



Arbitration CAS 2018/A/5906 Kyle Cesare v. Union des Associations Européennes de Football (UEFA), award of 18 December 2019

Panel: Mr Manfred Nan (The Netherlands); Mr Jacopo Tognon (Italy); Ms Raphaëlle Favre Schnyder (Switzerland)

Football

Match fixing

Burden and standard of proof

Admissibility of assessments of evidence presented as evidence and assessment by a CAS panel

Proportionality of the sanction

- 1. The burden of proof regarding a match-fixing offence lies with the sports-governing body and the applicable standard of proof shall be one of “comfortable satisfaction”. The standard of “comfortable satisfaction” is greater than a mere “balance of probabilities” but less than proof “beyond a reasonable doubt”, bearing in mind the seriousness of the offence committed. This does not mean that there is some sort of “sliding scale” within the standard of “comfortable satisfaction” depending on the seriousness of the charge, but that in case of serious allegations, the adjudicatory body should have a high degree of confidence in the quality of the evidence.**
- 2. In match-fixing proceedings, the fact that no witnesses are called by the parties to testify before the CAS panel does not provide the latter with the benefit of hearing any direct evidence from the persons with direct knowledge of the match-fixing plot. Although this does not render inadmissible documents such as transcripts of interrogation or recordings, court decisions or witness statements presented as evidence, it does affect the quality of such evidence, because the CAS panel can only analyse the documents provided and finds itself in the position of assessing previous assessments.**
- 3. Whenever an association uses its discretion to impose a sanction, CAS will have regard to that association’s expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its *de novo* powers of review, be free to say so and apply the appropriate sanction.**

I. PARTIES

1. Mr Kyle Cesare (the “Appellant” or the “Player”) is a football player of Maltese nationality, who formerly was a player on the Maltese U-21 team that participated in the UEFA European U-21 Championship 2017.
2. The *Union des Associations Européennes de Football* (the “Respondent” or “UEFA”) is an association under Swiss law that has its registered office in Nyon, Switzerland. UEFA is the governing body of football at the European level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written and oral submissions, the evidence examined in the course of the present appeal arbitration procedure and the hearing. This background’s sole purpose is to provide a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. General Background Facts

4. In early 2016, an organized group plotted the fixing of the match played between the U-21 teams of Malta and Montenegro on 23 March 2016 (the “Montenegro Match”) in the European U-21 Championship, as well as the match played between the U-21 teams of Malta and the Czech Republic on 29 March 2016 (the “Czech Republic Match”), (together the “Matches”).
5. According to UEFA, the following elements resulted in an investigation being carried out by the Malta Football Association (the “MFA”) and UEFA’s Maltese Integrity Officer Mr Franz Tabone:
 - i) *The Maltese A team’s manager reported the presence of suspicious individuals with links to match-fixing having coffee at the hotel in which his team was staying in Floriana. This was then reported by Mr. Tabone to both the Maltese U-21 manager and to the Maltese police (specifically, to Officer Sean Scicluna, who was in charge of investigating match-fixing cases in Malta).*
 - ii) *During the Montenegro Match, other suspicious individuals, notably Ronnie Mackay, who had been banned for life by the MFA in 2012 for match-fixing, were seen inside the stadium.*
 - iii) *The father of a Maltese U-21 player reportedly stated in a training session of the club, where he was the coach at the time of events under scrutiny, that his son had been approached to fix the Montenegro Match.*

- iv) Maltese U-21 Joseph Mbong immediately reported to his team manager that he had received an offer to fix the Czech Republic Match via Whatsapp message from player Seyble Zammit. The team manager then informed Mr. Tabone, who in turn contacted police inspector Scicluna”.*
6. The ensuing police investigation resulted in the questioning of several Malta U-21 players and the arrests of individuals involved in the fixing of the Matches, notably Mr Ronnie Mackay and Mr Seyble Zammit.
 7. As from the first interrogation by the police on 7 April 2016, the Player was not cooperative and lied to the police on at least two occasions. When asked about whether he had any information to give to the police about the Montenegro Match, he said “no” and he indicated that he did not know anything about a bribe being offered to him, which is contradictory to the Player’s subsequent testimony and therefore factually incorrect as is set out in more detail below. The Player also alleged to have deleted Mr Zammit’s number in his testimony of 3 August 2016, which statement was also established to be incorrect.
 8. Following the arrests and subsequent Maltese criminal court proceedings, it was determined, and it is not disputed between the Parties, that the plot to fix the Matches had been orchestrated chiefly by the two main masterminds described below between early 2016 and the Matches of March 2016:
 - Mr Mackay, who initiated the operation in Malta. He was used as an intermediary by an Asian individual known as “Fred”, who was financing the match-fixing. Mr Mackay’s task was to find somebody who knew and could approach players in order to involve them in the plot, and he coordinated its implementation with Mr Zammit. Mr Mackay was banned from football for life by the MFA in 2012 due to his involvement in another match-fixing scheme.
 - Mr Zammit, a footballer who was contacted by Mr Mackay and became the person in charge of approaching several Malta U-21 players to fix the Matches, offering them money to lose. He was the intermediary between the organizers of the match-fixing (Mr Mackay and the Asian investor) and its executors – certain players on the Maltese U-21 team – and he was also highly involved in the practical implementation of the fix.
 9. The UEFA Betting Fraud Detection System (the “BFDS”) escalated the Montenegro Match and found that there was strong pre-match betting for Malta to lose, resulting in several prominent European bookmakers removing the Montenegro Match from their markets prior to kick-off.
 10. The investigations resulted in criminal charges being brought against Mr Mackay, Mr Zammit, the Player and Mr Emanuel Briffa (a teammate of the Player on the Maltese U-21 team). The following decisions were issued by the Maltese Criminal Courts:
 - Mr Mackay was found guilty of match-fixing in relation to the Matches and sentenced to serve prison time.

- Mr Zammit confessed to having attempted to fix the Matches and was found guilty in a decision of 8 April 2016. However, because he acted as a whistle-blower and contributed decisively to the clarification of the facts, he was exempted from any criminal punishment for the offences committed by himself.
 - The Player and Mr Briffa were initially acquitted by the first instance criminal court on 23 August 2016, despite the court finding that they had accepted the bribes offered to fix the Montenegro Match. However, following an appeal by the Maltese Attorney General, they were found guilty of match-fixing on 5 February 2018, but were exempted from punishment subject to their not committing another criminal offence within the subsequent two years.
11. On 23 January 2017, an UEFA Ethics and Disciplinary Inspector (the “EDI”) opened investigations in relation to the Matches. Several players of the Maltese U-21 team were investigated, including the Player.
 12. On 7 February 2017, several of the investigated players of the Maltese U-21 team and Mr Tabone were interviewed by the EDI. The Player was not among them.
 13. On 29 May 2017, the EDI submitted her report to the UEFA Control, Ethics and Disciplinary Body (“CEDB”) and requested disciplinary proceedings to be opened against eight players, including the Player. The charge against the Player was “*acting in a manner that was likely to exert an unlawful or undue influence on at least one UEFA match with a view of gaining an advantage for themselves and third parties*” in violation of Article 12(2)(a) UEFA Disciplinary Regulations (the “UEFA DR”). The EDI requested the UEFA CEDB to impose a life ban on any football-related activity on the Player (and his teammates Mr Briffa, Mr Ryan Camenzuli and Mr Samir Arab), or, alternatively, if the UEFA CEDB would not agree to impose the sanction requested, to “*impose appropriate disciplinary sanctions on each of the persons involved depending on their role and involvement into the attempted match-fixing*”.

B. Background Facts Specifically Related to the Player

14. The Player met with Mr Zammit three times.
15. The first meeting took place on 8 March 2016, at the parking lot of the Tal-Qroqq Sports Complex pool. It was set up by Mr Zammit, who called the Player and asked to meet. There, they met inside Mr Zammit’s car and discussed the fix. Another Maltese U-21 player, Mr Luke Montebello, joined them at a later stage and immediately refused the proposal that was made to him. However, from the consistent statements of Mr Zammit and Mr Montebello, such refusal by the Player not only did not occur, but in fact Mr Zammit expressly confirmed in the Maltese criminal court that the Player had accepted the bribe that was offered to him.
16. The second meeting, also held on request of Mr Zammit, took place on or around 13 March 2016, in Café Jubilee in Gzira, in the presence of Mr Zammit, the Player, Mr Briffa and Mr Arab. Here again the fixing of the Montenegro Match was discussed, and, according to UEFA,

primarily based on Mr Zammit's consistent evidence, both the Player and Mr Briffa confirmed their acceptance.

17. A final meeting took place on or around 15 March 2016, in which Mr Zammit met with the Player in his car, and they were later joined by the Asian investor "Fred". According to UEFA, the purpose of this meeting was to confirm the Player's participation.

C. Proceedings before the UEFA Control, Ethics and Disciplinary Body

18. On 29 May 2017, the UEFA CEDB opened disciplinary proceedings against the Player.
19. On 8 July 2017, the Player submitted his defence, requesting that the charges brought against him be dismissed or, alternatively, that in case of imposition of a ban that he be allowed to play football during the punishment.
20. On 14 December 2017, a hearing was held at UEFA's premises in Nyon, Switzerland.
21. On 8 January 2017, the UEFA CEDB rendered its decision (the "UEFA CEDB Decision"), whereby the UEFA CEDB found the Player guilty of violating Article 12(2)(a) UEFA DR. The UEFA CEDB Decision contains the following operative part:

"The player Kyle Cesare is banned for life on all football-related activities".

22. On 14 February 2018, the grounds of the UEFA CEDB Decision were communicated to the Player.

D. Proceedings before the UEFA Appeals Body

23. On 9 February 2018, the Player announced his intention to lodge an appeal against the UEFA CEDB Decision.
24. On 19 February 2018, the Player filed the grounds of his appeal, requesting the UEFA Appeals Body to overturn the UEFA CEDB Decision.
25. On 15 March 2018, the EDI submitted a reply to the appeal, requesting that it be rejected.
26. On 5 June 2018, the UEFA Appeals Body rendered a decision (the "Appealed Decision") whereby it partially accepted the Player's appeal. The Appealed Decision contains the following operative part:

"1. The appeal lodged by Mr Kyle Cesare is partially accepted. Consequently, the UEFA Control, Ethics and Disciplinary Body's decision of 14 December 2017 is amended as follows:

The player Kyle Cesare is banned on all football-related activities for the period of ten (10) years.

2. The costs of the proceedings, totalling € 1'000 (minus the appeal fee), are to be paid by the Appellant".

27. On 30 August 2018, the grounds of the Appealed Decision were communicated to the Player.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 8 September 2018, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”), pursuant to Article R48 of the Code of Sports-related Arbitration (2017 edition) (the “CAS Code”), challenging the Appealed Decision. The Player nominated Mr Jacopo Tognon, Attorney-at-Law in Padova, Italy, as arbitrator. The Player, *inter alia*, requested to be provided with a full copy of the case file from UEFA.
29. On 20 September 2018, the Player informed the CAS Court Office that his Statement of Appeal was to be considered as his Appeal Brief.
30. On 9 October 2018, UEFA filed its Answer, in accordance with Article R55 CAS Code.
31. On 17 October 2018, UEFA informed the CAS Court Office that it nominated Ms Raphaëlle Favre Schnyder, Attorney-at-Law in Zurich, Switzerland, as arbitrator.
32. On 15 and 17 October 2018 respectively, upon being invited to express their positions in this respect, the Player informed the CAS Court Office that he preferred a hearing to be held, whereas UEFA indicated that it did not consider a hearing necessary.
33. On 28 December 2018, pursuant to Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:
- Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as President;
 - Mr Jacopo Tognon, Attorney-at-Law in Padova, Italy; and
 - Ms Raphaëlle Favre Schnyder, Attorney-at-Law in Zurich, Switzerland, as arbitrators.
34. On 11 January 2019, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing.
35. On 24 January 2019, the CAS Court Office informed the Parties that Mr Dennis Koolgaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *ad hoc* Clerk.
36. On 29 January 2019, in light of the Player’s silence as to his initial request to be provided with a full copy of the case file from UEFA, the CAS Court Office informed the Parties that it was the Panel’s understanding that the Player was satisfied with the documents currently on file.
37. On 4 April 2019, the Player and UEFA returned duly signed copies of the Order of Procedure to the CAS Court Office.

38. On 9 April 2019, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both Parties confirmed that they did not have any objection as to the constitution and composition of the Panel.
39. In addition to the Panel, Ms Kendra Magraw, CAS Counsel, and Mr Dennis Koolaard, *ad hoc* Clerk, the following persons attended the hearing:
- a) For the Player:
 - 1) Mr Kyle Cesare, the Player;
 - 2) Dr Keith A. Borg, Counsel;
 - 3) Dr. Carlos Bugeja, Counsel.
 - b) For UEFA:
 - 1) Mr Jacques Bondallaz, UEFA Chief of Disciplinary & Regulatory;
 - 2) Mr Miguel Liétard Fernández-Palacios, UEFA Legal Counsel.
40. At the outset of the hearing, further to the request of the Panel, the Parties indicated that they did not have any objection to including the arbitral award issued in *CAS 2018/A/5800 Samir Arab v. UEFA* in the case file. The Panel therefore announced that such arbitral award was therefore included in the case file.
41. During the hearing, the Player presented an affidavit of Mr Zammit that formed part of the case file of the UEFA Appeals Body. UEFA indicated that it did not have any objection to such document being included in the case file and presented a copy of such affidavit to the CAS Court Office during the hearing.
42. The Panel heard evidence from the Player. The Player, as the Appellant, was invited by the President of the Panel to tell the truth. Both Parties and the Panel had the opportunity to examine and cross-examine him.
43. The Parties were afforded full opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
44. Before the hearing was concluded, both Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
45. The Panel confirms that it carefully heard and took into account in its discussions and subsequent deliberations all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in this award.

IV. REQUESTS FOR RELIEF

46. The Player filed the following requests for relief in his Appeal Brief:

- “1. *address this Statement of Appeal to the apposite Panel of the Appeals Arbitration Division of the Court of Arbitration for Sport;*
 2. *select the English language as the language of these proceedings and order that proceedings be conducted exclusively in such language (R29 of the Code of Sports-related Arbitration);*
 3. *appoint a Panel of Arbitrators; by way of nomination to the same, Appellant nominates Mr Jacopo Tognon (R50 and R54 of the Code of Sports-related Arbitration);*
 4. *request a copy of the case-file from UEFA (R57 of the Code of Sports-related Arbitration);*
 5. *determine this dispute in accordance with the UEFA Disciplinary Regulations (R58 of the Code of Sports-related Arbitration);*
 6. *in terms of R57 of the Code of Sports-related Arbitration to annul and repeal the decision rendered by the UEFA Appeals Body on the 5 June 2018 in so far as this has found him responsible of the infringement of Article 12 (2) (a) of the Disciplinary Regulations of UEFA;*
 7. *find him solely responsible of the infringement of Article 12 (2) (d) of the Disciplinary Regulations of UEFA and consequently apply the commensurate sanction;*
 8. *should the sixth and seventh requests not be upheld, amend the decision rendered by the UEFA Appeals Body on the 5 June 2018 in so far as this has imposed a sanction in the form of a ban on all football-related activities for a period of ten (10) years and consequently substitute such ban with a warning, reprimand or football community service, or scale down such ban to a shorter period, after having regard to all circumstances of the case at hand and to the pleadings contained herein;*
 9. *impute costs and advances related to the proceedings before UEFA unto UEFA (R64 of the Code of Sports-related Arbitration).*
 10. *impute any and all costs related to these proceedings unto UEFA (R64 of the Code of Sports-related Arbitration).*
 11. *grant the appellant due contribution towards legal fees and other expenses to be incurred in these proceedings. (R64 of the Code of Sports-related Arbitration)”.*
47. UEFA filed the following requests for relief in its Answer:
- “ *Rejecting the reliefs sought by Kyle Cesare.*
 - *With regard to the Respondent’s costs, bearing in mind that UEFA is represented in these proceedings by in-house lawyers and the fact that UEFA has more financial resources than Kyle Cesare, the Respondent considers that no contribution towards the legal fees incurred by UEFA in connection with these proceedings must be paid by Appellant regardless of the outcome”.*

V. SUBMISSIONS OF THE PARTIES

48. The submissions of the Player, in essence, may be summarised as follows:

- The burden of proof is carried by UEFA's organs and the standard of proof required to be reached by UEFA for the finding of guilt is one of "comfortable satisfaction". Also, there exists a "sliding scale", under which the more serious the charge, the higher the degree of satisfaction which must be reached by the adjudicating body, with something close to, but not as strict as, the criminal standard of "beyond reasonable doubt" being the upper limit. Given that the allegations brought forward in this case involve a great imputation, said allegations must be proven to a rigorous standard, which although not as demanding as the criminal standard itself, must be closely scaled to the standard of "beyond reasonable doubt".
- While accepting responsibility in terms of Article 12(2)(d) and/or (e) UEFA DR, this Court cannot be satisfied, whether by applying the test of "comfortable satisfaction" or that of "balance of probabilities" that the Player breached Article 12(2)(a) UEFA DR.
- It is to be noted that the "conclusion of fact" reached by the UEFA Appeals Body are a result of a rather selective consideration of the different testimonies available in this case; indeed, in some instances the testimony of the same witnesses was considered as being credible, whereas in other cases related to the same facts (with other players), other parts are completely disregarded, with apparent discrepancies not even considered. Had the UEFA Appeals Body objectively considered all the evidence, it would have arrived at the conclusion that the Player could not have been found guilty of violating Article 12(2)(a) UEFA DR.
- Mr Montebello, who was in the Player's presence during the first meeting, confirmed that both himself and the Player just listened and never accepted any offer.
- Mr Zammit testified under oath on three different occasions. Oddly, the UEFA Appeals Body decided to select small parts of Mr Zammit's testimonies in order to construct a narrative that points towards the Player's guilt. It is regrettably submitted that in so doing, the UEFA Appeals Body went so far as considering that the fact that Mr Zammit said "*I offered Kyle Cesare to meet Mc Kay, he did not say no...*" proves the Player's guilt, without actually considering (or even mentioning) that Mr Zammit followed this declaration with "*... but actually never moved to the next step to meet Mc Kay*".
- When Mr Zammit in his testimony before the Maltese Court of 8 April 2016, revealed the names of players approached, he did not mention the Player. It was only when Mr Zammit's counsel prompted his client to mention the Player, that the Player's name was confirmed. Mr Zammit in any event explained that he just "*acquainted them with Ronnie McKay*". If Mr Zammit is to be believed, it would only be logical to expect that Mr Mackay would know who the players were that Mr Zammit had acquainted him with. Yet, it transpires that Mr Mackay never met the Player and had never heard of his involvement prior to reading his name in the newspaper.
- Mr Zammit also testified that he proposed money to the Player, but he explained that this was only for the Player to meet with Mr Mackay.

- The Player had explained to the police in Malta that he knew Mr Zammit to be a “*bluffer*”, so he initially did not believe him, and initially was taken by surprise and shock when he realised that Mr Zammit was serious, especially when Mr Zammit started being particularly persistent, and was continuously harassing, pressuring and terrifying the Player. But at the end, the Player did the right thing and he did not accept to meet Mr Mackay.
- If it is to be believed that Mr Zammit’s role was only to find players and that Mr Mackay would then make the monetary offer, it would mean that it was impossible for someone to accept an offer from Mr Zammit. Without the meeting with Mr Mackay, there was no offer, and without the offer, there was an impossibility of acceptance.
- It is humbly submitted that the UEFA Appeals Body limited itself to a rather superficial analysis of the facts, ostensibly disregarding the rest of Mr Zammit’s testimony, missing the above details.
- As for the rest, there is absolutely no proof that the Player was part of the plan or that he accepted the bribe.
- It transpires from Mr Mackay’s testimony of 1 November 2016, that Mr Zammit mentioned a number of players to Mr Mackay, but not the Player.
- In view of these circumstances, it is submitted that there cannot be the comfortable satisfaction required, having in mind the seriousness of the allegations made, for this Court to find that the Player violated Article 12(2)(a) UEFA DR. The Player can only be found guilty of a violation in terms of Article 12(2)(e) and/or (f) UEFA DR.
- As to the proportionality of the sanction imposed on the Player, it should stand uncontested that the sanction imposed by the bodies of UEFA against fellow players in this same case in respect of infringements of Article 12(2)(d) UEFA DR included 12 months’ suspensions for Mr Montebello and Mr Cremona, an 18 months’ suspension for Mr Camenzuli and a 24 months’ suspension for Mr Arab. Such bans were also accompanied by an order for community football service. The sanction to be imposed on the Player should be no different to that imposed on the aforementioned individuals.
- Without prejudice to the above, in any case, the sanction of the imposition of a ban on all football-related activities for a period of 10 years is disproportionate and excessively severe. The impugned sanction does not strike the necessary balance between the deterring and retributive effect such decision ought to have and the necessary restorative element.
- The Player, still a boy in 2016, is indeed an individual with a clean record both on and off the pitch; he was not the instigator of any plan to fix the Matches; he did not manipulate the match or receive money to affect its outcome; he never became acquainted with Mr Mackay, he immediately admitted his failure to report the fix attempt to the Executive Police in Malta, to the EDI and to the UEFA CEDB; and until the recent events under scrutiny in these proceedings, his reputation was untarnished, and his football skills were recognised locally and internationally.

49. UEFA provided the following summary of its submissions:

- *“Based on the evidence on file, which was properly evaluated by UEFA’s disciplinary bodies in two instances, it is clear that the Appellant accepted the offer that was made to him to fix the Montenegro Match. This is evident not only from the testimony of the person who actually offered the bribe (Mr. Zammit), but also from that of the other persons involved.*
- *Indeed, not one single person who participated in the scheme has been able to confirm that the Appellant refused the offer, with the exception of the Appellant himself (who has every reason to deny having accepted the bribe to protect his career). In fact, all evidence points to a direct and immediate acceptance of the offer, as confirmed by Mr. Zammit himself on several occasions.*
- *The Appellant has in fact provided contradictory statements and failed to substantiate any of his arguments, from either a factual or legal point of view.*
- *From the very beginning, he failed to cooperate with the Maltese police, choosing to invent an apparently ‘innocent’ story about purchasing tickets to a party and a car from Mr. Zammit, to later recant his statement and confirm that he had actually been approached to fix the Montenegro Match. This already removes any credibility from the Appellant’s statements.*
- *Remarkably, while the Appellant places much emphasis on the alleged need to have met with Ronnie Mackay to consider that the offer to have been accepted, it is confirmed from the testimonies of the Appellant himself, as well as his teammates Luke Montebello and Samir Arab that:*
 - i. Ronnie Mackay was never mentioned by Seyble Zammit in any of the meetings attended by the Appellant.*
 - ii. Seyble Zammit (not Ronnie Mackay) is the only person who offered the player (including the Appellant) the money to lose the Montenegro Match.*
 - iii. In this sense, Mr. Zammit’s testimony that he allegedly offered them to meet Ronnie Mackay is not only discredited by his own subsequent admission that he instead offered money to the players, but also by the testimony of the persons to whom he had made the offers. Tellingly, the Appellant expressly testified in court that “Seyble had never mentioned Ronnie Mackay to me” and he confirmed that he was actually offered €3’000 by Mr Zammit. This further discredits the affidavit submitted in the Appeals Body proceedings by the Appellant.*
- *The seriousness of all offences relating to match-fixing under Art. 12 DR requires the imposition of the most severe disciplinary measures available: bans from football-related activities. This approach is not only confirmed by the jurisprudence of UEFA’s disciplinary bodies, but it has also been endorsed by CAS when dealing with cases involving the manipulation of sports competitions, especially by individuals.*
- *The Appellant has failed to prove any of the alleged mitigating circumstances that he has submitted as a basis for an eventual reduction of the sanction. His arguments in this respect are based chiefly on mere party statements and uncorroborated proof of disproportionality of the [Appealed Decision], without providing any actual evidence or legal arguments to support his position. Only for this reason the Appellant’s arguments shall be disregarded.*
- *In any event, there are no mitigating circumstances in this case that would warrant the amendment of the [Appealed Decision].*
- *The sanction imposed by the Appeals Body in the [Appealed Decision] can only be reviewed by the CAS if it is evidently and grossly disproportionate. However, the Appellant has not submitted any*

evidence of its disproportionality. On the contrary: UEFA's disciplinary bodies have eloquently reasoned their respective decisions on the basis of the circumstances of the case and CAS' jurisprudence on such matters. The Appeals Body have perfectly justified how the sanction imposed is not only proportionate, and in fact it could even be considered lenient to some extent considering precedents in similar situations and the concurrence with the CEDB's prior analysis of the case.

- *Not only shall deference be given to the [Appealed Decision], but there are no reasons to depart from the conclusions contained therein, or to otherwise reduce the suspension imposed on the Player, which is more than adjusted to the seriousness of the offence committed.*
- *The Player's appeal shall therefore be rejected and the [Appealed Decision] confirmed".*

VI. JURISDICTION

50. The jurisdiction of CAS, which is not disputed, derives from Articles 62(1) UEFA Statutes (2017 edition) as it provides that “[a]ny decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration” and Article R47 CAS Code, which provides:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

51. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

52. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

53. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

54. The appeal was filed within the deadline of ten days set by Article 62(3) UEFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

55. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

56. The Player did not make any submissions in respect of the law to be applied to the matter-at-hand beyond requesting that the present dispute be resolved in accordance with the UEFA DR.
57. UEFA submits that the procedural and organizational aspects of the disciplinary proceedings carried out by UEFA in the Player's case are governed by the UEFA DR (edition 2017), but that the merits of the dispute are governed by UEFA's rules and regulations, in particular the UEFA DR (edition 2014), and additionally by Swiss law.
58. Article R58 of the CAS Code provides the following:
"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".
59. Article 64(1) UEFA Statutes stipulates the following:
"These Statutes shall be governed in all respects by Swiss law".
60. In accordance with the principle of *tempus regit actum*, an offence is to be judged on the basis of the substantive rules in force at the moment the alleged offence was committed, subject to the principle of *lex mitior*. However, the procedural aspects of the proceedings are governed by the regulations in force at the time the appeal was lodged.
61. Accordingly, the Panel agrees with UEFA that the various regulations of UEFA are primarily applicable to the dispute. The UEFA DR (edition 2014) are primarily applicable to the merits of the dispute, since the alleged offence was committed before the UEFA DR (edition 2016) entered into force. The Panel is satisfied with the subsidiary application of Swiss law, should the need arise to fill a possible gap in the various regulations of UEFA. The procedural and organisational aspects are governed by the UEFA Statutes (edition 2017) and the UEFA DR (edition 2017).

IX. MERITS

A. The Main Issues

62. In light of the above, the main issues to be resolved by the Panel are:
- i. What is the standard of proof to be applied?
 - ii. Did the Player accept a bribe?
 - iii. If so, is the sanction imposed on the Player proportionate?

63. These issues will be addressed in turn below.

i. What is the standard of proof to be applied?

64. As to the standard of proof, the Panel observes that both Parties agree that the burden of proof lies with UEFA and that the applicable standard of proof shall be one of “comfortable satisfaction”. The views of the Parties, however, diverge as to the interpretation and application of such a standard.

65. The Player submits that there is some sort of “sliding scale” under which the more serious the charge, the higher the degree of satisfaction which must be reached by the adjudicating body and that, given the serious nature of the charge in the matter at hand, the charge must be proven to a rigorous standard, which although not as demanding as the criminal standard itself, must be closely scaled to the standard of “beyond reasonable doubt”. On the other hand, UEFA argues that the Player’s theories about a “higher” standard of proof “within” the standard of comfortable satisfaction are nothing else than an attempt to mislead the Panel and that, just as one cannot be “half-pregnant”, one cannot be “a bit less comfortably satisfied” or “a bit more comfortably satisfied”.

66. As admitted by UEFA, only since 2016 has the UEFA DR contained a provision determining the applicable standard of proof to be applied, while the substance of the present proceedings is governed by the 2014 UEFA DR (edition 2014). The Panel therefore does not have the benefit of any regulatory guidance as to the applicable standard of proof.

67. Notwithstanding the absence of a standard of proof set in the applicable regulations, the Panel fully agrees with the Parties that the applicable standard shall be one of “comfortable satisfaction”.

68. As to the interpretation of such standard, the Panel considers it important to stress that, as also acknowledged by UEFA, the standard of “comfortable satisfaction” is commonly defined as being greater than a mere “balance of probabilities” but less than proof “beyond a reasonable doubt”, bearing in mind the seriousness of the offence committed.

69. In the view of the Panel, this does not mean that there is some sort of “sliding scale” within the standard of “comfortable satisfaction” depending on the seriousness of the charge, but that in case of serious allegations, the adjudicatory body should have a high degree of confidence in the quality of the evidence.

70. The Panel feels itself comforted in this analysis by the reasoning of another CAS panel:

“In assessing the evidence the Panel has borne in mind that the Player has been charged with serious offences. While this does not require that a higher standard of proof should be applied than the one applicable according to the UTACP, the Panel nevertheless considers that it needs to have a high degree of confidence in the quality of the evidence” (CAS 2011/A/2490, para. 40 of the abstract published on the CAS website).

71. The Panel accepts that the charge in the matter-at-hand is serious and that the consequences for the Player are severe if such charge would be established. The Panel, however, does not find that this should lead to a higher standard of proof than “comfortable satisfaction” being applied, but that it should have a high degree of confidence in the quality of the evidence.

ii. *Did the Player accept a bribe?*

72. The Panel notes that both the UEFA CEDB and the UEFA Appeals Body found that the Player accepted a bribe and that, as a consequence thereof, he violated Article 12(2)(a) UEFA DR.

73. The Panel observes that Article 12(1) and (2) UEFA DR provide as follows:

“1. *All persons bound by UEFA’s rules and regulations must refrain from any behaviour that damages or could damage the integrity of matches and competitions and must cooperate fully with UEFA at all times in its efforts to combat such behaviour.*

2. *The integrity of matches and competitions is violated, for example, by anyone:*

- a. *who acts in a manner that is likely to exert an unlawful or undue influence on the course and/or result of a match or competition with a view to gaining an advantage for himself or a third party;*
- b. *who participates directly or indirectly in betting or similar activities relating to competition matches or who has a direct or indirect financial interest in such activities;*
- c. *who uses or provides others with information which is not publicly available, which is obtained through his position in football, and damages or could damage the integrity of a match or competition;*
- d. *who does not immediately and voluntarily inform UEFA if approached in connection with activities aimed at influencing in an unlawful or undue manner the course and/or result of a match or competition;*
- e. *who does not immediately and voluntarily report to UEFA any behaviour he is aware of that may fall within the scope of this article”.*

74. In this regard, the Panel will describe and then analyse the evidence on file in turn.

a) *The evidence on file*

75. Turning to the issue of whether the Player accepted an offer to be bribed, as indicated above, although the UEFA Appeals Body reduced the sanction imposed on the Player, both the UEFA CEDB and the UEFA Appeals Body concluded that the Player did.

76. In supporting the conclusions reached in the Appealed Decision, UEFA relies, *inter alia*, on the following pieces of evidence in the present appeal arbitration proceedings before CAS:

- A transcript of the police interrogation of the Player on 7 April 2016;

- A transcript of tape recordings of Mr Zammit's testimony during his own trial before the Maltese criminal court of first instance on 8 April 2016;
- A transcript of the police interrogation of the Player on 13 April 2016;
- A transcript of the police interrogation of the Player on 18 April 2016;
- A transcript of tape recordings of Mr Zammit's testimony during the trial against the Player before the Maltese criminal court of first instance on 2 June 2016;
- A transcript of tape recordings of the testimony of Mr Montebello (a teammate of the Player) during the trial against the Player before the Maltese criminal court of first instance on 13 June 2016;
- A transcript of tape recordings of the testimony of Mr Arab (a teammate of the Player) during the trial against the Player before the Maltese criminal court of first instance on 13 June 2016;
- A transcript of tape recordings of the Player's testimony during his own trial before the Maltese criminal court of first instance on 3 August 2016;
- The decision of the Maltese criminal court of first instance in the trial against the Player;
- The decision of the Maltese criminal court of appeal in the trial against the Player; and
- The undated written witness statement of Mr Zammit titled "*Affidavit Mr Seyble Zammit 20th Feb 2018*" that was provided by the Player during the proceedings before the UEFA Appeals Body.

77. The Panel is put to the task of analysing the veracity of the evidence and observes that the majority of the background facts are not disputed between the Parties, e.g. it is not disputed that the Player eventually never received any bribe and that the match-fixing plot was never executed. The crucial difference in the Parties' respective submissions appears to be that UEFA submits that Mr Zammit made a financial offer to the Player to fix the outcome of the Montenegro Match and that the Player accepted this offer, whereas the Player maintains that he was only offered to meet Mr Mackay and never accepted a bribe. The Panel will therefore in particular focus on these last aspects by going through the various transcripts in chronological order.

78. On 7 April 2016, upon being interrogated by the Maltese police, the Player stated as follows:

Inspector: "*You are being shown a series of telephone calls or SMSes between yourself and Seyble Zammit last month (March 2016) how can you explain them?*"

The Player: "*Seyble at the beginning of March 2016 phoned me to sell me some 'Ziggy' party tickets which was held around mid-March and the others because there was a friend of his who wanted to sell a BMW and asked me if I wanted to see and buy it*".

[...]

Inspector: "*Do you have information to give the police regarding the match Malta vs Montenegro?*"

The Player: "*No*".

Inspector: *“What would you tell me if I say that a bribe was offered to you but you refused?”*

The Player: *“I know nothing”.*

Inspector: *“Do you want to add anything else?”*

The Player: *“No that’s all, nothing to say”.*

79. On 8 April 2016, Mr Zammit testified as follows before the Maltese criminal court of first instance in the criminal proceedings initiated against him:

Prosecution: *“Mention all the players or what was the agreement and if players were bribed in the match Malta vs Montenegro under twenty-one (21) and/or the match Malta vs Czech Republic under twenty-one (21)”.*

Mr Zammit: *“So Ryan Camenzuli, Joseph Mbong and Luke Montebello”.*

Dr. M. Mifsud: *“Mbong...?”*

Mr Zammit: *“Mbong Czech Republic sorry, Mathew Calleja Cremona, Emanuel I don’t know his surname”.*

Dr. M. Mifsud: *“...”*

Mr Zammit: *“And Kyle Cesare, Kyle Cesare. Those who accepted were Kyle Cesare and Emanuel Briffa and the rest refused everything”.*

Prosecution: *“They didn’t accept”.*

Mr Zammit: *“But the match turned out as it did he wanted three nil (3-0) this after the match he wanted to pay all the players because it didn’t get in”.*

Dr. M. Mifsud: *“Because of the one nil (1-0)?”*

Mr Zammit: *“Exactly”.*

Dr. M. Mifsud: *“Because then it turned out one nil (1-0).”*

Mr Zammit: *“And he wanted them to pay the players”.*

Prosecution: *“What players? What do you mean? Explain to the Court in detail this agreement how was it exactly”.*

Mr Zammit: *“After they tried with Cesare since these, obviously he took, he was going to take the money”.*

Prosecution: *“Who proposed the money to Kyle Cesare and Emanuel Briffa?”*

Mr Zammit: *“I did”.*

Prosecution: *“And what was the amount?”*

Mr Zammit: *“The amount was there”.*

Dr. M. Mifsud: *“Tell him”.*

Mr Zammit: *“Of three thousand five hundred (3,500)”.*

Prosecution: *“Now how was your agreement or on Ronnie’s instructions with these players when were they going to be paid etc. etc.? Were they paid in advance?”*

Mr Zammit: *"I just acquainted them with Ronnie Mckay and he took care of it, so much so he sent them on telegram what exactly needed to be done"*.

[...]

Prosecution: *"Exactly, now the agreement with Kyle Cesare and Emanuel Briffa was on the match Malta Montenegro only?"*

Mr Zammit: *"Yeab, only"*.

[...]

Prosecution: *"No, how was it arranged for you to meet him etc., etc. Give the Court some details"*.

Mr Zammit: *"I know Kyle Cesare; hang out with him, like I had his mobile number. I asked him to meet. He fixed a time told me to go there, because he was near his girlfriend, his girlfriend works there. I went there got in the car and kind of asked him and he told me all right"*.

Prosecution: *"What did you ask him, the exact words?"*

Mr Zammit: *"To lose three nil (3-0). I said that to all of them kind of because he wanted the first half two nil (2-0) and the second half one nil (1-0). That is three nil (3-0) the whole game, a three goal difference to have a direct score"*.

80. On 13 April 2016, the Player was again interrogated by the police and he testified, *inter alia*, as follows:

Inspector: *"The Police know that you often met Seyble Zammit and/ or other people where a bribe was offered to you for the match Malta vs Montenegro, what do you have to say about this?"*

The Player: *"I know nothing"*.

[...]

Inspector: *"How long have you been friends you and Seyble"*.

The Player: *"Since we were young in the U15 approximately, got to know him from football"*.

[...]

Inspector: *"What would you tell me if I say that Seyble Zammit offered you around €3500 to be bribed for the Malta vs Montenegro U21?"*

The Player: *"I know nothing"*.

Inspector: *"Did Seyble Zammit mention he was going to introduce you to someone to better agree on the price of the offer and/ or the score for the match?"*

The Player: *"No he never spoke to me about the game"*.

81. On 18 April 2016, the Player was voluntarily interrogated by the police and he testified, *inter alia*, as follows:

Inspector: *"Before coming to speak to the Police today 18 April 2016, did you speak to a lawyer?"*

The Player: *"Yes I spoke to Dr Clifton Grima"*.

Inspector: *“What do you want to tell the Police?”*

The Player: *“The first time Seyble met me at tal-Oroqq he had phoned me and asked me to come there near me. When he arrived I went out to speak to him and he made overtures on the Malta vs Montenegro match and told me that they were going to bet a lot of money and there was a Chinese man who was going to bet thousands in money. He also told me that it was nice to have a lot of money at hand. I told him I don’t do these things and told him that that [sic] I only know how to play my game. Another time he phoned me to go to Café Jubilee in Gżira but I had already told him that I wasn’t interested in being bribed. That day I went to make it clear to him that I don’t do these things. Seyble offered me there a €3000 bribe and he tried to persuade me, he also tried to increase the amount but I insisted not to. I left on that occasion and on another leaving training he asked me where I was and we met at Pietà near my football training ground. He was waiting for me there outside and as I was walking to him another car came, perhaps red in colour, but it was dark and a person got out probably of Chinese nationality. The latter and Seyble Zammit talked and got into the car. I was terrified of the Chinese man because Sey*

ble had told me that he had a lot of money and had power. They talked to each other but I did not understand what was being said. When they finished the Chinese left and Seyble as well. I haven’t seen them since”.

[...]

Inspector: *“If you wanted to refuse Seyble’s offer wasn’t it wiser if you didn’t go at all to meet him?”*

The Player: *“I warned him at once that I was (not?) going to play his game and continued meeting him because I was afraid of the Chinese man, that if I reveal it something would happen to me”.*

Inspector: *“When was this time, when you met Seyble?”*

The Player: *“Always March 2016 but I don’t remember the exact days and with reference to the previous statements I made to the Police I state that Seyble truly spoke to me about the Ziggy party tickets and the car”.*

82. On 2 June 2016, Mr Zammit testified as follows before the Maltese criminal court of first instance in the criminal proceedings initiated against the Player:

Prosecution: *“How many players you approached accepted your offer?”*

Mr Zammit: *“In my offer there was no offer except that they meet Ronnie Mackay”.*

Prosecution: *“Come again?”*

Court: *“The offer was to meet Ronnie”.*

Mr Zammit: *“I never offered players money”.*

Prosecution: *“I don’t know at this stage if can we declare him as a relevant witness for what he said in the other case”.*

Court: *“Hostile witness, why doesn’t he say what he knows?”*

Prosecution: *“To remind him what he said”.*

Court: *“I reminded him, I told him to state the whole truth, now he is basically saying what he knows well. Continue Inspector”.*

Prosecution: *“Explain, I asked you which players you approached accepted your offer?”*

Mr Zammit: *"Kyle Cesare and Manuel"*.

[...]

Prosecution: *"And Kyle Cesare where did you meet him?"*

Mr Zammit: *"Near the water polo pool"*.

Prosecution: *"Why did you meet there?"*

Mr Zammit: *"The same like Emanuel Briffa I asked him if he wanted to take part in this match and he replied yes"*.

Prosecution: *"Now when you say take part in this match explain to the Court what you mean"*.

Mr Zammit: *"As I told you to lose with more than two (2) goals and he said that he wanted to meet this individual"*.

[...]

Prosecution: *"Right, so you're saying that on one occasion with Kyle Cesare there was Luke Montebello, now the offer you made them, Luke Montebello did not accept but Kyle Cesare did accept?"*

Mr Zammit: *"Exactly"*.

Prosecution: *"Right"*.

Court: *"Now you and Ronnie Mackay to communicate, besides meeting you where did you meet?"*

Mr Zammit: *"With the cell phone"*.

Court: *"Right"*.

Prosecution: *"So Luke Montebello didn't accept and Kyle Cesare accepted your offer and there was an occasion when Emanuel Briffa accepted your offer and Samir Arab did not accept your offer, why are you saying that one accepted and the other didn't? Explain to the court why one accepted and the other didn't"*.

Mr Zammit: *"No I didn't tell them on the mobile let's meet to fix this game, I told them let's have a coffee. One of them accepted, the other didn't"*.

Prosecution: *"What did he accept?"*

Mr Zammit: *"To fix the game"*.

Prosecution: *"Explain in a bit of detail the exact words you said"*.

Mr Zammit: *"To fix the game against Montenegro two nil (2-0)"*.

Prosecution: *"To whom did you say these words?"*

Mr Zammit: *"To both of them eh, but one of them told me he wasn't interested and the other one told me yes"*.

Prosecution: *"So you said the words that the game must be lost by Malta, by the Maltese team, to whom? To Kyle Cesare and to Luke Montebello and in regard to Samir Arab and Emanuel Briffa the same thing happened?"*

Mr Zammit: *"Exactly, I didn't tell them on the mobile eh"*.

83. Also on 13 June 2016, Mr Luke Montebello testified as follows before the Maltese criminal court of first instance in the proceedings against the Player:

Prosecution: *“Luke, a few weeks ago the Police spoke to you about some incident involving a match Malta vs Montenegro, explain to the Court what was this accident and what do you know about it?”*

Mr Montebello: *“I was approached by Seyble Zammit and I met him in the car and there was Kyle Cesare and Seyble talked to us to fix the match and I did not accept and got out of the car. That’s all I know”.*

[...]

Prosecution: *“Explain to the Court what offer did Seyble make?”*

Mr Montebello: *“The offer was that we fix the match and he would give us more details, but I didn’t accept and I heard nothing more”.*

84. Also on 13 June 2016, Mr Samir Arab testified as follows regarding the second meeting before the Maltese criminal court of first instance in the proceedings against the Player:

Prosecution: *“Did Seyble Zammit tell you what he wanted from you exactly?”*

Mr Arab: *“On that day for sure he said nothing, sort of, to lose the game and he didn’t spell out anything”.*

Prosecution: *“What would you have acquired if the game was lost?”*

Mr Arab: *“Speaking for myself it didn’t cross my mind because I don’t do these things”.*

Prosecution: *“Well alright but Seyble Zammit what did he say you would obtain if you lose?”*

Mr Arab: *“He mentioned the sum of three thousand (€3000) Euros”.*

Prosecution: *“So when you were all there present he told you to lose for three thousand (€3000) Euros?”*

Mr Arab: *“Exactly”.*

85. On 3 August 2016, the Player testified as follows during the criminal proceedings lodged against him in respect of his relationship with Mr Zammit and the first meeting:

Defence: *“Now Kyle, explain to us a bit regarding Seyble Zammit and what do you know on Seyble Zammit. Is there a friendship or an acquaintance with the said Seyble Zammit. Explain.”*

The Player: *“I know Seyble from football, I know him playing against each other. We used to go out, meet up, talk about everyday things. That’s all”.*

[...]

Defence: *“Besides these occasions, related to this case, did you meet and take –”.*

The Player: *“Yes we used to meet -”.*

[...]

Defence: *“Now, explain to me when the meeting was held at Tal-Qroqq explain, what were the circumstances what happened”.*

The Player: *“As I told you, he phoned to meet, didn’t tell me about what; he came there and talked to me about the usual things, but up to then he didn’t mention anything. After some time he threw hints, after some time Luke Montebello came”.*

Defence: *“When you say that Luke Montebello came, you mean you planned meeting Luke Montebello or else –”.*

The Player: *“No I didn’t know Luke was coming”.*

Defence: *“You didn’t know Luke was coming, all right”.*

The Player: *“Well, I was in the car with Seyble and he kind of gave us hints on the Montenegro match, he said it’s nice having lots of money in your hands, things like that”.*

Defence: *“When did Seyble tell you this – let me ask you two questions – what was your reaction and what was your reply, if there was one?”*

The Player: *“I, as soon as he began giving these hints I showed him immediately that I’m not interested in doing these things, I never do these things and I always play for the team”.*

86. During the same testimony, the Player stated as follows in respect of the second meeting:

Defence: *“Yes, all right. So how long did this meeting last?”*

The Player: *“The same, a few minutes”.*

Defence: *“No, do you remember your reaction after this meeting if – what was your reaction in regard to this Seyble after the meeting at Jubilee?”*

The Player: *“On that occasion he offered us again three thousand (3,000) and none of us accepted and he sort of tried to increase it –”.*

Defence: *“In Seyble Zammit’s evidence there was a reference to an Asian. When you were in Gżira did he mention this Asian person or not?”*

The Player: *“Yes he mentioned it again”.*

Defence: *“And what impression of the person did he give you?”*

The Player: *“On that day I got worried a bit, I was a bit afraid”.*

Defence: *“Why were you scared? Because he was a well built man?”*

The Player: *“Because he told us that he is willing to do certain things. He has power, a rich man, sort of”.*

Defence: *“All right. And you told us that the Gżira meeting lasted a few minutes. Was there contact between you and Seyble after this meeting in Gżira, was there?”*

The Player: *“There was, exactly. There was another time in Pietà”.*

Defence: *“All right. At Pietà. Let me ask you a question. When did he contact you for the Pietà one? Did he contact you as usual?”*

The Player: *“No, that day I went out of the Jubilee I deleted –”.*

Defence: *“When you go out of the Jubilee in Gżira you mean”.*

The Player: *“I went out of the Jubilee and I deleted Seyble’s number”.*

Defence: *"You deleted Seyble's number"*.

The Player: *"His number wasn't saved"*.

Defence: *"You deleted Seyble's number when you got out of the Jubilee"*.

The Player: *"I deleted, exactly. Because I didn't have it, I didn't want to have anything to do with him any more"*.

87. The Maltese Criminal Court of Appeal declared the Player guilty of the following two offences:

- "1. Associated themselves with another person or persons in Malta or abroad with the intent of committing a crime in Malta mentioned in the Prevention of Corruption (Players) Act (Chapter 263) of the Laws of Malta, for which the punishment of imprisonment is provided for.*
- 2. As football players in the under twenty-one (U21) Maltese national football team accepted or obtained, or agreed to accept or obtain, or attempted to obtain, from any person for themselves or for any other person whomsoever any gift or consideration as an inducement or reward for doing or for omitting from doing, or for having, after the enactment of this act, done or omitting from doing, any act the doing or omission of which is against the interests of the side for which they played, or those of the person or club by whom or by which they are engaged or whom or which they represented"*.

88. Finally, the Panel notes that the undated written witness statement of Mr Zammit titled *"Affidavit Mr Seyble Zammit 20th Feb 2018"* that was provided by the Player during the proceedings before the UEFA Appeals Body provides, *inter alia*, as follows:

"I offered Kyle Cesare to meet Mc Kay, he did not say no, but actually never moved to the next step to meet Mc Kay. In fact he kind of started to avoid me and this despite the fact that we have known each other for years and used to kind of hang together.

McKay kept pressuring me to set up meetings with players. In fact one evening me and Mc Kay agreed to meet at Pieta' near the Nationalist Party Dar Centrali, and Mc Kay came to meet me with this Asian person. Me and this Asian person went alone, round the corner to wait for Kyle Cesrae [sic] to come out of training, but this unannounced meeting kind of put Kyle Cesare off as I had called him to meet him after training and never mentioned that I was to be accompanied by someone. During this instance Kyle never said a word and was visibly uncomfortable in the presence of the Asian person.

After this time Kyle Cesare never spoke to me again and as such although I had offered to set up a meeting with Mc Kay, I never managed to actually set the meeting".

b) *The Panel's assessment of the evidence on file*

89. The Panel did not have the benefit of hearing any direct evidence from the persons with direct knowledge of the match-fixing plot, i.e. no witnesses were called by the Parties to testify before the Panel. The Panel is cognisant of the fact that it is presumably not easy for a sports-governing body such as UEFA to bring a witness such as Mr Zammit before CAS, but it does not appear that UEFA undertook any efforts in this regard. Although this does not make the evidence provided inadmissible, it does affect the quality of the evidence, because the Panel can now only analyse the documents provided. Hence, the Panel finds itself in the position of assessing a previous assessment.

90. The Panel considers the transcripts of police interrogations and court examinations of Mr Zammit of particular importance for the matter-at-hand. Although Mr Zammit's declarations were given under oath, which enhances the credibility, the Panel also notes that Mr Zammit was treated as a whistle-blower and was eventually exempted from criminal sanctions because of his cooperation with the authorities, and that the Player argues that Mr Zammit had to compromise certain persons in the match-fixing scheme in order to fully exploit his whistle-blower status, which would reduce the credibility of his statements. In this regard however, the Panel notes that there is no indication that Mr Zammit had to implicate players not only as having been approached, but also as having accepted the bribe to benefit from his whistle-blower status.
91. The majority of the Panel has no reason to doubt about the veracity of Mr Zammit's declarations. The Panel considers it unlikely that Mr Zammit would unjustifiably accuse the Player of violations he did not commit. The key reason for this is that Mr Zammit and the Player were friends; they used to go out to parties and for coffee together. Mr Zammit testified in this respect on 8 April 2016 that *"I know Kyle Cesare; hang out with him, like I had his mobile number"* and the Player confirmed that they were friends *"[s]ince we were young in the U15 approximately"* in his testimony of 13 April 2016 and that they used to meet and that *"I know Seyble from football, I know him playing against each other. We used to go out, meet up, talk about everyday things. That's all"*. in his testimony of 3 August 2016. Finally, the Player also confirmed during the hearing before the Panel that he and Mr Zammit used to be friends. The Panel finds that the relationship between the Player and Mr Zammit can be described as a friendship. Against the background of this friendship, the Panel finds it unlikely that Mr Zammit's statements about the Player's acceptance of the bribe would be untruthful.
92. The Panel also finds that the Player did not offer any satisfactory explanation as to why Mr Zammit would falsely accuse him, despite their friendship. Also, while the Player has a clear reason to deny having accepted the bribe, there is no plausible explanation why Mr Zammit would falsely accuse his friend.
93. The Panel also finds that although the evidence provided by Mr Zammit in his various interrogations and testimonies is fairly consistent, one inconsistency is that Mr Zammit's testimony was not so clear about the content of the offer made to the Player (i.e. accepting to meet Mr Mackay or accepting a bribe to fix the Montenegro Match).
94. The Panel however has little doubt that, although Mr Zammit may have encouraged the Player to meet with Mr Mackay, Mr Zammit also offered the Player to fix the Montenegro Match, because this course of events is supported by the testimonies of the Player himself (testimony of 18 April 2016: *"Seyble offered me there a €3000 bribe and he tried to persuade me, he also tried to increase the amount but I insisted not to"*), Mr Luke Montebello (testimony of 13 June 2016: *"Seyble talked to us to fix the match and I did not accept"*) and Mr Samir Arab (testimony of 13 June 2016: confirmation of the Prosecutor's question *"So when you were all there present he told you to lose for three thousand (€3000) Euros?"*). The Player also testified during the hearing that Mr Zammit tried to persuade him again during the third meeting. The Panel finds that these elements together are sufficiently strong to support the conclusion that, through Mr Zammit, an offer was made to the Player to fix the Montenegro Match.

95. Turning then to the question whether the Player has accepted such offer, the Panel observes that the only evidence on file corroborating this theory are the various testimonies of Mr Zammit, who is therefore a key witness in the present proceedings.
96. In assessing the credibility of Mr Zammit's testimonies, the Panel finds that, importantly, at no point in time did Mr Zammit state that the Player refused the offer made. Mr Zammit's testimony is entirely consistent in saying that the Player was one of the players that accepted the offer, although it is not always clear from his testimony to which offer he refers.
97. The Panel, however, finds that there are clear statements of Mr Zammit on file, suggesting that the Player accepted the offer to fix the Montenegro Match.
98. The Player's acceptance was confirmed by Mr Zammit during his testimony of 8 April 2016 before the Maltese criminal court of first instance in the criminal proceedings initiated against him:
Mr Zammit: *"After they tried with Cesare since these, obviously he took, he was going to take the money".*
Prosecution: *"Who proposed the money to Kyle Cesare and Emanuel Briffa?"*
Mr Zammit: *"I did".*
Prosecution: *"And what was the amount?"*
Mr Zammit: *"The amount was there".*
Dr. M. Mifsud: *"Tell him".*
Mr Zammit: *"Of three thousand five hundred (3,500)".*
99. This testimony was subsequently confirmed by Mr Zammit's testimony of 2 June 2016 before the Maltese criminal court of first instance in the criminal proceedings initiated against the Player:
Prosecution: *"What did he accept?"*
Mr Zammit: *"To fix the game".*
Prosecution: *"Explain in a bit of detail the exact words you said".*
Mr Zammit: *"To fix the game against Montenegro two nil (2-0)".*
Prosecution: *"To whom did you say these words?"*
Mr Zammit: *"To both of them eh, but one of them told me he wasn't interested and the other one told me yes".*
100. Although the Panel obviously makes its own assessment of the evidence on record, the ruling of the Maltese Criminal Court of Appeal in respect of the Player strengthens the suspicions against the Player. The Maltese Criminal Court of Appeal, which appears to have based its decision on almost exactly the same evidence as is made available to the Panel while applying a higher standard of proof, *inter alia*, reasoned as follows:

“The picture resulting to this Court is one that goes far beyond the one where Seyble Zammit approached the respondents, they refused and everything finished there. What results is that after the first encounter, they met again with Zammit at the second meeting where there were other players and this can only imply that they not only had accepted the proposal but also that their presence was necessary to entice other players, but instead of following the example of those that had refused, they chose to continue meeting Seyble Zammit.

[...]

It is true that the prosecution’s case rests primarily of Seybel [sic] Zammit’s deposition that the respondent describes as unreliable and contradictory. The Court carefully examined Seybel [sic] Zammit’s deposition and although in some parts it appears that he was not very forthcoming and rather economical, he did explain that of all the players he had approached only the respondents [i.e. the Player and Emanuel Briffa] accepted his proposal and to meet Ronnie Mackay. The Court also examined the telephone list extrapolated by the expert nominated by the first Court from where it results that there were calls made by Zammit to the two appellants [sic]”.

101. Also, in the “*Affidavit Mr Seyble Zammit 20th Feb 2018*”, which appears to be the only piece of evidence that was not available to the Maltese criminal court of first instance and the Maltese Criminal Court of Appeal, Mr Zammit does not allege that the Player at some stage denied the offer. Although the non-denial of an offer does not necessarily mean that such offer was accepted, the Panel finds that the testimonies of Mr Zammit on 8 April and 2 June 2016 are sufficiently strong to prove that the Player had indeed accepted Mr Zammit’s offer to fix the Montenegro Match.
102. The majority of the Panel also finds that there are no indications in Mr Zammit’s affidavit that the assessment made by the Maltese courts in respect of the Player was otherwise incorrect, flawed or incomplete. The Panel also has no reason to doubt the truthfulness of Mr Zammit’s declarations and has full confidence in the evidence provided. Insofar Mr Zammit declared that the Player “*never moved to the next step to meet McKay*”, the Panel does not consider it to be decisive that the Player never met Mr Mackay and that the latter testified to have never heard about the involvement of the Player, except from the newspapers.
103. Even if Mr Zammit made the offer on behalf of Mr Mackay, the Panel finds that it derives from the evidence set out above that the Player’s acceptance of the offer was definite and that no meeting with Mr Mackay was required. In any event, following the hierarchy of the masterminds, it appears that the Asian investor “Fred” stood above Mr Mackay and it is not disputed that the Player met with Fred during the third meeting, voluntarily or not.
104. As to the Player’s argument that Mr Montebello confirmed in his testimony that they (Mr Montebello and the Player) “*just listened*” to Mr Zammit, the Panel finds that Mr Montebello cannot speak for the Player, because Mr Montebello testified that “*I did not accept and got out of the car. That’s all I know*”, without saying anything about the Player’s response to the proposal. Indeed, it appears from such testimony that the Player remained in the car after Mr Montebello got out.
105. Furthermore, as to the Player’s denial of any wrongdoing, the Panel finds the evidence provided by the Player to be highly incredible and inconsistent.

106. There is no doubt that the Player lied in his first two police interrogations on 7 and 13 April 2016 when he said that he knew nothing about an offer being made by Mr Zammit to fix the Montenegro Match. The fact that the Player lied on these two occasions is uncontested.
107. The Player's indication that he deleted Mr Zammit's phone number from his phone after the second meeting is not credible. The telephone records on file prove that the Player and Mr Zammit called each other in the days after the second meeting on 13 March 2016 (*inter alia* on 14 March 2016 at 11:14:24 for 67 seconds, at 15:12:21 for 111 seconds, at 20:13:42 for 9 seconds and at 20:55:40 for 21 seconds, on 16 March 2016 at 12:06:41 for 101 seconds, on 19 March 2016 at 14:23:13 for 26 seconds and at 14:49:19 for 81 seconds). The Panel finds that the Player did not give any satisfactory response when being confronted with this evidence during the hearing ("*I don't remember exactly, I think I called him because I did not want to have anything to do with him*") and was evasive in his responses.
108. The Panel finds that the Player answered the questions addressed to him during the hearing evasively, particularly in respect of why he decided to meet again with Mr Zammit.
109. Accordingly, the Panel finds that not much weight, if any, is to be given to the Player's declarations.
110. The Panel also finds that the continuous contact between the Player and Mr Zammit is incomprehensible (even though the third meeting may not have been planned by the Player) if the Player had refused the match-fixing offer at the outset, whereas further meetings would still have made sense following an acceptance for these subsequent meetings may have served to convince other players or to perfect match-fixing plans.
111. Consequently, considering all the evidence on record, the majority of the Panel has a high degree of confidence in the quality of the evidence and is comfortably satisfied that the Player is guilty of accepting a bribe and that he thereby violated Article 12(2)(a) UEFA DR.

iii. If so, is the sanction imposed on the Player proportionate?

112. Given that the Player's infringement is confirmed, the remaining task for the Panel is to assess the proportionality of the sanction imposed on the Player.
113. There is well-recognized CAS jurisprudence to the effect that whenever an association uses its discretion to impose a sanction, CAS will have regard to that association's expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its *de novo* powers of review, be free to say so and apply the appropriate sanction (*CAS 2017/A/5003*, para. 274, with further reference to *CAS 2015/A/4338*, para. 51).
114. Match-fixing endangers the integrity of the sport of football and needs to be eradicated from the game. Indeed, the detrimental impact of match-fixing violations on the attraction of sport has been pointed out in CAS jurisprudence:

“The very essence of sport is that competition is fair; its attraction to spectators is the unpredictability of its outcome” (CAS 2010/A/2172, para. 45 of the excerpt published on the CAS website).

115. The Panel observes that the majority of the Player’s arguments in respect of the proportionality of the sanction are premised on the argument that the Player was not guilty of accepting a bribe. As has been determined *supra*, the Panel, however, finds that the Player is guilty of such violation, with the consequence that any such arguments are groundless.
116. The Panel finds that it is to be taken into account that the match-fixing plot was finally not executed, that the Player did not receive any money for agreeing to fix the Montenegro Match and that the Player was not involved in the organization of the match-fixing plot.
117. Notwithstanding such mitigating factors, the Player not only tarnished the reputation of the sport of football by his conduct, he also put at risk the livelihood of himself and his teammates by entering into an agreement with Mr Zammit, while knowing about the involvement of “Fred”, whom he allegedly feared. The Player in general made a mockery of UEFA’s efforts to eradicate match-fixing from football and completely ignored the training received on match-fixing, and he did so for his own personal gain.
118. The Player also showed no sign of remorse and persisted in his denial of having accepted the bribe. The Player only indicated that, with the knowledge of hindsight, if he would be approached again with an offer to fix a match, he would go to someone and report the approach.
119. The Panel finds that the mitigating elements are sufficiently discounted in the sanction imposed on the Player by means of the Appealed Decision. Indeed, in case such mitigating factors would have been absent, the Panel believes that a lifetime ban would have been the only appropriate sanction. However, in the matter-at-hand, the Panel finds that the UEFA Appeals Body, following a measured analysis as to the proportionality of the sanction, considered a ten-year ban from all football related activities appropriate. The Panel has no reason to depart from such analysis and also considers such sanction appropriate.
120. Also in comparison with the sanctions imposed on the Player’s teammates for their involvement in the match-fixing scheme, the Panel does not consider the sanction imposed on the Player to be disproportionate. Mr Montebello, Mr Cremona, Mr Camenzuli and Mr Arab were banned from all football-related activities for a period between of 12 and 24 months. The Panel however considers this difference justified in light of the fact that none of them were found guilty of accepting a bribe, whereas the Player has been. The violation committed by the Player is therefore significantly more severe than the violations committed by his teammates.
121. Consequently, the majority of the Panel finds that the imposition on the Player of a 10-year ban from all football-related activities is appropriate.

B. Conclusion

122. Based on the foregoing, and after taking due consideration of all the evidence produced and all arguments made, the majority of the Panel finds that:
- i. The Player is guilty of accepting a bribe and thereby violated Article 12(2)(a) UEFA DR:
 - ii. The imposition on the Player of a 10-year ban from all football-related activities is appropriate.
123. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Kyle Cesare on 8 September 2018 against the decision issued on 5 June 2018 by the Appeals Body of the *Union des Associations Européennes de Football* is dismissed.
2. The decision issued on 5 June 2018 by the Appeals Body of the *Union des Associations Européennes de Football* is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.