

DECISION 2020/01

OF THE

BADMINTON WORLD FEDERATION

INDEPENDENT HEARING PANEL

DEFENDANT(s): Mr. Nikita Khakimov (BWF ID 17576)

PANEL: Mr. James Kitching (Chair)
Mr. Rune Bård Hansen
Mr. Kevin Carpenter

DATE: 9 October 2020

Regarding alleged violations of the:

2017 Code of Conduct in Relation to Betting, Wagering, and Irregular Match Results

PRELIMINARY MATTERS

Introduction

1. On 5 August 2020, Mr. Rune Bård Hansen, the President of the Badminton World Federation (“**BWF**”) Independent Hearing Panel (“**IHP**”) appointed the following members to a hearing panel in accordance with Article 18.1 of the BWF Judicial Procedures (19 July 2020) (“**Procedures**”):
 - 1.1. Mr. James Kitching as Chair; and
 - 1.2. Mr. Rune Bård Hansen and Ms. Sylvia Schenk as Members.
2. On 4 October 2020, it was brought to the attention of Bård Hansen by Schenk and Kitching, that due to circumstances existing between organisations with which they were employed or appointed, it would not be appropriate for them to sit together on the same panel.
3. As a result, on the same day Hansen decided to appoint Mr. Kevin Carpenter to replace Ms. Sylvia Schenk. The new formation of the panel was as follows:
 - 3.1. Mr. James Kitching as Chair (“**Chair**”); and
 - 3.2. Mr. Rune Bård Hansen and Mr. Kevin Carpenter as Members (“**Members**”).(collectively, the “**Panel**”).
4. The Panel was appointed by Hansen to decide on a case involving breaches of the November 2017 Code of Conduct in relation to Betting Wagering and Irregular Match Results (**November 2017 Code**) allegedly committed by a Russian badminton athlete, Mr. Nikita Khakimov (“**Khakimov**”).

Parties

5. The parties to this matter are:
 - 5.1. BWF, the international governing body for the sport of badminton, recognised by the International Olympic Committee (“**IOC**”); and
 - 5.2. Khakimov, a Russian professional badminton athlete registered with the BWF since 2009.

Procedural and Factual Chronology

6. This section outlines the key communications and procedural rulings which occurred prior to the oral hearing. Not all communications are recorded for reasons of relevance.

Initial Report

7. In July 2018, the BWF obtained a statement from a Whistleblower. That statement outlined that Khakimov had approached the Whistleblower on Facebook to manipulate a match at the European Teams Championships held on 13-18 February 2018.

- 7.1. The Panel decided, on request of the BWF (an “*Investigating Party*” pursuant to the Procedures), to redact any identifying features related to the Whistleblower in accordance with Article 35.5 of the Procedures.
8. The BWF (through its Integrity Unit) opened an investigation into the allegation.

First Interview

9. On 15 October 2018, the BWF invited Khakimov to attend an interview as part of an investigation into potential breaches of the November 2017 Code.
10. On 20 October 2018, an interview took place in Zurich, Switzerland (“**First Interview**”).
 - 10.1. The interview was conducted by the BWF Integrity Unit Manager, Mr. Andy Hines-Randle (“**Hines-Randle**”) and BWF investigator, Mr. Paul Scotney.
 - 10.2. Khakimov was represented by Mr. Andrei Tarasov and assisted by an independent interpreter, Ms Anastasia Pogadaeva.
 - 10.3. At the end of the interview, Khakimov voluntarily provided his mobile phone to BWF for forensic examined.
11. The testimony provided in the interview is set out below in **Part C**.

Second Interview

12. On 30 May 2019, the BWF invited Khakimov to attend a second interview.
13. On 25 July 2019, an interview took place in Moscow, Russia. Khakimov was assisted by an independent interpreter, Ms. Lucy Tarantina.
14. The testimony provided in the interview is set out below in **Part C**.

Request to Referral Officer

15. On 2 June 2020, the BWF Secretary General referred the case relating to Khakimov to the BWF Referral Officer, Mr. Alexander McLin, for review in accordance with Article 6.3 of the Procedures.
 - 15.1. The purpose of a referral under the Procedures is for the Referral Officer, an independent party, to review the evidence and decide whether to refer the case to the IHP.
16. On 21 June 2020, the Referral Officer confirmed that he had decided to refer the case against Khakimov to the IHP.
17. Although this referral was made pursuant to the previous edition of the Procedures, the provisions of which are effectively identical, for ease of reference the Articles mentioned above are to the current edition of the Procedures.

Charges

18. On 10 August 2020, the BWF notified Khakimov in accordance with Article 13.4 of the Procedures (“**Charge Notice**”) that:

- 18.1. he was charged with several violations of the November 2017 Code;
 - 18.2. he had various rights pursuant to the Procedures;
 - 18.3. the time frame to respond, as well as for a hearing and its related procedures, would be conveyed in due course; and
 - 18.4. a link was provided to download the evidence pertaining to the case as well as the “*Charges*” and “*Case Summary*” prepared by the BWF.
19. On 11 August 2020, Khakimov returned a signed “*Acknowledgment Form*” to the BWF, via the National Badminton Federation of Russia, confirming, *inter alia*, receipt of the Charge Notice and its exhibits.

Submissions and pre-hearing matters

20. On 15 August 2020, the Chair provided until 7 September 2020 for Khakimov to file his defence to the Charge Notice.
21. On 7 September 2020, Khakimov filed his defence (“**Defence**”).
22. On 7 September 2020, the Chair asked Khakimov, *inter alia*, to confirm whether he required an oral hearing.
23. On 7 September 2020, Khakimov confirmed his desire for an oral hearing.
24. On 17 September 2020, the Chair requested that Khakimov:
- 24.1. select a hearing date from those proposed;
 - 24.2. confirm the persons that would be accompanying him (if any) to the hearing;
 - 24.3. confirm whether he would like to cross-examine the witnesses identified in the “*Case Summary*”; and
 - 24.4. provide a translation in English of an exhibit to his Defence.
25. On 22 September 2020, Khakimov:
- 25.1. notified his preferred hearing date;
 - 25.2. confirmed that he would be accompanied by a lawyer and translator;
 - 25.3. confirmed that he did not wish to cross-examine the BWF witnesses; and
 - 25.4. informed that the relevant exhibit was in both Russian and English, and he would not provide further translation.
26. On 5 October 2020, Khakimov:

- 26.1. identified his interpreter as Mr. Lev Grevnin; and
- 26.2. confirmed that no legal representative would attend the hearing.
27. On 7 October 2020, the Chair notified the parties of the hearing procedure.
28. On 8 October 2020, Counsel for the BWF provided a written “*Opening Note*” to the Panel in lieu of making an opening submission at hearing.

Charges

29. The charges against Khakimov state:

Charge 1

1. *That on 13 February 2018, NIKITA KHAKIMOV sent messages on Facebook to [redacted] in which messages:*
 - a. *He solicited [redacted] to not use his best efforts in an Event in breach of §3.1.8 of the November 2017 Code, and/or*
 - b. *He offered money to [redacted] with the intention of negatively influencing his best efforts in an Event in breach of §3.1.10 of the November 2017 Code.*

Charge 2

1. *That on a date between 13 February 2018 and 20 October 2018 NIKITA KHAKIMOV destroyed evidence, specifically messages sent from his mobile phone to [redacted] which related to a Corruption Offence in breach of §3.1.19 of the November 2017 Code.*

Charge 3

1. *That, in breach of §3.1.19 of the November 2017 Code, NIKITA KHAKIMOV failed to report at the first available opportunity an approach by a person to offer money to [redacted] on 13 February 2018 to influence the outcome of an aspect of an Event.*
30. Charge 2 incorrectly cited Article 3.1.19 of the November 2017 Code; rather it should have cited Article 3.1.27 or 6.1.7 of the November 2017 Code.
31. When rendering its decision, the Panel:
 - 31.1. noted that the “*Case Summary*” referred to Article 6.1.7 of the 2017 November Code when describing the particular charge;
 - 31.2. determined that the incorrect citation in the Charge Notice provided no obvious prejudice to Khakimov, given the manner in how the case was heard and the nature of his defence;
 - 31.3. decided to refer to Article 6.1.7 as opposed to Article 3.1.27 of the 2017 November Code, taking note of the language in the “*Case Summary*”.

B. APPLICABLE RULES

Jurisdiction

32. Article 31 of the BWF Constitution recognises the IHP as a judicial body of the BWF.
- 32.1. The IHP is authorised by Article 29 of the BWF Constitution to “*penalise a Member, player, coach, competition official, or other person for infringement of the Statutes, for misconduct during competition, or for actions that bring the game of Badminton or the Federation into disrepute.*”
33. In accordance with Article 7.5 of the Procedures, the IHP has jurisdiction to decide matters, *inter alia*, regarding alleged breaches of the “*Code on the Prevention of the Manipulation of Competitions (BWF Statutes, Section 2.4)*”.
- 33.1. The November 2017 Code was the version of that Code (albeit with a different name) in force at the time of the alleged violations.
- 33.2. This jurisdiction extends to “*Covered Persons*” within both the November 2017 Code and Procedures. Khakimov is clearly a “*Covered Person*”.
34. Pursuant to Article 15.4 of the Procedures, the case against Khakimov was referred to the IHP following consideration of the evidence by the Referral Officer.
35. As such, the Panel has jurisdiction to hear this matter. In any event, Khakimov never disputed the jurisdiction of the Panel.

Burden of proof and standard of proof

36. Article 32.2 of the Procedures provides that the “*burden of proof regarding an allegation of breach rests on the Investigating Party*”.
37. Article 32.1 of the Procedures states that the “*standard of proof...shall be the balance of probabilities...a matter will be found proved if it is more likely to have occurred than not*”.

Violations

38. Khakimov is charged with violating the following provisions of the 2017 November Code:
- 3.1.8. *No Covered Person shall, directly or indirectly, solicit or facilitate any Player to not use his or her best efforts in any Event.*
- 3.1.10. *No Covered Person shall, directly or indirectly, offer or provide any money, benefit or Consideration to any other Covered Person with the intention of negatively influencing a Player's best efforts in any Event.*
- 6.1.7. *No Covered Person shall tamper with or destroy any evidence or other information related to any Corruption Offence.*

C. PROCEDURAL REQUEST(S), EVIDENCE, POSITIONS OF THE PARTIES

39. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence. Additional facts and allegations found in the written submissions, pleadings and evidence may be set out, where relevant, in connection with the findings at **Part D**.

Evidence

40. The evidence provided as part of the Charge Notice is summarised below.

Whistleblower report

41. The Whistleblower reported, in summary:

41.1. between 13-18 February 2018, he was representing his country at the European Team Championships in Kazan, Russia;

41.2. on 13 February 2018 at 18:35, he had a short conversation on Facebook with Khakimov. The messages state:

Khakimov: *Hay man
Howe are you?
Your team plays with [redacted], there is a suggestion if someone wants to earn money on this day you only need to lose one set! Money will be given to you immediately on the same day (sunglasses/smiley emoji and thumbs up emoji) if interesting write me*

Whistleblower: *Hi no sorry not interested.*

41.3. he believed that the approach was genuine as he was due to play against the named country the following day;

41.4. he believed that the messages must have been sent by Khakimov as they had been friends on Facebook for some time. He was surprised as Khakimov had never asked anything like this previously when they had spoken at tournaments. This was the first time Khakimov had communicated with him on Facebook;

41.5. as soon as he received the messages he showed them to his roommate, his coach, and subsequently the tournament organisers.

First Interview

42. In summary, Khakimov:

42.1. denied that he had any betting accounts or that he bet at all;

42.2. stated that he had never approached anyone to lose a match, and that he had not played or attended the 2018 European Championships;

42.3. stated that he knew the Whistleblower and they were Facebook friends. He had never had any contact with him on Facebook;

- 42.4. when shown a screenshot of the Facebook messages with the Whistleblower, he accepted the messages were sent from his Facebook account;
- 42.5. denied writing the messages and stated he did not know anything about them, and offered to provide Hines-Randle and Scotney with his phone;
- 42.6. suggested that the messages were sent by “*maybe someone who took his phone and wrote it themselves*” and that his Facebook account could be accessed by anyone who knew his name and date of birth. He further asserted that his phone “*could have been taken by some of his fellow team mates or whatever*”;
- 42.7. thought he was in Moscow at the time of the tournament;
- 42.8. when asked how a team mate would have access to his phone at the time (18:35) that the message was sent and still have the phone when the message was replied to (20:36), agreed this was “*strange*” but might be because he had not checked the message;
- 42.9. suggested someone might do this as a result of a quarrel within the team;
- 42.10. stated that people in his team knew the password to his phone, and even though he was not at the tournament, he trained with them. He identified his doubles partner and stated he knew the password;
- 42.11. suggested that whoever sent the message had deleted it before he saw it, and he was certain the messages were not on his Facebook account now;
- 42.12. consented to the content of his mobile phone being downloaded for forensic examination.

Content of mobile phone

43. Etienne Petit, BWF Intelligence Analyst, carried out a forensic examination of the content downloaded from the mobile phone. In his statement, Petit reported:
 - 43.1. the phone had a cookie from the betting website ixbet.mobi created on 12 February 2018 (the day before the messages were sent);
 - 43.2. the phone had no outgoing messages stored on it for the period from 09:14, 13 February 2018, to 08:19, 16 February 2018;
 - 43.3. during that period, it received messages and had also connected to an airport WIFI and received software updates, and so was therefore in use during that period where no outgoing messages were stored;
 - 43.4. the phone had been used to access 8 betting websites, with the website fonbet.com stored as a bookmark on the Safari browser;

- 43.5. the average number of outgoing messages per day was 47 per day in the period 13 January to 13 February 2018, and 22 per day in the period 16 February 2018 to 16 March 2018;
- 43.6. the phrase “*Howe are you*” was used in 23 messages on the phone. The correct English phrase “*How are you*” was not used at all; and
- 43.7. the phrase “*write me*” was used on 16 occasions.

Second Interview

- 44. The second interview was conducted to discuss the findings of the forensic examination. In summary, Khakimov:
 - 44.1. stated “*somebody could have grabbed my phone and used my Facebook page or my – because everybody in my team knows my password and I know passwords of other players*”;
 - 44.2. when asked how that person could have had the phone for so long, stated: “*maybe it was – maybe it was lying somewhere on its own and somebody grabbed it and used it for the period of time and I wasn’t aware of it.*”
 - 44.3. again identified his former doubles partner as someone who may have sent the messages to the Whistleblower;
 - 44.4. when asked about the phrasing of the messages, stated that “*Howe*” was used by a non-native English speaker, and the persons he was in conversation with who used “*How*” had better English than him;
 - 44.5. when asked about the 3-day period of no stored outgoing messages, stated that he did not delete the content of the mobile phone, but that he may have cleaned his phone and deleted messages he did not need; and
 - 44.6. when asked about the betting websites, stated that he did not have any betting accounts but may have visited websites to watch videos of matches, and he might have registered on Fonbet, but could not remember.

Other evidence

- 45. On 25 July 2019, Hines-Randle and Scotney interviewed the former doubles partner of Khakimov in Moscow, Russia. During that interview, he:
 - 45.1. stated that he did not have any betting accounts;
 - 45.2. stated that he had been approached by Khakimov after the First Interview, to discuss what had happened;
 - 45.3. denied sending the messages;
 - 45.4. confirmed that he cannot write English;

- 45.5. confirmed that he did not know the password of Khakimov's mobile phone; and
 - 45.6. confirmed that he never lived in the same city as or trained with Khakimov, that they only met at tournaments.
46. Hines-Randle provided a witness statement which set out the timeline of the investigation and summary of the evidence, as described above.

BWF case against Khakimov

47. In summary, the BWF case against Khakimov is that he:
- 47.1. on 13 February 2018, approached the Whistleblower on Facebook and requested he manipulate a match at the European Team Championships, a violation of the November 2017 Code;
 - 47.2. destroyed evidence in relation to that approach, a violation of the November 2017 Code; and
 - 47.3. in the alternative to the above, failed without undue delay to report to the BWF an approach to the Whistleblower his Facebook account, a violation of the November 2017 Code.
48. The BWF case is predicated on the fact that:
- 48.1. there is no evidence that any person but Khakimov used his phone on 13 February 2020 to send the messages. Khakimov's explanations regarding another party using his phone are implausible;
 - 48.2. Khakimov admitted that he may have deleted stored outgoing messages on his phone during the period when the messages were sent to the Whistleblower. There is no logical reason why this period of stored outgoing messages should be deleted, and others were not;
 - 48.3. Khakimov volunteered an examination of his mobile phone in the First Interview because he knew that he had deleted the outgoing stored messages. This is a deliberate destruction of evidence relating to a corruption offence; and
 - 48.4. Khakimov was not candid with BWF during the investigation, particularly with respect to his access of betting websites.

Khakimov Defence

49. As his Defence, Khakimov provided the following statement:

"I would like to begin with that I was building out my badminton career step by step for most of my life, and it wasn't easy task - I had to work really hard to become a good player. It would be completely illogical from my side to ruin my life by writing to some person whom I have never even knew. This is pure provocation. I believe this was all set up.

Badminton is my life, my passion and my main way of earning for my family. Above all, I disagree with the accusations presented against me. During the initial interview I openly allowed my phone to be examined, as I had nothing to hide. If I really wrote those messages, it would not be in my own interest to give my phone for examination so easily. In fact, I had a right not to do this at all, since my device contained a wealth of other private information. However, I did it, since I didn't commit the crime and I wanted to demonstrate my cooperation. I repeat - I have absolutely no relation to the writing I am being accused of. Even [redacted] wrote that he didn't expect it, when he read the message, because we never communicated via Facebook. [redacted] said "I was very surprised by this request as he has never asked me anything like this before. This was the first time he has sent me any message on Facebook. We have only spoken in for example tournaments but nothing that would suggest anything like this". I have really good friends in [redacted] team and it's really illogical to text the someone who I hardly ever know.

Please see the following evidence which exonerates me:

- 1. On the 13th of February I had flight to India. The flight time on my ticket was 19:30. The person who committed the crime apparently knew this fact and used it to his advantage. Moreover, the person who hijacked my Facebook account learned in which manner and style I write messages to people by browsing through my other chats.*
- 2. As I mentioned earlier, I used betting sites only to view games online on there home pages. These pages are available for viewing to anyone, don't require any login, and as a result no betting either. If I was part of the crime I am accused of, it would have been visible that I was using my account to bet on certain matches. However, there are no traces of such activity!*
- 3. Deleting messages is not a crime. I always clean my phone of garbage messages, spam, etc.*

I am asking you to examine the above facts. The professional life of an athlete is rather short and I don't want to end it like this, by being falsely accused of participation in a criminal plot.

50. Khakimov provided a copy of an air ticket as part of his Defence. The ticket, in his name, was for Rossiya Airlines flight FV5883 from Moscow, Russia, to Goa, India at 19:30 on 13 February 2020, and returning on flight FV5884 at 10:30 on 25 February 2020.

Hearing

51. A hearing was held on 9 October 2020 via videoconference.
52. At its outset, the Parties confirmed that they had no objection to the composition of the Panel or to any other persons attending the hearing.
53. At its conclusion, the Parties confirmed that they had been provided an opportunity to state their case and had no objection to the procedure conducted. In addition, Khakimov stated that he would have preferred to have made his case in person, but understood the limitations caused by the COVID-19 pandemic.

Attendance

54. The Parties attended the hearing in person with their representatives:
 - 54.1. BWF, represented by Mr Louis Weston, Counsel, and Mr. Thomas Delaye-Fortin, BWF Head of Legal Affairs;
 - 54.2. Khakimov, accompanied by Mr. Lev Goronin, his interpreter.
55. The hearing was also attended by Mr Stuart Borrie, BWF Chief Operating Officer, to provide logistical and administrative support to all parties and observers in the hearing.

Witness Testimony

56. Both BWF and the Panel had an opportunity to examine Khakimov. Under examination, the only new information forwarded was that:
 - 56.1. he flew alone to Goa. He brought his phone with him and used it in India. His family was waiting for him in Goa;
 - 56.2. he did not see the messages sent on Facebook to the Whistleblower before they were deleted, despite having used his phone;
 - 56.3. the person who had sent the messages had done so to ‘set him up’ and take his position in the national team. A similar incident had occurred when he first joined the national team with a teammate, which caused him to miss out on participating in certain big tournaments; and
 - 56.4. he had not raised this ‘set up’ theory previously as it had not been discussed during the interviews.
57. The Chair requested that Petit present himself for examination. The Parties and the Panel had an opportunity to examine Petit. Under examination, he relevantly stated that:
 - 57.1. where his report referred to no stored outgoing messages from the mobile phone during the identified period, this meant all outgoing messages from any application with a messaging function. It was not specific to Facebook;
 - 57.2. he could not confirm whether the messages reported by the Whistleblower had been deleted, or simply not sent from the mobile phone. The device had been wiped of all stored outgoing messages for the identified period in his report.

Submissions of the Parties

58. A summary of the submissions received during the hearing is set out below.

BWF

59. BWF provided a written “*Opening Note*” in advance and requested that it be considered as its submission. In short, this addressed the Defence as follows:
 - 59.1. BWF reasserted the matters set out in the “*Case Summary*”;
 - 59.2. the explanation provided in the Defence was entirely fanciful;

- 59.3. Khakimov allowed his phone to be examined because he knew that the messages had been deleted; and
 - 59.4. Khakimov is layering complexity to escape from the obvious position that he sent the messages himself.
60. BWF asserted as a result that Charge 1 and 2 are proven, and that Khakimov should be sanctioned with:
- 60.1. a 5 year suspension from badminton-related activities; and
 - 60.2. a fine in excess of five thousand (5,000) United States Dollars.

Khakimov

61. Khakimov provided additional oral submissions at the hearing. In short, and in addition to the Defence, he stated that:
- 61.1. he had represented Russia for 15 years. Badminton was his passion and only source of income to support his family; and
 - 61.2. he had cooperated fully with the BWF during the investigation.
62. Khakimov asserted that, given the totality of the evidence, the charges should be dismissed and that he be subject to no sanction.

D. FINDINGS

63. While the Panel has carefully considered all the facts, evidence, allegations and arguments submitted orally and in writing, the Panel refers in these findings only to the submissions and evidence it considers necessary to explain its reasoning.
64. The Panel was grateful for, and ably assisted by, the quality of the written and oral submissions by the Parties.
65. The Panel noted the jurisprudence of the Court of Arbitration for Sport (CAS) when dealing with the assessment of evidence in corruption matters.
66. On several occasions, the CAS has recognised that special attention must be given to the paramount importance of fighting corruption of any kind in sport and to the nature and restricted investigatory powers of sport governing bodies compared to state authorities (see e.g. CAS 2009/A/1920 *FK Pobeda et al v. UEFA*; CAS 2014/A/3832 *Vanessa Vanakorn v. FIS*).
67. In this respect, various CAS panels have recognised that corruption is “*by its nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoings*” (CAS 2010/A/2172 *Oleg Oriekhov v. UEFA*).
68. Consequently, it is more likely than not that direct evidence will be the exception and indirect evidence the standard when dealing in cases involving alleged corrupt activity. In this respect, the CAS has previously held “*It is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt*” (CAS 2015/A/4059 *Klubi Sportiv Skenderbeu v. UEFA*).
69. In this matter, the standard of proof is one of balance of probabilities.

Charge 1

70. Charge 1 alleges that, on 13 February 2018, Khakimov sent messages on Facebook to the Whistleblower in which he:
 - 70.1. solicited the Whistleblower to not use his best efforts in an “*Event*”; and
 - 70.2. offered money to the Whistleblower with the intention of negatively influencing his best efforts in an “*Event*”.
71. This is alleged to have violated Articles 3.1.8 and 3.1.10 of the November 2017 Code.
72. The word “*Event*” is defined in the Procedures as “*badminton tournaments sanctioned by the BWF and any other international badminton event where Players participate in.*”
73. The Panel held that it was more probable than not that Khakimov had committed the violations alleged. In making this finding, the Panel noted that:
 - 73.1. the European Teams Championships is an “*Event*” for the purposes of the November 2017 Code;

- 73.2. it was undisputed that the messages had been sent to the Whistleblower from Khakimov's Facebook account;
 - 73.3. the messages demonstrated a clear attempt to "*solicit*" the Whistleblower to "*not use his best efforts*" (i.e. to deliberately "*lose one set*") in a match at the European Teams Championships;
 - 73.4. the messages also demonstrated an offer of money to the Whistleblower for the purpose of "*negatively influencing his best efforts*" (i.e. to deliberately "*lose one set*") in a match at the European Teams Championships;
 - 73.5. it was undisputed that for a period prior to and after the messages had been sent, all stored outgoing messages from applications with a messenger function on Khakimov's mobile phone had been deleted; and
 - 73.6. Khakimov had proffered multiple explanations as to how the messages were sent from his Facebook account, the identity of who had sent them, and their motive for sending them. All explanations were without supporting evidence, contradictory, and self-serving. It deemed Khakimov an unreliable witness and gave no weight to his testimony.
74. As such, the only logical conclusion was that Khakimov himself had sent the messages to the Whistleblower from his mobile phone, and had subsequently deleted the messages before offering to provide (and subsequently providing) his mobile phone to BWF investigators for forensic examination, at the end of the First Interview.
 75. Accordingly, the Panel held that Khakimov had violated Articles 3.1.8 and 3.1.10 of the November 2017 Code when he sent the messages to the Whistleblower.

Charge 2

76. Charge 2 alleges that, on a date between 13 February 2018 (the date the messages were sent) and 20 October 2018 (the date of the First Interview), Khakimov "*destroyed evidence*", the messages from his mobile phone to the Whistleblower, which related to a "*Corruption Offence*".
77. This is alleged to have violated Article 6.1.7 of the November 2017 Code.
78. The phrase "*Corruption Offence*" is defined in the November 2017 Code as "*any offences described in Clauses 3*". This thus includes Articles 3.1.8 and 3.1.10 described above.
79. The Panel held that it was more probable than not that Khakimov had committed the violation alleged. In making this finding, the Panel noted:
 - 79.1. it had already found that Khakimov had deleted the messages before offering to provide (and providing) his mobile phone to BWF investigators for forensic examination, at the end of the First Interview;

- 79.2. it had already found that the messages clearly demonstrated conduct in violation of (at least) Articles 3.1.8 and 3.1.10 of the November 2017 Code, which are both a “*Corruption Offence*”;
 - 79.3. the messages were “*evidence*” of “*Corruption Offences*”; and
 - 79.4. by deleting the messages, a permanent data erasure, Khakimov had clearly “*destroyed evidence*” within the meaning of that phrase.
80. Accordingly, the Panel held that Khakimov had violated Article 6.1.7 of the November 2017 Code when he deleted the messages that he had sent to the Whistleblower.

Charge 3

81. Charge 3 is an alternative charge to Charge 1, if the Panel had dismissed that charge. As the Panel upheld Charge 1, there was no need to examine Charge 3.

Sanction

82. Article 41 of the Procedures stipulates the types of sanctions that may be imposed by an IHP if an individual is found to have committed regulatory violations.
83. Article 42 of the Procedures defines a suspension as “*a prohibition on Badminton-Related Activities for a defined period of time, including for life.*”
84. When determining a sanction, Article 43.1 of the Procedures states that the: “*hearing panel deciding upon the sanction shall determine the type and extent of any sanction, its scope and duration, considering all relevant mitigating and aggravating factors in a case and the degree of guilt of the party when imposing a sanction. The hearing panel shall be bound to impose a proportionate sanction.*”
85. Article 43.2 of the Procedures sets out the aggravating and mitigating factors that a hearing panel must take into consideration when determining a sanction.
86. The Procedures do not prevent the Panel from drawing inspiration from the decisions of similarly-constituted sporting tribunals or prior BWF decisions.
87. The Panel recalled the press release dated 25 November 2014 by the BWF where its stance on corruption offences was made clear:

“We are pleased to join with IOC and other international federations in the fight against corruption in sport. We expect IBIS to have a positive impact and we look forward to benefiting from it...This is a significant ideal to which we all subscribe-that sport must be played in an environment devoid of illegal betting, match-fixing or any other forms of corruption or manipulation-and BWF will continue to do its utmost to uphold this and to spread this philosophy among its global membership.”

88. The Panel also noted the preamble to the November 2017 Code:

“Every athlete has the right to compete in clean and fair sport which is free from manipulation. It is a fundamental principle of sport that the outcome of a match is determined by the skill of the players, and anything that attacks the integrity of a match

brings the whole of a sport into disrepute. Protection against any attempt to gain advantages (personal advantage or advantage for others) by not making best efforts shall also be considered as a serious offence that can bring the sport into disrepute.”

89. As a starting point to determining the appropriate sanction, the Panel referred to a seminal CAS decision regarding corruption (**emphasis added**)

*“78. However, the Panel has to remind itself that match-fixing, money-laundering, kickbacks, extortion, bribery and the like are a growing concern, indeed a cancer, in many major sports, football included, and must be eradicated. **The very essence of sport is that competition is fair; its attraction to spectators is the unpredictability of the outcome...***

*80. **It is therefore essential in the Panel’s view for sporting regulators to demonstrate zero-tolerance against all kinds of corruption and to impose sanctions sufficient to serve as an effective deterrent to people who might otherwise be tempted through greed or fear to consider involvement in such criminal activities...***

(CAS 2010/A/2172 *Oleg Oriekhov v. UEFA*)

90. The Panel was also guided by CAS jurisprudence regarding the principle of proportionality in disciplinary sanctions, which was recently described as follows:

“The principle of proportionality implies that there must be a reasonable balance between the nature of the misconduct and the sanction. In order to be respected, the principle of proportionality requires that (i) the measure taken by the governing body is capable of achieving the envisaged goal, (ii) the measure taken by the governing body is necessary to reach the envisaged goal, and (iii) the constraints which the affected person will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal. In other words, to be proportionate a measure must not exceed what is reasonably required in the search of the justifiable aim.”

(CAS 2016/O/4684 *ROC & Lyukman Adams et al. v. IAAF*)

91. The Procedures provide no guidance as to how the IHP should sanction an individual that has committed multiple regulatory violations, whether: (i) each charge should be sanctioned separately and the sanctions accumulated; (ii) a sanction should only be issued for the rule considered the *lex specialis*; or (iii) all charges be sanctioned cumulatively.
92. Having the freedom to decide, the Panel deemed it sensible to determine the sanction for Charge 1 and Charge 2 cumulatively.
93. In this respect, the Panel took note of several cases involving match manipulation previously decided by the CAS and other sports bodies. A summary is set out in the following table:

Decision	Basic Facts	Sanction
CAS 2009/A/1920	A club President was found to have manipulated a match in a continental football competition.	Banned for life from football activity.
CAS 2010/A/2172	A referee was found to have failed to report an approach to manipulate a match in a continental football competition.	Banned for life from football activity.
CAS 2011/A/2490	A player was found to have separately approached 3 other players to manipulate tennis matches.	Banned for life from tennis activity.
CAS 2011/A/2621	A player was found to have approached another player to manipulate tennis matches on multiple occasions.	Banned for life from tennis activity.
CAS 2011/A/2362	A player was found to have deliberately bowled 2 'no-balls' during an international cricket match upon request from a third-party.	Banned for 7 years from cricket activity (2 years suspended).
CAS 2011/A/2364	A player was found to have been a party to the deliberate bowling of 3 'no-balls' during an international cricket match upon request from a third-party. The player was also found to have failed to report an approach to manipulate a different international cricket match.	Banned for 10 years from cricket activity (5 years suspended).
CAS 2013/A/3062	A player was found to have manipulated a match in an international football competition.	Banned for 10 years from football activity.
CAS 2017/A/4856	A player was found to have deliberately lost an international tennis match.	Banned for 7 years from tennis activity and fined.
CAS 2017/A/5173	A referee was found to have manipulated a match in an international football competition.	Banned for life from football activity.
CAS 2018/A/5846 & 5847	Two players were found to have manipulated or spot-fixed multiple international badminton matches.	Banned for 20 years and 15 years from badminton activity and fined.
CAS 2018/A/5939	A player was found to have manipulated an international tennis match.	Banned for 5 years from tennis activity and fined.

94. The jurisprudence demonstrates that it is paramount, where an individual has undertaken corrupt behaviour which directly strikes at the heart and essence of sporting competition, that a significant sanction must be issued: both as a strong deterrent to future offenders, but also and primarily, to demonstrate the seriousness of the violation and the zero-tolerance to be shown to such behaviour.
95. In CAS 2017/A/4856, it was stated that “[a] life ban may be an appropriate sanction in any case involving match-fixing, based on the totality of the facts and circumstances”.
96. The onus was therefore on the Panel to determine an appropriate and proportionate sanction, considering “the totality of the facts and circumstances”.
97. The Panel noted the following when determining sanction:
 - 97.1. Khakimov had approached a fellow international badminton athlete and offered him money to manipulate a match at the European Teams Championship;
 - 97.2. Khakimov would have presumably received a financial benefit had the requested manipulation occurred;
 - 97.3. Khakimov failed to properly cooperate with the investigation. Khakimov had lied about his betting activity, and deliberately destroyed evidence of a corruption offence to conceal it from the BWF;
 - 97.4. the necessary deterrent effect that a lengthy sanction would provide;
 - 97.5. the approach was not successful; and
 - 97.6. badminton was Khakimov’s only purported source of income.
98. The Panel subsequently ordered that Khakimov be suspended from all badminton-related activity for a period of five (5) years.
99. The suspension shall commence from the date of notification by BWF of the terms of this decision (i.e. 13 October 2020).
100. In making this order, the Panel noted that the BWF had also requested that a fine be imposed on Khakimov. The Panel decided against issuing a fine, noting that:
 - 100.1. the approach was a single act, and not successful; and
 - 100.2. the length of the sanction would effectively end Khakimov’s playing career. As badminton was his only purported source of income, the suspension would deprive him of the possibility to earn money from his chosen profession.

Costs

101. Having heard no submissions on costs, the Panel made no order as to costs, whilst noting that it may be requested to make a costs order in future, in accordance with Article 40 of the Procedures.

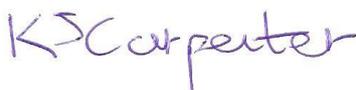
DECISION

1. Nikita Khakimov (BWF ID 17576) has:
 - a. violated Article 3.1.8 of the November 2017 Code of Conduct in relation to Betting Wagering and Irregular Match Results;
 - b. violated Article 3.1.10 of the November 2017 Code of Conduct in relation to Betting Wagering and Irregular Match Results; and
 - c. violated Article 6.1.7 of the November 2017 Code of Conduct in relation to Betting Wagering and Irregular Match Results.
2. Nikita Khakimov (BWF ID 17576) is:
 - a. suspended from badminton-related activities for a total period of five (5) years.
3. The five (5) year period shall commence from the date on which this decision is communicated to him (i.e. 13 October 2020).

Note: This reasoned decision is communicated within 45 days of the date of the conclusion of the hearing, in accordance with Article 35.3 of the BWF Judicial Procedures.

The 21 day time limit to appeal to the Court of Arbitration for Sport commences after the service of the reasoned decision, in accordance with Article 38.1 of the BWF Judicial Procedures.

In accordance with Article 40 of the Procedures, a party may apply to the hearing panel to make an order for costs, but such application shall be made within 7 days of the notification to that party of this reasoned decision



Kevin Carpenter



James Kitching
(Chair)



Rune Bård Hansen

18 November 2020