



**Arbitration CAS 2005/A/991 Muhammad Saqlain v. International Hockey Federation (FIH),
award of 30 April 2006**

Panel: Prof. Michael Geistlinger (Germany), President; Mr Daniel Bethlehem QC (United Kingdom);
Mr Patrick Lafranchi (Switzerland)

Hockey

Violation of a rule of the game

Jurisdiction of the CAS

Procedural fairness

Discretionary powers given to its bodies by the Statutes and Bye-Laws of the federation

1. The application of the rules of the game, *id est* the rules which are intended to ensure the correct course of the game and competition, cannot, save in very exceptional circumstances, be subject to any judicial review. However, if the issue goes beyond the mere application of such rules of the game, because the sanctions imposed as a result of the violation of the rule of the game affect the judicial interests of the appealing party and of other interested parties, and because the appealing party raises questions with regard to the rules of law, CAS has jurisdiction to review the case.
2. Simply because a person acting on behalf of an association or federation is a compatriot of a person incriminated cannot suffice in itself to create a suspicion of bias. In the absence of any further criteria or evidence which could give rise to such suspicion, no procedural unfairness can be inferred.
3. The discretionary powers given to its bodies by the Statutes and Bye-Laws of a federation also cover their power to consider previous behaviour of a player in defining a sanction. Such consideration does not involve the concept of double jeopardy, as the player in such case is not penalised a second time for an earlier misbehaviour. A series of acts of a similar nature just indicate to the competent body that the player obviously is not changing a certain behaviour irrespective of sanctions imposed earlier.

The Appellant, Mr Muhammad Saqlain, is a professional hockey player and, since 2005, captain of the Pakistan national hockey team. He has been a member of this team since 1998 and has to his credit numerous gold medals and trophies as captain and player.

The Respondent, the International Hockey Federation (FIH), is the IOC-recognized international federation for the sport of field hockey.

On 14 August 2005 the Pakistan national team played the Australian national team at the Four Nations Hamburg Championship, an invitational tournament approved by the FIH. During the match the following incident occurred, described by the parties in their written submissions as follows:

At a certain moment the Appellant receives the ball coming from the right. The Appellant moved with the ball at his stick towards the centre line. At the moment while the Appellant was pushing the ball for an onward pass he was tackled from the left by the Australian player Craig Victory. The ball is partially blocked by Craig Victory, makes a little bounce but continues its way to the Appellant's team mate. Before arriving there, it is intercepted by another Australian player and rolls to the left-side of the field. The ball is chased by a third Australian player but before he can stop the ball, one of the umpires blows his whistle for a reason not clear from the video. The parties hold different views on the reason why the whistle was blown. The Appellant holds that the umpire called for a foul and it was granted in favour of the Pakistan team due to dangerous play of Mr Victory. This is deduced from the fact that the Australian team walked into their half of the field in order to defend the goal. The Appellant does not remember which umpire had blown the whistle. The Respondent holds that it is not possible to conclude from the video evidence whether the whistle is blown to award a free hit to either team or just to stop the game following the injury of Mr Victory. In any case, a second whistle from the same umpire was for the Technical table to stop the time.

After having pushed the ball in order to pass it to his team mate, a direct contact between the stick of the Appellant and the face of Mr Victory occurred, which resulted in quite serious injuries to Mr Victory. The parties disagree on whether this was a deliberate act by the Appellant or whether it was an unintentional follow-through movement caused by the Appellant having lost his equilibrium after having been tackled by Mr Victory. Following to the collision, Mr Victory walked towards his team bench.

The incident was reported by the Tournament Director, Mr Alain Renaud, to the Secretary General of the FIH on 14 August 2005. He reported that Mr Victory's lip had been cut and a tooth was possibly damaged as a consequence of the Appellant moving the stick upwards towards the face of Mr Victory. He also reported that the action ended up with a free hit in favour of Australia, without special penalty towards the Appellant. Since the game was the last one in the Hamburg tournament, he did not immediately suspend the player for dangerous play and causing injury by a voluntary action. Mr Renaud proposed to suspend the Appellant for a minimum of one game. This sanction could be more severe depending on the Appellant's previous record and taking into account his specific responsibility as team captain.

According to Bye-law B1 to article 17 of the FIH Statutes and Bye-Laws, the Secretary General found that there was a prima facie case and referred it to the Judicial Commission of the FIH. Having heard the Appellant who was represented by two counsels and the Secretary General of the Pakistan Hockey Federation, the FIH Judicial Commission decided unanimously on 30 November 2005 that the Appellant has deliberately raised his stick in such a way as to cause danger to another player. He was found guilty of dangerous conduct and was suspended for the next three matches in which Pakistan play in a FIH world event. The Appellant was also ordered to pay to the FIH a sum of €1000 (one thousand euro) for expenses incurred.

The Appellant holds that the legal basis for this sanction is article 17.2 (a) (v) of the FIH Statutes and Bye-Laws, which reads as follows:

“17.2 Jurisdiction

- (a) *Except when the Statutes, Bye-Laws, Rules and Regulations vest jurisdiction in another body or person, the JC (Judicial Commission) is vested with the full power and authority to hear and determine all complaints, protests, claims and disputes in all matters including:*

...

- (v) *acts of misconduct on or off the field of play;*

...”.

The FIH Judicial Commission in its hearing on 27 November 2005 showed generosity with regard to the admission of evidence by the Appellant and allowed the inclusion of a written statement of the Appellant and of his coach, both of which had been circulated to the members of the Commission only at the commencement of the hearing. Evidence of earlier incidents of a similar nature were excluded in deciding upon the guilt of the Appellant in the Hamburg incident. They were, however, taken into consideration with regard to the sanction or penalty. The Commission relied on the testimony of the Tournament Director, Mr Alain Renaud, and of the Reserve Umpire, Mr Markus Petter, who were both sitting at, or near, the technical table and the team benches. Mr Petter had held that it was a deliberate foul. The FIH Judicial Commission found that the

“injury was ... a result of a second and distinct step in the incident. ... The broken jaw suffered by Victory ... shows that the stick must have been raised with some power. ... Whether it was with the deliberate intention of inflicting such an injury is not for the panel to decide. Suffice to say that they are satisfied that Saqlain deliberately raised his stick in such a way as to cause danger to another player”.

The Appellant was prevented, for certain reasons, from being present at the hearing before the Judicial Commission. These reasons were not found to be convincing by the FIH Judicial Commission. It rejected the contention of the Appellant and his coach that it was the fault of Mr Victory in the tackle which caused the injury. Therefore, the Appellant was found guilty of the dangerous conduct charge with respect to the Hamburg incident. In deciding the appropriate sanction, the FIH Judicial Commission considered previous incidents referred to and involving the Appellant, in particular the Aslan Shah tournament in Kuala Lumpur, where the Appellant had been previously suspended for similar conduct.

The Appellant filed its Statement of Appeal together with his Appeal Brief on 5 December 2005 and requested that the decision of the FIH Judicial Commission be set aside in the interest of justice, equity and fair play as arbitrary and groundless and for the Panel to pass any other order as it may deem fit and appropriate considering the circumstances of the case.

The Appellant also requested that the Panel suspend the decision of the FIH Judicial Commission as per the provisions of article 20 of the FIH Statutes & Bye-Laws. The Respondent, by letter dated 7 December 2005, referred to article 20.3 of the FIH Statutes & Bye-Laws which reads as follows:

“20.3 Pending the decision of the CAS, any sanction imposed by the JC (other than a sanction imposed under the FIH Doping Policy which shall remain in force) shall be suspended”.

Like the FIH, the CAS understands this provision to mean that such sanction is suspended automatically until a decision is rendered by the CAS. The Counsel to the CAS therefore informed the parties, by letter dated 7 December 2005, that there was no need for a stay of the decision of the FIH Judicial Commission in the present case.

LAW

The Jurisdiction of the CAS

1. None of the parties dispute the jurisdiction of the CAS in the present case. The Panel holds that the requirements set forth in article 20 FIH Statutes & Bye-Laws have been met. In the course of the hearing both parties confirmed their understanding of article 20 FIH Statutes & Bye-Laws entitling the CAS to decide *de novo* and being not limited to decide on whether the FIH Judicial Commission used its discretionary power under article 19 FIH Statutes & Bye-Laws reasonably. Both parties expressly agreed and explicitly accepted that the CAS Panel, in order to evaluate the case, had to assume the role of evaluating an act which occurred on the field of play and which would not ordinarily be subject to the jurisdiction of the CAS and to establish whether there was, and eventually sanction, an act of misconduct on the field of play. The CAS Panel feels bound to underline well established CAS precedent which states that the application of the Rules of the Game, *id est* the rules which are intended to ensure the correct course of the game and competition, cannot, save in very exceptional circumstances, be subject to any judicial review (see eg CAS 2003/A/461 & 471 & 473, in: CAS Digest III (2001 – 2003), 559 (566 n° 29) with further reference; for the FIH see in particular CAS 2001/A/354 and CAS 2001/A/355, in: CAS Digest III (2001 – 2003), 489 (497 n° 16)).
2. The issue brought before the CAS goes beyond the mere application of the Rules of the Game from two perspectives. First, the sanctions imposed by the FIH Judicial Commission after the end of the Hamburg tournament affect the judicial interests of the Appellant and of the Pakistani squad. Secondly, the Appellant raises questions with regard to the Rules of Law as far as the issues of bias, *mens rea* and double jeopardy have been involved, quite distinct from any unsubstantiated misuse of these legal remedies.

The Applicable Law

3. Pursuant to article R58 of the Code, the Panel shall decide the dispute according to the applicable rules and regulations. The applicable rules and regulations in the present case are the FIH Statutes & Bye-Laws. According to article 2 of the FIH Statutes & Bye-Laws the official seat of the FIH is Lausanne, Switzerland. Thus, in the absence of rules chosen by the parties, Swiss law applies.

The Merits

4. In the course of the hearing the memories of the witnesses proved to be of different exactness. Also, the potential of the video for analysis purposes proved to be of limited value. As a result of the witness statements, the expert analysis and the party observations as well as taking into consideration the character of and severity of the injuries incurred by Mr Victory, the Panel finds that Mr Victory has been hit in his face by the angle edge part of the Appellant's stick. Such result cannot be explained as part of a usual movement of pushing the ball to a team-mate standing not far away from the Appellant on the pitch, even assuming that the Appellant has been knocked out of his normal state of equilibrium by the tackling of and collision with another player, as a result of a technical foul by the latter person. The Panel makes no ruling as to whether the Appellant's act was committed deliberately or highly recklessly, but holds that in either case it was an act which risked causing, and indeed did cause, severe injury to the health and physical integrity of another player. This does not amount to a finding that there was a "*criminal intent on the part of the Appellant to injure Mr Craig Victory*" in the sense of *mens rea*, an assumption rebutted by the Appellant before the FIH Judicial Commission. The Appellant's act could not be justified by the prior technical foul committed by the Australian player, Mr Victory, against the Appellant. The Panel holds that the Appellant is responsible for having committed this act and finds that the act was the reason for the injuries suffered by Mr Victory. The Panel is satisfied by the testimony of Mr Victory and his head coach as well as by the medical evidence submitted by the Respondent regarding the nature and severity of the injuries of Mr Victory.

5. The Panel feels bound to qualify this act as an act of misconduct on the field of play in the sense of article 17.2 (a) (v) FIH Statutes & Bye-Laws, as this has been the finding of the FIH Judicial Commission. Such finding leads to the application of article 19 FIH Statutes & Bye-Laws which reads as follows:

"Article 19 – Sanctions
The JC and any other body authorised under the Statutes, Bye-Laws, Rules and Regulations to hear and determine any complaint, protest, claim, dispute or appeal may impose such sanction or sanctions as are laid down by the Statutes, Bye-Laws, Rules and Regulations or, by default thereof, such sanction or sanctions as it considers appropriate including but not limited to reprimand, fine (including interest), disqualification or suspension for such period as it determines appropriate, compensation, an order requiring a party to do or refrain from doing any act or thing and may also in its discretion award costs (including fees, charges and expenses)".

6. In the course of the hearing the Appellant explicitly withdrew his argument submitted in writing that the Judicial Commission, which found it appropriate under article 19 to impose a suspension for the next 3 matches in which Pakistan play in a FIH world event, was biased, but limited this argument to the FIH Secretary General, being of Australian nationality. The Appellant has argued that the FIH Secretary General could have reacted in three ways to the report of the Tournament Director: by entrusting the Pakistani Hockey Federation to deal with the case, by defining a prima facie case under Bye-Law B1 to article 17 FIH Statutes & Bye-Laws but referring it to Alternate Dispute Resolution under Bye-Law A8 (b) to Article 17 FIH Statutes & Bye-Laws and as last option, by referring the case to the FIH Judicial Commission. The respective provisions read as follows:

“Bye-Law to Article 17

A. Appointment

A1 The President of the JC in consultation with the Hon. Secretary shall appoint the members of each panel on a case by case basis ensuring impartiality and in any case where the President or Hon. Secretary is disqualified or unable to attend shall also appoint an acting President or acting Hon. Secretary as the case may be.

...

A8 Alternate Dispute Resolution (“ADR”)

- (a) ADR includes mediation and other forms of alternative dispute resolution.*
- (b) Before the Hon. Secretary General refers a matter to the JC, he may direct that the matter:*
 - (ii) be referred to mediation by a qualified mediator appointed by the Hon. Secretary General with the consent of the parties; or*
 - (iii) that another appropriate form of ADR agreed upon by the parties in consultation with the Hon. Secretary General by an appropriately qualified person appointed by the Hon. Secretary General with the consent of the parties be implemented.*

....

B. Procedure at Meetings of the JC

B1 Any reported alleged breach and/or act of misconduct shall be sent in writing to the Hon. Secretary General who shall initially determine if there is a prima facie case.

B2 In the event of a referral to the JC, subject to paragraph A, the Hon. Secretary General shall inform the President and Hon. Secretary of the JC. The Hon. Secretary of the JC shall immediately arrange a suitable date for a meeting of the JC and notify all eligible members of the Panel to determine their availability.

...”.

7. In dealing with the issue of bias, the CAS Panel would also like to make reference to article 21.1 (a) of the FIH Statutes & Bye-laws. This provision reads as follows:

“Article 21 – Procedural Fairness

21.1 The JC and any other body that is authorised under the Statutes, Bye-Laws, Rules and regulations to exercise jurisdiction must ensure that procedures are fair to all interested parties and uphold those parties’ basic rights. In particular they must ensure that:

- (a) no person who has a conflict of interest participates in a decision-making body;*

...”.

8. The Panel, considering the above provisions, cannot see any person having acted on behalf of the FIH as having been biased. Simply being a compatriot of a person incriminated cannot suffice in itself to create a suspicion of bias. The Appellant, however, does not present further criteria of the personality of the FIH Hon. Secretary General which could give rise to such suspicion. Besides, the Hon. Secretary General chose the course of action under the FIH Statutes & Bye-Laws that allowed for the least amount of influence by him. Had he chosen one of the alternatives offered to him by Bye-Law A8 (b) to article 17 FIH Statutes & Bye-Laws, he would have had an influence on the composition of such alternative resolution body. By referring the case as a *prima facie* case to the FIH Judicial Commission, he would have been aware of the obligation upon the Judicial Commission’s President and the Hon. Secretary, to appoint

an impartial panel. He had no influence himself on the composition of such panel and did not participate in this decision-making body. The Panel, thus, cannot see any procedural unfairness with regard to the Appellant's basic rights. In addition, the Panel does not see the option for the Hon. Secretary General under article 17 FIH Statutes & Bye-Laws to simply refer the act to the Pakistani Hockey Federation for sanctioning.

9. In the course of the hearing both parties agreed to the Panel's as well as the FIH Judicial Commission's wide discretionary power under article 19 FIH Statutes & Bye-Laws with regard to the kind of sanction(s) which can be imposed and the severity thereof. The parties disagreed on whether the FIH Judicial Commission and the CAS Panel are entitled to include earlier incidents for the purpose of considering any sanction or penalty. The FIH Judicial Commission had explicitly stated that it did not consider previous incidents in deciding upon the guilt of the accused, but that those incidents are relevant to the assessment of the previous conduct of the accused for the purpose of considering any sanction or penalty. Further to that the Respondent emphasized in the hearing that there is no precedent in FIH jurisprudence that the FIH Judicial Commission or the CAS Panel could rely on for the purpose of deciding upon the sanction in the present case.
10. The Panel finds that the discretionary power given to the FIH Judicial Commission and other bodies authorised under the FIH Statutes & Bye-Laws, Rules and Regulations by article 19 FIH Statutes & Bye-Laws also covers their power to consider previous behaviour of the Appellant in defining a sanction. Such consideration does not involve the concept of double jeopardy, as the Appellant in such case is not penalised a second time for an earlier misbehaviour. A series of acts of a similar nature just indicate to the competent body that the Appellant obviously is not changing a certain behaviour irrespective of sanctions imposed earlier.
11. The CAS Panel, itself, does not see a necessity to consider previous incidents in the present case because other criteria which are applied under general principles of law for defining a sanction suffice to support the sanctions having been imposed by the FIH Judicial Commission. Taking into consideration the seriousness of the act, its aptness of fundamentally endangering the basic rule of fair play in a sport, its potential consequences for the health and physical integrity of a person, and the necessity of giving a clear sign in the interest of general prevention of other such acts in the spirit of the Pakistani team where the Appellant has the function of team captain, and of the whole sports community, the CAS Panel finds it appropriate and reasonable to impose a sanction of suspension for the next 3 matches in which Pakistan play in a FIH world event and to pay to the FIH the expenses incurred by it and by members of the FIH Judicial Commission in connection with the hearing of this matter before the FIH Judicial Commission, limited to the sum of EUR 1000 (one thousand Euros).
12. The wide discretionary power under article 19 FIH Statutes & Bye-Laws must also be considered when evaluating whether the condition of article 21.1 (c) FIH Statutes & Bye-Laws has been fulfilled in the procedure before the FIH Judicial Commission and before the CAS Panel. Article 21.1 (c) FIS Statutes & Bye-Laws reads as follows:

“... must ensure that:

(c) the accused person or body is given access to all relevant material in the possession or under the control of the FIH, is given every reasonable opportunity to defend the charges and to be heard and is given the right to produce evidence and to be accompanied and/or assisted by an advisor”.

13. In the hearing the Appellant showed satisfied with regard to article 21.1 (c) FIH Statutes & Bye-Laws by having been informed by the CAS Panel on the contents of article 19 FIH Statutes & Bye-Laws which does not allow for an earlier specification of a particular sanction beyond a general reference on the discretionary power awarded to the sanctioning body. The Panel cannot see a different obligation from this for the FIH Judicial Commission.

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Mr Muhammad Saqlain on 5 December 2006 is dismissed.
 2. Mr Saqlain is suspended for the next 3 matches in which Pakistan play in an FIH world event.
- (...).