

**CAS 2024/A/10915 Djelika “Mami” Tounkara v. Fédération Internationale de Basketball (FIBA) et al.**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition**

**Sole Arbitrator:** Prof. Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy

**in the arbitration between**

**Djelika “Mami” Tounkara, Bamako, Mali**

Represented by Mr William Bock III and Mr Eric Neuburger, Attorneys-at-Law, Indianapolis, IN, United States of Americas, Ms Amaka Beverly Agbakoba-Onyejiana, Attorney-at-Law, Apapa Lagos, Nigeria, and Ms Nicole Dryden, Attorney-at-Law, Balmain, NSW, Australia

**Appellant**

**and**

**Fédération Internationale de Basketball (FIBA), Mies, Switzerland**

**Members of the FIBA Ethics Panel**

**Members of the FIBA Central Board**

**Members of the FIBA Executive Committee**

**Andreas Zagklis, FIBA Secretary General**

**Jaime Lamboy, FIBA Head of Legal Affairs**

All represented by Mr Antonio Rigozzi and Mr Patrick Pithon, Attorneys-at-Law, Geneva, Switzerland

**Respondents**

## I. THE PARTIES

1. The Appellant is Ms Djelika “Mami” Tounkara (“Ms Tounkara” or the “Player”), a basketball player of Malian nationality, born on 1 December 2003. Ms Tounkara is a former member of the Mali U-18/19 national women’s basketball team. She currently plays for a professional women’s basketball club based in Ivory Coast.
2. The Respondents are:
  - i. the Fédération Internationale de Basketball (“FIBA”), the internationally recognized governing body for the basketball discipline. FIBA is an association under Swiss law and has its headquarters in Mies, Switzerland. FIBA operates under its General Statutes (the “General Statutes”) and regulates basketball activities worldwide through the enactment of Internal Regulations (the “Internal Regulations”) and other rules and regulations, which include the FIBA Code of Ethics (the “Code of Ethics”), the FIBA Integrity Policy and the FIBA Safeguarding Policy;
  - ii. Mr Jaime Lamboy, the Head of Legal Affairs of FIBA;
  - iii. Mr Andreas Zagklis, the Secretary General of FIBA (the “Secretary General”);
  - iv. the members of the FIBA Ethics Panel (the “Ethics Panel”), *i.e.* of the FIBA body contemplated by Article 36 of the General Statutes, which oversees the observance of the Code of Ethics, as set out in the Internal Regulations, and reports on its inquiries and deliberations. It consists of minimum of 3 and maximum of 6 persons appointed by the Congress of FIBA (the “Congress”) upon proposal by the President of FIBA and the Secretary General;
  - v. the members of the FIBA Central Board (the “Central Board”), *i.e.* of the highest executive authority within FIBA pursuant to Article 15.1 of the General Statutes. The Central Board appoints the Secretary General, the Executive Committee and the permanent FIBA commissions that are responsible for examining and providing guidance on specific aspects of basketball sport, and the members of the FIBA Executive Committee. The composition of the Central Board is defined by Article 15.1.4 of the General Statutes;
  - v. the members of the FIBA Executive Committee (the “Executive Committee”), *i.e.* of the body contemplated by Article 15.2 of the General Statutes to exercise the powers of the Central Board between the Central Board’s meetings. Pursuant to Article 15.2.4 of the General Statutes, it is composed by FIBA President (Chair), the Secretary General, the FIBA Treasurer and 6 members appointed by the Central Board upon proposal by the President and the Secretary General. The main tasks of the Executive Committee are to develop tactics for extending the reach of basketball, use its influence in developing new commercial relationships, monitor outcomes and performances against annual business plan and the longer-term strategic plans approved by the Central Board, approve the yearly budgets and receive financial updates, assign hosts for events, review and supervise the performances of the Zones and the Regional Offices; and approve the Zone Competitions Regulations.

3. FIBA, the Head of Legal Affairs, the Secretary General, the members of the Ethics Panel, the members of the Central Board and the members of the Executive Committee together are referred to as the “Respondents”. The Appellant and the Respondents together are referred to as the “Parties”.

## II. BACKGROUND FACTS

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced during these proceedings relevant to the issues to be decided in this Award. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 10 June 2021, FIBA received an email from a journalist of the New York Times with respect to an investigation on the sexual abuse of female basketball players in Mali.
6. On 12 June 2021, Mr Andreas Zagklis received, in his capacity as Secretary General, a letter from Human Rights Watch (“HRW”), an international non-governmental organization which conducts research and advocacy on human rights. In its letter, HRW informed FIBA that it had documented a pattern of sexual harassments and abuse by Mr Amadou Bamba, the then head coach of Mali’s Under-18 girls’ national team (“Coach Bamba”), which is overseen by the Basketball Federation of Mali (“FMBB”). HRW inquired about FIBA’s prior knowledge of Bamba’s abuse, requested FIBA’s response to such matter, and urged FIBA to take immediate steps to protect Malian girls in basketball from abuse. In the same letter, HRW *inter alia* noted that the 2021 FIBA Under-19 Women’s Basketball World Cup (the “World Cup”) would take place in Hungary from 7 to 15 August 2021, where Mali was one of 16 teams competing, that the national team was at that time under selection, and that female basketball players were concerned about their safety in training before and at the tournament.
7. On 13 June 2021, an article was published in the New York Times about sexual abuse in Malian basketball.
8. On 14 June 2021, FIBA issued a press release indicating that FIBA had received since 10 June 2021 through the New York Times and HRW several allegations about systemic sexual harassment within the FMBB. FIBA stated that therefore:
  - i. it had immediately shared them with the independent Integrity Officer, Professor Richard McLaren (the “IO”), who opened an investigation into the matter;
  - ii. the Secretary General had notified the FMBB to require full collaboration with the investigation;
  - iii. 3 Malian individuals (Coach Bamba, the coach Mr Oumar Sissoko and the official Mr Hario Maiga) had been suspended from all FIBA activities while the investigation was conducted;

- iv. it had been alleged that Mr Hamane Niang, the FIBA President of Malian nationality and former President of the FMBB, knew or should have known about the sexual abuses in the FMBB, particularly during his time at the helm of that Federation from 1999 until 2007. As a result, the FIBA President, however strongly denying the allegations, had taken the decision to temporarily step aside while the investigation was conducted.
9. On 1 July 2021, FIBA received a second communication from HRW, highlighting the worsening of the issue of sexual abuse in Mali basketball and requiring immediate action to prevent and mitigate any harm.
  10. On 23 July 2021, FIBA provisionally suspended the FMBB President Mr Harouna Maiga for misleading investigators about his prior knowledge of sexual abuse and harassment in the FMBB.
  11. On 26 July 2021, the Secretary General of the Ministry of Sport of Mali signed the team list for the World Cup. The Player was not included in that list.
  12. On 26 July 2021, Coach Bamba was arrested by the Malian authorities and charged with paedophilia, rape and indecent assault.
  13. On 29 July 2021, FIBA received a letter from the Sport & Rights Alliance (“SRA”), a global coalition committed to embedding human rights and anti-corruption in world sport, urging FIBA to uphold its commitment to “zero tolerance” for abuse with respect to basketball in Mali.
  14. On 7 August 2021, the World Cup started in Debrecen, Hungary.
  15. On 8 August 2021, Ms Tounkara’s then counsel, Ms Amelia S. Fouques, sent a letter dated 7 August 2021 to FIBA to inform it that Ms Tounkara had been “*cut*” from the team of Mali participating in the World Cup in retaliation for being the main whistleblower in the FMBB sex abuse case, in violation of Article 98 of the Internal Regulations. As a result, Ms Fouques requested the Central Board to reinstate the Player immediately and to provide support for her travel to Hungary to join the team.
  16. On 18 August 2021, Ms Tounkara, as represented by her current counsel, filed with FIBA an “*Emergency Complaint for Expedited Relief from the FIBA Ethics Panel and the FIBA Disciplinary Panel*” (the “Complaint”) stating that:
    - i. the Player’s decision to bring forward direct evidence of sexual abuse in Malian basketball led to the arrest of Coach Bamba and the revelation of the corruption and its cover-up. HRW and SRA alerted FIBA about the urgent need to protect Ms Tounkara and other whistleblowers from retaliation. However, despite these warnings, FIBA failed to act and neglected its responsibility to safeguard whistleblowers, leading to emotional, financial and professional harm for the Player;
    - ii. the Secretary General and the members of the Executive Committee and of the Central Board had the duty under the FIBA’s rules to safeguard the Player and the other whistleblowers and protect them from retaliation;

- iii. the Player was removed from the Mali women’s basketball team, allegedly due to an injury she did not have. As a result, she lost the opportunities, as the recruitment prospects for US colleges and European pro leagues, as well as a chance to compete for a bronze medal at the World Cup;
  - iv. the Central Board and Executive Committee have broad authority, including making decisions not explicitly addressed in FIBA’s rules. Their members, as “Basketball Officials,” have to adhere to FIBA’s regulations, ensure player safety, and protect vulnerable groups like minors. They are also required to follow ethical conduct and good administration, making objective decisions and respecting personal rights. In the case of the Player and her teammates, who were vulnerable due to misconduct by their coach, FIBA had a heightened duty of care;
  - v. the Ethics Board had to be convened in an expedited fashion to consider the Complaint and sanctions had to be imposed on the Central Board, the Executive Committee and the Secretary General for failing to fulfil their safeguarding duties towards vulnerable players, including the Player. As a result, they should be publicly reprimanded, fined and the funds directed to a trust for the Player’s support. Additionally, given the severity of the offenses, the Player’s age, and her role as a whistleblower, officials should be removed from their positions, banned from FIBA activities for at least 3 years, and fined.
17. On 25 August 2021, Mr Jaime Lamboy, in his capacity as the FIBA Head of Legal Affairs, confirmed on behalf of the Ethics Panel, receipt of the Complaint and requested the Player’s counsel to provide a duly executed power of attorney so that the Ethics Panel could consider the substance of the communications received.
18. On 14 September 2021, the IO submitted his report on the investigation into the Mali basketball abuse (the “IO Report”), recommending the following:
- 7.1 *FIBA weigh the evidence concerning the many failures of the FMBB to ensure adequate safeguarding of players in the future and consider it a top priority.*
  - 7.2 *FIBA reserve the right to undertake additional investigation and disciplinary actions concerning all allegations and evidence produced in this Report.*
  - 7.3 *FIBA review the many safeguarding failures of the FMBB as described herein with a view to establishing a process by which the FMBB can become compliant with FIBA Regulations. The Integrity Officer can assist this process by providing best practice examples of safeguarding policies and procedures.*
  - 7.4 *FIBA create an internal task force to manage and oversee governance changes to FMBB to improve the FMBB’s administration of basketball in Mali including the development of appropriate policies, procedures, reporting mechanisms, and disciplinary processes. This should include the development of a Terms of Reference document including the duties, responsibilities, and qualifications of members to serve on this task force. It is strongly recommended to ensure that the task force includes an expert or experts on safeguarding.*
  - 7.5 *FIBA examine the evidence and findings contained herein under FIBA General Statutes, Internal Regulations, and Codes in force at the applicable time of the conduct. FIBA should determine those matters that ought to be referred to the FIBA Disciplinary Commission. The findings contained herein should also be examined in terms of requirements of local law at the time of reported incidents to determine if there are any further complaints to be referred to the Disciplinary Commission.*

- 7.6 *FIBA should register as an affected party of the criminal proceedings involving Coach Bamba to examine the evidence obtained by the criminal process. FIBA should then examine the evidence obtained by the criminal process as well as the evidence provided by the independent investigation and determine if a prima facie case is established. Based on the evidence, the Integrity Officer would recommend a sanction of a lifetime ban of Coach Bamba from any basketball involvement governed by FIBA.*
- 7.7 *The FIBA Disciplinary Commission review the direct witness evidence concerning President Maiga including efforts to obstruct the investigation; lying to investigators about his knowledge of sexual abuse and his failure to adequately follow-up on complaints of abuse to determine if a prima facie case is established.*
- 7.8 *The FIBA Disciplinary Commission review the direct witness evidence concerning Assistant Coach Diallou concerning her failure to immediately report complaints of abuse to determine an appropriate course of action.*
- 7.9 *The FIBA Disciplinary Commission review the evidence concerning Amadou Traoré including his issuance of a press release that questioned the “morality of witnesses” and his refusal to provide audited financial statements to determine if a prima facie case is established.*
- 7.10 *The FIBA Disciplinary Commission review the evidence concerning Secretary General Maiga and his refusal to cooperate by providing audited financial statements requested by the FIBA Integrity Officer to determine if a prima facie case is established; as well as other evidence provided by witnesses including downplaying complaints and failing to properly support alleged victims in his capacity as the senior leader of the FMBB.*
- 7.11 *The FIBA Disciplinary Commission review the evidence provided concerning Cheick Oumar Sissoko aka “Yankee” which, although hearsay, involves multiple different witnesses who allege unethical behavior as a coach. Yankee was in a position of enhanced trust and responsibility in supervising and leading youth under the age of 19. Under the general principles of international law and human rights, he has engaged in misconduct which may be investigated by Mali law enforcement. Although the MIIT has no direct evidence as to his misconduct, it is further recommended that FIBA approach the Mali Ministry of Sport and Mali law enforcement to proceed further with the matter and to investigate if he has violated local laws.*
- 7.12 *The FIBA Disciplinary Commission review the evidence concerning Amadou Ario Maiga which, although hearsay, involves two different witnesses who allege unethical behaviour. Although the MIIT has no direct evidence as to his misconduct, it is further recommended that FIBA approach the Mali Ministry of Sport and Mali law enforcement to proceed further with the matter and to investigate if he has violated local laws.*
- 7.13 *The FIBA Disciplinary Commission review the evidence provided concerning Jean-Claude Sidibé and assess his ongoing influence and interactions with the FMBB including suitability to be a candidate in any FMBB elections to any official positions.*
- 7.14 *FIBA should assist FMBB in implementing a confidential complaint process and appropriate disciplinary process.*
- 7.15 *FIBA should consider a world-wide central registry to record sexual abuse allegations and convictions of basketball coaches and other player entourage.*
- 7.16 *FIBA should consider how it may assist in providing psychological support for victims named or confidential witnesses in this Report.*
- 7.17 *President Hamane Niang consider and determine his appropriate course of action based on the contents of this Report.”*

19. On 19 October 2021, Mr Lamboy requested Ms Tounkara to provide her parents’ consent

to have her case heard.

20. On 22 October 2021, Ms Tounkara's counsel transmitted to FIBA the power of attorney signed by the Player's parents.
21. On 10 December 2021, Mr Lamboy requested, on behalf of the Ethics Panel, the Secretary General, the Central Board and the Executive Committee members to submit their observations and explanations concerning the allegations contained in the Complaint, and specifically on the following:
  - "1. *A general overview of the measures implemented by FIBA (particularly by the parties identified as respondents in the complaint to the extent applicable) related to the sexual abuse and harassment allegations against female basketball players in Mali.*
  2. *The handling and follow up by FIBA further to receiving information of possible retaliation against the complainant and any observation in connection with the handling of the related request to reinstate her into the Mali U19 national team that was due to participate in the 2021 FIBA U19 Women's Basketball World Cup.*"
22. On 14 January 2022, the Player's counsel submitted a "*Supplemental Submission In Support Of Emergency Complaint For Expedited Relief From The FIBA Ethics Panel And FIBA Disciplinary Panel And Request To Provide Comment On Submission To Be Made By FIBA*".
23. On 24 January 2022, the Chief Operating Officer of FIBA, Mr Patrick Mariller, transmitted a memorandum to the Ethics Panel, addressing the issues raised in the Complaint, as identified in the letter of Mr Lamboy of 10 December 2020, in the following terms:
  - i. concerning the "*general overview of the measures implemented by FIBA related to the sexual abuse and harassment allegations against female basketball players in Mali*", FIBA was first alerted to allegations of systemic sexual abuse in Malian basketball by New York Times on 10 June 2021. It immediately launched an independent investigation and prioritized players' protection. The FMBB was urged to cooperate, and 3 officials were provisionally suspended. To avoid collective punishment and an impact on the players, FIBA did not suspend the FMBB entirely, but closely monitored compliance. FIBA engaged with Terre des Hommes ("TdH") to implement a safeguarding program and allocated CHF 200,000 to protect young basketball players in Mali. Additional measures included deploying staff to oversee developments and collaborating with local authorities. The IO Report found no evidence against FIBA President, Mr Hamane Niang, but confirmed abuse by the 3 suspended individuals and failures by FMBB officials to report or prevent misconduct. Disciplinary proceedings had been opened and FIBA expanded its safeguarding efforts, reinforcing education and prevention programs to protect female players;
  - ii. concerning the "*the handling and follow up by FIBA further to receiving information of possible retaliation against Ms. Djelika Tounkara in connection with the 2021 FIBA U19 Women's Basketball World Cup*", FIBA received on 8 August 2021 a letter from Ms Fouques claiming that the Player was excluded from

the Malian national team for the World Cup in retaliation for her cooperation in the IO investigation. However, the letter lacked any supporting evidence and FIBA has no authority over national team selections. Moreover, information previously received from various sources, including the Player’s father and teammates, indicated she was injured. However, the IO Report suggested conflicting information, indicating a possible retaliation. FIBA requested further details, which were then submitted to the FIBA Disciplinary Panel (the “Disciplinary Panel”) handling the cases of the provisionally suspended individuals;

- iii. FIBA had not received any further complaints or indications of sexual abuse or retaliation in Mali, but remained prepared to take action if new evidence emerged. On 14 January 2022, the Player’s counsel reported that she had received death threats on 13 September 2021 and submitted a signed statement from 28 October 2021. While the timing of events was unclear, FIBA investigated and forwarded her statement to the Disciplinary Panel. However, the alleged perpetrator’s name was not mentioned and the Player confirmed that TdH took effective measures to protect her.
24. On 20 February 2022, Mr Lamboy, writing on behalf of the Ethics Panel, sent a letter to the Player, the Secretary General and the members of the Central Board and of the Executive Committee informing them that due to the passing of 3 out of the 5 Ethics Panel’s members the Ethics Panel could not act on her petition, pursuant to Article 36.3 of the FIBA General Statute, providing for a minimum composition of 3 members. As a result, two different options could be identified:

*“Option #1*

*The FIBA GS provides a formal process to appoint EP members. The authority to make such an appointment rests on the FIBA Congress. The last FIBA Congress was held on June 2021, with the next one scheduled for mid-2023. Thus, to appoint new members before the next FIBA Congress, an extraordinary meeting of such a body would need to be called as per article 14.1.9 of the FIBA GS.*

*Under such an approach, the EP members would need to request the FIBA Central Board to submit the matter for consideration by the FIBA Congress. In the meantime, the procedures in the case of reference would need to be stayed. The case would be reactivated once the FIBA Congress appoints the required member(s).*

*Option #2*

*Another approach considered by the EP members would be to proceed with a decision under the EP’s actual reduced composition if all the parties in the case agree. Under this scenario, the EP members would issue a decision in its present reduced composition if all the parties expressly agree and waive any challenges to the decision under the argument that it was rendered with a reduced composition. Absent such express waiver by all parties, the proceedings will be stayed, meaning no further action will be taken, pending the appointment of at least one additional member by the FIBA Congress. In such a case, the actual members of the EP would address the FIBA Central Board requesting for it to submit the matter for consideration of the FIBA Congress for appointment of additional members to the EP to comply with the FIBA GS.”*

25. On 24 February 2022, the Player rejected both proposals and submitted the following:

*“[...] we regard the appointment of further EP members to decide this case as necessarily barred*



*due to the irreconcilable conflicts [...]. Given that there exists no appropriate mechanism or authority under the FIBA GS and IR to appoint new EP members in this case, and as there is no authority for the EP to determine this matter with only two members, further review of this matter by the EP has become coram non iudice (i.e., before a body without power to act further).*

*[...] we submit that the only possible and appropriate step under the FIBA GS and IR is for Ms. Tounkara’s Complaint in this matter, which was submitted jointly to the FIBA EP and the FIBA Disciplinary Panel, to be promptly set for an evidentiary hearing before the FIBA Disciplinary Panel. We therefore ask that this matter be immediately referred to the FIBA Disciplinary Panel for purposes of scheduling an evidentiary hearing.*

*Alternatively, we would be willing to agree with FIBA to submit this matter to the Court of Arbitration for Sport (CAS) for first instance review of Ms. Tounkara’s Complaint, in the event, for whatever reason, the FIBA Disciplinary Panel were unable to promptly hold a hearing in this case.”*

26. On 25 February 2022, the Chief Operating Officer of FIBA informed the Ethics Panel that:

*“[...] the FIBA Secretary General and the members of the FIBA Central Board agree to have their case adjudicated by the EP in its present reduced composition and to waive any right to challenge their decision on that basis (i.e. Option #2 in your letter). [...].”*

27. On 4 April 2022, the Player, the Secretary General and the members of the Central Board and of the Executive Committee were informed in a letter sent by Mr Lamboy on behalf of the Ethics Panel (the “Letter of 4 April 2022”) that:

*“[...] as per the letter [...] of 20 February 2022 [...], in the specific absence of agreement by the Claimant for the EP to act under its actual reduced composition, the case of reference is stayed until further notice, pending either: (i) the appointment of at least one additional member by the FIBA Congress or (ii) any other joint proposal by the Parties to resume the proceedings in the present composition.”*

28. On 18 April 2022, the Player filed a Statement of Appeal with the FIBA Appeals Panel (the “Appeals Panel”) against the Letter of 4 April 2022 and requested, *inter alia*, “that the FIBA Appeals’ Panel find that her case should be promptly submitted to the FIBA Disciplinary Panel for hearing without further review by the FIBA Ethics Panel.”

29. On 15 June 2022, after FIBA agreed to pay the handling fee on behalf of the Player, the Appeals Panel issued a procedural order dealing with the procedural issues and time limits.

30. On the same 15 June 2022, the Player submitted a letter to the Chairman of the Appeals Panel, requesting a stay of the proceedings until 1 August 2022 to permit an opportunity for a settlement with FIBA.

31. On 1 July 2022, FIBA confirmed by counsel its agreement to the requested stay of the proceedings.

32. On 7 July 2022, the Appeals Panel granted the suspension of the deadlines of the proceedings.

33. On 23 and 24 August 2023, the XXII Congress of FIBA was held in the Philippines. On that occasion the following persons were appointed as members of the Ethics Panel for the 2023-2027 term:
- Ms Célestine Adjanohoun;
  - Mr Cyriel Coomans;
  - Mr Ruperto Herrera;
  - Ms Karo Lelai;
  - Mr Scott Derwin; and
  - Mr Saburo Kawabuchi.
34. On 5 March 2024, the Player sent a letter to the Appeals Panel as follows:
- “The undersigned wishes to notify you that Mr. Rigozzi and the undersigned reached an agreement mid-December last to send the following communication:*
- Dear Mr. Palus, Ms. Reinhold, members of the FIBA Appeals Panel:*
- I write with authorization from both parties to thank the Panel for permitting the parties to explore settlement. However, despite good faith attempts the Parties have failed to settle. Consequently, both parties believe that the underlying proceeding should now go forward. Counsel for the parties have agreed to propose that due to the upcoming holidays and in consideration of other matters in which counsel is involved that the submissions on behalf of Claimant Ms. Tounkara be made on 15 February 2024 and the submissions of Respondent FIBA be made on 15 March 2024.*
- Claimant believes that a final decision in this matter should be rendered by the Appeals Panel as presently constituted and notified to the parties on 15 June 2022. Respondent continues to believe the matter is for the Ethics Committee and reserves the right to ask for bifurcation on that issue. The parties anticipate addressing these issues in their submissions.*
- Respectfully,*
- Bill Bock*
- Counsel for Ms. Tounkara apologizes that this information did not get forwarded to the Panel in December. As indicated by the parties’ agreed statement above, a settlement in this matter cannot be reached at this time. Accordingly, we request the Appeals Panel resume the proceedings in this matter.*
- On behalf of Ms. Tounkara, we request that the Appeals Panel set a date for a final hearing in this matter and schedule which provides the parties with at least forty-five (45) days from today’s date within which to submit their documents and pre-hearing brief. In consideration of the limited resources of Ms. Tounkara, her pro bono counsel requests that the hearing be conducted remotely via Zoom or other internet-based platform.”*
35. On 19 March 2024, the Appeals Panel resumed the proceedings and issued a second procedural order setting time limits for submissions and inviting both parties to complete and sign it by 10 April 2024.
36. On 29 March 2024, the Player’s counsel submitted a letter requesting that the Appeals

Panel order the production of documents from FIBA.

37. On 9 April 2024, FIBA filed with the Appeals Panel a petition challenging its jurisdiction and requesting the bifurcation of the proceedings as follows:

*“[...] FIBA respectfully requests the Panel to issue a revised Order of Procedure to be signed by the parties and providing that:*

- *FIBA disputes the jurisdiction of the Appeal’s Panel (as acknowledged in the parties’ exchanges produced by the Claimant)*
- *The present proceedings should be bifurcated to address FIBA’s jurisdictional challenge (for instance by providing that FIBA’s submission of 8 May 2024 is limited to the issue of jurisdiction).*
- *Any request for documents production should be answered only if and once the (challenged)jurisdiction of the Appeal’s Panel is finally established.”*

38. On 10 April 2024, the Appeals Panel acknowledged the receipt of the request for bifurcation and suspended the time limits set in its second procedural order.

39. On 10 April 2024, the Player presented to the Appeals Panel her “*Statement of Reasons for Appeal and Pre-hearing Brief*”.

40. On 26 April 2024, the Appeals Panel granted FIBA’s request for bifurcation and informed the Parties as follows:

*“Please note that the Panel of Judges has decided to bifurcate the proceedings to address the Respondent’s challenge of the FIBA Appeals’ Panel’s jurisdiction in the present matter first.*

*Accordingly, the Respondent is invited to submit reasons for its jurisdictional challenge by no later than Friday, 10 May 2024.*

*Upon receipt of the Respondent’s submission, the Appellant will be provided with an opportunity to comment on this challenge and to submit any additional information in this regard as indicated in her counsel’s email of 11 April 2024. [...]”.*

41. On 15 May 2024, FIBA filed the reasons in support of its position that the Appeals Panel lacks jurisdiction over the present matter, stating, *inter alia*, that:

- i. Article 1-239 of the Internal Regulations allows appeals only against substantive decisions, not procedural orders. Under Swiss law, procedural orders cannot be appealed, as doing so would disrupt proceedings. The contested order, issued by the Ethics Panel, merely stayed the proceedings and was limited in time until either a new member was appointed by the Congress or the parties proposed an alternative solution;
- ii. since the Congress appointed new members of the Ethics Panel on 25 August 2023, surpassing the required minimum, the Player could have requested the continuation of proceedings, but did not.

42. On 30 May 2024, the Player submitted her response to the FIBA’s jurisdictional challenge. In essence, the Player claimed that the Letter of 4 April 2022 should be classified as an appealable decision, as the term “*decision*” is not explicitly defined in FIBA’s regulations and should therefore be interpreted broadly. In addition, procedural

decisions, such as an order to stay proceedings, are not explicitly excluded from being appealed under the Internal Regulations. Moreover, FIBA’s governing body had engaged with the case and even agreed to cover the associated costs, which could be considered as an implicit acknowledgment of the appeal’s validity.

43. On 12 September 2024, the Appeals Panel issued a decision (the “Appealed Decision”), stating that:
  - “1. *The appeal filed by Djelika Tounkara against the FIBA letter from 4 April 2022 (Order under Appeal) is dismissed for lack of jurisdiction.*
  2. *The Respondent shall bear the costs of the proceedings.*
  3. *The parties shall bear their legal costs.”*
44. In support of such finding, the Appeals Panel observed that the Letter of 4 April 2022 lacked the characteristics of a formal decision as required by Internal Regulations. In fact, FIBA did not express any intent to define the dispute in its letter, nor did the letter change the Appellant’s legal position in any meaningful way. Instead, it was basically a procedural update informing the Parties that the case was on hold pending certain conditions, without dismissing the matter or making any definitive rulings. The fact, then, that FIBA covered procedural costs did not imply a waiver of its right to challenge jurisdiction. In any case, the Appellant still had the option to pursue her case before the competent FIBA body in accordance with the applicable procedural rules.

### III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

45. On 2 October 2024, the Player transmitted to the Court of Arbitration for Sport (“CAS”) a Statement of Appeal, pursuant to Article R47 of the Code of Sports-related Arbitration (the “CAS Code”), to challenge the Appealed Decision. The Statement of Appeal contained, *inter alia*, the appointment of the Hon. Justice Hugh L. Fraser, Judge in Ottawa, Canada, as an arbitrator.
46. On 9 October 2024, the CAS Court Office informed the Appellant that “*Mr Fraser in on the special CAS Anti-Doping Division (ADD) list. Pursuant to Article A8(3) of the Procedural Rules applicable to CAS ADD, ‘ADD judges appearing on the special list of judges for CAS ADD may not serve as an arbitrator in any procedure conducted by the CAS Appeals Arbitration Division’*” and invited her to nominate an arbitrator from the standard list of CAS arbitrators within 3 days from the receipt of the communication.
47. On 11 October 2024, the Appellant nominated Mr Christopher L. Campell, Attorney-at-law in Novata, CA, United States of America, as an arbitrator in this matter.
48. On 14 October 2024, the Appellant filed with the CAS Court Office, pursuant to Article R51 of the CAS Code, her Appeal Brief dated 12 October 2024.
49. On 29 October 2024, the Respondents, within an extended deadline, sent a letter to the CAS Court Office stating that:
  - i. they jointly nominated Prof. Dr Martin Schimke, Professor in Düsseldorf,

Germany, as an arbitrator in this matter;

- ii. FIBA typically covers its share in appeal matters unless the appeal is clearly frivolous or vexatious, as in this case, since the Appellant’s complaint falls within the jurisdiction of the Ethics Panel, making her attempt to bring it before the Disciplinary Panel baseless and moot. Additionally, the Appellant’s claims that the Ethics Panel is conflicted cannot be accepted, and the Appellant must exhaust internal remedies before appealing to CAS. As a result, given the Appellant’s financial situation and *pro bono* legal support, the Respondents would not pay their share of the advance on costs, as they would have no means to recover it if they prevail in arbitration.
50. On 30 October 2024, the Respondents requested, *“pursuant to Article R55(3) of the CAS Code, that the [...] time limit for filing the Answer be set aside and a new time limit be set after (i) either the Appellant’s payment of its share of the advance costs or (ii) after the CAS Court Office issues a decision on the Appellant’s Legal Aid application.”*
  51. On 30 October 2024, the CAS Court Office, acknowledging the receipt of the Respondents’ letters, informed the Parties that the time limit for the Respondents to file their Answer was set aside and would resume upon the Appellant’s payment of her share of the advance of costs or upon her request for legal aid being granted.
  52. On 31 October 2024, the Appellant wrote a message to the CAS Court Office, as follows:
 

*“The intent of counsel for Ms. Tounkara in nominating an arbitrator was not to act inconsistently with Ms. Tounkara’s request for legal aid. Rather, I was under the obviously mistaken impression that it was required that Ms. Tounkara nominate an arbitrator in the event that the Respondents would request a three-member Panel. I apologize that our filings lacked the appropriate clarity on this point.*

*To avoid confusion, I wish to inform the CAS Office that Ms. Tounkara does not wish to maintain her request for a three-member Panel. Rather, Ms. Tounkara wishes to act consistently with her request for legal aid in all respects and is content to have the process followed for appointing a single neutral arbitrator if the Respondents do not consent to Mr. Christopher Campbell (Ms. Tounkara’s nominee) serving as the single arbitrator in this matter.”*
  53. On 1 November 2024, the CAS Court Office noted the Appellant’s request that a Sole Arbitrator be appointed to decide this case and invited the Respondents to comment on this request.
  54. On 6 November 2024, the Respondents informed the CAS Court Office that they:
 

*“understand that the Appellant requests that a sole arbitrator to be appointed in the pre arbitration is to retroactively fulfil the requirement of Art. 5(b)(1) of the Guidelines on Legal Aid before the Court Arbitration for Sport. Whether this is admissible is not for the Respondents to say. The only comment the Respondents wish to make in this respect is that FIBA, as a contributor to the CAS Legal Aid Fund, considers that CAS Legal Aid is a limited resource and should be used parsimoniously, in particular only to assist athletes who have a genuine legitimate case and do not benefit from third party support.”*
  55. On 8 November 2024, the CAS Court Office informed the Parties that pursuant to Article

R50 of the CAS Code, the Deputy President of the CAS Appeals Arbitration Division had decided to submit the present case to a Sole Arbitrator.

56. On 4 December 2024, the Parties were informed that Ms Janie Soublière, Montreal, Canada, had been appointed as Sole Arbitrator and that, together with her acceptance, she had provided a disclosure indicating that she personally acted as an independent consultant to assist the IO investigation in the case of sexual abuse within the FMBB in 2021.
57. On 11 December 2024, the Respondents provided their comment on the nomination of Ms Soublière as Sole Arbitrator in this matter, as follows:
  - i. it is important that the CAS proceedings are perceived as independent and impartial, given the sensitivity of the case, and appointing Ms Soublière as the Sole Arbitrator raises concerns about the integrity of the process, as she played a direct role in the investigation on behalf of FIBA and had personal knowledge of the Appellant’s circumstances. This creates objective doubts regarding both her independence and impartiality;
  - ii. considering this, in order to prevent unnecessary challenges, Ms Soublière should reconsider her acceptance of the appointment;
  - iii. the objection was not intended to question Ms Soublière’s personal integrity or the quality of her work as part of the FIBA investigation, but solely to uphold the fairness and credibility of the arbitration process.
58. On 19 December 2024, the CAS Court Office informed the Parties that  
*“[...] Ms Janie Soublière has decided to resign in order to ease the arbitration process. In accordance with Articles R36 and R54 of the Code of Sports-related Arbitration, the President of the CAS Appeals Arbitration Division, or her Deputy, will appoint another sole arbitrator in due course”.*
59. On 30 December 2024, the Parties were informed that the Appellant had been granted legal aid in the present matter, and that, as a consequence, the deadline for the Respondents’ Answer had been restored. Furthermore, the CAS Court Office informed the Parties that Prof. Luigi Fumagalli, Attorney-at-Law in Milan, Italy, had been appointed by the Deputy President of the CAS Appeals Arbitration Division as Sole Arbitrator in this matter and that he provided his acceptance.
60. On 14 January 2024, the Respondents in a letter to the CAS Court Office submitted a request for bifurcation arguing that:
  - i. the Appeals Panel correctly found that it lacked jurisdiction, as the Ethics Panel’s decision was not appealable. The allegations of prejudice against the Ethics Panel do not establish jurisdiction, and Swiss law requires a proper legal basis for jurisdiction, which is absent here;
  - ii. CAS proceedings must be bifurcated in order to first determine the jurisdictional issue before considering the merits. This approach would align with procedural

economy, as resolving jurisdiction first could avoid unnecessary costs, particularly given that the Appellant has legal aid;

- iii. pending a decision on bifurcation, the deadline for the Respondents to file their Answer should be suspended.

61. On 15 January 2025, the CAS Court Office invited the Appellant to file her position on the requests submitted by the Respondents and in the meantime suspended the Respondents’ deadline to file their Answer.

62. On 20 January 2025, the Respondents clarified to the CAS Court Office that:

*“[...] they do not challenge the jurisdiction of CAS to review the decision of the FIBA Appeals Tribunal of 12 September 2024 according to Article 186 para (2) and (3) PILA.*

*As set forth in our letter of 14 January 2025, the Respondents’ bifurcation request is intended to ensure procedural efficiency by addressing, as a preliminary matter, whether the FIBA Appeals Tribunal correctly dismissed the Appellant’s appeal for lack of jurisdiction. Resolving this issue as a preliminary matter would, in the Respondents’ view, spare both parties from the unnecessary costs of addressing the merits of the Appellant’s complaint and conducting the particularly complex factual analysis required to adjudicate those merits (see Respondents’ bifurcation request of 14 January 2025, para. 11-22).*

*For these reasons, FIBA respectfully requests that the CAS or the Sole Arbitrator issue a procedural order according to which (i) the present proceedings be bifurcated and ii) the Respondents be permitted to file an Answer limited – at this stage and subject to its right to develop its position in future to the extent necessary – to the question of whether the FIBA Appeal Panel correctly dismissed the Appellant’s appeal for lack of jurisdiction. [...]*”

63. On 22 January 2025, the Appellant, in a letter to the CAS Court Office:

- i. summarized the “*factual and procedural background before the FIBA bodies after the filing of the Complaint*”, as well as the “*factual and procedural background before CAS*”;
- ii. submitted that FIBA’s request for bifurcation should be denied for five key reasons: (1) the significant delay in resolving her case, despite her emergency Complaint filed over 3 years ago, warrants proceeding directly to the merits; (2) the likelihood of her success supports a final hearing before the CAS, rather than a referral back to the Appeals Panel; (3) CAS rules favour efficiency, fairness, and avoiding unnecessary procedural issues, making a direct resolution preferable; (4) FIBA’s own delays in requesting bifurcation weigh against granting it; and (5) the principle that athlete-related disputes should be resolved swiftly supports immediate adjudication. FIBA does not dispute CAS jurisdiction but seeks to dictate the order in which the Sole Arbitrator addresses the issues, which is an improper use of bifurcation. Under CAS precedents, the CAS Panel can review the case *de novo*, regardless of whether the Appeals Panel correctly found it lacked jurisdiction. Additionally, the Sole Arbitrator should assess whether the Ethics Panel is conflicted. If so, this would provide further grounds for *de novo* review. Granting bifurcation would improperly limit the Sole Arbitrator’s ability to fully consider the case;

- iii. emphasized, as to the legal analysis of the case, that:
    - a. *“the Appeals Panel Had Jurisdiction Over Mami’s Claims and Should Have Rendered a Decision on the Merits”*, because:
      - *“FIBA General Statute Article 39.4 Expressly Confers Authority on the Appeals Panel to Hear an Appeal from a Decision of FIBA”*;
      - *“A decision that the Ethics Panel should not be disqualified was a substantive decision made by FIBA”*;
      - *“The FIBA Ethics Panel continues to be ethically barred from taking up Mami’s Emergency Complaint”*;
    - b. *“FIBA Also Waived Any Argument That it Could Challenge the Authority of the Appeals Panel to Hear Mami’s Appeal”*;
    - c. *“The Appeals Panel Was the Only Competent Body within FIBA to Handle this Case Pursuant to FIBA Internal Regulations”*; and therefore
    - d. *“The CAS Should Rule on the Merits of Ms. Tounkara’s Claims Against FIBA Rather than Refer this Case Back to any FIBA Body”*;
  - iv. as a survivor of childhood sexual abuse and a whistleblower who has contributed to FIBA and the global basketball community, the Appellant deserves FIBA’s support in securing justice, rather than facing procedural delays and conflicts of interest. The Appellant has a right to both a fair and prompt hearing, and the Sole Arbitrator is the only authority capable of ensuring an expeditious and just resolution. A single final hearing on the merits is the most efficient way forward, avoiding unnecessary procedural complications that would only delay justice;
  - v. therefore, FIBA’s motion to bifurcate should be denied and the Sole Arbitrator should proceed directly to a final hearing.
64. On 27 January 2025, the CAS Court Office informed the Parties on behalf of the Sole Arbitrator that:
- *“The Respondent’s request for bifurcation is granted. The reasons for the Sole Arbitrator’s decision will be included in the Award.*
  - *The Sole Arbitrator will issue a partial Award on the issue of whether or not the decision of the FIBA Appeal’s Panel of 12 September 2024 should be set aside.*
  - *The Respondent is invited to file its Answer, limited to this issue, by 6 February 2025. The Respondent is further invited to specify in its Answer also the procedural consequences (with respect to the continuation of the present arbitration and the underlying dispute between the Parties) it would consider to be produced in the event the decision of the FIBA Appeal’s Panel of 12 September 2024 is (a) confirmed or (b) set aside.*
  - *The Sole Arbitrator reserves the possibility to invite the Appellant to file a Reply to the Respondent’s Answer and/or to invite the Parties to an online hearing for the discussion on the matters to be decided in the partial Award.”*
65. On 17 February 2025, the Respondents filed with the CAS Court Office, pursuant to Article R55 of the CAS Code, within an extended deadline, their Answer on the issues to be dealt with in this Award.
66. On 21 February 2025, the Appellant submitted a letter to the CAS Court Office, asking



for a 7-day extension to file her Rebuttal to the Respondent’s Answer.

67. On 24 February 2024, the CAS Court Office granted the Appellant’s request.
68. On 6 March 2025, the Appellant replied to the Respondent’s Answer, asking the Sole Arbitrator to deny the request for bifurcation and to proceed with a single final hearing on the merits of the Player’s claims.
69. On 10 March 2025, the CAS Court Office informed the Parties that the Sole Arbitrator deemed himself sufficiently well informed to issue a partial Award based solely on the Parties’ written submissions, without the need to hold a hearing. Therefore, any of the Parties wishing a hearing to be held was invited to provide brief reasons in that respect.
70. On 13 March 2025, the Respondents confirmed that they did not see any reason for a hearing to be held.
71. On the 14 March 2025, the CAS Court Office noted that none of the Parties had requested a hearing within the prescribed deadline and that therefore the Sole Arbitrator would render an Award in due course.

#### **IV. THE POSITION OF THE PARTIES**

72. The following outline of the Parties’ positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties relevant to the issues to be decided in the present Award, whether or not there is specific reference to them in the following summary. In this Award, the Sole Arbitrator will address in fact only the requests and related submissions concerning whether the Appealed Decision should be set aside and any consequence deriving from any finding in that respect.

##### **A. The Position of the Appellant**

73. In her Statement of Appeal and in her Appeal Brief, the Appellant requested the CAS to issue an award to:

*“Ms. Tounkara requests the following relief:*

1. *That the FIBA Decisions be reversed.*
2. *That the CAS find that Ms. Tounkara has exhausted her internal remedies.*
3. *That the CAS find that due to the conflicts of interest of the newly appointed members of the FIBA Ethics Panel and Disciplinary Panel who were appointed, after Ms. Tounkara’s Complaint was filed, and by a person charged in her Complaint, that the FIBA Ethics Panel and Disciplinary Panel are not competent bodies within FIBA to hear her case.*
4. *That pursuant to R57 of the Code of Sports-Related Arbitration that the CAS issue a new decision which replaces the FIBA Decisions and award Ms. Tounkara relief against the FIBA Parties.*
5. *That given the severity of the disciplinary offenses, the ages of the vulnerable people involved, the knowledge of the named FIBA Parties of the problem, and the explicit, urgent, and repeated requests for assistance that went ignored, the FIBA Parties be:*

- *Removed from office and prohibited from participating in any or all FIBA and FIBA-related activities for at least five (5) years and*
  - *Fined CHR 50,000 for the FIBA Secretary General and CHF 20,000 each, for each other member of the FIBA Central Board and Executive Committee to be paid into a Trust to be set up for Mali Women’s Basketball (Mali Women’s Basketball Trust) to be used for trauma support, legal support, medical and psychological support, for appropriate sexual harassment, abuse and safeguarding training of all Mali Basketball officials, and for the professional coaching and training of elite Mali women basketball players.*
  - *Due to the severe harm to Mami, she should be paid at least one-half of the funds in this trust for harms to her and her role as primary whistleblower.*
6. *Assuming arguendo there are additional or alternative breaches which are administrative in nature, pursuant to FIR 169, the FIBA Parties, should be publicly reprimanded and fined CHF 1,000 per person to be paid into the Mali Women’s Basketball Trust.*
  7. *Assuming arguendo there are additional or alternative breaches of the Code of Ethics and Integrity, sanctions should be imposed on the FIBA Parties including suspension of membership and status as an Official pursuant to FIB 168.*
  8. *Pursuant to FIR 167 the following sanctions should be imposed on the FIBA Parties, who had an explicit duty to “[g]uarantee [Mami’s] conditions of safety, mental and physical wellbeing” and on the occasion of any basketball competitions to “[e]ndeavour to protect the environment” surrounding the competition (FIR 121 e – f) and failed in their duties when they did not respond to urgent and repeated warnings that players may be retaliated against generally, and specifically when they were informed Mami had in fact been retaliated against in violation of FIR 98.*
  9. *Given the severity of the disciplinary offenses, Mami’s age and her position as primary whistleblower, the knowledge of the FIBA Parties of the problem and the explicit and repeated requests for urgent action that went repeatedly ignored, the FIBA Parties should be:*
    - *Removed from office and prohibited from participating in any or all FIBA and FIBA-related activities for at least three (3) years and*
    - *Fined CHF 20,000 for the FIBA Secretary General and fined CHF 10,000 each, per each other member of the FIBA Central Board and Executive Committee to be paid into a Trust for Mami (Mami Trust) to be used for her trauma support, legal support, medical and psychological support and to support her basketball career including economic and educational opportunities lost by not participating in the U19 World Cup where scouts from American universities and European professional leagues were scouting for NCAA scholarships and professional contracts.*
  10. *Assuming arguendo there are additional or alternative breaches which are administrative in nature, pursuant to FIR 169, the FIBA Parties should be publicly reprimanded and fined CHF 1,000 per person to be paid into the Mami Trust outlined above.*
  11. *Assuming arguendo there are additional or alternative breaches of the Code of Ethics and Integrity, sanctions should be imposed on the FIBA Parties including suspension of membership and status as an Official pursuant to FIR 168.*
  12. *Public acknowledgement of the victim-survivors of sexual abuse and exploitation in Mali Basketball by Professor McLaren and the MIIT is best practice. “We would like to commend these victims for their courage in coming forward...”. However, to date, FIBA has not done this for the prime whistleblower, Ms. Tounkara.*
  13. *Given that Mami’s allegations of abuse by Coach Bamba were confirmed by the FIBA IO in the MIIT in no uncertain terms, FIBA should be required to publicly honor Mami for*

*“defending basketball’s good reputation,” and FIBA should be required to acknowledge her service with a Golden Rule award for “denouncing those who attempt to discredit” basketball. Not only will this reinforce FIBA’s Golden Rule, but it is best practice to acknowledge victim-survivors of sexual abuse for coming forward and will encourage other whistleblowers and FIBA’s grant of this award to others but not Mami constitutes unequal treatment, discrimination based on sex and a failure to appropriately recognize her service under the FIBA Safeguarding policy.*

14. *This is further an appropriate outcome given FIBA issued Coach Bamba a lifetime ban and a fine of CHF 80,000 and issued Harouna Maiga an 8-year suspension along with a CHF 20,000. These funds should be used to provide compensation to Mami as without her bravery as the first and primary whistleblower, FIBA would never have been able to issue these sanctions or fines.*
  15. *Finally, as is best practice with child sexual assault victim-survivors, FIBA should be required to issue a public apology to Mami for the abuse she suffered at the hands of the FMBB officials including Coach Bamba and other officials who retaliated against her. This is an important and necessary public acknowledgment that something bad happened to Mami and that FIBA acknowledges that Mami rendered exemplary service to FIBA and the sport of basketball.”*
74. In her submissions, the Appellant outlined the key facts she deems relevant, specifically regarding: the duty of the Respondents to protect a publicly known whistleblower from direct retaliation; their obligation and authority to safeguard the Player; their prolonged failure to act despite clear evidence of imminent retaliation; and the necessity for this case, which should have been decided by the Appeals Panel, to now be resolved by the CAS Panel.
75. The Appellant’s submissions on the legal aspects of the issues to be decided in this Award can be summarized as follows:
- i. *“the Appeals Panel Had Jurisdiction Over Mami’s Appeal”*:
    - the Sole Arbitrator should apply the *contra proferentem* principle, which mandates that any ambiguity in FIBA’s rules be interpreted against FIBA as the drafter. FIBA’s claim that the Appeals Panel lacked jurisdiction is contradicted by Article 39.4 of its General Statutes, which grants broad appellate authority, unless an appeal is expressly excluded. Furthermore, FIBA failed to provide any textual or precedential basis demonstrating such an exclusion. Consequently, the Appeals Panel should have heard the Player’s case based on the *contra proferentem* principle alone, as the rules do not justify a restrictive interpretation. FIBA’s argument relied on an unsupported assertion that only substantive decisions can be appealed under Swiss law, despite Article 39.4 of the General Statutes containing no such limitation. Even if the decision were of procedural nature, FIBA’s rules do not prohibit procedural appeals, and the Appeals Panel should have exercised its jurisdiction;
    - the present appeal regards a substantive decision by FIBA, not a mere procedural order. Specifically, the Player challenged FIBA’s refusal to recognize that the Ethics Panel was ethically barred from hearing her Complaint and its decision to reject her request for an immediate transfer of

the case to a competent FIBA body. FIBA incorrectly characterized the Letter of 4 April 2022 as a procedural order issued by the Ethics Panel. However, FIBA had previously admitted that the Ethics Panel lacked the required number of members to act, meaning that it had no authority to issue any orders. Therefore, the decision to deny the transfer request was made by FIBA itself and communicated through Mr Lamboy. The Appellant’s appeal was directed at this FIBA decision, not at a decision of the Ethics Panel: the FIBA’s refusal to transfer the case was in direct response to the Appellant’s formal request on 24 February 2022 for an evidentiary hearing before the Disciplinary Panel. Hence, the appeal was based on a substantive matter as the FIBA’s refusal to allow the case to proceed before the appropriate body;

- the Complaint should not be referred back to the Ethics Panel because of serious conflicts of interest and an appearance of impropriety that FIBA had neither acknowledged nor addressed. The Ethics Panel members are appointed by the Congress, but only upon the proposal of the FIBA President and General Secretary. Given that both the President at the time, Mr Saud Ali Al-Thani, and the General Secretary, were named as respondents to the Complaint, they were directly implicated in the case and could not ethically oversee the appointment of panel members who would be responsible for judging their own actions. Despite this clear conflict, they continued to hold the authority to appoint new Ethics Panel members in 2023, creating a structural bias that undermined the legitimacy of the panel. Furthermore, several of the newly appointed Ethics Panel members had direct connections to the Central Board, the same body against which the Player had lodged the Complaint. Two of them, Ms Celestine Adjanohoun and Mr Karo Lelai, were not only former Central Board members, but also named respondents in the Complaint. Even more, Mr Scott Derwin had previously served on the Central Board, but failed to disclose this connection when ruling on the Player’s case. This meant that individuals who had previously been part of the governing body accused of ethical breaches were now positioned as decision-makers in the case, raising serious concerns about impartiality. The broader structural issues within FIBA further intensified the problem:
  - at least 18 members of the current Central Board, all named respondents in the complaint, participated in the 2023 Congress that approved the appointment of the new Ethics Panel members. This meant that individuals accused of misconduct played a role in selecting those who would judge them, making the Ethics Panel inherently incapable of acting independently; additionally,
  - FIBA had no defined selection criteria for its Ethics Panel members, meaning there was no guarantee that those appointed had relevant legal or governance expertise, further eroding confidence in the panel’s ability to handle the case fairly;
  - in contrast, the Appeals Panel, which had taken over the case, had higher standards of independence. Unlike the Ethics Panel, the Appeals Panel required its judges to have legal training and prohibited them from holding positions within FIBA, ensuring a greater level of

- objectivity. Given the pervasive conflicts of interest within the Ethics Panel, allowing it to handle the case would directly violate the General Statutes, particularly Article 44, which prohibits individuals from participating in decisions where they have a conflict of interest;
- FIBA failed on multiple occasions to disclose these conflicts of interest, and this repeated failure to disclose relevant information reinforced her argument that the Ethics Panel could not be trusted to adjudicate the case fairly. For all these reasons, the Appellant firmly maintained that referring her Emergency Complaint back to the Ethics Panel would be both legally improper and ethically indefensible. Given the clear structural bias, lack of impartiality, and repeated failures of disclosure, she insisted that the case should remain with the Appeals Panel, which had the necessary safeguards to ensure a fair and independent review;
- ii. *“FIBA Has Waived Any Argument That it May Challenge the Authority of the Appeals Panel to Hear Mami’s Appeal”*: the Appeals Panel should not have referred the Player’s complaint back to the Ethics Panel also under the doctrines of waiver and equitable estoppel. The Player had legitimate expectations of a fair hearing before an impartial FIBA body, and she relied on assurances, including FIBA’s agreement to pay the judges’ fees, that the Appeals Panel would handle her case. Based on this, she fully engaged with the process, complying with procedural requirements, enduring repeated questioning about traumatic events, and preparing detailed submissions. FIBA, however, only challenged the Appeals Panel’s authority nearly two years after it had accepted jurisdiction and agreed to cover the necessary fees. During this time, FIBA acted under the Appeals Panel’s direction, responding to orders and requesting extensions, further affirming its recognition of the Appeals Panel’s authority. Raising a jurisdictional challenge so late, after relief had already been granted, was both inconsistent and improper. Given this delay and FIBA’s conduct, waiver and equitable estoppel should have barred its challenge, reinforcing that the Appeals Panel had the authority to decide on the Player’s case;
- iii. *“The Appeals Panel Was a Competent Body to Handle Mami’s Case Pursuant to FIBA Internal Regulations”*:
- the Appeals Panel was the only competent body within FIBA capable of hearing the Player’s case, as all other potential bodies were either conflicted or unable to act under FIBA’s Internal Regulations;
  - a competent body, as defined by the FIBA rules, is one with lawful authority to handle a case, which depends on the specific circumstances. Normally, the competent bodies in the first instance include the Secretary General or the Disciplinary Panel, but both options were unavailable due to conflicts of interest:
    - the Secretary General was a respondent in the case, preventing him from referring the matter to the Disciplinary Panel or forming a new panel, as required by the regulations;
    - similarly, the Ethics Panel was also compromised, as its members and those responsible for referring cases had conflicts of interest;

- as a result, by refusing to consider the Complaint on the merits, the Appeals Panel left her without a non-conflicted forum within FIBA to seek justice;
- iv. *“Reasons The CAS Should Rule on the Merits of Ms. Tounkara’s Claims Against the FIBA Parties Rather than Refer this Case Back to the FIBA Appeals Panel for Hearing”*:
- Article R57 of the CAS Code grants the CAS full power to review the facts and the law in appeals cases. CAS may issue a new decision or annul the prior decision and refer the case back to the previous instance. CAS proceedings are not merely appeals but rather independent arbitrations, capable of curing due process violations that may have occurred at prior stages. CAS Panels can re-examine all factual and legal matters without being bound by previous rulings. This allows for the introduction of new evidence and legal arguments while also remedying any procedural flaws from prior proceedings. CAS has frequently replaced challenged decisions with its own rulings, ensuring an efficient and fair resolution of disputes;
  - in the present case, multiple reasons justify a *de novo* hearing by the Sole Arbitrator:
    - lack of an independent internal review: the FIBA President and General Secretary, both respondents in the case, appointed the members of the Ethics and Disciplinary Panels, raising concerns about impartiality;
    - procedural economy: a final CAS ruling on the merits would prevent unnecessary procedural debates and avoid additional delays;
    - excessive delays in FIBA’s internal process: since 2021, this case has faced significant procedural setbacks, including the inability to constitute an Ethics Panel, jurisdictional disputes, and prolonged negotiations;
    - the Appellant’s vulnerability and whistleblower status: as a victim of sexual abuse and a whistleblower, she has faced emotional distress due to the drawn-out proceedings, making a prompt and final decision imperative.
76. In her reply to the Respondents’ Answer, then, the Appellant emphasized that her entitlement to a *de novo* final hearing on her claims is founded upon her human rights, arising from *“four complementary foundational legal principles and three legal frameworks”*:
- i. *“Legal Personality and Private Life”*: Swiss legal personality rights under the Swiss Civil Code (“SCC”) limit the autonomy of Swiss associations, like FIBA. While Article 8 of the European Convention on Human Rights (“ECHR”) protects private life, the SCC provides protection against any FIBA rules that creates *“excessive restrictions”* (Article 27 SCC) on the Player. Further, unlawful infringements of her personal and economic freedom (Article 28 SCC) are also prohibited. All have been violated by FIBA and the Respondents towards the Player. Therefore, the SCC supports her right to a *de novo* final review of her case by the CAS;
  - ii. *“Right to Non-Discrimination”*: Article 14 ECHR provides protection against non-

discrimination, which has been violated in the Player’s case due to retaliation for whistleblowing about gender-based child sex abuse, providing a further basis for final *de novo* review;

- iii. “*Denial of Justice*”: if an athlete is prevented from obtaining a fair and impartial hearing, this violates Article 6 ECHR. The Player has not been provided full procedural rights (including the right to be heard, and by an unbiased panel), thus the FIBA process has denied her justice, and she is entitled to final *de novo* review of all of her claims against FIBA;
- iv. “*Failure to Provide an Effective Remedy*”: if a process within an International Federation is flawed and leaves an athlete without meaningful recourse, this violates Swiss constitutional principles and ECHR guarantees under Article 13. The FIBA process cannot be considered effective, since it left the Player without a merits hearing for 3.5 years despite suffering serious human rights harm and having made allegations that the Respondents failed to help her after she was retaliated against. Because FIBA has failed to provide her an effective remedy the Player should be given final *de novo* review of her claims by CAS.

## **B. The Position of the Respondents**

77. On 17 February 2025, in their Answer, the Respondents requested the CAS:

*“For the reasons set out above the Respondents respectfully request the Panel to issue an arbitral award ruling as follows:*

1. *The Appeal filed by Ms Djelika Tounkara and all of her prayers for relief are dismissed, to the extent they are admissible.*
2. *The decision of the FIBA Appeals Panel is upheld.*
3. *Ms Djelika Tounkara shall bear all arbitration costs incurred with the present proceedings.”*

78. In support of their requests, the Respondents submitted that:

- i. “*the Appeals Panel correctly dismissed the appeal for lack of jurisdiction*” for the following reasons:
  - as to the “*jurisdiction of the Appeals Panel in general*”: Article 39.4 of the General Statutes and Article 1-239 of the Internal Regulations clearly establish that the Appeals Panel has jurisdiction only over appeals against decisions issued by FIBA, its organs, and disciplinary bodies, unless expressly excluded. These provisions confirm that the Appeals Panel functions as a second-instance body rather than a first-instance decision-making authority. The allocation of competences within FIBA reinforces this interpretation, as first-instance matters fall under the Secretary General, the Disciplinary Panel or the Ethics Panel, depending on the case. Contrary to the Appellant’s claims, the principle of *contra proferentem*, which applies only to ambiguous provisions, does not apply here, as the regulations explicitly and unambiguously define the Appeals Panel’s jurisdiction;
  - as to the “*Letter of 4 April 2022 communicated on behalf of the FIBA Ethics*

*Panel*”: the Appellant attempts to create confusion about the nature of the decision she appealed before the Appeals Panel, arguing that it was a substantive decision by FIBA, rather than one from the Ethics Panel. However, the Letter of 4 April 2022 was clearly issued on behalf of the Ethics Panel, as confirmed by the consistent role of its Secretary, Mr Lamboy. Nevertheless, this distinction is irrelevant, since the Ethics Panel acts within FIBA, meaning that any of its communications are considered FIBA decisions under Article 1-239 of the Internal Regulations. The key issue remains whether the Letter qualifies as a “*decision*” under Article 39.4 of the General Statutes and Article 1-239 of the Internal Regulations;

- the “*Letter of 4 April 2022 does not qualify as a ‘decision’*”: the Appellant admits that if the Letter of 4 April 2022 does not meet the definition of a “*decision*” under Article 39.4 of the General Statutes and Article 1-239 of the Internal Regulations, then the Appeals Panel was correct in dismissing her appeal for lack of jurisdiction. However, FIBA regulations do not define what constitutes a “*decision*”, requiring reliance on Swiss law as supplementary legal guidance:
  - under Swiss law, as established by the Swiss Federal Supreme Court, a “*decision*” is an act of authority directed at an individual that definitively resolves a legal situation in a binding and obligatory manner. It must have direct legal effects on both the issuing authority and the recipient;
  - similarly, CAS jurisprudence defines a “*decision*” as a unilateral communication intended to produce binding legal consequences. For a communication to qualify as a decision, it must reflect the issuing body’s intent (*animus decidendi*) to conclusively determine a legal matter, directly impacting the rights or obligations of the parties involved. Mere statements for information purposes, which do not impose a definitive ruling, cannot be considered decisions;
  - the Letter of 4 April 2022 does not meet this standard. It was issued by the Ethics Panel Secretariat to inform the Parties that, due to the lack of an agreement between them on proceeding with a reduced panel, the case was stayed until either the Congress appointed new members or the Parties jointly agreed to continue with the existing composition. The letter did not reject the Complaint, close the case, or impose any definitive ruling. Instead, it simply confirmed that the Ethics Panel remained competent to hear the Complaint but was temporarily unable to proceed. As such, it did not resolve any substantive legal issue, nor did it alter the Appellant’s legal position. The Appellant still had the same options after the letter was issued: to wait for additional members to be appointed or to agree to proceed with a reduced panel. Furthermore, the Appellant’s claim that the letter constituted a refusal to transfer the case to the Disciplinary Panel is incorrect. The letter did not preclude the possibility of referral to the Disciplinary Panel; it only stated that the Ethics Panel would first need to issue a decision before any further steps could be taken. Additionally, the Appellant’s



argument that the Appeals Panel should have declared itself competent simply because FIBA’s regulations do not explicitly exclude appeals against such letters is unfounded. Article 39.4 of the General Statutes and Article 1-239 of the Internal Regulations specify that the Appeals Panel hears appeals against “*decisions*.” Since the Letter of 4 April 2022 does not qualify as a decision, the issue of whether an appeal is explicitly excluded does not even arise. Even if the Letter of 4 April 2022 were hypothetically considered a “*decision*”, it would still only constitute a procedural order rather than a substantive ruling. Procedural orders, such as a stay of proceedings, are not appealable because they do not resolve any fundamental legal issue. The stay was temporary and could be lifted at any time, leaving all substantive aspects of the Complaint open for further review. For these reasons, the Appeals Panel correctly dismissed the appeal for lack of jurisdiction, and the Appealed Decision should be upheld;

ii. as to the “*the other Appellant’s misplaced allegations*”:

- “*the Ethics Panel is neither a ‘conflicted body’ nor ‘ethically barred’*”: the Appellant’s argument is flawed, as Article 36.3 of the General Statutes states that the Ethics Panel members are appointed by the Congress, not by FIBA’s leadership. In addition, while the Respondents acknowledge that Ms Adjanohoun and Ms Lelai should not participate in the case, the remaining members (Mr Cyriel Coomans, Mr Ruperto Herrera, Mr Scott Derwin and Mr Saburo Kawabuchi) have no conflict of interest. The fact that Mr Derwin was a former Central Board member is irrelevant, as he is not currently on the Board or named in the Complaint. Since at least four non-conflicted members remain, the Ethics Panel is neither “ethically barred” nor “entirely conflicted,” as claimed by the Appellant. Furthermore, the claim that 18 members of the current Central Board (who are respondents in her Complaint) likely participated in approving the Ethics Panel members, creating a conflict of interest is unsupported, as the Central Board members do not have voting rights in the Congress and only hold consultative powers (Article 14.1.1(a) of the General Statutes). Even if the Ethics Panel were conflicted (which is denied), this would not grant the Appeals Panel jurisdiction over the case. The Appeals Panel can only hear appeals against challengeable “*decisions*”, and the Appellant cannot bypass the appropriate first-instance body by alleging conflicts of interest. There is no provision in the General Statutes or Internal Regulations allowing the Appeals Panel to assume jurisdiction solely due to an alleged conflict within the Ethics Panel;
- “*the Respondents did not waive their right to challenge the jurisdiction of the Appeals Panel*”: the Appellant’s contentions based on the doctrines of waiver, estoppel and her legitimate expectation of a fair hearing before a competent FIBA body are unfounded:
  - the Appeals Panel’s lack of jurisdiction is clearly established under FIBA regulations, and the Appellant’s case must proceed before the Ethics Panel;

- her expectation of a fair hearing does not override jurisdictional rules, nor does FIBA’s payment of fees, which was a procedural act to allow the case to move forward, not an acceptance of jurisdiction;
  - moreover, the suspension of proceedings was caused by the Appellant’s own counsel, who requested postponements for settlement discussions,
  - when no settlement was reached, the Appellant failed to meet filing deadlines, later attempting to revive the case;
  - the Respondents challenged jurisdiction before engaging with the merits, which is a valid legal approach. The Appellant’s reliance on fairness and alleged delays does not justify the Appeals Panel assuming jurisdiction, making her arguments on waiver and estoppel weak;
  - *“the Appeals Panel cannot deal with the Complaint as a first instance body”*:
    - the Appeals Panel does not have first-instance jurisdiction in disciplinary matters, as FIBA’s regulations clearly allocate this competence to the Ethics Panel and to the Disciplinary Panel;
    - the Appeals Panel can only review appeals against existing “*decisions*” under Article 1-239 of the Internal Regulations, which is not the case here;
    - furthermore, the claim that the Disciplinary Panel is conflicted due to the Secretary General’s involvement is incorrect;
    - if the Ethics Panel finds a *prima facie* breach involving the Central Board or the Secretary General, it refers the case directly to the Disciplinary Panel without the Secretary General’s intervention;
    - ultimately, the Ethics Panel is not conflicted and remains the appropriate body to handle the Complaint under Article 1-215 of the Internal Regulations;
    - in summary, the Appellant’s argument does not justify bypassing the established jurisdictional framework;
- iii. as to the “*procedural consequences*” of a decision on the issues to be considered in the Award:
- if the Appealed Decision is confirmed, the Appellant’s appeal will be dismissed, and the proceedings will be terminated. Since the XXII Congress has appointed new members to the Ethics Panel, the Appellant may request to lift the stay and resume her Complaint’s examination. The Ethics Panel will then determine whether there is a *prima facie* breach of the Code of Ethics. If so, the case will be referred to the Disciplinary Panel for a formal hearing; otherwise, the Complaint will be dismissed;
  - if the Decision under Appeal is set aside, under Article R57(1) of the CAS Code, the Sole Arbitrator may either issue a new decision replacing the Appealed one or annul it and refer the case back to the previous instance. If the Appealed Decision is set aside, the Arbitrator has two options: (i) declare that the Appeals Panel has jurisdiction over the Appellant’s appeal or (ii) return the case to the Appeals Panel for a new ruling on jurisdiction. Since the initial decision was purely procedural and did not address the Complaint’s

merits, internal remedies were not fully exhausted, making a referral back the most appropriate course of action. However, certain requests for relief remain inadmissible, and if option (ii) is chosen, the Appeals Panel must reconsider its jurisdiction in light of the CAS Award’s reasoning.

## V. JURISDICTION

79. The jurisdiction of the CAS is not disputed by the Parties.

80. According to Article R47, first paragraph of the CAS Code:

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

81. The jurisdiction of CAS is contemplated by Article 40 of the General Statutes as follows:

*“Subject to 14.1.14 and 33, any dispute arising from these General Statutes, the Internal Regulations, other rules and regulations, and decisions of FIBA that cannot be settled by the FIBA-internal appeals process shall be definitively settled by a tribunal constituted in accordance with the Statutes of the Bodies Working for the Settlement of Sports-Related Disputes and Procedural Rules of the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland. The parties concerned shall undertake to comply with the Statutes of the Bodies Working for the Settlement of Sports-Related Disputes and Procedural Rules of the Court of Arbitration for Sport and to accept and enforce its decision in good faith.”*

82. Article 14.1.14 and Article 33, referred to in Article 40, of the General Statutes provide where relevant respectively that:

*“14.1.14 The decisions of the Congress are final and not subject to appeal”; and*

*“33.2 The awards of the Basketball Arbitral Tribunal are final and binding upon communication to the parties.”*

83. The CAS jurisdiction to hear appeals against decisions of the Appeals Panel is finally provided by Article I-254 of the Internal Regulations as follows:

*“A further appeal against the decision by the Appeals’ Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following notice of the reasons for the decision (see article I-215). The Court of Arbitration for Sport shall act as an arbitration tribunal and there shall be no right to appeal to any other jurisdictional body. If so requested by FIBA, the CAS shall establish an expedited procedural calendar in order to ensure the smooth running of any directly or indirectly affected competition(s).”*

84. The Sole Arbitrator, consequently, has jurisdiction to decide on the appeal filed by the Appellant against the Appealed Decision.

## **VI. ADMISSIBILITY**

85. The admissibility of the appeal is not challenged by any Party. In fact, the Statement of Appeal was filed by the Appellant within the deadline set in Article R49 of the CAS Code and complied with the requirements of Article R48 of the CAS Code. In addition, the Appellant has exhausted the internal remedies available to her against the Appealed Decision. In fact, no internal appeal within the FIBA structure is provided against decisions of the Appeals Panel.
86. The appeal is therefore admissible.

## **VII. SCOPE OF THE SOLE ARBITRATOR’S REVIEW**

87. According to Article R57, first paragraph of the CAS Code,
- “The Sole Arbitrator has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. [...]”*.

## **VIII. APPLICABLE LAW**

88. The law applicable in the present arbitration is identified by the Sole Arbitrator in accordance with Article R58 of the CAS Code.
89. Article R58 of the CAS Code provides the following:
- “The Sole Arbitrator shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Sole Arbitrator deems appropriate. In the latter case, the Sole Arbitrator shall give reasons for its decision”*.
90. In light of the foregoing, the “applicable regulations” in the present case for the purposes of Article R58 of the CAS Code are those adopted by FIBA. Swiss law applies subsidiary.

## **IX. MERITS**

### **A. The bifurcation of the arbitration**

91. On 27 January 2025, the Sole Arbitrator decided to bifurcate the proceedings and address in a (Partial) Award the issue whether or not the Appealed Decision should be set aside (§ 64 above). This issue corresponds to the first request for relief (“*that the FIBA Decisions be reversed*”) specified by the Appellant (§ 73 above).
92. The Appellant, in fact, requested from CAS relief in several other aspects, *i.e.* to find *inter alia* that:

- i. before appealing to CAS, she exhausted the internal remedies within FIBA;
  - ii. the Ethics Panel and the Disciplinary Panel are not competent bodies within FIBA to hear her Complaint, because of conflicts of interest affecting their members;
  - iii. therefore, CAS should proceed on the merits of the Complaint and award the Appellant the relief therein requested, which include:
    - removing the Respondents from their offices;
    - banning them from any FIBA related activity for a given period of time;
    - fining them;
    - awarding compensation to the Appellant.
93. The Sole Arbitrator notes that there are strict interrelations between those additional issues and the request advanced by the Appellant to set aside the Appealed Decision. In fact, on one hand, the question whether the Appellant has exhausted the internal remedies available to her within the FIBA system is a condition of admissibility of the appeal to the CAS pursuant to Article R47 of the CAS Code (*“An appeal against the decision of a federation, association or sports-related body may be filed [...] if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”*), and therefore needs to be (at least incidentally) (and was: § 85 above) considered in the examination of the question (whether the Appealed Decision should be set aside) which is the limited object of this Award. On the other hand, the remaining issues seem to be dependent on the finding on the setting aside of the Appealed Decision (§ 119 below), and, subject to it, might be the object of further examination in a second phase of this arbitration.
94. The Sole Arbitrator has however come to the conclusion to adopt an Award on the first petition of the Appellant essentially for reasons of procedural efficiency. The petitions submitted to the Sole Arbitrator by the Appellant are in fact rather complex, and addressing them in briefings by the Parties might require extensive activity, which might be affected by (or become useless as a result of) any decision on the first petition. In fact, even a finding in favour of the Appellant might help shed some additional light at least on a first point of a complex dispute and give the Parties an incentive to resolve it amicably, in order to avoid further trauma (through the pain of the proceedings) for the Appellant.
95. The Sole Arbitrator wishes in fact to underline that, however “technical” the issues to be resolved might seem (and chiefly so the question of the setting aside of the Appealed Decision), he is fully aware and perfectly conscious of the tragedy that sexual abuse in Malian basketball caused for the victims. As mentioned by the Appellant, Coach Bamba received a lifetime ban and was fined; Mr Maiga was suspended for 8 years and fined as well. But the tragedy and the suffering for the victims remains.

## **B. The issue to be decided in this Award**

96. The issue to be decided in this Award is whether by the Appealed Decision the Appeals Panel correctly dismissed the appeal filed by the Player against the Letter of 4 April 2022

for lack of jurisdiction. The Appeals Panel in fact observed that the Letter of 4 April 2022 lacked the characteristics of a formal decision, because it merely contained some procedural information regarding the case started by the Player with the Complaint. As a result, the Appeals Panel found that no appeal could be filed against the Letter of 4 April 2022 under the applicable regulations. The Appellant challenges the conclusion, by advancing a number of reasons. The Respondents defend it, and submit that the appeal to CAS should be dismissed, because the Appealed Decision was correct.

97. The “jurisdiction” within FIBA of the Appeals Panel is defined by Article 39.4 of the General Statutes as follows:

*“The Appeals’ Panel shall hear and decide on appeals filed by an affected party against decisions of FIBA, including its divisions, organs and disciplinary bodies, unless such an appeal is expressly excluded in these General Statutes or the Internal Regulations of FIBA.”*

98. The mentioned provision is echoed by Article I-229 of the Internal Regulations:

*“The Appeals’ Panel shall hear appeals filed by an affected party against decisions of FIBA including its organs and disciplinary bodies, unless such appeal is the competence of an Appeals’ Panel of a FIBA Zone or expressly excluded in the FIBA General Statutes or Internal Regulations.”*

99. In other words, the Appeals Panel can hear appeals against “*decisions*” issued by any division, organ and disciplinary body of FIBA, unless such appeal is expressly excluded in the General Statutes or the Internal Regulations.
100. The issue therefore is whether the Letter of 4 April 2022 is a “*decision*” for the purposes of Article 39.4 of the General Statutes and Article I-229 of the Internal Regulations, and thus the Appeals Panel had jurisdiction to hear an appeal against it. The Sole Arbitrator in fact underlines that the plain reading of such provisions makes it clear that, however broadly defined is the jurisdiction of the Appeals Panel, appeals can be brought before it only against “*decisions*”: all “*decisions*” may be appealed, if not expressly excluded, but still they need to be “*decisions*”. In other words, the broad scope of Article 39.4 of the General Statutes and of Article I-229 of the Internal Regulations does not extend the jurisdiction of the Appeals Panel to any pronouncement by the any division, organ and disciplinary body of FIBA which does not qualify as a “*decision*”: as correctly pointed out by the Appellant, the appellate authority of the Appeals Panel is broad, since it is limited only by an express exclusion, but still it is restricted to “*decisions*”.
101. As mentioned, the wording of the provision is clear, and its relevance is confirmed by the principles on interpretation of the statutes and rules of a sport association under Swiss law. As confirmed by CAS precedents and the jurisprudence of the Swiss Federal Tribunal (“SFT”) (CAS 2008/A/1673; CAS 2009/A/1810; CAS 2009/A/1811; ATF 87 II 95 considers. 3; ATF 114 II 193, p. 197, consid. 5.a; SFT, 3 May 2005, 7B.10/2005, consid. 2.3; SFT, 25 February 2003, 4C.350/2002, consid. 3.2) such interpretation has to be rather objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body has to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association

which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located.

102. As a result of the clarity of the provision, the *contra proferentem* principle of interpretation does not find any room for application. It is true that Swiss law recognizes the *contra proferentem* principle. However, the scope of application of this principle is rather restricted, since it only comes into play if an ambiguity persists in case all other means of interpretation fail. The SFT (4A\_327/2015, para. 2.2.1) has stated as follows in this respect:

*“Die Unklarheitenregel gelangt dann zur Anwendung, wenn die übrigen Auslegungsmittel versagen. Danach sind mehrdeutige Klauseln gegen den Verfasser bzw. gegen jene Partei auszulegen, die als branchenkundiger als die andere zu betrachten ist und die Verwendung der vorformulierten Bestimmungen veranlasst hat.”*

Free translation: “The ambiguity rule applies if the other means of interpretation fail. According to this rule, ambiguous clauses are to be interpreted against the author or against the party who is considered to be more knowledgeable in the industry than the other and who has caused the use of the pre-formulated provisions.”

103. This also complies with CAS jurisprudence according to which the *contra proferentem* principle may apply on a subsidiary basis, *i.e.* if the primary interpretation in application of the principle of good faith does not lead to a clear result (cf. CAS 2017/A/5172, para. 84).
104. As a result, it is not possible to extend on the basis of that principle the jurisdiction of the Appeals Panel to pronouncements which do not qualify as “*decisions*”. Article 39.4 of the General Statutes and Article I-229 of the Internal Regulations are absolutely clear on the point that the appellate authority of the Appeals Panel is limited to the review of “*decisions*”.
105. In order to determine whether the Letter of 4 April 2022 is a “*decision*” for the purposes of Article 39.4 of the General Statutes and Article I-229 of the Internal Regulations, the concept of “*decision*” needs to be clarified.
106. The General Statutes and the Internal Regulations do not contain any definition in that respect. As a result, the Sole Arbitrator has to turn to the concept that could be identified on the basis of the law applicable to the General Statutes and the Internal Regulations, *i.e.* Swiss law. As in fact indicated by Article 2.2 of the General Statutes, “*FIBA is subject to the laws of Switzerland.*”
107. The Sole Arbitrator remarks that the definition of the concept and the identification of the characteristic features of a “*decision*” under Swiss law were explored in several CAS precedents. The Sole Arbitrator endorses such CAS jurisprudence, according to which:
- the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal (see CAS 2015/A/4213; CAS 2008/A/1633; CAS 2007/A/1251). However,

the form of communication may offer an indication of the intent of the body issuing it (CAS 2005/A/899);

- in principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties (see CAS 2012/A/2750; CAS 2008/A/1633; CAS 2007/A/1251);
- a decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects (see CAS 2008/A/1633 para. 31; CAS 2004/A/748 para. 89);
- an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an “animus decidendi”, *i.e.* an intention of a body of the association to decide on a matter [...]. A simple information, which does not contain any “ruling”, cannot be considered a decision (CAS 2015/A/4213; CAS 2008/A/1633);
- a letter which does not contain any formal decision but only an opinion of the administration of the international federation is not a decision as long as it has purely informative character and does not prejudice any future decision by any deciding body (CAS 2008/A/1633).

108. The principles so established correspond to those recognized by the SFT, which confirmed that under Swiss law a “*decision*” is an act of authority directed at an individual, which definitively resolves a legal situation in a binding and obligatory manner. A “*decision*”, in other words, must have direct legal effects on both the issuing authority and the recipient (ATF 101 Ia 73).

109. In light of the foregoing, the Sole Arbitrator finds that the Letter of 4 April 2022 does not qualify as a “*decision*” for the purposes of Article 39.4 of the General Statutes and Article I-229 of the Internal Regulations. Such conclusion is based on its content and effects, explained by the context in which it was sent.

110. The Sole Arbitrator notes in this regard that:

- i. on 18 August 2021, the Player filed her Complaint, addressed to the Ethics Panel and the Disciplinary Panel of FIBA, seeking relief against the Respondents (§ 16 above). A supplemental submission to the Complaint was then filed on 14 January 2022 (§ 22 above). In the meantime, correspondence had been exchanged with respect to the powers of attorney of the Player’s counsel (§§ 17, 19-20 above);
- ii. on 24 January 2022, FIBA replied to the Complaint (§ 23 above);
- iii. on 20 February 2022, Mr Lamboy wrote a letter to the Player, the Secretary General and the members of the Central Board and of the Executive Committee “*on behalf of and under the instructions of the FIBA Ethics Panel members*” with “*the purpose [...] to present the status of proceedings and require the parties’ position regarding pending matters*” (§ 24 above). In particular, that letter indicated that the Ethics Panel had recently lost a member with the death of Mr Gerasime Bozikis, that 2 other members had passed away in November 2020 and in August 2021, and that



therefore, with the death of Mr Bozikis, the Ethics Panel had been left with just 2 members, below the minimum composition of 3 members required by the General Statutes. Therefore 2 options for further proceedings before the Ethics Panel were offered: stay the proceedings until the appointment of new members; or proceed with only 2 members on the basis of the parties’ agreement;

- iv. on 20 February 2022, the Player rejected these options and in turn proposed that the Complaint be directly submitted to the Disciplinary Panel or directly referred to arbitration at CAS (§ 25 above);
  - v. in the Letter of 4 April 2022, Mr Lamboy, writing again upon instructions of the members of the Ethics Panel, communicated to the Player, the Secretary General and the members of the Central Board and of the Executive Committee that, in the absence of an agreement by the Player for the Ethics Panel to act under a reduced composition, the case brought by the Player with the Complaint was stayed until further notice, pending either: (a) the appointment by the FIBA Congress of at least one additional member of the Ethics Panel or (b) any other joint proposal by the Parties to resume the proceedings in the reduced composition (§ 27 above).
111. The above shows that the Letter of 4 April 2022 was issued by Mr Lamboy, upon instructions of the 2 “surviving” members of the Ethics Panel, in the context of a procedural discussion on how to proceed with the examination of the Complaint. Alternative options were proposed on one side by Mr Lamboy for the members of the Ethics Panel and on the other side by the Player, but no agreement on any of them was found. Therefore, the proceedings for the examination of the Complaint by the Ethics Panel were stayed until the appointment of its new members, moment in which those proceedings could be resumed. In that regard, the Sole Arbitrator notes that at the Congress held on 23 and 24 August 2023, new members of the Ethics Panel were appointed (§ 33 above), and the Ethics Panel resumed its operational capacity and was in a position to examine the merits of the Complaint (see below at § 113(i) with respect to the criticism of the Appellant to the capacity of the new members of the Ethics Panel to exercise independent judgment).
112. As a result, the Sole Arbitrator holds that, in the Letter of 4 April 2022, FIBA (through Mr Lamboy) did not dispose in any way of the Complaint: the Letter of 4 April 2022 only addressed a procedural point, without deciding on the Complaint. In fact, a decision on its merits remained (and still is) possible by the competent FIBA bodies, *i.e.* the Ethics Panel and the Disciplinary Panel. In other words, the Letter of 4 April 2022 did not contain a ruling affecting the legal situation of the Appellant, since it did not conclude the proceedings before the Ethics Panel and thus did not conclusively impact on the rights or obligations of the parties involved in the proceedings started by the Complaint.
113. In support of her claim that the Appeals Panel had jurisdiction to hear her appeal against the Letter of 4 April 2022, the Appellant advances some other reasons. The Sole Arbitrator however does not find them sufficient to ground the jurisdiction of the Appeals Panel to hear an appeal against a “pronouncement” that did not qualify as a “*decision*” for the purposes of Article 39.4 of the General Statutes and Article I-229 of the Internal Regulations. In fact:

- i. the Appellant submits that the Appeals Panel had to find that it had jurisdiction to hear the appeal against the Letter of 4 April 2022, because, in her opinion, the Ethics Panel was ethically barred from deciding on the Complaint, as a result of the “serious” conflicts of interest of the members elected at the 2023 Congress, affecting the authority and legitimacy of the Ethics Panel. The Sole Arbitrator however finds such submission unconvincing. Without expressing any view on the actual existence of a “structural” or “personal” bias of the Ethics Panel or of its components against the Player (which should be proven beyond mere speculation or a self-serving approach), the Sole Arbitrator notes (a) that no “*decision*” was rendered by the Ethics Panel on the Complaint, (b) that the Appellant’s contentions cannot turn the Letter of 4 April 2022 into a “*decision*”, and (c) that no other legal basis is offered by the General Statutes or the Internal Regulations for the Appeals Panel to hear cases as a first instance deciding body because of the other competent body would be conflicted. The power of the Appeals Panel is limited by the General Statutes and the Internal Regulations to consider appeals against “*decisions*”;
  - ii. the Appellant submits that the Appeals Panel had to find that it had jurisdiction to hear the appeal against the Letter of 4 April 2022, because, in her opinion, FIBA waived the option to challenge the jurisdiction of the Appeals Panel. The Appellant invokes in support of her contention her legitimate expectations of a fair hearing and the reliance on the assurances that the Appeals Panel would hear her case. Essentially, the Appellant refers to the fact that FIBA agreed to pay the fees of the components of the Appeals Panel and only challenged the jurisdiction of that body two years later, after responding to orders and requesting extensions. The Sole Arbitrator finds also this contention to be factually and legally ungrounded. In fact:
    - the circumstance that FIBA paid the handling fee does not imply an acceptance of jurisdiction, as such action is perfectly consistent also with a request for a decision (made possible by the provision of funds) denying jurisdiction;
    - the delays in the proceedings before the Appeals Panel cannot be attributed to the Respondents. In fact, the Player requested the stay of the proceedings on 15 June 2022, on the same day as a procedural order had been issued, and resumed them only on 5 March 2024. The Respondents’ counsel, then, challenged the jurisdiction of the Appeals Panel on 9 April 2024;
    - by so doing, the Respondents challenged the Appeals Panel’s jurisdiction before engaging with the merits;
    - the Appellant’s alleged reliance on the Respondents’ attitude does not justify the Appeals Panel assuming jurisdiction, overriding rules which clearly establish the conditions under which the Appeals Panel has the power to hear appeals against decisions of other FIBA bodies.
114. As a result, the Letter of 4 April 2022, not being a “*decision*” for the purposes of Article 39.4 of the General Statutes and Article I-229 of the Internal Regulations, could not be appealed to the Appeals Panel, and no other legal grounds can be found to establish the jurisdiction of the Appeals Panel to hear an appeal against it.

### C. Conclusion on the Bifurcated Issue and Its Consequences

115. In light of the foregoing, the Sole Arbitrator concludes that the Appeals Panel correctly found that it had no jurisdiction to hear an appeal against the Letter of 4 April 2022. The Appeal against the Appealed Decision, to the extent the Appellant requested its setting aside, must therefore be dismissed.
116. In the CAS Court Office letter of 27 January 2025, the Sole Arbitrator invited the Respondents to specify in their Answer also the procedural consequences (with respect to the continuation of the present arbitration and the underlying dispute between the Parties) it would consider to be produced in the event the Appealed Decision is (a) confirmed or (b) set aside. In the letter sent by the CAS Court Office on 20 February 2025, then, the Appellant was given opportunity to reply to the Respondents’ Answer.
117. In light of the foregoing, and on the basis of the Parties’ submissions, the Sole Arbitrator has therefore to determine the consequences of the present Award.
118. The Sole Arbitrator notes that the Respondent submitted that in the event of confirmation of the Appealed Decision the entire appeal has to be dismissed and the arbitration terminated, because the examination of the Complaint could be resumed before the Ethics Panel. On the other hand, the Appellant submitted that multiple reasons, including her human rights, justify the exercise by this Sole Arbitrator of the *de novo* power of review of the dispute enjoyed by CAS pursuant to Article R57 of the CAS Code, making a prompt and final decision imperative:
  - i. “*legal personality and private life*”;
  - ii. “*right to non-discrimination*”;
  - iii. “*denial of justice*” (including excessive delays, and the violation of her right to be heard by an unbiased panel);
  - iv. “*failure to provide an effective remedy*”;
  - v. “*procedural economy*”;
  - vi. her “*vulnerability*”.
119. The Sole Arbitrator notes that the Appellant’s claim that her case is heard *de novo* by this Sole Arbitrator is premised on the setting aside of the Appealed Decision and is presented as an alternative to the referral of the case back to FIBA (see point 4 of the request for relief: § 73 above). In other words, the mentioned reasons are not presented in order to justify a claim (entirely unsubstantiated from a procedural point of view) that a decision on the merits of the Complaint be rendered by this Sole Arbitrator even in the case the Appealed Decision is confirmed. As a result, the Sole Arbitrator will not examine whether the Appellant’s fundamental rights were violated by FIBA, as claimed in the Complaint or in the proceedings it started. The Sole Arbitrator limits himself to conclude that the confirmation of the Appealed Decision produces the dismissal of the entire appeal to CAS and precludes the examination of all other claims submitted by the Appellant.
120. This conclusion, based purely on legal considerations, does not detract from the

appreciation of the Sole Arbitrator for all actions taken and the courage shown by the Player in coming forward and expose the dreadful situation in the Mali basketball. Her attitude must be commended and honoured irrespective of the findings in the present Award.

## **X. COSTS**

(...)

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by Ms Djelika “Mami” Tounkara on 2 October 2024 against the letter sent by Mr Lamboy on behalf of the FIBA Ethics Panel on 4 April 2022 is dismissed.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 15 April 2025

## **THE COURT OF ARBITRATION FOR SPORT**

Luigi Fumagalli  
Sole Arbitrator