



# The court of arbitration for sport jurisprudence on match-fixing: a legal update

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## Abstract

The Court of Arbitration for Sport (CAS) jurisprudence on manipulation of sports competitions has vastly evolved from its initial award in RSC Anderlecht in 1998, to now Labuts in August 2020. Alongside, international and national regulations, as well as sporting regulations, including, most recently, the Council of Europe's Macolin Convention on the Manipulation of Sports Competitions, have sought to effectively tackle the omnipresent, ever-growing phenomenon of competition manipulation. Against this backdrop, this article briefly outlines the existing legal landscape on manipulation, followed by a chronological detailing of each CAS issued award. The key aspects of defining such sanctionable behaviour, select issues of standard of proof and types of evidence which are admissible and relied on, as well as the manner and quantum of sanction are then analysed. Ultimately, noting empirical trends across these awards, questions on *ne bis in idem*, proportionality of sanctions and legal certainty across CAS jurisprudence are raised.

**Keywords** Manipulation of sports competitions · Match-fixing · Court of arbitration for sport · Disciplinary sanctions · Evidence · Macolin convention · *Ne bis in idem* · Proportionality of sanctions · Legal certainty

## 1 Introduction

The manipulation of sports competitions<sup>1</sup> is certainly not a new phenomenon; on the contrary, it has been reported for centuries. For example, in August 1774, a London newspaper, *The Morning Chronicle*, described the alleged fixing of several cricket matches on the Artillery Ground in northern London and deplored the fact that the “*game of cricket has too long been perverted [...] to excessive gaming and public dissipation*”.<sup>2</sup>

Today, in part due to globalization, match-fixing has become a huge cross-border phenomenon. It is currently estimated that billions of dollars are circulated every year through crime syndicates, with more than 80 countries reporting match-fixing offences to the INTERPOL during

the last few years. In a recent operation called “*Veto*” conducted by Europol,<sup>3</sup> a total of 425 officials, players and criminals, from more than 15 countries, were suspected of being involved in the manipulation of more than 380 professional football matches in Europe, Africa, Asia, and South and Central America.<sup>4</sup> More importantly, these activities were part of a sophisticated organized crime network, which generated over €8 million in betting profits and involved over €2 million in corrupt payments to those involved in the matches.<sup>5</sup>

The INTERPOL also reported that its operation, SOGA (“SOccer-GAMbling”), against illegal betting carried out between 2007 and 2014 resulted in more than 8400 arrests, the seizure of almost USD 40 million in cash and the closure of around 3400 illegal gambling dens which handled bets worth almost USD 5.7 billion. The operations have successfully removed a major source of proceeds for organized crime syndicates.<sup>6</sup>

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<sup>1</sup> As explained in Sect. 2., “*manipulation of sports competitions*” and “*match-fixing*” are used interchangeably in this article.

<sup>2</sup> As quoted in Allen (2012, p. 101).

<sup>3</sup> See EUROPOL Press Release (2013).

<sup>4</sup> EUROPOL Press Release (2013).

<sup>5</sup> See also Carpenter (2011).

<sup>6</sup> See INTERPOL (2014).

Match-fixing occurs in many sports, with regular recurrence reported in sports such as football, cricket, tennis, boxing, basketball, badminton, ice hockey, handball, volleyball but also in bridge, darts or eSports.<sup>7</sup>

This global nature and tremendous growth of match-fixing recently gave birth to a specific international convention—with a worldwide reach—adopted by the Council of Europe in 2014. Known as the Convention on the Manipulation of Sports Competitions (CETS No. 215, hereafter, the “Macolin Convention”), it entered into force on September 1st, 2019. In parallel to this international effort, the Court of Arbitration for Sport (“CAS”) cases dealing with manipulation of competitions have become increasingly abundant and have set important milestones in the fight against this phenomenon.

In this complex context, this article strives to capture, describe and analyse the relatively rich CAS jurisprudence related to match-fixing, while also focusing on several key issues such as the definition of competition manipulation, selected evidentiary issues and sanctions.

## 2 Terminology

Several terms, such as “*match-fixing*”, “*competition fixing*”, “*manipulation of competitions*” and so forth are used at academic<sup>8</sup> and legislative<sup>9</sup> levels to describe the fraudulent alteration of a sports competition or event. Terminology used in national regulations is more diverse and includes concepts such as “*sporting fraud*” (e.g. India), “*corruption of players*” (e.g. Malta), “*bribery in sporting contests*” (e.g. USA) or “*corrupt activities relating to sporting events*” (e.g. South Africa).<sup>10</sup> The Macolin Convention—which is the most prominent international legal instrument combating this phenomenon—uses the terms “*manipulation of sports competitions*”.

In this paper, the terms “*manipulation of sports competitions*” and “*match-fixing*” are used interchangeably, except when otherwise indicated.

## 3 Duality of sanctions for match-fixing: a brief reminder

The manipulation of sports competitions is sanctionable at different levels.

The first level consists of *disciplinary (sporting) sanctions*, applied by the relevant sports bodies according to their internal punitive system (known as “sport justice”).

At the second level are *state sanctions*, applied by public authorities (“state justice”). Depending on the applicable national law, the latter may be of a civil, administrative, disciplinary or criminal nature. For instance, the fixing of a football match within the Swiss championship may be sanctioned both by the Swiss national football federation<sup>11</sup> and by civil<sup>12</sup> and criminal law.<sup>13</sup>

The CAS has made it clear that “*disciplinary sanctions imposed by associations are subject to civil law and must clearly be distinguished from criminal penalties*”.<sup>14</sup> Obviously, in the CAS’s view, sporting and criminal sanctions may be complementary.<sup>15</sup> The legal nature of “sport sanctions”—which may include, *inter alia*, warnings, bans, relegations, fines and other penalties,<sup>16</sup> has been clarified by the Swiss Federal Tribunal (“SFT”) in the *Gundel* case,<sup>17</sup> as statutory, which is a form of contractual sanction.<sup>18</sup>

This article focuses on the procedure and sanctions for tackling match-fixing cases, initiated and applied by sport bodies and reviewed by the CAS on appeal.

## 4 Legal basis for the fight against match-fixing

The manipulation of sports competitions being a global phenomenon, the fight against it is regulated at different levels.

<sup>7</sup> See Smith (2016).

<sup>8</sup> See KEA Report (2012, p. 27), study of the IOC and United National Office of Drugs and Crime (“UNODC”) (2013), study of the Council of Europe—European Committee on Crime Problems (2012), ICCS-Sorbonne Report (2014), the T. M. C. Asser Institute Report (2015), resource guide of the UNODC 2016, handbook of the IOC and INTERPOL (2016), report of the IOC and UNODC (2017).

<sup>9</sup> See website of the European Commission—Fighting Match-fixing. [https://ec.europa.eu/sport/policy/integrity/match-fixing\\_en](https://ec.europa.eu/sport/policy/integrity/match-fixing_en). Accessed 19 October 2020.

<sup>10</sup> See report of the UNODC and IOC (2017, pp. 22–35).

<sup>11</sup> Under Art. 13bis of the Disciplinary Regulations of the Swiss Football Association (as of July 2020).

<sup>12</sup> Notably under Art. 41ss of the Swiss Code of Obligations (as of July 2016).

<sup>13</sup> Notably under Art. 25a of the Sports Promotion Act (as of January 2019). For a complete analysis of Swiss criminal provisions applicable to match-fixing, see Diaconu and Kuhn (2019).

<sup>14</sup> *Johannes Eder v. Ski Austria*, CAS 2006/A/1102, award dated 13 November 2006 at para 52.

<sup>15</sup> *AEK Athens and Slavia Prague v. UEFA*, CAS 98/2000, award dated 20 August 1999.

<sup>16</sup> See Van Kleef (2015).

<sup>17</sup> *Gundel v. FEI*, SFT 119 II 271, decision dated 15 March 1993.

<sup>18</sup> *Gundel* at para c. 3c); see also decision of the SFT in *Swiss Ice Hockey Federation v. Dube*, SFT 120 II 369 decision dated 6 December 1994 at para c. 2.

## 4.1 International level

At an international level, three international conventions tackle match-fixing, either through general instruments aimed at fighting against corruption and transnational organized crime [United Nations Convention Against Corruption<sup>19</sup> (“UNCAC”) and United Nations Convention Against Transnational Organized Crime<sup>20</sup> (“UNTOC”)], or through a specific instrument dedicated to the manipulation of sports competitions (the Macolin Convention). These international instruments are needed notably in order to enhance cooperation between different countries, promote good governance and set international standards.

In the UNCAC framework, “*match-fixing*” can appear in a form of six corruption criminal offences: active and passive bribery in the public sector (Art. 15–16 of the UNCAC); active and passive trading in influence (Art. 18 of the UNCAC); and active and passive bribery in the private sector (Art. 21 of the UNCAC).

The UNTOC is the main international instrument in the fight against transnational organized crime, which has, as its purpose, to “*promote cooperation to prevent and combat transnational organized crime more effectively*”. Based on the idea that if crime can cross borders, so too must law enforcement, it can be applied to match-fixing if transnational elements and organized criminal groups are involved.

However, “*countries seem [...] not to be able to fully utilize the potential and the added value of the UNTOC and the UNCAC to effectively combat match-fixing. The absence of several important elements of match-fixing from the scope of application of these Conventions might leave different offences unaddressed*”.<sup>21</sup>

The most promising international instruments thus seem to be the Macolin Convention, which came into force on 1 September 2019. To date (October 2020), the Macolin Convention has been signed by 38 States (including by one non-European State, i.e. Australia) and ratified by seven of them.<sup>22</sup>

As its Explanatory Report clearly mentions, this convention completes the framework of the UNCAC and the UNTOC, as it specifically deals with cases involving the

manipulation of sports competitions which may occur *outside* any transnational crime network and without any acts falling within the definition of corruption having been committed.<sup>23</sup>

It is important to mention that the Macolin Convention involves all relevant stakeholders, namely public authorities, sports organizations and sports betting operators. It establishes important mechanisms of information exchange through national platforms (Art. 13 of the Macolin Convention) and cooperation regarding law enforcement.

## 4.2 National level

Second, at a *national level*, around thirty countries have adopted or are currently in the process of enacting specific legislation criminalizing the manipulation of sport events,<sup>24</sup> many of which are inspired by the Macolin Convention.

While these national regulations differ from each other in terms of definition and scope of the match-fixing offence, as well as in terms of applicable sanctions, they all share a common perspective on the seriousness of this offence and on the need to effectively tackle it in practice.<sup>25</sup>

## 4.3 Sport organizations

Thirdly and importantly, the fight against match-fixing is also regulated at the level of (international) sport organizations.

According to our ongoing research on this topic, 34 of the 35 International Federations (IFs, or bodies governing sporting disciplines included in the summer and winter Olympics) have adopted specific provisions or the International Olympic Committee’s (“IOC”) Olympic Movement on the Prevention of the Manipulation of Competitions of 2016, addressing match-fixing, notably under the angle of prevention, education, reporting, investigating and sanctioning.

These specific provisions have been scrutinized by the CAS in its increasingly abundant jurisprudence, which we address hereunder.

## 5 A brief inventory of the CAS jurisprudence on match-fixing

The section below summarizes each CAS award presented in chronological order based on the date of each award, with key facts and findings of each Panel.

<sup>19</sup> Adopted by the UN General Assembly by resolution 58/4 of 31 October 2003.

<sup>20</sup> Adopted by UN General Assembly by resolution 55/25 of 15 November 2000.

<sup>21</sup> Report of the IOC and UNODC (2013, p 15).

<sup>22</sup> See details as made available by the Council of Europe on their website—Etat des signatures et ratifications du traité 215. Convention du Conseil de l’Europe sur la manipulation de compétitions sportives. [https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/215/signatures?p\\_auth=nnv3jPOS](https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/215/signatures?p_auth=nnv3jPOS). Accessed 19 October 2020.

<sup>23</sup> Para 12 on p. 3.

<sup>24</sup> Based on findings of the study published by the IOC and UNODC (2017).

<sup>25</sup> For a detailed analysis, see the report of the IOC and UNODC (2017, pp. 22–35).

### 5.1 RSC Anderlecht, TAS 98/185<sup>26</sup>

UEFA's Executive Committee refused admission of RSC Anderlecht to UEFA's club competitions for one season for attempted bribery of a referee in two 1983–4 UEFA Cup matches.<sup>27</sup> The Panel observed that sanctions such as suspension were disciplinary, and thus within purview of UEFA's judicial (and not its legislative or executive) bodies. Any corruption was a violation of the "loyalty, integrity and fairplay" components (and related procedure) of UEFA's "disciplinary" laws.<sup>28</sup> Thus, according to the Panel, the Executive Committee did not have jurisdiction to issue such sanction directly resulting in compromise of guaranteed procedural rights through denial of one appeal and set limitation periods.<sup>29</sup> Regulations needed to be applied uniformly and not derogated from based on facts simply to serve the objective of tackling corruption.<sup>30</sup>

### 5.2 Benfica and Guimarães, CAS 2008/A/1583<sup>31</sup>

In this case, the Portuguese Football Federation (PFF) had found Porto and its Chairman to be involved in activities aimed at arranging or influencing the outcome of a match. PFF sanctioned Porto with ineligibility for the 2008–2009 Champions League season, which decision UEFA's Appeals Body reversed. Benfica and Guimarães, impacted by the latter decision, appealed it to the CAS.<sup>32</sup> Evaluating facts as an individual case, without automatic application of criminal law principles,<sup>33</sup> the Panel was not satisfied that either the Chairman or Porto had undertaken illicit activity, upholding the appealed decision. The PFF's finding of guilt and consequent acceptance of penalty by Porto were found not persuasive. Such findings of fact by judicial organs of national federations were held not binding on UEFA or CAS.<sup>34</sup>

<sup>26</sup> *Royal Sporting Club Anderlecht* ("RSC Anderlecht") v. *Union des Associations Européennes de Football*, ("UEFA"), TAS 98/185 award dated 22 July 1998.

<sup>27</sup> See pp 1 - 2.

<sup>28</sup> p. 7.

<sup>29</sup> Pp. 9–10.

<sup>30</sup> Pp. 8–9.

<sup>31</sup> *Sport Lisboa and Benfica Futebol SAD* ("Benfica") v. *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 15 July 2008.

<sup>32</sup> Pp. 1–7.

<sup>33</sup> Though sanctions with disciplinary and penal sanctions necessitated higher protection—paras 39–41.

<sup>34</sup> Paras 48–51.

### 5.3 Pobeda, CAS 2009/A/1920<sup>35</sup>

UEFA's Appeals Body confirmed suspension of Pobeda based on actions (of its President, Mr. Zabrcanec, and a player, Mr. Zdraveski) corresponding to unusually high sums bet on two matches in the Champions League.<sup>36</sup> The CAS Panel found that while silent on "match-fixing", such acts could be considered cheating, and a breach of "loyalty, integrity and sportsmanship" requirements of applicable regulations.<sup>37</sup> The Panel was comfortably satisfied that UEFA had proved, with expert witness testimony (explaining betting patterns) and other testimonies (attesting to behaviour), that Mr. Zabrcanec was personally involved in fixing.<sup>38</sup> This finding was considered adequate to sanction the club also.<sup>39</sup> They imposed a life-ban on Mr. Zabrcanec based on seriousness of his actions and consequences on football,<sup>40</sup> and an eight-year ban on Pobeda, citing need for deterrence, internal vigilance/reporting and club-wide consequences.<sup>41</sup> The Panel acquitted Mr. Zdraveski, not satisfied of his involvement based on merely a single witness's (retracted) hearsay testimony and his limited time on pitch.<sup>42</sup>

### 5.4 O, CAS 2010/A/2172<sup>43</sup>

O, a referee, had been sanctioned with a life-time ban by the UEFA Appeals Body, as confirmed world-wide by the FIFA Disciplinary Committee, for an admitted failure to report being contacted to fix a Europa League Group Stage match he refereed, won 3:1 by FC Basel against PFC CSKA Sofia, FC Basel's second goal coming by penalty and parallel criminal proceedings indicating he received EUR 50,000 to 60,000 for this.<sup>44</sup> The Panel upheld a violation of regulations by O's deliberate failure to report,<sup>45</sup> based on (1) his own admission, (2) transcripts of intercepted calls, (3) parallel interrogations in German criminal proceedings and (4) witness statements; with no finding of "actual" manipulation/money received being required<sup>46</sup>. The Panel, considered O's lack of prior wrongdoing, his refereeing skill and non-instigation of the fixing himself as mitigating factors, but

<sup>35</sup> *FK Pobeda* ("Pobeda"), *Aleksandar Zabrcanec and Nikolce Zdraveski* v. *UEFA*, award dated 15 April 2010.

<sup>36</sup> Para 2.

<sup>37</sup> Art. 5 of the 2004 edition of the UEFA Disciplinary Regulations.

<sup>38</sup> Paras 50 - 54.

<sup>39</sup> Under Art. 11 of the 2004 Regulations—Paras 67–68.

<sup>40</sup> Paras 67–68.

<sup>41</sup> Paras 69–70.

<sup>42</sup> Paras 58–62.

<sup>43</sup> *Mr. Oleg Oriekhov* "O" v. *UEFA*, award dated 18 January 2011.

<sup>44</sup> As summarized on pp. 1–7 of the CAS award.

<sup>45</sup> Art. 5 requirements as in the case of *Pobeda*, above.

<sup>46</sup> Para 40.

on the other hand noted O's seniority, level of competition, financial interests at stake, growth and impact of fixing (on UEFA, football and its perception), emphasizing the need to not tamper with legal and proportionate UEFA sanctions.<sup>47</sup> Notably, the Panel cited *Pobeda* (above) to concur that doping jurisprudence should inform fixing cases on evidentiary and other processes.<sup>48</sup>

### 5.5 *N and V, CAS 2010/A/2266*<sup>49</sup>

UEFA issued suspensions and fines (confirmed as applicable world-wide by FIFA's Disciplinary Committee) to a player (N) and a goalkeeper (V)<sup>50</sup> of Debreceni VSC for not reporting being approached and acting in a way likely to manipulate a match.<sup>51</sup> The Panel was comfortably satisfied by adduced phone conversation and text message transcripts of subjects unaware of the tapping (confirmed in depositions in parallel criminal proceedings, particularly when not collected by wrongdoing)<sup>52</sup> that V was contacted and failed to report,<sup>53</sup> but not N,<sup>54</sup> with no establishment of actual manipulation having taken place.<sup>55</sup> V's sanctions were thus found proportionate, but N's appeal upheld, the Panel noting again that federation sanctions were to be reviewed only when evidently and grossly disproportionate.<sup>56</sup>

### 5.6 *Köllner, CAS 2011/A/2490*<sup>57</sup>

The Appellant, a professional tennis player, had, on the basis of testimonies, been sanctioned with permanent ineligibility and fined USD 100,000 by the Anti-Corruption Hearing Officer ("ACHO"), for three counts of attempted match-fixing, inviting other players to deliberately lose matches and

offering them USD 10,000 each time.<sup>58</sup> The Panel was satisfied that it was more likely than not that the Appellant had indeed attempted to fix several matches, even if unsuccessful.<sup>59</sup> (1) Oral testimonies of fellow players and the Appellant's own manager (not the Appellant's own inconsistent one),<sup>60</sup> (2) voice recognition and (3) the lack of incentive to frame him were relied on (given his contention of impersonation).<sup>61</sup> The Panel upheld the life-ban citing tennis' susceptibility to fixing (fewer athletes needing to be corrupted) and the deterrent effect of exemplary punishment,<sup>62</sup> but considered any additional financial penalties disproportionate, his difficult financial situation already having been affected.<sup>63</sup>

### 5.7 *Savic, CAS 2011/A/2621*<sup>64</sup>

The Appellant, a professional tennis player, was sanctioned with permanent ineligibility and fined USD 100,000 by the ACHO<sup>65</sup> for offering a fellow competitor USD 30,000 to lose the first set against himself, on which he could win the remaining two<sup>66</sup>. The Panel relied on (1) witness testimony of the player approached, consistent before different fora, (2) corroborated by phone/computer records and identification of voice and (3) lack of incentive/evidence to support for contended impersonation to infer the Appellant's liability.<sup>67</sup> The life-ban was upheld noting that, though not bound by precedent for sanctioning (and discretion being with the ACHO), a referral to relevant awards<sup>68</sup> and prior SFT decisions (which had noted that federation objectives to protect integrity would justify privacy infringement by harming athlete development) was desirable.<sup>69</sup> Yet, given the player's affected livelihood, additional financial penalties were considered disproportionate.<sup>70</sup>

<sup>47</sup> Paras 44, 45, 47, 49–50.

<sup>48</sup> Para 20—particularly the standard of "*comfortable satisfaction*" to be met for standard of proof, given limited investigatory powers of sporting bodies relative to state authorities and the importance of fighting corruption in sport of any kind.

<sup>49</sup> *N. and V. v. UEFA*, award dated 5 May 2011.

<sup>50</sup> It's Control and Disciplinary Body ("CDB") suspending N until 31 December 2011 (with a fine of EUR 700) and V until 30 June 2012 (with a fine of EUR 10,000); the Appeals Body imposed further costs of EUR 6000.

<sup>51</sup> Under Art. 5, as above—see pp 2–5.

<sup>52</sup> Para 34.

<sup>53</sup> Violating Art. 5—paras 23–25.

<sup>54</sup> Paras 35 and 38–39.

<sup>55</sup> Para 36.

<sup>56</sup> Paras 43 and 81.

<sup>57</sup> *Daniel Köllner v. Association of Tennis Professionals* ("ATP"), *Women's Tennis Association, International Tennis Federation and Grand Slam Committee*, award dated 23 March 2012.

<sup>58</sup> Sanctions under the Uniform Tennis Anti-Corruption Program ("UTACP")—see p. 2.

<sup>59</sup> Paras 38 and 40.

<sup>60</sup> Para 62—evidence considered in preceding paragraphs.

<sup>61</sup> Para 57.

<sup>62</sup> Within permissible limits of the UTACP which allowed for life bans—para 66.

<sup>63</sup> Paras 70–73 (proportionality based on gravity of infringement and degree of guilt under the UTACP)

<sup>64</sup> *David Savic v. Professional Tennis Integrity Officers*, award dated 5 September 2012.

<sup>65</sup> Under the UTACP.

<sup>66</sup> Paras 2.1–2.14.

<sup>67</sup> Paras 8.11–8.29.

<sup>68</sup> Such as *Köllner* (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>69</sup> Paras 8.33–8.34 and 9.2.

<sup>70</sup> Paras 8.36–8.38 and 9.3.

### 5.8 *Asif*, CAS 2011/A/2362<sup>71</sup>

ICC's Tribunal sanctioned the Appellant, a professional cricketer, to seven years ineligibility, with two suspended, conditional on no further breach of ICC's Code of Conduct, (for bowling deliberate "no balls" pursuant to an undercover reporter offering GBP 140,000 to their agent for inside information for betting<sup>72</sup>) with parallel conviction by English criminal courts<sup>73</sup>. Based on (1) on-field acts seen with the reporter's taped recordings, (2) videos of the Appellant's bowling form/execution, (3) statistical data on bowling patterns, (4) lack of alternative explanation for correspondence at critical times with the agent and (5) financial benefit not needing to be shown, the Appellant's contentions were held contrary to evidence.<sup>74</sup> The Panel refused mitigation of sanctions issued argued for due to financial hardship and existing prison sentences, to avoid granting benefit of such lenience twice,<sup>75</sup> considering also that life-time bans had previously been given out by ICC and CAS for similar offences.<sup>76</sup>

### 5.9 *Butt*, CAS 2011/A/2364<sup>77</sup>

In the same context as *Asif* (above) the Appellant, captain of the Pakistani cricket team, was sanctioned for not reporting (but not for actual fixing) with 10 years of ineligibility (five suspended, conditional on no further breach, as above),<sup>78</sup> with parallel conviction by English criminal courts.<sup>79</sup> (1) Accuracy of the information given to the reporter and its recording, (2) timing of contact between the Appellant and agent, and (3) critical contribution to executing the fix, among other facts, were relied on by ICC's Tribunal. The Panel upheld the sanction (established liability not having

been contested),<sup>80</sup> reiterating deference to sports bodies' expertise (with only rare deviation on fact<sup>81</sup>) to gauge both disproportionality (here, held proportionate, given (1) captaincy, (2) prior bans, (3) unchallenged establishment as "ring-master", (4) leniency in parallel criminal proceedings, (5) no apology issued, (6) establishment of financial benefit being unrequired, and thus irrelevant to sanction);<sup>82</sup> and irrationality ("obviously or self-evidently unreasonable or perverse", a high threshold, not met here given ICC's rationale for length of sanction being relative to other code provisions, impact on the game and prioritization of offences<sup>83</sup>).<sup>84</sup>

### 5.10 *Olympiakos Volou*, TAS 2011/A/2528<sup>85</sup>

Based on allegations of fixing and illegal betting by the President of Olympiakos Volou in one match in the Greek Super League, UEFA's Appeals Body sanctioned the club with ineligibility to participate in the 2011–2 Europa League. The Hellenic Football Federation (HFF) had found only the President, but not players, involved in manipulation.<sup>86</sup> The Panel considered HFF's decision, the President's preventive detention and reports on betting,<sup>87</sup> to conclude that UEFA had proven the club's involvement to justify ineligibility,<sup>88</sup> even if players were not involved.<sup>89</sup> They confirmed UEFA's ability to rely on national federation findings, and held that pending procedure before other fora was not grounds to suspend UEFA/CAS decisions.<sup>90</sup>

### 5.11 *Metallist*, CAS 2013/A/3297<sup>91</sup>

Having been found guilty of fixing prior,<sup>92</sup> the club Metallist was confirmed disqualified from the 2013–4 Champions

<sup>71</sup> *Mohammad Asif v. International Cricket Council* ("ICC"), award dated 17 April 2013.

<sup>72</sup> See paras 1–20.

<sup>73</sup> Under the Prevention of Corruption Act, 1906 and the Gambling Act, 2005, to a year's prison sentence on each count, to run concurrently, of which the Appellant served six months—paras 21–23. See generally, Gardiner (2012).

<sup>74</sup> Paras 48–68.

<sup>75</sup> The ICC having considered parallel sanctioning already—paras 70–71.

<sup>76</sup> Para 76.

<sup>77</sup> *Salman Butt v. ICC*, award dated 17 April 2013.

<sup>78</sup> Paras 32–35.

<sup>79</sup> Under the Prevention of Corruption Act, 1906, and the Gambling Act, 2005 to two years and 6 months and 2 years respectively (to run concurrently) of which the Appellant served seven months before release on license—paras 36–38.

<sup>80</sup> Paras 53–54.

<sup>81</sup> Paras 56, 57 and 60—the Panel cited doping, English High Court and Court of Appeal jurisprudence.

<sup>82</sup> Paras 74–75.

<sup>83</sup> Paras 66–69.

<sup>84</sup> Paras 61–63.

<sup>85</sup> *Olympiacos Volou* ("Olympiakos Volou") v. *UEFA*, TAS 2011/A/2528, award dated 10 February 2012.

<sup>86</sup> Less severe sanctions were therefore issued to the club (only a point deduction), as opposed to the President (life-time ban from football activities and stadia, and fine of EUR 90,000)—see paras 1–9.

<sup>87</sup> Para 133.

<sup>88</sup> Under the applicable Europa League regulations and Art. 5 of the UEFA Disciplinary Regulations.

<sup>89</sup> Para 138.

<sup>90</sup> Paras 135–136.

<sup>91</sup> *Public Joint-Stock Company "Football Club Metallist"* ("Metallist") v. *UEFA and PAOK FC*, award dated 29 November 2013.

<sup>92</sup> Para 2.10; the award in CAS 2010/A/2267, 2278, 2279, 2280 and 2281 concerning the club was challenged before the SFT on 12 August 2013, in which stay was consequently granted (the club contending it needed to be observed in this proceeding as well)—para 2.13.

League by UEFA's Appeals Body based on proved fixing by its official (with strict liability for the club).<sup>93</sup> The Panel held that the Appeals Body was not bound by, or need not enforce prior stayed proceedings irrespective of likely outcome, if otherwise comfortably satisfied in its own determination.<sup>94</sup> Evidence not otherwise admissible could be admissible here given limited resources, even if secured inappropriately (as long as within public policy limitations) to curb fixing.<sup>95</sup> The Panel upheld sanctions<sup>96</sup> as (1) proportionate (“*reasonably required in search of a justifiable aim*” given the importance of fighting fixing, preserving confidence and integrity, and deterrence)<sup>97</sup> burden to show disproportionality being on the club;<sup>98</sup>; and (2) not discriminatory (equal treatment of same facts).<sup>99</sup>

### 5.12 *Besiktas*, CAS 2013/A/3258<sup>100</sup>

The CAS appeal arose from a UEFA Appeals Body decision holding Besiktas ineligible for the 2013–4 Europa League based on its officials' involvement in fixing the 2011 Turkish Super Lig final.<sup>101</sup> The Panel noted UEFA's ability to use other decisions to corroborate, supplement and confirm, without being bound, when applied on a case by case basis.<sup>102</sup> The (1) club's sporting and financial interest in winning,<sup>103</sup> (2) recorded conversations with tendency to avoid using direct language/reference to fixing, (3) private meetings held,<sup>104</sup> (4) oral and written testimonies of those familiar with events and the accused,<sup>105</sup> (5) incentives to frame/lie and (6) plausibility of alternative explanation, *inter alia*,<sup>106</sup> were relied on to find the officials, and thus Besiktas, directly/indirectly involved in fixing, the Panel upholding

the issued sanctions.<sup>107</sup> Lack of clarity on direct/indirect involvement was held to not be fatal as an eligibility determination was not sanctionary in nature.<sup>108</sup>

### 5.13 *Fenerbahçe*, CAS 2013/A/3256<sup>109</sup>

This CAS appeal arose from a 2013 UEFA Appeals Body decision sanctioning Fenerbahçe with exclusion from two UEFA club competitions for which they qualified<sup>110</sup> (reduced from three, by the CDB<sup>111</sup>) due to proven instances of bribes awarded to lose games in five matches, based on parallel criminal action initiated by Turkish authorities.<sup>112</sup> Finding that clubs could be sanctioned even if evidence adduced was insufficient to sanction specific individuals (before or concurrently),<sup>113</sup> the Panel found, *inter alia*, that (1) wire-taps (each assessed for credibility, and of “*crucial importance*”), as adequate to draw inference from, and corroborative to facts otherwise asserted,<sup>114</sup> (2) lack of suspicious on-field behaviour and silent match-reports, or lack of financial records showing money transferred were not proof of fixing;<sup>115</sup> (3) there was no evidence that the match was actually influenced<sup>116</sup> and or of effective change in the outcome was needed;<sup>117</sup> and (4) convictions in Turkish criminal courts had corroborative value, i.e. CAS could convict even if acquitted there, given lower standard of proof, making a contrary finding unlikely.<sup>118</sup> The Panel held that UEFA had not violated principles of equal treatment<sup>119</sup> or requirement to take into account mitigating circumstances (such as period of ineligibility already served),<sup>120</sup> in sanctioning. Despite finding liability for fewer matches than UEFA's disciplinary

<sup>93</sup> See paras 1.1–1.2, 2.2–2.5 and 2.11.

<sup>94</sup> Para 8.6–8.9

<sup>95</sup> Paras 8.10–8.11.

<sup>96</sup> Paras 8.35–8.36.

<sup>97</sup> Paras 8.25–8.26.

<sup>98</sup> Paras 8.32–8.34.

<sup>99</sup> Paras 8.37–8.40.

<sup>100</sup> *Besiktas Jimnastik Kulübü* (“Besiktas”) v. *UEFA*, award dated 23 January 2014.

<sup>101</sup> See detailed facts from paras 1–29; Besiktas won the final 6:5, IBB Spor scoring a second half penalty. There had been increased interaction (recorded) between a coaching assistant and an agent for many players in the months leading to the match and week before the final.

<sup>102</sup> Paras 141, 146–151, and 205.

<sup>103</sup> Paras 152 and 154.

<sup>104</sup> Paras 156–157, as well as paras 171–174.

<sup>105</sup> Para 177.

<sup>106</sup> Paras 187–204.

<sup>107</sup> Paras 180, 181 and 186.

<sup>108</sup> Paras 128–129. “*Indirect*” activity was held to include anything unintended influencing a match in a non-sportive way, of which Besiktas could be assumed aware, a mere attempt being adequate, even if not the only (or dominant) aim. Activity appearing licit, considering circumstances (i.e. if it influenced matches), might not be so—paras 134–136 and 138–139.

<sup>109</sup> *Fenerbahçe Spor Kulübü* (“Fenerbahçe”) v. *UEFA*, award dated 11 April 2014 (“Fenerbahçe's case”).

<sup>110</sup> Para 68.

<sup>111</sup> Para 57.

<sup>112</sup> See paras 1–22.

<sup>113</sup> Paras 245–247; not necessary to identify an individual officer involved (para 430) or the specific player (para 481).

<sup>114</sup> Paras 294, 383, 385 and 398.

<sup>115</sup> Paras 298–299, also as analysed per match—see, for example, para 439.

<sup>116</sup> Para 299.

<sup>117</sup> See, for example, 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.

<sup>118</sup> Paras 541–544.

<sup>119</sup> See paras 558 and 560.

<sup>120</sup> See para 565.

bodies<sup>121</sup> and none for incorrect details filled in admission to UEFA leagues,<sup>122</sup> two year ineligibility was held warranted,<sup>123</sup> given (1) no guidance in applicable regulations for sanctioning; (2) having made independent conclusions on procedure and merits with different results;<sup>124</sup> and (3) using the CAS's range of sanctions (akin to doping being between one and eight years),<sup>125</sup> as guidance.<sup>126</sup>

#### 5.14 *Sammut, CAS 2013/A/3062*<sup>127</sup>

The CAS appeal arose from a UEFA Appeals Body decision sanctioning the Appellant, a professional Maltese footballer, to a life-ban (increased from CDB's given 10 years),<sup>128</sup> for fixing a European Football Championship match lost 4:0 to Norway (three goals scored in the final 17 minutes) where Maltese players received a pay-out of betting gains.<sup>129</sup> The Panel concluded that (1) the match was fixed (based on an anonymous letter and statement confirming the fixing,<sup>130</sup> suspicious betting patterns,<sup>131</sup> and witness testimony from those with no incentive to fabricate the allegations);<sup>132</sup> and (2) the Appellant was responsible for the fix (noting that (a) a witness's criminal past did not impact credibility, but motivation to make false statements—which the players possessed—did,<sup>133</sup> (b) the footballer's specific identification thrice before UEFA and German authorities;<sup>134</sup> and (c) his

<sup>121</sup> Para 270 and 297.

<sup>122</sup> Being the document where clubs were required to verify/self-declare that no fixing was ongoing prior to being admitted to any UEFA competition and the legal basis for eligibility considerations, it being impossible to independently sanction with no legal basis for it—para 215.

<sup>123</sup> Paras 568–571—two year period is usual for “*standard*” offences. The offences here were “*particularly serious*” due to the number of matches, multiple involved high-ranked officials and top administration orchestrating the process—thus 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—paras 577–578.

<sup>124</sup> Para 573.

<sup>125</sup> Para 574.

<sup>126</sup> Para 572.

<sup>127</sup> *Kevin Sammut v. UEFA*, award dated 28 May 2014.

<sup>128</sup> Paras 21–25. The Appeals Body requested FIFA to extend the ban world-wide—para 28.

<sup>129</sup> Paras 1–14.

<sup>130</sup> Para 18.

<sup>131</sup> Para 100.

<sup>132</sup> Para 157.

<sup>133</sup> Para 165.

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

key on-field errors which led to the first goal).<sup>135</sup> On sanctions the Panel noted that both life-time and shorter bans had been awarded by federations for this offence, though CAS had consistently upheld life bans awarded by federations.<sup>136</sup> Yet, the ban was mitigated back to 10 years ineligibility, as the Panel found no proof of individual involvement in “actual implementation” which was more relevant to sanctioning (a mere error not proving intent to allow a goal).<sup>137</sup>

#### 5.15 *Eskişehirspor, CAS 2014/A/3628*<sup>138</sup>

The CAS appeal arose from a UEFA Appeals Body decision sanctioning Eskişehirspor with ineligibility for the 2014–5 Europa League based on findings of fixing against club officials/players in the Turkish Super Lig (Fenerbahçe's case above).<sup>139</sup> The Panel, held, *inter alia*, that the law could not predict all acts,<sup>140</sup> i.e. actions, otherwise legal, could influence match outcome. In this case, bonuses from third parties to play well had influenced competition, skewed player motivation, and thus could imply undue advantage, infringing fair play.<sup>141</sup> Relying on (1) wiretaps (presumed to be coded deliberately), (2) secret meetings (drawing inference from their nature), (3) timing and nature of connected acts, (4) corroborating parallel judgements (irrespective of whether final as evidence was considered anew) and (5) noting that evidence not otherwise admissible could be used given the objective of fighting fixing offences, the Panel found matches fixed and the club liable through acts of its official, irrespective of culpability.<sup>142</sup> Sanctions were upheld as justified, proportionate, connected to objectives and not contrary to principles of law,<sup>143</sup> with factors such as lack of negligence/fault considered irrelevant for mitigation given the period of mandatory ineligibility (one year) and non-disciplinary nature of sanctions.<sup>144</sup>

#### 5.16 *de la Rica, CAS 2014/A/3467*<sup>145</sup>

The Appellant, a professional tennis player, was sanctioned with ineligibility for any ATP event for 5 years, and a fine

<sup>135</sup> Para 171.

<sup>136</sup> Paras 177–178.

<sup>137</sup> Paras 179–180.

<sup>138</sup> *Eskişehirspor Kulübü* (“Eskişehirspor”) v. *UEFA*, award dated 2 September 2014.

<sup>139</sup> See paras 1, 4–5 and 11.

<sup>140</sup> Paras 111–112.

<sup>141</sup> Paras 114–119.

<sup>142</sup> Paras 128–133.

<sup>143</sup> Paras 137–138.

<sup>144</sup> Paras 140–141.

<sup>145</sup> *Guillermo Olaso de la Rica v. Tennis Integrity Unit* (“TIU”), award dated 30 September 2014.



of USD 25,000.<sup>146</sup> Relying on Skype messages (admissible based on chain of custody of the phone/computer, account verification and accuracy of content) and transcripts having probative value with corroborating witness statements, the Panel found the Appellant could not contend lack of knowledge (given ATP's education and signed player agreements/rulebook) for violating reporting and corruption provisions. Actual match loss (evidence of deliberate poor effort) was unrequired for corruption though established here (through witness statements, evidence of agreement to receive EUR 15,000 and discussion on how to lose).<sup>147</sup> The Panel refused to mitigate sanctions, finding that the match was lost deliberately and not due to threats, with no desire to report.<sup>148</sup> Sanctions were appropriate to the level of guilt and gravity of infringement, which undermined fairness and was knowingly undertaken.<sup>149</sup>

### 5.17 *Sivasspor*, CAS 2014/A/3625<sup>150</sup>

UEFA's Appeals Body sanctioned Sivasspor with ineligibility for the 2014–5 Europa League in addition to the CDB's fine of EUR 300,000 based on findings of fixing involving the club's officials/players.<sup>151</sup> Echoing the findings in *Eskişehirspor* (above) on most matters involving similar facts and parties,<sup>152</sup> the Panel held that even if fixing was unproven in the match against Fenerbahçe prior, CAS was not bound by that decision, or barred by *res judicata*.<sup>153</sup> They confirmed ineligibility on similar lines as *Eskişehirspor* as well, with Sivasspor liable through acts of its President, board member and players,<sup>154</sup> irrespective of culpability or any economic and sporting benefit.<sup>155</sup>

### 5.18 *Vanakorn*, CAS 2014/A/3832 and 3833<sup>156</sup>

Here, the CAS appeal arose from FIS's Hearing Panel's<sup>157</sup> suspension of the Appellant, a British-Thai professional skier, for 4 years from its events world-wide for manipulation of results of four 2014 giant slalom Olympic qualifying events she was involved in organizing,<sup>158</sup> based on factors including the events' dates' proximity to qualification deadlines, number of competitors, among others (for example, "*Thai National Junior Championships*" having the Appellant as a sole competitor, aged 35).<sup>159</sup> The FIS Council cancelled results of these events, noting that the Appellant should not have qualified, asking the IOC to take further action as seen fit.<sup>160</sup> The Panel overturned the decision, finding actions such as (1) irregular starts (due to inconsistent testimony and absent witnesses), (2) asking others to ski slowly (proven but not proved connected to manipulation), (3) result manipulation (errors noted, but unattributable to the Appellant), among others<sup>161</sup> contrary to spirit of sport, but not "*deliberate circumvention of the law and illegal acts*", besides being done with FIS knowledge/technical help, and for normal sums of money paid for such work.<sup>162</sup>

### 5.19 *Panathiakos*, CAS 2015/A/4151<sup>163</sup>

Runners up Panathiakos challenged top finishing Olympiakos's provisional admission to the 2015–6 Champions League<sup>164</sup> on suspension of proceedings against Olympiakos by UEFA's Appeals Body pending proceedings on their shareholder's involvement in fixing allegations in Greece (ultimately finally found to be unsubstantiated),<sup>165</sup> the play-offs having already commenced and Panathiakos having been eliminated by then.<sup>166</sup> The Panel considered the limited question of whether, if the Appeals Body was wrong in declaring Olympiakos eligible, Panathiakos had been able to demonstrate it was "*directly*"/"*legally*" affected (and would replace them) and thus had standing to sue. They found

<sup>146</sup> Under the 2010 UTACP; suspension of the last 1 months of eligibility was possible on being directed to education/rehabilitation as seen fit, with payment of fine—paras 5–17.

<sup>147</sup> Paras 110–115.

<sup>148</sup> Paras 116(a) and (b).

<sup>149</sup> Para 122.

<sup>150</sup> *Sivasspor Kulübü* ("Sivasspor") v. *UEFA*, award dated 3 November 2014.

<sup>151</sup> Paras 1, 4–5, and 17–20.

<sup>152</sup> Including evidence considered admissible (with additional evidence from criminal investigations in Turkish criminal proceedings) and use of judgements.

<sup>153</sup> Para 138(j).

<sup>154</sup> Paras 146–150.

<sup>155</sup> Para 147.

<sup>156</sup> *Vanessa Vanakorn* v. *Fédération Internationale de Ski* ("FIS"), award dated 19 June 2015.

<sup>157</sup> See paras 80–82.

<sup>158</sup> Para 3.

<sup>159</sup> Paras 14–20.

<sup>160</sup> Para 26.

<sup>161</sup> Paras 119–129 and 141–150. The FIS Council's decision was upheld, as the competition as a whole was corrupt even if not attributable to the Appellant—para 138.

<sup>162</sup> Paras 110–112.

<sup>163</sup> *Panathiakos FC* ("Panathiakos") v. *UEFA and Olympiakos FC*, award dated 26 November 2015 (operative part of 24 August 2015).

<sup>164</sup> Para 136.

<sup>165</sup> See paras 4–23.

<sup>166</sup> Paras 28–29.

match-fixing related ineligibility (akin to licensing and fair-play related eligibility) to be a separate admissions phase determination process before competition started (whereon, the replacement rule is no more applicable).<sup>167</sup> Panathiakos was thus held to lack standing<sup>168</sup> and certainty of selection as a replacement.<sup>169</sup>

### 5.20 *Pakruojis*, CAS 2015/A/4351<sup>170</sup>

In this case, based on (1) BFDS and other reports of betting variations in two matches lost to FK Siauliai,<sup>171</sup> (2) the club's form, league positions and turnover rate, (3) player behaviour on and off-field and (4) other factors (loss despite return of a top-scoring player, concession of a penalty, leading bookmakers' removing this match from the market) the LFF's Disciplinary and Appeals Committees sanctioned players with match disqualifications between 8 and 12 months and the club with a fine (strict responsibility).<sup>172</sup> The Panel relied on the (1) BFDS reports (with its expert explanation and demonstrated betting abnormalities) and (2) expert analysis of on-field behaviour (circumstantial to statistics) with no plausible alternative explanation, to conclude "presumed" fixing (needing evidence of fixing and connected player behaviour).<sup>173</sup> Noting that a "well-reasoned sanction" was to be upheld unless "grossly disproportionate",<sup>174</sup> the EUR 4500 fine for Pakruojis's strict liability per match<sup>175</sup> was confirmed.

### 5.21 *Skënderbeu*, CAS 2016/A/4650<sup>176</sup>

The UEFA Appeal's Body decision holding Skënderbeu ineligible (based on BFDS reports of multiple fixed matches) to participate in the 2016–7 Champions League

was appealed to CAS.<sup>177</sup> The Panel held that one year's eligibility was not disproportionate, illegal or contrary to public policy, based on the value-based objective of preliminary administrative eligibility determination.<sup>178</sup> They considered quantitative data sets of BFDS reports "valuable evidence if corroborated by further evidence"<sup>179</sup> (here, by video footage of conduct<sup>180</sup> and of betting operators),<sup>181</sup> not definitive to assess fixing by itself but definitive when seen with qualitative expert analysis<sup>182</sup> (of indirect fixing through betting patterns).<sup>183</sup> Noting the (1) similarity to evidence gathering and proof in doping matters,<sup>184</sup> and (2) lack of parallel criminal proceedings not indicating innocence,<sup>185</sup> the Panel found "indirect fixing" proven, with no direct culpability (none being found) needed to be established as well.<sup>186</sup>

### 5.22 *Phnom Penh*, CAS 2016/A/4642<sup>187</sup>

Phnom Penh FC was denied admission to the 2017 AFC Cup Playoff Qualifiers, although they had won the Cambodian domestic league, based on the Football Federation of Cambodia's findings of match-fixing (relying on taped recordings), i.e. coaches conspiring to dismiss another coach, players faking injury and playing below potential.<sup>188</sup> Not following prior awards and noting the need to differentiate on fact,<sup>189</sup> the Panel overturned the decision, holding that the coaches' actions (warranting independent sanction<sup>190</sup>) could not be attributed to Phnom Penh FC, being (1) aimed at furthering their own and not the club's interests, (2) coaches not being the club's agents and (3) Phnom Penh FC, in fact, being the victim of their activity.<sup>191</sup>

<sup>167</sup> Para 139–140.

<sup>168</sup> Para 133.

<sup>169</sup> See paras 141–145.

<sup>170</sup> *Vsl Pakruojis FK* ("Pakruojis"), *Darius Jankauskas, Arnas Mikaitis, Sigitas Olberkis, Valdas Pocevicius, Alfredas Skroblas, Donatas Strockis, Diogo Gouveia Miranda, C.H. Alexandru and Taras Michailiuk v. Lithuanian Football Federation* ("LFF"), award dated 13 July 2016.

<sup>171</sup> First 0:1 and the second 2:3 after being 0:2 in the lead, FK Siauliai having lost nine of thirteen games before that season.

<sup>172</sup> See paras 1–19 and 26.

<sup>173</sup> Which regulations allowed for in addition to "actual" fixing—paras 81(i), paras 91–92.

<sup>174</sup> Paras 98–99.

<sup>175</sup> Reduced to this amount by the Appeals Committee, from EUR 6000 per match of LFF Disciplinary Committee—para 26.

<sup>176</sup> *Klubi Sportiv Skënderbeu* ("Skënderbeu") v. *UEFA*, award dated 21 November 2016.

<sup>177</sup> See paras 1, 5–6 and 8–9

<sup>178</sup> Paras 48–49, 51 and 109–113; disciplinary sanctions needing higher threshold of breach.

<sup>179</sup> Paras 79 and 98.

<sup>180</sup> Paras 75–76.

<sup>181</sup> Paras 99–101.

<sup>182</sup> Paras 85, 91–93, 95 and 97.

<sup>183</sup> Paras 96–97; specific responsibilities need be attributed through BFDS evidence for it to be of value—para 105.

<sup>184</sup> Though no corresponding regulatory framework existed for BFDS—paras 82 and 88.

<sup>185</sup> Para 107.

<sup>186</sup> Paras 104–108.

<sup>187</sup> *Phnom Penh Crown Football Club* ("Phnom Penh Crown FC") v. *Asian Football Confederation* ("AFC"), award dated 6 December 2016.

<sup>188</sup> Paras 1–3 and 7.

<sup>189</sup> Paras 108–109 and 128.

<sup>190</sup> Paras 76–77.

<sup>191</sup> Paras 90–91.

### 5.23 Trabzonspor, CAS 2015/A/4343<sup>192</sup>

The TFF, after withdrawing Turkish Super League (2010–2011) winners Fenerbahçe from the Champions League, refused to declare Trabzonspor (the runners up) the winners, refused to grant them match annulment and point re-allocation. UEFA also declined intervention in Fenerbahçe's ongoing case.<sup>193</sup> The Panel concluded that though *ne bis in idem* was not violated,<sup>194</sup> CAS's issuing sanctions for what was "domestic" fixing would be *ultra vires*, as its jurisdiction was only as wide as that of the previous forum (i.e. UEFA here did not have this competence,<sup>195</sup> particularly when unrelated to its competitions),<sup>196</sup> and upheld the appealed decision.<sup>197</sup>

### 5.24 Viorel, CAS 2017/A/4947<sup>198</sup>

The RFF Discipline and Ethics Committee, and Recourse Committee (on appeal) banned the Appellant (part of coaching and management) from football-related activities for 2 years and fined him RON 200,000, 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.<sup>199</sup> The Arbitrator found the Appellant in violation of applicable regulations<sup>200</sup> relying on (1) the above reports, (2) RFF's internal investigation, (3) video recordings and (4) testimonies and analysis of crimes per actor to identify attributable facts and liability.<sup>201</sup> The Appellant's fundamental rights

<sup>192</sup> *Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi Tic A.S., Trabzonspor Futbol Isletmeciligi Tic A.S. and Tranzonspor Kulubu Dernegi* ("Trabzonspor") v. *Turkish Football Federation* ("TFF"), *UEFA, Fenerbahçe Futbol A.S. and Fenerbahçe Spor Kulubu*, award dated 27 March 2017.

<sup>193</sup> See paras 1–19.

<sup>194</sup> Paras 101–105.

<sup>195</sup> Competence to deduct points, declassify and reissue a title and pay damages, prior decisions having dealt with sanctioning under UEFA regulations—para 98.

<sup>196</sup> Paras 127–129 and 130–134.

<sup>197</sup> Para 135.

<sup>198</sup> *Ion Viorel v. Romanian Football Federation* ("RFF"), award dated 6 October 2017.

<sup>199</sup> See paras 1–18. Further penalties were also issued to other coaches and players—see para 24.

<sup>200</sup> Paras 126–127, and 132–137.

<sup>201</sup> Paras 137–141. 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 behaviour. The Panel also noted that this was likely done due to their non-payment of dues, no professional

to exercise his profession freely and hold private property were held not violated by the sanctions, which were considered to be (1) issued under regulations assumed valid (until held unconstitutional by a national court),<sup>202</sup> (2) drafted by a competent authority under law,<sup>203</sup> (3) with the objective of tackling fixing stated in RFF statutes and (4) proportionate (assessed based on it not violating international human rights standards or affecting rights drastically, with the fine being the minimum mandated under law, and given economic capacity relative to other Romanian nationals<sup>204</sup>).

### 5.25 Lamptey, CAS 2017/A/5173<sup>205</sup>

The Appellant, a Ghanaian referee, was sanctioned for match-fixing in connection with the 2018 FIFA World Cup Russia and handed a life-time ban at all levels, confirmed by FIFA's Appeals Committee.<sup>206</sup> This was based on reports of unusual betting patterns<sup>207</sup> (indicating knowledge of at least three goals being scored corresponding with his decisions to grant of a contentious penalty in absence of a foul, and a hand-ball and foul followed by omission to stop a quick start, resulting in two goals<sup>208</sup> critical to a 2018 FIFA World Cup Preliminary match's outcome).<sup>209</sup> The Panel, relying on unrebutted expert evidence, corresponding monitoring reports and video footage of actions seen with betting variations in an otherwise uneventful match,<sup>210</sup> ruled that the Appellant's actions had affected match outcome<sup>211</sup> and were deliberate acts, independent of communicating with others.<sup>212</sup> The life-time ban was upheld citing seriousness, referee responsibility for match/sport credibility, need for unpredictability and fairness, and no scope for mitigation based on high degree of Panel's satisfaction.<sup>213</sup>

Footnote 201 (continued)

alternatives, fear of repercussions, and need to provide for themselves and dependents—paras 138–139.

<sup>202</sup> Para 110.

<sup>203</sup> See paras 106–109.

<sup>204</sup> Para 112.

<sup>205</sup> *Joseph Odartei Lamptey v. FIFA*, award dated 4 December 2017.

<sup>206</sup> Para 25.

<sup>207</sup> From SportRadar and Early Warning System GmbH (including repeated past actions)—paras 8 and 14.

<sup>208</sup> See paras 7 and 9.

<sup>209</sup> Paras 1, 4 and 6.

<sup>210</sup> Paras 79–82 and 84.

<sup>211</sup> Paras 70–71.

<sup>212</sup> Para 74.

<sup>213</sup> Paras 91–95.

## 5.26 *Fantoni and Nunes, CAS 2016/A/4783*<sup>214</sup>

The EBL's Disciplinary Committee, in its appealed decision, had found two professional bridge players guilty of manipulation by having pre-arranged an illicit method of communication effectively used to exchange information<sup>215</sup> by placing the lead card “*vertically*” to indicate having unseen high honours (A, K, Q) in that suit and otherwise placing the cards horizontally.<sup>216</sup> They were (1) banned from EBL events for five years, (2) banned from playing as a team for life and (3) issued a fine of CHF 20,000 each. The Panel, (1) noting misleading inconsistencies/false positives in the code, (2) relying on expert opinion on utility thereof to win, (3) the inability to comprehend the entire code and (4) data selection and analysis flaws in assessment of the code, (5) with no proven patent advantage,<sup>217</sup> among other factors, reversed the decision based on inadequate evidence adduced before it, stating however, that “*this did not mean the players were not guilty*”<sup>218</sup> and imposing costs, as they considered that the player's “unusual” behaviour had led to the proceedings.<sup>219</sup>

## 5.27 *Skënderbeu II, CAS 2017/A/5272*<sup>220</sup>

The AFA's Ethics Committee had found Skënderbeu matches manipulated for betting gains, despite no establishment of the required direct or indirect player involvement, resulting in removal of their 2015–2016 Kategoria Superiore title, point deduction for the next season and fine of ALL two million, based on just BFDS data on over 50 matches, including local ones, and connected player behaviour.<sup>221</sup> In this appealed decision, the Committee held that where the regulations were inadequate, in disciplinary matters, a competent authority had power to act as a legislator.<sup>222</sup> The Panel found the “*negative*” formulation of the non-requirement of player involvement to find a club liable (in absence of what was, in-fact, required for liability) problematic for the level

of certainty<sup>223</sup> necessary for disciplinary sanctions,<sup>224</sup> with a lower threshold only permissible for administrative/provisional cases.<sup>225</sup> BFDS data were considered a “*valuable tool*”, but its admissibility was not considered in detail given the lack of legal basis for sanctioning in the first place.<sup>226</sup> Even if considered, the Panel found that another club, and not Skënderbeu, would be liable.<sup>227</sup>

## 5.28 *Lao Toyota, CAS 2018/A/5500*<sup>228</sup>

AFC's Entry Control Body (“ECB”) held Lao Toyota FC, winners of the 2017 Lao Premier League, ineligible for AFC Cup playoffs due to manipulation proven before the ECB, but the AFC's Disciplinary Committee (“DC”) had decided and dismissed the same claim before under different regulations.<sup>229</sup> The Panel held that clubs could not be tried twice by the same federation on the same facts (in this case, the DC's prior disciplinary process and ECB's later administrative one).<sup>230</sup> The ECB could not “cure” the defect in the DC decision, the second decision being both unforeseeable to the accused persons in the rules, and no reservation having been made to this effect by the DC prior.<sup>231</sup>

## 5.29 *Keramuddin, CAS 2019/A/6388*<sup>232</sup>

This case is not causally related to match-fixing but gives some interesting insight on the Panel's concept of a certain “*hierarchy*” of seriousness of offences in sport. The Panel, while sanctioning 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>233</sup> for mental, physical, sexual and other rights abuse of female players,<sup>234</sup> used prior life-time bans on FIFA officials in match-fixing awards and bans of 2–10 years for bribery as benchmarks for proportionality, noting that

<sup>214</sup> *Fulvio Fantoni and Claudio Nunes v. European Bridge League* (“EBL”), award dated 10 January 2018.

<sup>215</sup> The requirements for manipulation under applicable regulations—see para 14.

<sup>216</sup> See explanation in paras 3–10.

<sup>217</sup> Paras 115–117 and 120–122.

<sup>218</sup> Para 123.

<sup>219</sup> Paras 124–127.

<sup>220</sup> *Skënderbeu v. Albanian Football Association* (“AFA”), award dated 13 April 2018—an appeal against this decision was rejected by the SFT in July 2020 (4A\_462/2019) where *ne bis in idem* was held not violated by UEFA's two phase procedure.

<sup>221</sup> See pp 3–6 of the award.

<sup>222</sup> Para 61.

<sup>223</sup> Paras 66–68.

<sup>224</sup> Para 62–63—they reiterated criminal law requirements of certainty, but stated that scope for interpretation existed due to the non-“*criminal*” nature of such proceedings.

<sup>225</sup> Para 70.

<sup>226</sup> Paras 73–75.

<sup>227</sup> Para 74.

<sup>228</sup> *Lao Toyota Football Club* (“Lao Toyota FC”) v. AFC, award dated 12 June 2018

<sup>229</sup> See paras 29 and 31.

<sup>230</sup> Paras 42–43 and 45.

<sup>231</sup> Paras 51–58; the second exception to *res judicata* (use of a new forum) not established—paras 39–40 and 42.

<sup>232</sup> *Karim Keramuddin v. FIFA*, award dated 14 July 2020.

<sup>233</sup> See paras 1–6, and 18.

<sup>234</sup> Under Art. 23 and Art. 25 of the 2018 edition of the FIFA Code of Ethics.

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>235</sup>

### 5.30 *Labuts*, CAS 2018/A/6075<sup>236</sup>

In the latest CAS case concerning match-fixing, the Appellant, a Latvian goalkeeper playing for Athlone Town AFC in the second-tier league in Ireland, was banned for one year from any football-related activities for allegedly participating in the fix of a match lost 3:1 against Longford Town FC.<sup>237</sup> The FAI Disciplinary Committee considered, based on suspicious betting activity in relation to several aspects of the match, that (1) the match was fixed, and (2) that the Appellant had taken part in the fix, by deliberately failing to stop two goals (at 39’48” and 92’31”) from the opposite team.<sup>238</sup> The player strongly denied the accusations and no evidence was provided as to any financial irregularities in the player’s situation.<sup>239</sup> The three experts called to judge upon the goalkeeper’s defensive mistakes were not unanimous in distinguishing between a deliberate behaviour and mere manifestations of inadequacy and fatigue.<sup>240</sup> It was, however, established that the Appellant made a save (at 87’) and that two central defenders of the Appellant’s team were also underperforming, which notably contributed to the second goal being scored.<sup>241</sup> Based on these facts and expertise, the Panel was comfortably satisfied that the match was fixed, but not that the Appellant was actually involved in the fix.<sup>242</sup>

In the light of these awards, we shall examine in the following lines the way in which the CAS has described the notion of match-fixing, the most relevant evidentiary issues extracted from these cases and the sanctions applied for the different manipulation offences.

## 6 The notion of competition manipulation in the CAS jurisprudence

As previously noted, CAS jurisprudence has amplified in match-fixing cases, thus giving the Panels several opportunities to carve out the definition of match-fixing at a judicial level, in parallel to the legislative efforts to define this concept (notably, by the Macolin Convention).

<sup>235</sup> Para 231.

<sup>236</sup> *Igor Labuts v. Football Association of Ireland* (“FAI”), award dated 17 July 2020.

<sup>237</sup> Para 5.

<sup>238</sup> Paras 7, 13 and 40.

<sup>239</sup> Para 56.

<sup>240</sup> Para 58.

<sup>241</sup> Paras 62–64.

<sup>242</sup> Para 65.

As a reminder, in the Macolin Convention, the manipulation of sports competitions is defined as an “intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others” (under Art. 3). Importantly, this definition covers not only manipulations altering the *result* of a match or competition, but also any manipulation which influences “*the natural and fair course*” thereof, notably through a foul, penalty or action on the field altering the intermediate result or phase of the game. This is also called “*micro-manipulation*” or “*spot-fixing*”. Finally, it should be noted that Art. 7 of the Convention encourages sports organizations and competition organizers to: (1) prohibit competition stakeholders from betting on sports competitions in which they are involved; (2) prohibit competition stakeholders from misusing inside information; and (3) require competition stakeholders to report any suspicious activity immediately.

CAS jurisprudence has addressed the issue of match-fixing in a similar manner, using a wide angle and a broad definition of match-fixing. In the following lines, we will mention the main elements, *ratione materiae* and *ratione personae*, extracted from this jurisprudence.

### 6.1 *Ratione materiae*

As has been pointed out by several authors,<sup>243</sup> the material scope of the definition of match-fixing in CAS jurisprudence is quite amorphous. Notably, many types of unlawful or unfair conduct may result in match-fixing; certain conduct may be used to conclude “*presumed*” match-fixing<sup>244</sup> and conduct otherwise lawful might be considered illegal in a manipulation context.<sup>245</sup> To date, among others, the following elements are set as indicators of match-fixing in the CAS jurisprudence:

- bribing or attempting to bribe a referee (*Lisboa and Guimaraes*, CAS 2008/A/1583);<sup>246</sup>
- approaching competitors and offering them money (EUR 10,000 each time) in order to deliberately lose a tennis match (*Köllerer*, CAS 2011/A/2490);
- approaching a competitor and offering him money (USD 30,000) in order to deliberately lose a first set of a tennis

<sup>243</sup> See, for example, Palermo and Williams (2018, p. 1).

<sup>244</sup> *Pakruojis* at paras 81(i), paras 91–92.

<sup>245</sup> *Eskişehirspor* at paras 114–119.

<sup>246</sup> The evolution of the definition under applicable UEFA regulations, making up a large number of the CAS awards described above, was examined in detail in Garcia Silvero (2018, p. 9).

match, while winning the second and third set, and the match (*Savic*, CAS 2011/A/2621);

- receiving a bribe (between EUR 50,000 and EUR 60,000) as a referee, in order to fix several football matches (*O*, CAS 2010/A/2172);
- receiving a bribe as a goalkeeper, in order to fix several football matches (*N and V*, CAS 2010/A/2266);
- intentionally losing a first football match and arranging a draw for the second, while abnormal betting patterns were detected for those matches, i.e. ten times the usual amount of money for such a match (*Pobeda*, CAS 2009/A/1920);
- deliberate underplay on the field by cricket players (deliberate “no ball” and playing the maiden over), exactly as agreed in a fix which had been arranged with the players’ agent, who was promised GBP 140,000 for the fix (*Asif*, CAS 2011/A/2362 and *Butt*, CAS 2011/A/2364);
- deliberate poor play and consequent loss of a tennis match on receipt of EUR 15,000 (*de la Rica*, CAS 2014/A/3467) and proven responsibility for a loss through actions on the field for payout from betting gains (*Sammut*, CAS 2013/A/3062); and
- deliberate mistakes (*in casu*, not proven) by a goalkeeper allowing the opposite team to score two goals in the context of highly abnormal betting patterns (*Labuts*, CAS 2018/A/6075).

## 6.2 Ratione personae

Match-fixing may be a complex operation, involving dozens or even hundreds of participants at all levels, inside and outside of sports. Thus, CAS panels have justly considered measures imposed against almost all participants in sports competitions:

- players (*de la Rica*, *Köllerer*, *Savic*, *Asif*, *Butt*, *Fantoni and Nunes*, *Labuts*, etc.);
- coaches and management (*Viorel*, *Pobeda*);
- other club officials, such as presidents (*Pobeda*, *Olympicos Volou*);
- referees (*O*, *Lampety*); and
- clubs (*Besiktas*, *Pobeda*).

It is thus apparent that the CAS panels have taken generally the same broad perspective on match-fixing as international legislators, both *ratione materiae* and *ratione personae*, in an effort to effectively tackle the multi-faceted phenomenon of competition manipulation, which may manifest itself in many different forms, ultimately aiming at ensuring a fixed result or event, and thereby eliminating the element of uncertainty which should be inherent to any sports competition.

## 7 Selected evidentiary issues

Evidentiary issues are obviously paramount in the fight against match-fixing,<sup>247</sup> given the very nature of this offence and its broad scope, both *ratione materiae* and *ratione personae*. In the following lines, we will focus on a selection of such issues, notably standard of proof and admissible means of evidence, as extracted from the CAS jurisprudence.<sup>248</sup> In the jurisprudence briefly described above, the CAS panels have made it clear that nothing is worse than creating a false positive and issuing sanctions to an innocent person or club. Apart from the recurring question of the burden of the proof,<sup>249</sup> the panels focus primarily on issues of the standard of proof,<sup>250</sup> as well as admissibility and means of gathering evidence.

### 7.1 Standard of proof

As far as evidence is concerned, what is most important is not the evidence itself, but that it is capable of proving the facts sufficiently in the eyes of the panel. Indeed, in order to be convinced, the panels apply a high standard of proof. Even if a criminal standard is considered inapplicable in the context of private associations, the panels need to be comfortably satisfied that a conduct of a type which undermines the basic premise of fairness upon which all sporting contests are premised actually happened, i.e. at a level greater than a mere balance of probability, but less than proof beyond reasonable doubt.<sup>251</sup>

Considering the different nature of criminal procedures and disciplinary ones, relative lack of investigatory powers of sports governing bodies compared to those of a criminal prosecutors, incentive to conceal such evidence<sup>252</sup> (and consequent similarity to doping<sup>253</sup>) and within the context of seriousness of allegations and importance of fighting corruption,<sup>254</sup> CAS has repeatedly dismissed the application of the “beyond reasonable doubt”<sup>255</sup> standard, to apply the criteria of the “comfortable satisfaction”. The latter is much

<sup>247</sup> See also Rigozzi and Quinn (2014).

<sup>248</sup> These issues were analysed immediately after *Pobeda* in Barak and Koolard (2014) as well as, after, by Palermo and Williams (2018, p. 17).

<sup>249</sup> On this subject, see, for example Kaplow (2012).

<sup>250</sup> On this subject, see, for example Davis (1994).

<sup>251</sup> About the comfortable satisfaction standard of proof, see, for example, Davis (2012), Deakes (2014), Blackshaw (2018) and Duttig (2018).

<sup>252</sup> Notably stated first in *O* (para 21) and cited by numerous panels thereafter.

<sup>253</sup> See, for example, *O* (citing *Pobeda*) paras 20–21 and *Fenerbahçe*, paras 278–279.

<sup>254</sup> See for example *Besiktas*, paras 108–112.

<sup>255</sup> On this subject, see, for example, Newman (1993).

more flexible than the former but still more stringent than a simple balance of probabilities. As it has been repeatedly stated, the “*comfortable satisfaction*” standard therefore lies somewhere in between beyond reasonable doubt and a mere balance of probability.<sup>256</sup>

Panels themselves have observed the standard to be inconsistent and difficult to follow.<sup>257</sup> This is also because, prior to applying a comfortable satisfaction standard, a panel must first look at the concerned federation’s guidelines for an expressly chosen standard of proof (“*preponderance of probability*” in tennis, for example<sup>258</sup>). Parties (clubs or athletes) are presumed to have “consented” to such standard contractually.<sup>259</sup> Factors to judge appropriateness of such standard include how close it is to comfortable satisfaction (for example, held suitably proximate in the case of tennis) or whether it contravenes public policy. CAS itself, however, lacks authority to harmonize such standard.<sup>260</sup> This has now been confirmed in *Labuts*, noting that where the applicable rules are silent on the standard and the parties do not agree on a common standard, the CAS is to apply the standard used in prior awards.<sup>261</sup>

The fact remains that given the seriousness of an allegation of manipulation of a sports competition, the comfortable satisfaction criteria are considered fulfilled if there is a high degree of confidence in the *quality* of the evidence, and if the latter has been collected legitimately.<sup>262</sup> This indicates, therefore, that the standard lies closer to the test of beyond a reasonable doubt than to that of a mere balance of probability.<sup>263</sup>

## 7.2 Means of evidence

As has already been written, unless the applicable sport regulations contain specific evidentiary rules, CAS panels determine evidentiary issues according to the procedural rules adopted by each panel.<sup>264</sup> In making determinations on evidentiary issues, the CAS arbitrators are in no way bound to apply the procedural rules that would be applicable in a

Swiss court, i.e. evidence not otherwise admissible might be considered admissible and relied on.<sup>265</sup> Their freedom is only limited by the obligation to make sure that the contemplated procedural rule complies with the necessity for equal treatment of the parties and the right of both parties to be heard (under Art. 182(3) of the Swiss Private International Law Act), and is consistent with “*procedural public policy*”.<sup>266</sup>

In practice, in the match-fixing cases handled by the CAS, multiple types of evidence were used to try to reach the standard of proof described above. Across these awards, among the most frequently put forward,<sup>267</sup> one finds:

- suspicious betting patterns and conducts provided by betting operators;
- written evidence (rarely present);
- witness statements and confessions;
- expert evidence analysing betting patterns and on field behaviour;
- wiretaps, intercepted and taped phone or Skype conversations (sometimes with a coded language), their frequency and the point of time they were made;
- video recordings of on-field behaviour and interactions among parties;
- evidence of unneeded, private and suspicious meetings;
- evidence from parallel criminal investigations and connected decisions;
- rumours and anonymous letters;
- parallel circumstances (notings in match reports, potential financial benefit or a club’s poor financial condition); and
- coincidence between what was agreed between fixers and what happened on the field, result of the games, on field performances.

While most of these means of proof are not very different from those used in other types of sport offences, there is one specific to the manipulation: suspicious betting patterns,

<sup>256</sup> See, for example, *Sivasspor* at para. 131–132 and *Skënderbeu* at para. 64; see also, Rigozzi and Quinn (2014, p. 24).

<sup>257</sup> See *Fenerbahçe* at paras 275–277.

<sup>258</sup> *Köllerer* at paras 6 and 29, and *Savic* at paras 8.4 and 8.6.

<sup>259</sup> *Köllerer* at paras 38 and 40 (player consent) and *Skënderbeu* at para 64 (clubs’ consent in UEFA’s admission forms).

<sup>260</sup> *Köllerer* and *Skënderbeu*, as above; see also, *Vanakorn* at paras 92–93.

<sup>261</sup> *Labuts* at para 46.

<sup>262</sup> *Köllerer* at para 62, *Vanakorn* at paras 94 and 98.

<sup>263</sup> As also concluded by Rigozzi and Quinn (2014, p. 27).

<sup>264</sup> See, for example, Rigozzi and Quinn (2014, p. 4).

<sup>265</sup> See SFT decisions concerning Ukrainian match-fixing (including club Metalist) *A. v. Football Federation of Ukraine* (“FFU”), 4A\_448/2013 and *X. v. FFU*, 4A\_362/2013, both decisions of 27 March 2014 and—see also, von Segesser and Leimbacher (2014).

<sup>266</sup> See, for example, Rigozzi and Quinn (2014, p. 4); see also *Metalist* at paras 8.10–8.11, *Köllerer* at para 29 and *Vanakorn* at paras 92–93. The SFT, in an appeal from the award in *Metalist* confirmed the ability to use such evidence—see Beffa and Ducrey (2015, pp. 122–123).

<sup>267</sup> See also Palermo and Williams (2018, p. 20) where the CAS awards’ observations per specific type of evidence have been elaborated.

often based on a Betting Fraud Detection System (“BFDS”) report.<sup>268</sup>

Such reports are founded on algorithms and mathematical analysis that are able to quantitatively indicate if the betting patterns of a particular sports competition present a statistically significant deviation from the expected model. Illogical betting behaviour is thus detected even before the sports competition takes place and an alert is triggered.<sup>269</sup> These alerts, based on quantitative data and analysis, are then put to the test of the qualitative assessment that observers will be able to make of the course of the sporting competition. If the on-field action confirms the abnormal betting patterns and cannot be explained other than by the participants’ willingness to satisfy the bettors, it will be considered—with a high degree of certainty—that the competition has been manipulated. In order not to create false positives, an assessment of the on-field situation by three experts is generally required. On the contrary, if the quantitative analyses of abnormal betting patterns and the qualitative observations do not strongly match (or do not match at all), it will be considered that the BFDS has malfunctioned and the case will be dismissed.<sup>270</sup>

Such reports have been considered “valuable” evidence, particularly when specific individual responsibility can be attributed through it.<sup>271</sup> Yet, they are not definite by themselves, with no regulations governing them, requiring support of qualitative expert analysis<sup>272</sup> and corroborating evidence such as on-field conduct or that of betting operators.<sup>273</sup> Importantly, this application was confirmed most recently in *Labuts*, where the Panel almost solely relied on these reports and expert interpretation thereof to conclude a match was manipulated,<sup>274</sup> but countered this evidence with analysis of other on-field behaviour to conclude that the appellant goalkeeper was not himself primarily responsible for the fix.<sup>275</sup>

## 8 Sanctions

Here too, there are some questions of principle that the panels must resolve before deciding on the merits of a sanction.<sup>276</sup> First, the principle of *nullum crimen, nulla poena sine lege scripta et certa*<sup>277</sup> (no sanction may be imposed unless there is an express provision describing in sufficient clarity and specificity, not only the misconduct but also the applicable sanction) is considered to be fundamental; and second, the question of the *ne bis in idem* principle<sup>278</sup> is applied with the difficulty that some decisions are disciplinary ones and other administrative or civil ones.

The CAS awards on manipulation of sports competitions mainly concern football, but also tennis, skiing, bridge and cricket. As previously mentioned, they affect various factors such as clubs, staff members, referees and so forth. The principal sanctions with which the CAS has dealt in these awards are:

- bans, ineligibility for some competitions and suspension (of a person, of a club, of a referee; for one year, for a couple of years, and even life-long);
- fines;
- disqualification of a player;
- game annulment or result cancellation; and
- point deductions and relegation.

Some cases also involved criminal sanctions imposed by the concerned State (prison and/or fine), but the CAS has nothing to do with them. We briefly note here, in passing, that such sanctions are provided in national regulations and are extremely disparate. To give just a few examples, fixing the result of a match may be sanctioned, in Australia, Greece or Poland, by imprisonment up to 10 years, whereas in Denmark the maximum sanction is of 1 year.<sup>279</sup>

In each case, and contingent on express specific of a criterion for sanctioning, if any, under the applicable regulations,<sup>280</sup> the CAS panels have to determine if the sanction imposed by the respective governing body is adequate, not illegal, not contrary to public policy, appropriate to the level of guilt and the gravity of the violation,<sup>281</sup> and proportionate—which means that it has to be reasonably required in

<sup>268</sup> Other reports relied upon include those of SportRadar and Early Warning Systems (GmbH).

<sup>269</sup> On this subject, see, for example, Kerr (2017), and Forrest and McHale (2019).

<sup>270</sup> Forrest and McHale (2019); see also Forrest and McHale (2015, p. 12 and 47–48), and Palermo and Williams (2018, p. 21).

<sup>271</sup> *Fenerbahçe* at para 105.

<sup>272</sup> *Fenerbahçe* at paras 82, 85, 88, 91–93, 95 and 97.

<sup>273</sup> See, for example, *Skënderbeu* at paras 75–76, 79, 87 and 99–101, *Skënderbeu II* at paras 73–75 and *Pakruojo* at para 55(ii).

<sup>274</sup> *Labuts* at paras 48, 50 and 52.

<sup>275</sup> *Labuts* at paras 57–65.

<sup>276</sup> See also, Palermo and Williams (2018, p. 22).

<sup>277</sup> On this subject, see, for example, Timmerman (2018).

<sup>278</sup> On this subject, see, for example, Oliver and Bonbois (2012).

<sup>279</sup> IOC and UNODC (2017, p. 42).

<sup>280</sup> As seen expressly stated in UEFA Regulations and referred to by the CAS from initial awards – see for example, *Pobeda* at para 21 and 67–70 or *N and V* at para 81.

<sup>281</sup> *N and V* at para 41.



search of a justifiable aim.<sup>282</sup> In addition, it has to be non-discriminatory in the sense that an equal treatment has to be given to similar situations.<sup>283</sup> A panel ordinarily defers to the sanction imposed by a federation given their expertise in governing their sport and objectives unless the sanction is found, based on the above criteria, “*evidently and grossly disproportionate*”.<sup>284</sup>

Thus, where the sanction is a life-time ban, the CAS generally considers that the fact of adding a fine to it makes the whole sanction *disproportionate* because the ban already has a financial effect by affecting the future earnings of the condemned, while also considering that where integrity was sought to be protected, harming individual privacy and a sports person’s development was justified.<sup>285</sup> Life-time bans were also mitigated in absence of evidence of extent of *actual involvement* in the fix.<sup>286</sup> Exemplary life-time bans were also considered suitable given a sport’s peculiar susceptibility to fixing.<sup>287</sup>

Still, as regards proportionality, an alleviation of the sports sanction cannot be obtained by alleging that a prison sentence has been pronounced in the same case, whereas that criminal sentence has been mitigated because a sports sanction would also be pronounced. This would be tantamount to benefiting twice from the same mitigating circumstance.<sup>288</sup> Finally, doping’s scale of sanctions has also been used as guidance again.<sup>289</sup>

Moreover, CAS awards steer clear of making a link between the standard of proof and the sanction. It is not the case, therefore, that a lower sanction would directly be warranted because a higher degree of evidence was not available.<sup>290</sup> The standard of evidence is always applicable the same way, being the need to prove guilt which leads to a sanction that flows from the degree of guilt (and not from the strength of the evidence). Yet, where evidence was inadequate for CAS’s satisfaction, despite reversal of lower fora conviction, costs were imposed, as it was the suspicious

<sup>282</sup> *Metalist* at paras 8.25–8.26.

<sup>283</sup> *Metalist* at paras 8.37–8.40 and *Fenerbahçe* at paras 558 and 565.

<sup>284</sup> See, for example, *Butt* at paras 56–57 and 60, 66–69 and 74–75, *N and V* at para 43, *de la Rica* at para 122, or *Pakrujo* at paras 98–99.

<sup>285</sup> *Köllerer* at paras 70–73 and *Savic* at paras 8.33(vii), 8.34, 8.36–8.38 and 9.3.

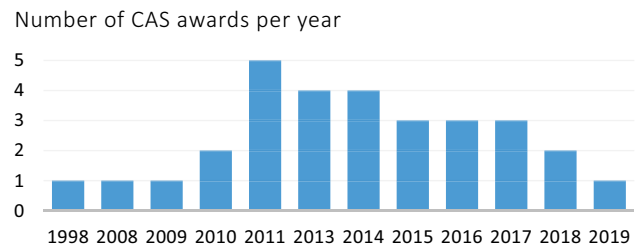
<sup>286</sup> *Sammut* at paras 179–180.

<sup>287</sup> *Köllerer* at para 66.

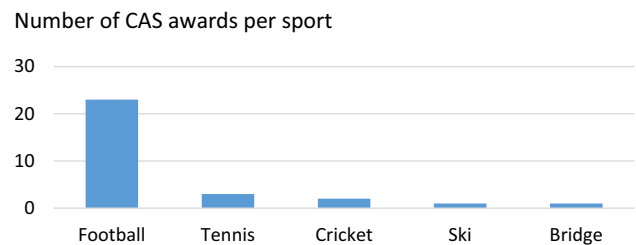
<sup>288</sup> As considered in *Asif* at paras 70–71 and 76 and *Butt* at paras 53–54 where parallel sentencing in criminal proceedings took into account ICC’s ongoing procedure which would likely result in certain additional sanctions.

<sup>289</sup> See *Fenerbahçe* at paras 56–57 and 60.

<sup>290</sup> *Pakrujo* at paras 83–84.



**Fig. 1.** Represents the number of cases of manipulation of sports competitions brought to the CAS annually



**Fig. 2** represents the number of cases of manipulation of sports competitions brought to the CAS per sport concerned.

behaviour which led to the proceedings in the first place and the Panel could not rule out wrongdoing.<sup>291</sup>

All in all, in the field of manipulation of sports competitions, CAS awards confirm, to a very large extent, the sanctions imposed by the lower sporting bodies.

## 9 Conclusion

The review of these thirty CAS awards allows us to draw several conclusions and to identify a few open questions.

First, from a quantitative perspective, we found that while there was a peak of CAS cases in the years 2011–2014, there was a decline since 2015. Seeing the entry into force of the Macolin Convention in 2019, might trigger the conclusion that this instrument comes too late, since the phenomenon has been decreasing for several years now. Obviously, such a view would be tantamount to forgetting that the CAS awards only represent the tip of the iceberg. For its part, the Macolin Convention goes much further than the questions dealt with in the CAS awards, notably because it tends to combat the phenomenon on the wide scale of all sports at all levels, and not only top-level sport (Fig. 1).

Second, we observe that there is a very strong overrepresentation of cases related to football, with a smaller number of cases involving tennis and cricket. Nevertheless, the existence of match fixing cases in other sports, such as skiing and bridge, shows that the phenomenon is clearly not restricted to a particular sport or category of sports (teams or individuals, for example) (Fig. 2).

<sup>291</sup> *Fantoni and Nunes* at paras 124–127.

Third, the *ne bis in idem* principle (double jeopardy) as applied by the CAS panels requires, in our opinion, a more in-depth consideration in future awards. Indeed, the panels are regularly confronted with cases in which administrative, disciplinary, penal and/or civil sanctions have been pronounced for the same case of manipulation of sports competition<sup>292</sup> and at different levels (national and international, courts and sports bodies, administrative or disciplinary).<sup>293</sup>

Recurrently, the CAS panels conclude that there is no violation of the principle of *ne bis in idem* by considering that the various sanctions are not of the same nature and are therefore not likely to constitute double jeopardy, *Lao Toyota* being a notable exception.<sup>294</sup> Nevertheless, it remains worrisome to note that the same person may be subject to several sanctions for the same act on the sole basis of the difference in the legal nature of each of them. The result of such an interpretation of the *ne bis in idem* principle is all the more questionable when it leads to several sanctions that not only bear the same name (for example, “fine”), but that are exactly the same from the individual’s perspective (since they all affect his/her patrimony, in the example here above), even if their legal nature is indeed different.

Sometimes—nevertheless only if the legal nature of both sanctions is the same—the CAS corrects this problem by considering that the double penalty becomes *disproportionate*. While considered necessary for setting an example, particularly in susceptible sports on the one hand, on the other, for example, a financial penalty in addition to a life-time ban, is considered excessive as the latter would, in any case, have an additional financial effect on a player by affecting his/her future earnings<sup>295</sup>.

The issue of life bans (isolated from any other sanctions) may be delicate in the high-performance sporting context, where an athlete’s career only lasts for a few years; therefore, it can be argued that a ban for eight years (similar to the maximum ban applicable in doping offences) is efficient and deterrent enough.<sup>296</sup> Life-time bans have also been

considered disproportionate based on the existence of mitigating factors, such as no proof of actual involvement in the fix and the effect on an athlete’s career.<sup>297</sup>

Fourth, the principle of *legal certainty* as apparent from the CAS jurisprudence is worth a more in-depth consideration. Generally, most CAS awards refer to prior awards on various aspects, including in awards related to match-fixing, and panels are unlikely to depart significantly from this practice.<sup>298</sup> Though not obligated to follow precedent, they tend to do so in the interest of legal certainty.<sup>299</sup> It has been concluded that this is closer to the civil law practice of “*jurisprudence constante*” (or non-deviation except when clear error or injustice shall result) than common law’s *stare decisis*.<sup>300</sup> Across the studied match-fixing awards, starting with *Benfica and Guimarães*, CAS panels have referenced prior awards noting the importance of certainty, but chosen whether to deviate or not from them, per case.

This notably triggers a potential problem regarding the consistent interpretation of the same provisions (as seen in the awards involving UEFA regulations, notably in *Fenerbahçe* and *Skënderbeu*), standard of proof, and quantum of sanction (in cases arising having the same facts such as those of *Asif* and *Butt*, or within the same sport, such as for life-bans in tennis as in *Savic*, or for the same objective of deterrence given the value of preserving integrity). Also, panels have regularly borrowed from doping jurisprudence, to lend further consistency across CAS disciplinary sanctions; yet, at the same time, they note categorically that the strict degree of certainty as in criminal procedure is unrequired given the hybrid nature of proceedings as seen in *Skënderbeu II*. In *Phnom Penh*, for instance, the panel categorically noted prior awards on attribution of officials’ acts to a club but chose to deviate from them.

Given the recurrence of match-fixing cases, the particular nature of this threat and the current absence of a harmonized approach at the level of the international sport regulators, it is thus probable that CAS jurisprudence will continue to develop in the coming years, thus setting new milestones for the contouring of the rather “amorphous” current framework.

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<sup>292</sup> Most recently in *Lao Toyota* where the different levels of applicability of the principle and exceptions were discussed. Previously, this question had arisen in awards such as *Metallist*, *Skënderbeu*, *Trabzonspor*, and *Sivasspor*; see also Palermo and Williams (2018, p. 15).

<sup>293</sup> Even where the principle is not explicitly cited such as *Asif* and *Butt*.

<sup>294</sup> *Lao Toyota* at paras 39–42 and 51 to 58.

<sup>295</sup> As seen in *Köllner* at paras 70–73 and *Savic* at paras 8.36–8.38 and 9.3.

<sup>296</sup> See also White (2017) and Rigozzi and Quinn (2018, p. 106)—where it is suggested that an approach considering proportionality per case for doping related sanctioning is advisable (CAS awards on manipulation having accepted/suggested applying doping jurisprudence to sanctioning—*Fenerbahçe* at paras 56–57 and 60).

<sup>297</sup> *Sammur* at paras 179 and 180.

<sup>298</sup> As has been seen in the awards summarized, but also other seminal awards (*Canadian Olympic Committee and Beckie Scott v. IOC*, CAS 2002/O/373, award dated 18 December 2003 at para 14) and widely opined before. See, for example, Koffman-Kohler (2007, p. 366).

<sup>299</sup> Blackshaw (2009, p. 155).

<sup>300</sup> See conclusion based on empirical study confirming past scholarship in Bergasel (2012).

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