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Problems of Proof in Football Clubs' Disciplinary Liability for Match-Fixing: Practice of the Court of Arbitration for Sport (CAS) (2009–2014)

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Match-fixing is one of the most serious threats to professional football. As noted in one of the decisions of the Court of Arbitration for Sport (CAS), CAS 2014/A/3628, "... the protection of the integrity of the competitions is absolutely essential for UEFA, as match fixing is considered to be the biggest threat to sport because it touches at the very essence of the principles of loyalty, integrity and sportsmanship". In this article CAS decisions for the period 2009–2014 on cases related to the liability of clubs for match-fixing by officials or players are systematically introduced into scientific circulation. For this purpose, the authors consider the arguments of the parties and CAS in disputes and make the following conclusions. First, the arbitration is not inclined to impose a conditional sanction or reduce the size of the sanction on the basis of proportionality. Secondly, CAS considers an administrative measure to be different in nature from sanctions and therefore not subject to the principle of proportionality. Thirdly, the application of the principle of strict liability allows to hold the clubs that participated in match-fixing activities liable without proving the existence of the club's consent to illegal actions. Fourthly, in order to protect the integrity of sport CAS accepts the use of a wide range of evidence to confirm the fact of match-fixing, including the evidence, the application of which is deemed unacceptable in national legal systems.

Keywords: disciplinary liability of clubs, match-fixing, manipulations of sports results, liability of clubs for match-fixing, practice of the Court of Arbitration for Sport.

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Introduction

In this article we refer to the decisions of the Court of Arbitration for Sport (hereinafter – arbitration, CAS) for the period 2009–2014, which allow us to analyze the position of arbitration on the issues of combating manipulation of match results (the so-called “match-fixing activities”) (Arbitration CAS 2009/A/1920..., 2010; Arbitration CAS 2013/A/3256..., 2013; Arbitration CAS 2013/A/3297..., 2013; Arbitration CAS 2014/A/3625..., 2014; Arbitration CAS 2014/A/3628..., 2014). We draw attention to the CAS practice due to the formation of consistent practice of the UEFA jurisdictional bodies competent to bring players, clubs and their officials to disciplinary liability. Match-fixing, as noted in the practice of arbitration, is one of the most serious violations of sports regulation. However, Russian and foreign authors have not studied this issue in the context of these decisions yet.

According to the established practice of CAS, *Lex sportiva* (sports legislation) is used in disciplinary disputes, namely:

- the UEFA Disciplinary Regulations;
- the UEFA Europa League Regulations and the UEFA Champions League Regulations;
- the CAS code;
- CAS practice.

These rules of law have been used by CAS in all disputes declared by us. At the same time its own practice does not formally bind CAS, but in most cases arbitration refers to its decisions in motivation, thereby giving them a precedent character (Arbitration CAS 2013/A/3256..., 2013: 275-280). As was mentioned, all sports organizations must adopt strong regulations and clear procedures regarding match-fixing (Veuthey, 2014: 102).

CAS also applies Swiss legislation in a subsidiary way, since UEFA is an Association established and located in Switzerland. First and foremost, it is the application of the principles enshrined in Swiss legislation (Arbitration CAS 2014/A/3625..., 2014: 130). For example, in **CAS 2013/A/3256** the arbitration pointed out that article 2.06 of the

UEFA Europa League Regulations, which was valid during the period of dispute, did not contain reference to the standard of proof. It was therefore necessary to turn to Swiss law to answer the question, since the standard of proof in such a case was a question of law that applied subsidiary (Arbitration CAS 2013/A/3256..., 2013: 274). Match-fixing in the most national jurisdictions is considered as a crime. In this context match-fixing is often compared to doping, noting the “fight” against doping (Zaksaite, 2012: 18). Some academics, sports administrators and commentators posit that match-fixing is a more serious threat to the integrity of sport than doping (Carpenter, 2012: 13-24; Serby, 2015: 84).

However, CAS may not apply the procedural rules provided by Swiss law. For instance, the arbitration stated that it is possible to refer to **CAS 2009/A/1879**, according to which even if evidence might not be admissible in a civil or criminal court in Switzerland, this does not automatically prevent a sports federation or an arbitration from taking such evidence into account in its deliberations (Arbitration CAS 2013/A/3297..., 2013: 8.10). CAS's discretion extends to all evidence the use of which does not violate the basic principles of Swiss law. So, in **CAS 2013/A/3297**, the arbitration emphasized that, in accordance with the public interest in finding the truth in match-fixing cases, and given the limited capacity of sports federations and arbitrations in obtaining and securing evidence, it is necessary to take into account even the evidence that is inadmissible in particular national legal systems. However, such actions of arbitration or jurisdictional bodies of sports federations are still limited; they cannot violate fundamental values of Swiss procedural public policy (Arbitration CAS 2013/A/3297..., 2013: 8.11).

Still on the subject of the evidence used by arbitration in match-fixing cases, note should be taken of the doctrine and jurisprudence. In **CAS 2013/A/3256** it is pointed out that the virtue of an appeal system which allows for a full rehearing before an appellate body is that the issues relating to the fairness of the hearing before the tribunal of first instance “fade to the periphery” under the doctrine of Swiss law and CAS practice, which was first recorded in **CAS 98/211** (Arbitration CAS 98/211..., 1999: 8; Arbitration CAS 2013/A/3256..., 2013: 262).

Thus, there can be built a hierarchy of legal sources used by CAS:

1. Fundamental principles enshrined in Swiss law.
2. The UEFA Regulations.
3. CAS practice.
4. Swiss law.

5. Swiss legal doctrine and jurisprudence.

It should be noted that in fact there is no conflict between the acts of UEFA and the fundamental principles of Swiss legislation in the field of sports regulation. Thus, we can talk about the priority of *Lex sportiva* over national legislation when considering match-fixing disputes.

Before analyzing CAS decisions, we will refer to the description of the claimed disputes at the stage before the appeal.

Trial can be divided into three levels:

1. National football Federation.
2. UEFA.
3. CAS.

At the first and second levels, there are “first” and appellate instances, and it is also possible to examine the case within national jurisdiction. According to the category of cases we are interested in, there may be criminal prosecution on charges of giving/receiving a bribe or other crimes related to match-fixing (Arbitration CAS 2013/A/3256..., 2013: 41; Arbitration CAS 2014/A/3625..., 2014: 68; Arbitration CAS 2014/A/3628..., 2014: 66). However, the application of national law is difficult in CAS or UEFA proceedings. For example, in **CAS 2014/A/3628** the party referred to the illegality of the use of wiretapping in accordance with Turkish law, but this argument was not accepted by the arbitration.

Previous decisions are relevant to the CAS proceedings because the arbitration may take into account not only the decision of the UEFA Appeals Body, but also of national courts, as it was, for example, in **CAS 2013/A/3256** (Arbitration CAS 2013/A/3256..., 2013: 41). Arbitration may also take into account the previous positions of sports instances. In the previously mentioned dispute **CAS 2013/A/3256** arbitration drew attention to the decision of the Professional Football Disciplinary Committee of the Turkish Football Federation on the application of sanctions to the club “Fenerbahçe Spor Kulübü”: “However, a different position is... the club was sanctioned with penalty of relegation to the lower league” (Arbitration CAS 2013/A/3256..., 2013: 41). But it should not be forgotten that the arbitration shall consider the case in accordance with the principle *de novo*, provided for by Article 57 of the CAS Code (Code of Sports-related Arbitration, 2017).

CAS may also take into account materials collected during the investigation of alleged violations:

– report of the UEFA Disciplinary Inspector, as was done in **CAS 2014/A/3625** (Arbitration CAS 2014/A/3625..., 2014: 7);

– materials obtained by law enforcement authorities: for example, Police Digest in **CAS 2013/A/3256** or the results of an investigation by the German Prosecutor's office in **CAS 2010/A/2172** (Arbitration CAS 2013/A/3256..., 2013: 21; Arbitration CAS 2010/A/2172..., 2010: 2).

In the presence of a certain amount of evidence, “comfortable satisfaction” of CAS is possible and therefore the club can be held liable. For example, in **CAS 2013/A/3256** UEFA noted that there was sufficient evidence of match-fixing as the participation of club officials in such illegal activities was proved (Arbitration CAS 2013/A/3256..., 2013: 291).

In the cases concerned UEFA bases its position on a number of proofs at once: thus, if one of the proofs was not considered during the hearings, it would not affect the club's prosecution in accordance with the “comfortable satisfaction” standard. For example, the position of UEFA in **CAS 2013/A/3297** includes the argument that even the hypothetical declaring the evidence inadmissible allows the club to be held accountable because the video was not the only evidence on which the decision of the jurisdictional body was based (Arbitration CAS 2013/A/3297..., 2013: 7.3.2).

Let us turn to the positions of football clubs that have appealed to CAS and consider the two main arguments of the applicants:

1. The guilt of the players, officials and club's staff in misconduct as the grounds for holding the club liable has not been proven.
2. Mitigating circumstances were not taken into account; as a consequence, the sanction applied by the UEFA jurisdictional body is disproportionate to the violation.

Theoretical Framework

This study is based on the results of the previously published works of the few researchers of match-fixing in sports issues (Carpenter, 2012), (Peurala, 2013), (Zaksaite, 2012), (Lukomski, 2012), (Zaksaite, 2013), (Veuthey, 2014), (Serby, 2015), (Kerr, 2017).

At the same time, consideration of the composition of responsibility for match-fixing through the prism of key decisions of the Court of Arbitration for Sport for UEFA Disciplinary Regulations was not previously observed for the listed authors.

Statement of the Problem

The summarized and analyzed practice of the Court of Arbitration for Sport allows us to give an answer to a complex of sophisticated questions that arise in the process of

proving by the clubs and UEFA of their positions regarding disciplinary responsibility for match-fixing:

Who, when clubs are offended for match-fixing, are the officials, as well as any persons affiliated with the club acting on his behalf?

The use of the principle of strict liability by UEFA allows clubs to be brought to disciplinary liability, but the main question still remains: is it necessary to prove the club's direct or indirect consent to match-fixing?

Is it permissible to use a wide range of evidence to confirm the fact of match-fixing, including evidence, the use of which is considered inadmissible due to particular national law? And if the evidence is admissible, but having a defect (for example, poor quality of translation or recording of negotiations), can such evidence be used in CAS proceedings?

Is it possible to extend the probation period and principle of proportionality to an administrative measure – exclusion from UEFA club competitions, applied on the basis of the Champions League or Europa League Regulations, and not on the basis of the Disciplinary Regulations?

Could UEFA Disciplinary Chambers apply an administrative measure in the form of deprivation of the right to participate in UEFA club competitions cumulatively with disciplinary sanction?

Methods

In the research process the legal dogmatic method, the problem method, the legal modeling method, and the system method were applied. These methods have been already used by the authors in studying the disciplinary responsibility of the clubs for match-fixing in football.

The legal dogmatic method is used to analyze, to interpret and to systematize the offences of match-fixing in football as per the UEFA Disciplinary Regulations. The analysis is carried out on two levels. Firstly, the offences of match-fixing are analyzed from the point of view of the appellant clubs offended; secondly, – from that of the UEFA as the respondent; and thirdly, regarding the decisions of the Court of Arbitration for Sport.

The empirical part of the study consists of the cases on match-fixing 2009–2014, in which the clubs were offended by their officials' manipulations. A full analysis of the cases being limited to the scope of the article, we will illustrate in general the positions of the clubs, UEFA and CAS on match-fixing as it is banned by the UEFA Disciplinary Regulations.

Discussion

The use of evidence deemed inadmissible under national law or evidence with factual flaws

Stating that the guilt of the players and the clubs' officials in misconduct as the grounds for liability has not been established, the clubs formulate two main arguments in support of their position:

1. Evidence of guilt presented by UEFA is insufficient or inadmissible in the proceedings.
2. The actions of the person who committed the violation are not grounds for bringing the club to responsibility for match-fixing.

Under the circumstances listed by us, the clubs consider themselves not subject to disciplinary responsibility for match-fixing, as the evidence collected does not comply with the “comfortable satisfaction” standard, which applies to this category of cases, based on the seriousness of allegation made (Arbitration CAS 2014/A/3625..., 2014: 131). Therefore, the club should be released from responsibility for match-fixing.

First, the evidence could have been obtained in an improper way. As a result, they cannot be used in hearings. For example, in CAS 2013/A/3297 the club claimed that the arbitration violated Swiss public order, having applied the sanction on the basis of illegally obtained evidence (Arbitration CAS 2013/A/3297..., 2013: 7.2.2). The appellant took a similar position in CAS 2013/A/3256, considering the evidence used by the UEFA jurisdictional bodies to make a decision against the club inadmissible. Such evidence was the wiretaps conducted by the Istanbul police, which, according to the club, have a number of legal shortcomings (Arbitration CAS 2013/A/3256..., 2013: 284). In CAS 2014/A/3628 the club referred to the illegitimacy of the use of evidence, namely the wiretap evidence, drawing attention to the fact that one of the Turkish courts, which considered the criminal case about match-fixing in relation to the club's officials, declared the use of the abovementioned evidence in connection with liberalization of criminal procedure legislation inadmissible (Arbitration CAS 2014/A/3628..., 2014: 130).

Second, the arbitration should not take into account the evidence with errors in its content. For example, during the **CAS 2014/A/3625** hearings, FC Sivasspor challenged the accuracy of the translation of telephone conversations from Turkish into English. The club believed that the translation provided by UEFA was not correct, as the Turkish word “ameliyati” was translated as “operation”, the correct meaning of the word being “surgery”. Due to this incorrect translation, the UEFA Appeals Body considered

the word to be related to match-fixing operation, while in reality it referred to the surgical operation that the goalkeeper had to undergo at the end of the season and which took place in 2011. Therefore, in a telephone conversation, the Agent reassured the player that the latter should not worry about the future, but should concentrate on the upcoming surgery (Arbitration CAS 2014/A/3625..., 2014: 46). Also, during the **CAS 2014/A/3625** hearings, the club challenged the interpretation of the wiretaps listened to by the Turkish police: neither the Disciplinary Inspector nor the UEFA jurisdictional bodies analyzed the full record of the talks and referred to a part of it only. According to the club, having considered the full record and thereby filling in the missing parts and correcting errors in interpretation, it would become clear that the discussion between the parties was not about match-fixing activities (Arbitration CAS 2014/A/3625..., 2014: 43). For example, according to the club's argument in CAS 2013/A/3256, the negotiations of the club's official were related to legal activities and did not constitute evidence of match-fixing. The person had previously provided a loan to the club to pay the operating expenses, but the conversation was not recorded by the police. In the future, the official used these funds for one of the projects in the interests of the club. All transfers of the funds mentioned were recorded in the financial statements of the club and presented during the consideration of the dispute (Arbitration CAS 2013/A/3256..., 2013: 307). Thus, in the opinion of the clubs, selective citation and errors in the translation of the conversation should not allow taking the evidence into account in the CAS judgments.

Third, the applicants consider that the evidence collected by UEFA is not sufficient to hold the club accountable according to the "comfortable satisfaction" standard. For example, the club in CAS 2014/A/3628 noted that the UEFA Disciplinary Inspector had not provided any evidence other than the results of the recorded telephone conversation. Therefore, it is impossible to say that the "match-fixing" took place, since there is no evidence of the transfer of remuneration for the violation. In particular, there is no evidence that the funds were allegedly transferred to the player: it is not proved that the funds were allegedly in the bag that was given to the player by the intermediary, and the player claims that there was a watch inside the bag (Arbitration CAS 2014/A/3628..., 2014: 35). In another case, the club drew the attention of the arbitration to the fact that the funds, which are payment for the actions aimed at match-fixing, were not transferred. Therefore, there is no reason to consider these meetings as proof of the existence of certain match-fixing agreements. The Turkish club pointed out that the quotes from the listened phone conversation are not sufficient evidence of match-fixing, because such

quotes as if confirming the match-fixing activities (“everything is fine, I’ve just had a meeting with the guys” and “we need to beat them”) do not actually prove per se the existence of illegal arrangements (Arbitration CAS 2014/A/3628..., 2014: 35).

In another case, **CAS 2013/A/3256**, the club argued that the use of code phrases in the conversation had not been proven. In the opinion of the club, a telephone conversation related to construction projects, not to “match-fixing”, and the club does confirm that special and incomprehensible terminology was used in the conversation. However, the UEFA Disciplinary Inspector was wrong to consider this a special code to avoid revealing the fact of match-fixing. The person who used the named terminology is employed in the construction industry and manages a number of projects for the club. Therefore, the terminology in the conversation was related to one of these projects and did not represent a code for disguising illegal agreements (Arbitration CAS 2013/A/3256..., 2013: 434).

In addition to challenging the wiretaps, the clubs did not agree with the qualification of the meetings of their officials and players as match-fixing evidence. Their position was based on the fact that the meetings were personal and not related to illegal activities. For example, in the **CAS 2014/A/3625** dispute, to support its position the club drew attention to the fact that corruption is by its nature hidden, so to agree on match-fixing in public places is unreasonable, and it is even more illogical to transfer funds in such places (Arbitration CAS 2014/A/3628..., 2014: 43).

In contrast to the position of the club in CAS 2014/A/3628 that, apart from the wiretaps, no other evidence was presented, UEFA provides the materials used by the Turkish court: different protocols, inventory, registering the facts of mobile communication, a receipt of funds to the credit institution, reports of special bodies (for example, auditing organizations), the positions of the parties (Arbitration CAS 2014/A/3628..., 2014: 62).

In response to the argument of the “Fenerbahçe Spor Kulübü” club in CAS 2013/A/3256 that the accusation of match-fixing is groundless, as the use of code words in the conversation is not proved, UEFA pointed out that in this conversation there are repeated words from other telephone conversations (Arbitration CAS 2013/A/3256..., 2013: 448). These words were used in relation to several matches. As noted by UEFA, in view of the established presence of a large number of match-fixing cases and the creation of a criminal society in the season 2010/2011, this thesis is logical, since the code words in telephone conversations about contractual matches coincide with a high probability.

Proof of *negotiation and transfer of money as a reward for breach* is an interesting theme. In **CAS 2014/A/3628** UEFA referred to an investigation conducted by national law enforcement authorities (Arbitration CAS 2014/A/3628..., 2014: 64-65). In particular, the results of police surveillance were used to prove the transfer of monetary compensation for the violation, indicating that "... the intermediary left the hotel early in the morning, in his hand was a bag. The football player sent his driver to meet the intermediary, and when the intermediary returned to the hotel, he was already without a bag. During all this time, the car, which took the intermediary, was parked in front of the place of residence of the player" (Arbitration CAS 2014/A/3628..., 2014: 64).

In cases where there was no surveillance, the presence of meetings, indicating the manipulation of the match results, according to UEFA, is proved on the basis of *the results of wiretapping*. For example, in **CAS 2014/A/3625** the position of UEFA was that the content of the recorded conversation could be connected with the meeting concerning the organization of match-fixing: "... it is clear from all the wiretapped conversations that the President of Fenerbahçe met with the President of Sivasspor and entered into a match-fixing deal; on the basis of this deal and through B., a Sivasspor board member, and CC., an intermediary, the latter attempted to convince the Sivasspor player C. not to play to the best of his abilities" (Arbitration CAS 2014/A/3625..., 2014: 70). The argumentation about the meetings, as appears from a position of UEFA, does not leave doubts that officials and players of the clubs are guilty of match results manipulation. Therefore, according to the principle of "comfortable satisfaction" the argumentation of UEFA is possible.

Also, the UEFA argumentation can be based on *expert opinion*. For example, in **CAS 2009/A/1920**, a betting expert was involved. He concluded that the betting on the match was anomalous: "Objectively, something strange and unusual happened with rates in Asia. For me, there was no doubt that the match was not fair and that there was either an agreement on the account, as evidenced by noteworthy rumors, or a certain criminal community influencing the outcome of the match" (Arbitration CAS 2009/A/1920..., 2009: 3). In this case, the expert's conclusion was based on the fact that the size of the funds for the game was much larger than usual for such matches, and the dynamics of the coefficients was rather strange. In this regard, the expert and UEFA claimed that there was a manipulation of the match results. This report, as UEFA believed, was enough to admit the fact of manipulation in accordance with the "comfortable satisfaction" standard of proof. Although an alert by a UEFA monitoring system (as "machinery expert") is not a proof of match-manipulation either (Peurala,

2013: 275). On the other hand, lastly, the CAS 2016/A/4650 decision can be seen to legitimize data analysis as the grounds for suspension of clubs (Kerr, 2017: 51).

The position of CAS regarding the procedural possibility of applying the evidence is quite close to the position of UEFA. In its decisions, the arbitration emphasizes that the parties may invoke evidence that cannot be applied in accordance with national procedural law (the only limitation – Swiss public policy) (Arbitration CAS 2013/A/3297..., 2013: 8.11).

This CAS position is based on two theses:

1. It is necessary to establish the truth in the course of consideration of the case on manipulating the results, subject to the presence of public interest (Arbitration CAS 2013/A/3297..., 2013: 8.11).

2. Due to the limited resources of sports federations, it is necessary to apply evidence that cannot be considered in national courts (Arbitration CAS 2013/A/3297..., 2013: 8.11).

Separately, CAS examined the issue of the quality of translation of telephone recordings and their interpretation. Arbitrage noted that each record was reviewed separately (Arbitration CAS 2013/A/3256..., 2013: 294). Therefore, if the content or translation of one of the records is incorrect, this does not mean that all records are not considered as evidences. The CAS agrees with UEFA on the issue of assessing deficiencies in the records, considering that if the jurisdictional authorities of the national federation and the state court apply the records, they are correct and do not have defects (Arbitration CAS 2013/A/3256..., 2013: 294). The arbitration pointed to the fact that both parties can quote the records of the conversations they have heard and prove their case on the basis of quotations.

It is known that the fact of violation is established according to the “comfortable satisfaction” standard. Estimating the proofs, the CAS states the position that manipulation of match results is a covert corruption activity (Arbitration CAS 2014/A/3628..., 2014: 127). Therefore holding secret meetings and strange content of a talk which reflects the use of code words (“operation”, etc.) with a high probability are the basis to recognize these actions as manipulation of match results and to execute the standard of proof (Arbitration CAS 2014/A/3625..., 2014: 138).

If the club claims that in recorded conversations the talk is about legitimate activities, despite their strange content, the CAS rightly requires confirmation of this thesis. For example, in **CAS 2013/A/3256**, the arbitration indicated that the arguments brought by the club were untenable, because there was no evidence that the person

recorded in the telephone conversation was involved in a certain building project for the club and needed a sum for this project (Arbitration CAS 2013/A/3256..., 2013: 324). Since the club did not provide evidence of the legitimate activities of the person whose conversation was recorded, CAS recognized the record as evidence of the manipulation of the match result on the basis of “comfortable satisfaction”.

Similarly, the question of the nature of the meetings and the transfer of monetary reward for manipulating the results of the match was resolved. CAS established the facts of the transfer of remuneration in accordance with the standard of “comfortable satisfaction”: “... it is obvious that the agent met the goalkeeper and his brother in a restaurant and handed over a bribe” (Arbitration CAS 2014/A/3625..., 2014: 138).

CAS also takes into account the testimony of experts. For example, the fact of manipulating the results of the match can be established on the basis of expert testimony about abnormal bets on the game. As noted in **CAS 2009/A/1920**, the tribunal is convinced that the outcome of the game was planned, based on the expert’s opinion and his clear and convincing explanations during the hearing (Arbitration CAS 2009/A/1920..., 2010: 30). Due to the unambiguous conclusions about the manipulation of the results of the match on the basis of expert testimony and the lack of convincing objections of the club, the arbitration recognized the fact of violation as proven in accordance with the “comfortable satisfaction” standard.

The proportionality of the sanction applied by the UEFA Appeals Body

The fact of challenging the proportionality of the sanctions does not mean that the club accepted the guilt of manipulating the results of matches. In all the cases each of the clubs that appealed demanded a reduction in the amount of the sanction, taking into account the presence of mitigating circumstances only if CAS would bring the club to justice.

The clubs usually referred to several mitigating circumstances, as was done in **CAS 2014/A/3628** (Arbitration CAS 2014/A/3625..., 2014: 64):

1. UEFA has never applied sanctions for commission of illegal acts by the third party. In previous decisions (cases of FC “Olimpiakos”, “Fenerbahce”, “Steaua”, “Besiktas”), UEFA punished the team, which initiated the manipulation of the match results in their favor. In addition, when dealing with cases at the national level, only the involved club officials were prosecuted.

2. The club was a victim of manipulating the results of the match, not the infringer.
3. The club has taken all possible precautions to avoid such a situation.

4. The club reacted to the scandal with the manipulation of the match results in the best possible way, terminating unilaterally the employment contracts with the player and the coach after they were convicted by the national courts for manipulating the match results.

5. The club did not benefit from manipulating the results of the match.

6. UEFA did not suffer damage to the image or other harm in the competition held, since the alleged manipulation of the match results did not help the club to claim victory in the competition.

In turn, in **CAS 2013/A/3297**, in the opinion of the club, the following should have been recognized as mitigating circumstances (Arbitration CAS 2013/A/3297..., 2013: 7.2.2):

1. The duration of the period elapsed since the violation.

2. Lack of sporting claims of the club as a motivation for manipulating the results of matches.

3. The injustice of applying the principle of strict liability due to the lack of evidence against the club and its officials.

In **CAS 2013/A/3256**, Fenerbahce FC put forward some of the circumstances previously listed by us, namely the lack of sufficient evidence against the club officials and the lack of damage to the image or other harm to UEFA as a result of the club's actions (Arbitration CAS 2013/A/3256..., 2013: 553).

The presence of mitigating circumstances should lead to a reduction in the size of the sanctions applied. Usually, in the cases under consideration, the clubs asked to change the real sanction for a conditional one with a probation period or to reduce the sanction for a violation. For example, the club applied for this in **CAS 2014/A/3628** and **CAS 2013/A/3297** (Arbitration CAS 2014/A/3628..., 2014: 13; Arbitration CAS 2013/A/3297..., 2013: 7.2.2).

Also, the applicants in support of their position give the practice of arbitration. For example, during the hearings on the case **CAS 2013/A/3297**, the club noted that the size of the sanction is contrary to the current practice of determining CAS proportionality (Arbitration CAS 2013/A/3297..., 2013: 7.2.2). FC Fenerbahce put forward the similar argument in **CAS 2013/A/3256** (Arbitration CAS 2013/A/3256..., 2013: 555).

The arguments of UEFA are objections to the applicants' arguments and can be systematized as follows:

1. The guilt of players, officials of the club in manipulation of results of matches as the basis of bringing the club to responsibility is proved;

1. The mitigating circumstances were taken into account, as a result of which the sanction imposed by the UEFA Appeals Commission is proportionate to the violation.

The arguments of UEFA can be divided in the same way as the classification of the applicant's arguments previously presented by us. For example, in **CAS 2013/A/3297**, the position of UEFA was in justification of a possibility to apply a complex of proofs collected by national federation:

1. The evidence does not have disadvantages, due to which their use is impossible.
2. The evidence submitted is permissible to be used in the dispute resolution process in the jurisdictional bodies of UEFA and in the CAS.

According to UEFA, the application of evidence despite discrepancy to national procedural legislation is possible. For example, during the UEFA **CAS 2013/A/3297** hearings, it was stated that according to current CAS practice, even if the evidence may be inadmissible for civil or criminal justice, this does not prevent the sports federation or the independent arbitration from taking this evidence in the course of settlement of dispute (Arbitration CAS 2013/A/3297..., 2013: 7.3.2). This argument is based on the fact that when considering a case within a sports organization or arbitration, the possibilities for obtaining evidence are objectively limited: the resources of such organizations are much more modest than the resources of the law enforcement agencies of the state. In addition, an argument in favor of accounting of such proofs is also the public interest expressed in justice and honesty of football competitions and also in firmness of the values of sport recorded in the Charter of UEFA (Arbitration CAS 2014/A/3628..., 2014: 118).

In most cases, UEFA objects to the claimants' arguments related to the actual evils of evidence, on the basis of which the decision of the Appeal Commission was made. For example, if in **CAS 2014/A/3625** the representatives of the club claimed that the UEFA translation is incorrect, the representatives of UEFA argued, in turn, that the interpretation of the conversations heard by the club was incorrect (Arbitration CAS 2014/A/3625..., 2014: 81). UEFA based its position on the correctness of the Turkish court's interpretation of the telephone conversations heard. Therefore, the use of a prepared translation must be recognized as valid evidence in the proceedings.

UEFA refers to the decisions of the jurisdictional bodies of the Turkish Football Federation as well as the Turkish courts (Arbitration CAS 2013/A/3256..., 2013: 310), because it believes that the presence of an error in the interpretation of telephone conversations by the national football federation and the fact that the court overheard telephone conversations are unlikely, therefore, the translation was correct. Thus, the evidence did not have flaws, which made it impossible to apply them in the course of a dispute.

The arguments of UEFA are based on the fact that manipulating the results of matches is a serious blow to the fundamental values of football and, therefore, strict liability measures should be applied, and CAS should not be perceived as a “distributor of discounts” (Arbitration CAS 2013/A/3297..., 2013: 7.3.2). Based on this, the arbitration cannot reduce the size of sanctions without good reason.

At the same time, UEFA considers that the administrative measure in the form of disqualification of the club for one year is specified in the Competition Regulations and is a reasonable, proportionate and necessary measure to protect the values of football. Due to the presence of a certain administrative measure in the Competition Regulations, clubs cannot challenge its use. Similar statements can be found in other cases. For example, in **CAS 2014/A/3625**, it was noted that, based on all the factual circumstances and the available information on the dispute, UEFA considers the sanction applied as reasonable and proportionate, since there is no doubt that the club was directly or indirectly involved in manipulating the results of matches or an attempt to manipulate, which should find an adequate response, the response being a disqualification from the competition under the auspices of UEFA for a period of one season (Arbitration CAS 2014/A/3625..., 2014: 101). Due to the “automatic” nature of the application of administrative measures and in the absence of truly mitigating circumstances, UEFA considers the exclusion of the club from participation in competitions to be in proportion to the violation.

In **CAS 2013/A/3297** and **CAS 2014/A/3628**, UEFA arguments can be presented as follows:

1. Application of administrative measures is based on the principle of “strict liability” (Arbitration CAS 2013/A/3297..., 2013: 8.34).

2. It is possible to apply the principle of “strict liability” in view of a sufficient amount of evidence and, as a result, a sufficient conviction of the jurisdictional authority (Arbitration CAS 2013/A/3297..., 2013: 8.35). Consequently, there are no grounds for using a conditional sanction for a probation period and, in the opinion of UEFA, the club should have been deprived of the right to participate in competitions.

3. Absolutely defined administrative measures cannot be reduced (Arbitration CAS 2013/A/3297..., 2013: 8.35).

4. To prosecute, the club’s consent to the actions of affiliated persons who manipulated match results does not matter, since the meaning of this provision is that clubs should take responsibility for the illegal behavior of players and officials. This is due to the fact that clubs sign the “rules of eligibility” for a particular competition and have an obligation to comply with the goals of UEFA (Arbitration CAS 2014/A/3625...,

2014: 149). Therefore, the consequences of the violation are not considered mitigating circumstances and, moreover, this circumstance is completely irrelevant to the “rules of eligibility” provided for by the regulations.

5. By signing the form of admission criteria, the applicant expressly agreed to be bound by the provisions of Art. 2.08 of the Regulations (as amended at the time of participation in the competition) on the prevention of manipulation of the results by officials or players. Therefore, the club must be deprived of the right to participate in competitions under the auspices of UEFA for one season (Arbitration CAS 2013/A/3256..., 2013: 149).

As you can see, the clubs and UEFA presented their arguments on two issues that can be systematized as follows:

1. Has the guilt of officials, players, and other affiliated employees of the club been proved in the commission of the offense and are there grounds for bringing the club to responsibility?

2. Were mitigating factors taken into account when imposing sanctions?

In accordance with CAS practice, the appellant must prove that the sanction is disproportionate (Arbitration CAS 2013/A/3297..., 2013: 8.34). The position of the arbitration is based on the fact that the burden of proof according to Art. 8 of the Swiss Civil Code lies on the party approving a certain fact. The amount of the sanction is specified in the relevant standard of the UEFA Disciplinary Regulations.

CAS considered the danger of manipulating the match results for professional sports (Arbitration CAS 2013/A/3297..., 2013: 8.35). Due to the importance of combating the manipulation of match results, arbitration in most cases neither reduced the size of the sanction nor applied conditional sanction. For example, in a **CAS 2013/A/3297**, arbitration did not assess the facts cited by the club as evidence that the sanction was disproportionate and should, at a minimum, be conditional (Arbitration CAS 2013/A/3297..., 2013: 8.35). And in **CAS 2014/A/3625**, arbitration referred to the fact that an absolutely certain administrative measure could not be reduced, since it is not a sanction (Arbitration CAS 2014/A/3625..., 2014: 149). CAS motivated its decision by the arguments of UEFA previously presented by us about the impossibility of reducing the administrative measure defined in the Regulations.

It is interesting that in **CAS 2013/A/3256** arbitration acknowledged that the results were manipulated in relation to fewer matches than in the charges against the club. Nevertheless, arbitration supported the proportionality of the sanction (Arbitration CAS 2013/A/3256..., 2013: 149).

Conclusion

Application of the principle of strict liability allows to bring to justice the clubs that participated in manipulating the results of the matches without proving the presence of the club's consent to illegal actions. Due to this principle, it is possible to bring violator clubs to justice, because de jure no one participant manipulating the results of a match can have the right to conduct such activities on behalf of the club.

To protect the integrity of the sport, CAS recognizes the use of a wide range of evidence to confirm the fact of perfect manipulation of the results, including the evidence, the application of which is recognized to be unacceptable as per national legal systems. On the issue of applying evidence that may be considered inadmissible in individual national jurisdictions, the CAS is in solidarity with UEFA. At the same time, the parties still have the opportunity to provide arguments for the implementation of the "comfortable satisfaction" standard. Discretion in the selection of admissible evidence is primarily necessary for UEFA in order to prove the manipulation of the results, since, as CAS notes, this activity is secret and difficult to detect. Consequently, the refusal of a wide range of evidence would make the position of the parties unequal and would give an advantage to the clubs that are brought to justice.

At the same time, the practice of imposing disciplinary sanctions in conjunction with administrative measures is also a way to combat the manipulation of match results. The established practice of CAS in disputes about the liability of clubs for manipulating match results is to refuse to apply a conditional sanction or reduce the size of the sanction on the criterion of proportionality, including its application to administrative measures, stipulated by the provisions of competition regulations under the auspices of UEFA (that are not sports (disciplinary) sanctions by their nature).

Administrative measure in the form of deprivation of the right to participate in UEFA club competitions, provided for by the relevant regulations of the competition, is legally defined and allows to restore the integrity of the sport and the principles of fair sport. At the same time, the club that has violated the rules on the inadmissibility of manipulating the results, in addition to the deprivation of the right to participate in competitions, bears certain reputational and economic losses (funds received for participation in competitions, income from TV broadcasts, etc.). Since, as the practice we have reviewed shows, the club is highly likely to be brought to disciplinary responsibility on the basis of the provisions of the UEFA Disciplinary regulations, in addition to the administrative measure, an appropriate sanction is applied. With regard to this sanction, in contrast to the administrative measure, it is possible to

discuss the principle of proportionality, which was demonstrated by the clubs in some of the cases (however, unsuccessfully). Thus, administrative measures and (or) disciplinary sanctions play a preventive function on the club monitoring the activities of their officials and players, as well as any affiliated club of the persons acting on its behalf.

We agree with Zaksaitė who is stated to "... advocate such cultural policy that contributes to wider understanding of similar skills not trying only to eradicate or punish them. Disciplinary law and the scope of its application might be relatively narrow, covering only a sport's community" (Zaksaitė, 2013: 289). Match-fixing is a hidden corruption and sometimes it is difficult to find a clearly evidence of it. Although, even if an act is harmful enough to be punished, current sports jurisprudence in football made it possible to apply disciplinary liability even if it was stated that there was a reasonable doubt. Such practice is really doubtful especially if the sanction is severe (Lukomski, 2012: 291).

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Проблемы доказывания при привлечении футбольных клубов к дисциплинарной ответственности за манипулирование результатами матчей: практика Спортивного арбитражного суда (CAS) за 2009–2014 гг.

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Манипулирование результатами матчей – одна из важнейших угроз профессиональному футболу. Как отмечалось в одном из решений Спортивного арбитражного суда (CAS), CAS 2014/A/3628, «... защита неприкосновенности соревнований абсолютно необходима для УЕФА, поскольку манипулирование результатами является крупнейшим вызовом, затрагивающим базовые принципы преданности игре, целостности спорта и спонсорства». В настоящей статье представлены решения CAS за 2009–2014 гг. по делам, связанным с ответственностью клубов за подобное манипулирование, причем как официальных лиц, так и игроков. Авторами проанализирована аргументация сторон и CAS при рассмотрении споров, а также сделан ряд выводов. Во-первых, арбитраж не склонен применять условную санкцию или снижать размер санкции по критерию соразмерности. Во-вторых, CAS считает административную меру отличной по своей природе от санкций, а значит, на нее принцип соразмерности не распространяется. В-третьих, применение принципа строгой ответственности позволяет привлекать к ответственности клубы, которые участвовали в манипулировании результатами матчей без доказывания наличия согласия клуба на противоправные действия. В-четвертых, для защиты целостности спорта CAS признает допустимым применение широкого круга доказательств, позволяющих подтвердить факт совершеного манипулирования результатами, включая те, применение которых считается недопустимыми с точки зрения национальных правовых порядков.

Ключевые слова: дисциплинарная ответственность клубов, манипулирование результатами матчей, ответственность клубов за манипулирование результатами матчей, практика Спортивного арбитражного суда (CAS).

Научная специальность: 12.00.00 – юридические науки.
