Arbitration CAS 2011/A/2474 Antonio Urso & Marino Ercolani Casadei v. International Olympic Committee (IOC), award of 29 June 2012

Panel: Prof. Brigitte Stern (France), President; Mr Efraim Barak (Israel); Mr Quentin Byrne-Sutton (Switzerland)

Weightlifting
Refusal to refer a complaint related to the mismanagement of funds to the IOC Ethics Commission
Applicable procedural rules
Standing to sue and to be sued
CAS jurisdiction ratione personae
Notion of decision
Interpretation of arbitration agreements and clauses
Scope of the arbitration clause contained in Rule 61 of the Olympic Charter

1. **The general principle according to which the procedural rules which govern a legal complaint are those in force at the time it is filed is applicable in CAS arbitration.**

2. **Both "standing to sue" and "standing to be sued" are issues which relate to the merits of the case, and would therefore lead to the dismissal of the appeal, not to its inadmissibility.**

3. **The question of the jurisdiction *ratione personae* in CAS arbitration involves in fact one procedural aspect and one substantive aspect, which are not always clearly distinguished. The procedural aspect concerns the existence of an arbitration agreement giving a party a right to bring a case which pertains to jurisdiction and implies that the scope *ratione materiae* and *ratione personae* of the arbitration clause be determined. The substantive aspect deals with the standing to sue (légitimation active), defined as the existence in the persons of the appellant of an underlying right deriving from the applicable law and/or regulations, the protection of which they can request from the CAS. Concerning the different issues raised in relation with these questions of admissibility/standing to sue, for a CAS panel to deal with a case, both elements must therefore be present.**

4. **In order to invoke the CAS jurisdiction under Art. R47 of the Code, the parties first have to demonstrate that the appeal relates to a decision of a federation, association or sports-related body. A letter sent in the name of the IOC President containing the refusal of a request made by the parties, originates from a "sports-related body" within the meaning of Art. R47 of the Code, and amounts to a "decision" within the meaning of that provision.**

5. **Under Swiss law, arbitration agreements and clauses are to be interpreted in light of the rules relating to the construction of contracts, i.e. Art. 18 of the Code of Obligations. In this respect, a contract should be constructed so as to find the real intent which is mutually agreed upon by the parties even though the meaning of the contract might at first seem obvious. When a court is unable to find a common intent between the parties, the meaning of the contractual provisions that are the result of a dissent will have to be interpreted according to the principle of good faith. In practice, the court will move away from the parties' subjective intent and consider how a reasonable person in the position of the recipient would have understood the contractual terms in question.**

6. **Rule 61 para. 2 of the Olympic Charter (OC) providing for CAS jurisdiction is only intended to cover disputes arising from or connected to any given edition of the "Olympic Games" as defined under Rule 6 OC. There is no link between the Olympic Games and the internal accounts of an International Federation (IF) even if the money is used for purposes different from the ones provided for in the OC. Any other interpretation would render the arbitration clause virtually unlimited, which was certainly not the intention of the Olympic authorities, as has been ascertained through the history of the rule. As far as the Code of Ethics is concerned, the arbitration clause is only addressed to the "Olympic parties" and the "Olympic athletes" and as far as the OC is concerned to the same entities, as well as to the entities participating in the organization of the Olympic Games. "Olympic parties", a defined term in the OC, does not encompass the IFs which are therefore not submitted to such rule.**

Mr Antonio Urso, domiciled in Roma, Italy, appellant to the present case, is the President of the European Weightlifting Federation, the President of the Italian Weightlifting Federation and a member of the International Weightlifting Federation ("IWF") Executive Board.

Mr Marino Ercolani Casadei, domiciled in San Marino, Republic of San Marino, appellant to the present case, is a member of the International Weightlifting Auditors Committee, the General Secretary and Treasurer of the European Weightlifting Federation and the Vice President of the San Marino Weightlifting Federation.

The International Olympic Committee ("IOC"), respondent to the present case, is an association incorporated under the laws of Switzerland which is seated in Lausanne, Switzerland. The IOC is the governing body for the Olympic Movement and the Olympic Games. It bears the responsibility for ensuring that the Olympic Games are organized and carried out in accordance with the Olympic Charter ("OC").

The background facts stated herein constitute a summary of the main relevant facts, as established on the basis of the Parties' written submissions, set forth for the sole purpose of this Award. Additional facts will be set out, where material, in connection with the discussion of the Parties' factual and legal submissions.

On 18 February 2011, the Appellants, together with other members of the International, European and United States Weightlifting Federations, submitted to the Respondent's President a complaint regarding the financial management by the IWF of the funds allocated to the latter after each edition of the Olympic Games since 1992, pursuant to Rule 22 OC in its version of 8 July 2011, and letter A of the subsection of the IOC Code of Ethics ("Code of Ethics") entitled "Rules of Procedure Governing the Investigation of Cases Brought Before the IOC Ethics Commission" ("Rules of Procedure") in its 2009 version.

In substance, the Appellants argue that the International Weightlifting Auditors Committee would have discovered substantial accounting irregularities in the management of the Respondent's funds within the IWF, in violation of letter C of the Code of Ethics, which resulted in a report of 8 October 2009. Several Olympic resources granted to the IWF in the past decade would probably not have been recorded in the balance sheets of the IWF and, as a result, not be used for Olympic purposes in accordance with the Code of Ethics.

As a result, pursuant to letter A of the Rules of Procedure, the Appellants requested Respondent's President to proceed with an official referral of the matter to the IOC Ethics Commission ("Ethics Commission"), so as to enable its members to conduct an official inquiry on the financial management of the IWF and take the decisions deemed appropriate as well as potentially propose to the attention of the Respondent's Executive Board the measures or sanctions foreseen under Rule 23 OC, or any other appropriate measure.

On 20 May 2011, the Respondent notified through its Legal Affairs Department to the attention of the Appellants that, after a serious analysis of the complaint filed on 18 February 2011: *"[…] the questions raised are in reality related to the application of the IWF Statutes. Consequently, the IOC, respecting the IF's autonomy, will not intervene in this debate"*.

On 10 June 2011, pursuant to Article S20 of the Code of Arbitration for Sports ("Code"), the Appellants filed a Statement of Appeal to the Court of Arbitration for Sports ("CAS") with respect to the Respondent's letter of 20 May 2011, in which they requested the CAS:

> *"[…]*
>
> *(a) To recognize that the Complaint sent by the Appellants to the IOC President and the IOC Ethics Committee is related to the IOC Code of Ethics and its Rules of Procedure and thus to the Olympic Charter, of which the Code of Ethics is an integral part;*
>
> *(b) To recognize that the Legal Affairs Department's letter dated May 20, 2011 constitutes a decision issued by an incompetent body and depriving the Appellants of the object of their Complaint and thus resolving in an obligatory manner the issue raised by them;*
>
> *(c) To recognize that such decision has to be considered as a "definitive decision" since it cannot be made the object of any challenge within the IOC;*
>
> *(d) To recognize that such decision can be made the object of the present appeal to the CAS;*
>
> *(e) To affirm its jurisdiction on the present appeal;*

(f) To annul the decision and refer the case back to the previous instance, i.e. IOC President/IOC Ethics Commission, as set forth in Art. R57 of the CAS Code, with the order to start an inquiry and to issue a formal decision on the subject-matter in a timely manner;

(g) Adjudge and declare that the Appellants are entitled to receive from the IOC a contribution towards its (sic) legal fees and other expenses incurred in connection with this arbitration proceedings".

Pursuant to R48 of the Code, the Appellants nominated Mr. Efraim Barak as the arbitrator chosen by them.

On 23 June 2011, the Respondent, acting through its Legal Affairs Department requested the CAS pursuant to Art. R52 of the Code to determine that *"it is apparent from the outset that there is manifestly no arbitration agreement referring to the CAS"* and to take no further action to set the arbitration in motion.

On 29 June 2011, the Appellants reacted to Respondent's letter of 23 June 2011 and, rejecting Respondent's arguments, requested the CAS:

"(a) To order the IOC to produce the documents received from the IWF and to give the Appellants a suitable term to examine the whole dossier; and accordingly;

(b) To suspend the time-limit to file the Appeal Brief;

(c) To reject the Respondent's objection related to the application of Art. R52 of the CAS Code".

On 1 July 2011, the CAS Court Office invited the Respondent to file within 10 days its observations on the Appellant's letter of 29 June 2011, and suspended the deadline for the Appellants to file their Appeal Brief in the meantime.

On 8 July 2011, the Respondent basically reiterated the arguments it has raised in its letter of 23 June 2011, and invited the CAS to rule that *"the request of the Appellants that the IOC be ordered to produce documents is to be denied"*, reserving further rights against the Appellants.

On 18 August 2011, the CAS Court Office informed the Parties with regards to the exception of inadmissibility of the appeal raised by the Respondent that:

"[…]. In the light of Art. R52 of the Code of Sports-related Arbitration, it does not appear that there is manifestly no arbitration agreement referring to the CAS, considering that the IOC has rendered a formal decision which has legal effects towards the Appellants and which is now challenged before the CAS. In view of the position expressed by the parties in their correspondence, the issue in dispute seems rather related to a question of standing to sue, which goes beyond the simple control of the existence or not of a valid arbitration clause. In view of these elements and on behalf of the CAS Secretary General, I inform you that such issue of standing must be decided by the Panel, once constituted, possibly by way of a preliminary decision.

Accordingly, the CAS shall proceed with the present arbitration and the Appellants' deadline to file their appeal brief resumes as from today.

Finally, in view of the above and in reference to my letter to the parties of 16 June 2011, I kindly invite the Respondent to nominate an arbitrator from the list of CAS arbitrators published on the CAS website […], within ***five days*** *of receipt of the present letter, in accordance with Article R53 of the Code.*

[…]".

On 23 August 2011, the Respondent nominated Mr Quentin Byrne-Sutton as the arbitrator chosen by him and expressly requested the Panel to render a preliminary Award on the issues of jurisdiction and admissibility pursuant to Art. R52 of the Code, prior to any further procedure or submissions on the merits by either Party.

On the same day, the Appellants requested the CAS to suspend again the time-limit for the Appeal Brief until the Panel's decision with regards to the Appellant's motion contained in their letter of 29 June 2011 as to the production of documents by the Respondent (see supra).

On 25 August 2011, in view of the Parties' letters of 23 August 2011, the CAS Court Office granted each Party an opportunity to comment upon each Party's request by 29 August 2011, which they did in respective letters of 29 August 2011, basically reiterating the line of arguments raised previously.

On 30 August 2011, the CAS Court Office informed the Parties that their requests, respectively for the production of documents by the Appellants and for the issuance of a preliminary award by the Respondent, would be submitted to the Panel once constituted, adding that the deadline to file the Appeal Brief was suspended until further notice.

On 17 October 2011, the CAS Court Office informed the Parties on behalf of the President of the CAS Appeals Arbitration Division that the Panel appointed to decide upon the case was constituted of Professor Brigitte Stern as President, Mr Efraim Barak and Mr Quentin Byrne-Sutton as arbitrators.

On 10 November 2011, the Panel invited the Parties to provide further submissions on the following questions:

"[…]

1. Questions relating to the scope ratione materiae of Article 61 para.2 of the Olympic Charter

In article 61 para.2, what did the IOC intend to cover by the words "… or in connection with, the Olympic Games"?

- *Are there any provisions under the Chapter "Measures and Sanctions, Disciplinary Procedures and Dispute resolution" (articles 59-61 of the Olympic Charter) or in any other part of the IOC's Regulations – or considerations deriving from the legislative history of article 61 para.2 and/or the IOC's practice – that offer guidance for its interpretation?*
- *Why should the Olympic resources provided by the IOC to the IFs be deemed or not be deemed connected to the Olympic Games in the meaning of article 61 para.2?*
- *On what legal basis are IOC funds allocated to International Federations and what obligations does such an allocation of funds place upon the IOC and the International Federations?*

2. Questions relating to the scope ratione personae of Article 61 para.2 of the Olympic Charter

In general, who (what persons and entities) does the IOC deem to have standing to start an arbitration against the IOC on the basis of article 61 para.2 of the Olympic Charter?

- *Are there any provisions under the Chapter "Measures and Sanctions, Disciplinary Procedures and Dispute resolution" (articles 59-61 of the Olympic Charter) or in any other part of the IOC's Regulations – or considerations deriving from the legislative history of article 61 para.2 and/or the IOC's practice – that offer guidance for its interpretation?*
- *Is the information given in the webpage dedicated to the Code of Ethics, under the heading "Who can refer a case?" relevant for the Panel's analysis?*

3. Question relating to the scope ratione temporis of the application of the Ethics Code

Which version of the IOC Code of Ethics is applicable to the present dispute, and why? When was the first Code of Ethics adopted and more specifically was there a Code of Ethics in 1992?

It is to be noted that in the initial complaint sent to the IOC a reference is made to the Ethics Code adopted on 20 June 1999 (Exhibit 2 to the Statement of claim, p. 5). The annex to the Ethics Code accompanying the Statement of claim (Exhibit 3) contains the 2007 version of the Code of Ethics. There is also a 2009 version and an amended version of 26 October 2010.

The parties are entitled to add any other observations and file related evidence they deem relevant to interpreting the scope of the arbitration clause contained under article 61 para.2 of the Olympic Charter.

A 15-day deadline upon receipt of the present correspondence is given to the parties to provide the CAS Court Office with their submissions in relation to the above mentioned issues.

[…]".

On 23 November 2011, the Respondent requested an extension of deadline to file its submission, which the Appellants expressly agreed to by letter of the same day. On 24 November 2011, the CAS Court office granted an extension to 30 November 2011.

On 30 November 2011, the Appellants and the Respondent submitted their respective positions on jurisdiction and admissibility. While the Appellants stated that they remain at the Panel's disposal for any clarifications it might need, the Respondent (i) reiterated its request that the Panel decides on the issues of jurisdiction/inadmissibility in a separate award prior to any subsequent procedure in this case, and (ii) reserved its right to make further brief written submissions in respect of issues or arguments raised by the Appellants that would not have been raised before.

On 6 February 2012, the CAS Court Office informed the Parties that the Panel was minded to hold a hearing with respect to the preliminary issues of lack of jurisdiction and inadmissibility raised by the Respondent, and invited the Parties to express their views with respect to a hearing to discuss these preliminary issues on or before 10 February 2012.

On 10 February 2012, both the Appellants and the Respondent informed the CAS that, in their view, a hearing was not seen as needed.

On 16 February 2012, the Panel informed the Parties through the CAS Court Office of the following:

"[…]

The Panel has noted the Parties' intention not to have a hearing on the preliminary issues of jurisdiction and admissibility. The Panel will therefore respect the common will of the Parties and does not insist on holding a hearing.

However, before issuing a preliminary award on the basis of the parties' written submissions, the Panel would like to request the following additional information:

- *the Parties are invited to inform the CAS Court Office on the stage of litigation in front of the civil courts in Lausanne;*
- *the Appellants are invited to provide the CAS Court Office with the text of the recommendations mentioned in paragraph 3.3.6 of their exhibit 13, namely "The 1999 December 12 IOC 10th session approved the 2000 commission's recommendations 44 to 48 concerning the finance transparency within the Olympic movement in order notably that the IOC funds are used accordingly and to check that the NOC's and the Ifs provide the IOC an accounting expenses report concerning the IOC paid funds".;*
- *referring to the same exhibit as mentioned in the previous item, but to its paragraph 2.3.1, the Parties shall declare whether the money given by the IOC is given for specific and possibly different purposes, like "for Olympic purposes" or for "the development of sport" or for example as "IOC contribution for Beijing Olympic Games";*
- *the Parties are invited to provide CAS with word copies of their submissions.*

A 10-day deadline from receipt of the present letter is granted to provide the CAS Court office with the above mentioned information.

[…]".

On 24 and 27 February 2012, the Appellants, respectively the Respondent submitted their positions on the issues raised by the Panel in its letter of 16 February 2012. Both the Appellants and the Respondent informed the Panel that, to the best of their knowledge, there was no pending litigation in front of the civil courts in Lausanne in which they, respectively the European or International Weightlifting Federations, would be involved.

LAW

1. In view of the above and as agreed by the Parties, this Award only examines the issues of jurisdiction and admissibility, in keeping with the letter addressed to the Panel by CAS on 17 October 2011, stating that the Parties have requested that *"the issues of arbitrability"* be decided in a preliminary phase. Considering the conclusion arrived at by the Panel, no award shall be rendered on the substantive merits of the case.

The Time Limit for Appeal

2. It is undisputed between the Parties that the present case involves an appeal launched by the Appellants on 10 June 2011 against the decision of the Respondent's President, which refused to refer the case of the alleged mismanagement of the IWF funds to the Ethics Commission and which has been notified by the Respondent to the Appellants on 20 May 2011. As a result, the present dispute consists of an *"appeal arbitration proceeding"*, which is governed by the *"Special Provisions Applicable to the Appeal Arbitration Procedure"* in accordance with Art. R47 et seq. of the Code.

3. As regards the time limit for appeal, Art. R49 of the Code is applicable. It provides that:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

4. Considering that the decision at stake, by which the Respondent's President refused to refer the case to the Ethics Commission, was notified by the Respondent to the Appellants on 20 May 2011, and that the Appellants filed their Statement of Appeal on 10 June 2011, the appeal has been timely lodged within the 21 required days, in accordance with Art. R49 of the Code.

Preliminary Considerations Relating to CAS Jurisdiction, Admissibility and Standing

A. The applicable law

5. Art. R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

6. The Panel notes that the Parties have not agreed on the application of any specific national law. Therefore, as the Respondent is an association constituted under Swiss law and domiciled in Lausanne, Swiss law shall apply to the merits in accordance with the above quoted Art. R58 of the Code.

7. For the procedural questions relating to this arbitration, the Swiss Private International Law Act ("PILact") is the lex arbitri in accordance with its scope of application defined under Art. 176 of the PILact, and more specifically with its Art. 182 PILs, resulting from which procedural questions shall in the present case be governed by the CAS code in keeping with the Parties' consent thereto.

B. The invoked basis of jurisdiction

8. The Appellants are invoking the jurisdiction of CAS exclusively on the basis of Rule 61 para. 2 OC, which provides that:

"Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration".

9. While the Parties both agree that the 2009 version of the Code of Ethics – which was in force at the moment of the beginning of this procedure – shall apply to the present case, the *ratione temporis* application of the Olympic Charter has not been addressed.

10. The Panel considers that the general principle, according to which the procedural rules which govern a legal complaint are those in force at the time it is filed, is applicable. Therefore – given that the appealed "decision" is constituted by a letter of 20 May 2011 originating from the Respondent's President and that the Statement of Appeal was filed on 10 June 2011 – the 2011 version of the Olympic Charter shall be taken into account when ruling upon the CAS jurisdiction and the admissibility of the appeal.

11. Pursuant to Rule 61 para. 2 OC, the provisions of the Code are applicable to the subject matters referred to in that Rule. Among those provisions, Art. R47 of the Code sets the conditions for an appeal in the following terms:

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

12. The Panel will verify the existence of the relevant conditions for appeal here below.

C. The issues to be decided for a decision on jurisdiction

13. In accordance with Article 186 of the PILact, the CAS has the power to decide upon its own jurisdiction.

14. The Appellants do not rely on a specific arbitration agreement.

15. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to entertain an appeal, the statutes or regulations of the sports federation whose decision is under appeal and to which all the parties to the arbitration must have adhered must expressly recognise the CAS as an arbitral body of appeal to which the question under appeal may be submitted. This implies that the scope of Article 61 para. 2 has to be determined.

16. It results from above-quoted provisions that, for the CAS to have jurisdiction over this case, a certain number of conditions must be met:

1. There must be **a decision** against which an appeal is made, this is a minimal procedural condition;
2. The dispute must be *"**in connection with the Olympic Games**"*, this is a condition *ratione materiae*, which implies the interpretation of the arbitration agreement *ratione materiae*;
3. **The OC or the statutes or regulations of the IOC must provide the Appellants with an appeal against such decision** or there must exist **an arbitration agreement** between the Parties to the dispute, this is a condition *ratione personae*;
4. The available legal remedies must have been exhausted, **the exhaustion of legal remedies** being a condition for access to CAS.

17. Needless to say, these conditions are cumulative and must all be met for the CAS to have jurisdiction.

18. In other words, if the Panel reaches the conclusion that any one of these conditions is not met, it is bound to deny the jurisdiction of the CAS and may stop its analysis there. In view of the importance of the theoretical and practical issues raised by this case, on which the Panel will say more below, the Panel has however been minded to address each of the foregoing conditions.

D. The issue of admissibility and standing

19. The Respondent primarily argues that the Appellants have no *"standing to sue"* – and that the IOC, as it says, has *"no standing to be sued"* – because the Appellants own no substantive right under the applicable rules or any right to appeal the President's decision, based on his discretion, deriving from the IOC's Rules of Procedure, not to forward to the Ethics Commission the complaint in question. The standing to sue of the Appellants as presented by the Respondent is the other face of the standing to be sued of the Respondent, both being based on the existence of a right of the Appellants to be protected and a corresponding obligation of the Respondent to be fulfilled.

20. Whether the standing to sue issue should be characterized as relating to the admissibility of the appeal or to the merits of the dispute is a delicate question. If it is deemed an issue of admissibility, its denial will lead to the inadmissibility of the appeal, whereas if it is considered to relate to the merits of the case, its denial will lead to the dismissal of the appeal.

21. Although it is not evident that the procedural terminology used in English (linked to common law concepts of admissibility) and French in connection with this issue exactly correspond, according to the Swiss Supreme Court both "standing to sue" and "standing to be sued" are issues which relate to the merits of the case, and would therefore lead to the dismissal of the appeal, not to its inadmissibility (126 III 59 c. 1a; 114 II 345 c. 3a). This seems to derive from the jurisprudence of the Federal Tribunal, as can be for example illustrated the following extract from case 114 II 345:

> *"Selon la jurisprudence, la qualité pour agir et la qualité pour défendre appartiennent aux conditions matérielles de la prétention litigieuse (ATF 108 II 217 consid. 1 et les références). Elles se déterminent selon le droit au fond et leur défaut conduit au rejet de l'action (ATF 107 II 85 consid. 2 et les références), qui intervient indépendamment de la réalisation des éléments objectifs de la prétention litigieuse (ATF 74 II 216 consid. 1). De même que la reconnaissance de la qualité pour défendre signifie seulement que le demandeur peut faire valoir sa prétention contre le défendeur (ATF 107 II 85 consid. 2), revêtir la qualité pour agir veut dire que le demandeur est en droit de faire valoir cette prétention. Autrement dit,* ***la question de la qualité pour agir revient à savoir qui peut faire valoir une prétention en qualité de titulaire d'un droit*** *(KUMMER, dans RJB 112/1976 p. 167, "Die Rechtsprechung des Bundesgerichts 1974"; le même auteur, Grundriss des Zivilprozessrechts, 4e éd., p. 66 ss), en son propre nom (GULDENER, Schweizerisches Zivilprozessrecht, 3e éd., p. 139; STRÄULI/MESSMER, Kommentar zur Zürcherischer Zivilprozessordnung, 2e éd., n. 19 para. 27/28). En conséquence, la reconnaissance de la qualité pour agir ou pour défendre n'emporte pas décision sur l'existence de la prétention du demandeur, que ce soit quant au principe ou à la mesure dans laquelle il la fait valoir (ATF 107 II 86 consid. 2)"* [Emphasis added].

22. In the Panel's view, the question of the jurisdiction *ratione personae* in a CAS arbitration case involves in fact one procedural aspect and one substantive aspect, which are not always clearly distinguished.

23. The procedural aspect referred to in para. 16.3 of this Award concerns the existence of an arbitration agreement giving the Appellants a right to bring a case. Expressed differently, the procedural aspect of the jurisdiction *ratione personae* is an answer to the following question: Who in general is entitled to bring an arbitration case to the CAS?

24. The substantive aspect deals with the standing to sue, defined as the existence in the persons of the Appellants of an underlying right (deriving from the applicable law and/or regulations), the protection of which they can request from the CAS. In other words, in the general category of persons having an arbitration agreement or being able to benefit from an offer to arbitrate in a statute, not all of them will have an underlying substantive right upon which to base their claim.

25. The existence of a standing to sue implying the existence of an underlying right upon which to base one's claim (légitimation active) is considered in Swiss law, which is applicable here, as pertaining to the merits. This substantive aspect of admissibility *ratione personae* thus answers a second question: Assuming a person or entity benefits in general from an arbitration clause, does it moreover have a personal right to base its claim upon in the particular situation?

26. Thus, the Panel is potentially faced with two different issues.

27. The first one, which pertains to the admissibility of the appeal and thus amounts to a procedural issue, requires the Panel to determine to whom the offer to arbitrate found in Article 61 para. 2 of the Olympic Charter (in relation with the implementation of the Code of Ethics or the relevant rules of the Olympic Charter), is addressed; more specifically, the question is whether this offer to arbitrate is or is not limited to the category of the Olympic parties, of which the IFs are not part.

28. If the first question is answered positively and the IF is deemed to benefit from the offer to arbitrate included in Article 61 para. 2, the Panel will need to answer a second question, namely whether the IF would have an underlying substantive right to base their claim upon.

29. Some confusion has been caused in this case by the Parties conflating to some extent in their submissions these two different aspects.

30. More precisely, the Appellants have stated that in order *"to properly assess the "standing" issue it is advisable to move a step back and give answer to a fundamental question: who can refer a case to the Ethics Commission?. The answer is very simple: Anyone"*. They go on to argue that although they are not members of the IOC, they are undoubtedly part of the Olympic Movement, stating the following: *"… the Appellants are absolutely part of the Olympic Movement, both as persons who agree to be guided by the Olympic Charter and as executive (i.e. Mr. Urso) and auditing (i.e. Mr. Ercolani Casadei) officials of the IWF"*. In fact, not only do the Appellants discuss the question of the standing to sue in terms of the existence of a right to appeal, the Appellants also more or less conflate the right to present a complaint to the President of IOC for possible transmission to the Ethics Commission and the right to appeal against such a decision of the President of the IOC, invoking logic and a general principle of law:

"In short, the Appellants rely on logic and the general principle of law which, in order to safeguard the right of defence, would require the possibility to appeal a decision upon a complaint whenever it is found that – as in the present matter – the resolution has been issued without any respect for the applicable procedural rules and with no material grounds".

31. For its part, *"the Respondent does not dispute the Appellants' standing to submit a complaint in the present matter [to the Ethics Commission], but disputes their right to appeal against a decision not to open proceedings in respect of their complaint"*.

32. However, contrary to the position of the Appellants, the Respondent distinguishes the right to appeal to the President of the IOC in order to have a complaint presented to the Ethics Commission and the right to appeal to the CAS against a decision of the President refusing such transmittal to the Ethics Commission.

33. The Respondent argues that the Appellants lack both a right to appeal and standing to sue.

34. First, the Respondent rejects all possible grounds on which a right to appeal could be granted to the Appellants, Letter A1 of the Rules of Procedure Governing the investigation of Cases brought before the Ethics Commission, Article C1 of the IOC Code of Ethics and although not mentioned by the Appellants as a possible basis for the CAS's jurisdiction, also Article 75 of the CC. In other words, the Respondent considers that an arbitration agreement is nowhere to be found.

35. Second, the Respondent considers that the Appellants' appeal is not admissible either, because they cannot claim any right that has been infringed.

36. In other words, the Respondent argues that the Appellants have neither a right to appeal, nor standing to sue.

"According to Letter A1, the President had no obligation to refer the case to the Ethics Commission. Indeed, Letter A1, second paragraph states that any complaint will be sent to the President for analysis and possible referral to the Commission. It results therefrom that the referral to the Ethics Commission is to be seen as a mere possibility. Hence, the denouncer has no right to have his claim transmitted to the Commission. The President has a discretionary power to decide whether to do so in view of the circumstances and facts of the case".

37. In order to invoke the existence of a right to appeal the decision of the President of the IOC at stake in this case, the Appellants have concentrated on the existence of an entitlement to appeal to the CAS that would be granted to them by Article 61 para. 2 (question of jurisdiction), and the Respondent has mainly argued that the Appellants own no underlying right upon which they can seek protection (question of *"admissibility on the merits"*).

38. If the Parties' submissions did not always clearly distinguish these aspects, it is noteworthy that the case law is not always straightforward either. In a recent paper, Estelle de La Rochefoucauld has indeed put the CAS case law under scrutiny to find out that not all the rulings are in harmony in this regard (DE LA ROCHEFOUCAULD E., Standing to sue, a procedural issue before the CAS, CAS Bulletin 1/11, at 13 et seq. in particular at 19 et seq.).

39. In CAS 2007/A/1392, unlike the Swiss Supreme Court, the panel ruled that the standing to file an appeal against the decisions passed during the ordinary congress of an IF was a question of admissibility, thus a procedural issue. This point of view was shared by other panels in CAS 2009/A/1583 and CAS 2009/A/1584, both related to Art. 62(2) of the UEFA Statutes, which was deemed to define the conditions of admissibility of the appeal.

40. More recently, in CAS 2010/A/2056, the panel, quoting the Swiss Supreme Court, considered that *"the capacity to sue alone is a condition for admissibility whereas the lack of standing to sue belongs to the material conditions of the claim. As a result, the standing to sue is governed by substantive law and cannot lead to the dismissal of the appeal as inadmissible. Instead, the standing to sue would lead to the dismissal of the appeal"* (para. 56).

41. Concerning the different issues raised in relation with these questions of admissibility/standing to sue, the Panel would like to add as a preliminary matter that it considers that the existence of a right to file a complaint in front of the Ethics Commission and the existence of a right of appeal for the two Appellants against a decision of the President of the IOC are two different questions, and that the existence of the first does not necessarily imply the existence of the second. It is not because it indeed appears from the file – and the two Parties are in fact in agreement on that point – that any concerned person or entity with an interest can request that the Ethics Commission be seized if it considers that the Code of Ethics has been violated, that a right of appeal in relation with such procedure exists and is granted to anyone in the world.

42. It is the Panel's view that for a panel to deal with a case, two elements must therefore be present:

- A right to appeal, which pertains to **jurisdiction** and implies that the scope *ratione materiae* and *ratione personae* of the arbitration clause be determined;

- An underlying right to base one's claim upon, which pertains to the **standing to sue**, thus a question related to the merits under Swiss Law.

43. Although the status of the standing to sue appears to the Panel somewhat ambiguous, considering that Swiss Law, as interpreted by the Federal tribunal, has to be applied as *lex arbitri*, the Panel considers the standing to sue to be an issue that might lead to the dismissal of the appeal, not to its inadmissibility. The Panel will thus address the issue of jurisdiction *ratione materiae* and *ratione personae*, but will not enter into the analysis of the existence of a standing to sue.

E. The standard of interpretation

44. According to the Respondent, the principle of interpretation is based on the idea that *"the existence of an arbitration clause 'cannot be admitted too easily'…"* and *"depends in the first instance on the intention of the parties"*. In other words, according to the Respondent, the Panel should use a restrictive and subjective interpretation.

45. According to the Appellants, *"Rule 61 para.2 is an arbitration clause established by the IOC to refer the above-mentioned disputes to the Court of Arbitration for Sport (CAS)". In this respect, the legal principle "contra stipulatorem" applies and, therefore, in the matter at stake, such rule of the Olympic Charter cannot be interpreted in favor of the IOC"*. In other words, according to the Appellants, the Panel should use a liberal and objective interpretation. The so-called *"objective interpretation"*, in the eyes of the Appellants, seems to be what they describe as *"an Olympic interpretation"*, based on *"the ethical principles that are disseminated by Olympism, and which are transparency and correctness"*.

46. The Panel is of the view that in the circumstances of this case, neither a restrictive or liberal approach is warranted, which would create an imbalance in favor of one of the Parties, among others because both Parties are equally well aware of the terms of the concerned applicable texts and provisions, namely the Olympic Charter. The Panel is also of the opinion that such an argumentation would clearly run in contradiction with the governing principles of contractual interpretation under Swiss Law for the reasons described below, so that an interpretation *contra stipulatorem* should be balanced in the present case against the awareness of the Parties to the terms of the Olympic Charter.

47. According to Art. 178 para. 2 PILact, which applies as lex arbitri, *"[a]s regards its substance, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject matter of the dispute, in particular the law governing the main contract, or if it conforms to Swiss Law"*. Scholars agree that the *"substance"* of an arbitration agreement in particular relates to its validity, i.e. questions pertaining to the conclusion of an agreement to arbitrate, such as the offer and acceptance to arbitrate, as well as its interpretation (see, for instance: CR LDIP-TSCHANZ, Basel 2011, Art. 178 N 5). As a result, the Olympic Charter, and in particular Rule 61 OC, has to be construed in accordance with the relevant principles applicable under Swiss Law.

48. Art. 18 of the Swiss Code of Obligations relating to interpretation applies primarily to contracts, but is applied by analogy for any type of legal text, such indeed as statutes or laws. Therefore, under Swiss law, arbitration agreements and clauses are to be interpreted in light of the rules relating to the construction of contracts, i.e. Art. 18 of the Code of Obligations (Swiss Supreme Court, 130 III 66 c. 3.2 and quoted references; LDIP-TSCHANZ, Art. 178 N 118). According to Art. 18 para. 1 CO:

"[a]s regards both the form and content of a contract, the real intent which is mutually agreed upon shall be considered, and not an incorrect statement or manner of expression used by the parties, whether due to error, or with the intention of concealing the true nature of the contract".

49. In accordance with this provision, the Swiss Supreme Court has ruled that contractual provisions may be subject to interpretation even though their meaning might at first seem obvious (Swiss Supreme Court, 133 III 61 and 127 III 444). In other words, it is up to the Courts to construct the contract so as to find the *"real intent which is mutually agreed upon"* by the parties, an intent that can result from all the circumstances surrounding the conclusion of the agreement, such as the negotiation and exchange of mails (CR CO I-WINIGER, Basel 2003, Art. 18 N 16).

50. In a first step, the Courts should thus focus on each party's intent at the time of the signature to determine the mutual intent of the parties (Swiss Supreme Court, 123 III 35 c. 2b; 121 III 118 c. 4b/aa; 125 III 263 c. 4 bb; 125 III 305 c. 2b. For scholars, see: CR CO I-WINIGER, Art. 18 N 17 and 19).

51. When the Court is unable to find a common intent between the parties, in particular when the parties give another meaning to certain contractual terms, this is an instance of *"latent dissent"* as it is termed by the Supreme Court; in such cases, the contract has nevertheless been validly concluded, but the meaning of the contractual provisions that are the result of such dissent will have to be interpreted according to the principle of good faith (Swiss Supreme Court, 123 III 35 c. 2b). In practice, the Court will move away from the parties' subjective intent and consider how a reasonable person in the position of the recipient would have understood the contractual terms in question (CR CO I-WINIGER, Art. 18 N 139). Was the recipient entitled to construct the contractual terms as he did according to the principle of good faith, his construction will be deemed to be the relevant one and will as a result bind his contractor (Swiss Supreme Court, 123 III 35 c. 2b; CR CO I-WINIGER, Art. 18 N 140).

52. To determine the intent of the parties, the Court will however use different criteria, such as a systematic interpretation of the agreement taken as a whole, that will enable it to not only account for the wording of the agreement or the concerned provision, but also for the content and structure of the whole document the arbitration agreement or clause forms part of and for the history of its adoption, i.e. to bear in mind all relevant circumstances (Swiss Supreme Court, 133 III 409; 128 III 267. For scholars, among others: BSK OR I-WIEGAND, 5th ed., Basel 2011, Art. 18 N 24 and N 38; GAUCH/SCHLUEP/SCHMID/EMMENEGGER, Schweizerisches Obligationenrecht – Allgemeiner Teil, 9th ed., Zurich 2008, N 1210). Such an approach proves particularly relevant where, as in the present case, certain terms have a specific meaning that have been defined and have to be considered as understood by the parties in accordance with

the principle of good faith (see: CR CO I-WINIGER, Art. 18 N 27). This is the approach the Panel will follow in its examination of its jurisdiction *ratione materiae* and *ratione personae*.

F. The importance of the issues raised in this case

53. As mentioned above, the Appellants have insisted on what they call an *"Olympic interpretation"*, which would mandate a broad interpretation of Rule 61 OC. Although the Panel does not consider that the mere reference to superior values can modify the existing positive rules of law, with which it has to and will abide in arriving at its decision, it is sensitive to the importance of the issues raised in the case by the Appellants, issues which are also a concern of the Respondent.

54. The Panel reiterates that the origin of the dispute resides in the fact that the Appellants sought an IOC inquiry in order to ascertain a possible infringement of Letter C (Resources) of the Code of Ethics, which reads as follows:

> *"C. RESOURCES*
>
> *1. The Olympic resources of the Olympic parties may be used only for Olympic purposes.*
>
> *2.*
>
> *2.1 The income and expenditure of the Olympic parties shall be recorded in their accounts, which must be maintained in accordance with generally accepted accounting principles. An independent auditor will check these accounts.*
>
> *2.2 In cases where the IOC gives financial support to Olympic parties:*
>
> *a) the use of these Olympic resources for Olympic purposes must be clearly demonstrated in the accounts;*
>
> *b) the accounts of the Olympic parties may be subjected to auditing by an expert designated by the IOC Executive Board*
>
> *[…]".*

55. The Appellants insist that they *"[…] are dealing with an ethic issue which involves the distinguishing features of the Olympic principles as set forth in the Olympic Charter. We do beg the CAS Panel's pardon in advance for any possible trace of rhetorical digressions in this brief, but there would certainly be more ethics in sport business and management or sport politics if those involved respect the said ethical principles. It is therefore necessary to clarify that we are dealing here with something that Olympism disseminates: transparency and correctness"*.

56. There can be no doubt that the Olympic ideals are high ideals, as stated in the Fundamental Principles of Olympism that open the Olympic Charter which are worth quoting here:

> *"1. Olympism is a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind. Blending sport with culture and education, Olympism seeks to create a way of life based on the joy of effort, the educational value of good example, social responsibility and respect for universal fundamental ethical principles.*

2. *The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.*

3. *The Olympic Movement is the concerted, organised, universal and permanent action, carried out under the supreme authority of the IOC, of all individuals and entities who are inspired by the values of Olympism. It covers the five continents. It reaches its peak with the bringing together of the world's athletes at the great sports festival, the Olympic Games. Its symbol is five interlaced rings.*

4. *The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.*

5. *Recognising that sport occurs within the framework of society, sports organizations within the Olympic Movement shall 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.*

6. *Any form of discrimination with regard to a country or a person on grounds of race, religion, politics, gender or otherwise is incompatible with belonging to the Olympic Movement.*

7. *Belonging to the Olympic Movement requires compliance with the Olympic Charter and the IOC".*

57. It cannot be denied that the use of the funds received by the IFs from the Respondent for no other purposes than Olympic purposes is in line with these general principles. The Respondent itself is quite conscious of the importance of a transparent and correct use of the funds it distributes for the development of the Olympic Movement. It can be reminded here that this was precisely the purpose of the granting of money from the Respondent to the IWF, as results from Rule 24 para. 2 OC, which provides that:

"In order to enhance the development of the Olympic Movement, the IOC may grant part of its revenues to the IFs, to the NOCs including Olympic Solidarity, and to the OCOGs".

58. The Respondent has been very attentive to this problem over the years, as can for example be seen from the Recommendations 44 to 48 adopted during the 110th IOC session, in the year 1999, which read as follows:

"[…]

RECOMMENDATION 44:

The flow of IOC funds for each Olympic quadrennial will be disclosed by outlining the total source and use of those funds. This reporting will start with the current quadrennial.

The source and use schedules referenced should be audited and approved by independent, external auditors – as the IOC accountants are.

RECOMMENDATION 45:

The IOC will disclose the allocation of funds to each individual NOC and IF starting with the current quadrennial and every entity (NOC, IFs, etc.) will produce an accounting record for the IOC listing the expenditure of all funding provided by the IOC. The IOC will provide the required reporting template.

RECOMMENDATION 46:

The IOC will seek a more transparent, objective mechanism for fund distribution to be phased in over future quadrennials.

RECOMMENDATION 47:

Every bid city must disclose the amount by source of funding for bid expenditures as part of its bid documentation. This will be audited at the conclusion of the bid process.

RECOMMENDATION 48:

The IOC will encourage all NOCs and IFs to disclose their sources and use of funds".

59. These recommendations show the way towards more transparency and control, but it is to be kept in mind that, absent approval and implementation in the Olympic Charter, they remain mere recommendations. Taking into account the fact that none of these recommendations has finally been adopted and implemented as Amendments to the Olympic Charter, which is the legal framework in which the Panel has to take its decision, they do not bind the IFs and are not relevant in solving the dispute between the Parties.

60. As a result, and as shall be addressed in more depth hereafter (see infra.) it appears that Rule C (Resources) para. 1 of the Code of Ethics in the 2009 version is the positive applicable Rule. This Rule, as its wording shows, only applies to *"Olympic parties"*, a defined term in the Olympic Charter which does not encompass the IFs, which are therefore not submitted to such Rule.

61. Moreover, even if the recommendations had been adopted and implemented as Amendments to the Olympic Charter, the Panel would not rule differently. From these recommendations, the only one that might relate to the management of funds allocated by the IOC to the IFs is recommendation 48, stating that *"[t]he IOC will encourage all NOCs and IF to disclose their sources and use of funds"*. Unlike recommendations 44 to 47, the language of recommendation 48 however only provides for guidance to the IFs, without invading their autonomy through mandatory obligations. As a result, the Panel finds it very unlikely that the implementation of this recommendation as an Amendment in the Olympic Charter would have led to a different solution in that regard.

62. Notwithstanding what precedes, the Panel encourages the concerned Parties to continue to strive towards more transparency and correctness in the use of the funds flowing through the Olympic Movement.

63. Taking into account these preliminary remarks, the Panel shall now turn to the issues to be decided for a decision on jurisdiction (*see* supra).

The Existence of a Decision

64. In order to invoke the CAS jurisdiction under Art. R47 of the Code, the Appellants first have to demonstrate that the appeal relates to a *"[…] decision of a federation, association or sports-related body […]"*.

65. Although the Parties have not developed this point, it is the Panel's duty to ascertain its jurisdiction and therefore to verify the existence of a decision. The Panel will thus briefly address the question of the existence of a decision of a sport-related body.

66. A first issue relates to the form of the decision. It is undisputed that the appealed decision was issued in the form of a letter sent to the Appellants on 20 May 2011.

67. The possible characterization of a letter as a decision was considered in several previous CAS cases (CAS 2004/A/659; CAS 2005/A/899; CAS 2004/A/748; CAS 2008/A/1633; CAS 2008/A/1548).

68. The Panel agrees with the definition of "decision" and the characteristic features of a "decision" stated in those CAS precedents:

- *"the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal"* (CAS 2005/A/899 para. 63; CAS 2007/A/1251 para. 30; CAS 2004/A/748 para. 90; CAS 2008/A/1633 para. 31).
- *"In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties"* (CAS 2005/A/899 para. 61; CAS 2007/A/1251 para. 30; CAS 2004/A/748 para. 89; CAS 2008/A/1633 par. 31).
- *"A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects"* (2004/A/659 para. 36; CAS 2004/A/748 para. 89; CAS 2008/A/1633 para. 31).
- *"an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an 'animus decidendi', i.e. an intention of a body of the association to decide on a matter […]. A simple information, which does not contain any 'ruling', cannot be considered a decision"* (BERNASCONI M., "When is a 'decision' an appealable decision?" in: RIGOZZI/BERNASCONI (eds), The Proceedings before the CAS, Bern 2007, p. 273; CAS 2008/A/1633 para. 32).

69. Considering these definitions, it is the Panel's view that a letter can contain a formal decision which legally affects the Appellants.

70. The second issue is whether this decision is a decision of a sport's related body.

71. There is obviously no doubt that the Respondent, which is an international non-governmental not-for-profit organization in the form of an association recognized by the Swiss Federal

Council in an agreement entered into on 1st November 2000 (Rule 15 OC), is a sports-related body within the meaning of Art. R47 of the Code.

72. It is undisputed that the letter in question was notified on 20 May 2011 by the Respondent's Director of Legal Affairs. The letter, written on official Respondent's paper letterhead, expressly refers to the one sent by the Appellants on 2 May 2011 and states: *"[…]. I acknowledge receipt of your letter dated 2 May 2011 concerning the file you sent to the IOC President at the end of February 2011 regarding the International Weightlifting Federation. […]"*. This express reference to the Respondent's President makes it clear that the Respondent's Director of Legal Affairs was acting for the account and in the name of the Respondent's President; any other construction would obviously run in contradiction with the principle of good faith. Moreover, this is in accordance with Letter G of the Code of Ethics as reproduced below (*infra*), which makes it clear that such a decision has to be rendered by the Respondent's President.

73. The Olympic Charter also makes it clear in its Rule 20 para. 2 that *"[t]he President represents the IOC and presides over all its activities"*, adding at para. 3 that *"[t]he President may take any action or decision on behalf of the IOC when circumstances prevent it from being taken by the Session or the IOC Executive Board. Such action or decision must be submitted promptly for ratification by the competent organ"*.

74. Thus, the Panel finds that the Respondent's President appears in the decisions it takes, including the ones concerning potential referrals to the Ethics Commission, as a representative of the Respondent.

75. Generally speaking, the Panel believes that the nature of the deciding body referred to under Art. R47 of the Code should be construed as encompassing any decision taken in the framework of the Statutes or relevant provisions originating from the concerned federation, association or sports-related body, notwithstanding the exact nature of the body taking the aggrieved decision within such federation, association or sports-related body. Any other interpretation of these notions would clearly create the risk of excluding numerous decisions from a potential appeal, and thus leave the recipient of such *"decision"* without any remedy at law. This obviously only applies providing that the other requirements foreseen at Art. R47 of the Code are satisfied, an issue that shall be addressed hereunder with regards to the present case.

76. The third issue is whether the letter indeed amounts to a *"decision"* within the meaning of Art. R47 of the Code.

77. In other words, taking into account that the letter of 20 May 2011 originates from a *"sports-related body"*, the issue rather consists in determining whether the refusal of the Respondent's President to have the complaint filed on 18 February 2011 by the Appellants referred to the Ethics Commission, as notified to the Appellants in said letter, amounts to a "decision" within the meaning of Art. R47 of the Code.

78. According to the letter:

"[…]

Complaint regarding the International Weightlifting Federation's Financial Management

Dear Dottore Mancini,

I acknowledge receipt of your letter dated 2 May 2011 concerning the file you sent to the IOC President at the end of February 2011 regarding the International Weightlifting Federation (IWF).

After a serious analysis of all the documents in our possession, the one you communicated as well as the one communicated by the IWF, it appears that the questions raised are in reality related to the application of the IWF Statutes.

Consequently, the IOC, respecting the IF's autonomy, will not intervene in this debate.

Your sincerely.

[signature]

Howard Stupp

Director".

79. According to Letter G of the Code of Ethics:

"G Implementation

[…]

2. The Olympic parties shall inform the IOC President of any breach of the present Code, with a view to possible referral to the IOC Ethics Commission.

3. The IOC Ethics Commission may set out the provisions for the implementation of the present Code in a set of Implementing Provisions".

80. The Ethics Commission has implemented such provisions in a subsection of the Code of Ethics entitled *"Rules of Procedure Governing the Investigation of Cases Brought Before the IOC Ethics Commission"* (*"Rules of Procedure"*). In line with Letter G of the Code of Ethics mentioned above, Letter A para. 1 of the Rules of Procedure provides that:

"Referrals to the Ethics Commission (the Commission) are made in writing to the IOC President.

Any complaint or denunciation sent directly to the Commission is immediately forwarded to the IOC President for analysis and possible official referral to the Commission.

[…]".

81. The letter sent by the President clearly is a refusal of a request made by the Appellants, and their appeal is based on the allegation that such refusal contravenes statutory provisions of the Olympic Charter and the Code of Ethics.

82. In CAS 2007/A/1392, referred to by Estelle de la Rochefoucauld (Standing to sue, a procedural issue before the CAS, CAS Bulletin 1/2011, at 14), the Panel stressed the fact that the appealed decision need not directly affect the situation of the appellant. The submission that the challenged decision contravenes legal or statutory provisions is sufficient as regards the

admissibility of the appeal. As pointed out by Estelle de la Rochefoucauld, *"[t]he principle according to which the decision of Sports Federations or Associations may be challenged by the members of those Associations or Federations, without restrictions as regards the locus standi or the standing right, is part of the transnational general principles applicable to the world of sport, the so-called Lex sportiva, irrespective of any national rule of law"* (at 14-15).

83. For these reasons, the Panel finds that the letter sent in the name of the IOC President originates from a "sports-related body" within the meaning of Art. R47 of the Code, and amounts to a "decision" within the meaning of that provision.

84. Considering that the letter of 20 May 2011 from the IOC President is a "decision" within the meaning of Art. R47 of the Code, the Panel shall now turn to the scope of application of Rule 61 OC.

The CAS' Jurisdiction *Ratione materiae*

85. The Appellants having based their appeal on Article 61 para. 2, the Panel must determine what the intent of the Respondent was when offering to submit to the CAS disputes *"in connection with" "the Olympic Games"*, and what the good faith understanding of the scope *ratione materiae* of such an offer of arbitration should be by a party wanting to use such Rule as a basis for a claim before the CAS.

86. Two expressions need to be clarified here. What does the expression *"Olympic Games"* cover? What kind of acts can be considered as "in connection with" the Olympic Games.

A. Textual interpretation

87. First, the Panel will focus on the meaning of the expression *"Olympic Games"*. In fact, the Olympic Charter itself defines the Olympic Games in Rule 6 in the following manner:

> *"1. The Olympic Games are competitions between athletes in individual or team events and not between countries. They bring together the athletes selected by their respective NOCs, whose entries have been accepted by the IOC. They compete under the technical direction of the IFs concerned.*
>
> *2. The Olympic Games consist of the Games of the Olympiad and the Olympic Winter Games. Only those sports which are practiced on snow or ice are considered as winter sports".*

88. It thus clearly appears that the "Olympic Games" are a defined event, and that a reference to the Olympic Games cannot be equated to a reference to the "Olympic Movement" or to *"Olympic purposes"*. This also derives from Rule 59 OC, which makes a clear distinction between the measures and sanctions applicable *"[i]n the context of the Olympic Movement"* under its para. 1, and the ones applicable *"[i]n the context of the Olympic Games"* under its para. 2, where "Olympic Games" clearly refer to the event itself, in line with the definition provided for under Rule 6 OC.

89. The Appellants have however tried to argue that the manner in which the funds granted to the IFs by the Respondent are spent, is a question that can be dealt with under Rule 61 para. 2 OC, by virtue of Rule 24 OC, relating to Olympic resources, which reads:

> *"1. The IOC may accept gifts and bequests and seek all other resources enabling it to fulfil its tasks. It collects revenues from the exploitation of any of its rights, including but not limited to television rights, sponsorships, licences and Olympic properties as well as from the celebration of the Olympic Games.*
>
> *2. In order to enhance the development of the Olympic Movement, the IOC may grant part of its revenues to the IFs, to the NOCs including Olympic Solidarity, and to the OCOGs".*

90. The Appellants therefore see a *"connection"* between the way the money distributed by the Respondent is spent and the *"Olympic Games"*. According to them, the *"connection"* comes from the link between the way the money is spent and the development of the *"Olympic Movement"* and the *"Olympic purposes"*. In their words: *"[…] it is unquestionable that the Olympic Movement generates some billions in revenue from the Olympic Games and that the IOC distributes more than 90% of these Olympic marketing revenue to organizations – as the IWF – throughout the Olympic Movement to support and promote the worldwide development of sport"* (Appellants' brief, para. 8); *"[…] the provision "in connection with the Olympic Games" should be read in conjunction with the IOC rules providing that the Olympic resources of the Olympic parties may be used only for Olympic purposes"*.

91. The Panel cannot follow such an analysis, as it is based on an assimilation of *"Olympic purposes"* and/or the *"development of the Olympic Movement"* with the *"Olympic Games"*. In other words, Rule 24 OC does not mean that the use of the money has to be made *"in connection with the Olympic Games"*, but only that the money must positively be used for the *"development of the Olympic Movement"* and, negatively, cannot be used for any purpose which is not among the *"Olympic purposes"*. The Panel thus agrees with the Respondent, when it submits that *"(t)he scope of this arbitration clause is limited to disputes having a direct connection with the "Olympic Games", which are not to be understood as some general concept, but in the concrete sense of a specific event, which lasts 16 days and happens every two years"*.

92. In conclusion, the Panel considers that a systematic construction of Rule 61 para. 2 OC taking into account the interpretation of the Olympic Charter and the different concepts clearly defined does not support the Appellants' analysis considering that a dispute over the use of the money for purposes different from the ones provided for in the Olympic Charter – *"Olympic purposes"* and the *"development of the Olympic Movement"* – is a dispute connected to the Olympic Games considered as a worldwide competition. The Olympic Games are not an abstract concept encompassing all what happens in the Olympic Movement and all the actions performed for Olympic purposes; rather, they are a specific event taking place at a specified time.

B. The history of Rule 61 para. 2 OC

93. The Panel notes that the historical background comforts the textual analysis, as aptly explained by the Respondent in its submission.

94. It is not disputed that the text of Rule 61 para. 2 OC, as it stands today, was introduced in 1995. The Respondent explains that it is on this basis that the ad hoc panels for the Olympic Games were created in order to deal with cases arising during the Olympic Games. The original interpretation however was so strict that cases "in connection with the Olympic Games" were only cases arising between the first and last day of the Olympic Games. This was not considered as appropriate, so that the time scope of the words *"in connection with"* was explained in the following terms in Rule 1 para. 1 of the *"Arbitration Rules for the Olympic Games"*, entitled *"Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)":*

"The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 59 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games".

95. In other words, while the ad hoc division panels deal with the cases arising during the time frame of the Olympic Games and ten days before, the CAS ordinary panels shall deal with cases in connection with such Olympic Games, but arising outside of this short time frame, such as for instance the ones relating to a disqualification of an athlete from the Olympic Games.

96. The cases brought to the CAS under Rule 61 para. 2 OC (or the then identical applicable provision) all had an evident connection with the event of the "Olympic Games". Some examples can be given here: CAS 2000/A/310, contesting a suspension resulting from a doping offence during the Sydney Olympic Games; CAS 2002/O/373, dealing with a sanction of the IOC concerning a doped athlete during the Salt Lake City Olympic Winter Games; CAS 2006/A/1051, dealing with ethical questions raised by an accreditation to the Olympic Games; CAS 2008/A/1545, dealing with a disciplinary measure against a relay team due to a doping offence of one member of the team during the Sydney Olympic Games; CAS 2008/A/1641, dealing with a claim against the results of a race that took place during the Beijing Olympic Games of 2008.

97. In sum, the history of the early interpretation and of the evolution of the expression *"in connection with the Olympic Games"* shows an extremely close link with the event of the Olympic Games and confirms the interpretation stemming from a good faith interpretation of the words used.

C. CAS case law

98. The Panel also finds support in prior cases.

99. Besides the cases already mentioned above in this Award, which show examples of a connection with the Olympic Games, of special interest is CAS 2010/A/2054, which indicates when it cannot be considered that there is a connection with the Olympic Games.

100. In this case, the question was the application of the Rules of the Olympic Charter to issues arising inside of a National Olympic Committee ("NOC"). Although the panel considered that the NOC had to abide by the Olympic Charter, it did not consider that these rules were directly applicable to issues arising inside the NOC (in that case with regards to electoral rules).

101. In para. 59 of the award, the panel quoted Rule 1 of the Olympic Charter (in French):

"[…]

Sous l'autorité suprême et la conduite du Comité International Olympique, le Mouvement olympique comprend les organisations, les athlètes et les autres personnes qui se soumettent à la Charte olympique. Le but du Mouvement olympique est de contribuer à la construction d'un monde meilleur et pacifique en éduquant la jeunesse par le biais d'une pratique sportive en accord avec l'Olympisme et ses valeurs.

2. Les trois principales parties constitutives du Mouvement olympique sont le Comité International Olympique (CIO), les Fédérations Internationales de sports (FI), et les Comités Nationaux Olympiques (CNO)".

102. In the award, the panel concluded that all NOCs had to abide by the Olympic Charter (*see* para. 59). Then, the panel went on to draw the consequences of such a finding: according to it, this does not mean that the rules can be enforced inside the NOCs, the only consequence being that, if a NOC does not respect the rules of the Olympic Charter, the sanction is merely the suspension or withdrawal of the recognition of the entity concerned. The relevant excerpts of the award are the following:

"D'autre part, en cas de non respect de ces règles et obligations, et s'agissant d'un CNO déjà reconnu par le CIO, la Règle 23 alinéa 1.4 prévoit que «selon les cas, les mesures ou les sanctions qui peuvent être prises par la Session, la commission exécutive ou la commission disciplinaire à laquelle il est fait référence à la Règle 23.2.4 ci-après sont:

[…]

1.4. A l'égard des CNO:

a) la suspension (commission exécutive du CIO); en pareille hypothèse, la commission exécutive détermine dans chaque cas les conséquences pour le CNO concerné et ses athlètes;

b) le retrait de la reconnaissance provisoire (commission exécutive du CIO);

c) le retrait de la reconnaissance définitive (Session); dans pareil cas, le CNO perd tous les droits qui lui sont accordés conformément à la Charte olympique;

d) le retrait du droit d'organiser une Session ou un Congrès olympique (Session)».

Il résulte de cette architecture que le non respect des obligations de la Charte Olympique a pour effet la reconnaissance ou non d'un CNO, voire le retrait définitif ou non de cette reconnaissance déjà accordée et que les règles de la Charte Olympique mentionnées ci-dessus ont un effet direct quant à ce droit de reconnaissance. En revanche, elles n'ont pas d'effet direct sur les règles internes dont se dote chaque CNO, y compris en matière de modalités électorales de ses membres et de son comité exécutif, quitte, bien sûr, à considérer que ces règles de fonctionnement interne sont contraires aux principes et obligations posés par la Charte Olympique et à en tirer les conséquences quant à la reconnaissance ou au maintien de la reconnaissance de ce CNO par le CIO. La régularité des opérations électorales d'un CNO ne peut donc s'apprécier que par rapport aux règles électorales dont il s'est doté, et non par rapport aux règles de la Charte Olympique qui n'ont pas d'effet direct (self executing) sur les règles électorales de chaque CNO".

103. According to the Panel, what is true for the internal electoral rules of a CNO is also true for the internal financial rules of an IF like the IWF.

104. Indeed, the Panel finds it hard to see why a different and more stringent treatment should be reserved to the financial rules of an IF, all the more since, while being one of the three main constituents of the Olympic Movement along with the Respondent and the NCOs (Rule 1 para. 2 OC), IFs face far less obligations and duties with regards to the Olympic Charter than NCOs (see infra). In that regard, Rule 25 para. 2 OC expressly provides that *"[s]ubject to the foregoing [i.e. the respect of the Olympic Charter and the World Anti-Doping Code], each IF maintains its independence and autonomy in the administration of sport"*.

105. As shall be pointed out hereunder, the far more limited submission of IFs to the Olympic Charter in comparison with NCOs is furthermore reflected by the Code of Ethics, which only applies to *"Olympic parties"*, to which NCOs belong to the exclusion of the IFs in accordance with the preamble of the Code of Ethics and Art. 1 of its subsection entitled Rules Concerning Conflicts of Interests Affecting the Behaviour of Olympic Parties.

106. For these reasons, the Panel finds that the management and accounting of the funds of the IFs are not subject to the Olympic Charter.

D. Conclusion on the inexistence of CAS' jurisdiction ratione materiae

107. All the elements analyzed by the Panel converge towards the conclusion that Rule 61 para. 2 OC was only intended to cover disputes arising from or connected to any given edition of the *"Olympic Games"*, i.e. to a set of the Olympic Games as a competition as defined under Rule 6 OC.

108. As a consequence, the Panel concludes that there is no link, in the sense of Rule 61 para. 2 OC, between the Olympic Games and the internal accounts of an International Federation. Any other interpretation would render the arbitration clause virtually unlimited, which was certainly not the intention of the Olympic authorities when drafting in 1995 Rule 74, to become Rule 59 and now Rule 61 para. 2, as has been ascertained through the history of the rule which was presented above (see supra).

109. The Panel therefore considers that it has no jurisdiction *ratione materiae* to entertain the present dispute.

110. Although the foregoing finding would be sufficient to deal with the matter of jurisdiction, the Panel considers that due to the importance of the issues and the extensive pleadings of the Parties on this aspect of the case, it should also address the jurisdiction *ratione personae*, in its strict sense of the existence of an arbitration agreement that can be invoked by the Appellants, leaving aside the question of the standing to sue.

The CAS Jurisdiction *Ratione personae*

111. In the present case, the statement of appeal was filed on 10 June 2011 by two individuals, namely the Appellants Antonio Urso and Marino Ercolani Casadei, the former identifying himself in the appeal as *"President of the European Weightlifting Federation and the Italian Weightlifting Federation, Member of the International Weightlifting Federation Executive Board"*, the latter as *"Member of the International Weightlifting Auditors Committee, General Secretary and Treasurer of the European Weightlifting Federation and Vice-President of the San Marino Weightlifting Federation"*.

112. While the Panel has already ruled that the CAS has no jurisdiction *ratione materiae,* it will indicate here that even if the broad interpretation of the scope *ratione materiae* presented by the Appellants would have been accepted, the Panel would in any case have no jurisdiction *ratione personae*, as will be developed now.

113. The Panel is of the opinion that the Statement of Appeal filed on 10 June 2011 makes it clear that the Appellants acted as representatives of IFs rather than as individuals. The Appellants' status however proves indecisive; be they representatives of their IF or individuals, the Panel in any case comes to the conclusion that the Appellants have no legal standing to file such an appeal, for the reasons described below.

114. As previously pointed out (*see* supra), the Olympic Charter and Code of Ethics refer to several notions, such as *"Olympic Games"*, *"Olympic Movement"*, *"Olympic purposes"* or *"Olympic parties"*. Each of these notions has a specific meaning that cannot be extended and encompass one another. Their definition is therefore significant in determining to which entity, in a given case, a right to appeal is granted under Rule 61 para. 2 OC.

115. The Panel will examine successively if the Appellants can assert a right of appeal relating to the Code of Ethics and relating to the Olympic Charter.

116. As regards the Code of Ethics, Letter G states that:

> *"1. The Olympic parties shall see to it that the principles and rules of the Olympic Charter and the present Code are applied.*
>
> *2. The Olympic parties shall inform the IOC President of any breach of the present Code, with a view to possible referral to the IOC Ethics Commission".*

117. In other words, the Code of Ethics makes is clear that only the *"Olympic parties"* shall see to it that the principles and rules of the Charter and the Code are applied and, as a consequence, according to this article, only the *"Olympic parties"* have rights and obligations under the Code of Ethics. The question therefore arises as to who these *"Olympic parties"* are.

118. The answer to this question can be found in the preamble of the Code of Ethics, which reads:

> *"The International Olympic Committee and each of its members, the cities wishing to organise the Olympic Games, the Organising Committees of the Olympic Games and the National Olympic Committees (hereinafter*

the "Olympic parties") restate their commitment to the Olympic Charter and in particular its Fundamental Principles. The Olympic parties affirm their loyalty to the Olympic ideal inspired by Pierre de Coubertin.

Consequently, at all times the Olympic parties and, in the framework of the Olympic Games, the participants, undertake to respect and ensure respect of the Present Code and the following principles:

[…]".

119. Based on the foregoing wording of the preamble, there is no doubt in the Panel's opinion that IFs do not belong to the *"Olympic parties"* as defined in the preamble of the Code of Ethics and that the Code of Ethics only applies to the Olympic parties.

120. Moreover, what applies to the IFs as entities *a fortiori* applies to any and all of their representatives, to whom the Appellants belong.

121. Thus, whether considered as having brought the appeal in their own name or in the name of the IFs, the Appellants cannot deem themselves to be in the category of the entities to which the Code of Ethics apply, and to which a right of appeal to enforce the Code of Ethics is granted under Article 61 para. 2.

122. Such a construction is in line with a systematic interpretation of both the Olympic Charter and the Code of Ethics.

123. It indeed appears that the IFs are not referred to at all in the Code of Ethics except in the subsection entitled *"Rules of Conduct for the International Federations Seeking Inclusion in the Olympic programme"*. While Rule 22 OC provides that the Code of Ethics is an integral part of the Olympic Charter, which it certainly is, this provision does still not imply that any entity belonging to the Olympic Movement would be bound by the Code of Ethics; such is only the case of the *"Olympic parties"* that are subject to its provisions and to which the IFs do not belong.

124. The inapplicability of the Code of Ethics to the IFs, is further confirmed by the modification of its Preamble in 2010 in Acapulco, resulting in the addition of the following paragraph:

"The International Federations and Recognised Organisations shall adopt a code of ethics based on the principles and rules of the IOC Code of Ethics or adopt the IOC Code of Ethics in a written declaration".

125. Indeed, this amendment shows that, prior to the amendment, the IFs were not subject to the Code of Ethics and that, since the enactment of the new version of the Code in 2012, they are not automatically subject to it but may elect to adopt their own code based on the principles and rules of the Code, or simply decide to adopt the IOC Ethics Code.

126. It results that the arbitration clause cannot be interpreted as granting a right of appeal to the IFs in the framework of the Code of Ethics, since it does not apply to them.

127. The Panel also finds it worth mentioning that, even if the Code of Ethics were applicable to the IFs which is not the case but for the very specific subsection mentioned above – which will be dealt with when examining the extent of the duties the IFs might perform in relation to the

Olympic Games – none of its provisions would impose an obligation of allocating the *"Olympic resources"* to the *"Olympic Games"* either. Letter C para. 1 of the Code of Ethics, the sole provision related to resources, only provides that:

"The Olympic resources of the Olympic parties may be used only for Olympic purposes".

128. Here again, *"Olympic purposes"* obviously has a broader meaning than *"Olympic Games"*, and more generally encompass in light of Rule 26.2 and 26.3 OC the development of the concerned sport throughout the world, as well as the pursuit and achievement of the goals set out in the Olympic Charter, in particular by way of Olympism and Olympism education. Such goals may obviously be met even where the funds allocated are not used directly in the frame of the *"Olympic Games"* but for other *"Olympic Purposes"*.

129. The question remains to be answered of whether the arbitration clause could be deemed to encompass an offer to arbitrate to the IFs in connection with the implementation of the Olympic Charter.

130. Unlike other entities such as NCOs for instance, the IFs have fairly limited duties imposed by the Olympic Charter, that are tailored to specific activities, such as their inclusion in the Olympic programs for which specific rules of conduct have been enacted in the Code of Ethics. It indeed appears that Chapter 3 of the Olympic Charter, which deals with IFs, only contains two provisions.

131. Rule 25 para. 2 OC, reproduced hereunder, does not even refer to the Code of Ethics, and insists on the preservation of the IFs' autonomy:

"The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code. Subject to the foregoing, each IF maintains its independence and autonomy in the administration of its sport".

132. Rule 26 OC, the sole provision covering the IFs' "duties" in the Olympic Charter, reads as follows:

"1. The mission and role of the IFs within the Olympic Movement are:

1.1 to establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application;

1.2 to ensure the development of their sports throughout the world;

1.3 to contribute to the achievement of the goals set out in the Olympic Charter, in particular by way of the spread of Olympism and Olympic education;

1.4 to express their opinions on the candidatures for organising the Olympic Games, in particular as far as the technical aspects of venues for their respective sports are concerned;

1.5 to establish their criteria of eligibility for the competitions of the Olympic Games in conformity with the Olympic Charter, and to submit these to the IOC for approval;

1.6 to assume the responsibility for the technical control and direction of their sports at the Olympic Games and, if they agree, at the Games held under the patronage of the IOC;

1.7 to provide technical assistance in the practical implementation of the Olympic Solidarity programmes.

2. In addition, the IFs have the right to:

2.1 formulate proposals addressed to the IOC concerning the Olympic Charter and the Olympic Movement;

2.2 collaborate in the preparation of Olympic Congresses;

2.3 participate, on request from the IOC, in the activities of the IOC Commissions".

133. Rule 26 OC therefore only imposes specific duties on the IFs in the Olympic Movement in so far as the "Olympic Games", defined as an event within the meaning of Rule 6 OC, are concerned (Rule 26.1.4, 26.1.5 and 26.1.6). Rule 26.1.6 OC is further detailed at Rule 46 OC related to *"[t]echnical responsibilities of the IFs at the Olympic Games"*, which states that:

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

2. The OCOG must ensure that the various sports included in the programme of the Olympic Games are treated and integrated equitably.

3. As to the schedule and daily timetable of the events, the final decision lies with the IOC Executive Board.

4. After consultation with each IF, the IOC Executive Board determines the number and selection of competitors for doping tests and all other anti-doping measures during the period of the Olympic Games".

134. It clearly appears from a literal reading of these provisions that the duties to be fulfilled by the IFs are in direct and close relation with the setting up of the *"Olympic Games"* for which the IFs have to respect the subsection of the Code entitled *"Rules of Conduct for the International Federations Seeking Inclusion in the Olympic programme"*.

135. For the rest, Rule 26 only provides general guidance to the IFs without any specific duties. The allocation and management of financial resources within the IFs is in particular not addressed in any way in these Rules.

136. In other words, the offer to arbitrate questions raised under the Olympic Charter, as addressed to the IFs, is limited to questions relating to the Olympic Games. For the reasons discussed earlier (see supra), when discussing its jurisdiction *ratione materiae*, the Panel comes to the conclusion that the IFs cannot rely on an arbitration clause for questions relating to the mismanagement of funds in their internal affairs.

137. In conclusion, it appears that, while the IFs belong to the *"Olympic Movement"*, such an affiliation is not enough in itself to deem that any of their acts take place *"in connection with the Olympic Games"* within the meaning of Rule 61 para. 2 OC and to thus trigger a right to appeal to the CAS. They only have a right to appeal in relation with their specific and limited duties in connection with the Olympic Games as described in the above-mentioned rules.

138. The conclusion that it is not enough to be part of the Olympic Movement in order to benefit from the arbitration offer contained in Article 61 para. 2 is in line with formerly adopted decisions of the CAS.

139. In particular, when applying Article 74, the predecessor of the present Article 61 para. 2, a panel decided in CAS NAG 1, that the athlete, although belonging to the Olympic Movement, was not an accredited athlete at the Winter Olympic Games – namely the 1998 Nagano Olympic Games – with the consequence that the ad hoc Division ruled that it had *"no jurisdiction to deal with its arbitral request under Article 74 of the Olympic Charter"* and added that *"(t)he Panel, of course, has under Article 74 the power to determine the scope of its jurisdiction"*.

140. The Panel also refers here to a decision in the same line taken by the Deputy President of the Appeals Arbitration Division of CAS in a case decided on 30 August 2000, in which the scope of Article 74 was discussed. The decision, referring to the foregoing case, stated that *"'olympic athletes', that is athletes duly accredited by the International Olympic Committee, were able to refer to rule 74 of the Olympic Charter to submit a request for arbitration or an appeal to the CAS. The Court has considered that athletes with only an interest in taking part in the Olympic Games could not use this arbitration clause to justify the jurisdiction of CAS"* (para. 9).

141. In summary, the arbitration clause is only addressed, as far as the Code of Ethics is concerned to the "Olympic parties" and the Olympic athletes, and as far as the Olympic Charter is concerned to the same entities, as well as to the entities participating in the organisation of the Olympic Games, in relation with such participation. The IFs cannot claim to benefit from an offer to arbitrate the issue of the management of their funds under any one of these entitlements.

142. As a result, the Panel finds that the CAS has no jurisdiction *ratione personae* in the present case.

143. This does not mean that the Panel has discussed the question of whether, had the Appellants been able to convince it that it had jurisdiction *ratione materiae* and *ratione personae* in relation with their case, they would have had a standing to sue, in other words, an underlying right capable of being protected.

144. The Panel has therefore neither ruled on the issue of whether the President of the IOC has or has not a discretionary power to transmit a complaint to the Ethics Commission, nor on the question of whether – in case it indeed has such a discretionary power – it would be possible for a "Legitimate Appellant" to argue an improper and arbitrary exercise of such discretionary power.

The Exhaustion of Local Remedies

145. While this question is legally irrelevant in view of the fact that the Panel has found that the CAS lacks jurisdiction *rationae materiae* and *ratione personae* to entertain this appeal, the Panel nevertheless finds it worth drawing the Appellants' attention to the fact that the fulfilment of

the final requirement, *i.e.* the exhaustion of internal remedies prior to the appeal, is more than doubtful in the present case and that, as a result, the applicability of Rule 61 para. 2 OC would have been highly improbable, even if all the other conditions of jurisdiction and admissibility had been fulfilled.

146. According to Art. 75 CC:

"any member of an association is legally entitled to file an action with a court, within one month after having received knowledge thereof, to set aside the decision to which it has not adhered and which are contrary to law or the constitution of the association".

147. The Swiss Supreme Court has ruled that an appeal of the type provided for under Art. 75 CC may not only be filed in front of State courts, but also in front of arbitral tribunals, and in particular in front of the CAS (Swiss Supreme Court, 119 II 271. CR CC I-FOËX, Art. 75 N 3 and quoted references). This was also ruled in CAS 2007/A/1392, where the panel confirmed that Art. 75 CC encompasses the right to file a claim in arbitration for the annulment of the internal decisions of a Swiss association.

148. As pointed out (see *supra*), the Respondent is an association incorporated under the laws of Switzerland, and thus subject to Art. 75 CC, which is a mandatory provision (CR CC I-FOËX, Basel 2010, Art. 75 N 3). IFs, whom the Appellants represent, are members of the Respondent and thus are entitled to invoke the application of Art. 75 CC.

149. To be appealed, the decision however needs to be final, which requires all internal remedies to have been exhausted prior to appealing to a State court or an arbitral tribunal (Swiss Supreme Court, 132 III 503. For scholars: CR CC I-FOËX, Art. 75 N 16; BSK ZGB I-HEINI/SCHERRER, 3rd ed., Basel 2006, Art. 75 N 7; BK-RIEMER, Art. 75 N 17).

150. In the present case, Rule 61 para. 1 OC provides that:

"The decisions of the IOC are final. Any dispute relating to their application or interpretation may be resolved solely by the IOC Executive Board and, in certain cases, before the Court of Arbitration for Sport (CAS)".

151. At first sight, the Panel notes the possibility that a dispute relating to the refusal of the Respondent's President to refer a given complaint to the Ethics Commission be considered to involve the application, respectively non application of a decision. In such case, in accordance with the foregoing Rule, the letter of 20 May 2011, by which the IOC President refused to refer the case to the Ethics Commission, should have been escalated to the Respondent's Executive Board and the decision of the Board could have been, in certain cases, appealed to the CAS.

152. In any event, absent the exhaustion of internal remedies in accordance with Rule 61 para. 1 OC, the Panel is of the opinion that the application of Rule 61 para. 2 OC to the present case would have been more than doubtful, had all the other conditions of jurisdiction and admissibility been fulfilled. However, considering that in any event the CAS in any case lacks jurisdiction both *ratione materiae* and *ratione personae*, the Panel shall refrain from addressing that particular issue in more depth.

The Court of Arbitration for Sport rules:

1. The appeal filed on 10 June 2011 by Antonio Urso and Marino Ercolani Casadei is inadmissible.

(…).