and 88.

<sup>231</sup> Paras 104 to 108.

<sup>232</sup> **CAS 2016/A/4642 Phnom Penh Crown Football Club v. Asian Football Confederation (“AFC”), award dated December 6, 2016.**

<sup>233</sup> Paras 1 to 3.

<sup>234</sup> By the Football Federation of Cambodia (“FFC”) Disciplinary Committee (convicting coaches but exonerating accused players of conspiring to achieve dismissal of the Head Coach, including by getting players injured and getting players to play below potential through receiving taped recordings), and FFC Appeal Committee (before whom more stringent punishment was sought, but denied) – para 7.

<sup>235</sup> A violation of the pre-condition for admission under Article 73.6 of the AFC Statutes.

<sup>236</sup> Independently warranting sanction under AFC’s Disciplinary Code – paras 76 and 77. In this case, this determination was relevant to see whether the AFC General Secretary was the correct AFC authority to make the disqualification decision as opposed to the Competitions Committee, as the former could make an ascertainment of whether criteria were met in fact with minimal discretion, but not a subjective assessment of whether or not to admit a club – paras 69, 72, 80 and 82..

<sup>237</sup> The officials could have been agents of the club therefore - paras 90 and 91.

<sup>238</sup> Paras 108, 109 and 128, differentiating prior awards on fact. A majority of Panel noted facts like the runner-up had never expressed a wish to appear, responded to CAS, its participation was not within its own hands alone (right existing only to correct application of rules and not to participate) and not all affected parties could be impleaded – paras 106 to 110.

<sup>239</sup> Paras 122, 123, 125 and 126.

<sup>240</sup> **CAS 2015/A/4343 Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic A.S., Trabzonspor Futbol Isletmeciligi Tic A.S. and Tranzonspor Kulubu Dernegi v. Turkish Football Federation (“TFF”), UEFA, Fenerbahçe Futbol A.S. and Fenerbahçe Spor Kulubu, award dated March 27, 2017.**

<sup>241</sup> Paras 1 to 9.

denied by the TFF,<sup>242</sup> and UEFA refused intervention in proceedings in Fenerbahçe.<sup>243</sup> Unlike previous CAS awards, here UEFA's competence to intervene at the national/domestic league level<sup>244</sup> was being considered, with identity of the parties, subject matter and legal grounds all needing to be the same for *res judicata* effect.<sup>245</sup> The principle of *ne bis in idem* was held not violated on facts.<sup>246</sup> The Panel concluded that CAS sanctions for domestic fixing violations would be *ultra vires* as CAS jurisdiction was as wide as that of the previous forum (UEFA did not have this competence, particularly when unrelated to its competitions),<sup>247</sup> upholding the appealed decision.<sup>248</sup>

(22) In Viorel,<sup>249</sup> based on BFDS and Sportradar's reports (of inexplicable betting patterns indicating prior knowledge of outcome and deliberate losses for significant profits) involving FC Gloria Buzau's matches, Mr. Ion Viorel, in coaching and management, was found guilty and banned from football-related activities for two years and fined RON 200,000.<sup>250</sup> After considering preliminary issues<sup>251</sup> to conclude the scope of review was limited to procedural rights,<sup>252</sup> the Arbitrator held Mr. Viorel's fundamental rights to exercise his profession freely and hold private property not violated, sanctions being issued under regulations (assumed valid until held unconstitutional by a court of national jurisdiction),<sup>253</sup> drafted by a competent authority under Romanian law,<sup>254</sup> with the objective of tackling fixing stated in RFF statutes,<sup>255</sup> and proportional (not violating international human rights standards or affecting rights drastically, the fine being the minimum mandated under law, and given his economic capacity relative to a Romanian national<sup>256</sup>). The Arbitrator confirmed breach of Article 61 of the 2016

<sup>242</sup> TFF finding the individual actors but not the club liable for offences in the first such complaint, the UEFA declining disciplinary action against TFF as requested later as well – paras 10 to 14.

<sup>243</sup> Paras 17 to 19.

<sup>244</sup> By asking TFF to deduct points, declassify and reissue a title and pay damages, prior decisions having dealt with sanctioning under UEFA regulations – para 98.

<sup>245</sup> Para 96.

<sup>246</sup> As, the prayers for relief should have corresponded to those in Fenerbahçe, but did not;<sup>246</sup> (ii) there was no existing UEFA or TFF decision sanctioning the Fenerbahçe at the national level;<sup>246</sup> (iii) the TFF's decision withdrawing the Fenerbahçe from the Champions League and imposing ineligibility had been held in Fenerbahçe to be equivalent to the first of UEFA's "two-stage" process of sanctioning under the and so had no national level consequences either;<sup>246</sup> and (iv) the TFF Disciplinary Committee or Arbitral Body decision could not be considered decisions by "independent and impartial courts of arbitration"<sup>246</sup> sanctions by whom issued would amount to being convicted twice – paras 101 to 105.

<sup>247</sup> Paras 127 to 129 and 130 to 134. The club's burden to demonstrate its standing (as a likely replacement for the top finishing club) as one 'indirectly' affected when its rights were disposed off in a decision without direct (tangible or immediate – financial or sporting) effect on them under Article 62(2) of the UEFA Statutes was discussed but considered relevant only if UEFA had the competence to issue sanctions prayed for – paras 114 to 116 and 123 to 125.

<sup>248</sup> Para 135.

<sup>249</sup> **CAS 2017/A/4947 Ion Viorel v. Romanian Football Federation ("RFF"), award dated October 6, 2017.**

<sup>250</sup> By the Romanian Football Federation's Discipline and Ethics Committee ("DEC") and consequently by the Recourse Committee to whom the decision was appealed (and appeal dismissed) - see paras 1 to 18. This was under Article 60bis with the application of Article 60(1), Article 61 and Article 45 of the RFF Disciplinary Regulations (2016 edition). Further penalties were also issued to other coaches and players – see para 24 of the CAS award. Article 61 reads, "*Whoever conspires or make arrangements to influence the result of a game in a manner inconsistent with the ethics of sport and the principles of conduct required by these rules shall be sanctioned with a ban on any activities related to football from 1 to 2 years and a fine of at least 200,000 lei.*" (detailed in para 101).

<sup>251</sup> Including jurisdiction, admissibility of witness statements – see paras 71 to 91. Limitation period under the RFF Disciplinary Regulations was also considered (even if time barred in majority of the games, the same conduct in just one game would still be adequate to initiate proceedings and impose the same sanction) – paras 129 to 131.

<sup>252</sup> Mr. Viorel having chosen to stick to this original prayer (to annul the Recourse Committee decision on procedural violations and refer to the DEC for fresh determination), despite the Arbitrator pointing out their ability to review the whole case *de novo* and inability to refer back to any forum except the one of 'previous instance' – here the Recourse Committee and not DEC – see paras 98 and 99.

<sup>253</sup> Para 110.

<sup>254</sup> Federations having autonomy to legislate/regulate their own affairs under Romania's Act 69/2000 – see paras 106 to 109.

<sup>255</sup> Such 'objective' under Article 53 of the Romanian Constitution; as applicable to RFF's disciplinary bodies in Article 57.2.

<sup>256</sup> Para 112.

RFF Disciplinary Regulations<sup>257</sup> (applied retrospectively<sup>258</sup>) on the basis of the above reports, RFF's internal investigation, video recordings, testimonies and analysis of crimes per actor to identify attributable facts and pin liability.<sup>259</sup>

(23) In Lamptey,<sup>260</sup> based on reports of unusual betting patterns<sup>261</sup> which corresponded with controversial refereeing decisions<sup>262</sup> critical to a 2018 FIFA World Cup Preliminary match outcome,<sup>263</sup> Mr. Joseph Lamptey was sanctioned by the FIFA Ethics Department, Disciplinary Committee and Appeals Committee with a life-time ban.<sup>264</sup> The Panel, relying on unrebutted expert evidence, corresponding monitoring reports and video footage of actions<sup>265</sup> which corresponded to the variation in patterns in an otherwise uneventful match,<sup>266</sup> ruled that Article 69(1) requirements of his actions affecting match outcome,<sup>267</sup> and being deliberate independent acts without communicating with others, were fulfilled.<sup>268</sup> The life-time ban was upheld citing seriousness of the case, referee responsibility for credibility of the match and sport, need for maintaining unpredictability and fairness, with no scope for mitigation based on high degree of Panel's satisfaction.<sup>269</sup>

(24) In Fantoni and Nunes,<sup>270</sup> EBL's Disciplinary Committee found two professional bridge players guilty of having pre-arranged an illicit method of communication, effectively used to exchange information<sup>271</sup> by unnatural card positioning to signal a high suit.<sup>272</sup> The Panel, noting misleading inconsistencies/false positives in and expert opinion on utility of the code, inability to comprehend the entire code, data selection and analysis flaws among other factors, with no patent advantage,<sup>273</sup> reversed the decision based on inadequate evidence adduced before it, stating "*this did not mean the players were*

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<sup>257</sup> Paras 132 to 137.

<sup>258</sup> Citing CAS jurisprudence on *tempus regit actum* and ECHR jurisprudence requiring a determination on a case by case basis, and noting that additional sanctions had been eliminated in the 2016 edition, with the RFF Disciplinary Regulations enshrining this principle (in Article 5) – paras 126 and 127.

<sup>259</sup> Paras 137 to 141. The Panel noted that players often did not have information in advance, or it was withheld from them until the last minute due to fear of them using the information to skew betting odds, but they assisted in manipulation through on-field actions, for gaining financial benefit for themselves and third parties, used information likely to compromise integrity, did not report the schemes, and did not denounce the behavior. The Panel also noted that this was likely done due to their non-payment of dues, no professional alternatives, fear of repercussions, and need to provide for themselves and dependents – paras 138 and 139.

<sup>260</sup> CAS 2017/A/5173 *Joseph Odartei Lamptey v. FIFA*, award dated December 4, 2017.

<sup>261</sup> From SportRadar and Early Warning System GmbH (including repeated past actions) - paras 8 and 14.

<sup>262</sup> In this instance being the grant of a contentious penalty in absence of a foul, citing a hand-ball and a foul called followed by omission to stop a quick start by South Africa, both resulting in goals, with betting patterns indicating knowledge of at least three goals being scored – see paras 7 and 9.

<sup>263</sup> Paras 1, 4 and 6.

<sup>264</sup> For manipulation as defined under Articles 22 and 69(1) of the applicable FIFA Disciplinary Code, with Article 69(1) requiring that the referee "*must be held to have... behaved in a manner which was punishable*" under the Article, the Article sanctioning all acts influencing a match contrary to ethics and conspiring to do so – see para 25.

<sup>265</sup> See paras 79 to 82.

<sup>266</sup> As needed under Article 97(3) of the FIFA Disciplinary Code - a link between deviation and decision, explained only by the other – para 84.

<sup>267</sup> A requirement under Article 69(1) – para 70 and 71.

<sup>268</sup> Borrowing from the Swiss Federal Tribunal's jurisprudence on conspiracy not needing other persons who derived benefit from his actions needed to be proven involved – based on a purposive interpretation of the rule, historical legislative intent and regulatory context in which it was framed – para 74.

<sup>269</sup> Paras 91 to 95.

<sup>270</sup> CAS 2016/A/4783 *Fulvio Fantoni and Claudio Nunes v. European Bridge League ("EBL")*, award dated January 10, 2018.

<sup>271</sup> The requirements under Article 3.1 of the EBL Disciplinary Code and Law 73 of the Laws of Duplicate Bridge, the World Bridge Federation's Laws of Duplicate Contract Bridge adopted by the EBL – para 14.

<sup>272</sup> The players were accused of placing the lead card 'vertically' to indicate having unseen high honours (A, K, Q) in that suit and otherwise placing the cards horizontally – see explanation in paras 3 to 10.

<sup>273</sup> Paras 115 to 117 and 120 to 122.

*not guilty*<sup>274</sup> and imposing costs as the player's 'unusual' behaviour led to the proceedings.<sup>275</sup> The difference in agreed standard of proof between parties, noting it to be more than a 'balance of probability' but less than 'beyond reasonable doubt' and given the serious nature of EBL's accusations.<sup>276</sup>

(25) In *Skënderbeu II*,<sup>277</sup> the Panel reversed the AFA Ethics Committee's removal of the club's 2015-16 *Kategoria Superiore* title, point deduction for the next season and fine of ALL 2 million, despite no establishment direct or indirect of player involvement, but just BFDS data and connected player actions.<sup>278</sup> Reiterating criminal law requirements of certainty, but that scope for interpretation existed due to the non-'criminal' nature of such proceedings,<sup>279</sup> the Panel found the 'negative' formulation of the non-requirement of player involvement to find a club liable (with absence of what was, in-fact, required for sanctioning) as problematic,<sup>280</sup> and necessary for disciplinary sanctions, with a lower threshold only permissible for administrative/provisional cases.<sup>281</sup> Though BFDS data was considered a 'valuable tool', its admissibility was not considered given the lack of legal basis of sanctioning.<sup>282</sup>

(26) In *Lao Toyota*,<sup>283</sup> the AFC's Entry Control Body ("ECB") held Lao Toyota FC ineligible for AFC Cup playoffs due to manipulation proven before the ECB,<sup>284</sup> the AFC's Disciplinary Committee ("DC") having decided and dismissed such claims prior.<sup>285</sup> The Panel held that a club could not be tried again by the same federation on the same facts - here the DC's disciplinary decision and ECB's latter administrative one, both within the AFC.<sup>286</sup> The ECB decision could not 'cure' the first DC 'failure' (i.e. the second exception<sup>287</sup> to *res judicata* of a different forum), the second procedure being both unforeseeable in the rules, and no reservation being made to this effect by the DC.<sup>288</sup>

(27) In *Keramuddin*,<sup>289</sup> while sanctioning the Mr. Keramuddin, the former President of the Afghan Football Federation, to a life-time ban from all national and international football activity, and fine of CHF 1,000,000<sup>290</sup> for mental, physical, sexual and other rights abuse of female players,<sup>291</sup> the Panel used prior life-time bans on FIFA officials in match-fixing awards and bans of two to 10 years for bribery

<sup>274</sup> With potential for more consistent and reliable data leading to a different outcome – para 123.

<sup>275</sup> Under Rules 64 and 65 of the CAS Code in connection with proceedings involving federations which are not party the agreement establishing the ICAS – paras 124 to 127.

<sup>276</sup> Paras 45, 47 and 113 – there was a difference in the agreed standard between parties.

<sup>277</sup> **CAS 2017/A/5272 *Skënderbeu v. Albanian Football Association ("AFA")*, award dated April 13, 2018** – an appeal against this decision was rejected by the Swiss Federal Tribunal in July 2020 (4A\_462/2019) where *ne bis in idem* was held not violated by UEFA's two phase procedure.

<sup>278</sup> Notably, the AFA Ethics Committee held that there was "room for establishing a new practice under Article 134 /2 of the Disciplinary Code" where the trial panel could themselves act as legislators, should the law be "absent, incomplete", have "contradictions", or be "unclear". – see pages 3 to 6. The club was sought to be sanctioned under Article 68 (2) of the AFA Disciplinary Code, which required "the participation of a player or official in influencing the result of the game in accordance with paragraph 1 of this article". Due to the absence of proof for this, Article 134 of the same code was applied, which granted the competent authority the discretion to act like a legislator in disciplinary matters – para 61.

<sup>279</sup> Paras 62 and 63.

<sup>280</sup> Paras 66 to 68.

<sup>281</sup> Such as only eligibility/admission - para 70.

<sup>282</sup> Paras 73 to 75.

<sup>283</sup> **CAS 2018/A/5500 *Lao Toyota Football Club v. AFC*, award dated June 12, 2018.**

<sup>284</sup> Under Article 4.1.1 of the ECB Procedural Rules and Article 73.6 of the applicable AFC Statutes of 2010 – the resulting ineligibility was pursuant to Article 12.8 of the AFC Club Competition Entry Manual for 2017-18; see paras 29 and 31.

<sup>285</sup> Under Article 66 of the Disciplinary and Ethics Code of the AFC.

<sup>286</sup> Para 45. *Res judicata* and *ne bis in idem* were contended established by the club, while AFC contended that the decisions were of a different nature, disciplinary being rendered first (incorrect order) by two independent bodies with different objectives, *inter alia* – see paras 42 and 43.

<sup>287</sup> See paras 39, 40 and 42.

<sup>288</sup> Paras 51 to 58.

<sup>289</sup> **CAS 2019/A/6388 *Karim Keramuddin v. FIFA* award dated July, 2020.**

<sup>290</sup> See paras 1 to 6, and 18.

<sup>291</sup> Under Articles 23 and 25 of the FIFA Code of Ethics (2018 edition, "FCE").

as benchmarks for proportionality, noting the gravity of such (fixing/bribery) offences was “*far less severe*” than those affecting human rights, dignity and integrity of young players in this case.<sup>292</sup>

(28) In Labuts,<sup>293</sup> based on reports of UEFA’s Betting Fraud Detection System (“BFDS”) citing irregular and suspicious betting patterns,<sup>294</sup> the FAI sanctioned the Mr. Labuts, a goalkeeper for Athlone Town FC with a 12 month ban from all football related activity for being “*guilty of deliberate actions designed to influence the result*”, corresponding to the deviation in betting patterns.<sup>295</sup> The Panel noted that where the applicable rules were silent on the standard of proof and none was agreed between the parties, prior established CAS standards applied.<sup>296</sup> The Panel concluded the match was manipulated based on BDFS reports and experts’ interpretation thereof,<sup>297</sup> citing prior CAS reliance on them, but was not satisfied that the Mr. Labuts was responsible for manipulation based on their analysis of an expert’s explanation.<sup>298</sup>

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<sup>292</sup> Para 231.

<sup>293</sup> **CAS 2018/A/6075 Igor Labuts v. Football Association of Ireland (“FAI”), award dated \_\_ August, 2020.**

<sup>294</sup> Live betting for (i) atleast two goals in the first half, (ii) atleast four goals in total, (iii), Athlone Town FC to lose by two clear goals – para 5.

<sup>295</sup> Under Rules 99, 105, 106.1 and 106.2 of the applicable FAI rules effective February 2001 – see paras 7, 13 and 40. The decision was confirmed by the FAI Appeal Committee, as well as in the consequent by initiating arbitration proceedings under the FAI Rules (which decision was appealed to the CAS).

<sup>296</sup> Being comfortable satisfaction given the importance of fighting corruption, investigative ability of governing bodies and adherence to CAS doping jurisprudence - para 46.

<sup>297</sup> Paras 48, 50 and 52.

<sup>298</sup> Showing that other’s (central defenders) on the field were more likely critical to the manipulation, genuine error could have taken place, and alternative non-contributing behaviour was noticed – see paras 57 to 65.