



**Arbitration CAS 2008/A/1641 Netherlands Antilles Olympic Committee (NAOC) v. International Association of Athletics Federations (IAAF) & United States Olympic Committee (USOC), award of 6 March 2009**

Panel: Prof. Luigi Fumagalli (Italy), Sole Arbitrator

*Athletics*

*Olympic Games*

*Lane violation resulting in the disqualification of an athlete by the IAAF Jury of Appeal*

*Field of play decision*

*CAS Jurisdiction*

1. **IAAF CR 146.7** which states the procedures governing protests and appeals, as well as the *“field of play”* decision doctrine, do not directly interfere with the arbitration clause, drafted in broad terms in the Olympic Charter. Article 59 of the Olympic Charter sets a principle which cannot be derogated from by an International Federation, through its internal rules: jurisdiction to CAS, with respect to disputes *“arising out of, or in connection with, the Olympic Games”*, is given by the Olympic Charter, and not by the rules of the various International Federations, which cannot, therefore, limit it.
2. The application of IAAF CR 146.7 which provides that the decisions taken by the IAAF Jury of Appeal shall be final, and that there shall be no further right of appeal, including the Court of Arbitration for Sport preclude the examination of the merits of the dispute by a CAS Panel.
3. Except where evidence of some exceptional circumstances -as the existence of bad faith- has been brought by a party, the exclusion of the possibility to review a *“field of play decision”* by a CAS Panel is not limited to the merits of the decision but covers also the procedural aspects leading to it.

The Netherlands Antilles Olympic Committee (NAOC or the “Appellant”), with headquarters in Curaçao, Netherlands Antilles, is the National Olympic Committee for the Netherlands Antilles, recognized as such by the International Olympic Committee (IOC). In this capacity, the NAOC entered athletes to compete in the Games of the XXIX Olympiad, held in Beijing from 8 to 24 August 2008 (the “Beijing OG”).

The International Association of Athletics Federations (IAAF or the “First Respondent”) is the world governing body for the sport of athletics and is a part to the Olympic Movement. In

particular, one of its objects is to assume full responsibility for the organisation, supervision and officiation of the athletics programme at the Olympic Games. IAAF has its headquarters in the Principality of Monaco and is an association under Monegasque law.

The United States Olympic Committee (USOC or the “Second Respondent”; the First Respondent together with the Second Respondent are hereinafter jointly referred to as the “Respondents”), with headquarters in Colorado Springs, USA, is the National Olympic Committee for the United States, recognized as such by the IOC. In this capacity, the USOC entered athletes to compete in the Beijing OG.

On 20 August 2008, the 200 meter men final (the “Race”) was held at the Beijing OG. Eight athletes qualified and competed in such event. One of the participants was Mr Churandy Martina (“Mr Martina”), an athlete entered into the Beijing OG by the NAOC. Three athletes entered by the USOC also participated in the Race.

The athletes crossed the finish line of the Race in the following order:

1. Usain Bolt (JAM)
2. Churandy Martina (AHO)
3. Wallace Spearmon (USA)
4. Shawn Crawford (USA)
5. Walter Dix (USA)
6. Brian Dzingai (ZIM)
7. Christian Malcom (GBR)
8. Kim Collins (SKN).

Following the Race, however, the IAAF determined that Mr Wallace Spearmon, an athlete entered into the Beijing OG by the USOC, had committed a lane violation. As a result, Mr Spearmon was disqualified and the results of the Race adjusted as follows:

1. Usain Bolt (JAM)
2. Churandy Martina (AHO)
3. Shawn Crawford (USA)
4. Walter Dix (USA)
5. Brian Dzingai (ZIM)
6. Christian Malcom (GBR)
7. Kim Collins (SKN)
- DSQ. Wallace Spearmon (USA).

At 23:08 of 20 August 2008, an appeal to the Jury was filed by the USOC. The reason for the protest was specified as follows:

*“Athlete 1003 (Martina) violated rule 163.3 when he did not keep within his lane to the inside on the curve and gained a material advantage. As per rule 163.3, he shall be disqualified”.*

As a result of the protest, the Jury rendered the following decision (hereinafter referred to as the “Decision”):

*“The Jury evaluated all available evidence and decides to accept the appeal. Athlete 1003 (Martina, AHO) shall be disqualified under Rule 163.3 and the results shall be adjusted accordingly”.*

The official finish results of the Race, then, were announced as follows:

1. Usain Bolt (JAM)
  2. Shawn Crawford (USA)
  3. Walter Dix (USA)
  4. Brian Dzingai (ZIM)
  5. Christian Malcom (GBR)
  6. Kim Collins (SKN)
- DSQ. Churandy Martina (AHO)
- DSQ. Wallace Spearmon (USA).

In other words, as a result of the Decision, Mr Martina lost the silver medal, awarded to Mr Crawford, with Mr Dix winning the bronze medal.

On 23 August 2008, the NAOC filed an application with the *ad hoc* Division at the Beijing OG (the “OG Division”) of the Court of Arbitration for Sport (CAS), pursuant to the CAS Arbitration Rules for the Olympic Games (the “OG Rules”), to challenge the Decision. In such application, the NAOC named the IAAF as respondent.

In its application to the OG Division, the Appellant sought the following relief:

- “1. Declare the Appeal to the Jury (attached) invalid;*
- 2. Instruct the IAAF to void the attached Appeal to the Jury, nullify the disqualification of Churandy Martina, and re-publish the final results of the race involved showing C. Martina in second place.*
- 3. Advise the IOC of the decision in this case”.*

On 24 August 2008 the President of the OG Division, acting pursuant to Article 11 of the OG Rules, appointed Prof. Avv. Luigi Fumagalli as Sole Arbitrator to settle the dispute between NAOC and IAAF.

On the same 24 August 2008, day of the closing ceremony of the Beijing OG, the Sole Arbitrator issued the following decision, pursuant to Article 20 of the OG Rules:

*“The present dispute is referred ex officio to regular CAS procedure.*

*The Applicant is granted a deadline of 1 September 2008 to bring the present case before CAS and to file an appeal brief in accordance with article R51 of the Code.*

*The time-limit for the initiation of regular CAS arbitration provided in the statutes or regulations of the IAAF, if any, or the time-limit set by art. R49 of the Code of Sports-related Arbitration shall not apply.*

*The Panel formed during the OG shall remain assigned to the resolution of the dispute”.*

The Sole Arbitrator, in fact, noted that the IAAF had indicated to the CAS Secretary General that it would have little availability to deal with the case before the end of the Beijing OG, and that it clearly appeared that other parties, in addition to the IAAF, might be involved in the dispute.

On 1 September 2008 the NAOC filed, pursuant to the decision issued by the Sole Arbitrator on 24 August 2008, its statement appeal and appeal brief.

On 22 September 2008 the USOC filed, pursuant to Article R41.3 of the Code of Sports-related Arbitration (the “Code”), an application for participation as a party in the arbitration proceedings started by NAOC against IAAF. It submitted the following conclusion:

*“NAOC’s Application is nothing more than an attempt to overrule a field of play decision. As such, it should be dismissed for lack of justiciability.*

*However, if there is a hearing on the merits, the evidence will show that the United States timely and properly filed its protest and appeal of Churandy Martina’s lane violation with the IAAF.*

*Additionally, the NAOC does not dispute that Churandy Martina committed a lane violation in the 200 meter final. Therefore, Martina was justly disqualified by the IAAF.*

*Accordingly, the Arbitrator should rule against NAOC and confirm the official race results of the 200 meter final as determined by the IAAF”.*

On 23 September 2008 the USA Track & Field, Inc. (USATF) applied to participate as a party in this arbitration. In support of such request, the USATF indicated that it had “*a legitimate interest in this proceeding*”, because the relief sought by the Appellant would have the effect of depriving Mr Crawford and Mr Dix of the medal they had been awarded at the Beijing OG, while “*USATF, as the National Governing Body for track and field in the United States, administered programs and events that helped prepare Shawn Crawford and Walter Dix for competition in the Beijing Games, and later nominated them for selection to Team USA by the USOC*”.

On 3 October 2008, IAAF filed its answer to the appeal filed by NAOC, requesting:

*“that CAS rules that:*

*As a preliminary issue:*

- 1. CAS lacks jurisdiction to entertain the NAOC’s appeal;*
- 2. Consequently, the NAOC’s appeal against the decision of the IAAF Jury of Appeal is rejected;*
- 3. The decision of the IAAF Jury of Appeal is declared final and binding under the Olympic Charter provisions and IAAF Rules;*

*In the eventuality CAS retains jurisdiction over the NAOC's appeal:*

4. *Mr Martina violated IAAF Rule 163.3;*
5. *The decision of the IAAF Jury of Appeal is the result of the strict application in good faith of IAAF Technical Rules and does not affect the judicial interests of Mr Martina;*
6. *The decision of the IAAF Jury of Appeal may not affect rights relating to the personality of Mr Martina, and is thus open to examination by a court or arbitration panel;*
7. *The other competitors who did not infringe the games rules should be entitled to the benefits of their effort and are entitled not to be deprived of their places by an athlete who has infringed the games rules and does not dispute it.*
- 5 [8]. *Consequently, Mr Martina's disqualification and the official race results of the men's 200 meter final as determined by the IAAF Jury of appeal should be confirmed as a matter of fairness in sport;*
- 6 [9]. *The IAAF be granted a contribution towards its costs".*

On 17 October 2008, the CAS Court Office informed NAOC, IAAF, USOC and USATF of the decision of the Sole Arbitrator (i) to grant the request for intervention filed by USOC and to include the USOC as Second Respondent in the arbitration; and (ii) to deny the request for intervention of the USATF, "*considering that there is no agreement between the parties to allow such intervention and that USATF is not bound by any arbitration agreement such as Rule 59 of the Olympic Charter (contrary to the USOC)*".

In a letter dated 26 November 2008, the NAOC indicated the issues on which it requested that Mr Crawford be heard as a witness.

In an e-mailed letter of 30 November 2008, the USOC indicated its position "*that Mr Crawford's actions, and any testimony by him, are not relevant to this proceeding*".

In a letter dated 8 January 2009, the Appellant asked the "*CAS and/or USOC ... to make their utmost to achieve the goal to have Shawn Crawford as a witness at the upcoming hearing*" and underlined that "*his witness statement is of utmost importance in this case and our right to be heard would be affected seriously if we would not be able to have him as a witness*".

On 8 January 2009, the USOC filed a letter with the CAS stating its position on the outstanding issues. Such letter had attached an affidavit signed by Mr Crawford.

On 9 January 2009, the CAS Court Office, writing on behalf of the Sole Arbitrator, reminded the parties that, pursuant to Article R44.2 of the Code, "*it is their responsibility to secure the availability of the witnesses at the hearing*" and indicated that "*the Sole Arbitrator has decided, for the time being, not to issue any order with respect to the attendance of Mr Crawford*".

On 12 January 2009, the First Respondent, in a letter to the CAS, addressed some procedural issues. With respect to the deposition of Mr Crawford, the IAAF declared that, "*taking into account [his] written testimony, the right of the NAOC to be heard and to support its position are not affected*".

A hearing was held in Lausanne on 15 January 2009.

At the conclusion of the hearing, the Sole Arbitrator declared that he reserved any decision on the request to hear Mr Crawford as a witness, with the possibility, if the case, to reopen evidentiary proceedings. The parties, after making cogent submissions in support of their respective cases, confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.

## LAW

### Jurisdiction

1. The Appellant is invoking the jurisdiction of CAS on the basis of Article 59 of the Olympic Charter, and of “*the arbitration clause set forth in the Constitution and Bylaws of the IAAF*”. On the other hand, the jurisdiction of CAS is denied by the Respondents on various grounds, but chiefly on the basis of the “*field of play*” decision doctrine and of IAAF CR 146.7.
2. Article 59 [“*Disputes – Arbitration*”] of the Olympic Charter so provides:  
*“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, in accordance with the code of Sports-Related Arbitration”.*
3. In such respect, the entry form to the Beijing OG signed by every athlete contained the following statement:  
*“In agree that any dispute, controversy or claim arising out of, in connection with, or on the occasion of the Olympic Games, not resolved after exhaustion of the legal remedies established by my NOC, the International Federation governing my sport, BOCOG and the IOC, shall be submitted exclusively to the Court of Arbitration for Sport (CAS) for final and binding arbitration in accordance with the Arbitration Rules for the Olympic Games, which form part of the Code of Sports-related Arbitration, the arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law and seat shall be in Lausanne, Switzerland. The CAS shall rule on its jurisdiction and shall have the exclusive power to order provisional and conservatory measures. The decision of the CAS shall be final binding and non-appealable. I shall not and I hereby waive my right to institute any claim, arbitration or litigation, or seek any other form of relief, in any other court or tribunal”.*
4. IAAF CR 60 [“*Disputes*”], in the portions relevant in these proceedings, then, so provides:
  1. *Unless otherwise stated in a specific Rule or Regulation (for example, in relation to disputes arising in the field of competition), all disputes arising under these Rules shall be resolved in accordance with the provisions set out below.*

9. *All decision subject to appeal under these Rules, whether doping or non-doping related, may be appealed to CAS in accordance with the provisions set out below. All such decisions shall remain in effect while under appeal, unless determined otherwise (see Rules 60.23 and 60.24).*
  25. *Unless the Council determines otherwise, the appellant shall have 30 days from the date of communication of the written reasons of the decision to be appealed (in English or French where the IAAF is the prospective appellant) in which to file his statement of appeal with CAS. Within 15 days of the deadline for filing the statement of appeal, the appellant shall file his appeal brief with CAS and, within thirty days of receipt of the appeal brief, the respondent shall file his answer with CAS.*
  26. *All appeals before CAS ... shall take the form of a re-hearing de novo of the issues raised by the case and the CAS Panel shall be able to substitute its decision for the decision of the relevant tribunal of the Member or the IAAF where it considers the decision of the relevant tribunal of the Member or the IAAF to be erroneous or procedurally unsound.*
  28. *In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Procedural Guidelines). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.*
  29. *In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise.*
  30. *The CAS Panel may in appropriate cases award a party its costs, or a contribution to its costs, incurred in the CAS appeal.*
  31. *The decision of CAS shall be final and binding on all parties, and on all Members, and no right of appeal will lie from the CAS decision. The CAS decision shall have immediate effect and all Members shall take all necessary action to ensure that it is effective. The fact of the referral to CAS and the CAS decision shall be set out in the next notice to be sent by the General Secretary to all Members”.*
5. However, pursuant to IAAF CR 146.7,  
*“The decision of the Jury of Appeal (or, in the absence of a Jury of Appeal, the decision of the Referee) shall be final. There shall be no further right of appeal, including to the Court of Arbitration for Sport”.*
  6. The Sole Arbitrator notes that the arbitration clause contained in Article 59 of the Olympic Charter and confirmed in the entry form for the Beijing OG is drafted in broad terms: it refers to *“any dispute arising on the occasion of, or in connection with, the Olympic Games”*, or to *“any dispute, controversy or claim arising out of, in connection with, or on the occasion of the Olympic Games”*, and sets as a pre-condition for the referral of such dispute to arbitration only the *“exhaustion of the legal remedies established”* by the relevant NOC, IF or the IOC, in accordance with Article R47 of the Code, and Article 1 of the OG Rules.
  7. Such clause is binding on Mr Martina, who accepted it by signing his entry form, and is binding also on the IAAF, the NAOC and the USOC. As indicated in CAS OG 04/009, para. 2.2, with reference to National Olympic Committees and International Federations, *“by reason of the benefits which accrue to each type of organization by reason of their recognition by the IOC, each can be deemed to have subscribed to the arbitration clause”* set in the Olympic Charter.

8. In addition, there is no question as to the satisfaction by the NAOC of the condition of the exhaustion of the internal remedies, if any, available to it prior to the appeal. The issue, indeed, is not disputed by the Respondents. And, in any case, the NAOC sent letters to the IAAF, the days immediately following the Race, exactly with the purpose of exploring the possibility to find a settlement of the dispute within the IAAF system.
9. The Sole Arbitrator, therefore, finds that Article 59 of the Olympic Charter and the arbitration clause contained in the entry form to the Beijing OG confer upon him jurisdiction to hear the dispute between the parties; the parties are bound by the same arbitration clause; the dispute is "*arising out of*" the Beijing OG; there is no doubt as to the exhaustion by the Appellant of the internal remedies available to it.
10. The question, however, is, in such context, whether the jurisdiction of the Sole Arbitrator, so founded, is limited by IAAF CR 146.7 and/or by the "*field of play*" decision doctrine: both the rule and the doctrine, in fact, could seem (and have been invoked) to exclude the possibility for the CAS to entertain an appeal against the Decision issued by the Jury of Appeal of IAAF, as taken on the "*field of play*".
11. The Sole Arbitrator notes, in such respect, that IAAF CR 146.7, as well as the "*field of play*" decision doctrine, do not directly interfere with the arbitration clause, drafted in broad terms in the Olympic Charter. Article 59 of the Olympic Charter sets a principle which cannot be derogated from by an International Federation, through its internal rules: jurisdiction to CAS, with respect to disputes "*arising out of, or in connection with, the Olympic Games*", is given by the Olympic Charter, and not by the rules of the various International Federations, which cannot, therefore, limit it. A different solution, on a more general level, would contradict the spirit of the orderly administration of the Olympic Games, in a single context of legal remedies available for the settlement of disputes to the exclusion of State jurisdiction, underlying the very setting up of the OG Division.
12. As a result, the Sole Arbitrator concludes, in accordance with CAS jurisprudence (CAS OG 04/009, para. 6.5), that he has jurisdiction to hear the dispute. In the exercise of such jurisdiction, however, the Sole Arbitrator shall have to verify whether and to what extent IAAF CR 146.7 and the "*field of play*" decision doctrine apply, so as to preclude the examination of the merits of the dispute.

### **Appeal Proceedings**

13. As these proceedings involve an appeal, originally formed pursuant to the OG Rules, against a disciplinary decision issued by a federation (IAAF), they are considered and treated as appeal arbitration proceedings in a disciplinary case of international nature, in the meaning and for the purposes of the Code.



### Scope of the Arbitrator's Review

14. Pursuant to Article R57 of the Code,

*“The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. [...]”*

15. In the same way, pursuant to IAAF CR 60.26,

*“All appeals before CAS ... shall take the form of a re-hearing de novo of the issues raised by the case and the CAS Panel shall be able to substitute its decision for the decision of the relevant tribunal of the Member or the IAAF where it considers the decision of the relevant tribunal of the Member or the IAAF to be erroneous or procedurally unsound”*.

### Applicable Law

16. Pursuant to Article R58 of the Code, the arbitrator is required to 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”*.

17. Pursuant to Article 17 of the OG Rules,

*“The Panel shall rule on the dispute pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate”*.

18. Pursuant to IAAF CR 60, then,

*“28. In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Procedural Guidelines). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.*

*29. In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise”*.

19. As a result of the above, the Sole Arbitrator finds that the dispute has to be set primarily according to the Olympic Charter and the provisions of IAAF.

20. The rules of the Olympic Charter relevant in this arbitration are the following:

- i. Article 27 [“Mission and Role of the IFs within the Olympic Movement”]:

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

*1.6 to assume the responsibility for the technical control and direction of their sports at the Olympic Games and at the Games held under the patronage of the IOC”*.

ii. Article 28 [*“Mission and Role of the NOCs”*]:

“2. *The NOCs’ role is:*

- 2.1 *to promote the fundamental principles and values of Olympism in their countries, in particular, in the fields of sport and education, by promoting Olympic educational programmes in all levels of schools, sports and physical education institutions and universities, as well as by encouraging the creation of institutions dedicated to Olympic education, such as National Olympic Academies, Olympic Museums and other programmes, including cultural, related to the Olympic Movement;*
- 2.2 *to ensure the observance of the Olympic Charter in their countries;*
- 2.3 *to encourage the development of high performance sport as well as sport for all;*
- 2.4 *to help in the training of sports administrators by organising courses and ensure that such courses contribute to the propagation of the fundamental principles of Olympism;*
- 2.5 *to take action against any form of discrimination and violence in sport;*
- 2.6 *to adopt and implement the World Anti-Doping Code.*

3. *The NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games and the regional, continental or world multi-sports competitions patronised by the IOC. In addition, each NOC is obliged to participate in the Games of the Olympiad by sending athletes.*

7. *NOCs have the right to:*

- 7.2 *send competitors, team officials and other team personnel to the Olympic Games in compliance with the Olympic Charter”.*

iii Article 47 [*“Technical responsibilities of the IFs at the Olympic Games”*]:

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

*By-law to Rule 47*

1. *Technical arrangements at the Olympic Games:*

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

- 1.1 *To establish the technical rules of their own sports, disciplines and events, including, but not limited to, results standards, technical specifications of equipment, installations and facilities, rules of technical movements, exercises or games, rules of technical disqualification and rules of judging and timing.*
- 1.2 *To establish the final results and ranking of Olympic competitions. Such results shall be made available to the IFs by the OCOG, at its expense, immediately after each event in electronic form, in accordance with guidelines established by the IOC. The IF concerned then has the right to display such competition results for its own sport on its official website.*

- 1.3 *Subject to the IOC's authority, to exercise technical jurisdiction over the competition and training venues of their respective sports during the competition and training sessions at the Olympic Games.*
- 1.4 *To select judges, referees and other technical officials from the host country and from abroad within the total number adopted by the IOC Executive Board upon proposal of the IF concerned. The expenses for accommodation, transport and uniforms of such judges, referees and other technical officials coming from countries other than the host country shall be paid by the OCOG. The technical officials must be present at the site at least three days prior to the first event in their sport and at least one day after the last event.*
- 1.5 *To appoint two technical delegates during the planning and setting up of the facilities for their sports in order to ensure that their rules are complied with and to review and validate all technical elements of the competitions including entries, venue standards, competition schedule, pre-Olympic events as well as the conditions regarding accommodation, food and transport provided for the technical officials and judges. [...]*
- 1.6 *To ensure that all competitors comply with the provisions of Rules 49 and 51.*
- 1.7 *To enforce, under the authority of the IOC and the NOCs, the IOC's rules in regard to the eligibility of the participants before the Olympic Games (preliminaries) and during the Olympic Games.*
- 1.8 *To prepare and revise their IF's technical requirements for the candidate cities together with the IOC.*
4. *Further provisions regarding technical arrangements.*
  - 4.2 *The necessary technical officials (referees, judges, timekeepers, inspectors) and a jury of appeal for each sport are appointed by the IF concerned, within the limit of the total number set by the IOC Executive Board upon the recommendation of the IF concerned. They perform their tasks in accordance with the directions of such IF and in coordination with the OCOG.*
  - 4.3 *No official who has participated in a decision may be a member of the jury responsible for making a ruling on the resulting dispute.*
  - 4.4 *The findings of the juries must be communicated to the IOC Executive Board as soon as possible.*
  - 4.5 *Juries make a ruling on all technical questions concerning their respective sports, and their decisions, including any related sanctions, are without appeal, without prejudice to further measures and sanctions which may be decided by the IOC Executive Board or Session".*

21. The IAAF provisions relevant in this arbitration are the following:

i. IAAF CR 145 ["Disqualification"]:

- "1. *If an athlete is disqualified in an event for an infringement of a technical Rule, reference shall be made in the official results to the Rule which has been infringed. Any performance accomplished in the same round of that event up to the time of the disqualification shall not be considered valid. However, performances accomplished in a previous qualifying round of that event shall be considered valid. Disqualification from an event for an infringement of the technical Rules shall not prevent an athlete from taking part in any further event in that competition.*

2. *If an athlete is disqualified from an event for acting in an unsporting or improper manner, reference shall be made in the official results giving reasons for such disqualification. If an athlete is warned for a second time under Rule 125.5 for acting in an unsporting or improper manner in an event, he shall be disqualified from that event. If the athlete's second warning occurs in a different event, he shall be disqualified only from the second event. Any performance accomplished in the same round of that event up to the time of the disqualification shall not be considered valid. However, performances accomplished in a previous qualifying round of that event, other previous events or previous individual events of a Combined Event shall be considered valid. Disqualification from an event for unsporting or improper behaviour shall render the athlete liable to disqualification by the Referee from participation in all further events in that competition. If the offence is considered serious, the Competition Director shall report it to the appropriate governing body for consideration of further disciplinary action according to Rule 22.1(f)".*
- ii. IAAF CR 146 ["Protests and Appeals"]:
1. *Protests concerning the status of an athlete to participate in a competition must be made, prior to the commencement of such competition, to the Technical Delegate(s). Once the Technical Delegate(s) make a decision, there shall be a right of appeal to the Jury of Appeal. If the matter cannot be settled satisfactorily prior to the competition, the athlete shall be allowed to compete "under protest" and the matter be referred to the Council of the IAAF.*
  2. *Protests concerning the result or conduct of an event shall be made within 30 minutes of the official announcement of the result of that event. The Organising Committee of the competition shall be responsible for ensuring that the time of the announcement of all results is recorded.*
  3. *Any protest shall, in the first instance, be made orally to the Referee by the athlete himself or by someone acting on his behalf. To arrive at a fair decision, the Referee should consider any available evidence which he thinks necessary, including a film or picture produced by an official video tape recorder, or any other available video evidence. The Referee may decide on the protest or may refer the matter to the Jury. If the Referee makes a decision, there shall be a right of appeal to the Jury.*
  4. (a) *In a track event, if an athlete makes an immediate oral protest against having been charged with a false start, a Track Referee may allow the athlete to compete under protest in order to preserve the rights of all concerned. Such a protest cannot be accepted if the false start was detected by an IAAF approved false start control apparatus, unless for any reason the Referee determines that the information provided by the apparatus is obviously inaccurate. Where an IAAF approved false start control apparatus is used, a protest may be based on the failure of the Starter to recall a false start. The protest may be made only by, or on behalf of, an athlete who has completed the race. If the protest is upheld, any athlete who committed the false start, and who was subject to disqualification according to Rule 162.7, shall be disqualified. Where there is no disqualification of any athlete according to Rule 162.7, the Referee shall have the authority to declare the event void and that it shall be held again if in his opinion justice demands it.*  
*Note: The right of protest and appeal shall apply whether or not a false start control apparatus is used.*
  - (b) *In a Field Event, if an athlete makes an immediate oral protest against having a trial judged as a failure, the Referee of the event may, at his discretion, order that the trial be*

*measured and the result recorded, in order to preserve the rights of all concerned. If the protested trial occurred during the first three rounds of trials of an event in which more than eight athletes are competing, and the athlete would advance to the final three rounds only if the protest was upheld, the Referee may allow the athlete to compete in the final three rounds under protest in order to preserve the rights of all concerned.*

5. *An appeal to the Jury of Appeal must be made within 30 minutes of the official announcement of the decision made by the Referee, in writing, signed by a responsible official on behalf of the athlete, and shall be accompanied by a deposit of USD100, or its equivalent, which will be forfeited if the appeal is not allowed.*
6. *The Jury of Appeal shall consult all relevant persons. If the Jury of Appeal is in doubt, other available evidence may be considered. If such evidence, including any available video evidence, is not conclusive, the decision of the Referee shall be upheld.*
7. *The decision of the Jury of Appeal (or, in the absence of a Jury of Appeal, the decision of the Referee) shall be final. There shall be no further right of appeal, including to the Court of Arbitration for Sport”.*

### **Admissibility of the Appeal**

22. As mentioned, the first question discussed by the parties in this arbitration is whether the power of the Sole Arbitrator to adjudicate on the appeal is precluded by IAAF CR 146.7 and by the “*field of play*” decision doctrine. The Respondents invoke them and submit that the Decision of the Jury of Appeal cannot be reviewed in the arbitration proceedings. On the other hand, the Appellant emphasizes, at least as a preliminary line of reasoning, that it is not directly challenging the merits of the Decision, but the procedure which led thereto. In the Appellant’s opinion, in fact, (i) the protest/appeal to the jury was not timely filed, since it was submitted at 23:08, i.e. 9 minutes past the 30 minute deadline provided for protests by IAAF CR 146.2; (ii) the protest/appeal to the jury was filed by USOC on behalf of Mr Crawford, while the Crawford had not given any authority to USOC for such purposes; (iii) the Decision was adopted in disregard of NAOC’s procedural right to be heard. The Appellant, then, also challenges the Decision by alleging that it was not based on proper evidence, because the official video coverage of the Race did not allow anybody to establish whether a lane infringement had been committed by Mr Martina.
23. The Sole Arbitrator finds such question to be most relevant in this arbitration: should the Sole Arbitrator find that IAAF CR 146.7 and/or the “*field of play*” decision doctrine apply, then he would be bound to conclude that the appeal brought by NAOC against the Decision is not admissible.

24. The “*field of play*” decision doctrine is well established in the CAS jurisprudence:
- i. in CAS OG 96/006, the Panel held as follows [English translation of the French original]:
    - “4. *When examining its competence, the Panel must first note that the decision by the AIBA to reject the protest, thereby confirming the referee’s decision, is typically a decision relating to sport and the rules to which sport is subject.*
    5. *Traditionally, doctrine and judicial practice have always deemed that game rules, in the strict sense of the term, should not be subject to the control of judges, based on the idea that “the game must not be constantly interrupted by appeals to the judge” (judgement by the Swiss Federal Tribunal ATF 119 II 12/19).*
    6. *The traditional theory is thus that only sports decisions “which damage the personality or property of the athlete” (loc. cit.) should be reserved for the ordinary or arbitral courts.*
    7. *Admittedly, the distinction between what can be submitted to a court or arbitral panel – the rule of law – and what cannot – the game rule – is vague (ATF 103 Ia 412).*
    8. *A new approach tending to abolish this distinction is being seen which consists of holding the view that, in high level sport, applying the game rules very often has consequences in terms of property and financially, or may affect rights relating to personality, and is thus open to examination by the courts.*
    9. *Taking this view, part of doctrine deems that “the rules established by official sports organizations relating to sports activities are no longer distinguished from other social rules with regard to their source, application or imperativeness” (Margareta BADDELEY, L’Association sportive face au droit, p. 377).*
    10. *According to this author: “In the present context of sports, the game element inherent to sports activity could not justify it any particular legal immunity” (BADDELEY, op. cit., p. 383).*
    11. *In comparative law, particularly in the United States and France, the game rule is not shielded from the control of judges, but their power of review is limited to that which is arbitrary or illegal.*
    12. *Applied in this particular case, this theory leads us to consider the dispute submitted to the present Panel as arbitrable. Consequently, the Panel is competent. However, exercising this competence must, in our view, be tempered by the respect due to the particularities of each sport as defined by the rules established by the sports federations.*
    13. *In casu, the referee’s decision, confirmed by the AIBA, is a purely technical one pertaining to the rules which are the responsibility of the federation concerned. It is not for the ad hoc Panel to review the application of these rules. This restraint is all the more necessary since, far from where the action took place, the ad hoc Panel is less well placed to decide than the referee in the ring or the ring judges. The above-mentioned restraint must be limited to technical decisions or standards; it does not apply when such decisions are taken in violation of the law, social rules or general principles of law (BADDELEY, op. cit., p. 378), which is not the case in this particular instance”.*

- ii. in CAS OG 00/013, the Panel then stated that

*“17. CAS arbitrators do not review the determinations made on the playing field by judges, referees, umpires, or other officials who are charged with applying what is sometimes called “rules of the game” (one exception among others would be if such rules have been applied in bad faith, e.g. as a consequence of corruption). If they happen to have been present at the relevant event, CAS arbitrators were mere spectators with no official role. Moreover, they are not, unlike on-field judges, selected for their expertise in officiating the particular sport”.*
  - iii. in CAS OG 02/007, the Panel referred to “*field of play*” issues as those implying “*the application of the rules governing the playing of the particular game*” and held that

*“embark on a review of a purely technical “field of play” decision ... would be an illegitimate exercise, absent some evidence of bad faith in the making of the decision. ... [I]t is not open to a player to complain about a “field of play” decision simply because he or she disagrees with that decision”.*
  - iv. in CAS 2001/A/354 and CAS 2001/A/355, the Panel confirmed that

*“16. ... it has been established that CAS does not review “field of play” decisions made on the playing field by judges, referees, umpires and other officials, who are responsible for applying the rules of a particular game. An exception is nevertheless possible if such rules have been applied in bad faith ...”.*
25. The Sole Arbitrator fully endorses such doctrine and agrees with the rationale underlying it: it is intended to protect the integrity of sporting events, which, barring specific exceptions (as highlighted in CAS jurisprudence), need not be disrupted by litigation before courts of law or arbitration bodies. The Sole Arbitrator, therefore is not prepared to interfere with the application of the rules governing the play of the particular game, which is to be left to field officials, who are specifically trained to officiate the particular sport and are best placed, being on-site, to settle any question regarding it.
  26. The point so far made, however, leaves two questions open.
  27. The first concerns the exact definition of the scope of the “*field of play*” decision doctrine. In other words, the question is whether the exclusion of the possibility to review a decision taken by a field referee is limited to the merits thereof or covers also the procedural aspects leading thereto. In this case, the question is whether the “*field of play*” decision doctrine precludes the Sole Arbitration from examining only whether a lane infringement has been committed by Mr Martina or precludes also the examination of the timely filing of the protest, of the authority of the USOC to file it and of the respect of NAOOC’s procedural rights, if any, in such connection.
  28. The second question to be addressed, then, even assuming the broader definition of the “*field of play*” decision doctrine, is whether the exceptions indicated by the CAS jurisprudence are granted in this case, so that a revision of the Decision, even if characterized as a “*field of play*” decision, is allowed.

29. The Sole Arbitrator finds that, in these arbitration proceedings, not only is the Decision not open to review in its merits, but that also that the procedural aspects that led thereto cannot be revised.
30. The Sole Arbitrator is led to this conclusion by two reasons: one is based on IAAF CR 146.7; the other derives from the "*field of play*" decision doctrine.
31. Under the first perspective, the Sole Arbitrator notes that IAAF CR 146.7 is drafted in broad terms: it excludes the possibility to challenge, also before the CAS, the decisions issued by the Jury of Appeals in the proceedings governed by IAAF Rule 146, i.e. in the proceedings concerning the results or the conduct of an event. In such respect, IAAF CR 146.7 makes no distinction between the possible grounds for a challenge of the decisions of the Jury of Appeal: the possibility of a further appeal is excluded whatever basis is offered for it.
32. In addition, the Sole Arbitrator notes that the same IAAF CR 146 sets the procedure for "*Protests and Appeals*", describes the deadlines for the filing of protests (to the Referee) and appeals (to the Jury of Appeal), and indicates the subject empowered to file them. At the same time, IAAF CR 146 describes in broad terms the procedural powers of the officers in charge of dealing with protests and appeals: they have the authority to consider all available evidence thought to be necessary; they can consult all relevant persons. In other words, they have full control on the procedure, which, by necessity, is to take place shortly after a competition event, and therefore, according to the very IAAF CR 146, is not constrained by the formalities of judicial or disciplinary proceedings. As a result, the decision rendered by the Jury of Appeal with respect to, and in the framework of, IAAF CR 146 is covering also those procedural aspects, and not only the merits of the specific infringement.
33. Under a second perspective, the Sole Arbitrator remarks that the rules governing the conduct of a sport are not constituted only by those defining directly technical movements or actions by the competitors (whose application cannot be reviewed under the "*field of play*" decision doctrine), but also by those concerning, for instance, technical disqualification. Among those rules are therefore also those defining, from a procedural point of view, how a disqualification is to be announced and what are the remedies available in the federative system to challenge it. Indeed, in the evaluation of the conduct of an event, the Jury of Appeal (or the Referee) has to evaluate not only whether an athlete actually remained within his/her lane, but also whether a protest has been properly (i.e. timely and by the subject empowered) filed. Both evaluations – combined together – make up the decision of the "*field of play*" officer as to the regularity of the game and as to its results.
34. As a result, the Sole Arbitrator finds himself to be precluded from examining (i) whether the procedure that led to the Decision was consistent with IAAF CR 146, also with respect to the exercise by the officers involved in it of the procedural powers they enjoyed and the hearing of all relevant subjects, (ii) whether the protest/appeal to the jury was timely filed by USOC, and (iii) whether the protest/appeal to the jury was filed by the subject authorized to act on behalf of Mr Crawford. The Sole Arbitrator is satisfied that such evaluations were part of the



Decision and therefore, in the exercise of his jurisdiction, will not review it on the basis of IAAF CR 146.7 and of the “*field of play*” decision doctrine.

35. This conclusion, it is to be noted, makes it irrelevant the deposition of Mr Crawford or of any additional witness: whatever their declarations on the issue of the timely filing and of the power to act, the Sole Arbitrator, for the reason stated above, would not find himself in the position to review the Decision.
36. At the same time, the Sole Arbitrator finds that the exceptional circumstances allowing the review of a “*field of play*” decision under the CAS jurisprudence are not granted.
37. In this respect, the Sole Arbitrator notes that CAS precedents made reference to something which is described as “*arbitrary*”, “*bad faith*”, “*breach of duty*”, “*malicious intent*”, etc. In such connection, the Sole Arbitrator agrees with the view expressed by the Panel in CAS OG 02/007, that held as follows:

*“In the Panel’s view, each of those phrases means more than that the decision is wrong or one that no sensible person could have reached. If it were otherwise, every field of play decision would be open to review on its merits. Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each of those phrases means that there must be some evidence of preference for, or prejudice against, a particular team or individual. The best example of such preference or prejudice was referred to by the Panel in Segura, where they stated that one circumstance where a CAS Panel could review a field of play decision would be if a decision were made in bad faith, e.g. as a consequence of corruption. The Panel accepts that this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision”.*
38. Indeed no evidence has been offered or given by the Appellant as to the existence of bad faith, e.g. as a consequence of corruption, of the Jury of Appeal in dealing with the USOC protest/appeal. In the same way, the very claim that NAOC’s “right to be heard” in the procedure leading to the Decision was violated is found by the Sole Arbitrator to be wholly unsubstantiated: indeed, the issue, referred to in the late stage of this arbitration, was not even raised by the Appellant in the letters sent to IAAF the days immediately following the Race.
39. On the basis of the above, the Sole Arbitrator concludes that the appeal filed by NAOC must fail.
40. In light of the foregoing, the Sole Arbitrator dismisses the appeal brought by the NAOC. The Decision is confirmed.

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

1. The appeal filed by the Netherlands Antilles Olympic Committee against the decision issued by the IAAF Jury of Appeal on 20 August 2008 is dismissed.
2. (...).
3. All other prayers for relief are dismissed.