SPORTS & ENTERTAINMENT LAW JOURNAL
ARIZONA STATE UNIVERSITY
VOLUME 14 SPRING 2025 ISSUE 2

AN OPINION PAPER

JUDICIAL ALCHEMY: HOW CASCADING PROCEDURAL FAILURES UPENDED THE JORDAN CHILES ARBITRATION AND REWROTE OLYMPIC HISTORY

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INTRODUCTION

At the Olympic Games Paris 2024, Jordan Chiles won the bronze medal in the Artistic Gymnastics Women's Floor Exercise Final after officials corrected a judging error in response to an inquiry from her coach. The inquiry questioned the difficulty score of her routine, and the officials' review confirmed the error, raising Chiles' score and altering the standings. Five days later, after the world had celebrated her medal-winning performance and Chiles had returned home to a hero's welcome, she learned it was all a big mistake. The Romanian Federation (FRG)[1] had challenged the final scoring by appealing to the Court of Arbitration for Sport (CAS)[2] which determined Chiles' coach had submitted the verbal inquiry four seconds late. CAS issued a decision (Ruling) instructing the

[1] The national governing body for gymnastics in Romania, the Romanian Gymnastics Federation (FRG) is responsible for representing the interests of Romanian gymnasts and organizing gymnastics activities within the country.

[2] To participate in the Olympics, each athlete and organization must agree to resolve all disputes through the Court of Arbitration for Sport (CAS) which was established by the IOC and is headquartered in Switzerland. For most Olympic sports, disputes are adjudicated in Switzerland, according to the CAS Code of Rules (CAS Code) and Switzerland's Private International Law Act (PILA).

For those subject to its jurisdiction in Olympic-related matters, CAS decisions are final and unappealable, except for limited grounds for appeal to the Swiss Federal Supreme Court (SFT). This exceptional autonomy, particularly in Olympic disputes, has led to criticism, as seen in the Chiles case.

International Gymnastics Federation (FIG)[3] to lower Chiles' score and recommending the International Olympic Committee (IOC)[4] "reallocate" her bronze medal to the Romanian gymnast, Ana Maria Barbosu, who had been in third place prior to the inquiry process.[5] Chiles has since appealed the Ruling to the Swiss Federal Supreme Court (SFT).[6]

The Chiles case raises an important question: How could such a scenario unfold at the Olympic Games, where well-established rules are in place to ensure fairness and finality? In fact, FIG rules address every aspect of gymnastics competitions, including the selection and training of officials, the judging process, and the

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[3] The International Gymnastics Federation, also known as the Fédération Internationale de Gymnastique, (FIG) is the global governing body for gymnastics. Headquartered in Switzerland, FIG sets competition rules, certifies judges, and organizes major gymnastics events, including the Olympics.

[4] Governed by the Olympic Charter, the International Olympic Committee (IOC) owns and controls the Olympics, delegating authority to IFs and NOCs for sport-specific and country-specific operations. It selects host cities and oversees the Local Organizing Committee (LOCOG). The IOC sets general eligibility requirements for the Games, while IFs determine sport-specific qualifications. NOCs, in turn, rely on NGBs to manage athlete selection.

[5] For clarity, this paper distinguishes among three closely related elements of the CAS matter involving Jordan Chiles. The term "Arbitration" refers to the entire dispute resolution process before the CAS Ad Hoc Division. "Ruling" refers to CAS's substantive decision to recommend reallocation of Chiles' medal. "Written Decision" refers to the formal, reasoned opinion issued on August 14, 2024, which forms the basis of the SFT's limited review.

[6] The Swiss Federal Supreme Court, also known as the Swiss Federal Tribunal (SFT) is Switzerland's highest court and the only court to which CAS decisions may be appealed. The permissible grounds for appeal are set forth in Article 190(2) of Chapter 12 of the Swiss Act on Private International Law (PILA), which provides as follows:

An arbitral award may be set aside only:

a. *Where the sole member of the arbitral tribunal was improperly appointed or the arbitral tribunal improperly constituted;*
b. *Where the arbitral tribunal wrongly accepted or declined jurisdiction;*
c. *Where the arbitral tribunal ruled beyond the claims;*
d. *Where the principle of equal treatment of the parties or their right to be heard in an adversary procedure were violated;*
e. *Where the award is incompatible with public policy.*

Bundesgesetz über das Internationale Privatrecht [Federal Act on Private International Law (PILA)] Dec. 18, 1987, SR 291, art. 190(2) (Switz.).

review and appeal of scoring. These rules establish an in-competition review process that grants coaches a limited right to challenge certain judging decisions within a specified timeframe after a gymnast's score is posted. Upon accepting such an inquiry, a Superior Jury[7]—composed of three senior-ranking FIG officials—conducts a video review, determines whether a judging error occurred, and renders a final, unappealable decision. In the Chiles case, FIG conducted this process entirely in accordance with its rules, and it is undisputed that the revised scoring accurately reflected the gymnasts' performances. This begs the question: What justified CAS's decision to override FIG's authority and alter the final Olympic results?

To fully grasp the implications of CAS's arbitration of the Chiles case, it is important to first examine the framework governing the Olympic dispute resolution process and CAS's unique role within it. Dispute resolution is central to the Olympic Movement, with all participants required to submit to the exclusive jurisdiction of CAS. Athletes must agree that CAS decisions are "*final, binding, and non-appealable*," except on limited procedural grounds subject to review by the SFT.[8] By waiving the right to litigate disputes in any other forum, athletes entrust CAS with significant authority over their rights.

Similarly, Olympic organizations must depend exclusively on CAS, with the Olympic Charter providing that disputes "*shall be submitted exclusively to the Court of Arbitration for Sport*."[9] Arbitrations at the Games are adjudicated by panels of CAS arbitrators "*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law*,"[10] and

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[7] A body of officials established under FIG Rules to oversee gymnastics competitions, address judging errors, and make final decisions on inquiries. In the Chiles case, the Superior Jury reviewed and corrected a judging error, raising her score to the third-place position. Its decisions are intended to be final and unappealable.

[8] OLYMPIC GAMES PARIS 2024, CONDITIONS OF PARTICIPATION FOR NOC DELEGATION MEMBERS, GAMES OF THE XXXIII OLYMPIAD PARIS 2024 5 (2024) [hereinafter Conditions of Participation] (discussing Section 7: Arbitration).

[9] INTERNATIONAL OLYMPIC COMMITTEE, OLYMPIC CHARTER: IN FORCE AS FROM 23 JULY 2024 108 (2024) [hereinafter Olympic Charter] (discussing Rule 61: Dispute Resolution).

The Olympic Charter is the governing document of the Olympic Movement, outlining its principles, rules, and regulations. The Charter emphasizes the independence of IFs and their responsibility to govern their respective sports.

[10] CT. ARB. FOR SPORT, ARBITRATION RULES FOR THE OLYMPIC GAMES art. 17 [hereinafter Ad Hoc Rules].

are governed by Chapter 12 of the Swiss Act on Private International Law (PILA).[11]

For disputes arising at the Olympics, CAS establishes an on-site Ad Hoc Division[12] (AHD) "*to provide in the interests of the athletes and of sport, the resolution by arbitration of any disputes*."[13] CAS devised a set of rules specifically for the AHD (CAS Arbitration Rules for the Olympic Games) to provide structure to its swift proceedings and safeguard the rights of all parties to participate and contribute to the resolution process (Ad Hoc Rules). The Ad Hoc Rules require arbitrators to "*give a decision within 24 hours of the lodging of the application*," though extensions are permitted in exceptional cases.[14] For more complex disputes, they allow referral to the CAS Appeals Division for adjudication under the Code of Sports-related Arbitration (CAS Code), which provides more time and structure and is not confined to the period of the Games.[15]

CAS decisions are reviewable only by the SFT on very limited bases, and they are rarely set aside. As a rule, those appealing a CAS decision are bound by the CAS panel's findings of fact unless such facts were established through a violation of Article 190(2) of PILA. In addition, the SFT will only review the merits of an award if it is incompatible with public policy. Therefore, CAS enjoys an exceptional level of autonomy in adjudicating disputes. For Olympic athletes, who have no choice but to submit to CAS arbitrations to participate in the Games, the fair resolution of disputes requires the AHD and its arbitrators to get it right the first time.

Given the stakes, case management is crucial to the AHD's dispute resolution process. From the outset of each case, the AHD must conform to its procedural rules to ensure that all parties fully understand the challenges and issues presented, can assemble relevant evidence, and are able to advance appropriate legal

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[11] PILA governs international arbitration proceedings, including those conducted by CAS. Under Article 190 of PILA, the Swiss Federal Tribunal (SFT) may review CAS awards for limited procedural violations. Bundesgesetz über das Internationale Privatrecht [Federal Act on Private International Law (PILA)] Dec. 18, 1987, SR 291, art. 190 (Switz.).

[12] At the Games, CAS sets up an Ad Hoc Division (AHD) to adjudicate disputes according to its Arbitration Rules for the Olympic Games (Ad Hoc Rules), though provision is made for the AHD to refer more complex matters to the CAS Appeals Division to adjudicate pursuant to the CAS Code, which provides more time and structure.

[13] Ad Hoc Rules, *supra* note 10, at art. 1.

[14] *Id.* at art. 19.

[15] *Id.* at art. 20(b).

arguments. Additionally, the AHD must recognize and acknowledge unique circumstances where the expedited procedures of the Ad Hoc Rules are insufficient to support a fair adjudication.

To appreciate the unique circumstances of the Chiles case and the deficiencies of the Ruling requires a thorough review of the AHD's adjudication—an inquiry the SFT is unlikely to undertake. Although Chiles has appealed the Ruling under PILA, the odds remain daunting: between 2020 and 2023, the SFT set aside only three of approximately 100 CAS awards.[16] This article examines the procedural anomalies in the Chiles case, the legal grounds on which her appeal rests, and the broader implications of the Ruling for Olympic dispute resolution and the integrity of the Movement itself.

I. PROCEDURAL FLAWS OF THE CAS ARBITRATION

The handling of the Chiles case by the CAS Ad Hoc Division reveals numerous procedural deficiencies that collectively compromised the fairness and integrity of the arbitration process. This section recounts the events chronologically, highlighting the cumulative impact of these flaws and their broader implications for the adjudication of Olympic disputes.

A. DEFICIENT APPLICATIONS AND INITIAL FILINGS

Adjudicating even the simplest dispute within the 24-hour timeframe prescribed by the Ad Hoc Rules is challenging; the Chiles case, however, was far from simple. As with all CAS arbitrations, the proceedings began with the filing of an application, which according to the Ad Hoc Rules, "*shall include*," among other requirements, "*a brief statement of the facts and legal arguments on which the application is based*," and "*any appropriate comments on the basis for CAS jurisdiction*."[17] These components are essential to initiate a fair and effective arbitration, especially given the compressed timeframe of Ad Hoc proceedings. For these reasons, the CAS Code mandates that the matter "*shall not proceed*" unless the application includes each of the required elements.[18]

The FRG submitted two separate applications to the CAS Court Office a day after the Women's Floor Exercise Finals—one challenging the score of Ms. Maneca-Voinea and the other

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[16] Alexis Schoeb, *Caselaw of the Swiss Federal Tribunal on Appeal against CAS Awards (2020-23)*, *in* CAS BULLETIN 2024/1 33 (2024), https://www.tas-cas.org/ [https://perma.cc/SX7W-P69J].

[17] Ad Hoc Rules, *supra* note 10, at art. 10.

[18] CT. ARB. FOR SPORT, CODE OF SPORTS-RELATED ARBITRATION art. R38 (2023) [hereinafter CAS Code].

challenging Chiles' revised score. Neither application included FIG as a party, instead naming its Technical Committee President, Donatella Sacchi, as the sole respondent. CAS later acknowledged in its Arbitral Award (Written Decision) that the FRG offered no legal basis for asserting jurisdiction over Sacchi:

> [T]he Applicants have not offered any legal basis on which it can assert that jurisdiction could be exercised over Ms. Sacchi (in her personal capacity, or as a referee in the competition) as Respondent with respect to the results of the Women's Floor Exercise Final. The Panel finds that it has no jurisdiction over Ms. Saachi."[19]

Despite this clear jurisdictional flaw, CAS allowed the Applications to proceed without requiring the correction of these deficiencies. The FRG's initial filings did not address the timeliness of Chiles' verbal inquiry, focusing instead on challenging the Superior Jury's decision to revise her score. In fact, the issue of timeliness was raised for the first time more than 30 hours after the Applications were filed—and six hours after CAS accepted the FRG's Amended Application.

While CAS's acceptance of an application is generally considered "unreviewable," the SFT may intervene if fundamental rights guaranteed by PILA are violated in the process. For example, the SFT reviewed a case where CAS was accused of violating public policy by rejecting an application submitted by fax. The court upheld CAS's decision, reasoning that the applicant had been notified of the procedural requirement and, therefore, the rejection did not constitute a denial of justice. In considering the issue, the SFT emphasized the importance of strict adherence to application requirements (and procedural rules generally):

> For reasons of equal treatment and legal certainty, the rules on appeal procedures must be strictly complied with. To decide otherwise in the case of a particular arbitration procedure would be to forget that the respondent is entitled to expect the arbitral

[19] CAS OG 24-15 Fed'n Rom. Gymnastics and Barbosu v. Sacchi and Fed'n Internationale de Gymnastique and CAS OG 24-16 Fed'n Rom. Gymnastics and Maneca-Voinea v. Sacchi and Fed'n Internationale de Gymnastique, Arbitral Award, ¶ 50 (2024) [hereinafter Written Decision].

> tribunal to apply and comply with the provisions of its own rules.[20]

While CAS's departure from its application rules may not, on its own, justify setting aside an arbitral award, the SFT has clarified that:

> [A] violation of procedural public policy occurs whenever fundamental and generally recognized principles of procedure have been disregarded, leading to an intolerable contradiction with the sense of justice, so that the decision appears incompatible with the values recognized in a state governed by the rule of law.[21]

By disregarding its own procedural requirements, CAS jeopardized the legitimacy of its proceedings, disadvantaged key parties, and introduced unacceptable inequities into the arbitration process.

B. CRUCIAL NOTIFICATION FAILURES

CAS had just 24 hours to adjudicate the matter upon accepting the FRG's flawed Applications at 10:04 on August 6th, unless the AHD President extended the timeframe due to "*exceptional circumstances*."[22] CAS quickly identified Chiles, USA Gymnastics[23] (USAG), and the United States Olympic & Paralympic Committee[24] (USOPC) as additional Interested Parties (U.S. Interested Parties). While it notified the Respondent, Ms. Sacchi, and the Romanian Olympic and Sports Committee[25]

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[20] Tribunal fédéral [TF] [Federal Tribunal] May 17, 2021, 4A_666/2020, ARRÊTS DU TRIBUNAL FÉDÉRAL SUISSE (RECUEIL OFFICIEL) [ATF] ¶ 6.4.3 (Switz.).

[21] Tribunal fédéral [TF] [Federal Tribunal] Aug. 17, 2020, 4A_486/2019, ARRÊTS DU TRIBUNAL FÉDÉRAL SUISSE (RECUEIL OFFICIEL) [ATF] ¶ 3.3 (Switz).

[22] Ad Hoc Rules, *supra* note 10, at art. 18 (*"The Panel shall give a decision within 24 hours of the lodging of the application. In exceptional cases, this time limit may be extended by the President of the ad hoc Division if circumstances so require."*).

[23] As the National Governing Body for gymnastics in the United States, USA Gymnastics (USAG) is responsible for training athletes, organizing competitions, and representing the U.S. in international gymnastics events.

[24] The U.S. Olympic & Paralympic Committee (USOPC) is the National Olympic Committee for the United States, responsible for organizing and funding U.S. participation in the Olympic and Paralympic Games.

[25] The Romanian Olympic and Sports Committee (ROSC) is the National Olympic Committee responsible for coordinating Romania's participation in the Olympic Games.

(ROSC) at 17:01 that same day, the CAS Court Office used incorrect email addresses for the U.S. Interested Parties and neglected to confirm receipt. As a result, all three U.S. Interested Parties remained unaware of the proceedings.

This failure to notify the U.S. Interested Parties alongside the other Parties was unjustifiable given the circumstances. The CAS Code states: "*All* notifications *and communications that CAS or the Panel intend for the parties shall be made through the CAS Court Office*" which operates on-site during the Games under the authority of the CAS Secretary General.[26] Timely notification is a routine administrative task critical to the fair resolution of disputes, and the Court Office was fully equipped to ensure its communications reached the intended recipients.

All accredited persons at the Paris Olympics were required to complete and sign the "Information Notice on the Processing of Personal Data of Participants and Other Accredited Persons for the Olympic Games Paris 2024" (Information Notice), providing the following to the IOC and the Local Organizing Committee, Paris24: "*contact and travel details such as postal address, email addresses, phone number, public social media accounts, booking number, arrival and departure information*."[27] The Information Notice authorized the IOC and Paris24 to share such personal information with third parties to fulfill their duties at the Games, specifically including "*the Court of Arbitration for Sport (CAS) headquartered in Switzerland who has been granted authority to settle disputes in connection with the Olympic Games Paris 2024*."[28] CAS personnel in Paris should have been aware of this protocol and used it to verify the U.S. Interested Parties' contact information. Moreover, accredited individuals were obligated to maintain the accuracy of their data, further ensuring the reliability of this resource.[29]

In addition, everybody who signed the IOC's "Conditions of Participation" understood that:

> During the Olympic Games, the competitors, team officials and other team personnel of each NOC are placed under the responsibility of a chef de mission appointed by his NOC and whose task, in addition

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[26] CAS Code, *supra* note 18, at R31.

[27] OLYMPIC GAMES PARIS 2024, INFORMATION NOTICE ON THE PROCESSING OF PERSONAL DATA OF PARTICIPANTS AND OTHER ACCREDITED PERSONS FOR THE OLYMPIC GAMES PARIS 2024 (2023).

[28] *Id.*

[29] Conditions of Participation, *supra* note 8, at 4 (discussing Section 5: Processing of Personal Data).

> to any other functions assigned to him by his NOC, is to liaise with the IOC, the IFs and the OCOG.[30]

Given the well-established role of the chef de mission, the CAS Court Office could have easily obtained the correct contact information by reaching out to the U.S. Delegation's *chef de mission*, the IOC, or Paris24. Yet there is no indication that CAS took these basic steps.

By 10:04 the next day, August 7th, the AHD's 24-hour period had expired. While the Ad Hoc Rules permit the AHD President to extend deadlines under certain circumstances, CAS did not notify the Parties of any formal action that would allow the FRG to correct its Applications. Despite still lacking a completed application naming FIG as a Respondent or Interested Party, and having failed to notify Chiles, USAG, or USOPC, CAS pressed forward. At 10:42, it informed the FRG, ROSC, and Ms. Sacchi that it had consolidated the two Applications into a single proceeding and composed a Panel of three arbitrators.

C. IMPROPER CONSTITUTION OF ARBITRAL PANEL

When the AHD accepts an application, its President appoints up to three arbitrators, including one to lead the panel. According to the CAS Code, these arbitrators "*shall be and remain impartial and* independent *of the parties*."[31] Among the limited grounds for the SFT to set aside an arbitral award is improper tribunal composition, which includes the appointment of arbitrators with conflicts of interest or insufficient independence.[32]

CAS Rules impose an affirmative duty on arbitrators to "disqualify him- herself voluntarily or, failing that, may be challenged by a party if circumstances give rise to legitimate doubts as to his or her independence."[33] CAS and the SFT often refer to the "IBA Guidelines on Conflicts of Interest in International Arbitration" (IBA Guidelines), a widely recognized authority.[34] These guidelines classify potential conflicts into three categories:

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[30] Olympic Charter, *supra* note 9, at 67 (quoting Rule 28, Recommendation 4).

[31] CAS Code, *supra* note 18, at R33.

[32] Bundesgesetz über das Internationale Privatrecht [Federal Act on Private International Law (PILA)] Dec. 18, 1987, SR 291, art. 190(2) (Switz.).

[33] Ad Hoc Rules, *supra* note 10, at art. 13.

[34] *See* Massimo Coccia, *The jurisprudence of the Swiss Federal Tribunal on challenges against CAS awards, in* CAS BULLETIN 2/2013 5, https://www.tas-cas.org/ [https://perma.cc/B5PG-PZ9F].

- **Red List:** Conflicts requiring automatic or conditional disqualification.
- **Orange List:** Situations that warrant disclosure but may not disqualify an arbitrator.
- **Green List:** Circumstances unlikely to affect impartiality.

Under the Red List, disqualification is automatic if "*[t]he arbitrator currently or regularly advises a party, or an affiliate of a party*," and such advice generates "*significant financial income*."[35] If the financial connection is deemed insignificant, the conflict may fall under the Waivable Red List, "*but only if and when the parties, **being aware of the conflict of interest** situation, expressly state their willingness to have such a person act as arbitrator*." (emphasis added).[36] Prior to—and regardless of—disclosure and agreement of the parties, both the arbitrator and the AHD must determine there are no justifiable doubts as to independence.[37]

Dr. Hamid Gharavi, appointed to lead the Panel, has a longstanding professional relationship with Romania. According to The New York Times:

> Mr. Gharavi . . . is currently serving as legal counsel to Romania in disputes at the World Bank's International Centre for the Settlement of Investment Disputes. Mr. Gharavi's work on behalf of Romania dates back almost a decade.[38]

Gharavi disclosed this relationship in his "Declaration of Acceptance and Independence," stating, "*I represent Romania in investment arbitrations before ICSID*," and offering the following qualification:

> I am independent of each of the parties and intend to remain so; however, I wish to call your attention to the following facts or circumstances which I hereafter disclose because they might be of such a

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[35] IBA COUNCIL, IBA GUIDELINES ON CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION 15 (2024).

[36] *Id.* at 16 (discussing Part II, Section 2: Waivable Red List).

[37] *Id.* at 14.

[38] Tariq Panha, *Head of Panel That Ruled Against Jordan Chiles Represents Romania in Other Cases*, N.Y. TIMES (Aug. 13, 2024), https://www.nytimes.com/ [https://perma.cc/QB6E-QU3Y].

> nature as to compromise my independence in the eyes of any of the parties.[39]

Under the IBA Guidelines, such a relationship raises clear doubts about impartiality. Given the significance of ICSID cases and the financial stakes involved, it is reasonable to assume Dr. Gharavi or his firm received substantial income from representing Romania. As for the connection between Romania and the Parties, the SFT has found a presumption of partiality where a party is a state and an arbitrator has represented an office of the state. Olympic-related arbitrations inherently carry a presumption of bias due to national affiliation, because athletes represent their countries.[40] Moreover, the Olympic Charter explicitly prohibits IOC members from voting on any matters relating to their nations, further emphasizing the need for neutrality in such contexts.[41]

The issue of bias was both confirmed and exacerbated by Romanian Prime Minister Marcel Ciolacu's public comments on the Arbitration:

> Marcel Ciolacu, Romania's prime minister, said the decision was "totally unacceptable" as he stirred up a diplomatic row. "I decided not to participate in the closing ceremony of the Paris Olympics, after the scandalous situation in gymnastics, where our athletes were treated in an absolutely dishonorable way," he wrote on Facebook. "To withdraw a medal earned by honest work based on an appeal, which neither the coaches nor the top technicians understand, is totally unacceptable."[42]

Such politically charged statements highlight the unique challenges of ensuring independence when national interests are at stake.

While Dr. Gharavi disclosed his ties to Romania, CAS did not adequately address the conflict. For the appointment to proceed under the Waivable Red List, two conditions must be met:

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[39] *Jordan Chiles Appeal Before the Swiss Court*, GIBSON DUNN 55 (Sept. 16, 2024) https://www.gibsondunn.com/ [https://perma.cc/FB5X-B4FV] (quoting Declaration of Acceptance and Independence of Dr. Gharavi. Gharavi, dated August 7, 2024).

[40] Olympic Charter, *supra* note 9, at 79-81 (highlighting Rules 41 and 44).

[41] *Id.* at 41-42 (highlighting Rule 18).

[42] Tom Morgan, *Romania PM to snub closing ceremony after gymnastics controversy,* THE TELEGRAPH (Aug. 6, 2024), https://www.telegraph.co.uk/ [https://perma.cc/BH7L-SKED].

1. All parties, arbitrators, and the arbitration institution must have full knowledge of the conflict of interest.
2. All parties must expressly agree to the arbitrator's appointment despite the conflict.[43]

Neither condition was satisfied. CAS's failure to properly notify Chiles, USAG, and the USOPC precluded full knowledge of the conflict. FIG's late inclusion in the proceedings denied it a meaningful opportunity to object to Dr. Gharavi's appointment.

In its Written Decision, CAS downplayed the conflict by noting that the Parties had been notified of Dr. Gharavi's Romanian ties prior to the Hearing and had not objected. This reasoning is flawed for several reasons:

- FIG was not included as a Party when the Panel was constituted.
- Chiles, USAG, and the USOPC were not notified in time to raise objections.
- By the time FIG raised concerns, the Arbitration was already well underway.

CAS also cited boilerplate acknowledgements made during the Hearing, such as the Parties confirming they had "no objection" to the Panel's constitution. However, as Alexis Schoeb notes in *Caselaw of the Swiss Federal Tribunal on Appeal against CAS Awards (2020-24)*, such acknowledgements cannot retrospectively resolve legitimate doubts as to independence:

> It is noteworthy that the SFT considers that style clauses ("boiler plates" clauses) inserted into awards—e.g., certifying that the tribunal has taken into account the allegations, arguments, and evidence presented by the parties, or that the right to be heard has been fully honoured (as the parties themselves may admit at the end of an evidentiary hearing before an arbitral tribunal)—are not decisive and the SFT will take into account the actual circumstances of each case.[44]

[43] IBA COUNCIL, *supra* note 35, at 9 (discussing Part I, 4(c) Waiver by the Parties).

[44] Schoeb, *supra* note 16, at 44 (citing 4A_536/2018, ¶ 4.2).

According to SFT caselaw, situations appearing on the Red List automatically constitute grounds for challenging an arbitrator under PILA, regardless of waivers:[45]

> If facts or circumstances exist as described in the Non-Waivable Red List, any waiver by a party (including any declaration or advance waiver . . .), or any agreement by the parties to have such a person serve as arbitrator, shall be regarded as invalid.[46]

CAS's boilerplate acknowledgements failed to address the substantive issue: key parties were excluded from the process, and FIG's objections were disregarded despite being well-founded. The Panel's attempts to discount the conflict also contradicted CAS's own Media Release issued on August 14th, which acknowledged public concerns about the Panel's impartiality:

> The CAS condemns the outrageous statements published in certain US media alleging, without knowledge of the above and before review of the reasoned award, that the Panel, and more particularly its chairman, was biased due to other professional engagements or for reasons of nationality.[47]

These comments highlight the widespread concerns over Dr. Gharavi's impartiality, further underscoring CAS's procedural shortcomings in addressing the conflict.

CAS's handling of the Panel's composition violated fundamental principles of fairness. Allowing an arbitrator with clear ties to one party to lead the Panel weakened the integrity of the arbitration process and sets a troubling precedent for future disputes, particularly in the highly charged context of international sports arbitration.

The SFT has consistently held that circumstances falling under the Red List constitute automatic grounds for challenge. In this case, CAS's handling of disclosure and party consent is incompatible with the values of impartiality and due process that underpin the arbitration system.

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[45] Bundesgrericht [BGer] [Federal Supreme Court] Oct. 5, 2008, ENTSCHEIDUNGEN DES SCHWEIZERISCHEN BUNDESGERICHTS [BGE] 135 | 14, E. 4.1 (Switz).

[46] IBA COUNCIL, *supra* note 35, at 9 (discussing Part I, Section 4(b)).

[47] Media Release, Ct. Arb. for Sport, The CAS Ad Hoc Division Publishes the Arbitral Award (Aug. 14, 2024) (on file with author).

D. IMPROPER HANDLING OF AMENDED APPLICATIONS

At 16:57 p.m. on August 7th, new lawyers representing Ms. Barbosu and Ms. Maneca-Voinea filed what they termed an *"Amended Application,"* which the Panel inexplicably accepted without proper scrutiny. The Amended Application significantly altered the proceedings by introducing new parties—Ms. Ana Barbosu and Ms. Sabrina Maneca-Voinea as Applicants and FIG as a Respondent.[48] This addition of parties impacted the relevance of facts, evidence, and legal issues while fundamentally altering the scope of the Arbitration.

The AHD's decision to accept the Amended Application nearly 30 hours after it had already accepted the FRG's initial (incomplete) Application subverts fundamental principles of fairness. The Ad Hoc Rules and the CAS Code do not permit applicants to retroactively alter the cast of parties and subject new respondents to decisions taken in earlier stages of proceedings in which they had no opportunity to participate.

Had the Court Office treated the Amended Application as a new application, the resolution process—and associated timeframes—would have started anew, allowing all parties an equal opportunity to participate. Alternatively, the Panel could have considered consolidating the new application with the pending one, but that would have required consulting all affected parties.[49] FIG, for instance, likely would have opposed such consolidation for the same reasons it objected to the Amended Application (as Chiles, USAG, and USOPC would have done, had they been made aware of the proceedings at that time). Instead, CAS appears to have bypassed the required consultation process, dismissing its significance while still exposing the proceedings to the same risks of distortion that such consultation is meant to prevent.

The CAS Court Office is required to independently assess how to handle related filings. According to the Ad Hoc Rules:

> If an application is filed which is related to an arbitration already pending before the ad hoc Division, the President of the ad hoc Division may assign the second dispute to the Panel appointed to decide the first dispute. In order to decide upon such assignment, the President of the ad hoc Division **shall take into account** all the circumstances, including the relation between the

[48] Written Decision, *supra* note 19, ¶ 20.
[49] CAS Code, *supra* note 18, at art. R39.

> two cases and the progress already made in the first case. (emphasis added). [50]

By disregarding the fundamental requirement to ensure equal participation, the AHD compromised the integrity of the arbitration process. Instead of following established protocols, CAS notified the parties of the Amended Application (FIG's first inclusion as a Party to the proceedings), extended FIG's deadline to file its Answer and *amici curiae* brief until 21:00 that same evening and postponed the hearing—initially scheduled for 10:00 on August 8th—to 8:00 on August 9th. This timeline afforded FIG only four hours to:

- Review all materials.
- Reassess and revise its *amici curiae* brief in light of the Amended Application.
- Prepare and file its Answer as a Respondent.

Before that point, FIG had no reason to believe it would be added as a Respondent or that FRG's jurisdictionally flawed Application naming Ms. Saachi as Respondent would survive.

FIG objected to the admissibility of the Amended Application the next afternoon. However, less than two hours later, the AHD dismissed FIG's objection, noting:

> [A]s a technical matter, the Amended Application could have been treated as a formal new application and registered under a new procedure number, and that this would have resulted in the same practical consequence as accepting the amendment of the original Applications.[51]

This explanation dismisses the affected Parties' right to meaningful participation in <u>all</u> stages of the adversarial process. As Massimo Coccia, a CAS Arbitrator and expert in international law, states in his paper *The Jurisprudence of the Swiss Federal Tribunal on Challenges Against CAS Awards*:

> One of the fundamental rights guaranteed by article 182.3 PILA and sanctioned by 190.2(d) is the principle of equal treatment. Under this principle, the parties must be given the **same opportunity** to present their cases during the arbitral proceedings. Moreover, the arbitrators must treat the parties in a

[50] Ad Hoc Rules, *supra* note 10, at art. 11.
[51] Written Decision, *supra* note 19, ¶ 25.

> similar manner **at every step of the proceedings**. (emphasis added).[52]

FIG was denied this fundamental right. By the time it was included as a Respondent, the AHD had already:

- Consolidated the two proceedings;
- Composed the Panel;
- Addressed Dr. Gharavi's disclosure of interest;
- Issued procedural directions; and
- Granted the FRG's requests to extend deadlines.

Each of these decisions was made without FIG's input or the participation of the U.S. Interested Parties. These omissions irreversibly undermined the fairness and integrity of the proceedings.

The AHD's dismissive treatment of FIG's objections is compounded by inconsistencies in the Written Decision, which stated: "*As regards the Interested Parties, no objections were submitted to the Amended Applications of 8 and 9 August 2024*."[53] At the time CAS issued the Written Decision, it knew Chiles, USAG, and the USOPC had not been properly notified when it accepted the Amended Application. Making matters worse, the Written Decision mischaracterized FIG's position:

> FIG declared that the Applicants had, in their submission dated 8 August 2024, "substantially amended their applications and introduced entirely new facts and arguments that were not included in the original applications as filed on 6 August 2024," and that the Panel "should not allow" these amendments. However, at the Hearing the FIG stated that it had no objection with regard to the substantive amendments. For this reason, the Panel concludes that it is able to proceed to determine the matter on the basis of the Applications as amended.[54]

This boilerplate assertion disregards the core issue: whether CAS's procedural irregularities precluded FIG from fully participating. The fact that FIG may not have objected to certain "*substantive*

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[52] Coccia, *supra* note 34, at 13 (citing Federal Tribunal Judgment 4A_488/20111 of 18 June 2012, *Pellizetti*, at 4.4.1).

[53] Written Decision, *supra* note 19, ¶ 94.

[54] *Id.* ¶ 93.

amendments" is irrelevant to the distortive effects of retroactively reconstituting the Application.

For purposes of Chiles' appeal to the SFT, FIG's preserved objections and the procedural irregularities surrounding the Amended Application are critical. By disregarding these objections, CAS denied FIG and the U.S. Interested Parties a meaningful opportunity to participate, violating procedural safeguards enshrined in PILA. CAS's decision to proceed with the Amended Application violated the principle of equal treatment and raised significant doubts about the fairness and integrity of the Arbitration.

E. INCOMPLETE EVIDENCE AND MISGUIDED INQUIRY

On August 8th at 21:17, the Applicants filed a request with the CAS Court Office for the disclosure of "the complete footage showing whether the accredited coach complied with the rules and whether the challenge was lodged within the 60 seconds provided by the rules."[55] Hours later, at 00:12 August 9th, the AHD requested FIG to comment on the disclosure request. Later that morning, at 9:02, the Court Office followed up on behalf of the Panel with a request to FIG for additional information, including: the identity of the "person designated to receive the verbal inquiry," and evidence from that person (or others) of their recording of the time of receipt, either in writing or electronically.[56]

These requests exposed the flaws stemming from the AHD's acceptance of the incomplete Applications and its exclusion of key parties from early stages of the Arbitration. By the time FIG was included, the Panel appeared to have already embraced the FRG's vague notion of a "*mandatory one-minute rule*," narrowing its focus to whether the verbal inquiry complied with this supposed requirement. This focus overlooked the broader question of whether the Superior Jury had acted within its discretionary authority under FIG Rules in revising Chiles' score.

The AHD's handling of notifications further compounded these issues. According to the factual record set forth in the Written Decision, the AHD did not confirm effective notification of the U.S. Interested Parties during the period between August 7th and 9th, despite their continued absence from the proceedings. It was not until the morning of August 9th—three days after accepting the FRG's initial Application—that the AHD finally acknowledged the lack of response from these parties and requested FIG to provide additional contact information for USAG.[57]

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[55] *Id.* ¶ 27.
[56] *Id.* ¶ 29.
[57] *Id.* ¶ 30.

Even at this late stage, the AHD continued seeking critical details—such as the identity of the intake official—from the wrong source. This ongoing confusion, combined with the failure to properly notify Chiles, USAG, and the USOPC, irreparably eroded the fairness of the proceedings.

Despite holding exclusive authority to reallocate medals,[58] the IOC was not included as an Interested Party by the AHD until August 9th. Of the 17 decisions adjudicated by the AHD at the Paris Games, the IOC was included as an Interested Party at the outset in all but two cases. Its delayed inclusion in this matter remains unexplained.

The IOC's earlier involvement could have clarified key points of confusion and ensured a more coherent inquiry. For instance, the IOC's role in overseeing the "Olympic Host Contract" with Paris24 and its authority over Olympic broadcasting and data access would have been helpful in resolving questions about video evidence and timing data.[59]

The CAS Written Decision criticized FIG for failing to implement proper mechanisms to monitor compliance with the purported "*mandatory one-minute rule*." However, this criticism ignored how Olympic events are managed and the interplay between the various organizations involved. The Olympic Charter grants IFs,[60] such as FIG, independence in governing their respective sports at the Games, requiring that "*[a]ll elements of the competitions, including the schedule, field of play, training sites and all equipment must comply with its rules*."[61] While IFs set the rules, the Charter assigns much of the responsibility for ensuring compliance to the LOCOG[62] (Paris24). The LOCOG is tasked with

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[58] Olympic Charter, *supra* note 9, at 100. Rules 56 and 58 provide: *"The authority of last resort on any question concerning the Olympic Games rests with the IOC." "Any decision regarding the awarding, withdrawal or reallocation of any victory medal or diploma falls within the sole authority of the IOC."*

[59] *Id.* (highlighting Rule 56).

[60] Each Olympic sport is governed by an International Federation (IF). FIG oversees gymnastics.

[61] Olympic Charter, *supra* note 9, at 88 (quoting Rule 46).

[62] For each Olympic Games, the IOC selects a host city and contracts with the Local Organizing Committee (LOCOG) to manage the Games. At the Games, the LOCOG is often referred to simply as the "OCOG." Under the agreement, the LOCOG assumes responsibility for most operational aspects, including the venues, facilities, and many of the personnel administering the events. The IOC requires the LOCOG to follow each IF's

providing much of the staffing, equipment, and operational oversight for Olympic events, all in consultation with the relevant IFs. It works under the direction of the IOC Executive Board to coordinate and execute these arrangements.[63]

The responsibilities of ensuring smooth event operations are divided among organizations. The Olympic Games Coordination Commission, established by the IOC President, includes representatives from the IOC, LOCOG, IFs, and NOCs,[64] along with athletes.[65] This Commission conducts on-site inspections, coordinates between stakeholders, and oversees preparations, subject to the approval of the IOC Executive Board. During the Games, the IOC Executive Board assumes the duties of the Coordination Commission, ensuring that daily operational needs are met.[66]

Specific to gymnastics, the Charter requires the LOCOG to align its event-related tasks with FIG Rules. This includes hiring and training personnel, installing and managing equipment, and overseeing competition logistics. LOCOGs are also responsible for publishing explanatory materials for each sport, detailing technical arrangements, and submitting these documents for IOC approval.[67] Therefore, responsibilities for event operations, including compliance with timing mechanisms, are shared across multiple entities. The IOC and Paris24, rather than FIG alone, were also responsible for ensuring adherence to FIG's rules during the Paris Games. CAS's failure to adequately involve these entities in the Arbitration proceedings led to an inaccurate attribution of operational shortcomings to FIG.

For example, both the IOC and Paris24 were uniquely equipped to provide essential evidence, including accurate contact information for Ms. Chiles, USAG, and the USOPC, as well as the identity of the intake official responsible for receiving verbal inquiries. Despite this, CAS did not engage these entities or access their records. As noted in the Written Decision:

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rules in managing competitions and operating the facilities. For the Paris Olympics, the LOCOG was Paris24.

[63] Olympic Charter, *supra* note 9, at 88-92 (discussing Rule 46).

[64] Each country must have a National Olympic Committee (NOC), recognized by the International Olympic Committee (IOC), to oversee all Olympic-related activity within their country, subject to the Olympic Charter and IOC governance. In the U.S., the NOC is the United States Olympic & Paralympic Committee (USOPC), which manages Team USA. Romania's NOC is the Romanian Olympic and Sports Committee (ROSC).

[65] Olympic Charter, *supra* note 9, at 77-78 (discussing Rule 37).

[66] *Id.* at 77 (addressing Bye-law 3 to Rule 37).

[67] *Id.* at 94 (highlighting Bye-laws 1 and 2 to Rule 49).

> The Panel made the request because it was acutely aware of the need to have before it, in advance of the hearing if possible, an accurate, authoritative and official information as to the timing of the inquiry submitted on behalf of Ms. Chiles.[68]

The Panel appears not to have recognized that the intake official's identity and related information resided with Paris24 and the IOC, an issue that persisted through the proceedings, including the Hearing. This procedural misstep not only distorted the evidentiary record but also skewed the Panel's evaluation of FIG's role. The Panel concluded that FIG was "*not fully responsive to the information the Panel had sought*,"[69] and criticized the federation for its inability to identify the intake official:

> The Panel was surprised that the FIG was not able to identify the person who recorded the information as to time, and that no clear and established mechanism appeared to be in place to address so important a matter as the timing of a request for an inquiry.[70]

It further expressed surprise that no clear mechanism appeared to be in place for recording the timing of verbal inquiries, even though these responsibilities—if they were to exist under FIG Rules—would fall outside FIG's purview and into the realm of Paris24 and the IOC.

CAS does not appear to have properly sought video footage and timing data from the IOC. Under the Olympic Charter, the IOC holds exclusive rights to broadcast and access event-related data. As the custodian of this information, the IOC was uniquely positioned to provide the video footage and Omega data the Panel erroneously sought from FIG.[71]

Had CAS followed proper protocols, it could have accessed this evidence in a timely manner. Instead, it persisted in seeking information from FIG, which FIG was not equipped to provide. These missteps led to critical gaps in the factual record, distorted the Panel's deliberations, and contributed to the unfair scrutiny placed on FIG. By not engaging the appropriate entities, CAS weakened its ability to conduct a fair and comprehensive arbitration.

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[68] Written Decision, *supra* note 19, ¶ 123.
[69] *Id.* ¶ 125.
[70] *Id.* ¶ 126.
[71] Olympic Charter, *supra* note 9, at 18-19 (discussing Rule 7).

F. DENIAL OF REFERRAL TO CAS APPEALS DIVISION

At 12:03 on August 9th, three hours after it was added as an Interested Party, the IOC informed the AHD that it did "*not intend to make any substantive submission at this juncture*" and expressed the view that "*it would be both preferable and consistent with the purpose of the CAS Ad Hoc Division, that a dispute concerning an event that took place on 5 August 2024 be resolved before the end of the Olympic Games*."[72] This statement appears to have influenced the Panel's decision not to refer the matter to the CAS Appeals Division, despite clear indications that the AHD's expedited timeline could not reasonably accommodate a fair and thorough adjudication.

In the three hours between the IOC's addition as an Interested Party and its response, the AHD finally established contact with the USOPC--at 10:23 on August 9th, three days after the FRG filed its initial Application and two days after the 24-hour adjudication period had expired. At this late stage, the AHD provided the USOPC with "*a copy of the entire case file, in particular all written submissions and the Notice of formation of the Panel and Arbitrator's Acceptance and Statement of Independence signed by the Members of the Panel*."[73] However, the USOPC immediately flagged the unreasonableness of the deadlines, as Chiles, USAG, and the USOPC had not been notified of the proceedings until that morning. At 14:44, the USOPC requested an extension to review the submissions and evidence and to respond formally. USAG obtained the case documents indirectly through the USOPC, as the AHD never directly provided the entire file to either USAG or Chiles.[74]

CAS acknowledged that failing to notify the U.S. Interested Parties earlier was "an unfortunate circumstance that should not have occurred," but minimized its significance: "However, these Interested [Parties] now dispose of all relevant documents in order to participate in these proceedings and file their amici curiae briefs."[75] The Panel extended the deadline for these Parties to file submissions until 20:00 on August 9th, granting only an additional two hours beyond its earlier extension to 18:00. It did not address

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[72] Written Decision, *supra* note 19, ¶ 32.

[73] *Id.* ¶ 33.

[74] The factual record set forth in the Written Decision reveals only that *"[f]urther communications were exchanged between the CAS Court Office and USOPC, with the inclusion of other USOPC Officials and Officials of US Gymnastics regarding the different deadlines applicable in the proceedings."* Written Decision, *supra* note 19, ¶ 33.

[75] *Id.* ¶ 35.

the implications of its procedural missteps leading up to that point, stating in its communication to the Parties:

> Furthermore, US Gymnastics and the USOPC, like any other Party, will be given ample opportunity to present their position at the hearing scheduled for tomorrow, 10 August 2024, at 08:00 Paris time.[76]

Shockingly, at this point, the AHD had still made no contact with Chiles herself.

Despite the obvious procedural deficiencies and colossal discrepancy in notice and time, the Panel announced that it "*will not apply Article 20(c) of the Ad Hoc Rules*," rejecting any referral to the Appeals Division and affirming that "*[a]ccordingly, the hearing scheduled for tomorrow will not be postponed in any event*."[77] The IOC's preference to resolve the matter prior to the Closing Ceremonies rather than support a fair adjudication and the reasonable participation of all parties is inexplicable—especially given the lack of urgency (the Women's Artistic Gymnastics competitions had already concluded) and limited opportunities for the aggrieved parties to address problems on appeal.

Referring the case to the CAS Appeals Division would have provided more time for the Parties to review the materials, introduce additional evidence, and prepare their cases—and Chiles would have had the opportunity to engage her own counsel and participate meaningfully in the proceedings. The additional time and structure would have also allowed the Panel to deliberate more thoroughly and issue a fairer, more defensible decision.

The SFT does not typically review CAS decisions to retain and fully adjudicate disputes within the AHD. However, where such a decision is intertwined with procedural anomalies that compromise a party's right to be heard, basic principles of fairness and justice demand review.

> According to the SFT, whether a case has been judged within a reasonable timeframe depends on all the circumstances of the case and, in particular, its breadth and complexity both factually and legally, the nature of the procedure and the interests

[76] *Id.* (quoting CAS Ad Hoc Division's communication to the Parties on 9 August 2024 at 15:51).

[77] *Id.*

> at stake, and the behavior of the parties as well as the tribunal.[78]

It is therefore unfathomable that, just hours after confirming that vitally Interested Parties had been excluded from the proceedings, the AHD refused to postpone the hearing or refer the matter to the CAS Appeals Division. This sudden insistence on finalizing the decision before the end of the Games starkly contrasted with the multiple deadline extensions previously granted to the FRG, and raises the question: What purpose or interest was served in denying the Arbitration the additional time? It was not the rights of the Parties, as many were excluded from meaningful participation; it was not the interests of the athletes, who would bear the brunt of a flawed decision and its repercussions; it was not the interests of sport, as the Ruling disrupts the functionality of FIG Rules and potentially destabilizes the relations among Olympic organizations; it was not efficiency, as the Ruling is now under appeal with the SFT. In the end, the Panel's expedited timeline served no discernible interest—and undermined the very principles the Ad Hoc Division was created to protect.

The Panel's prioritization of speed over fairness runs counter to the purpose of the Ad Hoc Division, the Olympic Charter, and the rules of FIG. Finalizing a flawed decision before the end of the Games prioritized expedience over the interests of athletes and sport, leaving Chiles with limited recourse.

FIG filed its reply brief at 17:29 on August 9th, while USAG—having been notified only four hours earlier—submitted its comments and the Omega report requested by the Panel at 19:57. These submissions, prepared under severe time constraints, underscore the undue burdens placed on the U.S. Interested Parties as a result of CAS's procedural irregularities. The AHD's refusal to provide adequate time or refer the case to the CAS Appeals Division further compromised the integrity of the Arbitration process.

II. THE CONFUSED MERITS

At 20:38 on August 9th, the AHD again requested FIG to identify the person designated to receive verbal inquiries. This repeated request reflects the Panel's apparent misunderstanding of the rules coordinating responsibilities among the organizations involved in Olympic events. FIG responded minutes later, clarifying:

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[78] Schoeb, *supra* note 16, at 52 (citing 4A_22/2023, para. 7.3.2).

> *[T]his individual is not a FIG official and was directly appointed by the LOC. As this person does not hold any official judging position, her/his name does not appear in any FIG official documents.*[79]

This exchange lays bare a fundamental problem: the Panel had already accepted the FRG's mischaracterization of a "*mandatory one-minute rule*" without examining the broader body of FIG Rules or the actual operational framework of the Games. Because FIG and the U.S. Interested Parties were excluded from meaningful participation at critical stages, this misconception went uncorrected. By the time the Hearing commenced, the Panel's framing of the dispute—and the evidentiary record built around it—had been irreparably distorted.

At 00:30 on August 10th, the Panel provided a glimpse into the issues it expected the Parties to address later that morning at the Hearing:

> *[T]he submission of FIG of 9 August 2024 . . . at Paragraph 12 that the Superior Judge disposes of some tolerance to accept an inquiry not strictly made within the 1-minute window set out at Article 8.5 of FIG Technical Regulations, including any supporting evidence, together with Article 8.5 of FIG Technical Regulations that provides that "Late verbal inquiries will be rejected."*[80]

This communication revealed for the first time that the Panel intended to challenge FIG's established rules governing the inquiry process—a position fundamentally at odds with FIG's own regulatory framework and longstanding practice. FIG and the U.S. Interested Parties had no notice or reason to expect such a misinterpretation of Article 8.5, particularly one so inconsistent with FIG's Rules and procedures. With the hearing only hours away, there was no meaningful opportunity for the affected parties to correct the Panel's misconception or to submit evidence addressing the proper interpretation of the rule. As a result, the Panel's misinterpretation shaped the framing of the issues and the factual findings—distortions that now constrain the scope of review before the SFT.

The SFT must accept the facts as presented in the Written Decision and cannot review the Panel's adjudication on the merits

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[79] Written Decision, *supra* note 19, ¶ 39 (quoting FIG's email response on August 9, 2024, at 22:21).

[80] *Id.* ¶ 40.

unless one of the grievances mentioned in Article 190.2 PILA is raised against the factual findings. For this reason, it is essential to understand how the AHD's mismanagement of proceedings impacted not only the individual rights of the Parties but also the factual findings and framing of the issues presented.

Because FIG and the U.S. Interested Parties were not afforded an equal opportunity to participate in the proceedings from the beginning, the Panel lacked the benefit of fully developed opposing viewpoints, including arguments as to whether the rule the FRG alleged had been violated even existed. The result of this procedural default was an egregious misinterpretation of FIG Rules, an unjustifiable interference with an international federation's determination of competition results, and a violation of the Olympic Charter.

The SFT has held that an arbitral tribunal may not base "*its decision on a provision or legal consideration which has not been discussed during the proceedings and which the parties could not have anticipated to be relevant*."[81] FIG and the U.S. Interested Parties were excluded from significant portions of the Arbitration, depriving them of the opportunity to address the Panel's fundamental misreading of the rules. This exclusion violated their right to be heard and contributed to the Panel's questionable interpretation of the governing rules.

The right to be heard, according to the SFT, "*is violated if, as the result of an oversight or misunderstanding, the arbitral tribunal fails to take into consideration the claims, arguments, evidence or offers of evidence presented by either party and relevant to the decision to be taken*."[82] The AHD's procedural mismanagement directly affected the factual findings and the framing of the issues. By presuming the existence of a "mandatory one-minute rule" and centering its inquiry on whether this hypothetical rule was violated, the Panel misconstrued the nature of the dispute and rendered a decision untethered to FIG's actual rules.

In sum, procedural irregularities in the AHD's handling of the matter deprived key parties of their right to be heard, contributed to distortions in the framing of the issues and the factual record, and led to a decision misaligned with the governing framework it purported to apply. These concerns were compounded by the

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[81] Tribunal fédéral [TF] [Federal Supreme Court] Feb. 9, 2009, 4A_400/2008 Arrêts du Tribunal fédéral suisse [ATF] 3.2 (Switz.); *SWISS FEDERAL SUPREME COURT, Tribunal federal, lère Cour de droit civil, 4A_400/2008, arrêt du 9 février 2009, X. contre Y., Mmes et MM.*, ASA BULLETIN, 495, 498-500 (2009).

[82] Tribunal fédéral [TF] [Federal Supreme Court] Mar. 22, 2007, 4P.172/2006 Arrêts du Tribunal fédéral suisse [ATF] 5.2 (Switz).

Panel's misinterpretation of FIG's Rules, as the following section demonstrates.

A. THE NONEXISTENT "MANDATORY ONE-MINUTE RULE"

The CAS Ruling is predicated on a fundamental misinterpretation of FIG's Rules. Specifically, the Panel assumed the existence of a "*mandatory one-minute rule*" requiring automatic dismissal of verbal inquiries submitted after one minute, even though no such rule exists.

This misinterpretation first took root in the allegations advanced by the Applicants. The FRG vaguely alleged the verbal inquiry lodged by Chiles' coach was submitted late. The Panel presumed a reference in the Rules to a one-minute timeframe for verbal inquiries to be submitted after the posting of the final gymnast's score constituted a firm "deadline" requiring the Superior Jury to dismiss all late inquiries, and accepted that the video and Omega data referenced by the FRG evidenced a violation:

> First, the Applicants contend that the inquiry submitted by Ms. Chiles should be dismissed as it was submitted after the end of the 1-minute deadline provided by Article 8.5 of FIG Technical Regulations 2024. Applicants first relied on a video footage on which Ms. Cecile Canqueteau-Landi, Ms. Chiles' coach, appears in the frame for 45 seconds. According to Applicants, in such circumstances Ms. Canqueteau-Landi could not have lodged the inquiry within the limited time provided. The Applicants note the information prepared by Omega which indicated that the said inquiry was submitted 1 minute and 4 seconds after Ms. Chiles's score was put up on the Board, that is to say 4 seconds late.[83]

In fact, Article 8.5 does not support a claim that the scoring resulted from a violation, and nothing in the Rules suggests video or Omega data evidence one. FIG confirmed as much in its response to questions posed by the Panel as to whether the one-minute timeframe mandates the dismissal of late verbal inquiries, asserting it does not. FIG explained that its Rules authorize the Superior Jury to exercise discretion in deciding whether to accept inquiries

[83] Written Decision, *supra* note 19, ¶¶ 104, 51.

submitted beyond the one-minute timeframe and maintained that such judging decisions are not reviewable by a CAS Panel.[84]

By overlooking the requirement that the FRG substantiate its conception of the rule it alleged FIG had violated, CAS effectively shifted the burden to FIG to defend against an amorphous, indiscernible allegation and prove it did not violate any of its rules in determining the final standings of the competition. Had the AHD enforced the application requirements or undertaken an independent review of the Rules before commencing proceedings, it would have realized they authorize the Supreme Jury to decide upon the inquiry exactly as it did, and that the Application presented no valid dispute to adjudicate. Instead, deprived of FIG's countervailing perspective, the Panel's misinterpretation hardened over the course of the proceedings, ultimately embedded in the Written Decision as the "*mandatory one-minute rule.*"[85]

The validity of the FRG's Application and the legitimacy of the proceedings it spawned turn entirely on the existence of a "*mandatory one-minute rule*." Without such a rule, there was no violation to adjudicate. The Panel incorrectly assumed the rule existed, making it the focal point of its inquiry and skewing the Arbitration from the start. Evidence and testimony that might have been relevant if there were such a rule were irrelevant to the actual circumstances, according to FIG Rules. Without the Panel's contrivance of a "mandatory one-minute rule," the validity of the dispute dissolves. Therefore, before accepting the Application or considering the "field of play" doctrine, the timeliness of the inquiry, or what FIG may or may not have had in place to monitor and assess such timeliness, the AHD should have first resolved the following threshold issue:

> **Whether FIG Rules mandate the automatic disqualification of verbal inquiries submitted more than a minute after the score of the last gymnast of a rotation is shown on the scoreboard, or grant the Superior Jury discretion to accept and decide on such inquiries.**

Excluding FIG and the U.S. Interested Parties from meaningful participation ensured this fundamental question—the very foundation of the dispute—was never properly considered.

The only support CAS offers for the existence of "*a mandatory one-minute rule*" is the following:

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[84] *Id.* ¶¶ 40, 60, 103.
[85] *Id.* ¶ 134.

> Article 8.5 of FIG Technical Regulations, provides that a gymnast's coach can submit an inquiry with respect to the D Score provided that the request is
>
> > *"made verbally immediately after the publication of the score or at the very latest before the score of the following gymnast/athlete or group is shown* […]
> >
> > *For the last gymnast or group of a rotation, this limit is one (1) minute after the score is shown on the scoreboard. The person designated to receive the verbal inquiry has to record the time of receiving it, either in writing or electronically, and this starts the procedure."*[86]

From such language, the Panel contrives the following:

> The Panel finds that Article 8.5 is clear and unambiguous from all relevant perspectives. The one-minute time limit is set as a clear, fixed and unambiguous deadline, and on its face offers no exception or flexibility. Despite arguing that Article 8.5 should be interpreted and applied with a degree of flexibility, the Respondents have offered no evidence or practice to support the existence of any exception or tolerance to the application of the rule.[87]

After concluding that the FIG Rules establish a fixed, inflexible one-minute deadline, the Panel highlights the language, "*Late verbal inquiries will be rejected*," and proclaims conclusively that it "*makes it clear that compliance is intended to be mandatory and strict, and to be sanctioned by a rejection if violated. No room is afforded for any exercise of discretion*."[88]

The words "will" and "shall" have distinctly different legal definitions. As Black's Legal Dictionary provides: 'may' "is employed to imply permissive, optional, or discretional, and not mandatory, action or conduct," whereas 'shall' "is generally imperative or mandatory." The difference between these terms is rarely overlooked in drafting rules and regulations, and FIG Rules appear to reflect an appreciation for the distinction. The Technical

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[86] *Id.* ¶ 117.
[87] *Id.* ¶ 118.
[88] Written Decision, *supra* note 19, ¶ 119.

Regulations include 521 uses of 'will' and only 42 uses of 'shall', and the FIG Code of Points (Code) includes 196 'wills' and 7 'shalls', respectively (which should be presumed to be deliberate, according to general rules of construction). FIG's use of "will" concerning the rejection of inquiries supports its position that while officials may opt to dismiss "late" inquiries, they are not required to do so. Such an interpretation is reasonable, deserving of judicial deference, and consistent with the other FIG Rules. It also aligns with the approach to the interpretation of association regulations recognized in CAS jurisprudence:

> According to the SFT, the starting point for interpreting is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review.[89]

As recommended by CAS jurisprudence, to the extent the literal interpretation is not dispositive, the provision's relationship with other legal provisions and its context should be considered:

> Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation).[90]

The extent to which a "*mandatory one-minute rule*" conflicts with other Rules further demonstrates that FIG never intended for there to be one.

- **The Superior Jury's Discretion:** The Technical Regulations empower the Superior Jury to supervise the competition, address extraordinary circumstances, and take final decisions about inquiries. A "*mandatory one-minute*

[89] Noravank Sport Club LLC v. Union des Associations Européennes de Football, CAS 2022/A/8888, Arbitral Award, ¶ 81 (2023) (Neth.) (quoting SFT 132 III 226, at 3.3.5 which references SFT 131 II 361, at 4.2).

[90] *Id.*

rule" directly conflicts with this discretion, which is neither qualified nor limited by the Rules.[91]

- **Finality of Superior Jury Decisions:** The Technical Regulations provide that the Superior Jury's decision is final and may not be appealed.[92] Nothing in the Rules qualifies the finality, provides for an exception to it, or allows for an appeal—of either the Superior Jury's decision to accept an inquiry pertaining to the last gymnast of a rotation or its adjudication of such inquiry. A "*mandatory one-minute rule*" contravenes this finality by introducing an exception or limitation.

- **Technical Committee's Authority:** The Technical Regulations empower the President of the Technical Committee "*to make decisions on any urgent technical matter*,"[93] and further clarify:

> If unforeseen problems arise during major events, the existing Rules and Regulations do not provide for them, [and] an immediate solution is required, it rests with the respective TC/PK-C to take the responsibility and to decide the matter.[94]

  A "mandatory *one-minute rule*" improperly constrains this authority.

- **Technical Committee's Discretion:** The Code emphasizes accurate scoring and establishes that the Technical Committee is responsible for "*[a]ssuring that the gymnast is given the correct score for their performance or intervene as ruled herein*."

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[91] FEDERATION INTERNATIONALE DE GYMNASTIQUE, TECHNICAL REGULATIONS 2024 36-38 (2024) [hereinafter Technical Regs] (discussing Art. 7.8.1).

[92] *Id.* at 45-46 (highlighting Art. 8.5).

[93] FEDERATION INTERNATIONALE DE GYMNASTIQUE, STATUTES 23 (2023) [hereinafter FIG Statutes] (quoting Art. 15.2).

[94] Technical Regs, *supra* note 91, at 51 (quoting Art. 12).

A "*mandatory one-minute rule*" unjustifiably restricts the Technical Committee's discretion to ensure accurate scoring and fair results.[95]

- **Coaching Behavior and Penalties:** In the section of the Code that addresses penalties for the behavior of coaches, FIG takes great care to ensure its prescription of penalties does not affect the accuracy of performance scores. For coaching behavior that directly impacts gymnasts' performance, specific point deductions are prescribed to neutralize the extent to which the behavior influenced the score, but in instances where a coach's behavior has no effect on performance, point deductions are prescribed to neutralize the extent to which the behavior influenced the score, but in instances where a coach's behavior has no effect on performance, point deductions are prohibited, and penalties apply only to the coach.[96]

By Chair of the Superior Jury *(in Consultation with the Superior Jury)*	**Card System For FIG Official and Registered Competitions**
Behaviour of Coach with NO direct impact on the result/performance of the gymnast/team	
– Unsportsmanlike conduct *(valid for all phases of the competition)*	1st time – Yellow card for coach *(warning)* 2nd time – Red card & removal of coach from the competition and/or training hall
– Other flagrant, undisciplined and abusive behaviour *(valid for all phases of the competition)*	Immediate Red card & removal of coach from the competition and/or training hall
Behaviour of Coach with DIRECT impact on the result/performance of the gymnast/team	
– Unsportsmanlike conduct *(valid for all phases of the competition)* i.e. unexcused delay or interruption of competition, speaking to active judges during the competition, speak directly to the gymnast, give signals, shouts *(cheers)* or similar during the exercise. etc.	1st time – **0.50** *(from gymnast/team at event)* & Yellow card for coach *(warning)* 1st time – **1.00** *(from gymnast/team at event)* & Yellow card for coach *(warning)* if coach speaks **aggressively** to active judges 2nd time – **1.00** *(from gymnast/team at event)* & Red card & removal of coach from the competition floor*
– Other flagrant, undisciplined and abusive behaviour *(valid for all phases of the competition)* i.e. incorrect presence of the prescribed persons in inner circle during competition and/or in the preparation of the apparatus, etc.	**1.00** *(from gymnast/team at event)*, immediate Red card & removal of coach from the competition floor*

A "*mandatory one-minute rule*" runs entirely counter to this principle by allowing procedural technicalities unrelated to the athlete's performance to override accurate scoring.

- **Purpose of the FIG Rules:** The Code provides that the primary purpose of the FIG Rules is to "*[p]rovide an objective means of evaluating gymnastics exercises*," to *"[a]ssure the identification of the best gymnast in any competition*,"[97] and that "*[t]he gymnast is guaranteed the right to . . . [h]ave their performance judged correctly, fairly, and in accordance with the stipulations of the Code of Points*."[98] A "*mandatory one-minute rule*" directly

[95] FEDERATION INTERNATIONALE DE GYMNASTIQUE, 2022-2024 CODE OF POINTS, WOMEN'S ARTISTIC GYMNASTICS § 4.2(f) [hereinafter Code of Points].
[96] *Id.* § 8.3.
[97] *Id.* § 1.1.
[98] *Id.* § 2.1.1.

> contravenes each of these crucial objectives, in preventing the Superior Jury from examining and correcting the scoring of the last gymnast to ensure accurate scoring. This also violates the guaranteed right of gymnasts to have their performances judged correctly and in accordance with the Code of Points.

Given these conflicts, it is evident that FIG never intended to create a rigid "*mandatory one-minute rule*." Instead, FIG's Rules are designed to prioritize fairness, accuracy, and discretion in scoring decisions. As the Rules provide:

> Nothing should be contained in the CoP which contravenes the provision of the Statues, the Technical Regulations as well as other FIG Rules, or which has the effect of modifying such provisions.[99]

CAS jurisprudence supports this principle of interpretation. As CAS has held: "*priority must be given to the true purpose of the rule (the ratio legis) in order to avoid any interpretation that contradict or overlook this true purpose*."[100]

A "*mandatory one-minute rule*" that automatically disqualifies late inquiries would necessitate a framework of rules, policies, and procedures to function. No such support exists because FIG does not view its inquiry process as including such a rule. Without the necessary mechanisms to govern its application, a "*mandatory one-minute rule*" would render the inquiry process dysfunctional.

The FIG Rules provide no reliable way to determine whether a verbal inquiry for the last gymnast of a rotation is "late" under a "*mandatory one-minute rule*." The Panel relied on Omega data to assert that the Chiles inquiry was four seconds late, but the evidentiary record does not adequately support this conclusion, nor does it establish how FIG is to make such determinations in the future. It is unclear how the Omega data accurately determines the time of submission, or when for purposes of applying the "*mandatory one-minute rule*," an inquiry may properly be considered "submitted."

- Is it when the coach demonstrates her intention to submit an inquiry?

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[99] Technical Regs, *supra* note 91, at 36 (quoting Art. 7.3).

[100] Eduardo Julio Urtasun v. Fédération Internationale de Football, CAS 2009/A/2000, Arbitral Award, ¶ 34 (2010) (Switz.).

- Is it when she makes it known to the intake official that she is doing so?
- Is it when the official recognizes the coach's intentions and understands she is submitting an inquiry?
- Is it when the official begins recording the time, or is it when she concludes recording the time?
- If the official records the time in writing, how is the time that elapses between the coach's verbal inquiry and the completion of the written record accounted for?
- Is it when the button is pressed?
- Is it when the signal is transmitted, or is it when it is received?

Such uncertainty may be immaterial under FIG's current Rules, which allow for discretion in the acceptance of inquiries, but they are critical to the enforcement of a "*mandatory one*-minute *rule*." It takes time to articulate "I'd like to file an inquiry,' and to hear and acknowledge the same; and it takes time to press a button and transmit a signal (or record the time in writing). The Ruling's suggestion that the timing of submission could be determined by the pressing of a button transmitting a signal to the Omega system is unsupported by the Rules. Without clear standards for submission and timing, there is no reliable way to assess compliance

Implementing and enforcing a "*mandatory one-minute rule*" would require the support of numerous officials, each understanding their specific role and responsibilities relating to the inquiry process. However, FIG Rules, policies, and procedures provide no guidance for this. As FIG Technical Committee's President Donatella Saachi testified at the Hearing, many officials involved in the event—such as judges and administrative staff—are appointed by the LOCOG. These officials include Time Judges and Secretaries, whose roles would be critical to enforcing a "*mandatory one-minute rule*."

The Code specifies the responsibilities of Time Judges, which include:

- *Time the duration of the exercise (BB & FX).*
- *Time the duration of the fall period (UB & BB).*
- *Time the duration between the green light and the commencement of the exercise.*
- *Ensure adherence to the warm-up time (for non-adherence, written information to the D-Panel)*
- *Give on an audible signal to the gymnast and D-Panel (BB)*
- *Inform the D1 Judge of any violation or deduction; sign and submit the appropriate written record.*

- *Time violations where there is no computer input, the Time Judge must record the exact amount of time over the time limit.*[101]

Notably, the responsibilities of Time Judges do not include the timing of inquiries. Similarly, the Code's *Table of General Faults and Penalties* makes no reference to inquiries, nor does it provide guidance for how Time Judges should address their submission or timing in the chart instructing Time Judges how to report information to the D1 Judge.[102]

Section 8.3 – Table of General Faults and Penalties

Faults		Small 0.10	Med. 0.30	Large 0.50	Very Large 1.00 or more
Failure to complete the competition due to absence from the Competition area				Disqualified	
Unexcused delay or interruption of competition				Disqualified	
Written Notification by TIME JUDGE to D-Panel **NOTE: the deductions will be applied when exceeding time is by one second**					
– Flagrant exceeding of touch warm-up time *(after warning)* • by Individuals	Team/Evt Gym/Evt		X X		From the Final Score
– Failure to start within 30 seconds after green light is lit	Gym/Evt		X		
– Failure to start within 60 seconds	Gym/Evt	The right to begin the exercise will be terminated			
– Overtime *(BB, FX)*	Gym/Evt	X			
– Starting exercise without signal or when red light is lit	Gym/Evt				"0"
UB and BB – Exceeding allowable intermediate fall time – Exceeding intermediate fall time (more than 60 seconds)	Gym/Evt Gym/Evt		X		Exercise ended

Ms. Saachi also testified that the intake official for verbal inquiries is not a FIG official, but rather someone appointed by the LOCOG. The Code describes the responsibilities of these Secretaries:

> *The Secretaries need to have COP and computer knowledge; they are usually appointed by the Organising Committee.*
> *Under the supervision of the D1 Judge they are responsible for correctness of all entries (proceedings) into the computers:*
> *-adherence to the correct order of teams and gymnasts*
> *-operating the green and red lights*
> *-correct flashing of the Final Score.*[103]

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[101] Code of Points, *supra* note 95, § 5.5 (highlighting rules for Functions of the Time, Line Judges & Secretaries).

[102] *Id.* § 8.3 (addressing the Table of General Faults and Penalties).

[103] *Id.* § 5.5.

The intake of verbal inquiries is not mentioned among the Secretaries' listed responsibilities. For Secretaries to play a critical role in a "*mandatory one-minute rule*," their responsibilities would need to be explicitly outlined, particularly since they are appointed by the LOCOG and not FIG. FIG Rules provide no such guidance, and there is no mention whatsoever of Secretaries in the Code's "*Table of Faults and Penalties*."[104]

The Rules establish that the Superior Jury is to "*take the final decision about inquiries*."[105] If a "*mandatory one-minute rule*" existed, the Superior Jury would presumably be responsible for determining compliance and disqualifying late inquiries. However, the Rules are silent on how the Superior Jury should verify or enforce violations of this hypothetical rule. The Code's *Table of General Faults and Penalties*—which catalogs the faults the Superior Jury is empowered to enforce—does not mention inquiries or timing violations related to their submission.[106]

The detailed and deliberate structure of the Code strongly suggests that if FIG intended to create a "*mandatory one-minute rule*," it would have specifically included inquiries among the responsibilities and procedures outlined for officials such as Time Judges, Secretaries and the Superior Jury. The absence of such provisions supports FIG's testimony that its Rules do not mandate the automatic dismissal of late verbal inquiries. Without the necessary procedural framework, a "*mandatory one-minute rule*" cannot function within the existing FIG Rules.

While a "*mandatory one-minute rule*," as envisioned by the Panel, cannot function within the FIG Rules, the one-minute timeframe—when applied with discretion—works effectively, and as CAS has previously held, "*the Panel shall determine that the interpretation given to the rules does fit into the context of the whole regulation*."[107] At the Hearing, FIG's Saachi testified that the one-minute timeframe "*is not compulsory to one minute*"[108] and does not mandate the automatic disqualification of an inquiry.[109] FIG's Rules, policies, and procedures currently in place support this interpretation and FIG's application of it.

For verbal inquiries related to performances other than the last in a rotation, the timeframe in Article 8.5 aligns with the Code's

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[104] *Id.* § 8.3.

[105] Technical Regs, *supra* note 91, at 37.

[106] *Id.*

[107] SV Wilhelmshaven v. Club Atlético Excursionistas & Club Atlético River Plate, CAS 2009/A/1810 & 1811, Arbitral Award, ¶ 3 (2009) (Switz.).

[108] Written Decision, *supra* note 19, ¶ 127.

[109] *Id.* ¶ 63.

guidance to coaches, which permits them to "*[i]nquire to Superior Jury concerning the evaluation of the content of the exercise of the gymnast*,"[110] and the section of the Rules providing that such inquiries "*are allowed, provided that they are made verbally immediately after the publication of the score or at the very latest before the score of the following gymnast/athlete or group is shown*."[111] The Technical Rules further instruct coaches by providing that "*[s]hould the inquiry not be confirmed in writing within four (4) minutes, the procedure becomes obsolete*,"[112] which effectively disarms an inquiry (absent discretionary intervention by a FIG official) so as to avoid any interference with the various other Rules governing the competition.

The timeframe is consistent with other FIG Rules, which establish specific intervals within which gymnasts must begin their routines after the prior gymnast's score is posted. The rule ensures that inquiries do not unfairly delay or disrupt subsequent performances, safeguarding the competitive integrity of the event. No such language appears in the instructions pertaining to the last gymnast because there is no subsequent performance to automatically render the inquiry "obsolete."

For the last gymnast of a rotation, the timeframe is "*one (1) minute after the score is shown on the scoreboard*."[113] Unlike the timeframe for other gymnasts, this rule is unrelated to athlete performance and instead serves a practical, administrative purpose. As CAS acknowledged in its Written Decision:

> [T]he rule applies only to 'the last gymnast or group of a rotation,' with the aim of ensuring a prompt closure and finality of the competition, to avoid a situation of extended uncertainty as to who may have finished in what order in the competition.[114]

This timeframe encourages coaches to act quickly (effectively saying, "Submit your verbal inquiry immediately or within one minute to ensure its timely consideration; otherwise, it may be rejected."). In its Written Decision, CAS acknowledged the testimony of Chiles' coach, Ms. Cecile Canqueteau-Landi, in which she confirmed she was aware of the one-minute timeframe, "*and*

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[110] Code of Points, *supra* note 95, § 3.1.
[111] Technical Regs, *supra* note 91, at 45 (quoting Art. 8.5).
[112] *Id.*
[113] *Id.*
[114] Written Decision, *supra* note 19, ¶ 119.

believed she had made the inquiry as fast as she could."[115] Importantly, the timeframe precedes the four-minute window within which a coach must confirm the inquiry in writing.[116] While it is important for FIG to expedite the award ceremonies ("*the ceremonies must take place immediately after the competitions*"),[117] for an inquiry to delay the closure of the competition, the entire process would have to exceed five minutes—a scenario not applicable to the Chiles inquiry. Further, "*LOCs are responsible for a quick procedure for these ceremonies (maximum 10 minutes or less to set-up and commence)*."[118] Ms. Canqueteau-Landi submitted the verbal inquiry and its written confirmation within five minutes, causing no delay to the award ceremonies or other aspects of the event.

Regardless, the Rules establish that discretion—not any hard-and-fast rule—must prevail to prioritize fairness and accuracy in scoring: "*[t]he FIG reserves the right to alter these arrangements in exceptional circumstances*."[119] This principle underscores the discretionary authority of the Superior Jury. As FIG's Saachi explained, the one-minute timeframe is a guideline, not a strict cutoff, and is intended to facilitate event management, not to degrade accurate scoring or procedural fairness.

Given the paramount importance of scoring accuracy, FIG's interpretation is both logical and functional. A rigid interpretation would contravene the organization's overarching goal of fairness and infringe upon the gymnast's guaranteed right to have their performance judged "*correctly, fairly, and in. accordance with the stipulations of the Code of Points*."[120] AS CAS has held, rules should be interpreted in a manner that seeks "*to discern the intention of the rule-maker, not to frustrate it*."[121]

General principles of statutory construction provide that a provision should be interpreted so as to be harmonious with the broader body of rules of which it is a part. As noted in CAS jurisprudence:

> [S]tatutory construction "is a holistic endeavor" and that the meaning of a provision is 'clarified by the remainder of the statutory scheme . . . [when]

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[115] *Id.* ¶ 80.

[116] Technical Regs, *supra* note 91, at 45-46 (discussing Art. 8.5).

[117] *Id.* at 46 (quoting Art. 9.3.1).

[118] *Id.*

[119] *Id.*

[120] Code of Points, *supra* note 95, § 2.1.1.

[121] Fédération Internationale de Natation Amateur (FINA), CAS 96/149 A.C., Arbitral Award, ¶ 22 (1997).

> only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.[122]

FIG's interpretation and application of its Rules, which prioritize discretion over rigid enforcement of the one-minute timeframe, harmonize with the broader regulatory framework. This approach ensures compatibility with other provisions and supports FIG's primary objective of delivering accurate and fair scoring, as the Chiles inquiry demonstrates.

As CAS jurisprudence affirms:

> With regard to the spirit and the purpose of the rule (which may be considered as the 'intention' objectively construed of the association which drafted the rule) . . . the rationale of [the rule in question] may not compromise one of the paramount objectives . . . .[123]

CAS's decision not to apply this interpretive principle resulted in a heightened focus on procedural formality at the expense of FIG's paramount objectives of fairness and accuracy. Although timeframes for the last gymnast in a rotation matter, the only way to harmonize them with both the main objective of FIG's Rules and the unambiguous generality of the authority conferred upon the Supreme Jury and Technical Committee is to recognize that, for purposes of the inquiry process, properly exercised discretion prevails over any factual indication of timeliness.

B. FIELD OF PLAY DOCTRINE: CAS'S OVERREACH

The CAS Written Decision devotes significant attention to the "field of play" doctrine, describing it as a "*cornerstone principle of sport and CAS case law*."[124] This doctrine insulates decisions made during competition from outside interference, which the Panel acknowledges "*should not be reviewed by the Panel*."[125] The Written Decision goes on to explain the function and rationale of the doctrine:

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[122] U.S. v. Cleveland Indians Baseball Co., 532 U.S. 200, 220 (2001); *see also* United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 371 (1988).

[123] Galatasaray v. Union of European Football Associations, CAS 2018/A/5957, Arbitral Award, ¶ 88 (2019) (It.).

[124] Written Decision, *supra* note 19, ¶ 104.

[125] Written Decision, *supra* note 19, ¶ 105.

> This wise principle seeks to avoid a situation in which arbitrators are asked to substitute their judgment for that of a judge, referee, umpire or other official, on a decision taken in the course of a competition that relates to a sporting activity governing the rules of a particular game.[126]

The Panel dismissed the Application of Moneca-Voinea on this basis, as it involved a judge's call that she had stepped out of bounds—a classic "field of play" decision, and thus, not reviewable by CAS.[127]

The decision to accept and adjudicate Chiles' inquiry, which the FRG alleged violated the one-minute timeframe, also constitutes a "field of play" decision. It was rendered by the Superior Jury during the event and involved the application of FIG Rules. Under the doctrine, this decision should have been insulated from CAS review. Instead, the Panel dismissed the doctrine's relevance, focusing instead on the absence of rules, policies, and procedures to enforce the purported "*mandatory one-minute rule*." According to the Written Decision, FIG's failure to have anything in place requiring officials to monitor compliance with the hypothetical "*mandatory one-minute rule*" made it impossible for FIG to even make a "field of play" decision as to whether it had been complied with; thus, it was impossible for CAS to interfere with one in adjudicating the matter.

The Panel's reasoning was circular: the absence of procedures to monitor compliance with a hypothetical rule does not negate the applicability of the "field of play" doctrine to decisions made under the actual FIG Rules. By dismissing the doctrine, the Panel overstepped its authority and imposed procedural requirements that do not exist within FIG Rules. This distortion of both factual and legal analysis undermined the integrity of the Arbitration process and produced a flawed Ruling.

III. THE DISTORTED WRITTEN DECISION

The AHD's final procedural misstep—its flawed construction of the Written Decision—magnified the procedural injustices that had already compromised the fairness of the Arbitration. By misrepresenting the factual record, minimizing critical irregularities, and mischaracterizing party participation, the Written Decision severely limited the Parties' already narrow rights of

[126] *Id.* ¶ 105.
[127] *Id.* ¶¶ 110, 111.

appeal to the SFT. It also threatens the integrity of future arbitrations by setting a dangerous procedural precedent.

While "challenge-proofing" a decision through fair and transparent process is an admirable goal, constructing a written award in a manner that obscures procedural issues may frustrate appellate review and compound prior procedural deficiencies.[128] Athletes participating in the Olympic Games must submit to CAS jurisdiction and accept that "*[t]he decisions of the CAS shall be final, binding and non-appealable, subject to the action to set aside in the Swiss Federal Tribunal*."[129] Given this extraordinary deference, CAS rulings must objectively and accurately reflect the procedural and factual record. Where inaccuracies or inconsistencies materially affect a party's ability to seek redress under PILA, the written decision itself becomes a procedural failure subject to review.

In the Chiles case, the CAS Written Decision failed to meet these fundamental standards. Its deficiencies included:

- Misrepresenting critical procedural events, including the timing and adequacy of notifications to key parties;
- Obscuring the impact of procedural irregularities, such as the late addition of FIG as a Respondent, the amendment of applications, and the timing of the inclusion of Interested Parties;
- Introducing contradictions about the timeline of events and the handling of objections; and
- Failing to provide a clear and transparent account of how procedural anomalies affected the outcome.

These procedural shortcomings raise serious concerns under basic principles of fairness and undermine Chiles' ability to seek appellate review. As the definitive procedural record, the Written Decision's inaccuracies also erode broader confidence in CAS's ability to safeguard athlete rights and ensure fairness and transparency. The following discrepancies further highlight procedural defects that raise serious questions under Swiss law:

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[128] Antonio Rigozzi, *Challenging Awards of the Court of Arbitration for Sport*, 1 J. INT'L DISP. SETTLEMENT 217, 2017 (2010) ("*This topic is addressed not only to counsel, but also to arbitrators looking for some guidance on how to make their awards as 'challenge-proof' as possible as a matter of Swiss law*.").

[129] Conditions of Participation, *supra* note 8, at 5 (quoting Section 7: Arbitration).

A. INACCURATE FACTUAL DEPICTIONS OF PARTY STATUS AND PARTICIPATION

- **Written Decision:** At the beginning of the Written Decision, the Panel established that all references to "*Respondents*" used throughout the Written Decision include Ms. Donatella Sacchi and FIG; all references to "*Interested Parties*" include ROSC, Chiles, USAG, USOPC, and the IOC; and all references to "*Parties*" include "*all Applicants, Respondents, and Interested Parties,*" collectively.[130]

  Reality: The FRG's Application was filed on August 6th. FIG was not added as a Party until August 8th, the IOC was not added as an Interested Party until August 9th, and Chiles, USAG, and the USOPC were not made aware of the arbitration until August 9th. Thus, all references to "*Parties*" in the Written Decision's account of proceedings prior to August 8th are inaccurate, as are all references to "*Interested Parties*" in the account of proceedings prior to August 9th.

This obfuscates the procedural deficiencies resulting from (1) CAS's acceptance of the FRG's Amended Applications, which added FIG as a Respondent after the proceedings were already underway, (2) its late inclusion of the IOC as an Interested Party, and (3) its failure to properly notify Chiles, USOPC and USAG. For example:

- **Written Decision:** "*On 6 August 2024 at 17:01 . . . The CAS Ad Hoc Division, acting ex officio, identified as further Interested Parties Ms. Chiles, USOPC and US Gymnastics, and* ***notified a copy of the Application to them***." (emphasis added).[131]

  Reality: CAS sent notifications to incorrect email addresses. Chiles did not learn of the proceedings or receive any materials until the evening of August 9th, mere hours before the Hearing. The USOPC and USAG also remained unaware of the dispute until days after its commencement and received incomplete notifications.

- **Written Decision:** "*On 7 August 2024 at 10:42, the CAS Ad Hoc Division* ***informed the Parties and Interested Parties*** *that the two proceedings had been consolidated in*

[130] Written Decision, *supra* note 19, ¶ 2.
[131] *Id.* ¶ 13.

accordance with Article 11 of the CAS Arbitration Rules for the Olympic Games . . . It notified the ***Parties and Interested Parties*** *of the composition of the Arbitral Tribunal*." (emphasis added).[132]

Reality: The only Parties CAS informed of its consolidation of the two proceedings and its composition of the Arbitral Tribunal at this time were FRG and Ms. Sacchi. FIG was not yet a Party. The only Interested Party was the ROSC. It did not inform the USOPC or USAG at this time, and never properly informed Chiles.

- **Written Decision:** On August 7, 2024 at 10:42, "*the attention of the* ***Parties and Interested Parties*** *was drawn to the disclosure made by Dr. Hamid G. Gharavi in his Independence and Acceptance form, namely the fact that he acts as counsel for Romania in investment arbitration*," (emphasis added) and "*[n]o objection to the appointment of Dr. Gharavi as President of the Panel was received by any Party or Interested Party, either within the deadline for raising objections fixed by the CAS Ad Hoc Division, or at any time during the proceedings*."[133]

  Reality: The only Parties CAS informed of its consolidation of the two proceedings and its composition of the Arbitral Tribunal at this time were FRG and Ms. Sacchi. FIG was not yet a Party. As for the Interested Parties, only the attention of the ROSC was drawn to the disclosure, as the IOC was not involved at that time, and USOPC, USAG and Chiles were still unaware of the dispute. In fact, CAS never notified Chiles of Dr. Gharavi's Romanian ties.

- **Written Decision:** "*No objection to the appointment of Dr. Gharavi as President of the Panel was received by* ***any Party or Interested Party****, either within the deadline for raising objections fixed by the CAS Ad Hoc Division, or* ***at any time during the proceedings****, including at the hearing or up to the issuance of the dispositive part of the award*." (emphasis added).[134]

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[132] *Id.* ¶ 14.
[133] *Id.* ¶ 15.
[134] *Id.*

Reality:

- Four of the five Interested Parties could not object within the deadline for raising objections because they had not been properly notified of the dispute.
- Because Chiles was never properly notified or provided information relating to Dr. Gharavi, she had no opportunity to object.
- At the Hearing, Dr. Gharavi asked the Parties whether they had any objections to the constitution of the Panel, but he did not mention either his representation of Romania or his Declaration.

- **Written Decision:** "*On 7 August 2024, the CAS Ad Hoc Division issued procedural directions . . . [and] the **Parties and Interested Parties were informed** that a hearing would take place on 8 August 2024, at 10:00*." (emphasis added).[135]

  Reality: The only Parties CAS informed of its consolidation of the two proceedings and its composition of the Arbitral Tribunal at this time were FRG and Ms. Sacchi. FIG was not notified at this time, and the only Interested Party it informed at this time was the ROSC. The AHD did not inform the IOC, USOPC, USAG, or Chiles.

- **Written Decision:** On August 7, 2024, "*the CAS Ad Hoc Division confirmed the extension until 21:00, for **all Parties**, of the time limit to file the Answer and the amici curiae brief. The **Parties were also informed** that the previously scheduled hearing would be postponed until Friday 9 August 2024*." (emphasis added).[136]

  Reality: The only Interested Party it informed at this time was the ROSC. The AHD did not inform the IOC, USOPC, USAG, or Chiles.

- **Written Decision:** "*The CAS Ad Hoc Division, on 9 August 2024 at 00:12, invited **the other Parties** to file Rejoinders to the Reply of FRG, Ms. Barbosu and Ms. Maneca-Voinea*." (emphasis added).[137]

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[135] *Id.* ¶ 16.
[136] Written Decision, *supra* note 19, ¶ 21.
[137] *Id.* ¶ 28.

Reality: The AHD did not invite the USOPC, USAG, or Chiles to file Rejoinders at this time. They remained unaware of the dispute.

- **Written Decision:** "*On 9 August 2024 at 9:02, the CAS Ad Hoc Division sent . . . at the request of the Panel*" a communication requesting FIG to provide information pertaining to the identity of the intake official and evidence that they recorded the time they received the verbal inquiry.[138]

  Reality: The Written Decision neglects to mention that USOPC, USAG, and Chiles did not receive this communication.

- **Written Decision:** Also on August 9, 2024, at 9:02, "*the CAS Ad Hoc Division also **informed the Parties** of the inclusion of the IOC as an Interested Party. The IOC was invited to . . . comment on the possible referral of the dispute to the CAS Appeals Arbitration Division*."[139]

  Reality: The CAS Ad Hoc Division did not inform the USOPC, USAG, or Chiles at this time.

- **Written Decision:** On August 9, 2024 at 15:51, the AHD finally addressed its failure to notify certain of the Parties with the following explanation: "*The issue of notification to U.S. Gymnastics and the USOPC, Interested Parties that were included ex officio by the CAS Ad Hoc Division although the Applicant(s) did not include them in their Application, has already been discussed bilaterally between the CAS Ad Hoc Division and those parties. It is, of course, an unfortunate circumstance that should not have occurred. However, **these Interested [Parties]** [sic] now dispose of all relevant documents in order to participate in these proceedings and file their amici curae briefs*." (emphasis added).[140]

  Reality: This explanation places an undue burden on any aggrieved party seeking recourse from the SFT, as it

[138] *Id.* ¶ 29.
[139] *Id.* ¶ 32.
[140] *Id.* ¶ 35.

downplays both the significance of the "*issue of notification*" and the extent to which it stemmed from the AHD's questionable management of the proceedings.

- By mentioning that the Interested Parties were added by the AHD because "*the Applicant did not include them in their Application*" suggests that is a reason for the "*issue of notification*." If so, that would support the view that CAS should not have deviated from its rules to accept the incomplete Application in the first place. Regardless, CAS included them as Interested Parties and repeatedly failed to notify them for nearly the entirety of the proceedings, and that is the real "*issue of notification*."
- It is misleading to suggest that the Parties had all relevant documents at that time, since neither USAG, USOPC, nor Chiles received the documents pertaining to Dr. Gharavi. Moreover, by stating that "*[t]he issue of notification to U.S. Gymnastics and the USOPC . . . has already been discussed bilaterally between the CAS Ad Hoc Division and those parties*" and "*these Interested [Parties] now dispose of all relevant documents in order to participate in these proceedings and file their amici curae briefs*."[141] CAS implies that the "*issue of notification*" was resolved—despite the continued exclusion of key participants and the lack of timely or complete disclosure. The Written Decision does not reference the USOPC's communication to the AHD, in which it stated: "*[w]e will need all new deadlines if you mean to give the parties any chance to participate.* ***We have not been able to review any of the materials in this case at all and our counsel are all US based of course***." (emphasis added).[142] This omission downplays the practical barriers the U.S. Interested Parties faced in preparing a timely and meaningful response.
- Notably absent from this explanation is any reference to Chiles herself, arguably the most vitally Interested

[141] *Id.* ¶ 35.

[142] *Jordan Chiles Appeal Before the Swiss Supreme Court*, GIBSON DUNN (Sept. 15, 2024), https://www.gibsondunn.com/ [https://perma.cc/4XQ3-2ZDR] (quoting the email correspondence between the CAS Ad Hoc Division and Chris McCleary, dated August 9, 2024, from page 27 of the Complainant's Appeal).

Party. Even at this late stage of the proceedings, CAS had still not notified her or contacted her. Omitting this fact from the procedural account raises serious concerns about the completeness and fairness of the notification process.

- The Written Decision does not address the cause for the "*issue of notification*," despite the significant impact that CAS's handling of this matter had on the Arbitration and the rights of the Parties. This serious procedural anomaly also affected Chiles' due process rights in pursuing her appeal to the SFT. Several additional facts, also omitted from the Written Decision, are relevant to understanding the causes and consequences of the notification failure:
  - The email address CAS used to notify Chiles contained a typo.
  - The email address CAS used to notify USAG was incorrect.
  - The email address CAS used to notify the USOPC was incorrect (it was the email address of a USOPC employee no longer employed by the organization).

- **Written Decision:** "*On 9 August 2024 at 15:51, the CAS Ad Hoc Division . . . **informed the Parties** . . . the Panel will not apply Article 20 c) of the Ad Hoc Rules. Accordingly, the hearing scheduled for tomorrow will not be postponed in any event*." (emphasis added).[143]

  Reality: The CAS Ad Hoc Division did <u>not</u> inform Chiles at this time (she remained unaware of the Arbitration until 17:26 p.m. on August 9th).

B. FACTUAL INACCURACIES IN DESCRIBING PANEL CONSTITUTION AND OBJECTION PROCESS

In addition to misrepresenting party status and participation, the Written Decision mischaracterizes how and when Parties were informed of the Tribunal's composition and their ability to object. These inaccuracies obscure critical procedural defects—specifically, the right to a properly constituted and neutral

[143] Written Decision, *supra* note 19, ¶ 35.

tribunal—and impair Chiles' ability to raise these issues on appeal. Key discrepancies include:

- **Written Decision:** On August 7th, "*the CAS Ad Hoc Division informed the Parties and Interested Parties that the two proceedings had been consolidated," and that "[i]t notified the Parties and Interested Parties of the composition of the Arbitral Tribunal*."[144]

  Reality: This statement is misleading. While it accurately reflects the Parties and Interested Parties included in the initial Applications, it is inaccurate concerning those added later in the proceedings, which for purposes of the Written Decision, are also considered "*Parties and Interested Parties*." The Written Decision implies that Chiles, USAG, and USOPC were notified of the Panel's composition in a timely manner—a factor affecting Chiles' ability to seek recourse on review. However, the factual record establishes that they did not receive these notifications and could not have been informed by the AHD at that time.

- **Written Decision:** "At the outset of the hearing, the Parties were requested whether they had any objection as to the constitution of the Panel. All Parties declared that they were **satisfied with the composition of the Panel and had no objection**." (emphasis added).[145]

  Reality: This statement omits key context:
  - Chiles, USAG, and USOPC had not been properly notified of the composition of the Panel, did not receive complete case files (including Dr. Gharavi's Declaration), and were deprived of the opportunity to raise timely objections. Chiles herself remained unaware of Dr. Gharavi's Romanian ties until after the arbitration concluded, learning of them only through subsequent media reports.[146]

These deficiencies in notification and related omissions deprived Chiles and other Interested Parties of meaningful participation in the constitution of the Tribunal. This procedural

[144] *Id.* ¶14.
[145] *Id.* ¶ 46.
[146] Tariq Panja, *Head of Panel that Ruled Against Jordan Chiles Represents Romania in Other Cases,* N.Y. TIMES (Aug. 13, 2024), https://www.nytimes.com/ [https://perma.cc/4SUJ-42ZC].

irregularity now materially hinders Chiles' ability to challenge the integrity of the proceedings under Swiss law, because the SFT's review is confined to the factual record set forth in the Written Decision.

C. OMISSIONS IN DESCRIPTION OF CASE FILE ACCESS

The Written Decision misrepresents the extent to which Interested Parties had access to the full case file, thereby minimizing another significant procedural defect.

- **Written Decision:** "*The CAS Ad Hoc Division duly provided to Mr. McCleary a copy of the entire case file, in particular all written submissions and the Notice of formation of the Panel and Arbitrator's Acceptance and Statement of Independence signed by the Members of the Panel, to USOPC*." (emphasis added).[147]

  Reality: The AHD provided access to a download folder, but the folder was incomplete. Notably, it did not include Dr. Gharavi's "Declaration of Acceptance and Independence." The omission of Dr. Gharavi's Declaration is significant. Without this document, the USOPC, USAG, and Chiles were unable to assess potential conflicts or lodge informed objections during the arbitration. The Written Decision's assertion that the case file was "*duly provided*" conceals the reality that Interested Parties were materially disadvantaged—a defect that impacts both the fairness of the proceedings and the ability to seek meaningful review before the SFT.

D. UNRELIABLE ACCOUNT OF AMENDED APPLICATIONS

The Written Decision mischaracterizes the status of objections to the Amended Applications filed by the FRG, again obscuring the extent of procedural irregularities.

- **Written Decision:** "*As regards the Interested Parties, no objections were submitted to the Amended Applications . . .* ."[148]

  Reality: The only Interested Party CAS notified of the Amended Applications was the ROSC. The U.S. Interested

[147] Written Decision, *supra* note 19, ¶ 33.
[148] *Id.* ¶ 94.

> Parties had not yet been properly notified and were unaware of the dispute at the time and therefore not able to object. FIG, however, did object, and its objections were acknowledged elsewhere in the Written Decision but downplayed or omitted from critical sections. This statement appears in the Written Decision at Section V, "JURISDICTION AND ADMISSIBILITY," without what would seem a pertinent fact set forth in Section III, "THE CAS PROCEEDINGS," that "*On 8 August 2024, at 13:47, **FIG objected to** the admissibility of the Amended Application*,"[149] and that "*[o]n 8 August 2024, at 15:39**, the CAS Ad Hoc Division acknowledged the objection of FIG** to the admissibility of the Amended Application*." (emphases added).[150]

By framing the absence of objections as consent, the Written Decision inaccurately portrays the procedural history. Moreover, it does not fully integrate FIG's documented objections into the jurisdictional and admissibility analysis, creating an incomplete and misleading record that hampers appellate review.

E. MISCHARACTERIZATION OF TIMELINESS OF INQUIRY

The Written Decision also inaccurately characterizes the handling and evidentiary evaluation of the timing of Chiles' verbal inquiry. This mischaracterization undermined the fairness of the proceedings and contributed to an improper shifting of the burden of proof onto FIG.

- **Written Decision:** "*An inquiry was submitted **within time** on behalf of Ms. Maneca-Voinea to increase her D Score from 5.900 to 6.100, but the inquiry was denied*." (emphasis added).[151]

  Reality: The Written Decision's conclusion regarding the timeliness of Ms. Maneca-Voinea's inquiry is irreconcilable with the Panel's own admission that "*[t]here was no arrangement or mechanism in place to check whether the rule had been applied or complied with*."[152] Without a verifiable mechanism to assess the timing of verbal

[149] *Id.* ¶ 23.
[150] *Id.* ¶ 25.
[151] *Id.* ¶ 7.
[152] *Id.* ¶ 137.

inquiries, any definitive finding regarding compliance or non-compliance is unsupportable.

- **Written Decision:** "*It was **undisputed** that 1 minute and 4 seconds after the publication of Ms. Chiles' initial score on the scoreboard, Ms. Chiles' coach, Ms. Cecile Canqueteau-Landi, submitted a verbal inquiry as to Ms. Chiles' D Score*." (emphasis added).[153] And later in the Written Decision: "*At the hearing there was **no dispute between the Parties** that Ms. Chiles' inquiry was submitted 1 minute and 4 seconds after her score was official displayed on the scoreboard. All parties accepted as clear and determinative the report prepared by Omega. No party sought to introduce other evidence to challenge that determination*." (emphasis added).[154]

  Reality:
  - The Written Decision conflates the existence of evidence with the establishment of proof, treating the Omega data as determinative even though it was neither authoritative nor conclusive. The Applicant failed to prove the precise time of the verbal inquiry. The Panel acknowledges in the Written Decision that, while "*relevant and helpful*,"[155] the Omega report and supporting document "*were not fully responsive to the information the Panel had sought*"[156] because it failed to identify the "*(i) identity of the person designated to receive the verbal inquiry and (ii evidence from that person (or others) of their recording of the time receiving [the verbal inquiry]*."[157] No other evidence was introduced to establish the precise timing.
  - FIG, USAG, and Chiles consistently maintained that the Omega data could not reliably determine the timing of the verbal inquiry. Chiles' coach testified that she lodged her verbal inquiry within the one-minute timeframe, while Ms. Saachi testified that the Omega data could not decisively establish the

[153] Written Decision, *supra* note 19, ¶ 9.
[154] *Id.* ¶ 121.
[155] *Id.* ¶ 125.
[156] *Id.*
[157] *Id.* ¶ 123.

> timeliness of the verbal inquiry. This testimony contradicts the Written Decision's assertion that no party disputed the timing of the inquiry at the Hearing.

By treating the Omega data as determinative, the Panel effectively relieved the FRG of its burden to substantiate its allegations and impermissibly shifted the burden onto FIG to disprove an unproven violation. This reversal of burden, compounded by the lack of procedural safeguards, rendered the arbitration fundamentally unfair and distorted the resulting factual record.

F. CONSTRUCTION OF "MANDATORY ONE-MINUTE RULE"

The Written Decision's construction of a supposed "*mandatory one-minute rule*" was not grounded in the FIG Rules or consistent with FIG's practice. Rather, it reflects a fundamental misunderstanding that distorted the entire Arbitration.

- **Written Decision:** "Despite arguing that Article 8.5 should be interpreted and applied with a degree of flexibility, the Respondents have offered no evidence or practise to support the existence of any exception or tolerance to the application of the rule."[158]

  Reality:
  - The Panel notes that "*[u]nder Art. 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*"[159] and "*[t]he Panel notes that the 'applicable regulations' in this case are the FIG Code of Points 2022-2024 and FIG Technical Regulations 2024*."[160] Such Rules provide clear support for tolerance in applying the one-minute timeframe.
  - FIG's actual handling of the Chiles inquiry, in which the Superior Jury accepted and adjudicated the inquiry despite alleged timing issues, is itself direct evidence and practice supporting the existence of such tolerance.

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[158] *Id.* ¶ 118.
[159] Written Decision, *supra* note 19, ¶ 96.
[160] *Id.* ¶ 97.

- The Panel acknowledges in the Written Decision that, "*[a]ccording to Respondents . . . the Superior Jury is allowed to show tolerance for time deviations beyond the 1-minute deadline*."[161]

- **Written Decision:** As support for its conclusion that "*Late verbal inquiries will be rejected*,"[162] "*that compliance is intended to be mandatory and strict, and to be sanctioned by a rejection if violated*,"[163] and that "*[n]o room is afforded for any exercise of discretion*,"[164] the Panel cites the fact that Chiles' coach "*confirmed at the Hearing to have been well aware of this one-minute rule of Article 8.5, and that each team leader attended training sessions before the Games, at which the existence and importance of this rule was emphasized*."[165]

  Reality: As discussed herein, the one-minute timeframe referenced in the Rules applies to coaches and may extinguish their right to file an inquiry, but it does not prohibit a coach from filing an inquiry beyond the timeframe or limit the Superior Jury's ability to accept one. Thus, it is of little evidentiary import that training sessions were held to ensure coaches understood the importance of submitting inquiries within the one-minute timeframe. More relevant is the fact that the Applicant produced no testimony or evidence that timekeepers had been instructed and trained in a way that supported a "*mandatory one-minute rule*."[166] CAS did not identify that official, as it did not seek the information from the appropriate source. Perhaps more importantly, this discussion appears to overlook the fact that the burden of substantiating the alleged violation rested with the Applicant, which offered no evidence in support of its claim.

The Written Decision disregards testimony and evidence, improperly concluding that the Rules imposed an inflexible deadline with no discretion. This misinterpretation directly

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[161] *Id.* ¶ 63.
[162] *Id.* ¶ 119.
[163] *Id.*
[164] *Id.*
[165] Written Decision, *supra* note 19, ¶ 114.
[166] *Id.* ¶ 134.

contradicted both the literal language and the systematic structure of FIG's regulatory framework, which emphasizes the discretion of the Superior Jury and the priority of accurate and fair scoring.

By misconstruing the FIG Rules as creating a "*mandatory one-minute rule*," the Ruling not only misapplied FIG's regulations but also improperly expanded CAS's authority to intervene in field-of-play decisions traditionally insulated from its review. This critical distortion undermines the Ruling's legitimacy and further prejudices Chiles' ability to challenge the award before the SFT.

G. SYSTEMIC NOTIFICATION FAILURES

One of the most striking procedural deficiencies misrepresented in the Written Decision concerns CAS's repeated notification missteps. The Written Decision downplays these systemic failures, creating a factual record that distorts the procedural history and obstructs effective review by the SFT.

- **Written Decision:** "*The issue of notification to US Gymnastics and the USOPC . . . has already been discussed bilaterally . . . these Interested [Parties] now dispose of all relevant documents in order to participate in these proceedings*,"[167]

  Reality: This statement is misleading and materially inaccurate: The record clearly demonstrates that key Interested Parties—particularly Chiles—did not receive proper notification or the necessary materials in a timely manner, leaving them unable to meaningfully participate or raise objections.

The Written Decision obfuscates the true extent of these notification issues by suggesting that the Applicant's omission of certain Interested Parties in its initial filing contributed to the delays. In reality, CAS's procedural mismanagement, including reliance on incorrect email addresses and failure to ensure compliance with its own notification rules, caused these deficiencies. The Written Decision's omission of the root causes of these procedural issues results in a record that is both incomplete and inaccurate. These inaccuracies are not merely misstatements; they are procedural deficiencies that severely compromise both the fairness of the Ruling and the aggrieved parties' ability to appeal under PILA, given the SFT's reliance on the written record.

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[167] *Id.* ¶ 35.

While procedural mismanagement during arbitration is itself a serious concern, mischaracterizing such issues in the Written Decision compounds the harm. By distorting the factual record, CAS not only impaired the ability of the affected parties to seek meaningful review under PILA but also jeopardized the enforceability of its decisions under international legal standards.

A flawed written decision, particularly one that obscures procedural missteps, undermines not only the immediate rights of the parties involved, but also the broader credibility of CAS as the ultimate arbiter of Olympic disputes.

When inaccuracies infect the definitive record relied upon by the SFT, the promise of fairness in Olympic dispute resolution is diminished, and athletes, federations, and the Olympic Movement itself are left vulnerable to injustice without effective recourse.

IV. THE DENIAL OF CHILES' RIGHT TO PARTICIPATE AND RIGHT TO BE HEARD

U.S. Olympians are uniquely vulnerable in the CAS's Olympic dispute resolution process. While the USOPC facilitates their participation in the Games, athletes are personally responsible for securing and funding their legal representation if a dispute arises.

Among the USOPC's responsibilities is to "*facilitate, through orderly and effective administrative procedures, the resolution of conflicts or disputes that involve any of its members and any amateur athlete . . . that arise in connection with their . . . participation in the Olympic Games*."[168] As a condition of her participation, Chiles agreed to abide by the USOPC Dispute Resolution Hearing Procedures applicable to the Games,[169] to "*authorize the USOPC . . . to file protests and appeals on your behalf at the Games*,"[170] and to "*cooperate with the USOPC and your NGB in any proceeding involving your finish, result, or medal award in which the USOPC is a party or is asked to provide information*."[171] However, the USOPC requires U.S. athletes to acknowledge and agree that:

> [T]he USOPC is not obligated to bring, become a party to or represent you in a proceeding involving

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[168] 36 U.S.C. § 220505(c)(5).

[169] UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE, GAMES DELEGATION TERMS, PARIS 2024 OLYMPIC & PARALYMPIC GAMES 4 (2024).

[170] *Id.* at 9.

[171] *Id.*

> your finish result or medal award; and further understand that if you wish to participate individually in such a proceeding or you wish to bring a proceeding on your own, you will be responsible for securing the services of an attorney and for payment of all legal fees and expenses involved . . . .[172]

This stark disclaimer leaves athletes like Chiles particularly vulnerable in expedited AHD proceedings. It is neither realistic nor fair for an athlete to bear the financial and logistical burden of addressing disputes in a foreign legal setting while balancing the aftermath of competing on the world stage. Moreover, the costs of appealing an unfair CAS decision to the SFT—a complex and expensive process requiring local counsel—only compound these challenges.[173]

The USOPC was fully aware of the procedural inequities affecting Chiles. Yet, despite receiving a link to attend the video hearing, it chose not to participate. The CAS Written Decision noted this absence:

> USOPC, who received the link to connect to the video-hearing, did not attend. It did not give any explanation for such absence. Nor did it contact the CAS Ad Hoc Division any more at any time until the conclusion of the proceedings.[174]

Whatever the reasons for that decision, it underscores the broader challenges athletes face in securing a fair hearing before CAS, particularly when left to navigate high-stakes proceedings with limited institutional support.

The stakes for athletes in AHD proceedings are extraordinarily high because CAS rulings are so difficult to appeal. Mistakes the Panel may make in adjudicating the matter are not reviewable except for the limited reasons set forth in PILA. The procedural fairness of the arbitration process itself is therefore critical—as is access to qualified legal representation. CAS's failure to notify Chiles of the dispute until the day before the Hearing left her insufficient time to retain counsel or prepare for and participate in the proceedings.

In the earlier stages of the proceedings, CAS had acknowledged the importance of access to legal representation, having shown considerable flexibility in supporting other Parties' efforts to engage

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[172] *Id.*
[173] *Id.*
[174] Written Decision, *supra* note 19, ¶ 45.

counsel. The FRG took more than 24 hours after filing its Applications to involve its lawyers. The AHD not only fulfilled their request for additional time to prepare and file briefs but also allowed them to file required affidavits that had not been included in the Amended Application. The Panel also noted in the Written Decision that the new lawyers had "*indicated that '[b]oth application forms were addressed by the Applicant to the Ad Hoc Division of CAS without any legal assistance*,'"[175] as if this might explain the flaws in the FRG's initial Applications (and justify CAS's acceptance in their incomplete form), and implicitly justifying the Panel's flexibility by suggesting that fairness required allowing additional time to secure counsel.

Unfortunately, after the IOC urged the AHD to conclude the proceedings swiftly, despite being aware of Chiles' circumstances, CAS declined to grant Chiles a similar accommodation. It left her with insufficient time to retain independent counsel to represent her interests. USAG, which had also had to scramble to engage counsel, connected Chiles with its lawyer at the last-minute so that he could speak on her behalf at the Hearing, but she had no opportunity for meaningful preparation or participation.

CAS's handling of this case resulted in a troubling disparity in the treatment of the parties. The FRG was granted time to secure representation and build its case. In contrast, Chiles—without prior notification or access to counsel—was denied any real opportunity to present her side. This inequality made Chiles especially vulnerable to the CAS panel's deviation from its rules and violations of procedural principles.

In the spirit of basic fairness and for obvious public policy reasons, it is essential for the SFT to ensure CAS arbitrations satisfy a reasonable level of functionality. In a paper published in the *Journal of International Dispute Settlement,* entitled, "Challenging Awards of the Court of Arbitration for Sport," lawyer and professor, Antonio Rigozzi (who served as counsel to the IOC during the Paris Olympics and was present at fifteen of the seventeen in-person hearings held by the AHD, including the Chiles case) emphasized the importance of inclusion and participation to a fair adversarial process, given the limited reviewability of CAS decisions:

> It is submitted that this hands-off approach is acceptable as far as CAS awards are fundamentally fair on the merits. Of course, CAS arbitrators and CAS as an arbitral institution bear the main

[175] Written Decision, *supra* note 19, ¶ 17.

> responsibility of ensuring that such remains the case, but athletes' counsel also have to play their role in making sure that the arbitrators have been presented with all the arguments that could be made on behalf of the athlete so as to ensure that the arbitrators will have to address all the relevant issues to come to a correct and fair result.[176]

The adversarial process of CAS arbitrations requires parties to present and argue their positions to the panel. Generally, this adversarial process is effective in achieving a level of reliability and fairness, but only if all parties are provided a reasonably equal opportunity to participate. Access to qualified legal counsel is especially important because independent advocacy of conflicting positions clarifies the issues and reduces the risk of unchallenged or anomalous viewpoints distorting a panel's decision.

Provided all parties have an equal opportunity to contribute, and qualified, impartial arbitrators manage cases according to procedure, it is reasonably likely the process will result in a fundamentally fair adjudication of the merits "*in the interests of athletes and sport*."[177] On the other hand, if an arbitral panel's management of the process effectively excludes a party or hinders their ability to secure legal representation—particularly when all other parties have counsel—those parties cannot "*play their role*" and the adversarial system of justice breaks down.

This fundamental flaw in the AHD's handling of the Chiles case contributed to the Panel's failure to fully identify and examine issues and evidence central to the dispute. As Professor Rigozzi explains regarding SFT jurisprudence:

> According to the Supreme Court's case law, the parties' right to be heard in adversarial proceedings . . . does include a minimum duty for the adjudicator to examine and deal with the issues relevant to the decision. Accordingly, the parties' right to be heard is breached when the arbitrators, whether by inadvertence or due to a misunderstanding, fail to consider allegations or arguments made and evidence filed or tendered by either party which are important for the decision to be made. This would constitute a formal denial of justice given that in such case the affected party is

[176] Rigozzi, *supra* note 128, at 254.
[177] Ad Hoc Rules, *supra* note 10, at art. 1.

> placed in the same position as if it had not been able to present its case to the arbitrators at all.[178]

The procedural deficiencies of the AHD's handling of the Chiles Arbitration created a debilitating inequality in the Parties' opportunity to participate and to be heard. FIG and the U.S. Interested Parties were excluded from most of the proceedings, and when the AHD finally included them, it was too late for them to effectively advocate their positions. As the SFT has held:

> [A] violation of procedural public policy occurs whenever fundamental and generally recognized principles of procedure have been disregarded, leading to an intolerable contradiction with the sense of justice, so that the decision appears incompatible with the values recognized in a state governed by the rule of law.[179]

Given the limited timeframe within which it must work, the AHD must manage proceedings carefully to ensure a fair adjudication of disputes:

> The Panel organizes the procedure as it considers appropriate while taking into account the specific needs and circumstances of the case, the interests of the parties**, in particular their right to be heard**, and the particular constraints of speed and efficiency specific to the present ad hoc procedure." (emphasis added).[180]

If a panel's failure to account for these needs and circumstances results in the denial of a party's right to be heard, basic notions of fairness demand correction at the appellate level.

If the SFT does not safeguard the fundamental procedural principles of the dispute resolution process to which athletes are required to submit, the integrity of Olympic competition will quickly erode. The spirit that drives athletes and inspires viewers depends upon the essential belief that results will reflect the best performances on the field of play, as determined by the established rules of each IF, and not by the rushed deliberations of three arbitrators. For athletes to believe in the rules of the game, they must also believe in the rules of CAS.

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[178] Rigozzi, *supra* note 128, at 248-49.

[179] Bundesgericht [BGer] [Federal Supreme Court] Aug. 17, 2020, 4A_486/2019 ¶ 3.3 (Switz.).

[180] Ad Hoc Rules, *supra* note 10, at art. 15(b).

The AHD's departure from its procedural rules compromised the Parties' rights under PILA. Interested Parties—and FIG, to an extent—were effectively excluded from most of the proceedings and practically prevented from advocating their positions. With what little involvement they were afforded, they objected to the Panel's management of the process and sought additional time and referral of the dispute, all to no avail. In the end, Chiles, the most affected Interested Party, was left with only one option—to appeal to the SFT.

Under the circumstances, and given the exceptionally limited review of CAS decisions, this represents a serious procedural irregularity that undermines the fairness of the arbitration, and it was made much worse by the AHD's Written Decision.

If Chiles must accept the factual record established by the CAS Panel and its decisions on the merits, including its unsupported interpretation of a "*mandatory one-minute rule*," then basic principles of fairness demand that CAS be held to its own procedural rules. If CAS can violate its rules without consequence, fair dispute resolution in sport is illusory.

Given that Jordan Chiles was never properly notified by CAS, it is difficult to conclude that she was afforded a fair and equal opportunity to participate in the adjudication that stripped her of her hard-earned Olympic medal.

CAS Rules provide that the Parties must be notified, yet those procedures were not followed. The Panel acknowledges this error in the Written Decision, stating that it "*should not have occurred*."[181] Clearly, there was a manifest default in the arrangements: there was no monitoring system in place to allow the AHD to ensure that its notifications were properly communicated and received in a timely manner. This procedural lapse was attributable to CAS.

Against this factual background and case-specific circumstances, the SFT should find that the review it has been requested to conduct of the AHD's violations of procedural rules and violations of the Parties' due process rights are not precluded by the doctrine of *res judicata*. The SFT is not being asked to interfere with the Panel's decisions on the merits. Rather, it is asked to correct a fundamental procedural default by CAS itself—a failure to implement and monitor compliance with an important rule that it adopted to protect the athletes and the public. Such failure is tantamount to an error of law or *de facto* arbitrariness incompatible with the rule of law. It follows that the Ruling must be determined to be without effect.

[181] Written Decision, *supra* note 19, ¶ 35.

V. THE OMINOUS IMPLICATIONS OF THE RULING

The public policy implications of the CAS Ruling extend far beyond the parties and the sport of gymnastics, threatening the independence of IFs, an essential feature of the Olympic Movement. The Olympic Charter consecrates the independence of IFs as one of its seven fundamental principles of Olympism:

> [S]ports organisations within the Olympic Movement . . . have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.[182]

The Charter provides that the role of IFs is "*to establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application*."[183] So long as its statutes, practices, and activities conform with the Charter, "*each IF maintains its independence and autonomy in the governance of its sport*."[184] The Charter also emphasizes that "*[e]ach IF is responsible for the control and direction of its sport at the Olympic Games*,"[185] specifically including the rules governing competitive events, the selection of officials, and the determination of final results and rankings. The requirement that IFs "*establish an appeal mechanism or process for all technical matters concerning their sport and from which all rulings and decisions, including any related sanctions or measures, are final and without appeal*,"[186] implies their independence is intended to remain uninterrupted.

CAS jurisprudence and Swiss Law also recognize the independence of international federations:

> The principle of autonomy of associations is anchored in the Swiss Law of Private Associations (Cf. CAS 2011/O/2422, para. 8.31). It provides an association with a very wide degree of self-

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[182] Olympic Charter, *supra* note 9, at 8 (quoting Fundamental Principles of Olympism).

[183] *Id.* at 56 (quoting Rule 26).

[184] *Id.* (quoting Rule 25).

[185] *Id.* at 88.

[186] *Id.* at 90.

> sufficiency and independence (Cf. HEINI/PORTMANN, Das Schweizerische Vereinsrecht, 3rd ed. (Zurich, 2005), para 58). The right to regulate and to determine its own affairs is considered essential for an association and is at the heart of the principle of autonomy. One of the expressions of the private autonomy of associations is the competence to issue rules to their own governance, their membership and their own competitions. Swiss associations are deemed sovereign to issue their statutes and regulations (Cf. HEINI/PORTMANN, Das Schweizerische Vereinsrecht, 3rd ed. (Zurich, 2005), para 69).[187]

Properly enacted FIG Rules were in place to govern all aspects of the Chiles inquiry—and to dispose of the issues raised by the FRG without any need for CAS's intervention. According to the Rules, the Superior Jury effectively disposed of any question of timeliness by accepting the inquiry and conducting its examination. There is no basis in the FIG Rules for the FRG's challenge to the Superior Jury's decision.

FIG Statutes require that all national federations "*accept and fully comply with the FIG Rules*,"[188] and as a precondition to participating in international competitions such as the Olympics, each must attest to the fact that they have reviewed, understand, and agree to abide by them.[189] The rules governing inquiries had been in place for years, and the FRG had ample time and opportunity to voice any concerns it may have had over ambiguities or the degree of discretion required of officials to apply them. In fact, Maria Fumea, a member of the FRG's leadership team, serves on FIG's Executive Committee which approves the Code of Points and is involved in the legislative process concerning all other Rules.[190] Moreover, she and other FRG officials oversee the training and certification of Romanian judges and run FIG-sanctioned competitions in Romania—all according to the FIG Rules.

FIG goes to great lengths to minimize confusion, and the Rules themselves provide specific instructions to ensure questions as to vagueness or ambiguity are resolved well in advance of competitive

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[187] Overvliet v. Int'l Weightlifting Fed'n, CAS 2011/A/2675, Arbitral Award, ¶ 27 (2012) (Switz.).

[188] FIG Statutes, *supra* note 93, at 10 (quoting Art. 5.2).

[189] Technical Regs, *supra* note 91, at 8. Art. 1.4 provides: "*NFs and LOCs are required to ensure that they adhere to the Rules and Regulations concerned with the participation in and/or organisation of the FIG events*."

[190] FIG Statutes, *supra* note 93, at 20 (discussing Art. 13.2(11)).

events.[191] There is an elaborate review process that includes the other organizations involved in the various Olympic competitions, including both the IOC and LOCOG, through which rules are reviewed and issues and concerns addressed. The Charter provides that *"[a]t the latest three years before the opening of the Olympic Games, the IFs must inform the OCOG, the IOC and the NOCs about the characteristics of the required technical installations and the sports equipment to be used at the venues during the Olympic Games*."[192] Clarity is so important that *"[t]he Technical Regulations related to the Olympic disciplines cannot be modified less than two (2) years before the Olympic Games, except for emergency cases*."[193] In addition, at the Games, numerous training sessions are held to ensure everybody involved with the event understands the rules and how they are applied. All organizations affected by the CAS Ruling had ample time and opportunity—if not an obligation—to resolve any questions about the Rules governing the inquiry process. This underscores the importance of deference to FIG's interpretation and application of its Rules during competitions and in determining the results of an Olympic event.

This is not to say that FIG Rules are perfect and cannot be improved, but the time to question them and propose changes is not during the Olympic Games. The FIG Statutes establish a careful, deliberative process for proposing, considering, and adopting rules, in which each national federation—including Romania—participates. There are also elaborate and ongoing education, training, and certification requirements to ensure that officials, coaches, and national federations understand all applicable rules and are trained in their practical application.

There may always be some disagreement as to whether certain rules should be adopted (which is why a two-thirds vote is required for any changes), but given the elaborate legislative process, layers of training and certification requirements, and on-site meetings and briefings, it is highly unlikely for a national federation to have such a profoundly different understanding of a rule that has been in place for years.

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[191] Technical Regs, *supra* note 91, at 36. Article 7.3 provides: "*If, on the part of the TCs, there is information concerning certain interpretations of the CoP, proposed at the moment of the competition, this must be done in writing and be distributed to the NFs at least 24 hours before the start of the competition*."

[192] Olympic Charter, *supra* note 9, at 89 (quoting Bye-law to Rule 46).

[193] FIG Statutes, *supra* note 93, at 19 (quoting Art. 12.7).

The FRG challenged the final results of the Olympic Floor Exercise Finals without alleging any violation of the FIG Rules, other than an out-of-context reference to a timeframe directed at coaches. By accepting the FRG's incomplete Application and mishandling the adjudication, CAS arrived at and enforced a hypothetical rule that conflicts with FIG's well-established interpretation and application of its Rules.[194] The CAS Ruling impairs the integrity, harmony, and functionality of FIG's Rules, effectively interfering with its ability to govern and manage the sport of gymnastics and violating the Olympic Charter.

If the CAS Ruling is left to stand, FIG must jettison the inquiry process it believes to be most effective and race to revise its Rules to bring them into conformity with the views of three arbitrators (presumably before any other sanctioned events are held). To do so, it must address the potential impact of such changes on its many other well-established rules, policies, and procedures and revise them as well to ensure a workable level of compatibility. All of this must be done outside of the patient, deliberative process through which they were established. In the same hurried timeframe, FIG must scour its rules for arguable ambiguities in anticipation of future challenges to its previously respected discretion and independence. Athletes and coaches must now worry about how these rushed, unnecessary changes will manifest in the competition and whether they will fairly reward or arbitrarily punish their hard work and dedication.

These risks are not confined to gymnastics. All IFs must now confront the reality that their independence and rules are vulnerable to a level of outside interference not previously tolerated; national federations must recognize and consider a newfound right to challenge competition results—and also an urgent need to defend against such challenges; and the IOC must resolve whether the Fundamental Principles of Olympism are important enough to enforce in their current form, or whether it should instead reformulate the Charter to conform to the Ruling.

The CAS Ruling jeopardizes the integrity of Olympic competition, casting doubt over every result determined through a process in which a discretionary rule—even of an administrative nature—may be cited in isolation from a broader body of rules, mischaracterized as mandatory, and alleged to have been violated. In instances where those same rules do not provide a mandatory

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[194] Written Decision, *supra* note 19, ¶ 62 ("*Respondents contend that the inquiry by Ms. Chiles' coach was in any event timely submitted, notwithstanding the fact—unchallenged by any Party—that the submission was made after one minute and 4 seconds*.")

enforcement mechanism, IFs may be deemed incapable of rendering a "field of play" decision, requiring CAS to assume the role of legislator, competition judge, and jury.

CAS can expect a surge of applications to adjudicate "disputes" that have no direct bearing on athlete performances or the accuracy of results. Consider the Olympic Charter's eligibility, which effectively prohibits participants from authorizing certain uses of their name, likeness, or image during the Games. While its stated purpose (to protect Olympic sponsors) bears no meaningful relation to either athlete performance or competitive results, its enforcement (revocation of eligibility) would dramatically impact both. The Charter requires that any use of a Participant's publicity rights for advertising purposes during the Games comply with "*the principles determined by the IOC Executive Board*," which for Paris were set forth in the "*Commercial Opportunities for Participants During the Olympic Games Paris 2024*," which states that the IOC "*will oversee compliance with these Principles in connection with international advertising activity, in consultation with the relevant NOCs and OCOGs*,"[195] and that "*Participants who do not comply with the terms of this document* ***may be*** *sanctioned by the IOC, the relevant OCOG and/or NOC*." (emphasis added).[196] Neither the Charter nor the IOC's Commercial Opportunity Policies provide a mandatory enforcement mechanism for Rule 40, but the former does require IFs at the Olympic Games "*[t]o ensure that all competitors comply with the provisions of Rules 40 and 50*,"[197] and NGBs[198] are expected to enforce their own delegation's compliance with its own Rule 40 policies. Historically the IOC has chosen not to enforce it, presumably weighing the implications of such a decision against other important considerations in exercising its discretion. However, if the IOC were to enforce Rule 40, either by revoking an athlete's eligibility or disqualifying their results, it would obviously alter the final standings of Olympic competition.

To date, no national federation (or athlete) has disputed the final standings of an event based on a Rule 40 violation (either against

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[195] INTERNATIONAL OLYMPIC COMMITTEE, FREQUENTLY ASKED QUESTIONS COMMERCIAL OPPORTUNITIES FOR PARTICIPANTS DURING THE OLYMPIC GAMES PARIS 2024 2 (2024).

[196] *Id.* at 5.

[197] Olympic Charter, *supra* note 9, at 90 (quoting Bye-law 1.6 to Rule 46).

[198] In the U.S., gymnasts compete as members of the U.S. Team, managed by USA Gymnastics (USAG), the national governing body (NGB) for gymnastics. Romania's equivalent is the Federation Romanian Gymnastics (FRG).

the IOC, an IF, or an NOC), and if they had, CAS presumably would have dismissed it, because absent a rule mandating automatic disqualification, the IOC, IF, or NOC would not have violated the Rule in choosing not to enforce it. However, moving forward, any such dismissal by CAS would be irreconcilable with the Chiles Ruling, and consistency would demand that CAS set aside the NOC's, IF's, and IOC's independence, as it did FIG's, confirm that nothing was in place to monitor and ensure compliance with Rule 40, make an evidentiary finding of improper authorization of name, likeness, or image (which would be easy to establish), and instruct the NOC, IF, and IOC accordingly. Given the number of Rule 40 violations over the years, such a decision would retrospectively call into question the final standings of countless other events. The IOC might try to avoid this dilemma by asserting its "Supreme Authority" and rejecting CAS's instructions to reallocate the medal, or by supporting an agreement among the parties to award multiple medals (as some have suggested in this case). Such selective intervention would not only erode competitive equity but fundamentally threaten the credibility of Olympic competition itself.

VI. CONCLUSION

The Olympic Movement is a complex ecosystem comprised of numerous independent sports organizations. Each must conform to the Olympic Charter, and so long as they exercise competence in enacting their rules and consistency in applying them, their independence must be respected.

FIG's handling of the inquiry process in Paris complied with its well-established Rules and ensured the performances were judged correctly. By reversing the Superior Jury's decision and lowering Chiles' score, CAS directly contravened the cardinal purpose of FIG and its Rules. The justification for this intervention was enforcement of a rule ensuring the prompt closure of the competition and avoidance of extended uncertainty as to the competition results.[199] In fact, the two submissions comprising the Chiles inquiry process, verbal and written, were lodged well within the five-minute timeframe afforded in the Rules and caused no delay whatsoever. Simply put, there was no plausible justification for CAS to interfere with FIG's independence or the scoring accuracy of the gymnasts' performances.

Understandably, CAS requires considerable autonomy to adjudicate disputes during the Games, given the relative urgency

[199] Written Decision, *supra* note 19, ¶ 119.

and need for finality. As is the case with FIG and the other organizations, this must be exercised in accordance with its own rules and in conformity to the Olympic Charter. If an athlete, such as Chiles, can demonstrate that CAS wronged her by violating such rules, regardless of intention, or applied them in bad faith, the SFT must intervene. Absent such intervention, the dispute resolution process will devolve to a level of arbitrariness (or worse, corruption) that would be fatal to the integrity of Olympic competition.

This Ruling exposes the vulnerability of Olympic athletes, confirming they are at the mercy of an arbitrary system of justice. They have no meaningful recourse, even when the dispute resolution process offends the most basic principles of fairness—such as:

- A national federation, dissatisfied with a judge's on-the-field decision, challenges a result without substantiating a legitimate rules violation or act of bad faith;
- A CAS official, possibly influenced—intentionally or not—by the applicant's national status (or for some other unknown reason), accepts a vague, incomplete application and affords the federation ample time to formulate an arguable rules violation;
- CAS, assuming the IF could easily refute the violation if specifically alleged (and expecting the Interested Parties could do the same), selects an arbitrator partial to the applicant to shepherd the case through the process, avoiding objection to the appointment by sending notifications to incorrect or invalid email addresses;
- The panel proceeds through the initial stages of the proceedings with only the applicant and an individual over whom CAS has no jurisdiction as parties, before adding the real Respondent;
- The proceedings continue without the vitally interested parties being aware of the dispute until just before the hearing, and CAS refuses to allow them more time by referring the case to the Appeals Division;
- A rushed hearing is held, circumventing the "field of play" doctrine by leveraging an arguably ambiguous administrative rule (or one relating to discretion) that lacks supporting rules to ensure its monitoring and enforcement;
- The panel steps into the role of judge and reorders Olympic results;

- Finally, it fashions the record of its adjudication to minimize reviewability by the SFT.

This is not to suggest that all these scenarios occurred in this case, or that they will inevitably occur in the future. However, if the SFT chooses not to intervene in this instance, given the circumstances, it sets a precedent where such scenarios could arise without recourse. Essentially, CAS could disregard its own rules and interfere with the decisions of IFs without limitation—even influencing Olympic results—by identifying ambiguous or discretionary rules and claiming a lack of enforcement mechanisms. Such ambiguous or discretionary rules are abundant throughout the Olympic Movement, found in the rules of every NGB, NOC, IF, and even the IOC and CAS itself.

Consider the rules implicated in this case, including those related to CAS's handling of the proceedings and the IOC's Information Policy, which ensures accurate contact information will be shared with CAS. This case painfully illustrates that no mechanisms are in place to monitor compliance with these rules or ensure their enforcement. Does this evidence a "*manifest default*," and is such a failure "*tantamount to an error of law or* de facto *arbitrariness in the process or equivalent mischief?*" If not, how does it differ from the very circumstances for which CAS criticizes FIG? If it does, are athletes owed a similar apology? And can the SFT conclude that it is not being asked to interfere or substitute its judgment for that of CAS, but rather to rule on the basis of a "*complete failure to put in place an arrangement or mechanism to monitor and apply an important rule that it has adopted to protect the athletes and the public?*"

If athletes are required to submit disputes exclusively to CAS, basic principles of justice demand that CAS uphold a reasonable and discernible standard of competence, impartiality, and adherence to its rules. For the SFT to recognize CAS as a legitimate arbitral body—and to enforce its jurisdiction over athletes and the finality of its decisions—it must account for the unique circumstances Olympic athletes face and the impact of CAS's rule violations on the fundamental rights and interests PILA seeks to protect. When CAS disregards its own rules and obstructs athletes' recourse to the SFT by obscuring procedural anomalies in its Written Decision, it risks placing itself above accountability, undermining the integrity of Olympic competition and reducing justice for athletes to an illusion. Both Olympic athletes and the Olympic Movement deserve—and require—better.

AFTERWORD: THE PENDING APPEAL BEFORE THE SFT

Since the time this analysis was completed, the SFT has not yet rendered a decision in Jordan Chiles' appeal of the CAS Ruling. The outcome of this appeal will have significant consequences not only for Chiles, but also for the future of Olympic dispute resolution and the independence of international federations.

The only constraint on CAS's autonomy is its obligation to meet basic procedural standards for its awards to be enforceable under Swiss law. CAS operates with minimal oversight, and its structure makes it exceedingly difficult for athletes to challenge its decisions. Their only recourse is to appeal to the SFT—a costly, last-resort option.

Swiss law is decidedly pro-arbitration. As a result, the grounds for appeal are narrow and reserved for only the most egregious outcomes—those that violate fundamental principles of justice or threaten the credibility of arbitration itself. The SFT remains highly reluctant to interfere with the work of arbitrators, even in the face of serious procedural concerns.

While the urgency of many Olympic disputes justifies CAS's use of the expedited AHD, complex cases lacking immediate urgency may be referred to the regular CAS Appeals Division for a more structured review. Despite the end of the gymnastics competition, and despite having failed to properly notify Chiles, USAG, and the USOPC until just before the Hearing, CAS refused to refer the matter to the Appeals Division. Instead, it rushed through adjudication to issue its Ruling before the Closing Ceremonies. In doing so, CAS appears to have committed numerous procedural errors, culminating in the denial of Chiles' fundamental rights to participate and to be heard.

Chiles has filed two separate appeals with the SFT: one to set aside the CAS Ruling, and another seeking its revision in light of newly discovered video evidence.

A. APPEAL TO SET ASIDE CAS RULING

Chiles asserts two grounds for the SFT to set aside the Ruling:

1. CAS improperly constituted the arbitral panel.
2. The Panel's refusal to consider the video evidence constituted a violation of Chiles' right to be heard. This argument depends on whether the CAS Ruling was not final until August 14th, when the reasoned Award was issued.

If Chiles' appeal is upheld on either ground, the SFT will set aside the Ruling and remand the matter to CAS. Before remanding, the SFT will address Chiles' request for CAS to assemble an entirely new panel of arbitrators or, alternatively, one that does not include Dr. Hamid Gharavi, the arbitrator with Romanian ties. In either case, CAS will arbitrate the dispute again from the beginning and issue a new ruling.

B. REQUEST FOR REVISION

If the SFT declines to set aside the Ruling, it will then consider Chiles' request for revision based on newly discovered evidence. Revision may be granted if previously unknown material facts or evidence are discovered after the issuance of the CAS Award, provided that two conditions are met:

1. The newly discovered facts or evidence existed before CAS issued its final Award.
2. The evidence could not have been discovered earlier despite the parties' exercise of due diligence.

Since the video evidence existed before CAS issued its final Award, the first condition should be met. Given Chiles' lack of notice, the SFT is unlikely to blame her for failing to produce the evidence earlier, likely satisfying the second condition as well.

If the SFT grants Chiles' request for revision, it will instruct CAS to reopen the case and consider the video evidence. When revising an award following an SFT remand, CAS typically limits reconsideration to the issues directly impacted by the new evidence. Thus, CAS would reassess only the timeliness of the inquiry. If it deems the inquiry timely, Chiles will regain her bronze medal; if not, Romanian gymnast, Ana Maria Barbosu will retain it. All other aspects of the Ruling, including CAS's interpretation of the field-of-play doctrine, will remain unchanged, posing the same broader risks and implications as upholding the original CAS Award.

C. POTENTIAL RESOLUTION BY AWARDING MULTIPLE BRONZE MEDALS

There has been speculation that the parties could agree to award multiple bronze medals, citing precedents such as the 2021 Men's High Jump and the 2022 Women's Ski Cross events. However, the Chiles case is fundamentally different. FIG explicitly rejected the proposal to award joint third-place medals, emphasizing that altering finalized standings would undermine the federation's responsibility for ensuring accurate scoring and competition results.

Even if the parties supported such an outcome, CAS's final Ruling bars any modification without an SFT intervention. Further, if the IOC were to override FIG's rules and standings by unilaterally awarding an additional medal, it would set a precedent that could undermine rule-based outcomes grounded in athletic performance and increase reliance on post-competition negotiation.

D. LONG-TERM IMPLICATIONS FOR THE OLYMPIC MOVEMENT

Unless the SFT sets aside the CAS Award and a new arbitration reconsiders the dispute, the Chiles Ruling will have profound and lasting consequences.

CAS's apparent willingness to prioritize expediency over procedural fairness risks emboldening future panels to disregard due process, especially where institutional pressures favor quick resolutions. More dangerously, the Ruling undermines the longstanding autonomy of international federations to control their competitions and results—a foundational principle of the Olympic Movement.

CAS rulings influence not only future CAS decisions but also the rules and policies of international sports federations. If athletes' due process rights remain at risk in arbitration, federations may feel compelled to rewrite their rules to insulate themselves from CAS reinterpretation, jeopardizing both competitive fairness and administrative flexibility. Conversely, if the SFT sets aside the Ruling, it will reaffirm essential procedural safeguards and help restore trust in the Olympic dispute resolution process.

The SFT's decision will not merely resolve the question of a single Olympic medal, it will either reinforce or erode the framework that protects the integrity of international sport.