

## Paris 2024 Olympic Games – Navigating the legal framework of the CAS Ad Hoc Division

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With the Olympic torch journeying through France, the road to the Paris 2024 Summer Olympic Games is now at full speed. But how can disgruntled athletes seek remedy for unfavorable decisions or sanctions received on their way to the Olympic gold?

From the Atlanta Olympic Games held in 1996 onwards,<sup>2</sup> the International Olympic Committee (**IOC**) has empowered the Court of Arbitration for Sport (**CAS**) to act as the arbitral body for all related sporting disputes. Since then, the International Council of Arbitration for Sport (**ICAS**)<sup>3</sup> established a CAS ad hoc division (the **Ad Hoc Division**) to promptly resolve disputes arising immediately before and during the Summer and Winter Olympic Games<sup>4</sup> in accordance with special ad hoc arbitration rules.

This article will focus on the dispute resolution mechanism of the CAS Ad Hoc Division established for the Games of the XXXIII Olympiad – Paris 2024 (**Olympic Games 2024**) under the “Arbitration Rules applicable to the CAS ad hoc division for the Olympic Games” (the **Ad Hoc Rules**).<sup>5</sup>

### I. The CAS Ad Hoc procedure

Winning a medal at the Olympic Games often being an athlete’s longstanding dream, any dispute related to an athlete’s participation in the event is pivotal in his or her career. Accordingly, time is of the essence and any dispute must be resolved within the shortest possible time frame to avoid devastating results. In this context, and as will be explained below, the Ad Hoc Rules are designed to ensure a quick resolution of any dispute related to the Olympic Games 2024 which arise from ten days prior to the Opening Ceremony.<sup>6</sup>

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<sup>2</sup> Johan Lindholm, *The Court of Arbitration for Sport and Its Jurisprudence – an Empirical Inquiry into Lex Sportiva*, p. 31.

<sup>3</sup> ICAS’s purpose is to facilitate the resolution of sports-related disputes through arbitration or mediation and to safeguard the independence of CAS and the rights of the parties. It is also responsible for the administration and financing of CAS.

<sup>4</sup> Ad hoc divisions were also set up for other major sports events such as the Commonwealth Games since 1998, the UEFA European Championship since 2000 and for the FIFA World Cup in 2006.

<sup>5</sup> Available on the CAS’s website: <https://www.tas-cas.org/en/arbitration/ad-hoc-division.html>

<sup>6</sup> See Article 1 of the Ad Hoc Rules.

Anti-doping matter are however excluded from the CAS Ad Hoc procedure and will be adjudicated by the CAS Anti-Doping Division under separate arbitration rules.<sup>7</sup> During the Olympic Games 2024, the CAS Anti-Doping Division will handle anti-doping disputes referred to it by the International Testing Agency (ITA) in accordance with the IOC Anti-doping Rules.<sup>8</sup>

#### **A. Constitution of the Ad Hoc Division**

In anticipation of the Olympic Games 2024, the ICAS selects a group of arbitrators to form the Ad Hoc Division. In selecting the arbitrators, the ICAS is bound by the CAS's general List of Arbitrators.<sup>9</sup>

The group of arbitrators will usually be composed of one president and a co-president with certain leading functions as well as 12 arbitrators from different countries and profiles.<sup>10</sup>

When a dispute arises, pursuant to Article 11 of the Ad Hoc Rules, the president of the Ad Hoc Division appoints a Panel composed of three arbitrators from the list drawn up by the ICAS, although Article 11 of the Ad Hoc Rules also authorizes the president to appoint a sole arbitrator when appropriate under the circumstances. All appointments are made directly by the president without any outside input. This ensures that a Panel is appointed promptly.

#### **B. Lex arbitri, seat of arbitration, and applicable law**

Although the Ad Hoc Division is usually based onsite at the Olympic Games, this does not mean that the laws of the country where the Olympic Games are taking place will automatically apply.

In this regard, Article 7 of the Ad Hoc Rules states that the seat of the Ad Hoc Division and each Panel is in Lausanne, Switzerland and that the arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA), which primarily addresses issues of the arbitrability of disputes, constitution of the tribunal, and challenges to arbitrators as well as awards.<sup>11</sup>

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<sup>7</sup> <https://www.tas-cas.org/en/add/ad-hoc-division-arbitration-rules-cas-add/>

<sup>8</sup> See Article 8 of the IOC Anti-doping Rules: <https://stillmed.olympics.com/media/Documents/Olympic-Games/Paris-2024/IOC-Anti-Doping-Rules-applicable-to-the-Games-of-the-XXXIII-Olympiad-Paris-2024.pdf>

<sup>9</sup> See Articles 2 and 3 of the Ad Hoc Rules

<sup>10</sup> The group of arbitrators for the Paris Olympic Games can be found here: [https://www.tas-cas.org/fileadmin/user\\_upload/CAS\\_Media\\_Release\\_ParisOG.pdf](https://www.tas-cas.org/fileadmin/user_upload/CAS_Media_Release_ParisOG.pdf).

<sup>11</sup> Johan Lindholm, *The Court of Arbitration for Sport and Its Jurisprudence – an Empirical Inquiry into Lex Sportiva*, p. 33.

On the other hand, Article 17 of the Ad Hoc Rules provides that a Panel shall rule “*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate.*” Importantly, Article 17 makes no reference to any national law. The main consequence is that any dispute referred to the Ad Hoc Division will generally be settled by reference to the rules of the applicable sport body whose decision is being challenged, including the rules of both national and international federations or committees. In addition, in line with the practice of CAS, the Panel may also take into consideration prior CAS case law and try to come to the same or similar decision on issues already decided by previous Panels, although there is no principle of binding precedent or *stare decisis* in arbitration.<sup>12</sup>

### **C. Jurisdiction and admissibility issues**

Not all disputes related to the Olympic Games occur during the Olympics themselves. Indeed, issues often arise prior to the start of the Olympic Games, such as qualification and selection disputes.

In this context, Article 1 of the Ad Hoc Rules states that the jurisdiction of the Ad Hoc Division applies to “[...] *any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games*”. In turn, Article 61 of the Olympic Charter provides that any “*dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.*” In fact, all athletes participating in the Paris Olympic Games must agree to submit their disputes to the CAS Ad Hoc Division when submitting the Athlete’s Entry Form to participate in the Olympic Games.<sup>13</sup>

However, although the Ad Hoc Division has a broad jurisdiction over disputes related to the Olympic Games, Article 1 of the Ad Hoc Rules does not apply to disputes that have arisen more than ten days before the Olympic Games. The Opening Ceremony for the Olympic Games 2024 is scheduled for 26 July 2024, with the Closing Ceremony set for 11 August 2024.<sup>14</sup> Accordingly, the Ad Hoc Division would only be able to hear disputes arising between 16 July 2024 and 11 August 2024.

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<sup>12</sup> Despina Mavromati/Matthieu Reeb, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, Art. R46 no. 47-48.

<sup>13</sup> The Athlete’s Entry Form for Olympic Games 2024 was not released at the time of publication, but an excerpt can be found here: <https://stillmed.olympics.com/media/Documents/News/2023/12/excerpt-conditions-of-participation.pdf>.

<sup>14</sup> <https://olympics.com/en/paris-2024/schedule>.

Article 1 of the Ad Hoc Rules also puts forward a final hurdle – that of the exhaustion of remedies. The Ad Hoc Division only has jurisdiction insofar as the applicant has exhausted all internal remedies available under the statutes or regulations of the relevant sports body. However, owing to the time constraint, an exception is made where the time needed to exhaust internal remedies would render any appeal to the Ad Hoc Division ineffective.<sup>15</sup>

#### **D. Procedure before the Ad Hoc Division**

Keeping with its goal of efficiency, the Ad Hoc Division proceedings are streamlined and designed to promptly resolve disputes.

At the outset, Article 10 of the Ad Hoc Rules sets out the application process. A person or entity wishing to bring a dispute before the Ad Hoc Division should file an application containing the following information:

- i. A copy of the decision being challenged, if applicable;
- ii. A brief statement of facts and legal arguments on which the application is based;
- iii. A request for relief;
- iv. An application for stay of the effects of the decision being challenged or any other preliminary relief, if applicable;
- v. Any appropriate comments on jurisdiction; and
- vi. The contacts details of the claimant(s) and respondent(s).

In addition, athletes or entities wishing to bring a dispute before the Ad Hoc Division can use a standard form to bring a complaint before the Ad Hoc Division. These forms ensure that an application is complete and notified to the respondent(s) without delay. The application should, however, be written in English, French or Spanish.

As mentioned above, upon the receipt of an application, the president of the Ad Hoc Division will then appoint a Panel, usually composed of three arbitrators.

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<sup>15</sup> Article 1 of the Ad Hoc Rules.

Once the Panel has been appointed, it is granted considerable discretion and is free to tailor the procedure to the needs and urgency of the dispute. Indeed, Article 15(b) of the Ad Hoc Rules allows the Panel to organize the procedure *“as it considers appropriate while taking into account the specific needs and circumstances of the case, the interests of the parties, in particular their right to be heard, and the particular constraints of speed and efficiency specific to the present ad hoc procedure.”* Likewise, the Panel is given full control over the evidentiary proceedings.<sup>16</sup> The Panel will also usually call for a hearing to be held at short notice when appropriate, but it is not mandatory in circumstances where the Panel considers itself sufficiently well informed.<sup>17</sup> In fact, when a dispute arises, the hearing will often take place in the afternoon or evening of the same day. Similarly, if needed, a Panel is allowed to proceed with the proceedings even if a party fails to appear at the hearing or respond to communications.<sup>18</sup>

While the ad hoc procedure is quite flexible, a party that wishes to apply for a stay or preliminary relief must do so in its application.<sup>19</sup> Similarly, a party that wishes to contest the jurisdiction of the Panel must raise its objection at the start of the proceedings or at the start of the hearing at the latest, failing which it loses the right to do so.<sup>20</sup>

#### **E. Decisions of the Ad Hoc Division**

The above flexibility of the Ad Hoc Division’s procedure reflects the narrow time limits within which a Panel must issue a decision related to the Olympic Games. In this context, a Panel is able to render two types of decisions under the Ad Hoc Rules:<sup>21</sup>

- i. Decisions made in normal circumstances under Articles 18 and 19 of the Ad Hoc Rules; and
- ii. Decisions made in cases of extreme urgency under Article 14 of the Ad Hoc Rules.

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<sup>16</sup> Article 15(b) of the Ad Hoc Rules.

<sup>17</sup> Article 15(c) of the Ad Hoc Rules.

<sup>18</sup> Article 15(e) of the Ad Hoc Rules.

<sup>19</sup> Article 10 of the Ad Hoc Rules.

<sup>20</sup> Article 15(a) of the Ad Hoc Rules.

<sup>21</sup> It must be noted that Article 20 of the Ad Hoc Rules also allow a Panel to refer the dispute to arbitration by the CAS, either in part or in full.

With respect to decisions made in normal circumstances, the proceedings before the Ad Hoc Division are aimed at issuing a final reasoned decision on the merits 24 hours from the lodging of the application.<sup>22</sup> The swift rendering of decisions is essential due to the rapid pace of competitions and the awarding of medals. Nevertheless, the time limit may be extended by the president of the Ad Hoc Division under very exceptional circumstances.

Pursuant to Article 19 of the Ad Hoc Rules, decisions must be made by a majority of the Panel, or in the absence of a majority, by the President of the Panel and must be signed by the President of the Panel. In principle, decisions should be reasoned. Nevertheless, in case of urgency, the operative portion of the decision may be communicated to the parties, prior to the reasoning. In addition, all decisions must be reviewed by the president of the Ad Hoc Division.

Regarding decisions in urgent cases made pursuant to Article 14 of the Ad Hoc Rules, a Panel may rule on an application for a stay of the effects of a challenged decision or other preliminary relief without having heard the respondent(s). In doing so, the Panel must consider whether the relief is necessary to protect the appellant(s) from irreparable harm, the likelihood of success on the merits, and whether the interests of the applicant(s) outweigh those of the respondent(s) or members of the Olympic community. For instance, in the circumstances where an athlete makes an application before the Ad Hoc Division after being prevented from participating in a competition, one may argue that the failure to participate in the Olympic Games due to a pending decision from the Panel would constitute irreparable harm.

Preliminary decisions will however cease to have any effect upon communication of the decision made by the Panel under Article 20 of the Ad Hoc Rules.

Last, pursuant to Article 21 of the Ad Hoc Rules, all decisions by a Panel are considered final, binding and immediately enforceable upon communication to the parties.

## **II. Decisions – Primary laws and principles**

### **A. Overview of *lex sportiva* principles**

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<sup>22</sup> Article 18 of the Ad Hoc Rules.

At the outset, Article 17 of the Ad Hoc Rules provides that a Panel shall rule “*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate.*”

While the applicable regulations will vary from sport bodies to sport bodies, certain principles will apply regardless of the competition at issue. A first example can be found in the rules imposed by the Olympic Charter, which applies to all athletes taking part in the Olympic Games.

For instance, Rule 41 of the Olympic Charter provides that only athletes who satisfy the applicable citizenship criteria for a country may be nominated by their national Olympic association to participate in the Olympic Games. As such, an athlete who previously represented a certain country at previous Olympic Games is not guaranteed to be able to represent another country in subsequent Olympic Games.

A second example can be found in Rule 44 of the Olympic Charter which governs invitations and entries. Rule 44 sets out the requirements that must be met in order for an athlete to participate. Notably, Rule 44.3 provides that nobody is entitled as of right to participate in the Olympic Games. In this context, pursuant to Rule 44, entry in the Olympic Games is subject to acceptance by the IOC, which may at its discretion, at any time, refuse any entry, without indication of grounds. In turn, national Olympic associations shall only enter competitors (a) upon the recommendations for entries given by national federations and (b) who meet the qualification criteria for the relevant events determined by the international federation for that sport.

Any athlete failing to meet the above criteria exposes himself or herself to challenges and may potentially be prevented from participating in the Olympic Games.

While the above examples pertain to disputes regarding qualification and selection in relation to regulatory principles, a Panel may also have to rule on generally accepted principles or norms.

A case in point is that of the review of field-of-play decisions, that is “*decisions on ‘technical matters’ by sport officials entrusted with applying the rules-of-the-game.*”<sup>23</sup> Although Article 16 of the Ad Hoc Rules grants a Panel full power to establish the facts on which the application is based, meaning that the Panel may evaluate each case *de novo*, and the Ad Hoc Division has the power to review and overturn field of play decisions, the generally accepted norm is that a Panel will not overturn such

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<sup>23</sup> Johan Lindholm, *The Court of Arbitration for Sport and Its Jurisprudence – an Empirical Inquiry into Lex Sportiva*, p. 205.

field-of-play decisions, unless there is some evidence that the relevant field of play decision was tainted by fraud, bad faith, arbitrariness or corruption.<sup>24</sup> Although not a legal principle *per se*, this is to ensure the finality and certainty of sports results and avoid disrupting competitions, and has now become a generally accepted norm.

The above are only examples of the rules and principles applicable to disputes related to the Olympic Games. However, considering their significance in an athlete's road to an Olympic medal, one could reasonably expect that disputes relating to these matters will arise during the Olympic Games 2024.

### **B. Role of Swiss law in the proceedings**

While a dispute related to the Olympic Games will usually be resolved in accordance with the regulations of the relevant federations and other applicable principles, the impact of Swiss law should not be overlooked entirely. Indeed, as mentioned above, Swiss law, and in particular Chapter 12 of PILA, governs the arbitration.

In this context, Swiss law generally bestows upon a Panel a certain degree of discretion and various powers as regards procedural matters. For instance:

- i) the right to invoke a breach of procedural rights is deemed to have been waived if the breach is not immediately raised during the arbitration (Article 182(4) of PILA);
- ii) the Panel shall conduct the taking of evidence itself (Article 184(1) of PILA; see also Article 15 d) of the Ad Hoc Rules);
- iii) there is no absolute right to a reasoned award (Article 189 of PILA).

Athletes and sport bodies bringing claims before an Ad Hoc Panel should therefore keep the above in mind. However, Panels are obligated to ensure equal treatment of the parties and their right to be heard (Article 182(3) of PILA).

Nevertheless, in practice, Swiss law primarily affects the procedural rights of the parties, and the dispute will usually be decided according to the regulations of the relevant sport bodies. It must be noted, though, that many sport bodies are domiciled in Switzerland which may result in Swiss law applying to merits of the dispute as well. This will be the case if the Olympic Charter is applicable and if Swiss law is deemed "*appropriate*" (Article 17 of the Ad Hoc Rules), at least "*on a subsidiary basis*

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<sup>24</sup> Arbitration CAS 2015/A/4208 Horse Sport Ireland (HSI) & Cian O'Connor v. Fédération Equestre Internationale (FEI), award of 15 July 2016 (operative part of 4 January 2016).

*should the need arise to fill a possible gap in the Olympic Charter*<sup>25</sup> or in any other applicable regulations issued by sport bodies domiciled in Switzerland<sup>26</sup>.

### **III. Conclusion**

In the world of international disputes, the CAS Ad Hoc Rules and the CAS Ad Hoc Division are unprecedented. It is a perfect example of a dispute resolution system adapting to the particularities of the dispute by providing efficient and tailor-made solutions. Allowing flexibility in hearing schedules, accommodating urgent requests for relief, and carefully weighing the interests of all parties involved, are fundamental to ensuring the integrity and smooth running of the Olympic Games 2024 and to provide a fair and efficient dispute resolution mechanism for athletes in the pursuit of their Olympic dream.

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<sup>25</sup> CAS ad hoc Division OG 22/011, *Evan Bates et al. v. IOC*, para. 59.

<sup>26</sup> CAS ad hoc Division OG 16/018 8 *Kiril Sveshnikov, Dmitry Sokolov & Dmitry Strakhov v. UCI*, para. 6.2 ; CAS ad hoc Division OG 14/002 *Clyde Getty v. FIS*, para. 7.3 ; CAS ad hoc Division OG 04/005 2 *David Calder & Christopher Jarvis v. FISA*, para. 2.