

Is Serving an Eight Year Ban a REAL Settlement For an Athlete? (Case Study)

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The Court of Arbitration for Sport (CAS) has issued a Consent Arbitral Award in the arbitration procedure between the International Association of Athletics Federations (IAAF), the Turkish Athletic Federation (TAF) and Turkish middle-distance runner, Asli Cakir-Alptekin (the Athlete).

The Consent Arbitral Award ratifies a settlement agreement signed by the parties. The settlement relates to abnormal values found in the Athlete's blood samples, collected between July 2010 and October 2012. The incident is Ms Cakir-Alptekin's second violation of anti-doping rules, with the first incident occurring in 2004. As a result of the latest incident, she will be ineligible to compete for eight years. Furthermore, all competitive results obtained by the Athlete from 29 July 2010 onwards have been disqualified, along with forfeiture of all related titles, awards, medals, points and appearance money. These include a gold medal won at the 2012 London Olympic Games, as well as a gold medal won at the European Championships in the same year.

This article analyses the case's factual background, terms of the settlement, and the CAS decision, as well as provides comments on the likely rationale behind the settlement. The analysis is made exclusively based on disclosed documents and in no way intends to harm or defame the parties involved in the proceedings.

Commentary: *As the name suggests, a settlement by its nature must require compromise from both sides. Such compromise ensures the parties are motivated to reach an amicable agreement. Thus, the parties avoid lengthy and costly proceedings, as well as a verdict which could either be worse than the outcomes available through settlement, or involve an uncertain outcome due to the circumstances.*

However, given the terms of this settlement, questions arise about what Ms Cakir-Alptekin achieved through agreeing to a settlement, compared to the likely award which the CAS would have made if no settlement had been reached.

The Athlete in these circumstances will be ineligible to compete until 9 January 2021. By the time the ban is lifted, she will be too old to realistically compete in any international event. In effect, this so-called settlement is highly likely to mean Ms Cakir-Alptekin will not be able to run another major event for the rest of her life.

Given the settlement's unfavourable consequences for the Athlete, questions arise about whether rather than agreeing with this unfavourable settlement, it was worth opposing the IAAF's appeal before the CAS, relying on the TAF decision, its reasoning, or the evidence used. Obviously, fighting for a career which hangs in the balance will take priority over any other gains accomplished through a settlement with these terms. However, in these circumstances, it seems that mystery will continue to surround why Ms Cakir-Alptekin and the TAF took such a position.

Facts and Dispute Resolution Procedure

In January 2013, the IAAF charged the Athlete with an anti-doping rule violation on the basis of her Athlete Biological Passport. The athlete's case was heard by the TAF Disciplinary Board, which gave a ruling in December 2013 that no penalty should be imposed.

The TAF Disciplinary Board's decision held that the Athlete Biological Passport's evidence (as submitted by the IAAF) was insufficient to support an anti-doping rule violation and the Athlete should be exonerated accordingly.

The IAAF disagreed with the TAF Disciplinary Board's decision to exonerate the Athlete, referring the case to the CAS. Before a hearing could be held as part of the CAS procedure, the parties entered negotiations and reached a settlement agreement, which has now been ratified by the CAS Consent Arbitral Award.

Before accepting the settlement, the athlete argued before the CAS that "she has not manipulated her blood as asserted by the IAAF (i.e. in a manner which is prohibited), and therefore has not committed any anti-doping rule violation as alleged." The Athlete claimed that "any anomalies in her blood profile are explicable by various factors (and combinations of them), including (i) living and training at altitude, (ii) use of altitude-simulating techniques, and/or (iii) medical issues. She further alleged that the IAAF has not proved the allegations to the requisite standard, particularly in light of the evidence she submitted."

The TAF did not respond to the IAAF's allegations at any stage during the CAS proceedings.

As a last attempt on 26 May 2015, prior to reaching the settlement, the Athlete provided a witness statement to the CAS, made by Dr. Ahmet Karadac. The statement has not been disclosed, but presumably supports the Athlete's arguments.

Settlement Details

On 29 May 2015, the parties informed the CAS Court Office that they had reached a settlement and therefore the hearing would no longer be needed. The parties asked the Panel to ratify their Settlement Agreement.

In the settlement agreement, the Athlete acknowledged the abnormality of certain values in her Athlete Biological Passport relating to blood samples collected between 29 July 2010 and 17 October 2012. The Athlete also acknowledged that she is unable to substantiate the explanations she has offered for those values. Finally, the Athlete conceded that she is unable to rebut the IAAF's assertion that the values are the result of some form of blood manipulation, contrary to IAAF Rule 32.2(b).

Commentary: If the case had proceeded, the CAS could not have handed down any worse outcome for the Athlete. Such a wide admission and concession by the Athlete under the auspices of a settlement does not seem to sit comfortably with the notion of a settlement, unless other motives exist for the Athlete.

The IAAF acknowledged that after the IAAF's revision of its Anti-Doping Rules from 1 January 2015 onwards to reflect the provisions of the 2015 World Anti-Doping Code, Ms Cakir-Alptekin is entitled to argue that the maximum period of ineligibility for a second anti-doping rule violation of this type is eight years (IAAF Rule 40.8(a)(iii)).

Commentary: Arguably the CAS would take this view anyway [only] if the evidence proves without any doubt that those values are the result of some form of blood manipulation contrary to IAAF Rule 32.2(b). This does not therefore seem to be a real gain by the Athlete. By agreeing with a settlement and not raising her arguments concerning the lack of causation between the blood test and competition results, the Athlete agreed (effectively) to end her career since she will be too old to compete in major events by the time the time her ineligibility expires.

The TAF made no comment on the IAAF's positions or the Athlete. However, the TAF declared that it reserves its right to claim reimbursement of all the prize money paid by the General Directorate of Sports of Turkey to Ms Cakir-Alptekin regarding certain medals identified in the settlement.

The settlement was made relatively quickly and the athlete accepted:

- Some form of blood manipulation occurred between 29 July 2010 and 17 October 2012. This accusation was upheld by default.
- She is ineligible to compete until 10 January 2021.
- Disqualification of all competitive results obtained from 29 July 2010 onwards, along with forfeiture of all related titles, awards, medals, points, and prize and appearance money are forfeited.
- She will, equally with the TAF, bear the CAS arbitration costs (to be determined and notified by the CAS Court Office in due course).

The CAS issued a Consent Arbitral Award which ratifies the parties' settlement agreement, except for a minor part in relation to the reimbursement of the CAS Court Office Fees.

Commentary: Arguably, if all of the Athlete's and the TAF's arguments were refused, this outcome could have been the CAS Court's decision anyway. Therefore, questions arise about why the Athlete and the TAF did not fight for the case.

On the face of things, it seems the only gain the athlete achieved by agreeing to the settlement is that the parties agreed to bear their own legal costs, as well as other costs incurred in connection with the arbitration. An exception being that the Athlete and the TAF are jointly and severally liable to pay the IAAF an undisclosed agreed sum as a contribution towards its costs (due within 14 days of the settlement agreement).

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