

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

CAS 2021/A/7632 Ahmad Al Kamali v. World Athletics

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Alain Zahlan de Cayetti, Attorney-at-law in Paris, France
Arbitrators: Mr Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland
Mr Massimo Coccia, Law Professor and Attorney-at-law in Rome, Italy

in the arbitration between

Ahmad Al Kamali, Dubai, United Arab Emirates

Represented by Mr Alexandre Zen-Ruffinen, Attorney-at-law in Neuchâtel, Switzerland, and
Mr Jirayr Habibian, Legal Consultant in Dubai, United Arab Emirates

Appellant

and

World Athletics, Monaco

Represented by Ms Kate Gallafent QC, Barrister in London, United Kingdom

Respondent

I. PARTIES

1. Ahmad Al Kamali (“Mr Al Kamali” or the “Appellant”) is the President of the United Arab Emirates Athletics Federation (the “UAE AF”) and former Council member of the International Association of Athletics Federations (currently known as World Athletics). Mr Al Kamali is a national of the United Arab Emirates (UAE), currently residing in Dubai, UAE.
2. World Athletics (formerly known as the International Association of Athletics Federations, IAAF) (the “WA”, “IAAF” or the “Respondent”) is the international authority governing the sport of Athletics worldwide.
3. Ahmad Al Kamali and World Athletics are individually referred to as, the “Party” and collectively as, the “Parties”.

II. BACKGROUND FACTS

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in their written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion which 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.
5. In March 2015, the Appellant attended the Congress of the Confédération Africaine d’Athlétisme (the “CAA Congress”) which took place in Addis Ababa, Ethiopia.
6. On 7 March 2015, the Secretary of the IAAF Ethics Commission was contacted by a Mr Berhane Yebez, who introduced himself as “*a sports journalist in Ethiopia*” and preferred to “*remain in an anonymous capacity*”. In his email, Mr Yebez informed the Secretary “*that IAAF council member Al Kamali from Arab Emirates is trying to win support to become a Vice President at the next IAAF congress meeting in China and is giving gold watches to certain people in order to win their friendship ...*”. Furthermore, Mr Yebez indicated that Ms Vivian Gungaram, Mr Dadou Joof and Dr Harold Adams were among those who were offered golden watches by Mr Al Kamali.
7. On 23 March 2015, the Spanish newspaper “El Pais” published an article mentioning, in particular, what follows:

“El Pais understands, from sources close to the facts, that the IAAF Ethics Commission has received a formal complaint against Al Kamali, who has declared his desire to present himself for one of four Vice President seats at the IAAF. The elections take place in August. According to the letter sent to the Ethics Commission, at the beginning of March, during the African Athletics Association Congress in Addis Ababa, Al Kamali, in full campaign mode, offered authentic Rolex watches to 40 African delegates, all of whom have the right to vote in the IAAF Congress elections in Beijing.”

The President of one African Federation has confirmed in writing, by email to El Pais, what happened: “I heard of this matter and took part in many conversations and debates when I was in Addis. Some of the delegates were sufficiently responsible to return the watch they had received, or to leave them without opening in the room where they had been left as gifts.”

(Paragraph 10 of the IAAF Ethics Board’s Investigation Report of 1 November 2019 prepared by Ms Gemma White Q.C. (the “Investigation Report”).

8. On 24 and 25 March 2015, similar articles were published respectively by the “Associated Press”, “The Herald” and “Inside the Games”.
9. On 21 April 2015, the Secretary of the IAAF Ethics Commission informed Mr Al Kamali by a letter of the same date of a *prima facie* case which was considered to be brought against him, based on the violations of certain provisions of the IAAF Code of Ethics 2015 (the “IAAF Code”). Mr Al Kamali was further informed that “*Mr Sharad Rao, a barrister and former Director of Public Prosecutions of Kenya*” had been appointed to investigate the said matter.
10. On 16 July 2018, the Legal Secretary of the IAAF Ethics Board informed Mr Al Kamali, by a letter of the same date, that Ms Gemma White Q.C., was appointed as new investigator to conduct the investigation, thus succeeding to Mr Sharad Rao.
11. On 1 November 2019, Ms Gemma White issued the Investigation Report.
12. On 13 November 2019, based on the Investigation Report and its recommendations, the IAAF Ethics Board notified Mr Al Kamali the “Notification of Charge of Breach of the IAAF Code of Ethics” which provided, in particular, for specification of alleged violations and charges, range of sanctions, constitution of the Ethics Board’s panel to hear the matter at hand and the deadlines for Mr Al Kamali to submit his statement of defence. Pursuant to the provisions of the said Notification, Mr Al Kamali had allegedly breached the following provisions of the IAAF Code:
 - “a. *Article C5(21), namely as a candidate for an elected IAAF position, failing to conduct your candidacy with dignity and respect for your opponents in accordance with the Rules Concerning Candidacy for IAAF Office and the Conduct of Elections (see particularly paragraphs 2, 3 and 4 of Appendix 3 to the Code);*
 - b. *Article D2(26), namely as an IAAF Official, giving gifts of more than nominal value; and*
 - c. *Article C1(11), namely acting in a manner likely to affect adversely the reputation of the IAAF”.*

13. On 15 January 2020, Mr Al Kamali submitted to the IAAF Ethics Board his statement of defense contesting all charges brought against him.
14. On 10, 11 and 12 November 2020, a hearing was held by the panel of the IAAF Ethics Board.
15. On 15 December 2020, the panel of the IAAF Ethics Board issued its Decision no. 14/2020 (the “Appealed Decision”) by which it concluded that Mr Al Kamali had breached Articles C5(21) and D2(26) of the IAAF Code and applied the following sanctions: (i) “*a 6 month ban upon Mr Al Kamali from taking part in any athletics-related activity including holding any relevant office in athletics (whether at national, regional or world level) [...] with effect from the date of this decision*” and (ii) “*a fine [...] in the sum of €5000*”. In addition, the “*Panel has decided that Mr Al Kamali should make a contribution to the procedural costs of the Ethics Board in the sum of €15,000*”.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 4 January 2021, pursuant to the provisions of Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”), the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) with respect to the Appealed Decision.
17. In his Statement of Appeal, the Appellant nominated Mr Michele Bernasconi as arbitrator and requested that the appeal proceedings be conducted in the English language.
18. On 8 January 2021, the CAS Court Office acknowledged receipt of the Statement of Appeal and, in particular, invited the Appellant to submit his Appeal Brief within 10 days following the expiry of the time limit for the appeal, in accordance with Article R51 of the CAS Code.
19. On 11 January 2021, the Appellant requested for a 10-days’ extension of the deadline to file his Appeal Brief, which was granted by the CAS Court Office on 12 January 2021.
20. On 14 January 2021, the Respondent nominated Prof. Massimo Coccia as an arbitrator.
21. On 22 January 2021, the Appellant requested an additional 10-day extension of the deadline to file his Appeal Brief, which was granted by the CAS Court Office on 26 January 2021 in view of the Respondent’s agreement.
22. On 3 February 2021, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.
23. On 8 February 2021, on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed in order to rule on the present dispute had been constituted as follows:

President: Mr Alain Zahlan de Cayetti, Attorney-at-law in Paris, France

Arbitrators: Mr Michele Bernasconi, Attorney-at-law in Zurich, Switzerland

Mr Massimo Coccia, Law Professor and Attorney-at-law in Rome, Italy

24. On 12 February 2021, the Respondent requested an extension of the deadline to file its Answer until 6 March 2021, which was granted by the CAS Court Office, on behalf of the CAS Director General, on 15 February 2021.
25. On 5 March 2021, in accordance with Article R55 of the CAS Code the Respondent filed its Answer via e-filing, indicating that the English translation of an exhibit to the Answer (i.e. “*exhibit 4 to the report of Stephan Pastor*”) would be submitted by 19 March 2021 and requesting that the Appellant produced “*copies of various academic works / commentaries which were not included in the annexes to their Appeal Brief*” by the same deadline.
26. On 19 March 2021, the CAS Court Office informed the Parties that the English translation of the Exhibit 4 to the Report of Stephan Pastor had been submitted by the Respondent on the same date via e-filing.
27. On 22 March 2021, acting on behalf of the Panel, the CAS Court Office issued directions with regards to the Parties’ respective requests for production of additional documents and evidentiary materials.
28. On 23 March 2021 and on 1 April 2021, the Respondent produced the requested documents.
29. On 25 March 2021 and on 13 April 2021, the Appellant produced the requested documents.
30. On 15 April 2021, acting on behalf of the Panel, the CAS Court Office ordered the Appellant to produce additional documents and evidentiary materials.
31. On 22 and 23 April 2021, the Appellant produced the requested documents.
32. On 27 April 2021, the Respondent contested the authenticity of the evidentiary materials produced by the Appellant and requested that additional evidentiary actions were taken in that respect.
33. On 30 April 2021, after consultation with the Parties, the CAS Court Office informed them that, pursuant to Article R57 of the CAS Code, the Panel had decided to hold a hearing in these proceedings. In addition, the CAS Court Office informed the Parties that the Panel had denied the Respondent’s requests for additional documents and evidentiary materials, such requests to be addressed during the hearing and/or in the final Award.

34. On 21 May 2021, the CAS Court Office issued the Order of Procedure in these proceedings, which was duly signed by the Respondent and by the Appellant respectively on 27 and 28 May 2021.

35. On 1 July 2021, a hearing was held by videoconference via Cisco Webex in accordance with Articles R44.2 and R57 of the CAS Code. The following persons attended the hearing:

- For the Appellant: Mr Jirayr Habibian, Attorney-at-law
Mr Alexandre Zen-Ruffinen, Attorney-at-law
Mr Ahmad Al Kamali, appellant
Ms Julia Rizzo, trainee

For the Respondent: Ms Karena Vleck, WA General Counsel – Director of Legal and Business Affairs
Mr Vijay Parbat, WA Lead Counsel – Sports Law and Governance
Mr Niels Lindholm, WA Ethical Compliance Officer
Ms Kate Gallafent QC, Barrister
Mr Stephan Pastor, legal expert

In addition, Ms Delphine Deschenaux-Rochat, Counsel to the CAS, assisted the Panel at the hearing.

36. At the outset of the hearing, the Parties confirmed that they had no objections with regard to the constitution and composition of the Arbitral Tribunal. During the hearing, the Parties had the opportunity to present their cases, submit their arguments and answer all the questions posed by the Panel. At the end of the hearing, the Parties and their counsels expressly declared that they did not have any objections with respect to the procedure adopted by the Panel and that their right to be heard had been fully respected. A reservation was made in that regards by the Respondent’s attorney indicating that the requested copy of the original document (i.e. Delivery Note issued by Rivoli Group LLC in the name of UAE Athletics Federation on 1 February 2015 (the “Delivery Note”) made available by the Appellant in these proceedings, had not been provided to it.

IV. SUBMISSIONS OF THE PARTIES

37. The following summary of the Parties’ positions is illustrative only and does not necessarily comprise each contention put forward by them. However, in considering and deciding the Parties’ positions, the Panel has carefully considered all the submissions made and the evidence adduced by the Parties, even if there is no specific reference to those submissions in this section of the award or in the legal analysis that follows.

A. Submissions of the Appellant

38. The Appellant’s submissions, in essence, may be summarized as follows:

- (a) As a preliminary issue and with regards to the law applicable to the dispute at hand, the Appellant sustains that the Panel shall apply the rules and regulations in the following hierarchical order: “*the World Athletics Constitutions and regulations [i.e. IAAF Code], the Monegasque law and any rule of law that the Panel deems appropriate*”.
- (b) As to the merits, the Appellant challenges the Appealed Decision on the following grounds:
 - (i) The Appellant denies having violated Article D2(26) of the IAAF Code based on its in compliance with the principle of legality. The Appellant sustains that the notion of “nominal value” is undefined in the text of the said article and, accordingly, considers the regulation as “vague” and failing “*to meet the predictability test*”. Furthermore, the Appellant refers to the CAS well-established jurisprudence stating that there must be “*a clear connection between the incriminated behaviour and the sanction*”. In that respect, the Appellant highlights that “*no sanction is attached to the behaviours (insufficiently) described by the provisions [of Article D2(26) of the IAAF Code]*”. In view of the above, the Appellant alleges that the “*sanction pronounced against [him] is unlawful*”.
 - (ii) The Appellant affirms that the gifts offered by him during the CAA Congress were of nominal value:
 - 1) The Appellant refers to the Delivery Note produced by him in the proceedings before the IAAF Ethics Board and in the present proceedings, stating the price of each watch in the amount of USD 40.80. The Appellant highlights that the Delivery Note “*reflects the reality of 2015 (i.e. the value of this specific model at this specific time)*” and denies any allegations that the watches would in fact be more expensive, given that such allegations are based on “*random searches on the internet, without knowing whether we are talking about the same model of watch, without knowing how its price would have evolved*”;
 - 2) As to the concept of “nominal value”, the Appellant refers to its interpretation by the Swiss Labour Law and jurisprudence and by the “*rules in Monaco*”. The Appellant argues that in both cases it is acceptable to receive “*benefits of minor importance*”¹ or “*customary gifts of courtesy or hospitality*”² (the value of which is defined in some cases and undefined

¹ Article 93 para.1 of the Swiss “Ordonnance sur le personnel de la Confédération”.

² Article 3 of Arrêté ministériel n. 2011-468 du 29/08/2011 portant application de l'ordonnance souveraine # 3.413 du 29 août 2011 portant diverses mesures relatives à la relation entre l'Administration et l'administré.

in others), unless such gifts “influence the impartiality [...] or constitute a reward or consideration [...]”. Given that the price of each watch offered by him during the CAA Congress was “very small”, it could not “alienate the freedom of decision of the person receiving it”.

(iii) The Appellant sustains that at the time of the CAA Congress he “was not a candidate for a position in the IAAF” and, therefore, could not violate the IAAF Code, as its relevant provisions did not apply to him then (i.e. Article C5(21) providing for the application of the IAAF Code to “Candidates for elected IAAF positions”). In that respect, the Appellant indicates that, although he intended to nominate himself for a position with the IAAF at the time of the CAA Congress, the relating application form was submitted by him on 29 March 2015, i.e. after the congress. Taking this into account, the Appellant considers that his pure intent could not make him a candidate in the sense of the IAAF Code.

(iv) Finally, the Appellant considers the sanctions pronounced against him in the Appealed Decision as excessive. The Appellant refers to the existing relevant jurisprudence and indicates that (i) “the person sanctioned [...] has the right to be inflicted with the mildest possible measure which is nevertheless likely to achieve the desired goal”, and (ii) in order to observe the principle of proportionality of a sanction “it is necessary to examine all the circumstances of the case in question”. The Appellant argues that the IAAF Ethics Board has not “examined the above-mentioned elements and weighed the interests sufficiently before deciding on the sanction”.

39. Based on its above-mentioned allegations, the Appellant requests the CAS for the following relief:

- “1. The Appeal is admitted and the Decision of IAAF Ethics Board dated 15 December 2020 is annuled ;
2. Declare and find that the Appellant did not commit any violation of the Code of Ethics at the occasion of the CAA Congress in Addis Ababa in March 2015 ;
3. To fix a sum to be paid by the Respondent in order t (sic) contribute to the payment of the Appellant’s legal fees in the amount of CHF 30'000.-.
4. To condemn the Respondent to pay the costs of the arbitration”.

B. Submission of the Respondent

40. The Respondent’s submissions, in essence, may be summarized as follows:

- (a) As a preliminary issue, the Respondent contests the hierarchy of applicable laws and regulations determined by the Appellant. WA refers to (i) Article 84.6 of its Constitution in force (i.e. 1 January 2019 edition), which provides for the

application to the appeal proceedings of the “*Constitution and the Rules and Regulations, and on a subsidiary basis [...] Monegasque law*”, (ii) Article H.43 of the IAAF Code, which implies that the law chosen by the Parties is that of Monaco, and (iii) Article R58 of the CAS Code, which provides for the possibility of a panel to apply “*any rule of law that the Panel deems appropriate*” only as an alternative (i.e. in the event that the applicable law is not chosen by the parties). Consequently, WA considers that the Panel shall decide the present dispute “*according to the Code [IAAF Code] and, subsidiarily, to the laws of Monaco*”.

- (b) Referring to the procedural aspects of the matter at hand, WA indicates that the panel of the IAAF Ethics Board has considered in the Appealed Decision that the Appellant was “*an unsatisfactory witness*” and that the Delivery Note, which was submitted by the Appellant as a proof of the price paid by him for the watches in question “*(including how this Delivery Note has been sent and came to be put in evidence) was unsatisfactory*”.
- (c) The issue of the Delivery Note’s authenticity is further developed by the Respondent in its letter submitted to the CAS Court Office on 27 April 2021. The Respondent contests the authenticity of the Delivery Note’s original produced by the Appellant in these proceeding based on its difference from the one submitted by him before the IAAF Ethics Board. Consequently, the Respondent considers that such evidence may be relied on only subject to further investigation.
- (d) As to the merits, the Respondent denies any allegations presented by the Appellant in his Appeal Brief:
 - (i) Firstly, the Respondent addresses the Appellant’s arguments in respect of the non-compliance of Article D2(26) of the IAAF Code with the principle of legality and indicates that it is the principle of predictability which is actually challenged by the Appellant. In that respect and contrary to the Appellant’s allegations, the Respondent highlights that “*an official, reading Article D2(26), could clearly make the distinction between a gift that is of nominal value and that which is not*”. The Respondent further refers to the dictionary definitions of the word “nominal” as “*very small*”, “*insignificant*” and to the similar absence of a defined monetary nominal value in the Swiss and Monegasque laws on which the Appellant grounds his position. Furthermore, in reply to the Appellant’s allegations with regards to the absence of a clear sanction provided by the IAAF Code for the violation of the said article, the Respondent highlights that Part D of the Statutes of the IAAF Ethics Board contains the list of sanctions applicable to the violations of the provisions of the IAAF Code, which the IAAF Ethics Board applies on its own discretion.
 - (ii) Secondly, the Respondent argues that, contrary to the Appellant’s allegations, the gifts offered by him during the CAA Congress were of more than nominal value. WA grounds its position on what follows:

- 1) The price for each watch alleged by the Appellant to be in the amount of AED 150 (equal to USD 40.80), is doubtful and not confirmed. The Respondent challenges the authenticity of the Delivery Note submitted by the Appellant as a relevant proof and considers that this evidence is “*unsatisfactory*” and “*should be rejected out of hand*”.
 - 2) In any event, the purchase price, even if accepted to be in the amount alleged by the Appellant, does not reflect the actual value of the watches offered by him. In that respect, WA relies on the legal opinion prepared by Mr Stephan Pastor who concludes that, in order to determine the value of a gift, the following criteria must be considered hierarchically: (i) “*the purpose (or perceived purpose) of the gift*”, (ii) “*the context in which the gift was given*”, (iii) “*the nature of the gift (without regard to its value)*” and (iv) “*its purchase price*”. Having considered that (i) the watches have been offered by the Appellant at the CAA Congress which closely preceded the elections to the IAAF’s Council, (ii) in certain cases they identified their recipients (i.e. “*delegates with responsibility for voting at the IAAF Congress in Beijing*”), (iii) they were of “*a different purpose or perceived purpose to that of a logo-ed T-shirt or tie, or comestibles*” and (iv) their purchase price was doubtful, WA concludes that the gifts offered by the Appellant were of more than nominal value.
- (iii) Thirdly, the Respondent insists that at the time of the CAA Congress the Appellant was a candidate for the elections to the IAAF Council. It highlights that during the CAA Congress the decision of the Appellant to present himself as a candidate was “*discussed with colleagues*” and appeared to be “*public knowledge*”. The Respondent indicates that the absence of the Appellant’s formally filed and accepted nomination form (which “*was in fact submitted just a few weeks later*”), does not waive his intent to be nominated. The supposition of a contrary would mean that “*a person could lobby delegates in as dishonest, undignified and lacking in integrity a way as he wished up to the moment of submitting the formal Candidate Nominate Form*”, which would undermine the purpose of the relevant provisions of the IAAF Code. Consequently, WA considers that, notwithstanding the value of the gifts offered by the Appellant, he was prohibited to offer any gifts to “*any party who will vote*”, being a candidate for an IAAF position in the sense of the IAAF Code (Article C5.21, Paragraph 4 to Appendix 3 of the IAAF Code of Ethics).
- (iv) Finally, with reference to the Appellant’s arguments related to the “*manifestly excessive*” nature of the sanctions applied to him by the IAAF Ethics Board, WA clarifies that the panel of the IAAF Ethics Board has taken into account the number of watches (allegedly “*around 30 watches*”) which were supposed to be offered by the Appellant at the CAA Congress, and not the number of participants who actually acknowledged their receipt. Given that the CAA Congress hosted around 50 members with voting rights, the number of watches prepared by the Appellant would have been enough for an attempt to lobby the

majority of the voters. Consequently, WA considers that the sanctions applied to the Appellant are “*in fact extremely lenient*”.

V. JURISDICTION

41. Article R47 of the CAS Code states:

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

42. Article 84.3 of WA’s Constitution provides:

“Final decisions made by World Athletics under this Constitution may be appealed exclusively to the CAS (Appeal Arbitration Division) which will resolve the dispute definitively in accordance with the CAS Code of Sports-related Arbitration”.

43. The Panel observes that the Appealed Decision has been issued by the IAAF Ethics Board which, pursuant to WA’s Generally Applicable Definitions, “*means the independent judicial body established by World Athletics under the Previous Constitution and which ceases to exist, except to the extent set out in the Rules for matters under its jurisdiction under the Previous Constitution*” (emphasis added).

44. Accordingly, the Panel refers to Article 5.7 of the IAAF Constitution of November 2013, which states as follows:

“The Congress shall have the power to establish an Ethics Commission [Ethics Board] as an independent judicial body to adjudicate upon violations of the Code of Ethics, to impose sanctions for violations of the Code of Ethics and to perform such other functions as may be set out in the Statutes of the Ethics Commission [Ethics Board]. Members of the Ethics Commission [Ethics Board] shall be appointed by the Council”.

45. Article F35 of the Code of Ethics (“*Appeals*”) provides as follows:

“All decisions taken by the Ethics Commission [Ethics Board] and its Panels are final, subject to appeals lodged with the Court of Arbitration for Sport (CAS) except that there is no right of appeal against decisions of the Ethics Commission [Ethics Board] under rule C16(v) of the Statutes of the Ethics Commission [Ethics Board] (appeals against decisions of Members)”.

46. In consideration of the provisions mentioned above and of the fact that (a) the jurisdiction of the CAS is not contested by the Parties, and (b) the Parties have expressly recognized the CAS jurisdiction in the Order of Procedure which they have signed and returned, the Panel is satisfied that the CAS has jurisdiction to decide the present matter.

VI. ADMISSIBILITY

47. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”

48. Article 84.4 of WA’s Constitution establishes:

“Any appeal under Article 84.3 must be filed with the CAS within twenty-one (21) days of the appealing party's receipt of the written, reasoned decision of World Athletics in question”.

49. The Appealed Decision is dated 15 December 2020. Mr Al Kamali filed his Statement of Appeal with the CAS on 4 January 2021, hence within the 21-day term established by the applicable regulations. It follows that the appeal is admissible.

VII. APPLICABLE LAW

50. Article R58 of the CAS Code reads 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.”

51. Furthermore, Article 84.6 of WA’s Constitution provides:

“An appeal before the CAS shall be governed by this Constitution and the Rules and Regulations, and on a subsidiary basis by Monegasque law. [...]”.

52. Although the Panel observes the Parties’ disagreement on the hierarchy of applicable laws, it appears that the Parties explicitly agree that the dispute at hand shall be primarily decided in accordance with the IAAF Code.

53. In addition, the Panel notes that the Appealed Decision was rendered by the IAAF Ethics Board based on the provisions of the IAAF Code.

54. Article H.43 of the IAAF Code states as follows:

“The provisions of the Code shall be governed by and interpreted in accordance with the laws of Monaco”.

55. In addition, WA's headquarters, in accordance with Article 3.1 of its Constitution, are based in Monaco.
56. In view of the above, pursuant to the provisions of Articles R58 of the CAS Code, the Panel holds that the applicable law to the matter at hand shall be WA's Constitution and regulations, in particular, the IAAF Code, and the laws of Monaco on a subsidiary basis.

VIII. MERITS OF THE APPEAL

A. Preliminary Issue

57. Before turning to the main issues in dispute, as a preliminary note, the Panel will address WA's requests for the production of additional evidence after the closing of the phase of written submissions. In that respect, Article R56 of the CAS Code provides:

“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer”.

58. In line with the above, CAS jurisprudence provides for a strict interpretation of the scope of “*exceptional circumstances*”. In that spirit, the panel in CAS 2017/A/5369 so stated:

“Article R56 of the CAS Code introduces a fundamental rule, intended to serve the purpose of concentration and rapidity in CAS proceedings: the parties are not be authorized inter alia to specify further evidence after the submission of the appeal brief and of the answer. The rule corresponds to the obligation imposed on the parties to CAS arbitration to specify all the evidence on which they intend to rely to prove their respective case in the appeal brief (for the appellant) and in the answer (for the respondent). Article R56 allows however a deviation from the rule: further evidence, after the submission of the appeal brief and of the answer, can be specified if the parties agree or the President of the Panel gives an authorization “on the basis of exceptional circumstances”. The possibility to give an authorization, absent the parties’ agreement, represents an exception to the general prohibition, and as such is of strict interpretation. In addition, it leaves no room for an ordinary disregard based on a simple claim that otherwise the parties’ right to be heard would be infringed. The application of Article R56 has been endorsed by the Swiss Federal Tribunal: a party’s right to be heard is not violated if a CAS panel denies the filing of new evidence not submitted in timely manner”.

59. Although the CAS Code does not define the “*exceptional circumstances*”, such circumstances would exist, in particular, in the event that the new (untimely) evidence contains a fact which “*is a real novum*” (CAS 2017/A/4946).
60. In its Answer to the Appeal Brief, the Respondent has challenged the authenticity of the Delivery Note produced by the Appellant in the proceedings before the IAAF Ethics

Board and has requested that “*the CAS Panel should have the original [of the Delivery Note] made available to it, and the best possible copy of the original made available to World Athletics in order that it might consider whether to commission a forensic analysis of the original document*” (Paragraph 67 of the Answer) (emphasis added).

61. On 23 April 2021, the Appellant, following the Panel’s relating order, produced a notarized copy of the Delivery Note, which was communicated to WA.
62. On 27 April 2021, after the closing of the written submissions phase, WA has reiterated its request for a copy of the “*original*” Delivery Note based on the discrepancies between the copy presented by the Appellant during the first-instance proceedings and the one presented currently to the CAS. In addition and in order to verify “*the veracity of the purported Delivery Note*”, WA has requested that (i) Mr Al Kamali’s assistant, Ms Liesa Euton be summoned as a witness at the hearing and submit a prior written testimony, (ii) the Appellant “*identify by name the person at Rivoli Group LLC from whom he claims to have purchased the watches, and their contact details*”, (iii) the Rivoli Group provide the information requested by the Prosecutor on 22 January 2020.
63. Firstly, the Panel observes that, following WA’s request incorporated in the Answer, it has been duly provided with a notarized copy of the Delivery Note produced by the Appellant in these proceedings. Accordingly, WA’s request in that regards seems to be satisfied.
64. Secondly, the Panel considers that WA’s reasoning for the additional requests mentioned above does not constitute an exceptional circumstance in the sense of Article R56 of the CAS Code. The Panel observes that the issue of the Delivery Note’s authenticity and Ms Liesa Euton’s involvement therein has been raised by the Respondent as early as in its Answer. Accordingly, nothing prevented the Respondent from requesting in the Answer the production by the Appellant of any relevant information relating to this issue.
65. Finally and as will be further developed, the Panel considers that the issue of the Delivery Note’s authenticity does not bear, or bears very little, significance for the resolution of the dispute at hand.
66. Consequently, on 30 April 2021, the Panel rejected WA’s requests of 27 April 2021, while indicating that the issue of the Delivery Note’s “*original*” could be addressed during the hearing.
67. Turning now to the main issues of the case, in consideration of the facts in dispute and taking into account the content of the Appealed Decision, the main issues to be resolved by the Panel are as follows:
 - 1) Has Mr Al Kamali violated the provisions of Article D2(26) of the IAAF Code?
 - 2) Has Mr Al Kamali violated the provisions of Article C5(21) of the IAAF Code?

- 3) What are the legal consequences deriving from the violation, if any, of the relevant provisions of the IAAF Code by Mr Al Kamali?

68. The Panel will address these issues in turn below.

B. Main Issues

1) Has Mr Al Kamali violated the provisions of Article D2(26) of the IAAF Code?

69. Article D2(26) of the IAAF Code provides what follows:

“Gifts and other benefits of nominal value may be given or accepted by an IAAF Official as a mark of respect or friendship. The giving or accepting of any other gift or benefit by an IAAF Official is prohibited. In all circumstances, the giving or accepting of cash by an IAAF Official in any amount is prohibited”.

70. In the Appealed Decision the panel of the IAAF Ethics Board has concluded that Mr Al Kamali has violated Article D2(26) by offering gifts of more than nominal value during the CAA Congress (i.e. *“Continental watches branded with the UAE Athletics Federation logo”*).

71. The Panel notes that Mr Al Kamali argues such conclusions indicating, in particular, that Article D2(26) of the IAAF Code does not comply with the principle of legality, as it does not define the *“nominal value”* of allowed gifts and, therefore, is *“vague”*. Furthermore, the Appellant insists that, in any event, the watches offered by him at the CAA Congress were of a very low (i.e. of not more than nominal) value and his conduct could not be construed as a violation of Article D2(26) of the IAAF Code.

72. WA contests the Appellant’s allegations arguing, in particular, that the latter refers to the principle of predictability of Article D2(26), rather than that of legality. WA indicates that the notion of *“nominal value”* implies very clearly an *“insignificant”* and *“very small”* gift. WA further highlights that the watches offered by Mr Al Kamali during the CAA Congress could not fall under such interpretation either based on their market price or on the circumstances under which they were given.

73. Consequently and in order to establish whether Mr Al Kamali has violated the provisions of Article D2(26) of the IAAF Code, the Panel has to determine whether or not the watches offered by him during the CAA Congress were of a *“nominal value”*.

74. Firstly, the Panel directs its attention to the compliance of Article D2(26) of the IAAF Code with the principle of predictability and legality. The Panel notes that, based on the CAS constant jurisprudence, *“the principles of predictability and legality are satisfied whenever the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction”* (CAS 2019/A/6239, CAS 2019/A/6278).

75. The Panel further observes that Article D17 of the Statutes of the IAAF Ethics Commission (i.e. the IAAF Ethics Board) (Appendix 6 to the IAAF Code) provides for the list of sanctions which can be exercised by the IAAF Ethics Board for the violation of the provisions of the IAAF Code.
76. The Panel finds itself satisfied with the provision for sanctions stipulated in the IAAF Code and observes that Article D2(26) is sufficiently clear and unambiguous in describing the infringement, thus providing a sufficient legal basis for a sanction. Indeed, the term “*nominal value*” contained therein is broadly drawn; however, a disciplinary provision is not vulnerable to the principle of predictability merely because it is broadly drawn, as generality and ambiguity are different concepts (CAS 2014/A/3516 at para. 105; CAS 2017/A/5086 at para. 151). The Panel is of the view that the reference to “*nominal value*” is sufficient to allow those subject to such rule to understand its meaning and the circumstances in which it applies (cf. CAS 2017/A/5086 at para. 152; CAS 2008/A/1545 at paras. 30 *et seq.*; CAS 2004/A/725 at paras. 20 *et seq.*), especially considering that, according to the established case law of the Swiss Federal Tribunal, disciplinary sanctions imposed by sport associations must conform to civil law standards and not to criminal law ones (see e.g. SFT Judgement of 31 March 1999, 5P.83/1999, at para. 8b). In fact, civil law standards are often inherently vague and reveal their full meaning on the basis of judicial application, as is the case for example with the civil law notions of “good faith” (see e.g. Article 1095 of the Monegasque Civil Code) or “just indemnity” (see e.g. Article 439 of the Monegasque Civil Code).
77. Accordingly, the Panel proceeds with the examination of the watches offered by Mr Al Kamali during the CAA Congress, as well as the available evidence related to them.
78. The Panel notes first that no expert opinion has been submitted by either of the Parties to provide the Panel with an independent evaluation of the likely economic value of the watches offered by the Appellant. Second, the Panel refers to the Delivery Note produced by the Appellant in these proceedings as a proof of the price paid by him for each of the relevant watches. The Panel notes that the price mentioned in the Delivery Note is AED 150 (equal to approximately EUR 35) per watch. Given the low purchase price mentioned in the Delivery Note, the Panel is satisfied that the watches offered by Mr Al Kamali are of not more than nominal value in the sense of Article D2(26) of the IAAF Code.
79. Furthermore, the Panel observes that no persuasive evidentiary value can be attributed to the fact that, as reported in the Investigation Report, the current (i.e., at the time of investigation) market price of a similar Continental watch (i.e., not the same model as offered by Mr Al Kamali) is in the amount of GBP 86 (equal to approximately EUR 100) per watch. The Panel considers that this evidence, referring to a different model and year, does not disprove the value of the watches conveyed by the Delivery Note.
80. In addition to the above, the visual inspection of the watch in question (one of those offered by Mr Al Kamali during the CAA Congress and handed over to WA during the investigation stage of the first-instance proceedings) shows that the watch appears to be

of a low value. The Panel considers that such watch cannot be confused with a high-value brand and, therefore, taking into due consideration the evidence available, must be considered as a gift of nominal value. Accordingly, Respondent has failed to discharge its burden of proof as to the alleged value of the watches.

81. For the sake of completeness, the Panel observes that the authenticity of the Delivery Note indicating the purchase price of the watches offered by Mr Al Kamali, has been challenged by WA based on the discrepancies between the copy produced in these proceedings and the one presented by the Respondent before the IAAF Ethics Board. The Panel notes the Respondent's allegations and assumed discrepancies, however, considers them, as well as the Delivery Note itself, to be irrelevant to the determination of the "nominal value" of the watch. The Panel finds itself well satisfied with the market research provided for in the Investigation Report and with the visual investigation of the watch in question, in order to determine that it appears to be of "nominal value" in the sense of Article D2(26) of the IAAF Code.
82. In view of the above, the Panel concludes that Mr Al Kamali has not offered gifts of more than nominal value during the CAA Congress and, consequently, has not violated the provisions of Article D2(26) of the IAAF Code. On this point, the Appealed Decision warrants a correction.

2) *Has Mr Al Kamali violated the provisions of Article C5(21) of the IAAF Code?*

83. Article C5(21) of the IAAF Code provides as follows:

"Candidates for elected IAAF positions shall conduct their candidacies with honesty, dignity and respect for their opponents in accordance with the Rules Concerning Candidacy for IAAF Office and the Conduct of Elections (Appendix 3)".

84. Article 4 of the Appendix 3 ("*Rules Concerning Candidacy for IAAF Office and Conduct of Elections*") to the IAAF Code states:

"Candidates shall in no case and under no pretext give presents or offer donations or gifts or grant advantages or benefits of whatever nature to or at the request of any party who will vote in, or who may otherwise influence, an election".

85. In the Appealed Decision, the panel of the IAAF Ethics Board has concluded that Mr Al Kamali, being a candidate for the elections to the IAAF Council, has violated the provisions mentioned above by offering gifts to the participants with voting rights, in particular, during the CAA Congress.
86. The Appellant objects the IAAF Ethics Board's decision in that respect, indicating that he could not be considered as a candidate in the sense of Article C5(21) at the time of the CAA Congress, taking into account that his nomination form was submitted only later that month.

87. WA rejects the Appellant’s allegations, insisting that the status of a “*candidate*” in context of Article C5(21) does not depend on the fulfilment of formal requirements and applies to any person intending to nominate themselves for an IAAF position.
88. The Panel takes into consideration that neither of the Parties contests the fact that gifts, regardless of their value, were offered by Mr Al Kamali during the CAA Congress, in particular, to the IAAF members who were supposed to vote during the upcoming elections in August 2015.
89. Consequently, in order to establish whether or not Mr Al Kamali has violated the provisions of Article C5(21) of the IAAF Code, the Panel has to determine whether Mr Al Kamali was considered a candidate for the IAAF elections at the time of the CAA Congress.
90. Firstly, the Panel notes that at the time of the CAA Congress Mr Al Kamali was a member of the IAAF Council (p. 49 of the IAAF Constitution in force as from 1 November 2013).
91. Pursuant to the provisions of Article A (“*Application*”) of the IAAF Code:
- “1. Persons Covered by the Code: The Code applies to the following individuals (collectively referred to as the “IAAF Family”):*
- “IAAF Officials” meaning all members of the IAAF Council, IAAF Committees and IAAF Commissions and any person who acts or is entitled to act for or on behalf of the IAAF, including without limitation IAAF staff, consultants, agents and advisors;*
- [...]”*. (emphasis added)
92. Accordingly, the Panel concludes that, in general, at the time of the CAA Congress the provisions of the IAAF Code applied to Mr Al Kamali in his capacity as a member of the IAAF Council.
93. Secondly, the Panel observes that Mr Al Kamali, although denying having submitted a formal nomination form for re-election to the IAAF Council, does not contest his intent to do so at the time of the CAA Congress where he explicitly declared such decision to several Congress’s participants. In that respect, Mr Al Kamali alleges that the public announcement of his intent without any formal confirmation, could not make him a candidate for the IAAF elections in the sense of Article C5(21).
94. The Panel cannot endorse Appellant’s allegations in that respect. In particular, the Panel notes that the formal nomination form was submitted by the Appellant to the IAAF only a few weeks after the CAA Congress (i.e. on 29 March 2015), which is in line with his announced intent. In addition, and as stated above, at the time of the CAA Congress Mr Al Kamali was already a member of the IAAF Council and, therefore, bound by the provisions of the IAAF Code, which Article C1(12), in particular, states that “*Persons subject to the Code shall act with the utmost integrity, honesty and responsibility in*

fulfilling their respective roles in the sport of Athletics”. The spirit of the said article is practically repeated in Article C5(21) the violation of which is disputed at the matter at hand.

95. Consequently, the Panel finds that notwithstanding the absence of a formally submitted nomination form, Mr Al Kamali had anyhow a duty to act in compliance with Article C1(12) of the IAAF Code and, at the same time, was acting as a candidate for re-election to the IAAF Council at the time of the CAA Congress based on his continuous position in the same capacity (since 2011) and his publicly announced intent.
96. Accordingly, in line with the Appealed Decision, the Panel considers that by offering gifts to CAA Congress’s participants who had voting rights in the upcoming elections, Mr Al Kamali has violated the provisions of Article C5(21) of the IAAF Code in its reference to Article 4 of the Appendix 3.

3) *What are the legal consequences deriving from the violation of the relevant provisions of the IAAF Code by Mr Al Kamali?*

97. Article C16 of the Appendix 6 (“*Statutes of the IAAF Ethics Commission*” [Ethics Board]) to the IAAF Code provides as follows:

“The Ethics Commission [Ethics Board] shall have the following powers under the Code:

[...]

(vi) to impose sanctions for violations of the Code;

[...]”.

98. Article D17 of the same Appendix states:

“The Ethics Commission [Ethics Board] shall have the following powers:

(i) to caution or censure;

(ii) to issue fines;

(iii) to suspend a person (with or without conditions) or expel the person from office;

(iv) to suspend or ban the person from taking part in any Athletics-related activity, including Events and Competitions;

(v) to remove any award or other honour bestowed on the person by the IAAF;

(vi) to impose any sanctions as may be set out in specific Rules; and

(vii) *to impose any other sanction that it may deem to be appropriate, including community service within athletics and/or restitution;*

(viii) *for any appeals under C16(v) above, to uphold, dismiss or refer back to the Member Federation for further consideration and to do so without procedural costs”.*

99. In the Appealed Decision, the panel of the IAAF Ethics Board, having found that Mr Al Kamali has violated the provisions of Articles D2(26) and C5(21) of the IAAF Code, has imposed on him the following sanctions: (i) *“a 6 month ban upon Mr Al Kamali from taking part in any athletics-related activity including holding any relevant office in athletics (whether at national, regional or world level) ... with effect from the date of this decision”* and (ii) *“a fine [...] in the sum of €5000”*.
100. The Appellant has contested the sanctions applied against him, arguing that they are *“manifestly excessive”* and should be revised in consideration of all related circumstances.
101. In that respect, the Panel refers to the CAS long-established jurisprudence which provides as follows:
- “Sanctions imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when a sanction is found to be evidently and grossly disproportionate to the offense. In disciplinary matters, each situation must be evaluated on a case-by-case basis, taking into account all the specific circumstances at issue, the behaviour and degree of responsibility of the defaulting party, any possible aggravating or mitigating factor, as well as the main interests at stake, in respect of the principle of proportionality”* (CAS 2018/A/6239).
102. Therefore, whenever a sports body uses its discretion to impose a sanction, CAS panels display restraint in reassessing the measure of a sanction and only interfere in the exercise of such discretion when the sanction is evidently and grossly disproportionate to the offence or when they come to a different conclusion on the merits of the case (CAS 2017/A/5086 at para. 206; CAS 2009/A/1817 & 1844 at para. 174; CAS 2012/A/2762 at para. 122; CAS 2013/A/3256 at paras. 572-572; CAS 2016/A/4643 at para. 100).
103. In the matter at hand, the Panel takes into consideration that the Appellant has been cleared of the incriminated behaviour under Article D2(26) of the IAAF Code and is considered to have only violated the provisions of Article C5(21) of the IAAF Code. However, the Panel also considers that Article C5(21) of the IAAF Code is a very important provision and that it is ethically very reprehensible for a candidate to an important position in a prominent international federation to give presents or gifts of whatever value to people who will vote in the elections for that position. Indeed, the Panel shares the view already expressed by another CAS panel that *“the standards of conduct required of officials of an international federation [...] must be of the highest level because the public must perceive sports organizations as being upright and*

trustworthy, in order for those organizations to legitimately keep governing over their sports worldwide” (CAS 2017/A/5086 at para. 154).

104. Consequently, the Panel is of the view that the violation of Article C5(21) of the IAAF Code, in and by itself, warrants a 6-month ban, which therefore is an appropriate sanction (which the Panel acknowledges to have already been served by Mr Ahmad Al Kamali). Therefore, in order to bring the imposed sanctions in proportionality with the committed violation, the Panel deems it fair to cancel the fine which was ordered by the panel of the IAAF Ethics Board in the amount of EUR 5,000.

C. Conclusion

105. The Panel concludes that Mr Al Kamali, being member of the IAAF and acting in his capacity as a candidate for re-election in a IAAF position, has violated the provisions of Article C5(21) of the IAAF Code by offering gifts to the participants of the CAA Congress, who might vote in the upcoming elections. The Panel further concludes that no violation of Article D2(26) of the IAAF Code has been committed by Mr Al Kamali, as the gifts offered by him during the CAA Congress were of not more than nominal value. Therefore, the Appeal is partially upheld and the imposed sanctions shall be reduced in proportionality with the committed violation by cancelling the fine of EUR 5,000. As a consequence, if such fine has been already paid, World Athletics shall reimburse EUR 5,000 to Mr Ahmad Al Kamali.
106. All further or different requests of the Parties are rejected.

IX. COSTS

107. In accordance with Article R65.1 and 2 of the CAS Code, since the present appeal is directed against a decision which is exclusively of a disciplinary nature and which was rendered by an international federation, the proceeding is free of charge for the Parties, except for the Court Office fee, which the Appellant already paid and which shall be retained by the CAS.
108. As for a possible contribution towards legal fees and expenses:, Article R65.3 of the CAS Code states:

“Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.”

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109. In exercising its discretion under Article R65.3 of the CAS Code, for the reasons outlined above, the Parties shall bear their own legal fees and other expenses incurred in connection with this procedure.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Ahmad Al Kamali on 4 January 2021 against the decision rendered by the Panel of the IAAF Ethics Board on 15 December 2020 is partially upheld.
2. The operative part of the decision rendered by the Panel of the IAAF Ethics Board on 15 December 2020 is amended as follows:
 - The fine of EUR 5,000 (five thousand Euros) is set aside and, if already paid, shall be reimbursed by World Athletics to Mr Ahmad Al Kamali.
3. The remaining points of the decision rendered by the Panel of the IAAF Ethics Board on 15 December 2020, including the 6 (six) month ban imposed upon Mr Ahmad Al Kamali from taking part in any athletics-related activity, including holding any relevant office in athletics (whether at national, regional or world level), are confirmed.
4. The present award is pronounced without costs, except for the CAS Court Office fee of CHF 1,000, already paid by Mr Ahmad Al Kamali, which is retained by the CAS.
5. Mr Ahmad Al Kamali and World Athletics shall bear their own expenses incurred in connection with these arbitration proceedings.
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 4 November 2021

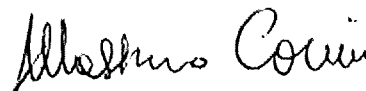
THE COURT OF ARBITRATION FOR SPORT



Alain Zahlan de Cayetti
President of the Panel



Michele A.R. Bernasconi
Arbitrator



Massimo Coccia
Arbitrator