JOURNAL OF SPORTS LAW, POLICY AND GOVERNANCE
ISSN (O): 2584 – 1122

Case Commentary: Samson Siasia Siaone v. Federation Internationale de Football Association, CAS 2019/A/6439

Surbhi Kuwelker[1]

Abstract

This article is a commentary to the Court of Arbitration of Sport's (CAS) award in the case of *Samson Siasia Siaone v. Federation Internationale de Football Associations*, CAS 2019/A/6439 decided in June 2021. The case follows in a long line of competition manipulation related awards decided on by CAS panels but highlights through its analysis certain applicable principles to takeaway in certain specific aspects of adjudication of disciplinary offences. Of note are those connected to the standard of proof due to the significance of evidence based on which such cases turn, as well as factors and principles discussed on sanctioning – these are the two issued focused on for analysis after examining the case in detail. The panel concluded its award by mitigating Fédération Internationale de Football Association's (FIFA) life-ban to five years and setting aside the imposed fine, determining that the sanctions, when considered independently were disproportionate. This conclusion was reached after examining factors based on precedent. The panel's analysis is evaluated against existing literature and previous CAS awards to gauge its effectiveness as guidance for future panels not only in manipulation cases but also in adjudicating other disciplinary offences in the future.

Keywords

Competition manipulation, Court of Arbitration for Sport (CAS), standard of proof, proportionality, sanctions

[1] University of Neuchatel, Neuchatel, Switzerland.

✉ Surbhi Kuwelker (surbhi.kuwelker@gmail.com)

1. Facts and prior proceedings

The Court of Arbitration for Sport (CAS) award in *Samson Siasia Siaone* v. *Federation Internationale de Football Associations* (FIFA),[2] (Siasia) arose through appeal against the prior decisions of FIFA internal bodies. These bodies, chronologically the FIFA Investigatory Chamber (of the FIFA Ethics Committee) and the FIFA Appeals Committee had commenced their proceedings based on a report of the FIFA Investigatory Chamber (Report), concerning the appellant, Mr. Siasia Siaone (Appellant), being approached to coach an Australian football club, by Mr. Wilson Perumal, a convicted match-fixing perpetrator.[3]

The crux of the alleged fixing involved Mr. Perumal offering employment as coach under instructions to always play or field certain players for promised employment benefits, evidence of which was an email trail between March and April 2010.[4] Ultimately, the club had not accepted the terms of salary and other benefits that the Appellant asked for, choosing another coach, i.e. a contract was never successfully concluded with the Appellant.[5] The Report had been based on the Appellant's agreement over email to follow Mr. Perumal's manipulation instructions to field certain players, and to accept and ignore manipulation actions of players on the field under Mr. Perumal's control, should he be employed.[6]

Based on the Report's recommendations, the FIFA Investigatory Chambers opened investigation for potential breaches of Articles 13, 17 and 27 of the FIFA Code of Ethics, 2018 (2018 FCE);[7] the FIFA Integrity Department was only made aware of these communications around October 2018, while the conduct took place between March and April 2010.[8] The Appellant was approached by email to provide a statement of his position, but claimed correspondence did not reach him on the correct address, FIFA's Investigatory Chamber concluding their investigation in his absence.[9] Ultimately, adjudicatory proceedings were

[2] CAS 2019/A/6439.

[3] Samson Siasia Siaone v. Federation Internationale de Football Association (FIFA), CAS 2019/A/6439, paras 2, 5 and 6, p. 2.

[4] Ibid, paras 8-29, p. 3-8. See also, para 148, p. 28. See also, paras 145-146, p. 28, where the conditions were termed "Golden Rules" by which several players would be under Mr. Perumal's control.

[5] Ibid. See also, para 147, p. 28.

[6] Ibid, para 31, p. 8.

[7] Ibid, see para 31, p. 9, in addition to the corresponding provisions of the 2012 and 2009 FIFA Codes of Ethics, respectively.

[8] Ibid, para 148, p. 28.

[9] Ibid, para 34, p. 9 and p. 10.

opened on reference of the matter to the FIFA Adjudicatory Chamber charging the Appellant with violations under Article 11 of the 2009 FIFA Code of Ethics (2009 FCE), under provisions relating to bribery, involving acceptance of benefits to manipulation matches covered under bribery-related offences as manipulation was not, at the time, a standalone offence.[10]

The Adjudicatory Chamber found the Appellant guilty of conspiracy to commit manipulation, as well as personally being interested due to financial gains, which compromised integrity.[11] Significantly, he was issued a *lifetime ban* from taking part in any kind of football activity at the national or international level (administrative, sport or any other), *and*, a fine of CHF 50,000 (emphasis supplied).[12] The appeal filed against this decision to FIFA's Appeal Committee was held inadmissible,[13] with the Appellant deciding to also challenge the Adjudicatory Chamber decision before the CAS.[14]

2. Findings of the CAS Panel and key legal issues

The CAS panel highlighted that the case did not deal with potential criminal liability, but the framing of the Appellant's behavior and analysing responsibilities under the 2009 FCE.[15] While placing the burden of proof on FIFA to establish to the panel's comfortable satisfaction[16] whether the Appellant had committed a breach of the FCE,[17] the panel also stressed that the Appellant had 'evident interest' in proving to and convincing the panel that the text of the correspondence between him and Mr. Perumal did not bear its literal and obvious meaning of revealing his clear intent to accept a coaching position on such terms.[18]

[10] Ibid, paras 35 and 36, p. 10; para 149, p. 28.

[11] Ibid, para 37, p. 10.

[12] Ibid, para 37, p. 10 and p. 11; para 149, p. 28.

[13] Ibid, paras 40 and 41, p. 11 and p. 12.

[14] As provided for under Article 82 para 1 of the FIFA Code of Ethics and Article 58 para 1 of the FIFA Statutes, to be filed within 21 days of the notification of the decision.

[15] Samson Siasia Siaone (Siasia) v. Federation Internationale de Football Associations (FIFA), CAS 2019/A/6439, para 150, p. 28.

[16] Ibid, para 156, p. 29. Here, held to mean the 'personal convictions' of the panel, having in mind the seriousness of the offence and on evaluating all evidence adduced, as applied across disciplinary proceedings widely.

[17] Ibid, para 153, p. 29. There being no specific burden of proof allocated prior to the 2012 edition of the FCE, the panel cited prior awards which held that FIFA carried the burden of proof by way of analogy to the Article 99(1) of the FIFA Disciplinary Code (which was then in force). The 2012 FCE under Article 49 specified that the burden of proof lay on the Ethics Committee, see, para 152, p. 29. The panel also noted that under Swiss Law, the party that bore the burden of proof was required to submit the facts it sought to prove to court, see, para 154, p. 29.

[18] Ibid, para 155, p. 29.

The main issues before the panel and the findings on each of them are described below:

2.1. Applicable law and whether the investigation and adjudication by the FIFA Ethics Committee was time barred

The panel found that it was the 2018 FCE that should apply to procedure,[19] and agreed with FIFA's argument that the 2009 FCE be applicable to merits[20] as the facts requiring consideration had taken place in 2010, when the 2009 FCE was in force, applying the principle of non-retroactivity for sanctionable rule violations and the quantum of sanction.[21]

Additionally, the panel agreed with FIFA's contention that the applicable 2009 FCE did not, at the time, have a specific provision on manipulation as existed under the 2018 FCE (under Article 29) due to which bribes for manipulation could be assessed under the general provisions on bribery (as available under Article 11 of the applicable 2009 FCE covering various corruption related offences).[22]

The panel found that the requisite limitation period of 10 years within the 2009 FCE for a bribery offence had been respected as required with the prosecution for a 2010 act being under taken in 2019.[23] However, the panel found that the offences alleged under Article 3 and 14 of the 2009 FCE on violation of, *inter alia*, the general rules, the duty of disclosure and reporting, were, in fact, time barred with a limited period of five years,[24] limiting its consideration only to the bribery offences.[25]

[19] Ibid, p. 27. The 2019 FIFA Code of Ethics would only be applicable to proceedings not formally opened before June 3, 2019 (under Article 88.3 thereof), though prior panels had rules to the contrary as well citing Worawi Makudi v. FIFA, CAS 2018/A/5769, award of 11 February, 2019 at para 82 (applicable regulations are those in force at the time the appealed decision has been notified to the party).

[20] Ibid, see, para 140-143, p. 27. Based on Article 57.2 of the FIFA Statutes whereunder the CAS Code would apply to all CAS proceedings, and pursuant to which, under Article 58, the CAS would apply the various applicable FIFA regulations to the merits, and, additionally, Swiss Law.

[21] Ibid, para 142, p. 27, citing the principle of *tempus regit actum* – see discussion in section 3.2 below.

[22] Ibid, para 143, p. 27.

[23] Ibid, paras 162, 163 and 164, p. 30 and 31. As specified under Article 12.2 of the 2009 FCE.

[24] Ibid, para 165, p.31. Under Article 12.1 of the 2009 FCE.

[25] Ibid, para 166, p. 31.

2.2. Findings on procedural issues and jurisdiction

While acknowledging certain inconsistencies in the Appellant's allegations concerning notification by email, the panel concluded that the FIFA Ethics Committee had an obligation to act with utmost diligence to confirm notice of opening of disciplinary proceedings given their gravity, for which, though provided for by email as a permissible option,[26] was inadequate for commencement of such proceedings.[27] FIFA should have identified the constant silence on sending emails, and confirmation through registered post should have been acquired.[28] Yet, though there was a violation of the right to be heard, it concluded that this bore minimal consequence owing to the panel's right to hear the case *de novo.*[29]

The panel also concluded, using an objective manner of interpretation for the rules of sport bodies, where the personal intent of parties is not of first relevance,[30] and grammatical interpretation as in Swiss law[31] that the Appellant was a 'coach' under the 2009 FCE[32] despite not being employed in the period when the offence was committed.[33] He could be considered a coach having a license granted to him for life, seeking a position with a new club.[34] His position as a coach and official was also considered to require him to possess knowledge of minimum behavior and integrity.[35] Accordingly, he would come under the purview of the 2009 FCE granting the FIFA Ethics Committee jurisdiction.[36] As well, the panel agreed with FIFA that the Ethics Committee did not lack competence (subsidiary jurisdiction) to investigate and sanction for breaches of the 2009 FCE without requiring that the respective confederation or national body to undertake the process first, if not already done so within three months of the committee's awareness of the offence.[37]

[26] Under Article 41.1 of the 2019 FCE.

[27] Siasia, paras 175 and 176, p. 32 and 33.

[28] Ibid, paras 177-180, p. 33.

[29] Ibid, para 180-181, p. 33 - under R57 of the CAS Code of Sports-related arbitration (CAS Code).

[30] Ibid, para 187, p. 34.

[31] Ibid, paras 190 to 192, p. 34 and 35.

[32] Article 1.1 of the 2009 FCE made the regulations applicable to all coaches, among other stakeholders in FIFA or a confederation, association, league or club.

[33] Siasia, para 183, 192-193, p. 34 and 35.

[34] Ibid, paras 193-195, p. 35.

[35] Ibid, paras 196-199, p. 35 and 36.

[36] Ibid, para 200, p. 36.

[37] Ibid, para 203, p. 37 – no prior proceedings had been proven to already have been commenced with lower bodies by the Appellant – para 204 – 206, p. 38 and 39.

2.3. Establishment of the bribery offence under Article 11 of the 2009 FIFA Code of Ethics

The panel noted that the Appellant did not dispute the facts but only interpretations and conclusions that the Adjudicatory Chamber had drawn from the correspondence between him and Mr. Perumal.[38] It also noted the principle of non-retroactivity *ratione personae* which has been upheld by past panels as a part of international public policy,[39] applying it to conclude that the Appellant could only be sanctioned if he had contravened the 2009 FCE being the code in force at the time of commission, as long as the new code maintained the misconduct as fault, respecting also the principle of most favourable provision in sanctioning matters.[40]

For the establishment of an offence under Article 11 of the 2009 FCE, the requirements include: the presence of an offer of a gift or advantage to an official, the incitement to breach some duty or behave dishonestly for the benefit of a third party, and the official should have breached the obligation to refuse.[41] The panel noted that Article 11 established a wide ranging scope of application, where the advantage gained could take any form (not necessarily material or economically quantifiable), with an offer or promise (such as of career advancement) being adequate.[42]

The panel thereafter proceeds to analyse the emails and witness testimony[43] focusing on the emails exchanged between the Appellant and Mr. Perumal, concluding, *inter alia*,[44] that the Appellant knew or could understand the nature of the author's business (to manipulate matches),[45] and that he did not refuse the conduct on which his coaching contract was to be dependent.[46] The panel inferred from other emails that the terms of manipulation were clear (constituting an offer and remuneration),[47] the Appellant was also interested in the terms of this

[38] Ibid, paras 207 and 208, p. 38.

[39] Ibid, para 209, p. 38 – Citing Joseph S. Blatter v. FIFA, CAS 2016/A/4501 award of 5 December 2016.

[40] Ibid, para 217, p. 40.

[41] Ibid, para 220, p. 41, citing generally Amos Adamu v. FIFA, CAS 2011/A/2426, award of 24 February 2012.

[42] Ibid, para 222, p. 41, citing, again, Amos Adamu v. FIFA, CAS 2011/A/2426, award of 24 February 2012, paras 117 and 118.

[43] Ibid, para 224, p. 42 documents the emails and witness testimony in detail.

[44] See, for example, ibid, para 232, p.45 – The panel deduces the Appellant's culpability based on the text of the interchange.

[45] Ibid, para 227-229, p. 44.

[46] Ibid, para 231, p. 45.

[47] Ibid, para 240, p. 47.

offer,[48] and that he signaled his acceptance and did not refuse (constituting a breach of duty and breach of his obligation to refuse).[49] The panel hence concluded that the Appellant's actions met the requirements to contravene Article 11 of the 2009 FCE even without the Appellant having received any money.[50]

2.4. Legal consequences and proportionality of sanction

With no sanction under the 2009 FCE for Article 11 breaches, the panel looked to Article 17.1 of the 2009 FCE whereunder different sanctions were provided for, concluding that while the maximum sanction was a ban and fine, the adjudicatory body had discretion as to exact amounts.[51] Addressing it's discretion, the panel noted that in accepting the CAS jurisdiction, the parties accepted that the panel had the ability to hear a matter *de novo* by reviewing in full both the facts and the law, and to issue a new decision replacing the challenged one or to annul and refer the case back for reconsideration.[52]

Yet, it noted further that such discretion, in the context of sanctions, was only to be exercised if the sanction was evidently and grossly disproportionate.[53] For this purpose, the panel noted what constituted such a standard, discussed in further detail below under section 3.2.2, and while noting that the imposed sanction fell within permissible limits of the 2009 FCE,[54] it also considered specific factors which served to both justify harsher punishment and more leniency.[55] It ultimately found that it needed to assess, despite seriousness of the offence, whether the harshest penalty permissible under the applicable regulations i.e. a life ban was proportionate here,[56] not disputing that a ban in itself was not unjustified.[57]

[48] See, for example, ibid, para 238, p 46.

[49] Ibid, para 241, p. 47.

[50] Ibid, paras 245-247, p. 48-49.

[51] Ibid, paras 248 - 253, p. 49-50. The panel chose to apply the 2008 FCE for sanctions as it seemed favourable to the Appellant relative to the 2018 FCE as it provided precise thresholds above which sanctions could be pronounced.

[52] Ibid, para 254, p. 50 – Under R57.1 of the CAS Code.

[53] Ibid, para 255, p. 50. A line of applicable prior CAS awards which had upheld this standard was used to support this, the latest decided one, and involving a manipulation offence being Guillermo Olaso de la Rica v. Tennis Integrity Unit, CAS 2014/A/3467, award of 30 September 2014.

[54] Ibid, para 263, p. 53.

[55] Ibid, see paras 264-266.

[56] Ibid, para 267, p. 54.

[57] Ibid, para 268, p. 54.

Ultimately, the panel concluded that the imposed sanction of a life-ban for a first offence committed passively, with no immediate adverse effect on football stakeholders was grossly disproportionate.[58] Considering the need to provide the Appellant a second opportunity to work in football in the future, it considered a five-year ban capable of achieving the envisaged aim of punishing an offence of this level of seriousness.[59]

The panel was unconvinced by FIFA's arguments on the cumulative sanction of a ban and a fine based on the facts that Appellant and fixer had both not made any gain or pecuniary benefit from their behavior, the scheme had not been implemented and the singular nature of the conduct.[60] Further, while noting the need to have deterrence for such offences, the ban was found to also have financial 'considerable' financial implication for a coach by eliminating football as a source of revenue,[61] as well as the social impact on the coach in specific circumstances.[62]

Accordingly, the Appellant's pleadings were partially upheld – the operative parts of the findings of the FIFA Ethics Committee were modified to reduce the Appellant's ban to five years from taking part in any kind of football-related activity at the national or international level (administrative, sport, or any other)[63] in addition to setting aside the imposed fine of CHF 50,000.[64]

3. Commentary - Analysis and relevance

This section seeks to look at two specific aspects of the above described award, the standard of proof and evaluation of evidence, and the question of proportionality of sanctions, in greater detail in light of literature and other awards of the CAS on manipulation.

[58] Ibid, paras 269 and 270, p. 54 and para 271, p. 56
[59] Ibid, para 272, p. 57.
[60] Ibid, para 276, p. 56 and p. 57.
[61] Ibid, para 277, p. 57.
[62] Ibid, para 278, p. 57.
[63] Ibid, para 280, p. 57 and para 2 of the ruling on p. 59.
[64] Ibid, para 280, p. 57 and para 3 of the ruling on p. 59.

3.1. Standard of proof and evaluation of evidence

At the outset, the panel's observations on the standard of proof in the context of disciplinary offences may be looked at in greater detail. Citing prior awards, and specifically those specific to manipulation, the panel importantly emphasized two things – *first*, that measures imposed by Swiss associations (in this case FIFA), should differ from criminal penalties (where the standard of 'beyond reasonable doubt', i.e. a higher standard of proof, was applicable);[65] and *second*, it emphasized that in assessing evidence it in cases of manipulation, it is to be kept in mind that the breaches of regulations are often sought to be concealed to ensure there is no trail of wrongdoing.[66]

The panel here also noted that assessment of evidence contributed significantly to the decision-making based on the 'comfortable satisfaction' standard, with the panel needing strong evidence that facts occurred in a specific manner, the evidence needing to satisfy the panel in the same sense.[67] To this end, the panel cited prior awards which stated that the 'context' i.e. relevant circumstances of the case assessed individually and/or combined are to be used to reach such a conclusion.[68] It is interesting to note, however, that this prior case was not an award concerning manipulation, but racism, an independent disciplinary offence – the relative gravity of both offences to extrapolate and confer similar (or dissimilar) standards of proof is difficult to gauge in order to persuasively further apply this reasoning to disciplinary offences in general or one of the two among these cases going forward.

Specific to manipulation and remaining consistency with prior awards, as also noted in prior writing,[69] the panel emphasized, and arguably pertinently, the need to note the significance of addressing manipulation offences, as well as the "*nature and restricted powers investigation*

[65] Ibid, para 157, p. 29, citing N. & V. v. Union of European Football Associations, CAS 2010/A/2266, award of 5 May 2011 – see para 18 therein.

[66] Ibid, para 158, p. 29, citing Mr. Oleg Oriekhov v. Union of European Football Associations, CAS 2010/A/2172, award of 18 July 2011 – see para 54 therein, as well as para 53, where another landmark case on manipulation is cited FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v. Union of European Football Associations, CAS 2009/A/1920, award of 15 April, 2010.

[67] Ibid, para 159, p. 30.

[68] Ibid. The panel cited a prior CAS award in GNK Dinamo v. Union des Associations Européennes de Football CAS 2013/A/3324 & 3369, award of 13 June 2014 which concerned disciplinary sanctions for racism in football.

[69] Discussed in Diaconu et al. (2021), under section 7.1 on Standard of Proof, citing the decision in Mr. Oleg Oriekhov v. Union of European Football Associations, CAS 2010/A/2172, award of 18 July, 2011, para 21 after which this was noted in many further decisions.

authorities of governing bodies of sport have in comparison with national authorities" while determining what 'comfortable satisfaction' should look like[70] (i.e. in this context, why it could be a lower standard than a criminal one) for manipulation.

There has been prior discussion on (with arguments being made in favour of) considering disciplinary offences, and regulations that govern them, akin to criminal law provisions. While not reiterated again here, and possibly impractical to consider in detail by each CAS panel per award in such cases, it is significant to highlight that the uncertainty over the classification/ nature of offences and regulations has bearing on the rigour of procedure normatively to be applied - which, in turn, directly impacts procedural rights of parties.[71] With the case being made of applicability of procedural safeguards under the European Court of Human Rights to CAS awards and procedure,[72] there is a necessity to have clarity, which brings legal certainty in the nature of regulations, and in turn applicable standards for parties to be able to assert their procedural rights which are required to be upheld by the CAS.[73]

Finally, the panel looked at how evidence adduced and on record before it was to be evaluated ('appreciation *des preuves*'), noting that '*libre* appreciation *des preuves*', both under Swiss arbitration law and other rules[74] allowed for it to be free in its evaluation of evidence or to determine its relevance, how material it was and what weight it was to be given.[75] This, when seen with CAS panels' established ability to consider decisions practically *de novo*, as discussed above, leads to situations where evidence adduction and evaluation becomes critical in turning decisions.[76] Thus, how evidence may be collected, what evidence may be adduced before the panel and connected factors – all of which are impacted by the determination of the

[70] Samson Siasia Siaone (Siasia) v. Federation Internationale de Football Associations (FIFA), para 159, p. 30.

[71] See, for example, the discussion in Hessert (2023), where the tests stemming from European Court of Human Rights jurisprudence on the categorisation of disciplinary offences and the statutes that contain them of as either criminal or civil.

[72] See, Duval (2022), the large number of CAS awards mentioning the European Convention of Human Rights either as argumentation, or applying principles and regulations to some extent was detailed to evidence that *de facto* the CAS did consider the convention and thereby its applicability; See also Rigozzi (2020), p. 78, where the argument for such applicability is made.

[73] European Court of Human Rights, Case of Mutu & Pechstein v. Switzerland (Applications nos. 40575/10 and 67474/10), judgment of 2 October 2018, para 56.

[74] Citing for example, Article 9(1) of the IBA Rules of Evidence.

[75] Samson Siasia Siaone (Siasia) v. Federation Internationale de Football Associations (FIFA), para 160, p. 30.

[76] Rigozzi and Quinn (2014), p. 1, as well as section 2.2 in Kuwelker (2022).

nature of the regulations, as discussed above are critical to the outcome of cases, with often severe sanctions, as seen below.

3.2. Quantum of sanction

In this award, as mentioned above in section 2.3 and 2.4, the ability of the panel to consider awards *de novo*, when appropriate to do so, and the delineation between reconsideration of facts and sanction (i.e. the standard of being 'evidently and grossly disproportionate') were all discussed in detail – perhaps with a view to, and serving the purposes of, justifying and laying out the foundation of revising operative parts of the decision of the FIFA body.

Unlike in prior cases which had found that should there be limited room to reassess facts, a panel's exercise of its full discretion to only assess sanctions would be arbitrary in nature,[77] the panel here held that it could find that the sanctions were in fact proportionate, but [*only*] based on a careful and thorough assessment of the facts (emphasis supplied).[78] It also noted its ability to consider precedent in such a determination.[79] Importantly, it also cited precedent stating that while a panel would not ordinarily 'tinker' with a fully reasoned and well-evidenced decision (differing from the lower body in sanction by a few months, for example),[80] this principle did not, in principle, prevent it from doing so.[81]

Also, as noted above in sections 2.1, 2.2 and 2.3, the CAS panel highlighted the principle of non-retroactivity for establishing the occurrence of a sanctionable offence as well as the quantum of sanction in disciplinary matters,[82] on the basis of which applicable law was determined. Sanctions are therefore to be determined in accordance with the law in effect at the time of the allegedly sanctioned conduct took place. Here, however, while the regulation

[77] Citing AC Milan v. UEFA, CAS 2018/A/5808, award of 1 October 2018 – while not mentioned in the award being discussed in this article, see Siasia, paras 133 to 135 thereunder where the degree and depth of scrutiny possible by CAS panels is discussed in detail with further reference to other awards.

[78] Siasia, para 257, p. 51.

[79] Citing Amos Adamu v. FIFA, CAS 2011/A/2426, award of 24 February 2012.

[80] It cited the decision of Piergorgio Bucci, Italy v. Federation Equestre Internationale, CAS 2010/A/2283 award of 23 June, 2011 – while uncited in the award being discussed in this article, para 14.36 of this award provided the example of not altering a 17 or 19 month suspension to 18 months if the decision were 'fully reasoned and well-evidenced'.

[81] Siasia, para 256, p. 51.

[82] The panel cited the prior CAS award of Jerome Valcke v. FIFA, CAS 2017/A/5003 award dated July 27, 2018.

applicable and offence to charge under determined relatively clearly, there were no specific guidelines within the applicable regulations on sanctioning, as has been advocated for in prior writing,[83] and the panel importantly here also made note of this.[84] More importantly, however, it considered that it was required to lay down relevant factors to be taken into consideration in such instances, and specifically in bribery offences, and reiterated factors laid down in precedent to guide it. The case of *Sidia Jose Mudagza* v. *FIFA*[85] concerning a bribery offence was heavily relied on.

As also noted in the award, while applying precedent, while guidance should be taken, each case is to be guided on its own facts. The panel also cited other awards to note that correctness was to be prioritised over consistency, so as to avoid the wrong benchmark inimical to the interest of sport.[86] Though the case cited on this principle by the panel was one related to doping severity of sanction in both instances could have adverse impact if incorrectly applied for consistencies sake. Overall, the principle of proportionality needed to be respected, which implied that there should be a reasonable balance between the kind of misconduct and the sanction.[87] The components of this principle, as seen in precedent were also noted, being: capability to achieve the goal of the sanction, the necessity of the measure to achieve such goal, and constraints to be suffered by the affected person balanced against the overall interest in the objective of such sanction.[88]

Here, the panel's noted factors, citing precedent (also from *Sidia Jose Mudagza* v. *FIFA*),[89] could be categorised as, *first*, external ones: the nature of the violation, impact on public opinion, the importance of the affected competition, the damage caused to the image of FIFA, the substantial interest of FIFA or the sporting system in general in deterring the conduct, the offender's assistance and cooperation, the circumstances around the act; and *second*, internal ones, specific to the offender: whether the violation was a repeated act, existence of precedent,

[83] Kuwelker et al. (2022) under the section discussing Sanction (section 3).

[84] Siasia, para 259, p. 51.

[85] Ibid, paras 259-260, p.51 – Sidio Jose Mugadza v. FIFA, CAS 2019/A/6219, award of 27 March 2020 (Mugadza).

[86] Robert Kendrick v. International Tennis Federation, CAS 2011/A/2518, award of 10 November 2011, para 10.23.

[87] As seen under Swiss law which applied – Advisory Opinion rendered by the Court of Arbitration for Sport CAS 2005/C/976&986 FIFA & WADA, paras 139 and 140.

[88] Siasia, para 260, p. 52 citing again the award in Mugadza, paras 118 and 119.

[89] CAS 2019/A/6219, award of 27 March 2020.

value of the advantage received, mitigating actions, whether the action was undertaken alone or with others, position, personality and education of the offender including evolution since commission of the offence, expression of regret or taking of responsibility by the offender, the motives of the violation and the degree of guilt.[90]

It may thus be observed that the panel's actively filling into the missing principles present in the regulation on sanctioning is important precedent where proportionality is under question (particularly in disciplinary offences) and guidelines lacking. The application of adduced evidence to this specific principle's requirements is discussed further below. As also seen below in sections 3.2.1 and 3.2.2, the panel considered proportionality of the life ban and the fine independently as the 2009 FCE did not have a minimum sanction specified for the proved offence, as opposed to the 2018 FCE.[91] As noted in section 2.4 above, after this consideration the panel concluded that both the ban and fine were disproportionate.

This is significant, because CAS panels have consistently upheld federation judicial body findings, and particularly in a long line of manipulation related awards,[92] indicating that this threshold has ordinary been very high.

3.2.1. Life-bans

As noted in section 2.4 above, while not disputing the imposition of a sanction, the panel disagreed with the proportionality of a maximum penalty under the regulation i.e. a life-ban, which it termed the "*most severe of disciplinary sanctions*"[93] to the "*level of guilt of the Appellant and the gravity of his infringement*".[94] This language used implies that the individual culpability within the commission of a crime, is independent and to be considered so, when sanctioning, from the gravity of the Appellant. This would, arguably be independent of the general gravity of the offence of manipulation.

[90] Ibid, para 117.

[91] Siasia, para 261, p. 53.

[92] See discussion in Silvero (2018), Palermo and Williams (2018), Diaconu et al. (2021) and Diaconu (2022), which cumulatively analyse in chronological order all of the CAS's jurisprudence across manipulation offences.

[93] Siasia, paras 263 para 267, p. 54.

[94] Ibid, paras 286 para 269, p. 54.

Sanctioning guidelines, while present in certain regulations, and specific to manipulations, are largely not present across sport bodies' regulations on prevention of manipulation.[95] Interestingly, the panel does not note the lack of such direction explicitly but states that the regulations do not guide them in a way that implies that a life ban should be imposed, noting importantly on its own that a "*lifetime ban can never be the inevitable consequence or automatic sanction to be imposed in every case of match-fixing*".[96] Importantly, and as has been noted in prior writing,[97] the panel emphasised, that this would compromise the principles of "*proportionality, predictability, and legality, fundamentals that should be observed*" when deciding sanctions, also citing prior awards which state this.[98]

Citing another uncommon manipulation award where the sentence had been mitigated (*Boniface Mwamelo* v. *FIFA*),[99] which had held that a specific case's circumstances should be decisive in determining the appropriateness and proportionality of a life ban,[100] the panel noted in detail prior awards which have put down factors to be considered when imposing sanctions.[101] It proceeded to thereafter in its consideration of facts relevant to determining proportionality, including, as seen in section 3.2 above, two types of factors. It noted the Appellant's contributions to the commission through factors such as his failure to refuse to participate or report,[102] knowledge of his duties and consequent failure to protect football stakeholders,[103] who initiated the fix, completion of the fix, the attempt being a singular instance with no prior fixing history, particularly with Mr. Perumal, abandonment of the negotiations after another coach's appointment, lack of gains, his proven discomfort with the situation, passiveness in participation, no consequent proven poor behavior, and the decision's negative effect that would hinder the Appellant getting back into the football workforce.[104] The

[95] See section 3 on Sanctions and section 9 which contains a Conclusion, in Kuwelker et al. (2022) – it is noted that certain federation include guidelines as well as aggravating and mitigating factors but they are, in large part not present.

[96] Siasia, para 265, p. 53.

[97] See, for example, Diaconu et al. (2021) under section 8, on Sanctions, as well as generally, Haas and Hessert (2021).

[98] For example, Luis Suárez, FC Barcelona and Asociación Uruguaya de Fútbol v. FIFA, CAS 2014/A/3665, 3666 & 3667, award of 2 December 2014, para 73.

[99] CAS 2019/A/6220, award of 7 July 2020.

[100] Ibid, para 161.

[101] Siasia, para 259, p. 51.

[102] Ibid, para 264, p. 53.

[103] Ibid, para 266, p. 54.

[104] Ibid, para 270, p. 53 and 54.

panel also considered external factors such as the lack of impact on the image of FIFA or competitions,[105] and the imperative to tackle widespread manipulation which compromised the perception of 'fair' competition.[106]

Yet, in the more recent cases of *Kevin Sammut v. UEFA*,[107] *Boniface Mwamelo v. FIFA*[108] and here, this has not been the case i.e. panels have 'tinkered' with lower body findings to reduce sanctions from life bans. In this case, the panel relied on the prior award in *Boniface Mwamelo v. FIFA*,[109] to importantly note that the most extreme sanction should not be imposed before less grave sanctions are exhausted. Though not noted by the panel here, that award also stated that in such instances, a panel should exercise its 'margin of discretion' where possible.[110]

Finally, while mitigation has been seen to be 'proportionate' on the one hand, on the other, panels have also considered the imposition of exemplary life-bans appropriate given a specific sport's susceptibility to fixing.[111]

3.2.2. Fines

The panel did not agree with FIFA's contention of the imposed fine relying on the level of income and financial expectations of the Appellant, as well as seriousness of the infringement supported by previous jurisprudence,[112] though it is to be noted that the award does not state specifically any reasons for not considering the cases cited by FIFA as valuable to justifying the imposition of a fine.

[105] Ibid, para 270, p. 54.

[106] Ibid, para 265, p. 53.

[107] Kevin Sammut v. UEFA, 2013/A/3062, award of 28 May 2014, para 177-180 – this award may however be differentiated from that at hand as the panel found based on the evidence before it that there was no proof of individual involvement in the "actual implementation" of the fix, mitigating the ban to 10 years from life.

[108] CAS 2019/A/6220, award of 7 July 2020.

[109] Ibid. Though uncited by the panel in the case discussed in this article, this principle is explicitly stated under para 168 of this award.

[110] Boniface Mwamelo v. FIFA, CAS 2019/A/6220, award of 7 July 2020, para 168.

[111] Daniel Köllerer v. Association of Tennis Professionals, Women's Tennis Association, International Tennis Federation and Grand Slam Committee, CAS 2011/A/2490 award of 23 March 2012 (Köllerer), para 66; the same principle was also applied in David Savic v. Professional Tennis Integrity Officers, CAS 2011/A/2621, award of 5 September 2012 (Köllerer).

[112] Siasia, para 273 and 275, p. 56 – the award does not detail the cited jurisprudence here or state why such jurisprudence is disagreed with. There is a lack of clarity between these paragraphs in the award on which decisions were cited by FIFA and which by the panel to support its own decision.

To support its decision to set-aside the fine, *first*, the panel made note of prior awards of the CAS[113] where even life-time bans (implying thus the graver nature of those offences) were not accompanied by fines to support its decision to set aside the imposed fine of CHF 50,000.[114] In other prior CAS awards, the cumulative impact of sanctions has been considered important to assess the quantum of sanctions issued and not merely as seen here between a ban and a fine (as has also been addressed in a few CAS awards)[115] but also between the concurrent sanctioning between two different bodies in manipulation cases,[116] particularly when seen with the impact made financially on the alleged offender. This decision could then be considered to reiterate consistently those factors to be important in determining fines.

Second, and as noted in detail in the findings in section 2.4 above, the panel here took into account specific factors peculiar to the circumstances of both the accused and that of offence i.e. whether there was gain or pecuniary benefit, whether the act was committed as a singular, non-repeated instance,[117] the financial implication for the accused and assessment thereby on whether there would be deterrence, noted to be important to sanction a manipulation offence.[118] These factors will serve as guidelines to future panels in the occasions where there is need to consider mitigating factors in reducing a fine.

Finally, the panel here also looked at, an arguably undefined and perhaps subjective, notion of 'social impact'[119] which it had referred to in the award prior when issuing the sanction, but not specifically fleshed out. Noting that the Appellant was 'in the last cycle of his professional career' having 'dedicated his life to football as a player and coach' convinced the panel in this case that "*the social impact"* would "*last longer*" than the five-year ban, implying that the effect of the ban on the person's future opportunities would also need to be paid attention to specific to the case.

[113] Mr. Oleg Oriekhov v. Union of European Football Associations, CAS 2010/A/2172, award of 18 July, 2011 and Vernon Manilal Fernando v. FIFA, CAS 2014/A/3537, award of 30 March 2015.

[114] Siasia, para 274, p. 56.

[115] Köllerer, paras 70 to 73 and Savic, paras 8.33(vii), 8.34, 8.36 to 8.38 and 9.3.

[116] As considered in Mohammed Asif v. ICC, CAS 2011/A/2362, award of 17 April, 2013 (Asif), paras 70–71 and 76, and Salman Butt v. ICC, CAS 2011.A/2364, award of 17 April 2013 (Butt), paras 53 and 54 where parallel sentencing in criminal proceedings took into account ICC's ongoing procedure which would likely result in certain additional sanctions.

[117] Siasia, para 276, p. 56 and p. 57.

[118] Ibid, para 277, p. 57.

[119] Ibid, para 277, p. 57.

4. Concluding takeaways

The CAS panel's analysis of precedent, principles and how the evidence adduced before it is to be utilised in the determination of establishment of both the offence and appropriate sanction in the award discussed above confirms what prior CAS panels have held in manipulation disputes. It follows in a line of jurisprudence through which increasingly there may be identified crystallised guidelines on characterisation of standard of proof based on the nature of an offence, as well as in determination of sanctions, where there is dearth of nuance in applicable principles. Consistency and correctness in decision making would both benefit from federation guidelines, as the regulations most often applied at first instance, being made more robust by incorporating these factors and principles, particularly given the potential of, often harsh sanctions issued at the federation level, including for first time disciplinary offences, combined with the discretionary nature of decision making on appeal thereafter.

References

Diaconu M (2022) CAS 2018/A/5800 Samir Arab v. Union Européenne de Football Association (UEFA), award of 14 November 2018. In: Duval A, Rigozzi A (eds) Yearbook of International Sports Arbitration 2018–2020. T.M.C. Asser Press, The Hague. https://doi.org/10.1007/15757_2022_37.

Diaconu M, Kuwelker S, Kuhn A (2021) The Court of Arbitration for Sport jurisprudence on match-fixing: A legal update. International Sports Law Journal 21:27-46. https://doi.org/10.1007/s40318-021-00181-3.

Duval A (2022) Lost in translation? The European Court of Human Rights at the Court of Arbitration for Sport. International Sports Law Journal 22:132-151. https://doi.org/10.1007/s40318-022-00221-6.

Duval A (2020) Time to go public? Need for transparency at the Court of the Arbitration for Sport. In: Duval A, Rigozzi A (eds) Yearbook of International Sports Arbitration 2017, pp 3-27. T.M.C. Asser Press, The Hague. https://doi.org/10.1007/15757_2019_29.

Haas U, Hessert B (2021) Sanctioning regime in match-fixing cases. In: Jusletter, Weblaw. DOI:10.38023/0b90833c-7a8a-46f5-b707-64b737451542.

Hessert B (2023) Sports Investigations Law and the ECHR. Routledge.

Kuwelker S (2022) Evolution of CAS human rights jurisprudence: observations from Keramuddin Karim v. FIFA. International Sports Law Journal 22:171-191. https://doi.org/10.1007/s40318-022-00219-0.

Kuwelker S, Diaconu M, Kuhn A (2022) Competition manipulation in international sport federations' regulations: a legal synopsis. International Sports Law Journal 22(4):288-313. https://doi.org/10.1007/s40318-022-00210-9.

Palermo G, Williams B (2018) Match-Fixing and the Evolution of CAS Jurisprudence. CAS Bulletin 2:8-25. https://www.tas-cas.org/fileadmin/user_upload/CAS_Bulletin_2018_2-..pdf. Accessed 30 December 2023.

Rigozzi A (2020) Sport Arbitration and the European Court of Human Rights – Pechstein and beyond. In: Muller C, Besson S and Rigozzi A (Eds) New Developments in International Commercial Arbitration. Stampfli.

Rigozzi A, Quinn B (2014) Evidentiary issues before CAS. In: Bernasconi M (ed.), International sports law and jurisprudence of the CAS. Weblaw.

Silvero EG (2018) The match-fixing eligibility criteria in UEFA competitions: an overview of CAS case law. CAS Bulletin 1:6:20. https://www.tas-cas.org/fileadmin/user_upload/Bulletin_2018_01.pdf. Accessed 30 December 2023.

Cases Cited

AC Milan v. UEFA, CAS 2018/A/5808, award of 1 October 2018.

Amos Adamu v. FIFA, CAS 2011/A/2426, award of 24 February 2012.

Boniface Mwamelo v. FIFA, CAS 2019/A/6220, award of 7 July 2020.

Case of Mutu & Pechstein v. Switzerland, ECtHR (Applications nos. 40575/10 and 67474/10), judgment of 2 October 2018.

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

David Savic v. Professional Tennis Integrity Officers, CAS 2011/A/2621, award of 5 September 2012.

GNK Dinamo v. Union des Associations Européennes de Football, CAS 2013/A/3324 & 3369, award of 13 June 2014.

FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v. Union des Associations Européennes de Football, CAS 2009/A/1920, award of 15 April 2010.

Guillermo Olaso de la Rica v. Tennis Integrity Unit, CAS 2014/A/3467, award of 30 September 2014.

Jerome Valcke v. FIFA, CAS 2017/A/5003, award of 27 July, 2018.

Joseph S. Blatter v. FIFA, CAS 2016/A/4501, award of 5 December 2016.

Kevin Sammut v. UEFA, 2013/A/3062, award of 28 May 2014.

Luis Suárez, FC Barcelona and Asociación Uruguaya de Fútbol v. FIFA, CAS 2014/A/3665, 3666 & 3667, award of 2 December 2014.

Mohammed Asif v. ICC, CAS 2011/A/2362, award of 17 April, 2013.

N. & V. v. Union des Associations Européennes de Football, CAS 2010/A/2266, award of 5 May 2011.

Oleg Oriekhov v. Union des Associations Européennes de Football, CAS 2010/A/2172, award of 18 July, 2011.

Piergorgio Bucci, Italy v. Federation Equestre Internationale, CAS 2010/A/2283, award of 23 June, 2011.

Robert Kendrick v. International Tennis Federation, CAS 2011/A/2518, award of 10 November 2011.

Salman Butt v. ICC, CAS 2011/A/2364, award of 17 April 2013.

Sidio Jose Mugadza v. FIFA, CAS 2019/A/6219, award of 27 March 2020.

Vernon Manilal Fernando v. FIFA, CAS 2014/A/3537, award of 30 March 2015.

Worawi Makudi v. FIFA, CAS 2018/A/5769, award of 11 February, 2019.