

Analysis of Evidence in the Case CAS 2019/A/6636 BC Arsenal v. Russian Basketball Federation and Forecasting of the Position of the CAS in the Case

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ABSTRACT

The subject of the article is the issue of the responsibility of persons for match-fixing activities. It considers the issue of the probable assessment of evidence in CAS 2019/A/6636. The forecast of the CAS position is based on the established Arbitration practice. The parties' positions are modeled based on the information available in open sources. **Keywords:** disciplinary responsibility of individuals, match fixing, responsibility of individuals for match fixing

Manipulation with the results of matches is one of the major threats to professional sports. As noted in one of the decisions of the Court of Arbitration for Sport (hereinafter — the CAS) CAS 2014/A/3628, the protection of the integrity of the competition is absolutely necessary, since “match fixing is the major challenge, as it affects the basic principles of loyalty to the game, the integrity of sport and sponsorship”¹. The CAS practice in this category of cases is of particular interest, as it demonstrates the specifics of the use of Lex sportiva to combat threats to professional sports.

This article analyzes the likely arguments of the parties and their assessment by the arbitration in the dispute between Arsenal BC and the Russian Basketball Federation (hereinafter — the RBF) which is considered in the Court of Arbitration for Sport².

Let us consider the facts of the case.

On December 7, 2019, the match of the 9th round of the Second Division of the men's Super League between the clubs of Arsenal (Tula) and Dynamo (Stavropol) took place. The first quarters of the match were not marked by anything remarkable, but in the last quarter with the score of 82:65 in favor of the Tula, the hosts started playing “strangely”. During the last minutes Arsenal basketball players of Arsenal confidently ignored the “one hundred percent” chances to score the ball and, as a result, did not score a single point in this segment. Though Dynamo scored one three-pointer, the “style” of their game was very similar to the opponent³.

The RBF investigated this “strange” game. Based on the video recording of the match, as well as the conclusion of the Review Commission and the recommendation of the Directorate, the RBF Executive Committee considered the teams' actions at the end of the game unsportsmanlike. As a result, two decisions were made.

Firstly, to annul the result of the Arsenal — Dynamo match and to declare a forfeit defeat to both teams with “disqualification”.

Secondly, in accordance with the Regulations of the Championship and the Cup of Russia among men's and women's clubs/teams in the 2019/20 season, taking into account the presence of a warning for violating the spirit of competitive rivalry and fair play in the 2017/18 season, to delete Arsenal BC (Tula) from the list of the participants of the XXIX Russian basketball championship among men's clubs/teams of the Super League Second Division⁴.

Arsenal BC contested this decision by applying to the CAS, and on December 20, 2019, the arbitration issued interim measures: it suspended the execution of the RBF decision and ordered the club to continue participating in the competition⁵.

¹ Arbitration CAS 2014/A/3628 Eskişehirspor Kulübü v. Union of European Football Association (UEFA), award of 2 September 2014 (operative part of 7 July 2014) [Electronic resource] // Court of Arbitration for Sport. URL: <http://jurisprudence.tas-cas.org/Shared%20Documents/3628.pdf#search=3628> (accessed on: 10.02.2020).

² Arsenal BC contests the decision of the RBF in the Court of Arbitration for Sport (CAS) [Electronic resource] // Arsenal Basketball Club. URL: <http://bcarsenaltula.ru/news/439/> (accessed on: 10.02.2020).

³ The RBF expelled Arsenal from Super League-2 for the “strange basketball” but the Tula club is fighting, in courts now [Electronic resource] // Internet portal Sports.ru. URL: <https://www.sports.ru/tribuna/blogs/sportslaw/2700306.html> (accessed on: 10.02.2020).

⁴ The Tula Arsenal has been expelled from the body of the participants of the Russian Championship [Electronic resource] // Russian Basketball Federation. URL: <https://russiabasket.ru/news/36438/tulskij-arsenal-isklyuchen-iz-chisla-uchastnikov-chempionata-rossii> (accessed on: 10.02.2020).

⁵ Arsenal BC contests the decision of the RBF in the Court of Arbitration for Sport (CAS) [Electronic resource] // Arsenal Basketball Club. URL: <http://bcarsenaltula.ru/news/439/> (accessed on: 10.02.2020).

Thus, there are two possible grounds for canceling the RBF decision or reducing the sanction:

1. Failure to prove the fact of match fixing.
2. Unlawful imposition of the sanctions in the form of expulsion from the League.

I. Evidence of the fact of manipulating the results of the match

In accordance with the CAS practice, the principle of strict responsibility of clubs for the actions of its officials has been established. Based on this principle, it does not matter whether the actions of the person are approved by the management of the club or whether it is exclusively his initiative⁶.

Hence, the RBF is to prove that at least one player, coach, or another person who can influence the game has manipulated the results of the match⁷.

In accordance with the established CAS practice the use of evidence is regulated by Lex sportiva (CAS Code and CAS judicial practice).

Besides, the CAS subsidiarily⁸ applies the Swiss law. The arbitration has explicitly stated that Lex sportiva has priority over the Swiss law in dispute resolution⁹.

However, the fundamental principles have priority over Lex sportiva, this refers to the application of the principles enshrined in the Swiss law, if these principles are applied in the arbitration¹⁰. In accordance with the practice of the Sports Arbitration, the principles established for criminal proceedings are not applied¹¹.

Based on the above, the CAS admits a wide range of evidence^{12, 13}.

The main evidence in match manipulation cases is often the evidence obtained from criminal trials conducted by national law enforcement agencies¹⁴.

In this case, however, no investigation was carried out into the fact of manipulating the results of the match, although the responsibility for unlawful influence on the result of an official sports competition is stipulated by the Criminal Code of the Russian Federation^{15, 16}.

Due to the refusal to initiate criminal proceedings, the amount of the possible evidence is reduced, since the RBF does not have the same powers as law enforcement agencies.

The main evidence providing the grounds for the RBF decision is the video recording of the match which shows the "strange" play of the athletes¹⁷.

⁶ Arbitration CAS 2014/A/3625 Sivasspor Kulübü v. Union of European Football Association (UEFA), award of 3 November 2014 (operative part of 7 July 2014) [Electronic resource] // Court of Arbitration for Sport. URL: <http://jurisprudence.tas-cas.org/Shared%20Documents/3625.pdf#search=3625> (accessed on: 10.02.2020).

⁷ Id..

⁸ Arbitration CAS 2013/A/3256 Fenerbahçe Spor Kulübü v. Union of European Football Association (UEFA), award of 11 April 2014 (operative part of 28 August 2013) [Electronic resource] // Court of Arbitration for Sport (accessed on: 10.02.2020).

⁹ Arbitration CAS 2017/A/5003 Jérôme Valcke v. FIFA, award of 27 July 2018 [Electronic resource] // Court of Arbitration for Sport. URL: https://www.tas-cas.org/fileadmin/user_upload/Award_5003_Final.pdf (accessed on: 10.02.2020).

¹⁰ Id..

¹¹ Id..

¹² Krus A. S. Manipulation or illegal influence on the result of the match [Manipuliaciia ili nezakonnoe vliianie na rezultati futbolnogo matha] // in SB.: Legal policy of Russia in the sphere of judicial power: Collection of scientific articles [Pravovaya politika Rossii v sfere osushestvleniya sudebnoy vlasti]. SPb. : Asterion. 2019. Pp. 215–220.

¹³ Afanasiev D. A., Vasiliev I. A. Review of the practice of the court of arbitration for Sport in 2009–2014 on attracting clubs to sports (disciplinary) responsibility for manipulating match results [Obzor praktiki Sportivnogo arbitrazhnogo suda za 2009–2014 gg po privlicheniu klubov k sportivnoy (disciplinarnoi) otvetstvennosti za manipulirovanie rezultatami matchei] // St. Petersburg lawyer [Peterburgskii urist]. 2018. № 1. Pp. 72–94.

¹⁴ Jun C., Vasilyev I. A., Izmailkova M. P., Dongmei P., Khalatova R. I. Problems of proof in football clubs' disciplinary liability for match-fixing : Practice of the court of arbitration for sport (CAS) (2009–2014) // Journal of Siberian Federal University — Humanities and Social Sciences. 2019. № 3, 05.2019. Pp. 343–362.

¹⁵ Art. 184 of the Criminal Code of the Russian Federation. Law dated June 13, 1996 No. 63-Φ3 // Ros. gas. 1996. Access from SPS "ConsultantPlus".

¹⁶ Krus A. S. Manipulation or illegal influence on the result of the match [Manipuliaciia ili nezakonnoe vliianie na rezultati futbolnogo matha] // in SB.: Legal policy of Russia in the sphere of judicial power: Collection of scientific articles [Pravovaya politika Rossii v sfere osushestvleniya sudebnoy vlasti]. SPb. : Asterion. 2019. Pp. 215–220.

¹⁷ The Tula Arsenal has been expelled from the body of the participants of the Russian Championship [Electronic resource] // Russian Basketball Federation. URL: <https://russiabasket.ru/news/36438/tulskij-arsenal-isklyuchen-iz-chisla-uchastnikov-chempionata-rossii> (accessed on: 10.02.2020).

In accordance with the CAS practice, the mere fact of poor performance by players does not constitute evidence of match result manipulation¹⁸. Hence, this is not the main evidence of the club's fault. Based on this, according to the standard of sufficient (comprehensive) conviction (comfortable satisfaction), the fact of manipulation of the match results cannot be established.

However, this CAS practice was developed in the course of consideration of the cases related to the manipulation of the results of football games^{19, 20}. The disputes under consideration involved the balls dropped by the goalkeeper in situations where in most cases a professional goalkeeper did not allow a goal.

In the case of the Arsenal — Dynamo game, there was a massive strange behavior of the players. Arsenal scored its last points 6 minutes 57 seconds before the final siren, after which the team's players started losing the ball and making inaccurate shots. On the part of the guests, similar actions were observed in the final 5 minutes: Dynamo's only hit during this time came from behind a three-point arc at the end of the time of handling the ball²¹. Thus, the players of the teams performed "strange" actions for a long time.

Therefore, this "abnormal" behavior cannot be just a coincidence and therefore must be accepted as evidence.

In addition, a proof of the fact of manipulation of the match results is an interview with Viktor Uskov, President of Arsenal BC, in which he pointed out that the actions of his team players were a reaction to the behavior of the opposing team which demonstratively stopped scoring points 5 minutes before the end of the match²².

Thus, the president of the club admitted that the players' actions were unsportsmanlike. Based on the above, the CAS is likely to establish that the match results were manipulated with.

However, the club may point to the social usefulness of its actions: refusing to play is a way to demonstrate the unsportsmanlike behavior of Dynamo players and draw attention to the problem of manipulating match results.

In addition, there is no manipulation of the results of matches due to the fact that Arsenal was winning the game at the time of the "refusal" to play. Consequently, the lack of scored points at the end of the game is an unusual tactic that allows drawing attention to the unsportsmanlike behavior of Dynamo players.

However, these arguments are unlikely to be taken into account by the CAS, since Arsenal scored its last points within 6 minutes 57 seconds and its players "abandoned" the game almost 2 minutes earlier²³.

Consequently, the Arsenal players could not pay attention to the unsportsmanlike behavior of the rival, as they were the first to act in an unsportsmanlike manner.

Therefore, the CAS will probably agree with the decision of the RBF regarding the manipulation of the match result by Arsenal.

In addition, the results of the bookmaker's expertise can be used as evidence²⁴. An expert's assessment of the betting market for "abnormal" betting on the match results will be important evidence.

Based on the above, an expert examination is necessary, and its results can be decisive.

If the presence of "abnormal" bets is established, the CAS will probably admit the fact of manipulation of the match results.

However, in the absence of "strange" bets, the club may point out that there is insufficient evidence of match manipulation to establish the club's guilt in accordance with the comprehensive conviction standard.

¹⁸ Arbitration CAS 2013/A/3256 Fenerbahçe Spor Kulübü v. Union of European Football Association (UEFA), award of 11 April 2014 (operative part of 28 August 2013) [Electronic resource] // Court of Arbitration for Sport. URL: <http://jurisprudence.tas-cas.org/Shared%20Documents/3256.pdf#search=3256> (accessed on: 10.02.2020).

¹⁹ Id..

²⁰ Arbitration CAS 2014/A/3625 Sivasspor Kulübü v. Union of European Football Association (UEFA), award of 3 November 2014 (operative part of 7 July 2014) [Electronic resource] // Court of Arbitration for Sport. URL: <http://jurisprudence.tas-cas.org/Shared%20Documents/3625.pdf#search=3625> (accessed on: 10.02.2020)

²¹ The Tula Arsenal has been expelled from the body of the participants of the Russian Championship [Electronic resource] // Russian Basketball Federation. URL: <https://russiabasket.ru/news/36438/tulskij-arsenal-isklyuchen-iz-chisla-uchastnikov-chempionata-rossii> (accessed on: 10.02.2020).

²² Viktor Uskov commented on the expulsion of Arsenal BC from the body of the participants of the Russian Championship [Electronic resource] // Komsomolskaya Pravda. URL: <https://www.tula.kp.ru/daily/27066/4135007/> (accessed on: 10.02.2020).

²³ The Tula Arsenal has been expelled from the body of the participants of the Russian Championship [Electronic resource] // Russian basketball Federation. URL: <https://russiabasket.ru/news/36438/tulskij-arsenal-isklyuchen-iz-chisla-uchastnikov-chempionata-rossii> (accessed on: 10.02.2020).

²⁴ Arbitration CAS 2009/A/1920 FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v. Union of European Football Association (UEFA), award of 15 April 2010 [Electronic resource] // Court of Arbitration for Sport. URL: <http://jurisprudence.tas-cas.org/Shared%20Documents/1920.pdf#search=1920> (accessed on: 10.02.2020).

II. Lawfulness of imposition of sanctions in the form of expulsion of the club from the League

In accordance with Art. 4.1 of the Regulations of the Russian Basketball Championship and Cup among men's and women's clubs / teams of the 2019/20 season, competitions are held in accordance with the current FIBA Official Basketball Rules, as well as in accordance with these Regulations and Appendices to them²⁵.

In accordance with Art. 92.1.2 of the Regulations of the Russian Basketball Championship and Cup among men's and women's clubs / teams of the 2019/20 season, if a team makes actions preventing the game after the referee has decided that game should start / be continued, certain sanctions are applied. In case of a repeated violation committed within the framework of one tournament, the team is exempted from the competition²⁶.

Thus, the sanction is lawful if:

1. There were actions preventing the game.
2. The club committed a repeated offence.

Since the manipulation of the match results is a threat to professional sports preventing fair play²⁷, Arsenal is liable in accordance with Art. 92 of the Regulations of the Russian Basketball Championship and Cup among men's and women's clubs / teams of the 2019/20 season.

More complicated is the issue of committing a repeated violation within the same tournament among men's and women's clubs / teams of the 2019/20 season states the basic terms and definitions but no definition of a "tournament"²⁸.

Several approaches to the interpretation of this term are possible.

1. Systemic interpretation of the term "tournament"

In accordance with Art. 74.8 of the Regulations of the Russian Basketball Championship and Cup among men's and women's clubs / teams of the 2019/20 season, one of the duties of the chief secretary is to place the calendar of games (if possible with the training schedule of the teams), including the planned events: the opening and closing of the tournament, contests²⁹.

If it is possible to open and close a tournament, the tournament should be understood as a Super League championship in the 2019/2020 season. Therefore, the first violation by Arsenal is to be in the current season. A similar violation was committed by the club in the 2017/18 season in the game against the Magnitogorsk Dynamo. Therefore, the violation by Arsenal is not a repeated one.

In accordance with Art. 91.1.1 of the Regulations of the Russian Basketball Championship and Cup among men's and women's clubs / teams of the 2019/20 season, at the first violation committed within the same tournament, the victory is awarded to the opposing team with a score of "20:0". The team loses the game by "forfeiture of the right", gets zero points in the classification, and is fined 75,000 rubl.³⁰

Based on the above position, the RBF sanction is to be canceled.

2. Systemic interpretation of the term "competition"

In accordance with Art. 1 of the Regulations of the Russian Basketball Championship and Cup among men's and women's clubs / teams of the 2019/20 season, competitions are the Russian Championship among women's clubs / Premier League teams, men's and women's clubs / teams of the Super League (First and Second Divisions), Russian Championships among male juniors and female juniors up to 19 years old (Children's and Juvenile Basketball League Championships), Russian Cups among men's

²⁵ Regulations of the Russian Basketball Championship and Cup among men's and women's clubs / teams of the 2019/20 season. [Electronic resource] // Russian Basketball Federation. URL: https://russiabasket.ru/Files/Documents/1_Регламент_2019-20_ЧР_29.11.2019.pdf (accessed on: 10.02.2020).

²⁶ Id..

²⁷ Arbitration CAS 2014/A/3628 Eskişehirspor Kulübü v. Union of European Football Association (UEFA), award of 2 September 2014 (operative part of 7 July 2014) [Electronic resource] // Court of Arbitration for Sport. URL: <http://jurisprudence.tas-cas.org/Shared%20Documents/3628.pdf#search=3628> (accessed on: 10.02.2020).

²⁸ Regulations of the Russian Basketball Championship and Cup among men's and women's clubs / teams of the 2019/20 season. [Electronic resource] // Russian Basketball Federation. URL: https://russiabasket.ru/Files/Documents/1_Регламент_2019-20_ЧР_29.11.2019.pdf (accessed on: 10.02.2020).

²⁹ Id..

³⁰ Id..

and women's clubs / teams — a set of matches of the Russian Championships among women's clubs / Premier League teams, men's and women's clubs / Super League teams (First and Second Divisions), Russian Cups among men's and women's clubs / teams³¹.

Therefore, a tournament cannot be just the 2019/20 Super League, since in this case it is a competition. In addition, in accordance with Art. 1 of the Regulations of the Russian Basketball Championship and Cup among men's and women's clubs / teams of the 2019/20 season, a sports season is the aggregate of all matches of the Competitions³². Hence, the competition can be held within the same season.

Thus, the only way to interpret the term "tournament" is the aggregate of all competitions, in this case, the Super Leagues.

Based on this position, Arsenal committed a second violation, and there is no reason to change the sanction.

According to the standard of comprehensive conviction, the CAS will probably agree with the first position as it is based on the interpretation of the term "tournament", while the second position is based on the interpretation of "competitions".

3. Grammar interpretation of the term "tournament"

In its practice the CAS uses this way of interpretation³³.

According to Ozhegov's dictionary, a tournament is a sports competition in a circular system, when all participants have one (sometimes more) game with each other³⁴.

Let's turn to the Oxford Dictionary, as sports arbitration used it to determine the meanings of words in its practice³⁵.

According to the Oxford Dictionary, a tournament is a sports competition involving several teams or players who take part in various games and must leave the competition if they lose. The competition continues until only the winner remains³⁶.

Therefore, a tournament must have a start, an end and results.

Thus, a tournament cannot be understood as the aggregate of all the Super Leagues held (2019/2020 Super Leagues, 2018/2019 Super Leagues, etc.).

Therefore, the committed violation is not a repeated one.

Based on the foregoing, the CAS is likely to recognize the RBF sanction as unlawful.

Summing up, it may be concluded that in this case, the CAS is most likely to agree with the fact that there was a manipulation with the result of the match.

The main and most complicated issue is the problem of defining a repeated offence. Based on the available information, the CAS may recognize the sanction as unlawful and cancel the RBF decision in this part.

This case may be of great importance for the formation of the CAS and RBF practice in this category of disputes, but now this is only an assumption.

Today, we may just hope that the RBF will make the necessary changes to the legal acts regulating the holding of the competition and eliminate the contradictions.

The material has been verified, the figures, facts, quotes have been verified with the original source, the material does not contain information of limited distribution.

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³¹ Id..

³² Id..

³³ Arbitration CAS 2017/A/5003 Jérôme Valcke v. FIFA, award of 27 July 2018 [Electronic resource] // Court of Arbitration for Sport. URL: https://www.tas-cas.org/fileadmin/user_upload/Award_5003_Final.pdf (accessed on: 10.02.2020).

³⁴ Explanatory Dictionary by Ozhegov [Electronic resource] // Online Explanatory Dictionary by Ozhegov. URL: <https://slovarozhegova.ru/word.php?wordid=32539> (accessed on: 10.02.2020).

³⁵ Arbitration CAS 2017/A/5003 Jérôme Valcke v. FIFA, award of 27 July 2018 [Electronic resource] // Court of Arbitration for Sport. URL: https://www.tas-cas.org/fileadmin/user_upload/Award_5003_Final.pdf (accessed on: 10.02.2020).

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