

**RULING ON THE APPEAL BROUGHT BY MR. EMMANOUIL GIANKOS
AGAINST THE CMAS TECHNICAL DELEGATED DECISION DATED 17
SEPTEMBER 2016 DISQUALIFYING THE APPELLANT FROM THE XXX
CMAS WORLD SPEARFISHING CHAMPIONSHIP 2016**

A. REMINDER OF THE FACTS

1. Mr Giankos is a spearfishing athlete of Greek nationality, who took part in the XXX CMAS World Spearfishing Championship 2016: an international competition which took place at Syros Island (Greece) in September 2016 (hereinafter referred to also as the "Championship").
2. Basically, the Championship is a sports competition among teams representing their respective countries. Each participating team consists of three athletes (with one substitute allowed) and the tournament format is based on two consecutive days of competition. Scores are calculated on a points basis. The winning team is the one that collects the most cumulative points at the end of the competition.
3. On 17 September 2016, the first day of the Championship, Mr Giankos reached a specific diving spot where also other athletes from Croatia and Cyprus were heading.
4. Upon arrival at the diving spot, Mr Giankos and the Croatian athlete, Mr Stjepko Kesic were the first to enter the water. The Cypriot athlete, Mr George Vasiliou, dove down into the water when Mr Giankos and Mr Kesic were resurfacing from their first dive.

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5. After having resurfaced from underwater, Mr Giankos was accused by the Croatian athlete, Mr Kesic, of using a torch under the water.
6. However, Mr Jesus Castillo Jimenez, the CMAS Commissioner who was on Mr Giankos' boat (hereinafter the "CMAS Commissioner"), gave permission to the Greek athlete to continue the competition. Thus, Mr Giankos left the area for the next target without saying anything to the Croatian athlete.
7. On the same day, the Croatian team formally requested the disqualification of Mr Giankos, pursuant to Article 4 of the Championship Regulation which provides, *inter alia*, that *"THE USE OF ARTIFICIAL LIGHT OF ANY KIND; ELECTRICAL OR CHEMICAL IS PROHIBITED IN SPEARFISHING BY GREEK NATIONAL LEGISLATION. VIOLATION OF THIS PROHIBITION WILL LEAD TO IMMEDIATE DISQUALIFICATION FROM CHAMPIONSHIP"*.
8. Still on 17 September 2016, the CMAS Technical Delegate, Mr Lourenco Silveira, heard Mr Kesic, who testified as follows:

"I was behind him [Mr Giankos] 15 meters and behind me was guy from Cyprus George Vasiliou. When Manolis Giankos turn from the depth and go up to the surface after one meter I saw that he had a torch in his hand and in that moment he drop the torch. I saw the light and guy from Cyprus [Mr Vasiliou] saw the light".
9. On the same day, the CMAS Technical Delegate also heard:
 - the Cypriot athlete, Mr Vasiliou, who said that he had seen Mr Giankos and Mr Kesic resurfacing from their first dive and a light from a torch lying on the sea bed;

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- the CMAS Commissioner, who testified that he had not seen the Greek athlete using a torch under the water; and finally
- Mr Giankos, who strongly denied any wrongdoing.

10. On the basis of the above findings, the CMAS Technical Delegate was of the view that Mr Giankos had committed a breach of the rule prohibiting use of a torch under the water. Therefore, still on 17 September 2016, the CMAS Technical Delegate pronounced the exclusion of Mr Giankos from the Championship.

11. Nonetheless the CMAS Technical Delegate authorized the Greek team to replace the disqualified athlete with the reserve, Mr Nicolaos Sarantinos, who took part only to the second (and last) day of competition.

12. Despite the disqualification of Mr Giankos, the Greek team managed to win the Championship.

B. THE PROCEEDINGS

13. On 24 November 2016, Mr Giankos lodged an appeal against the CMAS Technical Delegated decision dated 17 September 2016 disqualifying Appellant from the World Spearfishing Championship 2016.

14. In his Memorial of Appeal, Mr Giankos requests this Disciplinary Committee:

"I. to annul the CMAS Technical Delegate decision dated 17 September 2016 disqualifying Emmaunouil Giankos from the World Spearfishing Championship 2016

II. to declare that the disqualification of Emmanouil Giankos from the World Spearfishing Championship 2016 was illegal;

III. to annul the results of the World Spearfishing Championship 2016

IV. to declare that the World Spearfishing Championship 2016 needs to be staged anew;

V. to order CMAS to bear any costs of the present proceedings; and

VI. to order CMAS to pay Emmanouil Giankos a contribution towards his legal fees and other expenses incurred in connection with his disqualification and the ensuing legal proceedings, the amount of which will be specified at a later stage”.

15. Essentially, the Appellant argues that there is no reliable evidence demonstrating that he used torch under the water. The only evidence is the testimony of Mr Kesic, but the Appellant alleges that Mr Kesic cannot be considered a credible witness taking also into account that he was one of the main opponent of Mr Giankos during the Championship. Thus, in the light of CAS jurisprudence, the Appellant argues that the Respondent has failed to meet its burden of proof in relation to the allegation that Mr Giankos used a torch.

16. In its Written Observations, the Respondent invites the Disciplinary Committee to uphold the challenged decision. Essentially, the Respondent contends that the appeal submitted by Mr Giankos concerns a field of play decision and is thus inadmissible.

17. In its Reply, the Appellant argues that the field of play doctrine does not apply to the decision in *casu*, because the decision does not fulfill any of

the required three elements of a field of play decision. It is the Appellant's view that the application of this doctrine is limited to decisions that are made (i) by a referee, (ii) on the playing field and (iii) based on the referee's visual perception.

18. At the hearing of 22 February 2017, the Parties presented their oral arguments and answered the questions asked by the President of the Disciplinary Committee. The Appellant and his counsel participated at the hearing through telephone conferencing.

C. CONCLUSIONS OF THE DISCIPLINARY COMMITTEE

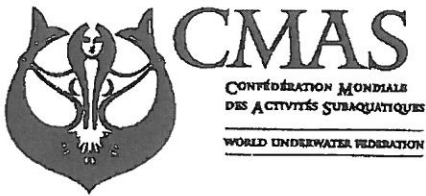
19. The Disciplinary Committee first analyses the CAS jurisprudence on the field of play doctrine (hereinafter the "Doctrine"), which protects field of play decisions of referees from judicial review.
20. According to CAS jurisprudence, the scope of the Doctrine is limited to decisions that are made by a referee (or other official responsible for applying the rules of the game) based on the referee's perception of the relevant actions of the playing field.
21. In the case at stake, the Disciplinary Committee has no doubt that the CMAS Technical Delegate is to be considered as a referee within the meaning of the Doctrine. However, it is also unquestionable that the appealed decision is not based on the perception of the CMAS Technical Delegate.
22. Indeed, it is plain that the CMAS Technical Delegate based his decision solely on witness testimony.

- 23.** Therefore, the Disciplinary Committee agrees with the Appellant that the decision challenged does not fulfil all the required elements of a field of play decision.
- 24.** To determine whether Mr Giankos used a torch under the water, the Disciplinary Committee must examine whether the evidence provided establishes the alleged wrongdoing.
- 25.** To do so, the Disciplinary Committee must consider the standard of proof of “comfortable satisfaction”, which has been developed through a long number of CAS case (se CAS OG/96/003-004; CAS 2011/A/2625 and CAS 2015/A/3975)
- 26.** When assessing this case under the “comfortable satisfaction” standard, the Disciplinary Committee has put particular emphasis on the following facts:
- the CMAS Commissioner (Mr Jesus Castillo Jimenez) testified that Mr Giankos had been still in the water when Mr Kesic had blamed him for using a torch under the water (“As Manolis was in the water someone from Croatia’s team claim to have seen Manolis deep down with some light”) and he also explained that he had not seen Mr Giankos using a torch under the water;
 - the Cypriot athlete, Mr Vasiliou, testified that he had seen Mr Giankos and Mr Kesic resurfacing from their first dive and a light from a torch lying on the sea bed (specifically, in his witness testimony, he said: “I saw a torch on the bottom. Before I reached the bottom I stopped my dive and I went back to surface because I was afraid that someone will tell that it was my torch. [...] I saw two divers going up and the light from the torch on the bottom.

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Torch was lying on the bottom and it was still on. I went up in my boat and I left the spot").

27. Hence, Mr Vasilou (i.e. the only other witness who saw the torch light under the water) was unable to identify the athlete who had used the torch. From the testimony given by Mr Vasilou, one can assume that the torch was used by the Appellant or by Mr Kesic (i.e. the two divers who were resurfacing when Mr Vasiliou dove down into the water). However, it is impossible to say which of the two athletes committed such fraud.
28. Thus, the Disciplinary Committee does not feel convinced that the witness statement of Mr Kesic would be enough to prove to the comfortable satisfaction that Mr Giankos used a torch under the water during the Championship.
29. Accordingly, on the basis of the evidence presented during these proceedings, the Disciplinary Committee is unable to conclude to its comfortable satisfaction that the charge made against the Appellant is established.
30. As to the other reliefs requested, it is undisputable that the Championship is a sports competition among national teams. Thus, the Disciplinary Committee is of the opinion that the Appellant would not be entitled to ask for reliefs other than those strictly his personal position.
31. Furthermore, the Disciplinary Committee finds that there is no provision in applicable regulation allowing the reply of the Championship. There are therefore no grounds permitting the Disciplinary Committee to annul the results of the XXX CMAS World Spearfishing Championship 2016.



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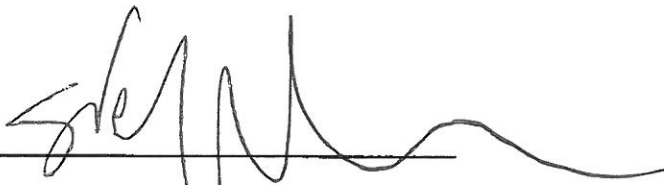
32. Finally, with regard to the costs of the present proceedings, the Disciplinary Committee finds that the CMAS has not requested to the Appellant the payment of any fees or administrative costs. Thus, the Disciplinary Committee determines that each Party shall bear its own legal costs.

ON THESE GROUNDS,

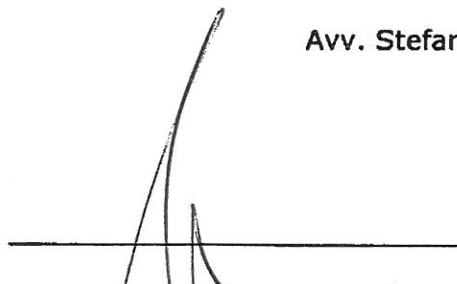
THE CMAS DISCIPLINARY COMMITTEE:

- Sets aside the CMAS Technical Delegated decision dated 17 September 2016 disqualifying the Appellant from the XXX CMAS World Spearfishing Championship 2016
- Rejects all other reliefs requested by the Appellant.

Rome, 5 May 2017



Avv. Stefano Brustia, President



Avv. Camillo Ungari Trasatti



Avv. Fiammetta Orsi