

Kluwer Arbitration Blog

2024 in Review: Sports Arbitration Developments in the Aftermath of the Olympic Games and CJEU Insights

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During the 2024 Olympic Games, as the public watched world-class athletes perform, international arbitration came into the spotlight. The decision of the Court of Arbitration for Sport (“CAS”) to “strip” the US gymnast, Jordan Chiles, of her Olympic bronze medal (“CAS Decision”) caused a media storm and called into question the independence and impartiality of the presiding arbitrator.

While this post does not aim to be exhaustive, it will focus on a couple of key developments in 2024: two CAS decisions issued during the Olympics and the Court of Justice of the European Union (“CJEU”) [decision](#) which revisits the scope of review of CAS decisions by the Swiss Federal Court.

The 2024 Olympics and the CAS Awards

On 5 August 2024, nine gymnasts took part in the final of the women’s floor exercise. During the execution of the routine, Ms. Barbosu (Romanian gymnast, score 13.700) was placed third, followed by Ms. Maneca-Voinea (Romanian gymnast, score 13.700) and Ms. Chiles (US gymnast, score 13.666). Following a verbal inquiry submitted by Ms. Chiles’s coach, Ms. Chiles’s score point was increased from 13.666 to 13.766 and she was awarded third place. The verbal inquiry and the increase of the score point effectively demoted Ms. Barbosu and Ms. Maneca-Voinea to fourth and fifth place respectively.

The following day, the Romanian Gymnastics Federation filed an appeal challenging the scores of the three gymnasts before the CAS tribunal chaired by Dr. Hamid Gharavi (“Tribunal”). The appeal was brought against the Fédération Internationale de Gymnastique (“FIG”) and Ms. Sacchi (“Respondents”), while Ms. Chiles, the US Gymnastics governing body and the International Olympic Committee were named amongst the interested parties (“Interested Parties”).

The Tribunal had to decide four issues:

- (a) Whether the inquiry submitted by Ms. Chiles’s coach was filed beyond the 1-minute deadline provided in Article 8.5 of the [FIG Technical Regulations](#);
- (b) Whether the inquiry of Ms. Chiles’s score was reviewed in manifest bad faith;

(c) Whether the penalty of 0.1 assessed to Ms. Maneca-Voinea was given without basis, and, if so, to increase her score to 13.800 and to adjust the final ranking accordingly; and

(d) In the alternative, whether to adjust the ranking of Ms. Barbosu, Ms. Maneca-Voinea and Ms. Chiles by placing all three athletes in third position and to allocate the medals to all three athletes.

The Tribunal's Decision

Before addressing the merits, the Tribunal first considered the relevance of the “field of play” doctrine (*i.e.*, a decision made on the playing field by the judges/referees or other officials cannot be subsequently reviewed), which was the main argument advanced by Respondents to argue that the Tribunal should dispose of the entirety of the proceedings. The Tribunal noted the importance of this well-established and settled doctrine as a “cornerstone principle of sports and CAS case law” and its intention not to depart from this principle (§ 104).

Having set out the relevant principle, the first and only challenge upheld by the Tribunal concerned the timeliness of the verbal challenge (point (a)), as Ms. Chiles’s inquiry was made four seconds after the one-minute time limit. The Tribunal found that the challenge did not fall within the scope of the “field of play” doctrine as the Tribunal was not being asked to interfere or substitute its judgment for that of a referee.

Article 8.5 of FIG 2024 Technical Regulations provides that a gymnast’s coach can submit an inquiry with respect to the score provided that, for the last gymnast, the request is made within “one (1) minute after the score is shown on the scoreboard”, and late verbal inquiries are to be rejected. Ms. Chiles was the last gymnast, thus the one-minute rule applied. Article 8.5, the Tribunal stated, is “clear and unambiguous from all relevant perspectives” and offers no exception or flexibility, and Respondents offered no evidence or practice to support the existence of any exception or tolerance to the application of the rule. The impact of non-compliance with the one-minute rule is also clear and unambiguous with Article 8.5 providing that “[l]ate verbal inquiries will be rejected”.

The Tribunal found that there was no room for discretion. Ms. Chiles’s inquiry was submitted one minute and four seconds after her score was displayed on the scoreboard and no party introduced evidence challenging it. The Tribunal found that Article 8.5 was violated, and the FIG did not have in place arrangements or mechanisms to ensure that the one-minute rule was complied with.

The remaining issues (points (b) to (d)) were all rejected by the Tribunal. Applying the “field of play” doctrine, the Tribunal rejected the notion that Ms. Chiles’s inquiry was conducted in bad faith, finding it “inappropriate” to even make the allegation of bad faith.

Further, the Tribunal had “no difficulty” in finding that the decision to apply a 0.1 point penalty to Ms. Maneca-Voinea should also be treated as falling within the “field of play” principle. Whether the decision was right or wrong could not be reviewed by the Tribunal.

Finally, as to the request to apply the “principle of fair play” and to award third place to all three gymnasts involved in the dispute, it was impossible for the Tribunal to apply the principle of fair play, especially when the FIG was opposed to it.

The Disclosure Issue

Following the CAS Decision, which effectively ruled that the original scores should stand and awarded third place to Ms. Barbosu, a media storm erupted, and the focus shifted to the alleged conflict between Dr. Gharavi and the Romanian government. During the CAS proceedings, all parties were informed of Dr. Gharavi's disclosure that he was acting as counsel for Romania in investment arbitrations before ICSID (see cases [ARB/20/15](#), [ARB/22/13](#) and [ARB/16/19](#)) and no objection was made. It was noted in the CAS Decision:

“no objection to the appointment of Dr. Gharavi as President of the Panel was received by any Party or Interested Party, either within the deadline for raising objections fixed by the CAS Ad Hoc Division, or at any time during the proceedings, including at the hearing or up to the issuance of the dispositive part of the award” (§ 15).

Several media outlets questioned Dr. Gharavi's “[long relationship with Romania's government](#)”, and various [opinions](#) were written concerning his independence and impartiality. Ms. Chiles filed an [appeal](#) before the Swiss Federal Court to overturn the CAS decision arguing *inter alia* that (i) CAS violated Chiles's fundamental “right to be heard” by refusing to consider video evidence that showed her inquiry was submitted on time; and (ii) she was not properly informed about Dr. Gharavi's disclosure. The case is still pending before the Swiss Federal Court.

The Strict Application of the Rules

This was not the only CAS decision to attract media attention. For example, Vinesh Phogat, the Indian wrestler, was disqualified from the women's 50kg freestyle final because she was 100 grams over the weight limit. An appeal was lodged with CAS arguing that “tolerance should apply” given the small overweight. The appeal was [rejected](#) as the weight limit rules were clear and did not allow for any discretion.

The CJEU Decision Concerning the Scope of Review of CAS Awards

The Swiss Federal Court review of the CAS awards was the subject of the CJEU [decision](#) in relation to the International Skating Union (“ISU”). In brief, the ISU, the most important association of figure and speed skating competitions, adopted rules effectively restricting athletes from participating in competitions not organized by the ISU by virtue of its “eligibility rules” (see previous coverage on the Blog [here](#) and [here](#)). As provided by the [ISU Statutes](#), a decision to impose a penalty for loss of “eligibility” is subject to review by CAS.

Complaints were lodged before the European Commission questioning whether the eligibility rules for participation in ISU competitions were in breach of European competition rules (Articles 101 and 102 [TFEU](#)). Ultimately, the issue was referred to the CJEU, which held that, while CAS has

exclusive jurisdiction to decide on ISU disputes, the arbitration proceedings and the review of the CAS decision by the Swiss Federal Court could not take place if there was no review of compliance with EU law.

In particular, the CJEU found that the review of the arbitral awards made by the CAS and the final review of decisions of the Federal Supreme Court must, in any event, be able to cover the question of whether the CAS awards comply with the fundamental provisions that are a matter of EU public policy, such as Article 101 and 102. In the absence of such judicial review, the use of arbitration would undermine the “protection of rights that subjects of the law derive from the direct effect of EU law and the effective compliance with Articles 101 and 102 TFEU, which must be ensured [...] by the national rules relating to remedies.” Accordingly, “eligibility” rules as the ones provided by ISU must be subject to effective judicial review by the Swiss Federal Court.

Conclusion: The Future of CAS Decisions and the CJEU Review

As is sometimes the case, there was a serious misalignment between what was reported in the media and what was written in the CAS Decision. In any event, both CAS decisions confirmed that there is no room for discretionary powers where the rules are unambiguous. Further, the CJEU has created some uncertainty as the CAS awards in Switzerland may no longer benefit from limited review, at least not where decisions affecting economic activities in the EU are concerned.

The scope of review of CAS awards will continue to be of interest, also in light of the pending [CJEU proceedings](#) brought by the Belgian Court of Cassation over a CAS award involving RFC Seraing, Doyen and FIFA concerning the third-party ownership agreements (prohibited by FIFA in 2015). As recently as January 2025, the Advocate-General of the CJEU (“AG”) issued a non-binding [opinion](#), stating that the CJEU should expand on its judgment in ISU. The AG opined that the principle of *res judicata* cannot prevent the review of arbitral awards when their conformity with EU law has been reviewed by a Non-Member State of the European Union (in particular, Switzerland), which is not permitted to request a preliminary ruling from the CJEU.

This development and many more to come will be covered by the Blog!

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