

## **Field of play & strict liability – CAS 2022/A/9018 UAE Equestrian and Racing Federation & Ismail Mohd v. Fédération Equestre Internationale**

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### **Abstract**

The Court of Arbitration for Sport (CAS) has recently decided a case that concerns two pertinent areas of sports arbitration disputes. In CAS 2022/A/9018 UAE Equestrian and Racing Federation & Ismail Mohd v. Fédération Equestre Internationale (CAS 9018), the CAS panel first had to determine the admissibility of the appeals filed by the UAE Equestrian and Racing Federation and the professional trainer Mr Ismail Mohd in consideration of the so-called “field of play doctrine” after the disqualification of a horse had automatically led to Mr Mohd’s ineligibility for a period of two months. In addition, this case offers some interesting insight into the discussion on “strict liability” provisions and the possibility of sportspersons to rebut the (scientific) presumption deriving from a strict liability rule. While the discussions concerning strict liability provisions are more prominent in doping-related disputes, this case shows the relevancy to other disciplinary issues and explains how the disputes are to be solved.

### **Keywords**

Court of Arbitration for Sport (CAS), admissibility of appeals before the CAS, field of play doctrine, strict liability, rebuttal of a presumption

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## 1. Facts of the case

The facts of the case before the CAS, in essence, maybe summarised as follows: The appeal was brought by the UAE Equestrian and Racing Federation, the national governing body of equestrian sports in the United Arab Emirates, and Mr Ismail Mohd (the trainer), a professional trainer in endurance riding. Endurance riding “*is a test of the Athlete’s ability to manage the Horse safely over an Endurance course. It is designed to test the stamina and fitness of the Athlete and Horse against the track, distance, terrain, climate, and clock, without comprising the welfare of the Horse.*”<sup>2</sup> It is one of the official equestrian disciplines recognised by the international sports governing body for equestrian sports, i.e., the Fédération Equestre Internationale (FEI), which was the respondent in the appeals proceedings before the CAS. The FEI is a Swiss association headquartered in Lausanne, Switzerland.

The trainer was training a horse that participated in a FEI CEI 1\*100 km Endurance Event held in Windsor, United Kingdom. During the event, the horse allegedly stumbled into a rabbit hole and suffered an injury as a result. This injury led to the disqualification of the horse. In addition, in accordance with Article 864 of the FEI Endurance Rules, the trainer automatically received 80 penalty points for the injury suffered by the horse which, in this particular case, led to the trainer’s automatic suspension for a period of two months, pursuant to Article 866.1 of the FEI Endurance Rules. This rule provides – in its pertinent parts – that “[i]f an Athlete or Trainer incurs 100 or more penalty points, the Athlete/Trainer will receive an automatic two-month suspension.”<sup>3</sup>

Both the UAE Equestrian and Racing Federation and the trainer challenged the automatic imposition of the trainer’s two-month suspension before the FEI Tribunal that declared the appeals inadmissible due to the “field of play” nature of the decision to disqualify the horse from the competition as a consequence of the injury suffered and the resulting automatic penalty of the trainer. Accordingly, the FEI Tribunal would have no jurisdiction to adjudicate on such a field of play decisions. The UAE Equestrian and Racing Federation and the trainer challenged the decision of the FEI Tribunal before the CAS.

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<sup>2</sup> FEI Endurance Rules (2023).

<sup>3</sup> Ibid.

As an initial matter, the CAS panel had to decide whether or not the appeals were admissible in the sense that it had the competence to review the automatic imposition of the trainer's two-month suspension. In other words, the CAS panel had the difficult task to draw a convincing line between a non-reviewable field of play decision and a reviewable "rules of law" decision. Secondly, the CAS panel, *inter alia*, had to deal with the question whether, based on the strict liability provision in question, the causal link between the scientific presumption that a horse's injury in endurance riding is caused by the mistreatment of the horse and that the trainer of that horse must be suspended from the sport as a consequence.

## **2. Findings of the CAS panel**

### **2.1. The threshold between the "rules of the game" and the "rules of law"**

After considering the Parties' submissions, the CAS panel concluded that while the disqualification of the horse from the competition in Windsor, UK, was a field of play decision, which was not contested by the Parties, the automatic two-month suspension of the trainer was not a field of play decision and, therefore, declared the appeals of the UAE Equestrian and Racing Federation and the trainer admissible. In this regard, the CAS panel in CAS 2022/A/9018 stated as follows:

*... the Panel observes that it follows from the legal authorities submitted by the Respondent in support of its submission that the qualified immunity of field of play decisions is not unlimited and that a distinction must be made between the 'Rules of the Game' and their application, on the one hand, and the 'Rules of law', on the other hand ... in the present matter, it is manifest that the attribution of the penalty points and the suspension of the Trainer for having reached the mark of 100 penalty points did not aim at securing a proper and correct running of the competition at which the Horse competed and during which is was disqualified. As argued by the Respondent, these consequences aim at holding a trainer responsible for the appropriate physical and mental preparation of the horses he/she trains. Further, as is apparent from the heading of the Chapter IX of the [FEI Endurance Rules] in which Articles 864 and 866 are included, i.e., 'Disciplinary', these provisions are of a 'disciplinary' nature. They start and continue to produce their effects only after the end of the competition or event*

during which the occurrence that triggered the imposition of the penalty points in question.

Moreover, and in any event, as it is undisputed that the consequences set out in Article 866 of the [FEI Endurance Rules] and applied in the present case affected, *inter alia*, the Trainer's rights of personality as the two months suspension he had to serve had an impact on his economic/professional activity, the question whether or not these consequences are part of the field of play decision is, pursuant to the jurisdiction of the SFT, irrelevant for the determination of the admissibility of the Appeal insofar as the FEI Statutes and regulations, particular Article 38 and 39 of the FEI Statutes, do not attribute exclusive jurisdiction to the competent civil courts in Lausanne, Switzerland, to hear the present matter/appeal.

In view of the above, the Panel finds that the 'automatic consequences' against which the Appeal is directed cannot be considered as integral part of the field of play decision rendered by the Ground Jury and that the Appeal is, thus, admissible *ratio materiae*.<sup>4</sup>

## **2.2. The strict liability provision and the causal link between the presumption and its consequences**

The second important question in this case was whether or not the imposition of the trainer's suspension for two months was proportionate in due consideration of the strict liability provision in place. The nature of Article 866 of the FEI Endurance Rules derived from the fact that this provision provides for an automatic imposition of the penalty points based on the incidents provided for under Article 864 of the FEI Endurance Rules. According to the FEI Endurance Rules, in the present procedure, the injury of the horse is sufficient to establish the trainer's liability, regardless of whether the trainer was at fault or negligence in causing the horse's injury. Article 864 of the FEI Endurance Rules was therefore implemented into the FEI Endurance Rules with the legitimate aim of sanctioning "*the bad training practices that, according to the studies referred to by the FEI, are likely to lead to serious injuries or at least are increasing the risk of those serious injuries to occur in endurance sport*".<sup>5</sup> The question

<sup>4</sup> UAE Equestrian and Racing Federation & Ismail Mohd v. Fédération Equestre Internationale (CAS 2022/A/9018), award of 15 March 2023, para 60, paras 65-67.

<sup>5</sup> Ibid, para 93.

for the CAS panel was, however, whether the causal link between the presumption that the horse's injury was caused by the trainer's mistreatment of the horse was established in this case, considering that, according to the appellants, the horse had allegedly sustained this injury by tripping into a rabbit hole.<sup>6</sup> The CAS panel denied this on the basis of the following considerations:

*The present Panel shares the view of the panel in CAS 98/222 according to which [a 'scientific presumption' that bad training practices lead to injuries in the horses participating in endurance events] may justify the legal rule sanctioning a consequence of the wrongful act and not the act itself, under the condition that science leaves no doubt that this 'consequence can occur only in one single manner, i.e. by the wrongful act'. However if the scientific presumption at the basis of such a system leaves some room for other causes or acts to have led to the sanctioned consequence, the party relying on such presumption will have to establish that the consequence (the serious injury of the horse) has indeed occurred as a consequence of the misconduct or wrongful act (bad training practices) and a rule, like the one at stake, sanctioning the serious injury of a horse and allowing no discussion of the real cause of such injury, would, according to the Panel, not be justified (CAS 98/222).*

*In the present case, it is not contested that horses may suffer serious injuries due to bad training practices of their trainers. However, the Panel finds that there is no scientific proof that a serious injury like the one suffered by the Horse could only occur due to bad training practices imposed by the Trainer. [...] According to the Panel, incidents/accidents do happen and all athletes, might they be the best trained and supported athletes in the world, suffer occasionally injuries whilst training or competing. There is no proof that this would not apply to horses or other animals.*

*The Panel considers that, in view of the above, rules like the one set out in Articles 864 and 866 of the [FEI Endurance Rules], which try to impose strict liability must, if the sanctioned consequence may have another cause than the misconduct or wrongful act these rules try to prevent, leave some room for a deference by the person submitted to such liability. Indeed, without existence of an 'established' causal link between the consequence and the misconduct, there is no possibility whatsoever for a disciplinary*

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<sup>6</sup> Ibid, para 60, paras 65-67.

*body and/or whether the sanction does not exceed that which is reasonably required in the search of the justifiable aim.*

*... in a situation like the present, where there are uncertainties as to the scientific cause of the injury, an absolute presumption concerning the causal connexion between the sanctioned misconduct and the injury cannot be upheld. In such a scenario, the burden of proof should be distributed in a legally justified and equitable manner (CAS 98/222) and the person submitted to the liability should in any event have the right to provide evidence rebutting any presumption laid down by the rule of law.*

*...although it is not scientifically established that an injury like one at hand can only occur due to bad training practices of a trainer, Article 864 of the [FEI Endurance Rules] does not provide a trainer with any right to rebut the non-scientific presumption according to which the injury was due to bad training practices and does not oblige or allow the FEI provide additional evidence supporting the presumption on which its relies. In these circumstances, the Panel considers that the causal link between the sanctioned consequence and the misconduct Article 864 tries to prevent is not established. However, without such causal link, the misconduct is not established and, consequently, no sanction can be imposed without violating the principle of proportionality...[the Panel] cannot cure this violation of the principle of proportionality by applying a procedure or a sanction not set out by the relevant rules without violating the principles of nulla poena sine lege and nulla poena sine lege clara.<sup>7</sup>*

### **3. Commentary**

This case offers guidance for the determination of two intellectually and practically relevant issues in sports proceedings.

#### **3.1. The threshold between the “rules of the game” and the “rules of law”**

The first issue concerns the question of the power of review of sports arbitration tribunals and CAS panels. In particular, Article R57, para 1 of the CAS Code of Sports-related Arbitration (CAS Code) provides that “[t]he Panel has full power to review the facts and the

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<sup>7</sup> Ibid, paras 99-104.

law”.<sup>8</sup> Accordingly, a CAS panels’ power of review is, in principle, not limited so that they can determine the facts and the law of the case *de novo* based on the evidence adduced in the proceedings before CAS.<sup>9</sup> CAS panels can further set aside the first instance decision and replace it by a new decision according to Article R57 para. 1 of the CAS Code. However, the field of play doctrine is a recognised exception to the unlimited power of review.<sup>10</sup> This doctrine entails that matters concerning the “rules of the game” shall generally not be reviewed by any adjudicatory body in protection of the integrity of the competition, the expertise of the specifically educated officials and the trust in their judging in the quintessential decision in view of the circumstances of the competition.<sup>11</sup> Adjudicatory bodies shall therefore only interfere with field of play decisions (i) if the applicable rules grant the adjudicatory body such power or (ii) if the decision was taken in bad faith, fraudulently or arbitrarily.<sup>12</sup> Against this background, CAS will generally be reluctant to review decisions related to the rules of the game, while decisions that fall within the ambit of the “rules of law” do not fall within the field of play doctrine and are therefore fully reviewable. The distinction whether or not a decision constitutes a field of play decision therefore proves to be a decisive factor for the success of an appeal. However, the task to draw a persuasive line between reviewable decisions, on the one hand, and unreviewable field of play decisions, on the other hand, is not always easy and is subject to various factors, including the applicable regulations, the integrity of the competition concerned and, as seen in this case, the consequences for a person beyond the competition in which the decision was made in due consideration of the principle of proportionality.<sup>13</sup>

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<sup>8</sup> CAS (2022).

<sup>9</sup> Mavromati and Reeb (2015), Article R57, para 12; AC Milan v. Union des Associations Européennes de Football (UEFA) (CAS 2018/A/5808), award of 1 October 2018, para 130 et seq.

<sup>10</sup> Reeb (2002), pp. 680 et seq.; Rigozzi and Hasler (2018), para 25; Aino-Kaisa Saarinen & Finnish Ski Association v. Fédération Internationale de Ski (FIS) (CAS 2010/A/2090), award of 7 February 2011, para 26; Horse Sport Ireland (HSI) & Cian O’Connor v. Fédération Equestre Internationale (FEI) (CAS 2015/A/4208), award of 15 July 2016, para 48.

<sup>11</sup> Horse Sport Ireland (HSI) & Cian O’Connor v. Fédération Equestre Internationale (FEI) (CAS 2015/A/4208) award of 15 July 2016, para. 48; Rigozzi and Hasler (2018), para 25; Beloff et al. (2021), pp. 1207.

<sup>12</sup> Yang Tae Young & Korean Olympic Committee (KOC) v. International Gymnastics Federation (FIG) (CAS 2004/A/704), award of 21 October 2004, para 19; Asian Handball Federation (AHF), Kazakhstan Handball Federation (KzHF), Kuwait Handball Association (KHA) v. International Handball Federation (IHF) (CAS 2008/O/1483), award of 20 May 2008, para 102; M. Beloff et al. (2021), pp. 1210

<sup>13</sup> Lucas Mahias v. Fédération Internationale de Motocyclisme (FIM) (CAS 2018/A/5916), award of 25 February 2019, para 53; Rigozzi and Hasler (2018), para 26.

### 3.2. The strict liability provision and the causal link between the presumption and its consequences

The other interesting issue that makes this case so interesting is the CAS panel's discussion about the strict liability provision in the applicable rules. At the heart of this discussion is the purpose of a strict liability provision and, in addition, who has to prove what and what are the possibilities to refute the presumption on which the strict liability rule provision is based. The CAS panel has correctly stated that a strict liability rule may be legitimate and proportionate if a (scientific) presumption is given, which, if fulfilled, for example poor training leads to injuries, certain disciplinary consequences may follow from this without the need for proof of guilt. The CAS panel made also clear that, if there are reasonable circumstances that – based on the evidence submitted by the addressee of the strict liability rule – cast doubt on the presumed connexion between wrongdoing (poor training) and consequences (injury), sports organisations can no longer rely on such presumption that was the origin of the strict liability provision. Instead, the burden of re-establishing the initial presumption falls back on sports organisations, as the party who rely on this presumption, to prove the causal link between the presumed wrongdoing and its consequences. In other words, sports organisations must then provide evidence that “*other scientifically possible causes did not lead or could not lead to the forbidden result in this particular case.*”<sup>14</sup> This is, however, only possible if the applicable regulations leaves room for an examination of the actual wrongdoing.

## 4. Conclusion

Sports law is fascinating. A horse's injury during a sports competition triggered intellectually and practically demanding legal questions which require a sound understanding of, *inter alia*, the rules and regulations of sports organisations and specificities of sport. This case encourages us to look at two sports law evergreens which, ultimately, proved not to be a horse of a different colour.

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<sup>14</sup> International Triathlon Union (ITU) (CAS 98/222 B.), award of 9 August 1999, para 39.



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