



Arbitration CAS 2003/A/534 Clémenceau B. Urey v. Liberia National Olympic Committee (LNOC), award of 20 April 2004

Panel: Judge Raymond Ranjeva (Madagascar), Sole Arbitrator

Multiple sports

Governance (dismissal from the position of president of a National Olympic Committee)

Olympic movement and settlement of litigation

Burden of proof with regard to the absence of local remedies

Decision appealed against under R48 of the CAS Code

Procedural guarantees to be provided by the internal organ

Conditions for the requisite filing of a statement of appeal to the CAS

1. The democratic spirit of the Olympic Movement primarily implies the friendly settlement of litigation within the institutional framework of the different federations, associations or sports-related bodies; judicial settlement cannot be substituted for amicable settlement and constitutes a less-satisfactory alternative.
2. The exhaustion of local remedies is one of the most established common rules in the international judicial process. It is compulsory even in the absence of a specific instrument. The rule is based on the principle that a local remedy is better than a more complex international judicial process and on the assumption that the rule of law is strictly upheld. Given these premises, the fulfilment of the prescription may be waived if the legal remedies are nonexistent or illusory. In such cases, a litigant seeking to establish the existence of a fact bears the burden of proving the non-existence and illusory character of local remedies.
3. The obligation to submit a copy of the impugned decision, under Article R48 of the CAS Code, implies that the CAS is directly seized of that decision. The notion of decision under R48 of the CAS Code implies a normative act resulting from the conclusion of a discussion or a deliberation. The normative dimension inherent in a decision entails the creation or suppression of a right following an assessment by the authorities or competent bodies; it excludes a simple finding by a competent body.
4. It is not to be presumed that the failure to submit the claim to an internal organ is sufficient for the appeal to be rejected. The principles of transparency and fairness require a meaningful procedural guarantee for the claimant to be granted due process by the prior instance in disciplinary proceedings.
5. The CAS Code makes it clear that the requisite filing of a statement of appeal must contain all in Art. R48 enumerated documents to provide the CAS with full knowledge of the subject-matter of the appeal case. This provision is obviously intended to deter

any frivolous or vexatious appeals. But the CAS Code does not prescribe a formalistic interpretation of the constitution of the file. The last paragraph of R48 allows some flexibility for the completion of a statement of appeal if the said requirements are not fulfilled when the statement is first lodged.

On November 12, 2003, Mr Clémenceau B. Urey, President of the Liberia National Olympic Committee (LNOC) was sent a letter signed, according to the version of that document filed by the Appellant, by 16 out of 18 members of the LNOC Executive Committee: 1] Deborah J. Williams, Vice-President ADM/LNOC; 2] Philibert S. Browne, Vice-President Tech./LNOC; 3] Joseph F. Willie, Assistant Secretary General/LNOC; 4] Avenso Z. Mulbah, Treasurer/LNOC; 5] Fred J. Pratt, Secretary General/Liberian Boxing Federation (LBF); 6] Auron Nawouh, Rep. LNTTA; 7] Sylvester Rennie, Rep. LNSF; 8] Edmond N. Dagbe, Rep. LVF; 9] Solomon Davies, Rep. LABA; 10] Henry O. Williams, President Liberia Track and Field Federations (LTFF); 11] Suzana King, Secretary General LRCA, represented by “Ferh Edmund”; 12] Patrick F. Sumoh Rep. LBSF; 13] B. Sao Liberty, Rep. ISSA; 14] George Gould, Rep. LWF; 15] Prof. Joseph Narmah, Member LNOC; 16] Stone Cephus Mulbah, Rep. YMCA. It appears that Gbuor Wilson, Rep LIWASA, and Gen. Francis Dolo, President Liberian Tennis Federation (LTF), did not sign the letter. This letter is one of the exhibits filed in the case; however the version filed by the LNOC (exhibits 2 and 8, both bearing the LNOC stamp) does not contain the same list of signatories and there are certain minor discrepancies in the text of the letter itself.

In the said letter of November 12, the members of the LNOC Executive Committee express their disappointment that President Clémenceau B. Urey “*failed to convene a meeting on Friday, October 3, 2003 upon a request by and through a letter... dated October 2, 2003 in an attempt to...legitimize ...[a] unilateral decision to commit LNOC Program funds to a single activity, which budget was grossly overstated*”. Moreover, the members of the Executive Committee invoke their “*attempt to ensure due process without prejudice and affording [President Urey] the opportunity to prepare [his] defense*”. The Executive Committee members set out nine allegations against Mr Urey as President of the LNOC: 1] Violation of Article 4, “the LNOC Rights”, on the ground that he “entered athletes in the All Africa games without the written or expressed approval of the president of the Liberia Track and Field Federation” (LTFF); 2] Violation of Article 13 by “*usurping the function of the VP for Technical Affairs by the selection of athletes to represent the LNOC/Liberia at the All Africa Games, organized by the Supreme Council of Sport in Africa without requesting a monitoring report from the VP/Technical affairs*”; 3] Violation of the LNOC financial policy on purchasing procedures “*by not obtaining three pro forma (quotations) for the cost of air tickets for athletes to the All Africa Games (“AA Games”) from the USA*”, and stating an exaggerated cost of US\$ 2,300.00 instead of US\$ 1,200.00 or less; 4] Violation of Chapter II (Conditions of participation), Rule 4, of the AA Games by failing to comply with the admission and qualifying rules when nominations were not obtained from the respective National Federations (NF); 5] Violation of Chapter III Enrolment, Rules-5B, by including competitors who are not members of the LTFF; 6] Violation of Article 10, para. 2, of the LNOC Constitution by admission of new individual members to the General Assembly “*without any urge on his part to further address the constitutional concern of maintaining a voting majority by NFs*”; 7] Unilateral decision to close the headquarters and offices of the

LNOC without any concern for the extent of damage or the status of employees; 8] Default in reporting to the Executive Committee on the US\$40,000.00 sent to the LNOC by the International Olympic Committee (IOC) for training of Liberian athletes for the AA Games 2003 and the Athens 2004 Games (it should be pointed out that the reference to the Athens Olympics does not appear in the version of the letter produced by the Respondent); 9] Blunt refusal to inform the LNOC about the severity of damage done to the offices of the LNOC and the unilateral preparation of a report on the extent of such damage, which he sent to the IOC, indicating an amount of US\$120,000.00.

Lastly, the Executive Committee members granted President Clémenceau B. Urey *“the right to a hearing as provided for under Article 7 of the LNOC Constitution...”* and they also considered that *“It therefore behoove[d] [them] to demand an urgent meeting of said Committee to be held on Saturday, November 15, 2003 at the YMCA on Broad Street”*. However, three days later, there was no meeting of the LNOC Executive Committee.

On December 2, 2003 at 3 p.m. a meeting was convened at the Sports Commission on Broad Street in the City of Monrovia. The 21 attending members of the Executive Committee *“unanimously expelled”* President Clémenceau B. Urey. They requested him to, *“on Saturday, December 6, 2003 at 10:00 am, in the Benson Street Office of the LNOC, turnover all LNOC’s properties ...to Mrs Deborah J. Williams, VP for Administration”*; they also instructed Mrs Deborah Williams *“to act as President of the LNOC pending the General Assembly, when bi-election will be held to fill the vacancy so created”*. President Clémenceau B. Urey received notice of his expulsion on LNOC letter-headed paper dated December 3, 2003; this letter was signed by five individual members: Mrs Deborah J. Williams; Philipbert S. Browne; Joseph F. Willie; Avenso Z. Mulbah and Joseph Narmah and on behalf of 16 out of 18 federations without mention of the signatories: 1] Liberia Basketball Federation (LBF); 2] Liberia Volleyball Federation (LVBF); 3] Liberia Boxing Federation; 4] All Liberia Football Association (LFA); 5] Liberia Table Tennis Association; 6] Inter School Sports Association; 7] Liberia Track and Field Federation (LTFF); 8] Liberia Swimming Federation; 9] Liberia Women in Sports Association; 10] Liberia Taekwondo Federation; 11] Liberia Rowing and Canoeing Federation; 12] Liberia Baseball and Softball Federation; 13] YMCA of Liberia; 14] Liberia Kickball Federation; 15] Liberia Wrestling Federation; 16] The National University Sports Federation. No signatures were appended on behalf of the Liberia Lawn Tennis Association and the Karate Federation. The signatories were acting on behalf of the LNOC Executive Committee.

At a meeting held on December 9, 2003, some so-called *“concerned members of the Liberia National Olympic Committee (LNOC)”* i.e.: 1] Manfred E. Jones, Secretary General, Liberia Lawn Tennis Association, 2] Kadala Kromah, President, National University Sports Federation, 3] Reginald Goodridge, President, Liberia Boxing Federation, and 4] Ogo Niang, Technical Director, Liberia Karate Federation, took note of the prevailing internal crisis within the Executive Committee, the potential consequences for the image of Liberia in the International Olympic Movement and decided to *“disassociate (themselves) and (their) respective Federations from the recent action by a faction of the Executive Committee to expel the ... elected President Mr Clémenceau Urey from the leadership of the LNOC”*. They based their decision on: 1] Irregularity and unconstitutionality of the decision to expel the President, as it is the exclusive prerogative of the President, by directive to the Secretary General, to call Executive Committee meetings; 2] Lack of citation to the authorities of some sporting Federations and lack of authorization from their respective federations to some of the individuals

who attended the meeting and signed the document; 3] Absence of evidence or proof to support the charges and allegations against Mr Urey. The “concerned members” thus: a] requested the Ministry of Youth and Sports to establish an “*independent blue ribbon Commission of Inquiry to probe the reasons for the crisis and make the necessary recommendations to resolve [it]*”; b] considered that, “*pending the findings of the Commission of Inquiry, the action...to expel the President [was]... null and void*”; and c] sought “*a general and comprehensive audit of all LNOC finances and individuals associated with those finances for the period 2001 to the present... to ascertain transparency and accountability within the LNOC*”.

On December 15, 2003, Mr Clémenceau B. Urey sent a letter to Judge Keba Mbaye, President of the Court of Arbitration for Sport (CAS) and appealed to the CAS to cancel the December 3, 2003 decision expelling him from the position of President of the LNOC Republic of Liberia.

On December 27, 2003, after Mr Urey’s expulsion and 12 days following the submission of the appeal, a General Assembly was held and endorsed the Executive Committee’s “no confidence” vote cast on November 25, 2003 and the decision of expulsion adopted on December 2, 2003.

LAW

CAS Jurisdiction

1. Before examining the merits of the appeal case submitted to it, the Panel must first consider the objections that have been raised.
2. The LNOC objects that the Appellant “*has failed to exhaust all available local/ internal constitutional remedies, prior to filing this Appeal and, as a matter of law and procedure, deprives [the CAS] of legal authority to hear this Appeal*”. Since the objection is submitted, the Panel will proceed with its examination.
3. The first objection is based on Articles 8-b and 19 of the LNOC Constitution. The LNOC contends that the prerequisite of the exhaustion of local/internal remedies has not been satisfied as there was no notification of the complaint to the General Assembly; therefore a non-attempted local remedy would still exist. The Appellant rebutted the argument and stated that he did not appeal to the General Assembly because 1] there was no agreement as to who constitutes the General Assembly, and 2] the Liberian judicial system remained cumbersome since the political crisis.
4. The Panel takes note of the common understanding of both parties relating to the major role of the General Assembly in settling the litigation between the Appellant and the LNOC. Both parties have accepted a good-faith and common-sense interpretation of Article 8 of the LNOC Constitution. The democratic spirit of the Olympic Movement primarily implies the friendly settlement of litigation within the institutional framework of the different federations,

associations or sports-related bodies; judicial settlement cannot be substituted for amicable settlement and constitutes a less-satisfactory alternative. Now, the parties disagree as to the legality and appropriateness of referring the expulsion decision to this appellate body, but, even though the Panel would have welcomed a non-judicial solution, it should be emphasized that the present procedure is compulsory in nature.

5. This case raises many questions about the impugned decision. First of all, there is a question about the composition of the General Assembly. It should be pointed out that there is a discrepancy between the definition of the General Assembly in Article 2 of the LNOC Constitution and its composition under Article 8 which refers to Article 6. Article 2 appears to be more restrictive in terms of participation in the General Assembly. However, the Panel considers that Article 6 reflects a broader and more democratic basis of membership of the Movement's General Assembly, consistent with the popular character of adherence to the Olympic ideal. In any event, the "definitions" clause, being purely informative in nature, cannot prevail over the normative provisions of Articles 6 and 8 put together.
6. Article 6-A of the Constitution thus enumerates the automatic members: i) the members of the IOC in the country; ii) all NFs affiliated to the IFs governing sports included in the Olympic Games or the representatives designated by them; and iii) active athletes having taken part in the Olympic Games. Article 6-B indicates the other possible members: i) NFs affiliated to IFs recognized by the IOC, the sports of which are not included in the Olympic Games; ii) Multi-sports groups or other sports-oriented organizations or their representatives as well as those liable to reinforce the effectiveness of the LNOC or who have rendered services to the cause of sport and Olympism; and iii) Individual members who are distinguished personalities upon approval of an application or nomination by the Executive Committee through a simple majority vote.
7. The Panel notes that the Constitution does not actually state the precise number of General Assembly members. As the composition of the General Assembly itself is questioned, the Panel has endeavoured to understand the situation. In addition to the Constitution, it has thus examined the document submitted by the LNOC marked "Exhibit 5", and the documents submitted by Mr. Urey with his letter of February 18, 2004, marked "Exhibit 2" and "Exhibit 3".
8. It is incumbent upon the Panel to compare these exhibits and to draw any pertinent conclusion. LNOC "Exhibit 5" is a five-page text entitled "*Resolution of the 2003 General Assembly*", including two pages of signatures headed "*LNOC Signature for the 2003 General Assembly Resolution*". The document contains 32 signatures and notes that 4 signatures are missing for different reasons. From nos. 1-7, the first 5 signatures correspond to the elected officers. Then from nos. 8-31, there are 24 names of Federations; in front of no. 21 there is the signature of the representative of the Federation. Finally, from nos. 32-35 there are the names of the individual elected members and no. 36 contains the name and signature of the last member, Joseph S. Boakai. Since "Exhibit 5" deals with the 2003 General Assembly, it is presumed that this list was compiled for the purposes of that General Assembly under Article

6 of the LNOC Constitution; the LNOC's answer confirms that the said 2003 General Assembly was held on December 27, 2003.

9. Mr. Urey's "Exhibit 2" is a leaflet that was issued for the "2003 General Assembly held on Saturday March 29, 2003". It contains for the purposes of the present appeal under "Categories of Membership": 6 elected officers; members of the Executive Committee, i.e., all National Sporting Organizations consisting of 16 established Federations/Associations and one "to be organized"; 11 individual members; and 9 incoming members. The document thus indicates a total of 33 members already belonging to the General Assembly plus 9 new members. Mr Urey's "Exhibit 3" is a confirmation letter from former Minister Max M. Dennis confirming that the 9 new individual members of the LNOC were admitted at the General Assembly in question.
10. The Panel is of the opinion that the two lists of the composition of the General Assembly contain differences that should be pointed out. As far as the elected officers are concerned, Prof. Joseph Narmah, an individual member according to Mr Urey's "Exhibit 2" (under the heading "Technical Committee") appears in LNOC "Exhibit 5" (no.7) as an elected officer. On the Federation/Association lists, the names of the representatives do not coincide, except for Kadala Kromah NUSF (nos. 9 and 22 respectively), Lemuel Sherman LKF (nos. 10 and 19 respectively) and Gen. Francis Dolo LTF (nos. 14 and 15 respectively). Both documents mention 16 Federations/Associations although there is some discrepancy because LIBSA and LWF and the names of their respective representatives only appear on one of the lists in question (that of LNOC "Exhibit 5"), their acronyms being identified on a different document (list of signatories attached to the expulsion letter of December 3, 2003). In the group of the individual members, M. Siebo Williams' signature can be found on Mr Urey's "Exhibit 2" only.
11. Having examined the composition of the General Assembly, the Panel now turns to the question of whether it was possible to convene a meeting of the General Assembly. Two different meetings, in March and December 2003, are to be taken into account.
12. The March 2003 meeting of the General Assembly has been used by the Panel as an informative guide in order to understand the practice of such meetings, because it has not been challenged and it pre-dates the period at issue; the corresponding list of participants can thus be relied upon for the purposes of this appeal.
13. The December 27, 2003, meeting was qualified by the LNOC as the "2003 General Assembly" (LNOC "Exhibit 5"). Some observations have been raised concerning this meeting. On behalf of the LTF, Cllr. Lloyd Kennedy, President, and Manfred Jones, Secretary General (Urey "Exhibit 5"), and also the LBF President Reginald Goodridge, *intuitu personae* (Urey "Exhibit 6"), confirmed that they did not receive any citation from the LNOC to attend the General Assembly of December 27, 2003. The official sending of a citation to all the entitled participants in a meeting is a compulsory duty that the officers of any organisation have to fulfil. This prerequisite is one of the legal guarantees for democratic governance, transparency and confidence within an association; non-compliance may invalidate a meeting

and render its resolutions void. The Panel must therefore consider the validity of the December 27, 2003 General Assembly meeting. After verification, LNOC “Exhibit 5” shows that the LBF was in fact represented at this meeting by Fred J.A. Pratt (no. 9) whose signature is appended next to his name; this fact cannot be questioned and it thus rebuts the LBF’s argument claiming a lack of citation.

14. As President Reginald Goodridge (Liberia Boxing Federation), in a signed statement dated 6 February 2004, “state[s] emphatically that [he] did not receive any citation” from the LNOC, he apparently thought that he was entitled to be personally cited to attend this convened meeting, but he misunderstood the common practice. Whilst individual members are sent a citation personally, federations are sent a citation at their office and are free to choose their representative. President Reginald Goodridge, not being an individual member of the LNOC, was not entitled to be cited in person. LNOC “Exhibit 5” mentions that “Mr Mansfred Jones of the LTA was absent”; according to Mr. Mansfred Jones himself, the explanation was a lack of citation. No further explanation has been given and no evidence of bad faith has been produced. In the opinion of the Panel, administrative officers are negligent if they do not ensure actual receipt of citations by their addressees. However, in the circumstances of the case, any such negligence was not committed on a scale such as to have had an impact upon the evolution of the crisis which was already prevalent in the Liberian Olympic Movement and had directly undermined the position of Mr Urey, the Appellant, as President of the LNOC. This ends the issue of the alleged lack of citation to the LTA and to Mr Goodridge.
15. After due consideration of these facts, the Panel is of the opinion that in March 2003 and in December 2003, it was not impossible, *de jure factoque*, to convene a General Assembly session.
16. The argument of Mr. Urey relating to the impossibility of convening a General Assembly cannot be upheld.
17. The second objection to the admissibility of the statement of appeal is based on the disagreeing interpretation of the “non exhaustion of the legal remedies” *per se* prior to the submission of the appeal case to the CAS.
18. The LNOC reproaches Mr. Urey for 1) his refusal to convene emergency meetings of the Executive Committee; 2) his refusal to attend on three consecutive occasions; and 3) his failure to submit the Executive Committee decision to the highest organ in the LNOC Constitution, constituting “a constructive waiver of all legal rights to arbitrate and divest an arbitral court of jurisdiction” (LNOC letter of 03/02/2004). Mr. Urey justifies his appeal in these respects by: 1] the practical impossibility of convening a General Assembly because of the behaviour of Mr Browne and his group (Urey letter of 20/02/2004); 2] the cumbersome situation of the Liberian judicial system; and 3] the absence of a court for sports. Mr. Urey thus contends that it would have been impractical to seek other legal remedies.
19. The Panel notes that beyond their respective arguments, the Parties are raising on the one side the *ratio legis* and on the other the mootness of the appeal case. According to Mr. Urey, given the circumstances, the rule of the exhaustion of local remedies is not relevant, while the

LNOC is contending that the appeal is moot on the ground that there is no appealable dispute. The Panel must deal with each of these issues.

20. The exhaustion of local remedies is one of the most established common rules in the international judicial process. It is compulsory even in the absence of a specific instrument (see 20 July 1989 Judgment of the International Court of Justice in *Elettronica Sicula S.p.A. (ELSI), USA v. Italy*, ICJ Reports 1989, p. 42). The rule is based on the principle that a local remedy is better than a more complex international judicial process and on the assumption that the rule of law is strictly upheld. Given these premises, the fulfilment of the prescription may be waived if the legal remedies are nonexistent or illusory (see Arbitral Tribunal, *Robert E. Brown (United States) v. Great Britain*, 23/11/1923, R.I.A.A., vol. VI, p.120; *Forests of Central Rhodope*, R.I.A.A., vol. III, p. 1405; *S.S. "Lisman", U.K. v. U.S.A.*, 05/10/1937, R.I.A.A., vol. III, p. 1767). In such cases, a litigant seeking to establish the existence of a fact bears the burden of proving the non-existence and illusory character of local remedies. In the present case, Mr. Urey has expressed his concerns to the Panel with regard to local remedies. But the Panel cannot accept his arguments in this respect because it was for Mr. Urey to demonstrate that he actually submitted his claim to the local judicial or sports-related bodies prior to filing his statement of appeal and that those authorities failed to respond to such requests. At no stage has Mr. Urey shown that he made submissions before those bodies concerning the cancellation of the expulsion decision and that responses were not forthcoming. The Panel accordingly concludes that Mr. Urey has not met his burden of proof in his attempt to show that local remedies were non-existent or illusory.
21. For these reasons, Mr Urey's argument related to the lack of local remedies cannot be upheld.
22. The Respondent contends that the dispute is moot on the ground of the non-exhaustion of local remedies, stemming from a failure by Mr Urey to respect the organic structure of the LNOC. According to the Respondent (letter of 03/02/04, p. 2), citing Article 8 of the LNOC constitution, the General Assembly represents the supreme organ which enjoys the power to examine and approve the Executive Committee's activity report presented by the Secretary-General. In its capacity as supreme organ, the General Assembly is therefore, in the absence of any specific organic institution, vested with residual powers, that is to say, powers which are not attributed to a specific organ.
23. The Panel would make the preliminary observation that the subject-matter of the appeal case pertains to a request for the cancellation of the decision which dismissed Mr. Urey from his duties and privileges as President of the Olympic Movement of the Republic of Liberia. The nature of the claims submitted by the Appellant derives from alleged breaches of legal rules by which the operation of LNOC organs is governed, and the cancellation of the decision appealed against was the only remedy sought. In these circumstances, the issues relating to the nature and quality of the relations between the Appellant and the executive bodies of the LNOC require an examination of the psychological and political environment surrounding the administration of the LNOC, but do not *per se* constitute the subject-matter of the statement of appeal filed with the CAS. The obligation to submit a copy of the impugned decision, under Article R48 of the CAS Code, implies that the CAS is directly seized of that decision.

24. The notion of decision under R48 of the CAS Code implies a normative act resulting from the conclusion of a discussion or a deliberation. The normative dimension inherent in a decision entails the creation or suppression of a right following an assessment by the authorities or competent bodies; it excludes a simple finding by a competent body. In other words, in the circumstances of the case, it was for the Respondent to prove to the Panel that the legal remedies prior to appeal guaranteed the possibility of reversing the decision to expel Mr. Urey from his position as President of the LNOC after due process. The question is thus whether the seizing of the General Assembly would have allowed a meaningful deliberation on the expulsion of the LNOC President.
25. It is not to be presumed, as the LNOC asserts, that the failure to submit the claim to an internal organ is sufficient for the appeal to be rejected. Given the crisis that prevailed within the LNOC relating to the relationship between Mr. Urey and the administration of the LNOC, as well as the matter at issue, i.e., the expulsion of the Appellant from his position as President of the LNOC, the principles of transparency and fairness require a meaningful procedural guarantee for Mr. Urey to be granted due process by the LNOC in disciplinary proceedings. Having regard to the evidence in the case file, the Panel observes that the documents, the object and purpose of the General Assembly, the tone of the correspondence and the absence of any indication to the contrary, all support the conclusion that the LNOC Executive Committee did not seek any alternative solution other than the ratification of its expulsion decision by a meeting of the General Assembly.
26. For these reasons, the Respondent's objection based on the mootness of the dispute cannot be upheld.
27. Having rejected the various objections to jurisdiction and admissibility, the Panel is bound to raise some ancillary issues that were not invoked by the Parties. The consensual nature of the basis of jurisdiction of the CAS places on the Panel the burden of reviewing the fulfilment of all the conditions that are stipulated in R48, R49 and R51 of the CAS Code.
28. The time-limit for the filing of documents is one issue. Even though the issue of compliance with time-limits has not been raised, the Panel finds that neither Party in fact met those time-limits. The Panel notes that the fixed limit is scheduled in order to prevent delaying tactics by parties. As far as this case is concerned, both Parties fully filed their evidence within a reasonable period.

Validity of Statement of Appeal

29. R48 of the CAS Code sets out the following prescriptions:
"The Appellant shall submit to the CAS a statement of appeal containing:
 - *the name and full address of the Respondent;*
 - *a copy of the decision appealed against;*

- *the Appellant's request for relief;*
- *the appointment of the arbitrator chosen by the Appellant from the CAS list, unless the parties have agreed to a panel composed of a sole arbitrator;*
- *if applicable, an application to stay the execution of the decision appealed against, together with reasons;*
- *a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to the CAS.*

Upon filing the statement, the Appellant shall pay the Court Office fee provided for under Article R.65.2.

If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office shall grant once only a short deadline to the Appellant to complete his statement, failing which it shall be deemed withdrawn."

30. This Rule makes it clear that the requisite filing of a statement of appeal must contain all of these enumerated documents to provide the CAS with full knowledge of the subject-matter of the appeal case. This provision is obviously intended to deter any frivolous or vexatious appeals. But the CAS Code does not prescribe a formalistic interpretation of the constitution of the file. The last paragraph of R48 allows some flexibility for the completion of a statement of appeal if the said requirements are not fulfilled when the statement is first lodged. In the present appeal case, despite the empirical method followed by the Appellant, all the required basic information relating to the dispute and the requested relief have been submitted to the CAS. The CAS is thus fully informed for the purposes of the appeal.
31. Notwithstanding the foregoing, the Panel has to waive the default of the first requisite condition: "*the name and full address of the Respondent*". This is obviously a *ratione personae* preliminary condition to be fulfilled when submitting a case to any judicial forum, as the lack of an identified respondent party renders the case moot. Nevertheless, the claim of the claimant determines the subject-matter of the dispute itself. When the Appellant requests the cancellation of a decision, the subject-matter of the case is the legal validity or unlawfulness of that decision; this means that the CAS has to make a finding solely on the decision itself. Dissenting views of different groups within the Executive Committee do not constitute a legal dispute; they represent the dissenting interpretations of the LNOC Constitution but do not call for a judicial finding on the respective individual rights of each group. For the CAS, the first stipulation under R48 of the CAS Code is a mere practical directive to be followed when a decision is appealed against. It is true that the CAS likes to know the exact name and the full address of any individuals or institution which may judicially be concerned by an appeal case relating to the outcome of a challenged decision. Under some municipal laws there is a substitute procedural citation of a Respondent when his exact name or his full address are not available.
32. The Panel notes that the LNOC was specifically designated for the first time in official correspondence relating to Mr Urey's appeal case, in a letter sent by DHL, signed on December 22, 2003 by M. Jorge Ibarrola, Counsel to the CAS and addressed to "*Mr Clémenceau B. Urey, C/o Atlantic Life and General Insurance Co., PO Box 2853 Tubman Boulevard, Sinkor, Liberia*". It is thus difficult not to consider that the LNOC stands as Respondent in

accordance with the CAS Code. The LNOC is indicated in all records of the file as having taken the impugned decision and as the addressee of the forthcoming arbitral award.

33. The Panel is thus of the opinion that the Statement of Appeal is not incomplete. The case is thus ready to be heard by the CAS according to the appeal arbitration procedure.

The request for cancellation of the decision to expel Mr. Urey from his position as President of the LNOC

34. In his statement of appeal filed with the CAS, Mr. Clémenceau B. Urey seeks the cancellation of the decision to remove him from the office of President of the LNOC. In calling for the cancellation of that decision against him, the Appellant is not requesting relief for prejudice caused by the violation of any personal right to the exercise of the LNOC presidency. It is merely at a secondary level, in light of the subject-matter of Mr Urey's claim, that the Panel is required to examine the expulsion as the consequence of a decision of which the validity is disputed, because of the interpretation of the law by the LNOC organs. Mr Urey requests the CAS to find that the requisite conditions are not met in order for the decision to produce the intended legal effect: expulsion or dismissal. In these circumstances, it is for the Panel to verify the fulfilment *vel non* of the conditions laid down by the legal rules governing the decision to dismiss Mr Urey. The validity of that decision will depend on its conformity, in both procedural and substantive terms, with the conditions required by law in such matters. It is thus for the Panel to examine the procedure followed, as well as to verify substantive compliance with the applicable law.

Validity of expulsion procedure

35. Mr Clémenceau B. Urey was notified of the expulsion decision, which had been taken "unanimously" by the LNOC Executive Committee at a meeting convened on December 2, 2003, at the Sports Commission on Bond Street in the City of Monrovia. On December 9, 2003, the so-called "concerned members of the LNOC" challenged the expulsion decision on the following grounds: "... *the meeting of the faction of the Executive Committee of the LNOC at which the decision was taken to expel the President was irregular and unconstitutional, as it is the exclusive prerogative of the President, by directive to the Secretary General, to call Executive Committee meetings*".
36. Mr Urey (in his appeal brief of 15/12/03) gives his own interpretation of the LNOC Constitution by stating the following: "... *the Constitution ... gives the right only to the Secretary General and President to call Executive Committee Meetings. Executive Committee Meeting can only be called by the Secretary General in consultation with the President. Therefore, any other meeting calling itself an Executive Committee Meeting without meeting the constitutional provision ... is unconstitutional*".
37. The Respondent (in its answer of 03/02/04) contends that: "*the constitution of the LNOC does not empower the president solely to act without reference to the Executive Committee. Article 11 of the LNOC Constitution solely vests the power in the Executive Committee. Therefore, any decision or document deriving*

from the gathering of one-half of the Executive Committee is sufficient authority for the conduct of LNOC business”.

38. The Panel takes notes of the fact that both Parties regard the LNOC Constitution as providing the pertinent rule. In order to address the respective arguments in relation to each other, the Panel must deal with the rules and powers relating to the decision to expel the President of the LNOC, the convening of Executive Committee meetings and the judgment by default given by the Executive Committee.
39. The Panel will first examine the pertinent articles of the LNOC Constitution. Under Article 8 thereof, *“The General Assembly shall be the highest organ within the LNOC ... and shall meet in ordinary session at least once a year ...”*; Article 9 stipulates: *“The General Assembly shall meet in extraordinary session at the request of at least two thirds of its members. The tenures of the president ... shall expire every four years, during a meeting of the General Assembly the agenda of which includes such expiry and election”*.
40. Article 11 relating to the Executive Committee states: *“The Executive Committee administers the LNOC between the meetings of the General Assembly and shall meet at least twelve times per year The Executive Committee can validly act only if at least one half of its members are present. Decisions shall be made by a simple majority of votes cast. It may deal with all questions of interest to the LNOC ...”*.
41. Article 9 thus provides for a system of fixed-term tenure for the President of the LNOC. The use of the concept of tenure indicates the intention of the drafters of the LNOC Constitution to give the officers and especially the President an official public position that allows him during his tenure to have meaningful influence and also security for the future performance of his duties. Two statutory guarantees are thus established: a four-year term and the compulsory inclusion of expiration and election on a General Assembly agenda. As a pure matter of fact, the expiration of Mr. Urey’s tenure did not occur in 2003, and the Constitution does not contain any specific rule relating to expulsion or to the involuntary premature termination of tenure. As a matter of principle, the specific silence of a legal instrument as to the involuntary termination of tenure cannot be interpreted as excluding any possibility of cancelling tenure prior to expiration. The strict rules on security of office are instituted not for the personal convenience of the incumbent; they are laid down for the sole purpose of affording the incumbent the best possible conditions for the performance of the duties vested in the office of President. If the silence of the instrument in this respect were to be interpreted as intending absolute preclusion of any premature review of the President’s current term of office, that would be tantamount to accepting the lawfulness of any misuse or misappropriation, for personal and individual gain, of the constitutional guarantees afforded in respect of such office. When serious accusations are made against an incumbent officer, the imperatives of justice and equity, together with the need for pacific relations within a country’s Olympic Movement, do not preclude the challenging of the person concerned, through a disciplinary procedure, with respect to the alleged acts with which he is charged, nor subsequently the possible penalty of dismissal. The LNOC’s November 12, 2003, letter sent by the Executive Committee to Mr Urey is crystal clear: its purpose is to inform Mr Urey that an action is being brought against him and it indicates the body before which he should

appear to discuss the nine complaints made against him by the Executive Committee and to present his defence.

42. Thus the expulsion decision against Mr Urey is a disciplinary measure taken upon a judgment by default. Disciplinary matters are governed by Article 19, paragraph 2, as follows: “*Any decision made by the LNOC’s disciplinary tribunal or similar body which constitutes the highest internal authority may be submitted exclusively by way of appeal to the CAS in Lausanne ...*”. The parallel in the LNOC Constitution between the use of the superlative form “*highest*” in both Article 19 and Article 8 (with reference to the General Assembly), indicates that the nouns qualified by these adjectives are equivalent and on the same level. The disciplinary procedure thus constitutes, in the LNOC system, an autonomous institution with its own “*highest authority*”. For these reasons, the Panel is of the opinion that the cancellation of the expulsion decision must be scrutinised according to the LNOC’s disciplinary procedure. Unfortunately, the Panel is not aware of the existence of specific LNOC disciplinary procedure rules; but neither this fact nor the absence of an LNOC disciplinary tribunal means that there is a legal or institutional vacuum capable of impeding the efficacy of such measures. The Panel must, by the method of deduction in light of the LNOC Constitution, identify the organ in which such disciplinary powers are vested.
43. The Panel, having regard to the parallel between the “*highest internal authority*” and “*highest organ*”, considers that the LNOC General Assembly may be vested with disciplinary powers, in addition to the residual powers mentioned above. In a case where the President of the LNOC is involved, the issues are so sensitive that the highest organ is entitled to exercise disciplinary powers. This conclusion of the Panel has to be understood in the context of the “*parliamentary procedure*”, as provided for under Article 12-A, with respect to the conduct of meetings. Any impeachment decision is a matter for the plenary deliberative institution in a parliamentary constitution. The Panel also has in mind the advisory opinions of the International Court of Justice stating that after 1945 the United Nations General Assembly succeeded to the supervisory functions of the Council of the League of Nations relating to mandated territories that were not placed under the Trusteeship of the United Nations (*International Status of South-West Africa, Advisory Opinion: ICJ Reports 1950*, pp.136-7). Moreover, as the LNOC General Assembly has to operate within the framework of its pertinent and appropriate laws and rules, the Panel cannot find any legal barrier that would hinder the General Assembly in discharging this specific task. The meeting system is not an inappropriate one: a disciplinary matter may be included as an item on the agenda of an ordinary or extraordinary session; the convening of a meeting is well-established under Articles 8 and 9. The remit of the General Assembly under Article 8 covers all the activities of the LNOC and its organs. Even though the Executive Committee appears in the Constitution as the permanent inter-session organ of the LNOC, the Panel finds that this is not a sufficient reason to regard the Executive Committee as the disciplinary organ. The guarantee of the various rights involved is better provided if the same single body is not responsible for challenging the disciplined person and for passing judgment on alleged torts or breaches. Moreover, as a disciplinary procedure cannot be handled summarily, the issue relating to the duration of the procedure itself does not matter. The description of the relationship between the General Assembly and the Executive

Committee satisfies those concerns. The Executive Committee may initiate disciplinary action and include it on the agenda of a General Assembly meeting.

44. In the present case, having regard to the LNOC's December 3, 2003 letter to Mr Urey, the Panel would recall the different steps that were followed in this disciplinary action: 1] Request for Executive Committee meeting (letters dated: October 2, 2003, LNOC Exhibit 1; November 12, 2003, LNOC Exhibit 2; November 25, 2003); 2] "No Confidence" vote of the Executive Committee against its former President Mr Urey on November 25, 2003 (LNOC Exhibit 5); 3] General Assembly's expulsion decision on December 2, 2003 (LNOC Exhibit 5).
45. The Panel must now deal with the legality of the disciplinary decision appealed against. The first issue relates to the identification of that decision. Mr Urey filed a statement of appeal against the December 2, 2003 decision of expulsion by the Executive Committee, even though, in the view of the Panel, it falls to the General Assembly to take a disciplinary measure against the President.
46. On the basis of the facts of which the Panel is informed, the problem lies in the characterization of the relationship between the respective remits of the General Assembly and the Executive Committee. Under the provisions of Articles 8-b and 11 of the LNOC Constitution, the General Assembly examines and approves the Executive Committee's activity report, presented by the Secretary General, whilst the Executive Committee administers the LNOC during the interval between meetings of the General Assembly. It can be said that the specific remit of the General Assembly consists of examining and approving the proposals of the Executive Committee. The Executive Committee, for its part, appears to enjoy the broadest powers in the administration of the LNOC as well as the active right to take initiatives concerning its activity. In other words, the General Assembly, the holder of supreme authority, nevertheless only has a passive role in the decision-making process.
47. In legal terms, the prejudice suffered by Mr Urey started with the opening of the disciplinary procedure, initiated as it was by the decision to dismiss him from his duties as President of the LNOC. That decision was taken on December 2, 2003. Under these circumstances, the decision of approval taken by the General Assembly on December 27, 2003 merely constituted, in the mind of the Executive Committee, a confirmatory act in respect of the expulsion.
48. However, the Panel has to consider the degree of finality of a decision taken in such conditions of severability between organs, in view of the disciplinary nature of the action taken against the President of the LNOC. In the first place, the protection of the rights of the individual involved requires the exhaustion of all procedural and legal resources before a disciplinary measure can be taken. In these circumstances, the expulsion decision taken by the Executive Committee could only be a preliminary measure prior to the final dismissal decision which can only be taken by the General Assembly. In the view of the Panel, Mr Urey was entitled to expect a decision by the highest organ of the LNOC dismissing him from his duties. Secondly, compliance with the conditions required for the validity of the expulsion

decision should not however lead to any undermining of the legitimate rights and interests of the Liberian Olympic Movement; it is thus incumbent upon the Executive Committee to take the necessary interim protective measures.

49. The preliminary nature of the Executive Committee's decision would not however justify a finding that Mr Urey's appeal was premature. That decision, hypothetically, may not have been ratified by the General Assembly, in which case the present appeal case would have been moot. But in the absence of pre-established rules of disciplinary procedure, it was not inappropriate for Mr Urey to seek the protection of his rights, especially as the initiative of the disciplinary proceedings no longer lay with the General Assembly.
50. For these reasons, the Panel is of the view that the Executive Committee's decision, in the specific circumstances of the present case, and in light of the situation in the Liberian Olympic Movement, was quasi-final and not abstract in nature, and therefore the said decision was appealable.
51. In order to exhaust the issues relating to the disciplinary nature of the proceedings and of the decision concerning Mr Urey, the Panel is bound to consider a fundamental principle of disciplinary law: *nulla poena sine lege*. This general principle is justified by a concern for procedural due process in disciplinary matters. The legal certainty of the penalty thus provides a guarantee against any arbitrary outcome.
52. In the present case, both Parties have referred to Article 8 of the LNOC Constitution, which provides for the organic status of the General Assembly and its remit. The documents filed by the parties reveal that their clear intention was to regard Mr Urey's expulsion as a constitutional or administrative matter. The Panel considers that it was inappropriate for the Parties to give an interpretation of the applicable law in disciplinary proceedings, but this notwithstanding, the Panel cannot take account of such a mistake of law in the absence of clear rules governing the disciplinary procedure. However, the Panel does not find that there was any breach of the *nulla poena sine lege* principle, as it was incumbent upon Mr Urey to raise this as a ground of defence in the disciplinary proceedings.
53. However, the Panel cannot refrain from considering the judgment by default organized against Mr. Urey or the conduct of the Appellant throughout the crisis facing the LNOC.
54. The judgment by default organised against Mr. Urey was initiated by the prior communication of the nine complaints set out against him by the Executive Committee, which formally summoned him to prepare his defence. In the view of the Panel, the communication of the list of complaints *per se* is not sufficient for meaningful disciplinary notice to be constituted. The principles of transparency and good faith imply that the person concerned should be informed precisely of the charges against him, in terms both of the alleged facts and of the rules said to have been breached, and should be allowed sufficient time to organize his defence. Whilst the letter of November 12, 2003, would appear to constitute appropriate notice of action with a summary of complaints, the three-day period between November 12 and 15, the date fixed for the meeting of the Executive Committee, seems too short for the

disciplined person to be able to prepare his defence. However, that time-limit was extended, because the Executive Committee did not take its decision until December 2, 2003, i.e. 20 days after the formal notice.

55. Regardless of the specific political situation prevailing in Liberia, the Panel cannot disregard the international character of the arbitration since the Appellant lodged his appeal with the CAS. By that procedural action, he waived his right to appear before the domestic tribunals of the Republic of Liberia. In these circumstances, it is incumbent upon the Panel to proceed in its reasoning according to international arbitral law. In this respect, an initial conclusion can be drawn: when Mr. Urey seized the CAS prior to the final adoption of the expulsion decision by the General Assembly, as the highest organ, he was premature in his initiating of the appeal procedure. However, since the Executive Committee's decision was no longer abstract in nature, not only because it had already caused prejudice to Mr Urey but also because it is this decision that the disciplined Appellant could challenge before the General Assembly, there was already something more than a mere intention. This may be compared to the common law concept of consideration in the sense of a certain conduct that will be followed through, either action or abstention. For consideration to create legal obligations, it has to be meaningful and sufficient, that is to say, having a certain value. In the present case, this condition is met by the reasoned and reasonable presentation of the complaints made against Mr. Urey. To conclude on this issue, the Panel finds that Mr. Urey cannot be criticized for having directly seized the CAS of an appeal, to the extent that the common-law concept of consideration and the status of the Executive Committee's decision in the disciplinary procedure did not leave any scope for the reopening of a meaningful review of the breaches that he was alleged to have committed.
56. With respect to the intrinsic validity of the disciplinary judgment by default, the Panel is compelled to find that such default can be explained, in the first place, by the absence of any submissions or defence before the organ which initiated the action or before that which ratified the disciplinary measure. This default does not call for any particular indulgence, for it merely reveals a lack of respect vis-à-vis the administrative organs of the LNOC. Secondly, the judgment was also by default because of the failure by Mr Urey to appear before the organ which is empowered to initiate the disciplinary action and that which is invested with decision-making powers. No party should be tried without a fair hearing, but on the other hand, the proper functioning of national Olympic institutions cannot be impeded by negative conduct or unwillingness to cooperate. Whilst it is certainly befitting to allow the disciplined person as much time as possible to respond to the charges, disciplinary bodies cannot be hindered in the exercise of their duties, provided they have fulfilled the obligation to give notice and to ensure respect for the rights of the person concerned. In the present case, in light of the conduct of Mr Urey, the Panel cannot find any reason to justify criticism of the judgment by default.
57. The very conduct of Mr Urey, both in exercising the office of President of the LNOC and in the course of the disciplinary procedure, warrants particular examination in view of the legal consequences that arise therefrom. The decision of expulsion is based on Article 7(f) of the LNOC Constitution which provides for the cessation of membership in the event of

“unexcused absences from three cited consecutive meetings” of the Executive Committee. This is a mere question of fact and the condition is met in the case of Mr. Urey. The only difficulty may possibly lie in the absence of specific provisions governing the convening of meetings of the Executive Committee, whereas Article 9 provides for the convening of extraordinary sessions of the General Assembly *“at the request of at least two thirds of its members”*. Under Article 11 of the LNOC Constitution, the quorum required for the validity of Executive Committee decisions is the presence of one half of its members. The permanent nature of that organ, together with the general nature of its powers in respect of the LNOC’s administration, implies that meetings may be convened as often as the interest of the organisation so requires, provided the quorum of attendance is met. In the present case, the repeated silence of Mr Urey in response to citation to three consecutive meetings of the Executive Committee represents a pattern of conduct which can be regarded as wilfully obstructing the proper functioning of the LNOC. By his continuing conduct, Mr Urey disqualified himself from the Executive Committee under the above-mentioned Article 7. Moreover, by his obstruction to the seeking of an internal solution within the LNOC, Mr Urey simply brought upon himself the application of statutory penalties by the constitutional organs of the LNOC.

58. Notwithstanding the preparatory character of the Executive Committee’s decision, pending the final decision within the exclusive jurisdiction of the General Assembly, Mr Clémenceau B. Urey is unfounded in complaining of the decision by which he was dismissed from his position as President of the LNOC.

The Court of Arbitration for Sport rules:

1. The objections to the jurisdiction of the CAS and to the admissibility of the appeal lodged by Mr. Clémenceau B. Urey are rejected.
2. Mr. Urey is unfounded in complaining of the decision of the LNOC by which he was dismissed from his position as President of the National Olympic Committee of the Republic of Liberia.
3. The appeal lodged by Mr. Clémenceau B. Urey, seeking the cancellation of the LNOC decision expelling him from the office of President, is denied.