



COURT OF ARBITRATION FOR SPORT (CAS)
TRIBUNAL ARBITRAL DU SPORT (TAS)
Ad hoc Division – Games of the XXIX Olympiad in Beijing

CAS arbitration N° CAS OG 08/007

FINAL AWARD
in the arbitration between

The Swedish National Olympic Committee (“SNOC”)

&

Ara Abrahamian (the “Athlete”)

(the "Applicants")

and

Fédération Internationale des Lutttes Associées (“FILA”)

Guillermo Orestes Molina Gonzales

Jean-Marc Petoud

Lee Ronald Mackay

(the "Respondents")

and

The International Olympic Committee (“IOC”)

(the "Interested Party")

1. BACKGROUND

- 1.1. This case involves the issue of what procedures, if any, international federations (“IFs”) must provide to athletes and others who protest events that occur during competition and thereafter. The case arises from a highly publicized incident relating to decisions made by officials in a semifinal wrestling bout.
- 1.2. On 19 August 2008 at 8:00 p.m., the Applicants filed an application before the *ad hoc* Division of CAS that raised three issues. The only one of relevance at this point is a claim by the Applicants that FILA does not have and did not apply proper internal appeal procedures. In the initial application, the Applicants’ main grievance was the giving of a warning to the wrestler with retrospective effect after, rather than during, the second period of the bout, and the Applicants sought the disqualification of the judges and referees involved in the bout from their further participation in the XXIXth Olympiad.
- 1.3. On 20 August 2008, in accordance with Art. 11 of the *ad hoc* Rules, a CAS Arbitration Panel was constituted as follows:

Mr David W. Rivkin, Attorney-at-law in New York, USA (President of the Panel)
Mr Thomas Lee, Attorney-at-law in Kuala Lumpur, Malaysia (Arbitrator)
Mr Michael J. Beloff QC, Barrister in London, United Kingdom (Arbitrator)
- 1.4. On 20 August 2008, the CAS wrote to the Chef de Mission of the Swedish National Olympic Committee, FILA, and the International Olympic Committee (IOC), acknowledging receipt of the application to the *ad hoc* Division of the CAS, and issuing procedural directions to the parties.
- 1.5. The Panel advised the parties and the IOC that it had identified the IOC as an Interested Party based upon the relief then requested.
- 1.6. The Panel issued the following evidentiary requests, arising out of the original application, to the parties in accordance with Art. 15 of the CAS *ad hoc* Rules:
 - (i) The Applicants were invited to indicate to the CAS, “before 3 p.m. (Beijing time) [on] 20 August 2008 on what basis they contended that the CAS has the power to

grant the relief requested in the Applicants' Application, either under the applicable FILA Rules, the Olympic Charter, or otherwise";

- (ii) The Applicants were also invited to indicate “*whether any application has been made by the Applicants to the IOC Executive Board under Art. 23.2 of the Olympic Charter*” (and if so, to provide a copy of same before 3 p.m. Beijing time on 20 August 2008).

1.7. Additionally, the Panel invited the IOC to confirm to the CAS by 3 p.m. Beijing time, 20 August 2008, whether the Applicants had made any such application to the IOC.

1.8. On 20 August 2008, at 1:01 p.m., Mr Howard Stupp, Director of Legal Affairs of the IOC, advised the CAS that “*the IOC has not received an application from the Applicants to the IOC Executive Board under Rule 23.2 of the Olympic Charter.*”

1.9. On 20 August 2008, at 2:59 p.m., Mr Stefan Lindeberg, the Chef de Mission of the Swedish Olympic Delegation, wrote to the CAS in the following terms:

On the 16th of August the Swedish NOC wrote a letter to the IOC President to confirm our respect for the decision taken by the Executive Board concerning the wrestler Ara Abrahamiam (attached).

At the same time we urged the IOC to deeply investigate what happened in and around the Bout 112 on the 14th of August. As a response on this we the 17th of August received a letter from the IOC President that included the following encouragement:

“...the Swedish Wrestling National Federation through the Wrestling National Committee to obtain full account of both the judgement and procedure followed by FILA. According to the Olympic Charter it is the role and responsibility of the international federations to manage the technical aspects of their sports at the Olympic Games....”

In that situation we had already exhausted the possibilities through the FILA and asked Christophe Dubi for advice, stressing the fact that this was not an issue concerning the judgement per se but the procedures during and after the Bout. Later we got the advice from him to contact CAS. And after talking to the general secretary of CAS we decided to file an application.

However we would like to change our request for relief in the application to: With reference to the obstructions described above we request that CAS after establishing its conclusions concerning breaches of the FILA rules respective the Olympic Charter submit these conclusions to the IOC and the FILA for each organisation to take appropriate actions within their respective jurisdictions. [Emphasis added]

- 1.10. In the 16 August 2008 letter referenced in Mr. Lindeberg's email, the SNOC also informed the IOC that it would not challenge the latter's decision to disqualify the Athlete and to withdraw his gold medal.
- 1.11. Mr Lindeberg sent another e-mail to the CAS at the same time, which attached "*the response from the IOC President quoted in my answer earlier*". That letter from the IOC President, dated 18 August 2008, read as follows:

Dear President Lindeberg,

I would like to acknowledge receipt of your letter related to the decision made by the IOC regarding the withdrawal of medal to Mr Abrahamian.

We thank you for the attitude of the Swedish Olympic Committee, from the hearing to your latest message, which demonstrates full respect to the ethical and Olympic values.

Regarding the match 112, we encourage the Swedish Wrestling National Federation through the Wrestling National Committee to obtain a full account of both the judgment and procedure followed by FILA.

According to the Olympic Charter, it is the role and responsibility of the International Federations to manage the technical aspects of their sports at the Olympic Games.

Should you have any question regarding the above, the Olympic Games Executive Director and Sports Director of the IOC remain at your disposal for further clarification.

- 1.12. On 20 August 2008, the Panel wrote a further letter to the parties, which advised them that it had reviewed the Applicants' emails in response to the *ad hoc* Division's letter earlier that day, and in light of Applicants' revision to the relief requested, the Panel considered that the issue it had to decide was the following:

- Did FILA's consideration of Applicants' requests (a) to change the result of the bout and (b) to sanction the officials involved in the bout, comply with the Olympic Charter (specifically, by-laws 4.2 and 4.3 of Rule 47) and FILA's own internal rules (including but not limited to the Constitution, Disciplinary Regulations, Wrestling Rules and the Code of Ethics).

This issue includes the following questions:

- Did FILA give any consideration to Applicants' requests other than is stated in the email sent by Mr Raphael Martinetti [President of FILA] on 14 August 2008 (attached as Exhibit G to the Application) ?

- Does either the Olympic Charter or FILA's internal rules require FILA to do anything more than what FILA did (such as, for example, to create an appeal jury)?

1.13. The Panel further advised the parties that in order to determine this issue, the Panel would hold a hearing at the offices of the *ad hoc* Division on Friday 22 August 2008 at 9am, but would not consider the actions of the officials at the bout itself.

1.14. The Panel indicated that it would be grateful to receive in advance of the hearing any written submissions that the parties might wish to provide on the issue to be determined.

1.15. On 21 August 2008 at 10:58 a.m., Mr. Martinetti, President of FILA, sent an email to the CAS, which stated in relevant part,

La Fila conteste les affirmations du CNO Suédois devant le TAS dans une situation qui est dans son champ de compétences.

La FILA va d'autre part engager les procédures disciplinaires prévues à l'encontre de l'athlète, l'entraîneur et la Fédération Nationale concernés pour leurs accusations mensongères et leur comportement anti sportif et contraires à nos règles et celles du CIO.

Il nous semble prématuré d'avoir une audience dès à présent avec le TAS, alors que la FILA est toujours en train de traiter ce cas à l'interne.

Les dirigeants de la FILA, moi y inclus, ainsi que les juges arbitres quitteront Pékin le 22 aout au matin.

1.16. In broad translation, Mr. Martinetti there stated: "FILA disputed the Swedish NOC's allegations before the CAS, with which FILA has the competence to deal. FILA would initiate the proper disciplinary procedures against the athlete, the coach, and the National Federation concerning their false accusations and their unsportsmanlike conduct which are contrary to FILA's regulations and those of the IOC. In FILA's opinion, it was premature to hold a hearing before the CAS while the internal investigation in FILA was ongoing."

1.17. While the precise nature of the disciplinary proceedings to which Mr. Martinetti refers is unclear, those proceedings, putting it at its lowest, are not a reason to defer the hearing or not to determine the issue on which the Panel has been asked to rule.

- 1.18. The Panel reiterated to FILA its invitation to provide written comments to the questions raised by the Panel (see paragraph 1.12 above) in order to give FILA a full opportunity to assist the Panel to deal with the issue and to state its own position on the case made against it.
- 1.19. On 21 August 2008, FILA corresponded with the CAS and indicated it was unavailable to attend the hearing at the proposed time and date. In order to allow the attendance of FILA's officials at the hearing, the Panel offered a different time that would be suitable to all parties. FILA repeated that it would not attend the hearing.
- 1.20. Accordingly, on 22 August 2008, the Panel held a hearing at 9:00 a.m. in the offices of the CAS *ad hoc* Division in Beijing, China. The following attended: for the Applicants, Mr. Stefan Lindeberg, Chef de Mission for SNOC; for the Interested Party, the IOC, Mr. Howard Stupp and Mr. François Carrard. We are grateful for their concise and helpful submissions. No representative of FILA attended.

2. FACTS

- 2.1 On 14 August 2008, the Men's Greco Roman 84 kg semi-final (Bout 112) took place between the Athlete, Abrahamian, a Swedish national, and the Italian wrestler, Andrea Minguzzi ("Minguzzi"). Under FILA rules, there are several officials with defined responsibilities at each bout: a referee, a judge, and a mat chairman.
- 2.2 Minguzzi won the first period of the bout. At 1 min 41 sec of the second period, the referee gave notice that he wanted to give Abrahamian a warning about his actions during the bout. The notice was opposed by the judge. The mat chairman took no further action, and the bout continued. At the end of the period, Abrahamian was given one point for maintaining a particular stance during the period. Because Minguzzi did not win any points during that period, Abrahamian would have been the winner of the period. Therefore, a third period would ordinarily have been necessary to determine the winner of the bout overall.
- 2.3 However, after the second period had ended, the mat chairman sought support from both the judge and the referee to give Abrahamian a warning. The officials then

- agreed on the warning, which resulted in Abrahamian losing a point and Minguzzi gaining a point. As a result, Minguzzi won the second period and therefore the match.
- 2.4 The Swedish coach immediately requested a “video check”, as provided in the FILA rules, in order to ascertain whether the warning was justified, but his request was denied.
- 2.5 Directly following the bout, Leo Mylläri, the Swedish head coach, and the assistant Chef de Mission, Glenn Osth, attempted to file a formal protest to FILA and the competition committee regarding an alleged departure from procedures by the bout’s officials from procedures. FILA refused to take receipt of the protest.
- 2.6 Several further communications passed among the Swedish delegation, FILA and the IOC. By email of 14 August 2008, the Applicants sought first, a change in the result of the bout and subsequently on the basis that there was no longer time “*to contest the outcome of the tournament*”, “*a penalty*” for the officials involved in the bout. FILA did not, however, take any action. Mr. Martinetti stated in an email to the IOC of the same date, which was allegedly copied to the wrong address of the Applicants. “*J’ai personnellement visionné la vidéo de la situation contestée avec les juges-arbitres du match et les deux responsables de l’arbitrage des Jeux. [...] Toute cette procédure est conforme aux règles de la lutte et la protestation des Suédois est irrecevable.*” (Broadly translated: “I have personally looked at the video of the disputed event with the judge-referees of the match and the two responsible for the refereeing the Games. ... All of the procedure is in conformity with the rules of the bout, and the Swedish protest cannot be entertained.”)
- 2.7 The Applicants allege that at various stages, FILA has offered three different and contradictory reasons for the penalty imposed on Abrahamian: “blocking the arm”, “fleeing the mat”, and taking hold of the fingers of the Italian wrestler to prevent further action, which has excited further their concerns.
- 2.8 While the IOC was informed of, and participated in some of these communications, the Applicants have not presented evidence of any formal application to the IOC for any particular relief, including the relief originally sought in this Application to

disqualify the match officials.

- 2.9 On 14 August 2008, in the meantime, Abrahamian won the bronze medal match. At the medal ceremony, immediately thereafter, Abrahamian took off his medal, placed it on the wrestling mat, and left the arena.
- 2.10 On 16 August 2008, pursuant to the provisions of Rule 23.2.1 of the Olympic Charter, the IOC Disciplinary Commission disqualified Abrahamian and stripped him of his medal for his misbehaviour at the ceremony.

3. PARTIES' ARGUMENTS

- 3.1 The Applicants argue that the actions by the mat chairman, the referee, and the judge during Bout 112 were “*not in accordance with the ethical principles for the Olympic Movement and the principles of fair play as expressed in the Olympic Charter.*”¹
- 3.2 Furthermore, the Applicants complain about an alleged inadequacy in the FILA rules from the perspective of the athlete, because they do not allow for technical protests.
- 3.3 The Applicants also argue that FILA’s failure to consider the protests raised by the Applicants contradicts the text and principles of the Olympic Charter..
- 3.4 In support of this contention, the SNOC relies on the fact that, according to Mr. Martinetti’s email of 14 August 2008, he personally reviewed the decision with the match officials. SNOC states that this is contrary to Rule 47, by-laws 4.2 and 4.3 of the Olympic Charter, which state,
- 4.2 ...a jury for appeal for each sport are appointed by the IF concerned;*
- 4.3 No official who has participated in a decision may be a member of the jury responsible for making ruling on the resulting dispute.*
- 3.5 Other than the emails described above (see paras. 1.15 and 2.6 above), the Respondent FILA has not made any formal submissions despite the Panel’s invitation to do so and the Panel’s willingness to adjust the hearing schedule to suit FILA’s convenience.

¹ Attachment to Application to CAS, Ad hoc Division of Applicants at pg. 3.

3.6 As a result of the amended relief now sought by the Applicants, they no longer have any claims against the individual Respondents. The claims against those Respondents are therefore withdrawn.

4. JURISDICTION AND THE APPLICABLE LAW

a. Jurisdiction Provisions

4.1 These proceedings are governed by the CAS Arbitration Rules for the Olympic Games (the “CAS ad hoc Rules”) enacted by the International Council of Arbitration for Sport (“ICAS”) on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in article 14 of the CAS ad hoc Rules, and as a result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of arbitrators, pursuant to article 7 of the CAS ad hoc Rules.

4.2 The jurisdiction of the CAS ad hoc Division in relation to the Athlete arises out of the entry form signed by each and every participant in the Olympic Games and from Rule 59 of the Olympic Charter. Jurisdiction over SNOC arises from Rules 3.1, 28, and 59 of the same Charter. Jurisdiction over FILA arises from Rules 3.3, 26, 27 and 59 of the same Charter(see CAS OG/08/03 para. 4.21.).

4.3 Under article 17 of the CAS ad hoc Rules, the Panel must decide the dispute “*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate.*”

4.4 Under article 16 of the CAS ad hoc Rules, the Panel has “*full power to establish the facts on which the application is based.*”

b. Legal Instruments

4.5 We set out below, the provisions of the legal instruments that are of relevance to the issues that we have identified.

4.6 The applicable provisions of the Olympic Charter:

Fundamental Principles of Olympism

4. The practice of sport is a human right. Every **individual must have the possibility of practising sport**, without discrimination of any kind and **in the Olympic spirit, which requires** mutual understanding with a spirit of friendship, solidarity and **fair play**. The organisation, administration and management of sport must be controlled by independent sports organisations. [Emphasis added]

47. Technical responsibilities of the IFs at the Olympic Games

1. Each IF is responsible for the technical control and direction of its sport at the Olympic Games; all elements of the competitions, including the schedule, field of play, training sites and all equipment must comply with its rules. The holding of all events in each sport is placed under the direct responsibility of the IF concerned.

By-law to Rule 47

1. Technical arrangements at the Olympic Games:

The IFs have the following rights and responsibilities regarding the technical arrangements at the Olympic Games:

1.1 To establish the technical rules of their own sports, disciplines and events, including, but not limited to, [...] rules of technical movements, exercises or games, rules of technical disqualification and rules of judging and timing.

1.3 Subject to the IOC's authority, to exercise technical jurisdiction over the competition[...] of their respective sports during the competition [...] at the Olympic Games.

4. Further provisions regarding technical arrangements:

*4.2 The necessary technical officials (referees, judges, timekeepers, inspectors) **and a jury of appeal for each sport are appointed by the IF concerned**, within the limit of the total number set by the IOC Executive Board upon the recommendation of the IF concerned. They perform their tasks in accordance with the directions of such IF and in coordination with the OCOG. [Emphasis added]*

*4.3 **No official who has participated in a decision may be a member of the jury responsible for making a ruling on the resulting dispute.** [Emphasis added]*

4.4 The findings of the juries must be communicated to the IOC Executive Board as soon as possible.

4.5 Juries make a ruling on all technical questions concerning their respective sports, and their decisions, including any related sanctions, are without appeal, without prejudice to further measures and sanctions which may be decided by the IOC Executive Board or Session.

4.7 The applicable provisions of the FILA Constitution:

Article 36 – Disciplinary procedure

a) Introduction

In order to deal with legal disputes in sporting matters which cannot be settled by FILA's judicial bodies, an arbitration institution called the "Court of Arbitration for Sport" (CAS) has been created under the aegis of the International Council of Arbitration for Sports (ICAS).

b) Procedure

In the event of an infringement of the FILA Constitution, Wrestling Rules and other Regulations, a case will be opened and measures taken. FILA's disciplinary bodies are as follows:

- The FILA attorney*
- The Sporting Judge – the only judge*
- The FILA Sporting Appeal Commission (three members)*

Members are nominated to these posts by the FILA Bureau at the suggestion of the FILA President.

*The FILA judicial bodies decide whether leave to appeal the first decision will be given. Affiliated National Federations and all the FILA members (FILA Bureau members, **wrestlers, coaches, referees, doctors and leaders**), through their FILA membership, **can appeal only to FILA in the event of disputes arising from the current Constitution and all the FILA Regulations or of all sporting conflicts which can arise between them and which they cannot settle amicably.** [Emphasis added]*

c) Appeal against the decision

Conflicts between FILA and one of its members or between members among themselves which are not resolved by a decision of the FILA Sports Judge, Disciplinary Commission or FILA Bureau will be submitted to the CAS for judgment, any state jurisdiction being excluded. As a last resort, the "Court of Arbitration for Sport" (CAS) will decide and judge all the valid appeals which are submitted to it by the affiliated National Federation or one of the FILA members against the decision(s) made by the FILA Sports Judge, the Disciplinary Commission or the FILA Bureau.

The appellants must be willing to conform exclusively to the CAS Constitution and Regulations and to the decision it makes.

4.8 The applicable provisions of the FILA Disciplinary Regulations:

TITLE 1 –

GENERAL PRINCIPLES

ARTICLE 1 PURPOSE

...

*The aim followed in order to obtain respect for the FILA Constitution and Regulations, as well as the respect of the principles derived from the provisions of sports jurisdictions, is **the requirement of a particular concept of “fair-play”** as a firm opposition to all form of sport offences [...] (emphasis added)*

TITLE III – REFEREES

ARTICLE 40 DISCIPLINARY ACTIONS

The sentences imposed on referees are :

- *warning*
- *reprimand*
- *suspension from functions throughout the competition*
- *banned from officiating in international events for 6 months to two years*
- *expulsion from the list of international referees*

ARTICLE 42 EXCLUSION

Any referee convicted of partiality and injustice while performing his duties as a referee will be excluded from the FILA for life.

4.9 The applicable provisions of the Code of Ethics:

Introduction

The International Federation of Associated Wrestling Styles (FILA) and all of its members [...] must re-affirm their acknowledgment of the FILA Constitution and its ensuing Regulations, the Olympic charter and its fundamental principles.

A. Dignity

1. Safeguarding the dignity of the human person is a fundamental requirement of Olympism and associative of life.

G. Implementation

1. *All the FILA parties will take care to apply the principles and Rules defined in the FILA Constitution and Regulations and in this Code.*

4.10 The applicable provisions of FILA International Wrestling Rules:

CHAPTER 4 - OFFICIALS

Article 16 Composition

In all competitions, the officials for each bout shall consist of the following:

- *1 mat chairman*
- *1 referee*

- 1 judge

i.e.: three officials qualified or designated by the Regulations for international judges and referees.

Article 17 General duties

a) Officials shall perform all the duties set forth in the Regulations governing wrestling competitions and in any special provisions which might be established for the organisation of particular competitions.

It is the duty of officials to follow each bout very carefully and to evaluate the actions of the wrestlers so that the results shown on the judge's score sheet accurately reflect the specific nature of said bout.

b) The mat chairman, referee and judge shall evaluate the holds individually in order to arrive at a final decision. The referee and judge must work together under the direction of the mat chairman, who co-ordinates the work of the officials.

c) It is the duty of the officials to assume all of the functions of refereeing and judging, to award points and to impose the penalties stipulated in the Rules.

Article 21 The mat chairman

.....

g) During a bout, if the mat chairman notes a serious error on the part of the judge and the referee, and he does not agree with them, he must interrupt the bout. With the agreement of the judge or referee if they accept their errors, he must review the video session and make the decision exactly. On the contrary, the decision cannot be modified.

.....

Article 22 The Person responsible for refereeing

In all Olympic Games, [...] two members of the Refereeing Department will be nominated to supervise all refereeing matters.

In case of dispute and after viewing the video, if the person responsible for refereeing agrees with the mat chairman, their decision will be applicable.

Article 23 Penalties against the officials

The FILA Bureau, which constitutes the supreme jury, shall have the right to take the following disciplinary measures against the official(s) technically at fault:

- 1) Give the official concerned a caution*
- 2) Withdraw the official from the competition*

- 3) *Demote the official to a lower category*
- 4) *Order a temporary suspension*
- 5) *Order a final dismissal*

4.11 The applicable provisions of FILA Regulations for the International Refereeing Body:

Article 26 TECHNICAL FUNCTIONS

The FILA mat chairman provides his technical functions under the following conditions and must: . . .

- *ask for the match to be interrupted and invite the judge and the referee to provide their explanations if they transgress the rules*
- *stop the match and ask the judge and the referee to comply with the rules if they are not assuming their functions in conformity with the Regulations or they prevent the match or the wrestlers from being evaluated correctly*
- *have the casting vote and make the final decision if there is a difference of opinion between the decision of the judge and the referee concerning the points awarded for an action, the issuing of a warning, disqualification or the result of the match*
- *examine immediately the video evidence in case of obvious dispute in the presence of both the judge and referee*

5 CONSIDERATION OF THE ISSUES

- 5.1 Given the somewhat tortuous nature of the developing background of this application, it is useful to set in context what we are asked to decide.
- 5.2 The Applicants do not challenge here the decision of the bout officials to give Abrahamian a warning and to remove his point.
- 5.3 The Applicants do not challenge either the disqualification of Abrahamian or the forfeit of his medal. As noted above (para 1.10), the SNOC told the IOC that it would not challenge that decision.
- 5.4 The Applicants also no longer seek the remedy originally requested: to disqualify the bout officials from further participation at the XXIXth Olympiad.
- 5.5 As set out in paragraph 1.9 above, the Applicants have amended their prayer for relief. Their request for relief is now directed solely at the process by which FILA handled their requests for action to be taken. In particular, the Applicants urge that the refusal of the president of FILA to accept those protests (as indicated in his email of 14 August 2008 to which we have referred to in paragraph 2.6 above) violated the Athlete's legitimate rights or expectations.
- 5.6 Thus, we must decide whether FILA's failure to provide an appeal jury or similar mechanism to consider issues that arise in competition violates the Olympic Charter and FILA's own rules about fair play.
- 5.7 As described above, the Athlete and Swedish officials immediately protested the decision of the bout officials to issue a penalty to the Athlete. After their request for a video check was denied, they asked FILA to review the decision. President Martinetti subsequently informed the IOC that he had personally reviewed the video and the decision *with, among others, the bout officials* (in apparent violation of by-law 4.3 to Rule 47 of the Olympic Charter). There was apparently, however, no formal mechanism for review of the bout officials' determination, or at least no such review was in fact properly undertaken.

- 5.8 At the oral hearing, Mr. Lindeberg, on behalf of the Applicants, made clear that he was not contending that all bout official decisions had to be reviewable by an appeal jury. He accepted, appropriately in our view, that it could be cumbersome, time-consuming and inappropriate for all “field of play” decisions made by officials to be reviewable by a jury. He contended instead that there ought to be a jury of appeal to consider allegations of departures from proper procedures by match officials. He also argued that, whatever might be the position in other competitions, this was certainly required in the Olympic Games by reason of the express provisions of the Olympic Charter.
- 5.9 In the context of this case, Mr. Lindeberg made clear that the Applicants were not complaining that there was no mechanism for challenging the officials’ decision that Abrahamian deserved a penalty (although they continue to urge that the penalty was unjustified), but rather that there was no mechanism for challenging the officials’ decision to impose that penalty *after the second period of the bout had ended*, allegedly in violation of FILA’s rules.
- 5.10 We note that the distinction, reflected in his submission, between an erroneous application of a rule and actual non-compliance with it, whether as a result of misinterpretation or otherwise, is well drawn in CAS jurisprudence (see CAS 2000/A/305 paras 3-6 and CAS 2000/A/304 paras 16-17).
- 5.11 The FILA international wrestling rules do provide for a species of hierarchical controls of field of play decisions (see in particular articles 17, 20, 21 and 26 of FILA international wrestling rules). These include the use of video evidence in the case of obvious dispute, a facility which the Applicants assert was not made use of in this occasion despite their express request. FILA’s rules provide, however, no further mechanism of appeal, even if the complaint is not merely one of wrong exercise of judgment or discretion within the framework of rules properly construed, but of actual departure from them. At the hearing, it was stated that FILA eliminated appeal juries following the Sydney Olympiad, in order to prevent undue interruption of bouts. (In the absence of any submissions from FILA, we lack any complete or formal explanation of this policy change.)

- 5.12 At first blush, this appears to us to be unfair to an athlete who, while naturally subject to the lawful rules of the sport in which he participates, has an expectation that those rules will be followed and that there be a remedy available to him if they are not.
- 5.13 This instinctive sense of what fairness may require receives explicit support in the provisions of by-law 4.2 to Rule 47 of the Olympic Charter, which has not, to our knowledge or that of the highly experienced IOC representatives who appeared before us, been the subject of previous judicial or arbitral interpretation. In our view, by-law 4.2 read, in particular in the context of its adjacent by-laws, either requires or assumes that International Federations will appoint juries of appeal. The reference in that by-law to a jury of appeal (as distinct from the reference to other officials) is not qualified by the adjective “necessary”; and the limits to the number of officials to be set thereunder by the IOC upon recommendation of the IF, does not, it seems to us, justify as a matter of construction, a complete absence of any jurors at all.
- 5.14 We also draw attention to the Fundamental Principles of Olympism of the Olympic Charter, which include at paragraph 4 that “*every individual must have the possibility of practising sport...in the Olympic spirit, which requires fair play*”. [Article 1 of FILA’s Disciplinary Regulations also incorporates the important concept of “fair play”.] This concept of fair play has been given a generous interpretation by CAS (see OG/Atlanta arbitration #005 para. 18) and, in our view, embraces fair play to, as well as by, athletes, and off the field as well as on it. The principles of Olympism must axiomatically inform an interpretation of the substantive rules and by-laws of the Charter.
- 5.15 We take comfort from the fact, that in our experience, confirmed by the submissions made to us both by the Applicants and the IOC, juries of appeal are a common feature in Olympic sports, especially where fine issues of subjective judgment may arise. Prior CAS ad hoc Division awards have often considered the decisions made by appeal juries in various sports. (See e.g. CAS OG 04/007 para 7.2.) The rules of those sports may distinguish between certain decisions that may be appealed to such a jury and others that may not.

- 5.16 As the Olympic Charter states and as Applicants agreed at the hearing, each IF has the power and the duty to determine how to conduct its sport, and that includes determining which types of disputes may or may not be brought to a jury of appeal. However, for the reasons we describe above, we conclude that the Applicants' complaint is well-founded insofar as it concerns the absence of *any* mechanism to deal with an alleged departure from FILA's own rules in connection with the adjudication of a bout. The objection by the Applicants, particular to the present case, is no mere technical one. We appreciate the force of the submission that to deduct a point after a period within a bout, as distinct from during it – the main departure from the rules here complained of – can prejudice the athlete who is entitled to know, if possible, where he stands at any point in time if this may bear on his subsequent sporting strategy (see the arguments alluded to in the 2004 gymnastics case, CAS 2004/A/704 para 3.9).
- 5.17 As we have stated, the Applicants have made it clear that they are not challenging the technical judgment per se, and in any event, given the fact that the removal of the individual's applicant's medal is also unchallenged, it would be pointless for them to do so. Accordingly, we limit ourselves to ruling that FILA must, consistently with the Charter and general principles of fairness, establish for the future a jury of appeal to determine the validity or otherwise of complaints of the kind ventilated by the Applicants in this matter: i.e. of departure from FILA's own rules. (In any event, as will appear from the balance of our award, the validity or otherwise of the Applicants' substantive complaints will need to be investigated in the context of the disciplinary process upon which they have requested FILA to embark.)
- 5.18 We note that it is possible that Article 22 of the FILA Wrestling Rules, quoted above, may provide such a mechanism, at least at the Olympic Games. Because FILA chose not to appear, we have received no guidance on the purpose or use of this rule or whether it was properly invoked in these circumstances. (see also paragraph 5.7 above)
- 5.19 In the original application, the Applicants asked the Panel itself to impose sanctions against the bout officials, and as noted, that request for relief was withdrawn in favour of a more general request asking us to "*establish [...] conclusions concerning breaches*

of the FILA Rules". One such breach brought to our attention was FILA's failure to act upon the Applicants' request that it sanction the bout officials (see paragraph 2.6 above). Article 36 of the FILA Constitution provides a mechanism to deal with such disputes between, among others, FILA members (like the athletes, the Swedish Wrestling Federation and FILA). The first part of this article contemplates, on our analysis, that there must be a trigger of a material infringement of some aspect of the FILA legal instruments before such process is instituted. Unless and until a jury of appeal (or other appropriate person or body) has determined that such an infringement has indeed taken place, that part cannot be invoked. However, the second part of the article is (whether designedly or otherwise) less confined. It provides generally that disputes arising between FILA members shall be referred to a FILA Sporting Appeal Commission composed of three members. In our view, it requires, as a matter of ordinary language, and materially to the present matter, no more than a dispute, and entitles FILA members (which would include the Athlete and his national federation) who have raised such dispute to have the disciplinary process engaged.

5.20 It suffices for us to say that the Athlete is accordingly entitled to have the process contemplated by Article 36 instituted (apparently, a 3-person Sport Appeal Commission) if he continues to wish for such a step to be taken. Inevitably, the body then seized of the matter will have to form a conclusion on the correctness or otherwise of the Applicants' complaint of departure from due procedures in the present matter, since, without such a departure, no disciplinary sanctions at all could sensibly be imposed on any official.

5.21 We should also add, that while we have no particulars of the disciplinary processes invoked against the Athletes and others by FILA referred to in Mr. Martinetti's email of 21 August 2008, such process must conform to the tenets of FILA's own instruments, including Article 36 of its Constitution as well as the principles of natural justice.

6 DECISION

- 6.1 FILA is required by the Olympic Charter and its own internal rules, to provide a procedure in its rules for an appeal jury (or some equivalent) to hear promptly claims by athletes or others affected that in a competition the relevant officials have not complied with FILA rules and procedures. Article 22 of its Wrestling Rules may provide such a procedure. If so, FILA should clarify that mechanism. In any event, FILA did not follow Article 22 properly, if at all, or provide any other appropriate appeal mechanism in this case. The Athlete is also entitled to invoke the disciplinary process contemplated by Article 36 of the Constitution.
- 6.2 To that extent, the Applicants' appeal is accepted. Any other claims made by Applicants, and not withdrawn, are hereby dismissed.

Beijing, 23 August 2008

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

David W. Rivkin
President of the Panel

Thomas Lee
Arbitrator

Michael J. Beloff QC
Arbitrator