



**Arbitration CAS 2015/A/4255 Vladislav Oskner v. Fédération Internationale de Gymnastique (FIG), award of 29 March 2016**

Panel: Mr John Faylor (USA), President; Mr Victor Berezov (Russia); Prof. Denis Oswald (Switzerland)

*Gymnastics (aerobic)*

*Admissibility of an appeal before a first instance body of a federation*

*Late filing and non-compliance with electronic filing requirements*

*CAS jurisdiction to review a final decision*

1. According to the federation's rules, for delivery by mail, the rule is that the date of delivery to the federation's office is controlling. If the mailing takes place within Switzerland, the rule provides an exception if the mailing containing the written and signed appeal is made through a Swiss post office. Only in this case will the date of sending be deciding. In all other cases of physical transport of the written and signed appeal, the delivery of the appeal must be made to the federation's office on the last day of the time limit during usual opening hours. The other exception to physical delivery of the signed and written appeal concerns electronic transmissions. Email transmission is permitted, *"provided that it contain an electronic signature officially certified and dated via a secure server"*. There is no violation of international law, conventions protecting human rights, Swiss law or CAS precedents with regard to the differing forms of service of notifications and communications set out in the various rules and regulations of the federation. The rules are legally justified by the differing sets of interests of the parties concerned. Therefore, an appeal against a decision of the federation disciplinary body filed lately by DHL courier and an email sent and received within the deadline but which did not conform to the electronic certification requirements cannot be admitted.
2. A CAS panel has no authority to review decisions of federations, associations or sport-related bodies which have become final and binding upon the disputing parties and are no longer eligible for appeal.

## **I. PARTIES**

1. The Appellant, Vladislav Oskner, is a competition judge Category II in Aerobic Gymnastics from Russia. He has been competition judge since 2007 and also serves as Vice President of the Aerobic Gymnastic Technical Committee of the European Union of Gymnastics (UEG). The Appellant was nominated by FIG to serve as Execution Reference Judge at the FIG Aerobic

Gymnastics World Championships 2014 (“2014 AER World Championships”) held in Cancun, Mexico between 27 and 29 June 2014.

2. The Fédération Internationale de Gymnastique (the “Respondent” or “FIG”), founded in 1881, is the governing body of competitive gymnastics worldwide with its registered office in Lausanne, Switzerland. It counts 142 national member federations and governs seven gymnastics disciplines: Gymnastics for All, Men’s and Women’s Artistic Gymnastics, Rhythmic Gymnastics, Aerobic Gymnastics, Acrobatic Gymnastics and Trampolining.

## II. FACTUAL BACKGROUND

### A. Background Fact

3. At a meeting of the Aerobic Technical Committee (“AER TC”) of the FIG held on the Antibes between 2 and 5 October 2014, the judges’ scores given during the 2014 AER World Championships were analyzed. At this session, the AER TC identified four judges who, it charged, had awarded biased scores, having “*systematically favored competitors from their home countries*”. The Appellant was one of these four accused judges.
4. More than six months later, on 25 March 2015, the FIG opened a disciplinary procedure against the four accused judges and referred the matter to the FIG Disciplinary Commission (“FIG DC”). On this same day, both the Appellant and the Russian Gymnastics Federation were sent the “Charge Letter” containing the charges raised against him.
5. A hearing before the FIG DC took place in Lausanne on 3 June 2015 at which the Appellant was present. The Appellant did not provide written comments to the “Charge Letter”, but defended himself by oral comments made during the hearing.
6. In its decision of 12 June 2015, the FIG DC held as follows:  
*“In this matter, the FIG DC finds that Mr Oskner acted in a manner that is clearly biased in favor of gymnasts from his own country. Specifically, Mr Oskner has given scores that are biased in favour of the gymnasts of the Russian Federation. Whether or not the Russian gymnast benefited from the scores given by Mr Oskner is totally irrelevant. The decisive factor is that Mr Oskner’s scores were biased in favour of the Russian gymnasts. Such behavior is even worse, considering that Mr Oskner was invited to the 2014 World Championships as a Reference Judge and the FIG paid for all his travel and accommodation costs”.*
7. In its decision, the FIG DC sanctioned the Appellant pursuant to Article 43.2(e) of the FIG Statutes by excluding him from participating in any FIG activities and other international events for a period of 12 months commencing on 12 June 2015.

### B. Proceedings before the FIG Arbitral Tribunal

8. The Appellant filed his appeal against the FIG DC decision by sending his written and signed appeal with all exhibits to the FIG Office in Lausanne both by email with the scanned appeal

and exhibits attached and the original signed version by DHL courier service from Moscow on 3 July 2015.

9. Receipt of the email on 3 July 2015 and the DHL signed original of the appeal were confirmed by the Secretary General of FIG, Mr André Gueisbuhler, by email of 10 July 2015. Therein, the Secretary General stated:

*"I confirm to have received your appeal by e-mail 3<sup>rd</sup> July 2015 and by DHL 6<sup>th</sup> July 2015.*

*Your payment of CHF 5'000.- was received 1<sup>st</sup> July 2015.*

*I have forwarded your Appeal file incl. Exhibit 1 and 2 as well as the Power of Attorney to the Appeal Tribunal which was constituted as follows:*

*Mr. Thore Brolin, President*

*Mr. Renata Loss Compagna, Member*

*Mr. George Stewart, Member*

*Ms. Claudia Schönleben was nominated as Secretary of the Appeal Tribunal.*

*The procedure shall be held in English.*

*Please note that all further correspondence in this matter must be addressed to the President of the Appeal Tribunal.*

*You will hear further directly from the President or the Secretary of the Tribunal.*

*Kind Regards,*

*André F. Gueisbuhler*

*Secretary General".*

10. On 30 September 2015, the Appellant was present at a hearing before the FIG Arbitral Tribunal ("FIG Tribunal") where he defended himself against the allegations raised against him and the sanction imposed by the FIG DC.
11. In its decision rendered on 5 October 2015, the FIG Tribunal ruled unanimously that:
- 1. The Tribunal declares the appeal inadmissible.*
  - 2. The decision made by the FIG Disciplinary Commission is upheld.*
  - 3. The amount of CHF 5,000.- paid by Vladislav Oskner shall be kept by the FIG.*
  - 4. All other requests are dismissed.*
12. In the reasoning of the decision, the Tribunal rejected the Appellant's argument that the decision of the FIG DC had been rendered outside the six month time limit set out in Article 6.3.2 of the FIG General Judges Rules ("FIG GJR") and was therefore null and void. Art. 6.3.2 FIG GJR states the following:

*“Within a maximum 6 month period (whenever possible), after the conclusion of the competition, the sanctions will be decided by the Disciplinary Commission ...”.*

13. The Tribunal took the view that the wording of Article 6.3.2 FIG GJR does not permit the conclusion that it sets down a fixed time limit and chose to assign the provision regulatory character.

*“The Appeal Tribunal agrees with the FIG that the wording of Article 6.3.2 does not show it is a fixed time limit. Instead, the wording “will be decided” shows that the Article is a regulatory provision. The wording “whenever possible” must be interpreted the same way. This is in clear contrast to the wording of Article 5 of the FIG Code of Points, saying that “Any disciplinary proceedings under this Code shall be instituted within the following time limits: ...”.*

14. Article 5 of the FIG Code of Discipline, effective as of 1 June 2011 (“FIG CoD”), incorrectly referred to above by the FIG Tribunal as the “Code of Points”, sets down a time limit for instituting disciplinary proceedings of 1 year from the end of the competition *“for any breach occurring during competition”*. The exceptions hereto are violations involving doping (8 years from the date of occurrence) and acts of a criminal nature (12 years from the date of conviction).

15. The FIG Tribunal ruled that *“Article 6.3.2 of the FIG General Judges Rules is not a preclusive deadline”*. The fact that the disciplinary proceedings started almost nine months after the conclusion of the 2014 AER World Championships *“does not have the effect that any fixed time limit was broken”*.

16. In the view of the FIG Tribunal, however, the deciding issue in dismissing the Appellant’s appeal was its “inadmissibility”. The reasoning of the FIG Tribunal is set out in Pt. 2.5 of the decision:

*“The Parties agree that Vladislav Oskner was notified about the appealed decision on June 12, 2015, and that the time limit for the appeal expired on Friday July 3, 2015. Vladislav Oskner sent an appeal duly signed with the DHL from Moscow on July 3, 2015. That appeal arrived at the FIG Office on July 6, 2015. Vladislav Oskner also sent an email with the same appeal attached to the FIG Office on July 3, 2015, and the FIG received the email the same day. The email was a normal one and did not contain an electronic signature and was not dated via a secure server. ...”.*

17. The FIG Tribunal based its decision on the provisions of Article 29 of the FIG CoD which provides in sections 7, 8 and 9 as follows:

*“The appeal shall be signed by the Appellant and sent in writing to the address of the FIG Office to the attention of the FIG Appeal Tribunal within 21 days from the notification of the decision.*

*Should the appeal be submitted by email it shall be admissible provided that it contains an electronic signature officially certified and dated via a secure server.*

*Should the appeal be sent by mail, it shall be delivered to a Swiss post office at the latest by midnight of the last day of the time limit or be delivered to the FIG office during its usual opening hours not later than the last day of the time limit”.*

18. In the view of the FIG Tribunal, *“the crucial point is the sending”*. It explained the filing procedure in its decision as follows:

*“An appeal may be delivered in many ways, and if the FIG receives the appeal before the deadline it is made in time. When the appeal is made in the very last minute there are however limited ways to deliver. The rules are set up to make sure that a delivery is made in time and that it is the relevant party who makes the appeal”*.

19. The FIG Tribunal pointed out that Article 29 section 9 FIG CoD permits an appeal to be delivered to a Swiss post office, but it must have been delivered to the post office on the latest by midnight of the last day of the time limit. The FIG Tribunal continues:

*“This means that the appeal must be inside Switzerland (or maybe Lichtenstein) on the last day of the time limit. Vladislav Oskner has sent the appeal by DHL from Moscow the very last day of the appeal. That appeal was not delivered to a Swiss post office. It can therefore not be accepted as the appeal made in time”*.

20. With regard to the Appellant’s email transmission on 3 July 2015, the FIG Tribunal took the view that Article 29 FIG CoD requires that the email bear *“an electronic signature officially certified and dated via a secure server”*. The FIG Tribunal explains as follows:

*“Whether an appeal is made in time and by the relevant party might be important for a competition the next day or an election for a position inside the FIG. There is the same interest also for appeals made to ordinary courts, and the same type of regulation occurs in Article 130 of the Swiss Civil Procedure Code”*.

21. The FIG Tribunal acknowledged that the FIG Secretary General had recognized the email a week later, on 10 July 2015, but asserted that *“this is not a confirmation that constitutes a delivery in due time”*. Moreover, the FIG Tribunal held that the defects in the untimely delivery of the DHL documents and the non-complying form of the appeal sent by email could not be healed by filing two appeals, one by email, the other by DHL courier.

22. The Tribunal rejected the Appellant’s argument that it is unfair that the FIG DC can send notification of its decision by normal email, whereas an appellant must submit his/her appeal by email with an electronic signature officially certified and dated via a secure server. This violates the principle of equality of the parties.

23. The Tribunal pointed out in declaring the appeal “inadmissible” that the need for exceptions to the rule set out in Article 29 FIG CoD is very limited.

*“The Appellant is not bound to wait until the very last minute to appeal. He or she can send the appeal a couple of days in advance to be sure that the appeal is made in time. As the email is not sent with an electronic signature officially certified and dated via a secure serve, the Appeal Tribunal finds that it cannot be accepted as an appeal made in time”*.

24. Having held that the Appellant’s appeal is inadmissible, the Tribunal refrained from addressing the other issues raised by the Parties dealing with material issues of law and fact.

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

25. On 23 October 2015, the Appellant filed his Statement of Appeal in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). In the Statement of Appeal, the Appellant nominated Mr. Victor Berezov as Arbitrator.
26. On 3 November 2015, the Appellant filed his Appeal Brief in accordance with Article R55 of the Code.
27. On 4 October 2015, the Respondent nominated Mr. Denis Oswald as arbitrator.
28. On 1 December 2015, the Respondent filed its Answer in accordance with Article R55 of the Code.
29. On 7 December 2015, the Appellant requested the Panel to order the Respondent to produce the full version of the Results Book of the 2014 AER World Championships containing the scores given by the Superior Jury, as the exceptional circumstances (Art. R56 of the CAS Code) were claimed to exist. Additionally, the Appellant sought to admit two pages from the Results Book containing the scores awarded by the Superior Judges at the 2014 World Championships.
30. On 3 December 2015, the Parties were informed by the CAS Court Office that the Panel appointed to decide this appeal was as follows:  
President: Mr. John A. Faylor, attorney-at-law in Frankfurt am Main, Germany  
Arbitrators: Mr. Victor Berezov, attorney-at-law in Moscow, Russia  
Mr. Denis Oswald, attorney-at-law in Colombier, Switzerland
31. On 14 December 2015, the Respondent objected to the Appellant’s request concerning the Results Book as such request violated Articles R56.1 and R51.2 of the Code.
32. On 20 January 2016, the Panel requested that the Appellant further address the admissibility of the pages from the Results Book, and moreover, invited the parties to state their position on the bifurcation of this appeal, such that the Panel would decide the issue of admissibility as an initial matter, following which, assuming the appeal is admissible, a further hearing on the merits of the appeal.
33. On 22 January 2016, the parties, respectively, confirmed their preference that the issue of admissibility be bifurcated and decided upon as a threshold matter. The Appellant further responded to the Panel’s inquiry concerning the admissibility of the Results Book.
34. On 29 January 2016, the CAS Court Office, on behalf of the Panel, confirmed that the Panel would proceed with a preliminary hearing on the issue of admissibility.
35. On 8 February 2015, the Panel held a preliminary telephone hearing, the subject matter of which was limited exclusively to the issue of admissibility of the appeal with the CAS. The Panel was

assisted at the hearing by Mr. Brent J. Nowicki, Counsel to the CAS, and joined by Mr. Artem Patsev, counsel for the Appellant and Dr. Stephan Netzle, counsel for the Respondent.

#### IV. THE PARTIES' SUBMISSIONS

##### A. The Appellant's Submission

36. Citing the wording of Article 29 section 7 of the FIG CoD (see marg. note 17 above), the Appellant submits that he did indeed appeal the FIG DC decision to the Tribunal by sending the written, signed and scanned appeal with all appendixes to the FIG office by email at 1.04 pm (Swiss time) on 03 July 2015 and by sending the hard copies of the appeal on the same day (3 July 2015) by the DHL courier service.
37. In evidence of the receipt of both his email with the attachments and the dispatch of the hard copies on 3 July 2015, the Appellant has submitted a copy of the Secretary General's email dated 10 July 2015 (text found in marg. note 9 above) which, he asserts, confirms the receipt of his email on 3 July 2015 and the DHL dispatch on 6 July 2015 as being "*duly signed*". The Appellant points out that the Secretary General then referred the case to the FIG Appeal Tribunal.
38. The Appellant asserts that, given the date of notification of the FIG DC decision on 12 June 2015, the last day of the appeal period (i.e., when any appeal shall be signed and sent in writing) was 3 July 2015. Accordingly, the sending of the appeal both by DHL courier service and by email on this date "*fully complies*" with the terms of the 21 day filing period set out in Article 29 section 7 FIG CoD.
39. In further support of his submission that the date of sending of the appeal is the determining point in time for establishing compliance with the 21 day deadline, the Appellant cites sec. 2.5 of the Tribunal's decision, in which the Tribunal stated:  
*"The wording of the Article 29 of the FIG Code of Discipline shows that the crucial point is the sending"*.
40. Moreover, he argues that the differing treatment of the "Parties" who are members of a Federation with regard to the sending of notifications and communications as provided in Article 10 section 2 FIG CoD, on the one hand, and the Appellant who appeals that decision with regard to the form and deadline requirements for filing his appeal, on the other, violate fundamental notions of fairness and equality and pose issues with regard to Swiss law and governing international conventions.
41. Specifically, in the view of the Appellant, Article 10 section 2 (Notifications) of the FIG CoD expressly permit that "*notifications and communications shall be sent by courier service, first class mail, facsimile or email*". Likewise, Article 11 section 2 provides that "*a notification by the parties should be sent no later than midnight on the last day on which such time limit expires*". In filing an appeal, however, the Appellant is bound to the more stringent requirements set out in Article 29 sections 7 through 9 FIG CoD.

42. The Appellant asserts that, in an appeal proceeding pursuant to Article 29 FIG CoD, he should be permitted to file an appeal by these same modes of sending, without requiring receipt on the last day of the filing period or by “*electronic signature officially certified and dated via a secure server*” as required by Article 29 section 8 FIG CoD. Midnight on the last day on which such time limit expires must also apply as the determining deadline for the timeliness of the appeal filing.
43. Citing CAS case rulings, the Appellant argues that when the rules of a federation are not clear and precise, the principle of *contra proferentem* must apply. The unclarity of the rule must weigh to the burden of the rule-maker.
44. With regard to the remaining material issues raised in the Appeal Brief, the Appellant submits the following:
- the FIG DC failed to apply the 6 month deadline set out in Article 6.3.2 of the 2013 FIG GJR. This deadline commences upon conclusion of the relevant competition following the analysis of the judges’ scores and video review of the exercises by the Technical Committee. This provision, being the more specific rule, precludes application of the 1 year deadline applicable “*for any breach occurring during a competition*” set out in Article 5 of the FIG CoD. The principle of *lex posterior derogat priori* and *lex specialis derogat generali* are governing in this case;
  - the “grand failure” made by the FIG to meet the terms stipulated in its own rules and regulations (the FIG Statutes, the FIG Technical Rules 2014, the FIG CoD, Aerobics Gymnastics Code of Points 2013-2016; the FIG GJRs, etc.) evidently indicates that the FIG DC decision was not issued duly and in time and by that should be declared null and void; basic rules governing the burden of proof were violated by the FIG DC;
  - as a result of unfair and partial proceedings, groundless and unlawful decisions were rendered by the FIG DC and the FIG Tribunal, imposing a sanction of one-year disqualification for Mr. Oskner;
  - Mr. Oskner is not guilty in any episode incriminating [him], and no real evidence was presented to prove it; he did not engage in biased judging;
  - all widely-known legal principles such as the principle of justice and fairness of punishment, the principle of equity, clarity, definiteness, legality, the principle of limitation periods were ignored by the FIG DC and the FIG AT;
  - the Appellant’s scoring of the Russian gymnasts at the 2014 AER World Championships was “absolutely correct”, the FIG DC’s evaluation of the Appellant’s scoring in the Bias Judges Report was incorrect.
45. In his Appeal Brief, the Appellant makes the following request for relief:
- “133. *The Appellant hereby respectfully requests CAS to rule that:*
- i. The appeal of Vladislav Oskner is admissible.*
  - ii. The Appeal of Vladislav Oskner is upheld.*

- iii. *The decision rendered by the FIG Disciplinary Commission on 12 June 2015 and the decision rendered by the FIG Appeal Tribunal on 05 October 2015 are annulled, with respect to the case of Vladislav Oskner.*
- iv. *Vladislav Oskner is not guilty of the infractions listed in the decision of the FIG Disciplinary Commission of 12 June 2015 and in the subsequent decision of the FIG Appeal Tribunal of 05 October 2015.*
- v. *The FIG shall bear the entirety of the arbitration costs.*
- vi. *Vladislav Oskner is granted an award in respect of all his legal costs and other expenses, including the CHF 5,000.- cost advance paid to the FIG Appeal Tribunal and the CHF 1,000.- court office fee paid to the CAS”.*

## **B. The Respondent’s Submission**

- 46. The Respondent submits that the FIG AT correctly upheld the decision of the FIG DC of 12 June 2015. The Appellant’s appeal against the FIG Tribunal’s decision was filed late. The Appeal must therefore be dismissed.
- 47. The time limit for submitting an appeal to the FIG Tribunal expired 21 days upon receipt of the decision of the FIG DC on 12 June 2015 which was Friday, 3 July 2015. The procedures for filing an appeal to the Tribunal were contained on the last page of the FIG DC’s decision. There, it is expressly stated that  
*“(…) an appeal shall be delivered to a Swiss post office at the latest by midnight of the last day of the time limit or be delivered to the FIG office during its usual opening hours not later than the last day of the time limit”.*
- 48. The Respondent further argues that even if the CAS disagrees with the FIG Tribunal regarding its finding of inadmissibility for late filing, it must dismiss the appeal also on the merits. The Appellant showed significant favoritism toward gymnasts of his home country, Russia, while performing his duties as a Reference Judge at the 2014 AER World Championships as demonstrated by the Biased Judges Report of 25 March 2015.
- 49. As a consequence of the late filing, the decision of the FIG DC became final and enforceable and cannot therefore be subject to an appeal to the CAS.
- 50. The Respondent submits that *“delivery by Russian post”* is definitely not the same as *“delivery to a Swiss post office”* as set out in Article 29 section 7 FIG CoD.  
*“The appeal deadline is met only when the appeal and the annexes have been delivered to a Swiss post office on the last day of the time limit”* (emphasis is that of the Respondent).
- 51. Article 29 FIG CoD, on the other hand, does indeed address delivery of the appeal by DHL. The latter must be delivered to the FIG Office *“during its usual opening hours not later than the last day of the time limit”*. The same applies to any other form of physical delivery, e.g. hand-delivery by messenger or delivery from a foreign post office or by courier system.

52. The Respondent submits that the appeal against the decision of the FIG DC was delivered to DHL in Moscow on 3 July 2015 and is not disputed by the Appellant. It arrived at the FIG only on 6 July 2015. Hence, the appeal neither arrived on the last day of the time limit (i.e., 3 July 2015) at the FIG office, nor was it delivered to, or did it arrive at, a Swiss post office within the same deadline (i.e., 3 July 2015).
53. The Respondent further points out that the FIG Statutes determine that the law applicable to the proceedings before the FIG DC and the FIG Tribunal shall be Swiss law (see Articles 1.2, 19.3 and 20 FIG Statutes).
54. Accordingly, the requirements of Article 29 FIG DoC are in line with applicable Swiss legal provisions, in particular Article 143 Swiss Civil Procedure Code (“CPC”):
- “Art. 143 Compliance*
- Submissions must be filed so later than the last day of the limitation period, either by filing with the court or by handing over to Swiss Post or a diplomatic mission or consular office of Switzerland for forwarding on the court”.*
55. In addition, the Appellant’s submission that he also sent an advance copy of his appeal by email is irrelevant. The requirements of Article 29 section 8 FIG DoC are in line with Article 130 Civil Procedure Code (“CPC”) regarding form.
- “Art. 130 Form*
- Submissions must be filed with the court in the form of paper documents or electronically. They must be signed.*
- In the case of electronic transmission, the document containing the submission and its enclosures must be certified by the recognized electronic signature of the sender. The Federal Council shall determine the format for transmission.*
- The court may request that the electronically transmitted submission and its annexes be subsequently filed in paper form”.*
56. In the view of the Respondent, it is undisputed that the appeal to the FIG Tribunal was not sent with an electronic signature officially certified and dated via a secure server.
57. In summary, the Respondent argues that the Appellant had three different options to file his appeal against the FIG DC decision in a timely manner: (a) by courier (arrival no later than on 3 July 2015), (b) by post (sent by a Swiss post office no later than on 3 July 2015); or (c) electronically (sent with officially certified electronic signature and via a secure server). Because the Appellant failed to comply with all three of these options, the FIG Tribunal correctly declared the appeal to be late and inadmissible.
58. In addressing the material issues raised in the appeal, the Respondent cites the following:
- To measure the quality and the independence of judging on a solid basis, the FIG has developed the Judges Evaluation Programme (“JEP”); the JEP also flags deviations between the expert score and the scores which a judge provided to his or her compatriots;

one or more deviation(s) in favour of a judge's own compatriots are considered to be biased judging which, when reported in the Bias Judges Report, are considered to be biased judging which when leads to disciplinary proceedings and sanctions pursuant to Article 6.3 of the FIG General Judges Rules;

- In the case at hand, the Bias Judges Report demonstrated that the Appellant significantly favoured Russian competitors in five events. This is the reason why his biased judging was brought to the attention of the FIG DC and led to the sanction pronounced in the decision of the FIG DC on 12 June 2015;
- Article 6.3.2 of the GJR is not a provision imposing a statute of limitation, but reflects the "intent" of the rule makers that allegations of incorrect and biased judgments "should" be decided in an expedited proceeding. Exceeding the 6-month period does not have the consequence of forfeiting the possibility to pursue the rule violation at a later date. This is supported by the qualification in the wording of Article 6.3.2 "whenever possible".
- Article 5 of the FIG CoD sets out the governing deadline. It governs disciplinary proceedings and not the General Judges Rules. The principle of "*lex specialis derogate legi generali*" applies only in cases of contradicting provisions on the same level of authority. The FIG General Judges Rules are decreed by the Executive Committee; the FIG CoD is issued by the FIG Council which is superior to the FIG Executive Committee.
- The Respondent submits that the relevant standard to measure deviations among the competition judges is not "some expert ranking" as the Appellant nonchalantly describes, but rather the post-competition Expert Score as provided by the FIG GJR and the JEP Rules, which is the only relevant standard. The Appellant's own calculations, as set out in the Appeal Brief, are completely irrelevant.

59. In its Answer, the Respondent makes the following requests for relief:

- (1) *to dismiss Mr. Oskner's appeal;*
- (2) *to uphold the decision of the FIG Appeal Tribunal of 5 October 2015 and the decision of the FIG Disciplinary Commission of 12 June 2015;*
- (3) *to grant the FIG a contribution towards its legal fees and other expenses incurred in connection with these proceedings.*

## V. JURISDICTION

60. Article 21 of the FIG Statutes in effect from 1 January 2013 ("FIG Statutes") provides as follows:

"21. *The Court of Arbitration for Sport*

*Any decision made by the Appeal Tribunal may be submitted exclusively by way of appeal to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, which will resolve the dispute definitively in accordance*

*with the Code of Sports-related Arbitration. The time limit for appeal is twenty-one days after the receipt of the decision of the Appeal Tribunal”.*

61. Supplementing this rule of jurisdiction, Article 43.1 sections 4, 5 and 6 of the FIG Statutes and Article 33 FIG CoD state the following:

*“43.1 Code of discipline and legal procedures*

*(...)*

*In so far as they come under the civil law, decisions of the FIG bodies (of proprietary nature) can be exclusively disputed to the Court of Arbitration for Sport “CAS” in Lausanne (Switzerland). The legal ordinary procedures are excluded.*

*The decisions which are of sports nature cannot be disputed.*

*Complaints to the Court of Arbitration for Sport can be addressed only when the internal FIG appeal procedures were exhausted.*

*(...)*

*Article 33 Appeal to CAS*

*An appeal against any decision of the FIG Appeal Tribunal, or other decision if provided otherwise in a specific provision, may exclusively be lodged to the Court of Arbitration for Sports in Lausanne (Switzerland), within 21 days from the notification of the decision of the FIG Appeal Tribunal.*

*The Parties to an appeal to the FIG Appeal Tribunal and the FIG itself, in any case, shall be authorized to appeal to the CAS.*

*The rules of the Code of Sports-related arbitration with regard to sports apply for the proceedings to the Court of Arbitration for Sports”.*

62. Lastly, Article R57 of the CAS Code provides:

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

63. The Parties have expressly accepted the jurisdiction of CAS in the Appellant’s Statement of Appeal and in the Respondent’s Answer.
64. Based on the above provisions and the express acceptance of CAS jurisdiction by the Parties, the Panel concludes that, notwithstanding issues regarding the admissibility of the appeal of the FIG Tribunal’s decision of 5 October 2015 to CAS, it has jurisdiction to decide this dispute.

## VI. ADMISSIBILITY

65. For the purposes of this CAS proceeding, the Appellant's appeal of the Tribunal's decision of 5 October 2015, notified to the Parties on 12 October 2015, was received and registered at the CAS Office on 28 October 2015, well within the 21-day deadline imposed both by Article 21 FIG Statutes and Article 29 section 7 FIG CoD. The Respondent has not challenged the timely filing of Mr. Oskner's appeal to the CAS. This, however, is not the issue.

## VII. APPLICABLE LAW

66. In accordance with Article R58 of the CAS Code,  
*"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice according to the law of the country in which the federation, association or sport-related body which has issued the challenged decision is domiciled or according to the rules of law of the Panel deems appropriate. In the latter case the Panel shall give reasons for its decision"*.
67. The Respondent is a registered Swiss association with its legal domicile in Switzerland. Moreover, both Parties have confirmed the application of Swiss law to this dispute in their respective submissions.
68. The Panel will therefore be bound by the rules and regulations of the FIG, in particular, but not limited to, the FIG Statutes (Edition 2013), the FIG CoD 2011, the FIG GJR 2013 IWF ADP in the version applicable in 2014. Subsidiarily, Swiss law shall apply.

## VIII. DISCUSSION

69. The deciding issue confronting the Panel in the case at hand, is whether the FIG Tribunal erred in dismissing the Appellant's appeal of the FIG DC's of 12 June 2015 on the grounds that, due to late filing and non-compliance with electronic filing requirements, the decision had already become final and binding upon the parties for reasons of late filing.
70. Specifically, the issue to be decided in this case is whether the appeal delivered by the DHL courier to the FIG Office on 6 July 2015 can be deemed timely and whether the email sent without an electronic signature certification from an unsecure server on 3 July 2015 complied with the requirements of Article 29 section 8 FIG CoD.
71. The Panel holds that the Tribunal held correctly in its decision of 5 October 2015 that  
*"The Parties agree that Vladislav Oskner was notified about the appealed decision [of the FIG DC] on June 12, 2015 and that the time limit for the appeal [to the Tribunal] expired on Friday, July 3, 2015"*.  
[Bracketed language inserted by Panel for purposes of clarity.]

72. During the preliminary telephone hearing of the Parties on 8 February 2016, it was pointed out to the Appellant that Friday, 3 July 2015, was a working day in Switzerland, not a holiday, and that the deadline for receipt of appeal was midnight on that day.
73. The Appellant himself concedes in his Appeal Brief (marg. note 73) that  
*“Given the date of the FIG decision (12 June 2015), the last day of the appellation period (i.e. when any appeal shall be signed and sent in writing) was **03 July 2015**”.*
74. Likewise, the Appellant states in the same marg. note 74 that  
*“Also Mr Oskner, acting on a bona fide basis, has emailed his duly signed and scanned appeal to the attention of the FIG’s office on **03 July 2015**, at 1.04 p.m. Swiss time (15.04 Moscow time, the FIG’s working hours) and duly (via an attorney) advised the FIG beforehand that he has already sent his appeal in writing to the FIG’s Office, and provided the FIG’s office with the DHL shipment unique number and copy of the waybill to avoid any doubts”.*  
[Bold-type and underlining inserted by the Appellant.]
75. The Panel noted in the telephone hearing on 8 February 2016 that the Appellant might have been irritated by the language of Article 29 section 7 FIG CoD which reads literally that *“the appeal shall be signed by the Appellant and sent in writing to the address of the FIG Office ... within 21 days from the notification of the decision”*. Indeed, even the FIG Tribunal states in its decision that  
*“The wording of the Article 29 of the FIG Code of Discipline shows that the crucial point is the sending”.*
76. A close reading of the language of Article 29 sections 7 through 9 FIG CoD, however, should have alerted the Appellant and his legal counsel to the fact that, with the exception of mailing through a Swiss post office, it is the time of delivery to the FIG Office which is deciding, not the time of sending. This is clearly stated in Article 29 section 9 FIG CoD:  
*“Should the appeal be sent by mail, it shall be delivered to a Swiss post office at the latest by midnight of the last day of the time limit or be delivered to the FIG office during its usual opening hours not later than the last day of the time limit”.*
77. For delivery by mail, the rule is, therefore, that the date of delivery to the FIG Office is controlling. If the mailing takes place within Switzerland, the rule provides an exception if the mailing containing the written and signed appeal is made through a Swiss post office. Only in this case will the date of sending be deciding. In all other cases of physical transport of the written and signed appeal, the delivery of the appeal must be made to the FIG Office on the last day of the time limit during usual opening hours.
78. The other exception to physical delivery of the signed and written appeal concerns electronic transmissions. Email transmission is permitted, *“provided that it contain an electronic signature officially certified and dated via a secure server”*. To the extent the Appellant was confused by the term “secure server” in Article 29 section 8 FIG CoD, it would have been possible for him to inquire by either email or telephone with the FIG Office several days before the expiration of the deadline to obtain clarification.

79. Based on the above considerations, the Panel holds that the language of Article 29 sections 7, 8 and 9 FIG CoD, when read in context, are sufficiently clear to have placed the Appellant and his counsel on notice that sending by DHL courier service, although in no way prohibited by the FIG rules, must ensure that receipt is completed by the end of working hours on the last day of the deadline, 3 July 2015. When in doubt, the Appellant should have sought clarification.
80. The Appellant challenges the fairness and equity of Article 29 FIG CoD for not explicitly permitting mailings by courier service and cites the imbalance in the rules, specifically that Article 10 section 2 FIG CoD, which expressly permits notifications and communications to a Party by way of “*courier service, first class mail, facsimile or email*” finds no equivalence in the provisions governing the filing of an appeal in Article 29 FIG CoD.
81. With regard to the sundry modes of transmission and conveyance set out in the FIG CoD, in particular in Article 10 FIG CoD dealing with notifications and Article 29 sections 7, 8 and 9 dealing with appeals, the Panel finds no violation of international law, conventions protecting human rights, Swiss law or CAS precedents with regard to the differing forms of service of notifications and communications set out in the various rules and regulations of the FIG.
82. In this regard, the Panel refers the Appellant to the Swiss Federal Act of 19 December 2003 on Electronic Signatures and to Art. 14 of the Swiss Code of Obligations governing authenticated electronic signatures issued by a provider of certification services, these provisions of which parallel closely the provisions of Article 29 section 7 FIG CoD. The Respondent has cited the provision of Article 130 of the Swiss Civil Procedure Code.
83. In justification of these differing modes of transmission and conveyance in Article 10 and Article 29 FIG CoD, the FIG Tribunal correctly pointed out in its decision of 5 October 2015:  
*“Whether an appeal is made in time and by the relevant party might be important for a competition the next day or an election for a position inside the FIG. There is the same interest also for appeals made to ordinary courts and the same type of regulation occurs in Article 130 of the Swiss Civil Procedure Code”.*
84. Legal justification for placing differing requirements upon the modes of transmission and conveyance of notifications and appeals and the consequences attaching to dates of sending and to dates of delivery result from the differing sets of interests of the parties concerned. The Panel finds no violation of fundamental rules of “fairness and equity” between the parties.
85. For example, a civil law court or an arbitral tribunal has a legitimate interest in establishing the authenticity of a declaration and the person of its sender in order to prevent fraud, misrepresentation and the costly misadministration of justice. The interest of the individual athlete who wishes to know when the time limit for submitting his/her appeal begins and ends does not share the same interests as a sports federation which organizes competitive events for a broad group of athletes. The federation must know with certainty whether and when a judicial decision which affects the persons in a competitive line-up will become final and binding.

86. Lastly, the Panel does not accept the Appellant's interpretation of Mr. Gueisbuhler's email of 10 July 2015. The email on that date in which the Secretary General confirms receipt of the DHL courier on 6 July 2015 and the email containing the scanned appeal on 3 July 2015 do not contain a confirmation that the documents so received were "*duly signed*". Mr. Gueisbuhler merely confirmed the physical receipt of the email and the DHL courier package on these dates, nothing more.
87. After all of the above, the Panel concludes that the Tribunal was correct in ruling that the filing of the appeal against the decision of the FIG DC by the DHL courier service on 6 July 2015 was late and that the email sent and received on 3 July 2015, although within the deadline, did not conform to the electronic certification requirements set forth in Article 29 section 8 FIG CoD.
88. This CAS Panel has no authority to review decisions of federations, associations or sport-related bodies which have become final and binding upon the disputing parties and are no longer eligible for appeal.
89. Having confirmed the inadmissibility of the appeal against the decision of the FIG DC, the Panel, like the FIG Tribunal, renders no ruling on the other material issues raised and disputed by the Parties both in these proceedings as in the proceedings before the FIG Tribunal.

## ON THESE GROUNDS

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

1. The appeal filed by Vladislav Oskner against the decision of the Fédération Internationale de Gymnastics (FIG) Arbitral Tribunal dated 5 October 2015 is dismissed.
2. The decision of the FIG Arbitral Tribunal dated 5 October 2015 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.