

The CMAS code of ethics and the challenges of safeguarding athletes – the Vertical Blue Case

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ABSTRACT

In this paper, we examine the recent 'Vertical Blue Case' involving two Croatian free divers, Vitomir Maričić and Petar Klovar, in a competition in the Bahamas, and the decision to suspend and punish the athletes made by the *Confédération Mondiale des Activités Subaquatiques* (CMAS), which solely relied on its Code of Ethics.

After laying out all the relevant facts, we first critically analyze the CMAS's *Code of Ethics* (the Code) and the articles used to justify the punishment. Secondly, we highlight many ethically questionable practices, unfair procedures, and anti-doping rule violations that heavily impact the particular case but were not considered in the decision made by CMAS. Thirdly, we demonstrate that several human rights violations were committed against the Croatian free divers. Fourthly, we reveal several problems with the Verdict itself. CMAS, for its part, defended its actions as necessary to safeguard the integrity of the sport, invoking its emergency powers under Article 10.2 to justify provisional measures in response to what it perceived as serious ethical concerns.

Finally, we argue for the correction of the CMAS decision and propose practical solutions, including revising the Code and establishing clear boundaries for its use in resolving cases in sports, especially in relation to laws and rules in sports.

KEYWORDS

doping case; ethically questionable practices; human rights violation; CMAS verdict

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INTRODUCTION

The ‘Vertical Blue Case’ presents a complex and contentious case in the sport of free-diving, involving sanctions imposed on two top Croatian divers, Vitomir Maričić and Petar Klovar, by the *Confédération Mondiale des Activités Subaquatiques* (CMAS). This article critically examines the legal and ethical controversies surrounding the CMAS decision in this case. The core issue revolves around CMAS’s reliance on its Code of Ethics as the sole basis for imposing sanctions, despite the absence of any confirmed anti-doping rule violations, as confirmed by the International Testing Agency (ITA). This analysis will highlight procedural irregularities, ethical concerns, and potential violations of the athletes’ human rights. We will argue for a clearer distinction between ethical standards and legal norms and call for reforms to the CMAS Code of Ethics to better protect athletes’ rights and prevent misuse.

In this paper, we will critically assess the case in detail. After presenting all relevant facts, we will first examine the CMAS Code – its purpose, its key provisions, and its adequacy as a basis for sanctioning athletes. We will also demonstrate that other more egregious violations of the Code occurred in this case, but were overlooked and went unpunished. Additionally, we will argue that several ethically questionable practices took place, along with potential violations of anti-doping rules. Furthermore, we will show that the basic human rights of the sanctioned athletes were compromised during the CMAS decision-making process. Finally, we will reveal several significant issues with the decision itself.

Our legal critique addresses whether CMAS’s actions contravened established regulatory frameworks, such as the World Anti-Doping Code (WADA) and International Testing Agency (ITA) determinations. The ethical critique, on the other hand, questions whether these actions upheld the principles of fairness, integrity, and the dignity of athletes, regardless of legal formalities.

In conclusion, we will call for the reversal of the decision and propose necessary changes to both the Code and its enforcement procedures to prevent similar problems in the future.

1. ‘VERTICAL BLUE CASE’ BACKGROUND – THE FACTS

Vertical Blue is a freediving competition organised by a private entity in Dean’s Blue Hole¹, Long Island, Bahamas. In this article, we are referring to competition that was held from 20th to 30th July 2023 under the auspices of the *Association Internationale pour le Développement de l’Apnée* (AIDA), but which had its own specific doping control policy and procedures.

On July 4, 2023, three Croatian free divers, Vitomir Maričić, Petar Klovar, and Sanda Delija, landed in the Bahamas, where Maričić and Klovar registered to participate in the Vertical Blue competition. Both athletes are top-tier free divers with a track record of remarkable achievements in their sport, both within the frame of CMAS competitions and those held under the aegis of AIDA, an independent freedivers’ association in charge of organizing and licensing the organization of freediving tour-

¹ More information can be found at <https://events.verticalblue.net/>.

naments². As professional competitors, Maričić and Klovar are registered in the *World Anti-Doping Agency's* (WADA) internet-based database for managing anti-doping information, called *Anti-Doping Administration and Management System* (ADAMS). Accordingly, ADAMS-registered athletes may be tested in every competition and at their residential address or whereabouts on a regular basis.

Upon arriving at Deadman's Caye Airport on Long Island in the Bahamas, they were met by William Trubridge, a local organizer of the free-diving event who was also a competitor in the competition he was organizing. He escorted them to local police officers who ordered a search of their luggage. It is important to point out two facts: one, that the police officers were off duty at the time³; and two, that Trubridge actively participated in the luggage search alongside police officers, which is contrary to the law or any common practice. In the search, different kinds of medications were found, including benzodiazepines – Normabel 5 mg, Diazepam 5 mg, Diazepam 2 mg, Diazepam Alkaloid 2 mg; diuretics – Furosemide 40 mg; and sildenafil. One of them, furosemide, is banned by WADA, and its mere possession is punishable. However, the athletes thus inspected never received or signed any kind of official police reports that listed substances that were found in their luggage.

Additionally, Trubridge secretly recorded the luggage search and posted the video on YouTube⁴. Video is problematic in several ways. Firstly, video was taken without asking for the athletes' consent or receiving it. Secondly, it was posted without consent of the conversants. Thirdly, it is unclear whether the recording is genuine or modified in some way(s). For example, we do not know whose voice is which, except for the written information in the video suggesting so. Fourthly, such recordings violated the VB special Doping Control policy and Procedure rules (which are problematic in themselves – this issue will be explored in the section dealing with human rights violations), which only permit secret recordings by the AIDA judge or doping officer – not by the organiser, Trubridge. Finally, while the video contains some pictures with the obvious intention to suggest that a doping breach had indeed happened, it is not clear whether this is some form of manipulation.

While the video posted by William Trubridge on YouTube raises ethical concerns, in our opinion it cannot be considered legally admissible evidence without proper verification of its authenticity, and without the consent of the parties involved. More importantly, disciplinary actions should be based on verifiable procedures rather than informal digital content circulated through unofficial channels.

Furthermore, on the same day, the athletes were tested “out of the competition” by Dominic Laing, the Doping Control Officer (DCO) of the *Bahamas Anti-Doping Commission* (BADC)⁵. Improbably, Laing was not officially entitled to provide the tests because his DCO license expired earlier the same year on 13th February 2023. Despite this, the samples were sent to a WADA-accredited laboratory in Montreal,

² Official internet site can be find at <https://www.aidainternational.org/>.

³ The Report Statement made by the police officers who conducted a search states the following: ... “The luggage transported into the Commonwealth of the Bahamas by the athlete Petar Klovar was examined by off-duty Royal Bahamas Police staff as well as Vertical Blue staff”.

⁴ Video can be found at <https://www.youtube.com/watch?v=3cK3bFSv6X8>.

⁵ Official internet site can be find at <http://www.bahamasadc.org/>.

INRS Centre Armand-Frappier Santé Biotechnologie, and the results of the sample analysis were all negative.

The designated testing and result management authority for the Croatian free diving athletes in this case was the BADC. Surprisingly, and without explanation, the BADC decided to transfer the management of the doping test results to the *International Testing Agency* (ITA), which is officially responsible for all anti-doping activities on behalf of CMAS, the international federation representing underwater activities in sport. In any case, after ITA reviewed the matter, no anti-doping rule violation was found and the result management was suspended.

The case took a surprising and unexpected turn when the CMAS President, Anna Arzhanova, contrary to the ITA findings, provisionally suspended the Croatian athletes pursuant to Article 10.2 of the *CMAS Statutes*, which allow the president to take provisional measures such as suspending athletes in matters and reasons of urgency. This suspension was enacted by presidential order on July 26, 2023, and this was ratified by the *CMAS Board of Directors* on September 23, 2023. The president of the *CMAS Disciplinary Committee* and CMAS Acting Sport Prosecutor, Stefano Brustia, upon the appointment of CMAS President Anna Arzhanova, initiated *Disciplinary Proceedings* No. 01/2023 against Vitomir Maričić and Petar Klovar, both Croatian nationals and freediving athletes, members of the Croatian Diving Federation, a national federation affiliated with CMAS. Stefano Brustia, along with Lavinia Di Basilio and Camilio Ungari Trasati, CMAS prosecutors on this case, invoked the *CMAS Code of Ethics*, Article 1.2 and Article 2.2, asserting that the Croatian athletes violated these provisions. ‘Article 1.2 Fair Play’ states:

“Fair play is the guiding principle in the sport of Underwater Activities & Sports. All Participants taking part in Underwater Activities & Sports shall behave with fairness and honesty.

All Participants shall operate within and abide by the rules of the sport.

All doping practices at all levels are strictly prohibited. The provisions against doping in the Anti-Doping Code shall be scrupulously observed. Underwater Activities & Sports is committed to be a drug free sport.”

And ‘Article 2.2 Representational duties’ of the Code of Ethics provides that:

“Participants shall represent CMAS honestly, respectably and with integrity.”

Finally, CMAS, through the undersigned Sport Prosecutor, referred the athletes to the *CMAS Disciplinary Committee* with the request for the committee to adjudge on 26th January 2024 as follows:

“The Disciplinary Committee of CMAS, composed by Stefano Brustia (President), Lavinia Di Basilio (Member), Carnillo Ungari Trasatti (Member), after having reviewed and considered the positions and defensive arguments of the Parties, rendered the following decision to:

- a) Adjudge and Declare that the Athletes Vitomir Maričić and Petar Klovar infringed articles 1.2 and 2.2 of CMAS Code of Ethics.
- b) Adjudge and Declare that such infringements are seriously high pursuant to the article 3, paragraph iv) of CMAS Code of Ethics.
- c) Adjudge and declare that the seriousness of the infringement may be validly mitigated by the absence of previous disciplinary records, and hence.

- d) Sentence both Athletes to six-month suspension from any activity within CMAS and a fine of Euro 5,000 each, to be effective upon notice of this Decision and deducted the suspension term already imposed on interim basis pursuant to the Presidential Order of 26th July 2023.
- e) Sentence the Athletes jointly to bear the administrative and legal costs of these proceedings in the magnitude of Euro 2,500.00.
- f) Oder CMAS to notify this decision to all National Federations affiliated to CMAS in view of giving full enforcement thereof (*CMAS Ruling*, 2023: 12–13)."

2. CMAS CODE OF ETHICS

Since the Croatian free diving athletes were sanctioned pursuant to the CMAS Code of Ethics it is an important and logical first step to look into it deeply, especially those articles crucial for the decisions delivered, as they carry significant legal and competitive implications for the athletes.

The Code is a concise three-page document that provides a clear framework for ethical conduct among all CMAS 'participants', which includes CMAS members, officials and associated personnel, athletes, team managers etc. The Code is integral to maintaining the five core values: a) equality – ensuring inclusion, impartiality, and protection from any form of harassment; b) fairness – maintaining fair competition and adherence to the rules; c) integrity – protection of CMAS sports from bribery, corruption, betting, and – conflict of interest; d) respect – treatment of others with dignity and mutual valuing among competitors; and e) environmental responsibility – protection of the environment and sustainable development.

The code's articles 1.2 and 2.2

The Croatian free divers were sanctioned for violating Articles 1.2 and 2.2 of the Code, though the specific details remain unclear. Article 1.2 is designed to protect and promote fair play as a fundamental principle in CMAS sports. It outlines three ways athletes can uphold fair play: by behaving with fairness and honesty, abiding by the rules of the sport, and competing without using prohibited doping practices. Article 2.2 focuses on the representation of CMAS sports, stating that all participants have a duty to act with honesty, respect, and integrity.

Both articles, as well as the entire Code, are written in a universalistic manner that fails to explain, guide, or illustrate precisely how they should be applied to specific cases and situations in sports everyday life. Consequently, this leads to a situation in which varying interpretations are possible. This makes the fact that they were used as the sole legal basis for sanctions particularly problematic, as the possibility of varying interpretations and terms which are too general undermine legal certainty. Therefore, we believe that a much more detailed explanation of the decision is necessary, specifically detailing exactly how (in what manner) and through which actions the articles of the Code were violated by the sanctioned athletes. Specifically, about:

- rule violations: when did they break the rules, and which specific rules were violated?
- anti-doping violation: what anti-doping violation occurred, especially considering that ITA, the official doping-testing agency, did not find any infractions?

- misrepresentation of CMAS: how, where, and when were the divers dishonest or unfair?

Other (non-sanctioned) breakings of the code in the Vertical Blue Case

Strangely, several obvious breakings of the Code's rules done by Trubridge weren't considered and/or sanctioned:

- being in a conflict of interest,
- failing to report conflict of interest,
- violating human rights.

Trubridge repeatedly violated Article 1.4.1 of the Code regarding conflict of interest. Firstly, as a participant in the same competition and holder of the world record in the sport discipline, he failed to “disclose any personal interests that could be linked with their prospective CMAS activities [...] when performing an activity for CMAS,” nor did he disclose his “private or personal interests” and the potential for “gaining any possible advantage” (Code, Article 1.4.1a). Furthermore, he did not “avoid [any] situation that could lead to conflicts of interest”; in fact, he initiated such a situation. Additionally, he did not disclose his relevant relationship with the Croatian athletes, which is critically important given Article 1.4.1b's instruction to refrain from engaging if one's actions and opinions can affect other parties in a relationship.

Furthermore, he failed to follow the Code's instructions that if a “conflict of interest, or the appearance of a conflict of interest, arises, or if there is a danger of such a conflict arising, the individual concerned must refrain from taking any further part in the handling of the matter” (Ibid.). Contrary to these clear directives, he proceeded with handling the case anyway without reporting relevant facts that put him in a position of conflict of interest.

Finally, he violated Article 2.6, which states: “Participants shall ensure that the personal rights of those persons whom they contact and with whom they deal are protected, respected, and safeguarded” (Code, Article 2.6). On the contrary, in our opinion, Mr. Trubridge took several advantages over the Croatian athletes and put them in an extremely vulnerable state. Specifically, he not only secretly recorded a video of the Croatian athletes but also uploaded the video to a YouTube channel. This action is also contrary to the Code, which states:

“Should the infringement be committed to obtain an illicit benefit, including sport outcomes, the relevant results, such as titles, prizes etc. shall not be awarded or revoked if already awarded” (Ibid.).

Problems and limits with code of ethics applicability

It seems to us that with Codes of Ethics (CE) being adopted by many international federations, the conditions under which athletes are controlled have become less clear, creating a grey area where their rights can be violated with limited possibilities of recourse to justice. Unlike the well-defined anti-doping rules regulated by the *World Anti-Doping Code* and *International Standards*, every CE is subject to different interpretations because its provisions are often too broad. As a result, athletes could find themselves sanctioned for violations of ethical standards that the CE does not clearly define.

The Vertical Blue case, involving two high-profile freediving professional athletes, is emblematic of this issue. By examining the Vertical Blue case, we realized that there is a need to review the CMAS Code of Ethics, particularly in relation to the behaviour of athletes.

In our opinion, a discussion is needed on the general role of the CE to shed more light on this particular case for CMAS. And in this case, the Code overrides existing Sports Laws and Rules, rendering them meaningless and needless. More concretely, the Code does not respect decisions made by the officially and specifically appointed body for investigating doping violations, the ITA, and instead punishes athletes for these doping violations.

The role of the CE is unclear, particularly regarding when and in which cases it should be applied. While rules and laws tend to be very specific and clear, the CE is designed to serve as a guideline rather than a legal mandate. This ambiguity is precisely why sanctions should not be based solely on the CE.

Furthermore, the CE appears to lose its purpose when there are existing laws that address ethical violations, such as doping. In our opinion, ethical principles translated into laws can serve as a basis for sanctions because the primary role of the CE is to provide guidance on ethical or non-ethical behaviour, practices, and actions. Once an 'ethical decision' is made by an independent ethical committee with ethical experts, it should be evaluated against existing laws and rules for appropriate sanctions. This approach ensures that ethical guidelines inform but do not override established legal frameworks.

Another problem is the usage of complex ethical terms without providing precise enough explanations or definitions: equality, fairness, honesty, respect, and integrity. These terms have been heavily discussed in the philosophy and ethics of sport discipline. Leaning on this literature can bring clarity and precision to crucial terms based on decades of rich discussions and considerations about fairness or fair play (Butcher & Schneider, 1998; Loland, 2002; Simon et al., 2015, etc.), integrity (Gardiner et al. 2017; Harvey & McNamee, 2020; Škerbić & Greguric, 2023; McNamee, 2024, etc.), respect (Fraleigh, 1984; Butcher & Schneider, 1998; Dixon, 2007; Simon et al., 2015, etc.), and equality (Tännsjö & Tamburrini, 2000; Morgan, 2006; Francis, 2016, etc.) in sports, and (intrinsic) values of sport (Simon, 2000; Tännsjö & Tamburrini, 2000; Russell, 2007; Morgan, 2012; Martinková, 2013; Škerbić, 2021, etc.). On the other hand, doping and anti-doping are among the most dominant and debated topics in the field, especially within the bioethics of sport sub-discipline. Moreover, some prominent authors, such as Angela Schneider, Mike McNamee, Sigmund Loland, and Silvia Camporesi, have been and continue to be part of WADA's ethical bodies.

However, aside from WADA's Code, it is peculiar that neither general codes of conduct in sport nor sport-specific ones have been significantly addressed within the disciplines of philosophy or (bio)ethics of sport. McNamee's 1998 analysis stands as a rare exception in this regard, but it is still relevant for our discussion. McNamee bases his critique on two key points: first, that codes of ethics (CE) introduce moral conservatism, retreating into a rigid language of moral certainty – centered on duties, obligations, principles, and rules. Second, he argues that CE promote moral minimalism, where the primary concern is encapsulated by the claim, "we have done nothing wrong or immoral; we have broken no rules".

This mindset reduces morality to rule-following and overlooks the inherent complexity of ethical behaviour. This mindset reduces morality to mere rule-following and fails to recognize the complexity of ethical behaviour. Furthermore, McNamee argues that codes of ethics (CE) transfer “blameability” and, by extension, “punishability” to the organizations that enforce them. While rules are indeed important and necessary, McNamee emphasizes the need for greater focus on the variety of rules, the inherent difficulties in their interpretation and application, and their characteristic underdetermination.

Code writers often attempt to shift context-sensitive judgment to the rule of law, but rules themselves do not define their own scope or interpretation. It is the agents – who possess varying degrees of virtue and vice – who ultimately interpret and apply them. Finally, it is important to acknowledge that even once a rule is clearly defined, it will only be genuinely followed, in the fullest sense, by a virtuous agent (McNamee, 1998).

“Are we not to prefer those who merely keep the rules for fear of being punished but those who keep them in order that the contest is a fair and equal test of relevant abilities and powers?” (Ibid., p. 161).

We will conclude this section with the logical assertion that ethicists of sport are well-positioned to offer solutions to the problems outlined. They should be actively included in interdisciplinary teams, working alongside experts in law, anti-doping, and sports sciences as authors and co-authors of codes of ethics.

3. ETHICALLY QUESTIONABLE PRACTICES AND ANTI-DOPING RULES VIOLATIONS

We argue that, in this case, many anti-doping rules were violated, and several ethically questionable practices by different individuals directly harmed the accused/sanctioned athletes.

First was the appearance of William Trubridge, who was both an organizer and a competitor in this competition. This represents a classic conflict of interest and a violation of the *World Anti-Doping Code*, particularly Article 4.1.2 of the *International Standard for Testing and Investigations* (ISTI), which states that:

“The Antidoping Organization shall ensure that Athlete Support Personnel and any other Persons with a conflict of interest are not involved in test distribution planning for their Athletes or the process of selection of Athletes for Testing.”

Second, what adds an additional dimension to the conflict of interest is that the Croatian freediver Klovar announced his intention to break Trubridge’s AIDA world record in the *constant weight without fins* (CNF) discipline. *Constant weight without fins* is an AIDA International freediving discipline in which the diver descends and ascends by swimming without the use of fins or pulling on the rope, except for a single hold to stop the descent and start the ascent. CNF is the most challenging depth discipline in freediving due to the physical effort required to swim without assistance.

Third, it is unclear why the *Bahamas Anti-Doping Commission* allowed local organizers and competitors in the competition to conduct the doping control and search of the athletes.

Fourth, the BADC sent DCOs with expired licenses to perform doping control, which is contrary to Article 5.3.3. Moreover, the ISTI established by WADA explicitly states that:

“Sample Collection Personnel shall have official documentation, provided by the Sample Collection Authority, evidencing their authority to collect a Sample from the Athlete, such as an authorization letter from the Testing Authority. DCOs shall also carry complementary identification, which includes their name and photograph (i.e., identification card from the Sample Collection Authority, driver’s license, health care, passport, or similar valid identification) and the expiry date of the identification.”

Fifth, the DCO did not have a mission order for doping control, conducted the tests at an inappropriate doping control station, and failed to provide basic conditions for doping control, such as bottled water.

Sixth, connected to the previous point, the luggage search was performed by William Trubridge and an off-duty police officer, without a search warrant, and on private premises, not at a police station.

Seventh, the athletes never received an official report signed and stamped by the Royal Bahamas Police. Instead, they were given a paper listing the medications found in their luggage, signed by the off-duty police officer.

Eighth, the athletes were very vulnerable upon arriving on the remote island where the competition was organized. They were intimidated by police officers carrying firearms. Educated to comply with anti-doping control, they did not oppose its implementation.

Ninth, however, the competitor William Trubridge, who was also the organizer, abused the athletes’ trust by organizing an illegal luggage search and doping control.

Tenth, BADC, the testing authority, and the result management authority could not handle result management, so the responsibility was transferred to ITA, which manages anti-doping activities on behalf of CMAS. The result management by ITA analysed the case and found no violation of anti-doping rules, subsequently suspending and closing the case.

Eleventh, the Vertical Blue competition unprecedentedly had its own Doping Control Policy and Procedures, which were not properly communicated to the athletes, even though these specific rules deviated from the WADA rules in important aspects with regards to persons authorised to conduct a search and perform doping control.

Surprisingly and without apparent reason (and also without providing any explanation or justification for her actions), CMAS President Anna Arzhanova suspended the athletes and referred them to the Disciplinary Committee for punishment. The CMAS Prosecutor cited support from Articles 1.2 and 2.2 of the CMAS Code of Ethics and imposed a severe penalty of 6 months’ suspension and a €5000 fine on both athletes.

4. HUMAN RIGHTS VIOLATION

We argue that the athletes’ rights were violated, invoking a general ethical principle related to fair play and the representation of CMAS with honesty, respect, and integrity. Above all, their human rights were infringed upon, including the right to liberty and security of person, the right to respect for private life, and the right to a fair trial.

Firstly, international human rights instruments⁶ guarantee the right to liberty and security of a person, which is violated in cases of unlawful deprivation of liberty. According to the case law of the *European Court of Human Rights*⁷, actions such as stops and searches by police constitute a deprivation of liberty, as does questioning in a police station or similar environment. In the case at hand, the Croatian free diving delegation was subjected to an unlawful and illegitimate search conducted by off-duty police officers, with no authority to perform a search, and the organizer, Trubridge, who himself was in a conflict of interest. They were caught off guard at the airport, after a long flight, by Trubridge and off-duty police officers in uniforms, with one of them carrying a gun. The officers acted in a hostile way, refusing to answer questions and failing to inform the athletes about their rights and responsibilities, directing them to Trubridge for further queries. Trubridge, on his part, confirmed that they were the only athletes being searched. Altogether, this contributed to an intimidating atmosphere which affected athletes' ability to object to the search and enforce their rights more vigorously. International standards in search provide that no consent to a search will be considered to have occurred where a person has been placed under duress, which is also the case where there is a lack of procedural guarantees protecting a person's ability to express their true will.

As previously stated, the Vertical Blue competition has its own doping control policy and procedures, which provide a specific procedure (different from the WADA rules) to carry out searches and perform doping tests. In addition to this arbitrariness being unprecedented among international organizations and competitions, checks carried out by the athletes found no trace of such specific rules in their email correspondence. The *Vertical Blue Doping Control Policy and Procedures* was published on the Vertical Blue website somewhere after June, 7, while the athletes registered for the event in February or early March 2023. This further undermined transparency and the athletes' ability to give a fully informed consent.

Furthermore, they never received and/or signed the police reports listing substances supposedly found in their luggage. This further breaches their rights due to the unlawful and illegitimate anti-doping test, the unsubstantiated "factual background" of the indictment, and ultimately, the search conducted not by local authorities but by William Trubridge, who serves as both organizer and competitor.

Secondly, protecting personal data is fundamentally important for individuals to enjoy their right to respect for private life (Camporesi & McNamee, 2018). This right was violated in this case, as athletes were secretly recorded without their consent or authorization. Such recordings also violated the VB special doping control policy and procedure rules, which only permit secret recordings by the AIDA judge or doping officer – not by the organiser, Trubridge, making them illegal and illegitimate.

Moreover, the recorded footage was later distributed on social media platforms, seemingly in an attempt to initiate a "witch-hunt" against Maričić and Klovar, again

⁶ Article 9 of the *International Covenant on Civil and Political Rights*; Article 5 of the *European Convention on Human Rights*.

⁷ Foka v. Turkey no. 28940/95, 24 June 2008; Gillan and Quinton v. The United Kingdom no. 4158/05, ECHR 2010; Cazan v. Romania, no. 30050/12, 5 April 2016; Osypenko v. Ukraine no. 4634/04, 9 November 2010.

without their consent or authorization. Even more, in the hearings Croatian athletes specifically dispute the recording stating that it was “manipulated in some way” (CMAS Verdict, p. 11).

Thirdly, regarding the right to a fair trial, the mono-national composition of the *CMAS Disciplinary Committee* – comprising solely members of Italian nationality, with only one member possessing antidoping expertise (who was not involved in the particular case) – is unprecedented among international organizations.

Typically, judicial bodies of international organisations are carefully composed to include judges of different nationalities and experts from various legal systems and cultures. This diversity helps mitigate the risk of shared biases among judges from the same legal culture when making decisions.

The independence and impartiality of a judicial body are crucial elements of the right to a fair trial, as outlined in Article 6 of the *European Convention on Human Rights*. The composition of such a body must provide adequate assurances to eliminate any reasonable doubt about its impartiality.

5. ISSUES WITH THE VERDICT

It is important to recognize that CMAS acted under its internal statutes, which allow for emergency measures, and viewed the athletes’ conduct as potentially jeopardizing the integrity of the sport. From this standpoint, CMAS may have believed it was acting in the sport’s best interest by invoking ethical standards to an exceptional context. However, even in such circumstances, the enforcement of disciplinary measures must adhere to broader legal norms and procedural safeguards to preserve legitimacy and prevent arbitrariness.

However, we find several important problems with the CMAS’s verdict solely governed by the Code against two free divers for not ‘behaving with fairness and honesty’ (Code, Article 1.2) and not “representing CMAS honestly, respectably and with integrity” (Code, Article 2.2).

Firstly, even the initial statement by CMAS in the Verdict that “the case at hand is governed solely by the CMAS Code of Ethics” and that “The WADA Code does not apply actually” (Ruling, pp. 8–10) is questionable, if not false. The crucial point for their verdict is the athletes’ ‘undeniable’ possession of furosemide, which is “a substance prohibited by the WADA list, and its mere possession is punishable under the WADA Code, unless there is a valid TUE” (Ruling, p. 8). Thus, CMAS claims that the WADA Code doesn’t apply while simultaneously using it as a critical rationale for the verdict.

This is also very strange in light of the fact that CMAS is an international sports federation under WADA and is also a *WADA Code Signatory*. This means it must conduct drug tests, manage results, provide education, and enforce sanctions, all while complying with the WADA Code. Additionally, all anti-doping activities on behalf of CMAS are managed by the *International Testing Agency* (ITA).

Secondly, we find it problematic that the verdict stands alone on the Panel’s “opinion that the Athletes’ behaviour was aimed to attempt to alter their physical conditions” and satisfaction with the conclusion “that it is likely (more probable than not) that those substances were carried in view of their use on the occasion of the com-

petition” (Ruling, p. 10, Point 34). This reliance on opinion and probability rather than proof is concerning and undermines the credibility of the verdict, especially in light of the ITA’s investigation, which cleared the athletes of any doping violations. Moreover, it is unclear why there was an effort to claim that the athletes intended to use prohibited substances when “it is not necessary to establish the intent to use the Prohibited Substance” (Ruling, p. 10, Point 35). Furthermore, the standard of proof normally used in doping-related cases is that of “comfortable satisfaction”, defined by the *Court of Arbitration for Sport* as greater than a mere balance of probabilities, but less than proof beyond a reasonable doubt, taking into consideration the seriousness of allegation (CAS 2009/A/1920, CAS 2013/A/3258, CAS 2010/A/2267, CAS 2009/1920).

Compared to CAS jurisprudence (e.g., CAS 2013/A/3258), which adheres strictly to the “comfortable satisfaction” standard, CMAS’s reliance on “likelihood” or subjective belief marks a significant departure. CAS rulings consistently emphasize that sanctions, particularly serious ones such as suspensions and fines, must be based on clear, objective evidence rather than mere suspicion or ethical interpretation.

The more serious and the less likely the allegation is, the higher level of proof is needed. This explains why CMAS decided to treat what is in its essence a doping case as an ethical violation, enabling it to apply broad rules which are not designed for cases in which serious legal sanctions may be imposed, and to use a lower standard of proof.

In this case, we are dealing with two top-tier athletes, one of whom is a coach, a judge, a member of the CMAS freediving committee and a renowned speaker. Additionally, while Furosemide is a WADA prohibited substance, it is also a drug used for managing pulmonary edema and lung squeeze, both common issues which can affect divers, all the more concerning when they are travelling to a remote location with difficulties in accessing an ER quickly or with question marks over the accessibility of the medical officers on site, especially since it is a competition organized by a private entity (Ruling, p. 5, Point 21; p. 7, Point 25). Similarly, Benzodiazepines and Sildenafil can also be considered as lifesavers. From this angle, the argument made by the Panel that “the use of those substances should be prevented in the interest of athletes’ health safety” is even more problematic (Ruling, p. 9, Point 37).

It should be noted that Article 2.6.1 and Article 2.6.2 of the *World Anti-Doping Code* provide that: “Possession by an Athlete [or an Athlete Support Person] In Competition of any Prohibited Substance or any Prohibited Method, or Possession by an Athlete [or an Athlete Support Person] Out-of-Competition of any Prohibited Substance or any Prohibited Method which is prohibited Out-of-Competition unless the Athlete [or the Athlete Support Person] establishes that the Possession is consistent with a TUE granted in accordance with Article 4.4 or other acceptable justification.” In its Comment to Article 2.6.1 and 2.6.2 WADA states that: “Acceptable justification may include, for example, an Athlete or a team doctor carrying Prohibited Substances or Methods for dealing with acute and emergency situations.”

Thirdly, we find problematic CMAS consideration and usage of the secret audio recording made by William Trubridge, who is neither a doping officer nor an AIDA judge, during the luggage search on his cell phone (and selected snippets of the conversation which were uploaded to a YouTube video) but even more CMAS justification for the act:

“We refer to the provisions of Act no. 23/2018 of the Bahamas Parliament which establishes that recording a conversation is lawful when: (a) is made to a party to the private conversation, or (b) is not more than reasonably necessary: (i) in the public interest, (ii) in the performance of a duty of the person making the communication or publication, or (iii) for the protection of the lawful interests of that person, or (c) is made to a person who has, or is believed on reasonable grounds by the person making the communication or publication to have, such an interest in the private conversation as to justify the making of the communication or publication under the circumstances under which it is made” (Ruling, p. 10, Point 39.b).

In our opinion, the provided justification and reference to Bahamian laws are not applicable. We do not see how secretly recording athletes was a reasonable necessity or in the public interest. Furthermore, we question CMAS’s obvious insinuation that making a secret recording was not only justified but also Trubridge’s duty and responsibility to expose the alleged attempt and balance the competition (Ibid.). Contrary to this, we think that all rationales fail in the face of the facts that Trubridge was not a doping officer, that he ordered doping control as a private individual and was in an obvious conflict of interest, especially considering the fact that Klovar announced his intention to break Trubridge’s AIDA world record in the *Constant Weight Without Fins* (CNF) discipline, and that Trubridge removed himself from the list of competitors only a day before the athletes’ arrival to the Bahamas, which further calls his good faith into question.

In that respect, it is concerning that the CMAS Verdict completely ignores the fact that many basic procedural safeguards were denied in this case: such as that Trubridge, as a civilian, participated in a search conducted by off-duty police officers, based on the Vertical Blue’s own specific Doping Control Policy and Procedures (a document which the athletes were not made aware of), that the athletes never received or signed a police Report Statement, and that they were placed in a vulnerable situation where they could not truly enforce their rights and object to a search.

Fourthly, while CMAS grounds their decision on the Code, emphasizing that it should be applied “to all CMAS members” (Ruling, p. 7, Point 28), we question why Trubridge wasn’t prosecuted for his obvious conflict of interest and breaking of the Code.

Finally, we find it worrisome that the CMAS Verdict was made by the Panel consisting of three experienced law experts, all hailing from the same country, Italy. This raises concerns about fairness and impartiality, especially for a decision based solely on the Code. It would have been more appropriate, if not necessary, to include at least one ethicist who is an expert on the Code and the ethics (of sport) and an expert from a different country to ensure a more balanced and objective judgment.

In simpler terms, CMAS sanctioned the athletes based on ethical considerations, despite the fact that the official anti-doping authorities (WADA and ITA) found no violations. Instead of relying on concrete evidence, CMAS based its decision on broad and loosely defined ethical principles. Furthermore, it applied a lower standard of proof than is typically required in sports law. From a legal standpoint, CMAS may have exceeded its authority by acting in a quasi-judicial capacity without adhering to essential procedural safeguards – such as ensuring a fair trial or respecting the jurisdiction of officially designated anti-doping bodies.

In conclusion, we argue that the Code of Ethics should not punish athletes for a potential anti-doping violation. Specifically, the *International Testing Agency* (ITA), the authorised organization for anti-doping in sports under CMAS, did not find any anti-doping violation. Therefore, in our opinion, there was no basis for holding the athletes ethically responsible for an anti-doping violation, and especially not for the rather severe punishment.

6. PROPOSALS

We advocate for several proposals that can help resolve this particular case and prevent similar ones in the future.

From a legal standpoint, the CMAS decision raises serious concerns about due process, jurisdiction, and evidentiary standards. The use of expired licenses, lack of proper search warrants, and rejection of ITA findings all challenge the legal legitimacy of the verdict.

In contrast, the ethical critique focuses on values such as fairness, integrity, and respect for athletes' dignity. The unilateral recording, public shaming, and misuse of ethical language to justify punitive decisions reveal deeper issues of moral governance in sport.

Firstly, we argue for the revision of the *CMAS's Code of Ethics*. The Vertical Blue Case shows that athletes are not provided with sufficiently strong safeguards, which are undefined, underdeveloped, and unclear. It also shows that athletes are vulnerable and that there is no secure way to protect their rights. Moreover, instead of sanctioning the person who in our opinion seemed to be the main culprit in the whole event, William Trubridge, CMAS sought to punish athletes for an alleged anti-doping violation treated as an ethical violation. The entire case points to the need to review the rationale and provide a better definition of the Code. This would prevent a unilateral interpretation to the detriment of athletes and protect their vulnerability and elementary human rights.

Secondly, a clear distinction should be outlined and respected between ethical and anti-doping violations, even though using doping is also an ethical failure. The distinction between them is significant: anti-doping violations involve taking prohibited drugs or undergoing procedures and breaking anti-doping rules to gain an unfair advantage in competitions, as defined and prescribed in the anti-doping rules and regulations – these violations constitute breaches of Law and/or Rules and involve specifically proscribed punishments. On the other hand, ethical violations involve failing to follow ethical guidelines, norms, principles, and suggestions. Ethics *per se*, as well as the Code, are not Laws or Rules but rather a set of desired norms and principles for moral behaviour. Thus, the role of codes of ethics is to provide general ethical directions for moral conduct in a specific human environment or practice, promoting specific morally acceptable behaviour. It should be perfectly clear that the guidelines are just suggestions and recommendations, not laws.

On the other hand, in our opinion, the Code cannot provide sufficient legal grounds for lawful decisions to punish sportsmen for actions that were dismissed by the legally appointed bodies (ITA) of the very same sports governing institution (CMAS) that hired them. The purpose of the Code is not to be tightly connected to Law or to

provide grounds for legal decisions when the Law lacks solid proof. Providing proper rationales for punishments based on directives and principles is difficult, if not impossible. It is unclear when a principle is violated and to what extent. In this particular case, despite the decision from the designated official international body (ITA), the decision was made based on violating *The Code of Ethics*.

In our opinion, an ethical committee that includes experts in the ethics of sport should be established. This committee would consider ethical violations and provide opinions or decisions, which would then form the basis for lawful rulings and verdicts.

Thirdly, we argue that this case sets a dangerous precedent where decisions made by official anti-doping bodies (ITA), anti-doping policies and procedures were neglected and undermined, while the Code was elevated above them. We advocate for clear boundaries between the law and rules on one side, and a code of ethics on the other, as well as a clear legal relationship between them. Our opinion is that the decision provided by an official anti-doping agency cannot and should not be overruled by a body relying solely on the Code. This is especially concerning in a case like this, where the sanctioning body (CMAS) issues a verdict that dismisses the relevance of existing law (*WADA's Code*) while simultaneously using parts of it to justify its decision.

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The authors report there are no competing interests to declare.

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Documents

(all retrieved at Aug 29, 2024)

CMAS Code of Ethics

<https://archives.cmas.org/document?sessionId=&fileId=4146&language=1>

CMAS Statues

<https://archives.cmas.org/document?sessionId=&fileId=4143&language=1>

WADA Anti-Doping Code

https://www.wada-ama.org/sites/default/files/resources/files/2021_wada_code.pdf

European Convention on Human Rights

https://70.coe.int/pdf/convention_eng.pdf

International Covenant on Civil and Political Rights

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

Ruling of the CMAS Disciplinary Committee in the Case of DC 2023-01, Vitimir Maričić & Petar Klovar vs. CMAS https://www.instagram.com/p/C2nQJ65S/?utm_source=ig_web_copy_link&igsh=MzRlODBiNWFlZ

Vertical Blue Doping Policy and Procedures

<https://docs.google.com/document/d/1JWPLqUGVHRE9sz4S49Hgf0x-XVvP7Hh4lTtMH0NotL4/edit?pli=1>