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LEGAL & TAX

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ISSUES LINKED TO THE CONDUCT OF PROCEEDINGS  
INVOLVING VULNERABLE ATHLETES

Lausanne, 30 September 2022

# ISSUES LINKED TO THE CONDUCT OF PROCEEDINGS INVOLVING VULNERABLE ATHLETES



## ISSUES LINKED TO THE CONDUCT OF PROCEEDINGS INVOLVING VULNERABLE ATHLETES

### Athletes vulnerable to harassment and abuse:

- children, minors
- athletes with disabilities
- athletes who identify themselves as lesbian, gay, bisexual, transgender or queer
- elite athletes
- girls and women

INGRID BEUTLER, FINAL REPORT OF THE CONSULTATION PROCESS TO CONSIDER THE CREATION OF AN INTERNATIONAL SAFE SPORT ENTITY, OCTOBER 2021

## ISSUES LINKED TO THE CONDUCT OF PROCEEDINGS INVOLVING VULNERABLE ATHLETES

### Article 6 §1 ECHR Right to a fair trial

- Right to a public trial;
- Right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

## ISSUES LINKED TO THE CONDUCT OF PROCEEDINGS INVOLVING VULNERABLE ATHLETES

### Standard of Proof/Burden of Proof

- CAS: Balance of probabilities: a standard that implies that on the preponderance of the evidence it is more likely than not that a breach of the regulations has occurred.
- Criminal Law: Beyond reasonable doubt.

## ISSUES LINKED TO THE CONDUCT OF PROCEEDINGS INVOLVING VULNERABLE ATHLETES

### R57 Scope of Panel's Review, Hearing

- The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. The President of the Panel may request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Upon transfer of the CAS file to the Panel, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments.

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- After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise. At the request of a physical person who is party to the proceedings, a public hearing should be held if the matter is of a disciplinary nature. Such request may however be denied in the interest of morals, public order, national security, where the interests of minors or the protection of the private life of the parties so require, where publicity would prejudice the interests of justice, where the proceedings are exclusively related to questions of law or where a hearing held in first instance was already public.

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## Procedural Measures

- CAS 2019/A/6388 Keramuddin v. FIFA
- CAS 2019/A/6669 Sayed Ali Reza Aghazada v. FIFA

## ISSUES LINKED TO THE CONDUCT OF PROCEEDINGS INVOLVING VULNERABLE ATHLETES

- Hear witnesses anonymously
  - ECHR 6 applies to criminal and civil procedures
  - Art. 29 (2) Swiss Constitution
  - Hearing of anonymous witnesses not necessarily in violation of Art. 6 ECHR (ATF 133 I 33) if necessary for the personal safety of the witnesses
  - Art. 44f. FIFA Code of Ethics
- Presence of a psychologist in the witness room
- Consider witnesses' statements as evidence in chief
- To provide prior to the hearing the questions for cross-examination
- Unredacted versions of the witnesses' statements and of the Accusation Letter only to the Panel
- No public hearing

## ISSUES LINKED TO THE CONDUCT OF PROCEEDINGS INVOLVING VULNERABLE ATHLETES

- Rights of the victims in the proceedings:
  - Generally, not a party, only a witness
  - Some IF's (UCI,..) have modified their rules
- No access to decisions
- No procedural rights (appeal, ...)
- No access to legal-aid
- Possibility for a victim to appeal against an IF's decision not to sanction the person accused?
- Necessity to have specialists examine victims/witnesses?

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