

CAS 2018/A/6075 Igor Labuts v. Football Association of Ireland

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Sofoklis P. Pilavios, Attorney-at-Law in Athens, Greece
Arbitrators: Mr. Mark A. Hovell, Solicitor in Manchester, United Kingdom
Mr. Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland

in the arbitration between

Igor Labuts, Latvia

Represented by Mr. Stuart Gilhooly, Attorney-at-Law with H J Ward & Co Solicitors in Dublin, Ireland, and Mr. Patrick Marron, Mr. Paul McGarry, Mr. Stephen McGuinness and Mr. Ollie Cahill, Barristers in Dublin, Ireland

as Appellant

and

Football Association of Ireland, Dublin, Ireland

Represented by Mr. David Casserly and Mr. Magnus Wallston, Attorneys-at-Law with Kellerhals Carrard in Lausanne, Switzerland, and Mr. Patrick Leonard and Ms. Louise Reilly, Barristers in Dublin, Ireland

as Respondent

I. PARTIES

1. Igor Labuts (the “Appellant” or “Player”) is a Latvian professional football player who plays in the position of goalkeeper at Athlone Town AFC, a club participating in the League of Ireland First Division, which is the second-tier league of the Irish professional football league system.
2. The Football Association of Ireland (the “Respondent” or “FAI”) is the national governing body for the sport of football in Ireland. It has been affiliated to the Fédération Internationale de Football Association (“FIFA”) since 1923.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 29 April 2017, the Player was playing as goalkeeper for Athlone Town AFC in their match against Longford Town FC (the “Match”) for the League of Ireland First Division. Longford Town FC won the Match 3-1.
5. FAI initiated an investigation on the Match after receiving a report from the UEFA Betting Fraud Detection System (“BFDS”), according to which there was “*clear and overwhelming betting evidence that the course or result of this match was unduly influenced with a view to gaining corrupt betting profits*”. The BFDS report stated that there were three irregular betting patterns on the Match: (i) highly suspicious live betting for at least 2 goals to be scored in the first half; (ii) highly suspicious live betting for at least four goals to be scored in total; and (iii) very suspicious live betting for Athlone Town AFC to lose the Match by two clear goals.
6. On 8 May 2017, the Player was interviewed by FAI and denied any involvement or knowledge of match-fixing with respect to the Match.
7. On 7 September 2017, the FAI Disciplinary Committee sanctioned the Player after a hearing with a ban for 12 months from all football-related activity for breaching FAI Rules 99, 105 and 106.
8. The Player filed an appeal against the FAI Disciplinary Committee Decision, which was heard on 4 October 2018.
9. On 5 October 2018, the FAI Appeal Committee rejected the Player’s appeal stating that it was “*comfortably satisfied that Mr. Igor Labuts was guilty of deliberate actions*”

designed to influence the result of the Match which took place between Longford Town FC and Athlone Town AFC on 29 April 2017”.

B. Proceedings before the FAI Arbitrator

10. The Player initiated an arbitration proceeding under the FAI Rules challenging the decision of the FAI Appeal Committee.
11. On 11 November 2018, an arbitration hearing took place at the FAI Headquarters.
12. On 28 November 2018, the FAI Arbitrator rendered his decision in this matter (the “Appealed Decision”) finding that *“the Appellant has breached Rules 99, 105 and 106.2 (a) and (b) when playing the Match on 29 April 2017 for Athlone Town AFC; that his appeal fails, and that his ban on taking part in any football-related activity for a period of 12 months effective from 7 September 2017 stands. This is the original sanction that was imposed and I have decided not to impose a different sanction. I note that this ban has already been served”.*
13. The Appealed Decision was notified to the Player on 29 November 2018 and, *inter alia*, determined the following:

“6.1 It was proposed by me at the outset of the Hearing and agreed to by the parties, that there were essentially two steps to the consideration of the case. First, it must be decided if the Match was “fixed”, that is, unduly influenced with a view to gaining corrupt betting profits, in the words of the BFDS report.

6.2 If the decision is that it was fixed, the second issue to be decided, is whether the Appellant took part in that undue influence: whether he conspired to influence the result of the Match in a manner incompatible with sporting ethics under Rule 105 acted in a manner that is likely to exert an influence on the course and/or result of the Match by means of behaviour with a view to gaining advantage for himself or a third party under Rule 106.2.a; participated directly or indirectly in betting or similar activities relating to matches or competitions or having a direct or indirect financial interest in such activities under Rule 106.2.b, or used or provided other with information which was not publicly available was obtained through his position in football and damages or could damage the integrity of match or competition under Rule 106.2.d and whether he brought the game of football into disrepute under Rule 99.

Was the match “fixed”?

(...)

6.4 The conclusion of the BFDS is that there was “clear and overwhelming evidence that the course or result of this match was unduly influenced with a view to gaining corrupt betting profits. The betting evidence ultimately indicates that bettors held prior knowledge of Athlone AFC suffering a minimum two goal defeat in a match which contained at least two first half goals, and at least four goals in total.”

6.5 No alternative expert evidence was adduced in relation to the BFDS system to contradict A. It was put to the expert in relation to the BFDS that there was no view in the report as to who may have manipulated the Match, and that was not denied. It was accepted that there were bets put on the Match, although it was not accepted by the Appellant that the match was manipulated for betting purposes.

6.6 I took note of the study of the BFDS that was carried out by B. and C. dated July 2015. (...)

6.7 It also makes the conclusion, highlighted by the FAI, as follows:

“Our overall conclusion from the study is that matches reported as suspicious by the FDS are very likely to have indeed been manipulated.”

(...)

6.8 In this case, A. explained that the initial report went through more than 20 experts qualitatively analysing the details of the statistics and the quantitative information, in order to come to a final conclusion in the BFDS that there was undue influence with a view to gaining corrupt betting profits.

6.9 I find that it is established that the Match was manipulated with a view to gaining corrupt betting profits for people who were betting on the Match. The evidence adduced by the FAI shows, to my comfortable satisfaction, that suspicious betting activity took place with regard to the Match in relation to three different aspects of that Match. For the reasons stated by BFDS in its report, and extensively developed and explained by A. in his evidence at the Hearing, I find that the individual or individuals who were betting in the live market on the Match had knowledge that a second goal was going to be scored in the first half; that at least four goals to be scored in total; and that Athlone Town AFC were going to lose the match by two clear goals. The betting on the Match was inappropriately confident of these results. The betting was improperly heavy on these three outcomes occurring, and indeed they all came to pass. It is noteworthy that the market did not remain inexplicably differentiated from what the norm should have been throughout the match – the differentiation in relation to the betting patterns on the goals in the first half against Athlone Town AFC returned to normal after the second goal had been scored.

6.9 The anomalies in the live betting patterns were not disputed as such by the Appellants, but the link between the betting anomalies and the activities of the Appellant were. It was specifically not admitted by the Appellant that the match was manipulated for betting purposes, but the anomalies in the betting patterns themselves were not disputed. No alternative explanation was offered as an explanation of the suspicious betting patterns.

6.10 I find that the deviation from the expected ordinary movement in the betting odds at distinct times in the Match, which contradict the mathematical model as set out in the BFDS report and elaborated upon by A., is a decisive indication that bettors had certain knowledge that the mathematical model did not have.

Was the Appellant involved in “fixing” the match?

7. The match has to be examined in light of the BFDS report.

Second goal conceded by Athlone Town AFC

7.1 Bettors were confident that there was going to be a goal scored in the last 15 minutes of the first half. The first significant deviation from the normal betting patterns occurred as real time betting on a second goal in the first half failed to diminish as time passed. Odds on a second goal remained stubbornly low despite the objective decreased likelihood of a goal against Athlone AFC, given that there was a decreasing amount of time in which it could take place. After the goal was scored, the market appeared to be satisfied, as referred to above. Its expectations had been met and the odds of a further goal in the first half returned to expected levels.

7.2 Looking at the actors in the scoring of the second goal, which came from a free kick towards the end of the first half, it must be examined whether the Appellant was to blame for that goal. In his evidence, the Appellant stated that he set the wall, set his position and waited for the shot. He said it was hard to remember what he wanted to do, but that he thought he wanted to catch the ball, and that it went under his palms and into the goal. He was disappointed and lay on the ground as he was shocked and couldn't believe that this could happen.

7.3 In support of this, D. stated that there was nothing unusual in the play of the Appellant at all. In his report, he stated that the Appellant “appeared to dive fractionally late which cost him.” He stated that it was possible that he could have dealt with the shot better but that the camera angle wasn't clear enough for him to go too strong on that point. He had not seen the second angle of the goal that was shown during the hearing and had not watched the full match.

(...)

Third goal conceded by Athlone Town AFC

7.7 As with the second goal, the live market was inappropriately confident that there would be a third goal conceded by Athlone Town AFC after the 80th minute. Despite the “abundantly clear” time-constraints, as discussed in the BFDS report, the market remained stubbornly confident that there would be another goal conceded by Athlone Town AFC.

7.8 In relation to the last goal conceded, the Appellant said that he was trying to save the game, when they were down to ten men. He had tried to rush the penalty area already. That chance was missed so he returned to his own area. When it was kicked by the opposing goalkeeper, the Athlone central defender missed it, and from the Appellant's point of view he thought that he could reach the ball and head it or kick it out because there was nobody close to the area, and the ball was a 50:50 between him and the opposing striker. He stated that he rushed the ball and even tried to intercept it with his hand when it was lobbed over his head, but he was unsuccessful.

(...)

7.10 E. was of the opinion that the decision-making of the Appellant over the third goal was very poor. His initial positional sense was very good, but rather than retreating when his own team-mate missed the ball, he came for the ball and left himself in no-man's-land and allowed the centre forward to score.

7.11 D. was of the view that the Appellant was quick in trying to close down the angle for the eventual goal-scorer in the third goal conceded by Athlone Town AFC, but states in his report, which he confirmed in evidence, that "his advanced position makes him very vulnerable to what was a very routine lob for the striker." D. is of the general view that the Appellant's level of playing was appropriate to the level he was playing at and that the footage did not suggest wrongdoing by the Appellant.

7.12 It was highlighted by Mr. Gilhooley in submission that the different elements in order to concede the final goal were highly implausible. First, if the Appellant wished to allow a goal, he had the opportunity when he save a cross from the number 23 in the second half. Secondly, in order for him to allow the third goal, it relied on the failure of another player to make contact on a goal kick from the opposing team, it relied on an opposing team player being present, and then it relied on that player being able to lob the Appellant when he rushed towards him. All of this pointed to the conclusion that the Appellant was not involved in anything wrong with the match.

Other evidence against the Appellant

7.13 The match also has to be examined in the light of the general circumstances of the Appellant. The FAI submitted that the movement by the Appellant to play for Athlone Town AFC when he did was inexplicable, and invited me to infer that therefore this was evidence that he was involved in match manipulation. However, it is apparent that there were reasons as to why the Appellant sought to play in Ireland, where he had contacts and had played previously. Further, his rationale for wanting to play in a team where he could get match play explains, to some degree, his foregoing of salary and his move to Athlone. No evidence was provided that there were financial irregularities or improper communication from the Appellant in relation to match-fixing.

8. Conclusion

8.1 I had the opportunity to examine the footage of the Match supplied, and was brought through a variety of clips of the Match. I also had the benefit of reading all of the reports and hearing the evidence of the witnesses. I looked at the Match in its entirety rather than individual elements of the Appellant's performance before coming to a conclusion.

8.2 The evidence of E. and F. was particularly strong in relation to the Appellant's actions around the second goal in the first half, as was E.'s evidence in relation to the last goal, and I find that their evidence was more convincing than the evidence for the Appellant, and is the evidence that I place most reliance on in coming to my conclusions. Against the backdrop of inappropriate and heavy betting that there would be a second goal in the first half and that Athlone would eventually lose by at least two goals, there is an ineluctable inference that there was an actor or actors that were able to effect a second and third goal and that this was known in advance.

8.3 Looking at the Match through this prism, the ineffectual nature of the Appellant's attempted save of the free kick at the end of the first half is more than unfortunate, as is the decision-making around the Appellant's play in relation to the third goal. I am comfortably satisfied that the Appellant purposely played badly to influence the outcome of the Match. In this, I am placing a heavy reliance on the expert evidence which I find to be more convincing in terms of the analysis and conclusions provided by the witnesses on the part of the FAI. I am comfortably satisfied that the Appellant's weak performance is explained by and linked to the deviation in betting pattern which caused the conclusion in the BFDS report that the match had been fixed.

8.4 I have reached a conclusion beyond comfortable satisfaction that the Appellant has therefore brought the game into disrepute under Rule 99; has conspired to influence the result of the Match in a manner incompatible with sporting ethics under Rule 105; has engaged in behaviour that damages or could damage the integrity of matches and competitions under Rule 106.1; has acted in a manner that is likely to exert an influence on the course and/or result of a match or competition by means of behaviour with a view to gaining an advantage for himself or a third party, being whatever party or parties had bet on the outcome of the Match pursuant to Rule 106.2 (1); and has participated directly or indirectly in betting or similar activities relating to matches pursuant to Rule 106.2 (b). I do not find that there was any breach of Rule 106.2(d) in relation to the use or provision of information.

9. Decision

9.1 For the reasons set out in this award, I make the following orders:

9.1.1 That the Appellant has breached Rules 99, 105 and 106.2 (a) and (b) when playing the Match on 29 April 2017 for Athlone Town AFC; that his appeal fails, and that his ban on taking part in any football-related activity for a period of 12 months effective from 7 September 2017 stands. This is the original sanction that was imposed and I have decided not to impose a different sanction. I note that this ban has already been served.

(...)"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 19 December 2018, the Player submitted a statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code") to the Court of Arbitration for Sport (the "CAS"), challenging the Appealed Decision. With his statement of appeal, the Appellant nominated Mr. Mark A. Hovell, solicitor in Manchester, United Kingdom, as arbitrator in this case.
15. On 11 January 2019, the Appellant filed his appeal brief in accordance with Article R51 of the Code.
16. On 16 January 2019, the Respondent nominated Mr. Michele A.R. Bernasconi, attorney-at-law in Zurich, Switzerland, as arbitrator.

17. On 15 February 2019, the CAS Court Office informed the parties that the Panel appointed to decide this matter had been constituted as follows:

President: Mr. Sofoklis P. Pilavios, attorney-at-law in Athens, Greece
 Arbitrators: Mr. Mark A. Hovell, solicitor in Manchester, United Kingdom
 Mr. Michele A.R. Bernasconi, attorney-at-law in Zurich, Switzerland

18. On 4 March 2019, the Respondent filed its answer in accordance with Article R55 of the Code.
19. On 2 May 2019, the CAS Court Office issued an order of procedure, which was signed and returned to the CAS by the Parties on 3 May 2019.
20. On 29 July 2019, the Appellant submitted an unsolicited reply to the Respondent's answer. After requesting the Respondent's position on the admissibility of said reply, the Panel decided to admit the reply to the file and invited the Respondent to submit its response. The Respondent submitted its response on 13 September 2019.
21. On 3 October 2019, after hearing the parties' preferences, a hearing took place in Lausanne, Switzerland. Besides the Panel and Mr Brent Nowicki, CAS Managing Counsel, the following persons were in attendance:
- The Appellant attended the hearing in person and was also represented by his legal counsels, Mr. Stuart Gilhooly, Mr. Paul McGarry SC, Mr. Stephen McGuinness and Mr. Ollie Cahill. The Appellant called D., G. and H. as expert witnesses.
 - The Respondent was represented by its legal counsels, Mr. Patrick Leonard SC, Ms. Louise Reilly and Mr. Magnus Wallsten. The Respondent called J., A., E. and F. as expert witnesses.
22. At the outset of the hearing, the parties confirmed that they did not have any objection as to the constitution and composition of the Panel.
23. At the conclusion of the hearing, the parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected, following which the Panel closed the hearing and announced that its award would be rendered in due course.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

24. The following outline of the parties' positions is illustrative only and does not necessarily comprise every submission advanced by the parties. The Panel has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

A. The Appellant

25. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant submitted that there is no evidence that he is guilty of match manipulation. He cooperated fully with the FAI by handing over all of his phone and bank records and no evidence of financial gain or links to match fixing was found.
- The Appellant's position, namely that his performance was not out of the ordinary and that there is no proof to suggest that he was deliberately inadequate in order to influence the Match in a certain way, was supported by four experts, three TV pundits and a goalkeeper coach. In their reports, they found the footage of the relevant sections of the Match as totally inconclusive concerning the question whether the Appellant or any other player tried to manipulate or influence the Match and that in both goals conceded the Appellant may have made poor choices and mistakes, but this is nothing uncommon for football at that level and there was no way to conclude that the mistakes were deliberate only from the video footage.
- The Appellant made a number of saves during the Match, as there were 14 shots on target by the opposing team, and some of those saves were made at times which are not consistent with the betting patterns alleged by the BFDS report, had the Appellant wanted to manipulate the Match.
- The Appellant also submitted that it has not been successfully proven that the Match was manipulated in the first place. And, in the event it was, then there was far more evidence that two of his teammates, X. and Y., were culpable. Both of them had also been accused of involvement in match manipulation in other countries in the past, unlike the Appellant.
- There were no precedents of just two players being found guilty of match manipulation on video evidence alone and involving just one match. At any case, it was per se not feasible to prove an individual player's involvement in a match-fixing scheme solely by relying on the BFDS report and video footage. In addition, in this case there were four experts confirming that there was nothing out of the ordinary in the Appellant's performance in the Match and, as a result, video footage is not sufficient to come to the comfortable satisfaction that a player was involved in match-fixing.
- In consideration of the above, the Appellant requested the CAS to:
 - i) Annul the decision in relation to the findings that the appellant breached rule 99, 105 and 106.2 (a) and (b) of the FAI Rules effective 9 February 2017*
 - ii) Reverse and annul the sanction of a 12-month football related ban*
 - iii) Rule that the Respondent is ordered to pay the costs of this procedure*
 - iv) Rule that the Respondent has to pay the Appellant a contribution towards his legal fees and other costs incurred in this process, in an amount to be determined at the discretion of the Panel."*

B. The Respondent

26. The Respondent's submissions, in essence, may be summarized as follows:

- The Respondent's position was that the BFDS report, the video footage of the Match available and the expert opinions by two experts it submitted prove beyond a comfortable satisfaction that the Appellant breached the relevant FAI Rules.
- The Appellant offered no evidence to support his assertion that the Match was not unduly influenced with a view to gaining betting profits, as correctly found by the Appealed Decision on the basis of the BFDS report. In particular, among the findings of the BFDS report were (i) highly suspicious live betting for at least two goals being scored in the first half of the Match, (ii) highly suspicious live betting for at least four goals being scored in total, and (iii) very suspicious live betting for Athlone Town to lose the match by at least two clear goals, all of which suggest that the Match was manipulated and bettors had prior knowledge of what would transpire.
- The Appealed Decision was also correct to find that the Appellant was involved in fixing the Match. The two expert witnesses put forward by the FAI supporting such conclusion were given sufficient information to assess the video footage in its proper context, including viewing the entirety of the footage available. K., a leading international goalkeeping expert also indicated in his report the findings that suggest that the Appellant's mistakes in the two goals conceded cannot be explained "*with technical/tactical reasoning*" and were not based "*on logical, rational or tactical triggers*" respectively. In addition, the Appellant's performance and errors at the time each goal was scored against his team coincided precisely with the highly suspicious betting patterns on the Match. Lastly, the circumstances surrounding the Appellant were also a key factor: the Appellant's and his team's position would not be affected as a result of the Match (the Appellant was a player for a club in a lower league and played in Athlone Town on a low (in fact no) salary), the Appellant moved from Latvia to play in a largely amateur club at the bottom of the second-tier league in Ireland for no salary at the latter stage of his career and the Appellant was placed by the Latvian Football Federation on a list of suspicious players and the anti-corruption organisation Federbet considers the Appellant's career activity to have been suspicious.
- The FAI Rules do not require an individual to have made any financial gain in order to commit a breach. Moreover, the Appellant has only provided the FAI with an extract of a Swedbank account for the period 1 February – 1 June 2017 and a list of phone calls made and received on his mobile phone from 8 April – 16 May 2017. Such evidence, however, did not establish the existence or not of any direct or indirect financial gain from manipulating the result of the Match, or the use of another device or other means of communication, and cannot outweigh the evidence relied on by the Appealed Decision.
- The opinions provided by three of the four experts of the Appellant are inconclusive. Moreover, the fact that the Player made saves in the Match did not refute the findings of the Appealed Decision as the Appellant's actions coincide

with the findings of the BFDS report and, at any case, the Appellant making saves was essential in raising as little suspicion as possible.

- As far as the extent of the sanction imposed on the Appellant, a one-year suspension was within the discretion allowed by the FAI Rules and did not automatically destroy a player's career. Despite serving three-year sanctions, the majority of the players involved in a Ukrainian match-fixing case that was decided by CAS continued their professional careers after serving the ban.
- In consideration of the above, the Respondent requested the CAS to rule that:

“1. The Appeal of Igor Labuts is dismissed.

2. The decision dated 28 November 2018 rendered by independent arbitrator Roderick Maguire in the matter of Igor Labuts is confirmed.

3. Alternatively, that Igor Labuts violated the FAI Rules and is sanctioned with a 12-month ban from taking part in any football-related activity.

4. Igor Labuts shall bear the entire costs of the arbitration.

5. Igor Labuts shall pay a significant contribution towards the FAI's legal fees and other related expenses in an amount that the Panel deems appropriate.”

V. JURISDICTION

27. The jurisdiction of the CAS, which is not disputed by any of the parties, derives from Article R47 of the Code and the following provisions of the FAI Rules (version effective from 9 February 2017):
- Rule 4.2.e) [Rule 3.2.e) in the 2018 version of the Rules] that determines that *“the Association undertakes to (...) Refer in the last instance any dispute of national dimension arising from or related to the application of the Rules or Regulations of the FAI only to an independent and impartial Court of Arbitration, which will settle the dispute to the exclusion of any ordinary court, unless expressly prohibited by Irish Law”*;
 - Rule 146 [Rule 64 in the 2018 version of the Rules] providing that *“Decisions of certain bodies may be appealed to the CAS in Lausanne, Switzerland as provided under the rule of such bodies.”*
28. In addition, by email of 7 September 2017, the FAI Disciplinary Control Unit confirmed to the Appellant that *“following a decision of the FAI Appeals Committee, in accordance with FAI Rule 173, any party can then appeal to an arbitrator within the required deadline. Following arbitration, the decision may be appealed to the Court of Arbitration for Sport”*.
29. Further, both parties signed on 3 May 2019 the order of procedure acknowledging the jurisdiction of the CAS.

30. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

31. Article R49 of the Code provides that *“in the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”*.

32. In view of the fact that the FAI Rules are silent on the matter of the time limit for filing an appeal before CAS, and considering that the Appealed Decision was notified to the Appellant on 29 November 2018 who then filed his statement of appeal with the CAS on 19 December 2018, it follows that the appeal was filed within the 21 days set by Article R49 of the Code.

33. The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

34. It follows that the appeal is admissible.

VII. APPLICABLE LAW

35. Article R58 of the Code (2018 edition) provides as follows:

“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.”

36. Article R58 of the Code indicates how the Panel must determine which substantive rules/laws are to be applied to the merits of the dispute. This provision recognizes the pre-eminence of the *“applicable regulations”* to the *“rules of law chosen by the parties”* or the *“law of the country in which the federation [...] which has issued the challenged decision is domiciled”*, which are only applicable *“subsidiarily”*.

37. Article R58 of the Code does not admit any derogation and imposes a hierarchy of norms, which implies for the Panel the obligation to resolve the matter pursuant to the regulations of the relevant *“federation, association or sports-related body”*.

38. The case at hand involves a domestic dispute related to a disciplinary proceeding by the Respondent that resulted in the imposition of sanctions to the Appellant.

39. As a result, the *“applicable regulations”* in the present case are the FAI Rules (version effective from 9 February 2017), which define the disciplinary offences with which the Appellant was charged.

40. In particular, the provisions on which the Appealed Decision was issued and the sanctions at issue imposed, provide as follows in their relevant part:

“RULE 99. BRINGING THE GAME INTO DISREPUTE

Any Member or Participant who has brought the game of football or the FAI into disrepute by any means, written, verbal, by action or otherwise shall be sanctioned with a suspension and/or fine and/or a ban on performing any football related activity or other sanction deemed appropriate.

RULE 105. MANIPULATING MATCH RESULTS

Anyone who conspires to influence the result of a match in a manner incompatible with sporting ethics shall be sanctioned with a suspension and a fine. The disciplinary body may also impose a ban on taking part in any football-related activity; in serious cases this sanction shall apply for life.

RULE 106. BETTING/GAMBLING

1. Anyone who engages in any behaviour that damages or could damage the integrity of matches and competitions may be subject to disciplinary sanctions. All persons are obliged to cooperate fully with the Association in all efforts to combat such behaviour.

2. Anyone who engages in any of the following may be subject to disciplinary sanction:

a) acting in a manner that is likely to exert an influence on the course and/or result of a match or competition by means of behaviour with a view to gaining an advantage for themselves or a third party;

b) participating directly or indirectly in betting or similar activities relating to matches or competitions or having a direct or indirect financial interest in such activities;

(...)”

41. The Panel will therefore primarily examine the Appealed Decision in the light of the FAI Rules. If necessary in order to fill any gap in the applicable regulations, subsidiary norms will be determined later on in this award.

VIII. MERITS

42. According to Article R57 par. 1 of the Code, the Panel has “*full power to review the facts and the law*”. As repeatedly stated in the CAS jurisprudence, by reference to this provision the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Panel to make an independent determination as to merits (see CAS 2007/A/1394).

43. In light of the facts and the circumstances of the case, as well as considering the Appellant's contentions in support of its claims, the Panel observes that the main issues to be resolved are the following:
- (i) Was the result of the Match manipulated?
 - (ii) Is the Appellant guilty of manipulation of the result of the Match?
44. As a preliminary matter, the Panel needs to determine the issues of the burden of proof and the standard of proof.
45. It has not been disputed that in disciplinary matters of this kind the burden of proof lays with the regulatory body.
46. As to the question of what the standard of proof is that the FAI needs to meet in demonstrating that the Appellant is guilty of violation of the FAI Rules he is charged with, the Panel observes that the Appellant has not expressed any position in his written submissions. The Respondent, on the other hand, both during the hearing and in its answer, submitted that the standard of proof in this matter shall be that of comfortable satisfaction (*"the Player must be considered to have violated the following FAI Rules if (to the Panel's comfortable satisfaction) (...) these prove beyond a comfortable satisfaction that the Player (...)"*). The Panel notes in this respect that the applicable rules do not appear to contain any explicit standard (FAI Rule 164 which is captioned Evidence/Proof does not include any provision on the applicable standard of proof) and neither was any standard agreed between the parties. In this context, both legal authorities (A. Rigozzi, B. Quinn, Evidentiary Issues Before CAS, in: MICHELE BERNASCONI (Ed.), *International Sports Law and Jurisprudence of the CAS - 4th Conference CAS & SAV/FSA Lausanne 2012*, Editions Weblaw 2014) as well as relevant CAS case-law concur that the applicable standard of proof should be the comfortable satisfaction standard. In the words of the CAS Panel in case CAS 2009/A/1920, confirming the finding of a previous CAS award:

"Taking into account the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the relevant facts "to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made" (CAS 2005/A/908 nr 6.2)".

47. The Panel sees no reason to reach a different conclusion in the present case.

A. Was the result of the Match manipulated?

48. Various CAS Panels have dealt with the question of whether the result of a match was manipulated. In doing so, they have assessed evidence brought forward by the regulatory body, including a report by the UEFA Betting Fraud Detection System such as the one submitted by the Respondent in the matter at hand. The BFDS report

included in the case file finds the existence of three distinct betting patterns with respect to the Match, as follows:

“1) Highly suspicious live betting for at least two goals to be scored in the first half

Entering the final 15 minutes of the first half (at 1:0), bettors exhibited a wholly suspicious confidence in at least one further goal being scored prior to half-time, with odds failing to increase against all logical explanations despite the clear time constraints on this outcome occurring. Indeed, approaching the final five minutes of the first half, bettors remained entirely undeterred by the rapidly diminishing time remaining for at least one additional goal being scored, with clear indications that this betting confidence was not driven by on-field events. Strikingly, once the second goal of the match was scored in the 40th minute, odds for at least three goals being scored before half-time immediately returned to highly competitive levels, demonstrating an independent confidence in at least two goals being scored in the first half, rather than a general confidence in a high scoring match. Overall, this betting is highly suspicious and must be considered as highly concerning from an integrity perspective.

2) Highly suspicious live betting for at least four goals being scored in total

Entering the final 10 minutes of the match (at 2:1), highly suspicious betting originated for at least one additional goal being scored before full-time, with odds for this outcome failing to increase despite the increasingly severe time constraints. Indeed, such was the overwhelming strength of this entirely one-sided confidence, that odds as late as the 89th minute implied that it was more likely than not that at least one further goal would be scored, which simply cannot be justified under any circumstances. The sheer strength of this betting is highly irregular and is deemed to be vastly suspicious from an integrity perspective, with clear indications that bettors held advanced knowledge of at least four goals being scored in total.

3) Very suspicious live betting for Athlone Town AFC to lose the match by at least two clear goals

In the final 10 minutes of the match (at 2:1), very suspicious live betting emerged for Athlone Town AFC to lose the match by at least two clear goals, with odds once again failing to increase despite the tight time constraints on Athlone Town AFC’s deficit being increased. Whilst Athlone Town AFC were at a numerical disadvantage during this period as they had been reduced to 10 men in the 80th minute, this had been fully accounted for by bookmakers, with the betting patterns that transpired firmly demonstrating that bettors were unjustifiably confident in Athlone Town AFC losing by at least two clear goals. Indeed, these patterns demonstrate that bettors were in no way basing their opinions upon on-field events, and overall, the betting witnessed across all live full-time markets firmly demonstrate that bettors held prior knowledge of at least one additional goal being scored in the latter stages of the match, with clear indications that they expected Athlone Town AFC to concede this goal.

4) Other factors

It should be noted that Athlone Town AFC midfielder Z. was shown a red card in the 80th minute (2:1) of the match, having only been substituted on to the field two minutes earlier in the 78th minute of the match.”

49. In view of the above, the BFDS report concludes that there is “*clear and overwhelming evidence that the course or result of this match was unduly influenced with a view to gaining corrupt betting profits. The betting evidence ultimately indicates that bettors held prior knowledge of Athlone AFC suffering a minimum two goal defeat in a match which contained at least two first half goals and at least four goals in total*”.
50. The Respondent further submits an evaluation report on the BFDS efficacy by B. and C., which concludes that the BFDS is likely to correctly identify a significant proportion of manipulated matches.
51. On the other hand, the Appellant submits no evidence to contradict the contents and the findings of the BFDS report and the other evidence relied on by the Respondent.
52. In view of the above, the Panel is convinced to its comfortable satisfaction that the result of the Match was manipulated. The Panel particularly considers the emergence of three betting patterns as indicated in very clear terms by the BFDS report, which remained essentially unchallenged by the Appellant, to be convincing evidence that the Match was manipulated.

B. Is the Appellant guilty of manipulation of the result of the Match?

53. According to the FAI regulatory framework governing the offence of match-fixing and in line with the standard of proof required, the Respondent has to establish to the Panel’s comfortable satisfaction that the Appellant:
 - acted in a manner that is likely to exert an influence on the course and/or result of a match or competition by means of behaviour with a view to gaining an advantage for himself or a third party; (Rule 106.2.a), or
 - participated directly or indirectly in betting or similar activities relating to matches or competitions or had a direct or indirect financial interest in such activities (Rule 106.2.b);
 - conspired to influence the result of a match in a manner incompatible with sporting ethics (Rule 105);
 - brought the game of football or the FAI into disrepute by any means, written, verbal, by action or otherwise (Rule 99).
54. The Respondent relies in essence on four sets of evidence to justify the Appealed Decision: (i) the BFDS report, (ii) the video footage available of the two goals conceded by the Appellant during the Match at 39’48” and at 92’31”, (iii) two expert opinions by E. and F. and a tactical goalkeeping performance report by K., and (iv) several circumstances surrounding the Appellant (p. 20 of the Respondent’s answer), with some references to the suspicious ownership of Athlone Town AFC too.

55. The Appellant, on the other hand, in support of his position that the evidence relied on by the Respondent provide no proof of him having manipulated the result of the Match, submitted four expert opinions suggesting that the Appellant's performance during the Match and, in particular, when he conceded two goals, one by a direct free kick at 39'48'' and one by a shot from open play at 92'31'' of the Match, was not out of the ordinary. As a result, the Appellant argues that the evidence relied on by the Respondent may offer proof that the match was manipulated, but no sufficient proof to suggest that he was deliberately inadequate in order to influence the Match in a certain way.
56. During his testimony at the hearing, the Appellant denied his implication in the alleged fixing of the Match and insisted on the fact that there is no evidence of any wrongdoing on his part. He said that he chose a team in Ireland because his sister was living and working there, that he preferred to be playing in a club as a first goalkeeper and that this was the reason why he accepted the Athlone Town AFC offer which involved a professional contract including his accommodation and board expenses, even though the salary was minimal. As to the goals in dispute, he argued that he did everything in his power to deny them. At the free kick for the 39'48'' goal, the player of the opposing team that stood at the far end of the wall pushed the Athlone Town AFC players that were forming the wall, and this, in combination with the ball speed and wet ground contributed to the Appellant not having been able to save the ball. As to the goal he conceded by a shot from open play at 92'31'', the Appellant said that his first thought was to leave the penalty box and rush towards the attacking player of the opposing team and that he had a 50% chance to save the ball. The Appellant also said that he is unable to work in a professional club because of the charges and sanction imposed on him and that he intends to follow a career as a coach, which may also prove impossible should the sanctions against him be confirmed due to the bad reputation this would certainly entail.
57. The Panel observes that the expert witness statements relied on by the Respondent may well offer certain evidence of wrongdoing on the part of the Appellant, but, on the other hand, they appear to be much more conclusive when it comes to the matter of allegedly deliberate lack of performance of at least two of his teammates. For instance, E. states in his statement that *"it became obvious to me that both central defenders for Athlone Town and the goalkeeper were involved in a number of incidents that were both illogical and inadequate for players playing at such a standard (...) The central defenders behaved in a manner that was also illogical, at time giving away clumsy free kicks when there was no need to and indeed no danger of note. The free kick leading to the second goal is one such example. Indeed at times the two central defenders appeared so lethargic that they could not keep up with play and tracked back very slowly. This is unusual, even for a player that may be having a bad game. In the second half, when the score was 2-1, both central defenders, but particularly the No. 6, were involved in attempting to head clear crosses into the box where they almost scored own goals. I found this to be inadequate and illogical. (...) As per the above, I believe the play of the goalkeeper and both central defenders to have been deliberately inadequate and to have influenced the result."* (emphasis added).
58. In addition, the Respondent's second expert's (F.) opinion is inconclusive as to whether the lack of performance on the part of the Appellant and his teammates was a

result of malicious intention or not and, in any event, appears to attribute the last goal conceded by the Appellant at 92'31'' (which was the one that determined the result of the Match) to the defending Athlone Town AFC player and not to the Appellant. F.'s statement of 27 June 2017 reads in its relevant part: *"it is my opinion that due to the distinctly poor quality of coaching and management allied to the inferior individual proficiency on behalf of the players, it is quite difficult to ascertain whether the many errors committed in the latter stages of the games concerned are deliberate and malicious or of merely manifestations of inadequacy and fatigue. (...) The sending-off in the Longford Town game was suspicious but I felt that the Referee could have given a yellow card rather than the red he produced under the circumstances that abounded. (...) The final goal at Longford is one that proved most controversial. I would have a better idea of the truth in this moment if the camera had been on the other side of the pitch therefore giving a more open picture of the player's body movements. Giving the lack of technical merit in the game itself, it is hard to define accurately the reasoning behind the player's actions. But I would question why he did not simply head, rather than try to volley, a ball at such height. The Athlone Town back four do not play as a unit and the two centre halves are like ships passing in the night, while the full backs would at times require a mobile phone to instigate verbal contact with their own centre halves."* (emphasis added).

59. By contrast, the statements of the experts provided by the Appellant totally contradict the evidence of the Respondent's experts.
60. In light of the above, the Panel finds that Appellant may have committed some mistakes of play during the match at stake, but from the aforementioned evidence submitted by the Respondent it appears that, if players of Athlone Town AFC had some malicious intent and involvement in manipulating the result of the Match, it is more likely than not that such players were the Athlone Town AFC central backs and not the Appellant.
61. Further, in relation to the goal at 39'48'', the various experts failed to agree upon whether the wall had been set up properly or not, whether that was the Appellant's sole responsibility, whether the Appellant was a good or poor goalkeeper; how many times the ball bounced before it went under the Appellant, how well struck the shot was, whether the blame for the goal lay with the Longford player who pushed the wall out of position so the shot went on target, and the like. F. initially described the wall setting as a "shambles", but conceded on examination that but for the pushing by the opposition, it would have blocked the free kick. E. felt that there wasn't much wrong with the set up of the wall.
62. Additionally, in relation to the goal at 92'31'', it was noted that the footage showed the centre back miss the ball and the Longford attacker then latch onto the ball as it bounced towards the Athlone Town penalty box, however, it did not show the starting position of the Appellant. This is obviously key, as the various experts all recognised that the Appellant had two choices – did he run out to the Longford attacker to attempt to block him higher up the pitch, before he had the ball under control or did he wait on his goal line and look to defend from there, possibly with one of his defenders chasing back to first defend? The decision would clearly be influenced by where he was when the centre back missed the ball. The further forward, the more likely to favour the first

option and continue out to the attacker; the further back, the more likely to go to the goal line.

63. E. had assumed that the Appellant was on his goal line to start with, but changed his mind at the hearing to assume that he would have been around the penalty spot. F. thought the Appellant would have been at the edge of his area.
64. Finally, the Panel notes the save that the Appellant made at the 87'. The experts, bar one, felt that this was a good save. the implication made by the Appellant is that if he was looking to ensure a fourth goal and for the score to be 3-1, he would have let this goal in, as there may not have been another shot on target in the game.
65. Considering all of the above, the Panel, while it is satisfied that the evidence submitted proves that the match at stake was manipulated, it is not comfortably satisfied by the evidence brought forward by the Respondent that the Appellant was actually involved in manipulating the result of the Match. Accordingly, the present decision cannot in any manner be deemed to constitute a disavowal of the values of the fight against match fixing of the Respondent, a fight that is of central importance for a clear and fair sport.
66. In view of the above determinations, the Panel sets aside the Appealed Decision. This conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Igor Labuts on 19 December 2018 against the decision issued on 28 November 2018 by the FAI arbitrator is upheld.
2. The decision issued on 28 November 2018 by the FAI arbitrator is set aside.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 17 July 2020

THE COURT OF ARBITRATION FOR SPORT

Sofoklis P. Pilavios
President of the Panel

Mark A. Hovell
Arbitrator

Michele A.R. Bernasconi
Arbitrator