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Swiss Federal Supreme Court
I. Civil Law Division
Av. du Tribunal fédéral 29
1000 Lausanne 14

January 7, 2025

Case No. 4A_510/2024 / ABS: Comments on the Responses of the Respondents and the Statement of the CAS

Dear Mr. President
Dear Federal Judge [REDACTED]
Dear Federal Judges

In the matter of

Jordan Lucella Elizabeth Chiles

Applicant

[REDACTED]
individually represented by Attorney Gabrielle Nater-Bass, Attorney Dr. Stefanie Pfisterer, Attorney Richard G. Allemann and Attorney Frédéric Fitz, Homburger AG, Prime Tower, Hardstrasse 201, 8005 Zurich

against

Federation Romanian Gymnastics

Respondent 1

[REDACTED]
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Ana Maria Bărbosu

Respondent 2

[REDACTED]
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and

Fédération Internationale de Gymnastique

Avenue de la Gare 12A, 1003 Lausanne

**FIG /
Respondent 4**

individually represented by Attorney Dr. Vincent Jäggi, Attorney Riccardo Coppa and Attorney Dr. Michael Kottmann, Kellerhals Carrard Lausanne/Sion SA,
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together the Respondents

as well as

Donatella Sacchi

c/o Fédération Internationale de Gymnastique,
Avenue de la Gare 12A, 1003 Lausanne

Interested Party 1

USA Gymnastics

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**USAG /
Interested Party 2**

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regarding the arbitral award of August 10 and 14, 2024, of the Court of Arbitration for Sport, Ad Hoc Division – Games of the XXXIII Olympiad in Paris, Arbitration Case No. CAS OG 24-15 / CAS OG 24-16 (Arbitration)

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Reasoning

I. Formalities

- 1 By order dated December 3, 2024, received on December 4, 2024, the Applicant was informed of the responses from Respondents 1, 2, and 4, the statement from Interested Party 2, and the submission from the CAS (act. 20, 22, 24, and 26) and was notified that any comments should be made by December 18, 2024. By order dated December 11, 2024, this deadline was extended to January 7, 2025.
- 2 With the present submission, the Applicant submits brief comments on the responses from Respondents 1 and 2 (act. 26) as well as 4 (act. 24) within the deadline. The two responses are addressed together in this statement.
- 3 The Applicant welcomes that Respondent 4 materially supports the Applicant's position – for example, by stating the following:

"[L]a FIG considère que tant les parties à la procédure arbitrale que la Chambre Ad Hoc du TAS étaient soumises à des contraintes temporelles extrêmement contraignantes [...]. Ces contraintes ont eu un impact important sur la capacité des parties à apporter des moyens de preuve nécessaires et celle de la formation arbitrale à les apprécier. [...] [L]a FIG se doit de relever que ces contraintes temporelles auraient pu (et dû) être évitées." (act. 24, para. 62 et seq.)

"En tranchant le litige [...] sans être en possession de tous les moyens de preuve nécessaires, elle a pris le risque de rendre une décision matériellement incorrecte et qui prive injustement une athlète de sa médaille olympique." (act. 24, para. 24)

"[I]l existe actuellement un nouveau moyen de preuve qui tendrait à contredire les constatations de fait que la formation arbitrale a cru pouvoir tirer sur la base des preuves dont elle disposait à l'audience." (act. 24, para. 82)
- 4 Furthermore, the Applicant notes that the CAS Ad hoc Division and the CAS Panel have waived submitting a statement and rightly do not dispute the existence of the conditions for revision pursuant to Art. 190a PILA (act. 22). Anything else would have been contradictory, given that the CAS Ad hoc Division justified the non-admission of the reconsideration request in its email of August 11, 2024, partly with the possibility of a revision procedure before the Federal Supreme Court (act. 4/47).
- 5 The Applicant has no comments on the response from Interested Party 2 (act. 20).
- 6 The Applicant has adjusted the heading according to the party selection made by the Federal Supreme Court as per the order dated September 19, 2024. Regarding Donatella Sacchi, now listed as Interested Party 1, the Applicant notes that the CAS Panel denied its jurisdiction *ratione personae* over her (act. 2, para. 37; award, para. 91), which is not reflected in the dispositive part of the arbitral award (award, p. 29).

- 7 The Applicant uses the same abbreviations as in the request for revision (act. 2). All time indications continue to refer to Central European Time (**CET**), unless otherwise noted (act. 2, para. 26).

II. Facts (act. 26, para. 1 et seqq.; act. 24, para. 57 et seqq.)

A. The RoS Video Undeniably Contains Footage of the Olympic Floor Exercise Final on August 5, 2024

- 8 The Applicant has stated in the request for revision that the RoS video contains footage of the Olympic floor exercise final on August 5, 2024 (act 2, para. 123 and 141 et seqq.). To the extent that Respondents 1 and 2 argue that the video and audio recordings contained in the RoS video were only compiled into a "collage" by a RoS employee on August 11, 2024 (act. 26, para. 85), this is irrelevant for the existence of the conditions for revision (below, para. 61 et seqq.). What is decisive in this context is that Respondents 1 and 2 do not dispute and partly even explicitly acknowledge in their response that:
- the five video tiles and the audio track seen or heard in the RoS video each represent recordings of the Olympic floor exercise final on August 5, 2024, in the Bercy Arena and depict the end of the Applicant's routine and the events in the following minutes (see, e.g., act. 26, para. 153: *"les séquences vidéo 'brutes' filmées par les trois caméras de RoS lors de la finale au sol"*);
 - the video and audio recordings shown or heard in the RoS video were **all recorded on August 5, 2024**, i.e., well before August 10, 2024 (e.g., act. 26, para. 153: *"disponible quelques heures après la capture des images live"*);
 - the synchronization between the video recordings and with the audio recording (see act. 26, para. 88) is correct, i.e., they run simultaneously; and
 - the RoS clock shows the correct time, i.e., the events recorded in the video and audio recordings took place between 3:29:08 PM and 3:35:59 PM on August 5, 2024 (see act. 26, para. 89 and 106 et seq.).
- 9 It is already established that the RoS video exclusively shows evidence created before August 10, 2024 (see below, para. 63 et seq.). Furthermore, the Respondents 1 and 2 rightly do not dispute that the merging of video recordings (act. 26, para. 82: *"images 'brutes'"*) and audio recordings **always** technically occurs afterwards when the audio recordings are made with a separate lapel microphone and not with a camera microphone. Finally, the RoS video serves as evidence of a pre-existing fact, which is why the RoS video is a permissible piece of evidence anyway.
- 10 The Respondents 1 and 2 go even further and try to conjure up numerous technical inconsistencies in connection with the RoS video, such as criticizing the lack of metadata of the video file or the designation of the video file as 'v3' (act. 26, para. 94 et seqq.). It remains unclear what they want to derive from these assertions. In any case, they are

irrelevant for the purposes of the request for revision and will – if at all – only be examined by the CAS Panel and not by the Federal Supreme Court (see below, para. 76 et seqq.). If the Respondents 1 and 2 intend to question the authenticity of the RoS video or even suggest fraudulent activities or the falsification of evidence without providing the slightest proof, this would not only be completely speculative but also defamatory. The Applicant reserves all rights in this regard.

11 Moreover, the insinuations of the Respondents 1 and 2 are absurd:

- The entry '*Date created*[:] 16/09/2024 09:26' (act. 26, para. 94) in the file properties of act. 4/11 indicates the time when the IT department of Homburger loaded the RoS video file onto the USB stick in act. 3/11 in the set-aside procedure No. 4A_494/2024. On September 16, 2024, the Applicant had submitted her motion to set aside (see act. 2, para. 23).
- The fact that the files of the RoS video submitted by the Applicant and the Interested Party 2 differ marginally in terms of other file properties is also easy to explain: In the reconsideration request of August 11, 2024, attorney Paul Greene submitted the RoS video by providing the web link created by RoS, under which the RoS video could be accessed (act. 4/46, p. 2; act. 4/51, p. 1). The RoS video had to be streamed from the internet by Homburger and probably also by Schellenberg Wittmer and copied using screen recording. It is normal that files with different properties are generated in this process.
- The (unsubstantiated) allegation by the Respondents 1 and 2 that the files of the RoS video submitted in the present revision procedure and in the set-aside procedure No. 4A_494/2024 (act. 4/11) do not correspond to the video that the Applicant and the Interested Party 2 submitted to the CAS Panel on August 11, 2024, via web link in their reconsideration request (act. 26, para. 93; see act. 4/46) is made against better knowledge. Attorney Greene forwarded the Applicant's reconsideration request to the CAS Panel on August 11, 2024, to the legal representatives who represented the Respondents 1 and 2 in the arbitration proceedings (Exhibit 74). They could also access the RoS video via the aforementioned web link. The Respondents 1 and 2 are therefore well aware that the RoS video now submitted as act. 4/11 is identical to the one that could be streamed via the mentioned web link.¹

Evidence:

- Email from attorney Greene dated August 11, 2024, at 10:04 PM,

Exhibit 74

¹ Furthermore, it should be noted that copies of documents are presumed to have the evidentiary value of the original (DIKE BGG-DOLGE, BGG 42 N 12; BSK BGG-MERZ, BGG 42 N 27). This presumption cannot be overturned by the unsubstantiated allegations of the respondents 1 and 2.

B. It Was Not To Be Expected that RoS Had Recordings of the Applicant's Verbal Inquiry

1. Introductory Remarks

- 12 In her reconsideration request of August 11, 2024, and later in her request for revision, the Applicant stated that she first learned on August 11, 2024, that audio and video recordings of the Inquiry by Cécile Canqueteau-Landi existed. She also explained in detail that she was not able to search for and submit suitable evidence within the exceptionally short procedure duration (act. 4/46; act. 2, para. 121 et seqq.). This was particularly due to her late notification by the CAS Ad hoc Division and the CAS Panel's refusal to refer the arbitration to the ordinary CAS procedure or to extend the deadline for the Applicant's only written submission or to postpone the nearly five-hour arbitration hearing (see act. 2, para. 109 and 174 et seqq.).
- 13 Respondent 4 explicitly acknowledges this when stating that the Applicant was subject to "*des contraintes temporelles extrêmement contraignantes*" and that "**[c]es contraintes ont eu un impact important sur la capacité des parties à apporter des moyens de preuve nécessaires et celle de la formation arbitrale à les apprécier**" (act. 24, para. 62, emphasis added; see also para. 24 and 78). As Respondent 4 also acknowledges, it would have been easy to counteract the unnecessary time pressure by applying Art. 20 lit. c CAS OG Rules and referring the dispute to the ordinary CAS procedure (act. 24, para. 63 et seqq. and 80), especially due to the Applicant's late notification (act. 24, para. 68; see also act. 24, para. 63: "*contraintes temporelles [qui] auraient pu (et dû) être évitées*"). These submissions by Respondent 4 are all the more significant as it considers itself a neutral party in the present dispute (act. 24, para. 7 et seqq.).
- 14 To contest this, Respondents 1 and 2 dedicate more than one third of their response to the request for revision to the attempt, through predominantly unsubstantiated, misleading, and factually incorrect assertions, to create the impression that the Applicant was intimately familiar with the production of the Netflix documentary "*Simone Biles: Rising*" and the filming of RoS, so that it would have been obvious to the Applicant on August 9 and 10, 2024, that RoS had video and audio recordings of the Verbal Inquiry.
- 15 The arguments of Respondents 1 and 2 are largely based on speculation, exaggerations, and distortions of statements made by the director of "*Simone Biles: Rising*", Katie Walsh. Contrary to the assertions of Respondents 1 and 2, the Applicant had nothing to do with the production of "*Simone Biles: Rising*" and therefore had no insight into the circumstances of the documentary's creation either before or during the 2024 Olympic Games or the arbitration proceedings. The Applicant had (and still has) no knowledge of the production processes, such as whether post-production ("*editing*") by Netflix was already taking place in parallel with the filming (act. 26, para. 79), how quickly the recordings from RoS could be retrieved internally at Netflix or RoS for viewing (act. 26, para. 79, 153), whether Katie Walsh retained video material for future documentaries or

episodes after the production of "*Simone Biles: Rising*" (act. 26, para. 48), or to what extent Cécile Canqueteau-Landi was filmed by RoS.

- 16 To the extent that the Applicant disputes the arguments of Respondents 1 and 2 below, she can only do so based on publicly available information, particularly the interviews of the US podcast GymCastic with director Katie Walsh, published on YouTube on July 21 and October 30, 2024 (the **July interview** and the **October interview**), as well as episodes 3 and 4 of "*Simone Biles: Rising*". Respondents 1 and 2 have violated the rule that exhibit must be submitted in its entirety (e.g., BSK-DOLGE, CPC 180 N 12) by submitting only isolated (very short) excerpts from these documents. The exhibit and the corresponding allegations of Respondents 1 and 2 are therefore inadmissible. The excerpts submitted by Respondents 1 and 2 are largely taken out of context. Respondents 1 and 2 even distort the statements of Katie Walsh in some cases in a factually incorrect manner. The Applicant submits the exhibit in full here solely to demonstrate the false impression that Respondents 1 and 2 are creating with their excerpts.

Evidence:

- | | |
|--|------------|
| — Interview by GymCastic with Katie Walsh on July 21, 2024, | Exhibit 75 |
| — Interview by GymCastic with Katie Walsh on October 30, 2024, | Exhibit 76 |
| — "Simone Biles: Rising", Episode 3, | Exhibit 77 |
| — "Simone Biles: Rising", Episode 4, | Exhibit 78 |

2. The Focus of the RoS Filming Was on Simone Biles

- 17 In their response to the request for revision, Respondents 1 and 2 misleadingly claim that, in addition to Simone Biles, her "*entourage*" was also always in the permanent focus of the Netflix documentary or the RoS filming, particularly the Applicant and her coach Cécile Canqueteau-Landi (e.g., act. 26, para. 45, 47, 71, and 78). The latter were therefore almost like a shadow permanently accompanied by the RoS cameras or Katie Walsh (act. 26, para. 59, 69, and 71: "*de près*", para. 78 and 81: "*(omni)présence*"). Accordingly, the Applicant and Cécile Canqueteau-Landi are shown very often in episodes 3 and 4 of the Netflix documentary (act. 26, para. 68: "*très souvent*", para. 73: "*à plusieurs reprises*").
- 18 The arguments of Respondents 1 and 2 are either gross exaggerations, misleading, or factually incorrect.
- 19 As Respondents 1 and 2 themselves state, the protagonist of "*Simone Biles: Rising*" is Simone Biles, and exclusively Simone Biles (cf. act. 26, para. 43). Simone Biles is the most decorated gymnast in the history of the sport worldwide. Even before the 2024 Olympic Games, she had won 30 medals at World Championships and seven medals at the Olympic Games. Since the 2024 Olympic Games, the total is 41 medals (Exhibit 79). It is well known that Simone Biles performs at a level that far surpasses all other gymnasts in the history of the sport. As Katie Walsh also states in the October interview:

"No one is like Simone. Everybody wants to meet her, everybody wants a picture, everybody wants a pen, everyone wants something [...]" (Exhibit 76, 27:50).79

Evidence:

— Wikipedia entry on Simone Biles,

Exhibit 79

- 20 Episodes 3 and 4 of the documentary show how Simone Biles deals with her problems after the mental breakdown highlighted in Episode 2 at the 2020 Tokyo Olympic Games, works her way back up despite all adversities, and finally successfully returns to the Olympic Games. Accordingly, all the episode titles are formulated in the first person (e.g., "*I will not be broken*", "*I will not defy the odds*", and "*I will rise*"). This was also emphasized by Katie Walsh in the October interview:

"The stuff that is **really focused on Simone and Simone's experience**. [...] Now, you're seeing it **from Simone's perspective**." (Exhibit 76, 04:20, emphasis added)76

"Part of the idea behind this film is that there is the outside world that looks in and comes up with their vision of who Simone is and, you know, what she's all about and there is **the way how she is perceiving the world** around her. **It is like from the inside out**." (Exhibit 76, 13:37, emphasis added)

- 21 It is already evident from this that the filming of RoS for the Netflix documentary was entirely focused on Simone Biles and not on other individuals, such as the Applicant or Cécile Canqueteau-Landi. Contrary to the assertions of Respondents 1 and 2, the Applicant **is not part of Simone Biles' "entourage"** (act. 26, para. 45, 46, and 47), but a gymnast independent from Simone Biles. To the extent that Respondents 1 and 2 want to create the impression that the Applicant was almost permanently near Simone Biles or was present at the 2024 Olympic Games, this is not only completely unsubstantiated and unproven but simply false. This remains unchanged by the fact that the Applicant and Simone Biles both competed for the USA in gymnastics at the Olympic Games (act. 26, para. 6).
- 22 The statement in act. 26, para. 73, that the Applicant "*est souvent filmée et apparaît à plusieurs reprises*" is contrary to the records: In episodes 3 and 4 of "*Simone Biles: Rising*," the Applicant is seen on screen for a total of **less than 45 seconds**. Even in the short sequences contained in act. 27/17-22, the camera focus is exclusively and clearly on Simone Biles, while the Applicant is only visible in the background or out of focus. The insinuations by Respondents 1 and 2 that the Applicant consciously interacts with the cameras in these sequences (act. 26, para. 73: "*on la voit parfois poser et sourire pour les caméras*"; "*s'amusant copieusement devant la caméra*") are completely unfounded. In act. 27/16, the Applicant is not shown at all, contrary to the allegations of Respondents 1 and 2. Act. 27/20 and 27/21 mostly consist of Instagram footage taken and published by Simone Biles, Team USA, and USAG – **not by RoS**.
- 23 The fact that the Applicant was not the focus of RoS's filming is also evident from the RoS video itself: The Applicant's routine was not filmed by any of the three RoS cameras (act. 4/11, from 15:29:08; see also para. 40 below).

- 24 To the extent that Respondents 1 and 2 claim that group scenes are among Katie Walsh's favorite moments (in the plural, act. 26, para. 74: "*scènes collectives*", "*moments favoris*"), this is a misquote. The statement by Katie Walsh, quoted in indirect speech in act. 27/23, on which this allegation is based, refers to a single scene, namely the athlete registration (see act. 27/23, p. 3: "*athlete processing*"), where Simone Biles, along with seven other athletes, tries on uniforms for the opening and closing ceremonies of the 2024 Olympic Games.
- 25 Cécile Canqueteau-Landi was also **only occasionally the focus of the filming**, contrary to the assertions of Respondents 1 and 2, and **exclusively in connection with the training or routines of Simone Biles**. Since the documentary is entirely dedicated to Simone Biles, Cécile Canqueteau-Landi was naturally **only** filmed or recorded **in her role as Simone Biles' coach**. Accordingly, Cécile Canqueteau-Landi is shown exclusively in scenes with Simone Biles in episodes 3 and 4 of "*Simone Biles: Rising*". Occasionally, short excerpts from focus interviews with Cécile Canqueteau-Landi are shown. However, these were not spontaneously recorded as a result of the (allegedly) constant presence of the RoS cameras but were conducted in pre-arranged, seated interviews. Apart from these focus interviews, Cécile Canqueteau-Landi is seen on screen for less than two minutes in episodes 3 and 4 of "*Simone Biles: Rising*", mostly in the background (Exhibits 77 and 78). For the same reason, it was never assumed that the lapel microphone recorded Cécile Canqueteau-Landi's statements far beyond Simone Biles' routine during the floor exercise final on August 5, 2024.
- 26 It is already evident from this that the assertion by Respondents 1 and 2 that RoS constantly followed Cécile Canqueteau-Landi step by step before and during the 2024 Olympic Games and recorded practically every gesture and word from her (act. 26, para. 69: "*tous ses gestes et paroles*") cannot be true.
3. **RoS Did Not Have Comprehensive Access Rights at the 2024 Olympic Games, Particularly Not to The Floor Area**
- 27 The assertion by Respondents 1 and 2 that, thanks to extensive access rights, the RoS team was able to accompany the Applicant and Cécile Canqueteau-Landi almost permanently at the 2024 Olympic Games (act. 26, para. 64 and 71 et seq.: "*de près*"; "*pratiquement partout*"; "*à tout moment quand celle-ci [i.e., Simone Biles] était avec ses collègues*") is also false. Even the out-of-context quote from Katie Walsh from the July interview does not support this (act. 26, para. 72: "*anytime*"): This refers not to the 2024 Olympic Games but to the 2023 World Championships in Antwerp, which took place almost a year before the 2024 Olympic Games (Exhibit 75, from 3:30). Moreover, Katie Walsh explains at this point that RoS's access rights at the 2023 World Championships were **limited**: RoS was only allowed to film in a small conference room at Simone Biles' hotel (Exhibit 75, 04:00). Access to the rest of the hotel and especially to Simone Biles' hotel room was not permitted to RoS (Exhibit 75, 04:25). As a makeshift solution, RoS

staged a breakfast scene with Simone Biles and her parents in this conference room to still convey an impression of naturalness and spontaneity (Exhibit 75, from 04:34).

- 28 Even at the 2024 Olympic Games, RoS did not have such extensive access rights as Respondents 1 and 2 want the Federal Supreme Court to believe. The only exhibit that Respondents 1 and 2 offer for this allegation is again a completely out-of-context quote from the July interview with Katie Walsh: Katie Walsh only responds to the question of whether access to Simone Biles would be **better than at the 2023 World Championships**, where RoS – as already mentioned (above, para. 27) – had only extremely restrictive access rights (Exhibit 75, 16:46: "*How much access will you have to Simone when you get to the Olympics – I'm assuming it's different than Worlds and US meets. Or will it be similar to Worlds 2023?*"). Katie Walsh responds in the incompletely quoted part in act. 26, para. 53, that she assumes (Exhibit 75, 17:00: "*I think ...*"; "*My understanding is ...*") that access would be much better than at the 2023 World Championships. However, she immediately qualifies: "*There's going to be places where I can't go*" (Exhibit 75, 17:45). In response to the interviewer's question, she clarifies (Exhibit 75, from 05:09, emphasis added):

"[GymCastic:] So with the access to [...] Simone, her hotel room, are those [...] USAG rules that [...] they have to be very strict and specific about that kind of stuff?

[Katie Walsh:] Yes. [...] **They're really careful with where you film and what you film, so we have to make sure we're staying in those boundaries.**"

- 29 Katie Walsh later confirmed this, among other things, in the October interview, where she explained that RoS was not allowed in the Floor Area at the 2024 Olympic Games competitions – including the floor exercise final on August 5, 2024 (Exhibit 76, 20:37):

"We were **on the perimeter, we weren't actually allowed on the proper floor itself** [...]."

- 30 **This means that the RoS team did not have access to the zone where the Applicant and Cécile Canqueteau-Landi were after the Applicant's routine and where the technical assistants responsible for receiving inquiries were stationed.**

- 31 This also explains why a significant portion of the footage of the Olympic competitions shown in episodes 3 and 4 of "*Simone Biles: Rising*", including the close-ups of the routines, did not come from RoS but from NBC, OBS, and other television networks such as CBS, CBC, ABC, PBS, and CNN (see Exhibit, 43:48: "*Footage provided by*" and "*Additional footage*"). Unlike RoS, these networks had access to the Floor Area. As already explained in the request for revision, the publicly available footage following the floor exercise final does not contain any video, let alone audio recordings of the Applicant's verbal inquiry (act. 2, para. 101).

- 32 Because RoS did not have comprehensive access to the Floor Area in the Bercy Arena, the RoS team's filming was regularly hindered in purely practical terms (Exhibit 76, 21:20; see also 4/11, where the view of the events is repeatedly obstructed by people):

"There were **many times – Just me filming from the walls**, I couldn't find her [i.e., **Simone Biles**] in the mix. I was looking through the lens, trying to capture her but **I had no shot because there are three or four people in front of me**, between me and the camera."

- 33 These access restrictions and practical difficulties already show that the allegation by Respondents 1 and 2 that RoS was practically "*omnipresent*" at the 2024 Olympic Games competitions and recorded every single gesture of Cécile Canqueteau-Landi (act. 26, para. 69: "*tous ses gestes*") cannot be true (see also above, para. 18).
- 34 Since RoS did not have access to the *Floor Area* – i.e., precisely the zone where Cécile Canqueteau-Landi, the Applicant, and the technical assistants were during and after the routines – it was not to be expected from the outset that the RoS cameras had captured footage relevant to the present dispute.
- 35 Contrary to the speculations of Respondents 1 and 2 (act. 26, paras. 67 and 81: "*(omni)présence [...] des microphones*"), Cécile Canqueteau-Landi did not regularly wear RoS lapel microphones during and in the run-up to the 2024 Olympic Games. The excerpts from episode 3 of "*Simone Biles: Rising*" cited in act. 26, para. 67 – the only evidence offered for this allegation – do not support this assertion: For example, the footage of Cécile Canqueteau-Landi reproduced in act. 27/11 is a so-called voiceover, i.e., the audio track does not come from the time of the scene shown in the picture but was added later. In the excerpts in act. 27/12 and 27/13, Cécile Canqueteau-Landi's voice is barely audible, which would not be the case if she had been wearing a lapel microphone. It is also not clear how the conversation shown in the training scene in act. 27/14 was recorded. These scenes thus refute the blanket allegation by Respondents 1 and 2 that Cécile Canqueteau-Landi was almost permanently equipped with a lapel microphone during the 2024 Olympic Games (act. 26, para. 69: "*tous ses gestes et paroles*", emphasis added).

4. The RoS Filming Did Not Focus on The Floor Exercise Final

- 36 The assertion by Respondents 1 and 2 that the RoS team accompanied the Applicant and Cécile Canqueteau-Landi **to all competitions** remains unsubstantiated (act. 26, para. 47 et seq.). Rather, the October interview with Katie Walsh reveals that the RoS filming, in consultation with Simone Biles, was initially focused on the all-around and team finals and thus **not on the floor exercise final on August 5, 2024** (act. 27/9a, 01:21: "*Those were the events that were most important to her [i.e., Simone Biles], so that's where we went*").
- 37 RoS had already decided in advance to limit the portrayal to two finals to avoid making the storyline too repetitive (Exhibit 76, 03:14). The all-around final was conceived as the actual climax of Episode 4 (Exhibit 76, 03:09).
- 38 Therefore, it was not expected from the outset that the RoS team would record the floor exercise final on August 5, 2024, with the same attention as the all-around and team finals. Contrary to act. 26, para. 48, Katie Walsh does not mention in the October

interview that she kept video recordings of the 2024 Olympic Games, let alone the floor exercise final on August 5, 2024, for future documentaries or episodes of "*Simone Biles: Rising*".

5. It Was Not to Be Expected That RoS Had Recordings of the Verbal Inquiry Submitted by Cécile Canqueteau-Landi on Behalf of the Applicant

39 Since neither the floor exercise final in general nor the Applicant in particular were ever the focus of RoS filming (above, para. 17 et seqq. and 36 et seqq.) and Cécile Canqueteau-Landi was only sporadically filmed by RoS in her role as Simone Biles' coach (above, para. 25), it was not expected from the outset that RoS would have recordings of the Applicant's routine or the following minutes.

40 This is also illustrated by the RoS video itself (act. 4/11):

- The Applicant's routine was not recorded at all by the three RoS cameras (act. 2, para. 61) (act. 4/11, from 15:29:08; see also above, para. 23).
- A few seconds after the end of the Applicant's routine, all three RoS cameras were successively turned off completely (act. 4/11, from 15:29:58) and were only sporadically reactivated during the further course of the RoS video.
- As far as the RoS cameras were turned on at all during the further course of the RoS video, their focus was on the atmosphere in the stands of the Bercy Arena, especially among the Brazilian fans, and on the gold medalist Rebeca Andrade, who had already been in first place before the Applicant's routine and on whom even two RoS cameras were occasionally focused (e.g., act. 4/11, from 15:30:30).
- Neither the Applicant's reaction to the initial display of her score nor her emotional reaction to the later approval of the inquiry and increase of her D-score were recorded by the RoS cameras (act. 4/11, from 15:33:53). These scenes are only visible in the recordings of NBC and OBS (act. 4/11, *ibid.*).
- Cécile Canqueteau-Landi was also by no means filmed at every step by the cameras, as Respondents 1 and 2 contend (act. 26, para. 60: "*suivaient constamment les mouvements de l'entraineure Cécile Canqueteau-Landi ...*"; para. 64: "*l'équipe de RoS la suivait de près, par le biais de trois caméras*"). On the contrary, Cécile Canqueteau-Landi is always seen from a distance in the RoS video and – with the exception of the recording between 15:32:55 and 15:33:27 (see act. 2, para. 64 et seq.) – mostly obscured by other people.

41 The lack of systematic and coordinated filming illustrates that the RoS cameras did not focus on the events in the Bercy Arena related to the Applicant's routine, because (i) the floor exercise final was not one of the competitions RoS focused on from the outset and (ii) Simone Biles' routine was already long over (see above, para. 17 et seqq. and 36 et seqq.). There can be no talk of a "*coordinated dance*" of the RoS cameras around the Applicant and Cécile Canqueteau-Landi (act. 26, para. 155). The random recordings also

show that it was effectively a coincidence that any recordings of the minutes following the Applicant's routine exist at all (act. 2, para. 182 et seqq.).

- 42 Moreover, Respondents 1 and 2 themselves acknowledge that there was deafening noise in the Bercy Arena during the final on August 5, 2024, and especially in the minutes after the Applicant's routine (act. 26, para. 63: "*le bruit assourdissant des spectateurs, qui l'oblige* [i.e., Cécile Landi-Canqueteau] *parfois à se couvrir les oreilles*"). Under these circumstances, it would have been highly uncertain for RoS whether any usable audio recordings of statements or conversations between people with lapel microphones were made at all.

6. The Accusation of Lack of Attention and Care by the Applicant Is Unfounded

- 43 Respondents 1 and 2 then accuse the Applicant of gross negligence and breaches of duty of care (para. 150: "*manqué de diligence*"), among other things, because she was allegedly unaware of the RoS team's presence at the floor exercise final (act. 26, para. 78: "*la requérante ne pouvait ignorer la présence de Katie Walsh*").

- 44 These accusations are not only unjustified but also incomprehensible: Respondents 1 and 2 are well acquainted with the enormous media presence and extraordinary performance pressure on athletes at international competitions from their own experience. The mental struggle to maintain focus on one's performance and actively block out distractions in such high-pressure situations after years of training is the main theme of the Netflix documentary introduced into this proceeding by Respondents 1 and 2 (see Exhibits 77 and 78 and as well as above, para. 20). It is therefore highly perplexing that Respondents 1 and 2, of all parties, reproach the Applicant of not paying attention to the filming of a documentary about another athlete or failing to notice the presence of the RoS team amidst the hordes of media personnel at these competitions (see, for example, act. 4/11, from 15:29:45) during the extreme situations of the 2020 and 2024 Olympic Games, the qualification rounds for the Olympic Games, or the World Championships.

- 45 The same applies *mutatis mutandis* to the arguments of Respondents 1 and 2 regarding Cécile Canqueteau-Landi. International competitions also demand the highest level of concentration and resilience from the coaches of top athletes like Simone Biles and the Applicant. The responsibility they bear goes far beyond the physical performance of their athletes, they also serve as their mental and emotional support.

C. The RoS Video Shows that the Verbal Inquiry By The Applicant Was Raised In A Timely Manner

- 46 In their response, Respondents 1 and 2 further argue that the RoS video does not establish that the Verbal Inquiry by the Applicant was raised in a timely manner (act. 26, para. 105 et seqq.).

- 47 Respondents 1 and 2 fail to recognize that this question will also need to be examined by the CAS Panel. The Federal Supreme Court, in the present revision proceedings, only needs to determine whether the RoS video is **capable** of altering the factual basis of the challenged arbitral award, so that a correct legal assessment could lead to a different decision (see act. 2, para. 151 et seqq., as well as below, para. 76 et seqq.).
- 48 Respondents 1 and 2 do rightly not dispute that the RoS video is indeed capable of altering the factual basis of the contested arbitral award.
- 49 Since Respondents 1 and 2 make numerous false assertions regarding the RoS video, the Applicant is compelled to briefly address them at this point:
- 50 Contrary to the allegations of Respondents 1 and 2, the RoS video clearly demonstrates the timeliness of the Verbal Inquiry raised by Cécile Canqueteau-Landi on behalf of the Applicant (act. 26, para. 105 et seqq.). The Applicant refers to the second-by-second depiction of the RoS video's content in her request for revision (act. 2, para. 66 et seqq.). Respondents 1 and 2 explicitly acknowledge this (act. 26, para. 106 et seq.; see also above, para. 8). In particular, Respondents 1 and 2 explicitly acknowledge that the Verbal Inquiry on behalf of the Applicant was raised three times and loudly in seconds 49 ("*Inquiry for Jordan*"), 57 ("*Inquiry for Jordan*"), and 59 ("*For Jordan*") after the initial display of the score (act. 26, para. 107: "*crier*", "*plus fort*"; see in detail act. 2, para. 66). Furthermore, Respondents 1 and 2 acknowledge that at least the statements audible in seconds 57 and 59 in the RoS video were made by Cécile Canqueteau-Landi (act. 26, para. 107).
- 51 Nevertheless, Respondents 1 and 2 speculatively allege that the Technical Assistants did not hear the Verbal Inquiry declared three times by Cécile Canqueteau-Landi in seconds 49, 57, and 59 after the initial display of the score (act. 26, para. 107). This is obviously incorrect:
- First of all, the RoS video audibly confirms the receipt of the Verbal Inquiry in second 60 with a "*Thank you*" (act. 4/11, 15:32:52). This indicates that Cécile Canqueteau-Landi was standing next to the relevant Technical Assistant at that moment and that the Verbal Inquiry was received in a timely manner by the third declaration "*For Jordan*" in second 59 after the initial display of the score. Respondents 1 and 2 also seem to assume that the Verbal Inquiry was understood and thus received by the Technical Assistants after the first declaration of the Inquiry in second 49 when they quote the following statement by Cécile Canqueteau-Landi without dispute: "***I know she noted [correctly: *nodded*], yes, when I started yelling***" (act. 26, para. 36; act. 4/9, p. 66 / para. 4, emphasis added).
 - Furthermore, the triple declaration of the Verbal Inquiry by Cécile Canqueteau-Landi may also be attributed to a previous misunderstanding on the part of the Technical Assistants regarding a Verbal Inquiry raised on behalf of Simone Biles. This misunderstanding led to the Verbal Inquiry by Simone Biles not being transmitted to the Superior Jury at all (see act. 2, para. 53) (act. 26, para. 63). Against this

background, Cécile Canqueteau-Landi wanted to ensure with absolute clarity that the Verbal Inquiry by the Applicant was registered by the Technical Assistants. Her third and final declaration "*For Jordan!*" can therefore only be understood as a further confirmation of the Verbal Inquiry already transmitted in second 49 (act. 2, para. 66, 6th bullet point).

- Finally, the Respondents 1 and 2 fail to recognize that mentioning the name of the Applicant to the Technical Assistants and thus the third and final declaration "*For Jordan!*" at second 59 was actually not necessary at all: In the period after the Applicant's performance, a Verbal Inquiry for another finalist would have been long overdue. Therefore, the Verbal Inquiry raised by Cécile Canqueteau-Landi could only refer to the Applicant, who had performed her routine as the ninth and last athlete (act. 2, para. 47).

52 Once again, despite better knowledge, the Respondents 1 and 2 make subtle insinuations that the Verbal Inquiry must be declared directly at the table of the Technical Assistants or that the "*note de départ*" – meaning the requested score or improvement – must be included (act. 26, para. 107 and 109). These alleged additional requirements are not derived from Art. 8.5 Technical Regulations (act. 1/8), lack any other basis, and unsurprisingly remain completely unsubstantiated.

D. Comments on the Arbitration Process and the Testimony of Cécile Canqueteau-Landi at the Arbitration Hearing

53 In their response, the Respondents 1 and 2 repeat the grossly incorrect findings in the arbitral award (award, para. 137) that the Applicant did not dispute that the one-minute rule for the Verbal Inquiry was violated (act. 26, para. 25 and 28). As the Applicant has shown in detail in her request for revision, both attorney Greene and the witness Cécile Canqueteau-Landi did indeed dispute this and questioned the (demonstrably inconclusive) Omega report (act. 2, para. 105 and 107 et seq.). Even Respondent 4 – the federation responsible for the competition and thus for compliance with the rules – stated in the arbitration proceedings that the Omega report does not record the time of the Verbal Inquiry (see act. 2, para. 103). In their response, Respondent 4 also emphasizes that "*la position de la FIG a toujours été celle de considérer qu'il y avait (forcément) une différence entre le moment où la verbal inquiry a été effectivement formulée (par oral) par Mme Canqueteau-Landi et le moment de son enregistrement dans le système d'Omega qu'effectue l'inquiry officer en pressant le bouton correspondant sur sa tablette*" (act. 24, para. 74). The Applicant refers to the corresponding statements in her request for revision and the clear statements of the parties during the hearing (act. 2, para. 101 et seq. and 118).

54 As Respondent 4 rightly emphasizes (as the Applicant already did in her request for revision, see act. 2, para. 114), even the arbitral tribunal concluded that the Omega report as evidence was "*not fully responsive to the information the Panel had sought*" (act. 24, para. 76). Respondent 4 also rightly points out that the findings made elsewhere,

that the state of evidence was "*crystal clear*", is in total contradiction to this (act. 24, para. 77). It is evident that the CAS Panel felt compelled to rely on the Omega report solely due to the insufficient state of the evidence (erroneously and without any reason, see para. 74).

- 55 Regarding act. 26, para. 24 et seqq., concerning the receipt of the Omega report by attorney Paul Greene, the Applicant allows herself the following clarifications (see already act. 2, para. 93): Respondent 4 submitted the Omega report at 5:29 PM. However, attorney Greene was not copied into this correspondence (act. 2, para. 96; act. 4/43). The download folder forwarded to attorney Greene logically did not contain the Omega report, as the former had already been forwarded to attorney Greene at 5:16 PM (act. 2, para. 91; act. 4/38). At 8:38 PM, the CAS Ad hoc Division circulated Respondent 4's submission along with the Omega report again, this time also to attorney Greene (act. 26, para. 25).

Evidence:

— Email from the CAS Ad hoc Division dated August 9, 2024, at 8:38 PM, Exhibit 80

- 56 As Respondent 4 rightly points out, the dispute underlying the present arbitration proceedings should have been referred to the ordinary procedure in accordance with Art. 20 lit. c CAS OG Rules to allow the parties to gather evidence (act. 24, para. 22 et seqq.). Respondent 4 had explicitly requested such a referral (act. 2, para. 80; act. 4/24, para. 4 and 8.b), and the Applicant expressly and unreservedly joined this request (act. 4/42, p. 1). The contradictory statements in the arbitral award regarding the evidence and the inability of Respondent 4 to identify the name of the Technical Assistant responsible for recording the Verbal Inquiry within the short time frame, as well as to submit videos, show how necessary the referral the ordinary procedure would have been.

III. Legal Argumentation (act. 26, para. 113 et seqq.; act. 24, para. 57 et seqq.)

A. Preliminary Remarks

- 57 In their response, Respondents 1 and 2 incorrectly argue that there is no legal uncertainty regarding the timing of the finality of the arbitral award in question (act. 26, para. 123 et seqq.). The Applicant refers to her statements in act. 2, para. 129 et seqq.
- 58 The Applicant then acknowledges that Respondents 1 and 2 exclusively address their main position – the existence of a ground for revision due to newly discovered means of evidence (Art. 190a para. 1 lit. a PILA, 2nd alternative, act. 2, para. 139 et seqq.) (act. 26, para. 131 et seqq.). **The alternative position of the Applicant – the existence of a ground for revision due to newly discovered facts (Art. 190a para. 1 lit. a PILA, 2nd alternative, act. 2, para. 186 et seqq.) – has been left undisputed by Respondents 1 and 2.** They merely (incorrectly, see act. 2, para. 103 et seqq.) allege that the Applicant acknowledged in the arbitration proceedings, relying on the accuracy of the Omega report, that the Verbal Inquiry was raised four seconds too late (act. 26, para. 24 et

seqq.). As the Applicant has already explained in detail, this would, in such a case, have to be regarded as a new fact (act. 2, para. 194 et seqq.). Respondents 1 and 2 rightly do not dispute this.

B. The RoS Video is Pre-Existing Evidence or Serves to Prove a Pre-Existing Fact, Although the Footage Contained Therein Was Only Compiled on August 11, 2024

59 As already mentioned, Respondents 1 and 2 attempt to create the impression that the RoS video is newly created evidence (act. 26, para. 140 et seqq.).

60 This view contradicts the case law of the Federal Supreme Court.

61 Art. 190a para. 1 lit. a PILA is modeled after Art. 123 para. 2 lit. a BGG or Art. 137 lit. b aOG (see BK-STACHER/CLEIS, PILA 190a N 2 and 93). Under Art. 137 lit. b aOG, the Federal Supreme Court was presented with a similar situation in decision 4P.102/2006 of August 29, 2006: The Federal Supreme Court granted a request for revision based on an affidavit created after the arbitral award. However, the affidavit referred to three documents dating before the arbitral award, which the Applicant could not have known before reading the affidavit (SFC 4P.102/2006, cons. 4.2). The Federal Supreme Court subsequently granted the revision based on the documents created before the arbitral award, to which the affidavit referred (SFC 4P.102/2006, cons. 5; BK-STACHER/CLEIS, PILA 190a N 95).

62 Also within the framework of Art. 123 para. 2 lit. a BGG, the Federal Supreme Court considered an expert report created after a judgment as a *pseudo-nova*, because it was based on the results of expert investigations and anamnesticly on documents that already existed at the time of the judgment (SFC 8F_9/2012, cons. 2.2).

63 In the present case, the RoS video compiles pieces of evidence that undisputedly (above, para. 8) date from August 5, 2024, and thus already existed before August 10, 2024, and certainly before the issuance of the arbitral award (act. 2, para. 164 et seq.). The individual videos and audio recordings undisputedly reflect facts of August 5, 2024, and have existed since then (above, para. 9; act. 2, para. 164). Respondents 1 and 2 also do not dispute that the RoS video thus shows the events of August 5, 2024, one-to-one (above, para. 8). Since the RoS video is a compilation of recordings from August 5, 2024, it constitutes – like an affidavit that refers to pre-existing documents or an expert report that relies on pre-existing expert investigations – a *pseudo-novum* within the meaning of Art. 190a para. 1 lit. a PILA.

64 In any case, the RoS video proves the fact of the timing of the Applicant's Verbal Inquiry. For this reason, the conditions for a revision based on newly discovered facts are also met in this case, as the Applicant demonstrated in the request for revision (act. 2, para. 186 et seqq.) and which Respondents 1 and 2 do not dispute.

C. The Applicant Could Not Present the RoS Video in the Arbitration Proceedings Despite Due Diligence

1. Introductory Remarks

⁶⁵ Respondents 1 and 2 make great efforts to accuse the Applicant of fundamental flaws regarding the diligence required by Art. 190a para. 1 lit. a PILA (act. 26, para. 150 et seq.). They claim that the Applicant negligently failed to contact RoS within the few remaining hours between her initial notification about the arbitration proceedings and the issuance of the arbitral award, and thus failed to present the RoS video in the arbitration proceedings (act. 26, para. 150: "*manqué de diligence*").

⁶⁶ The Respondents 1 and 2 misunderstand the scope of Art. 190a para. 1 lit. a PILA when they – **retrospectively** – blame the Applicant for negligent procedural conduct, asserting that she did not immediately request the recordings contained in the RoS video within the few hours between her initial notification and the issuance of the arbitral award. According to Art. 190a para. 1 lit. a PILA, the Applicant must only, but at least, demonstrate that she could not have discovered the relevant fact in time, even though she made **reasonable** inquiries during the arbitration proceedings and **exercised the diligence that could be expected from a conscientious party to the proceedings in the same situation** (BK-STACHER/CLEIS, PILA 190a N 84; SFC 5A_558/2014, cons. 5.2). **The circumstances of the individual case** are decisive (BK-Stacher/Cleis, PILA 190a N 83; BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 4th ed., Bern 2021, N 1926). The Federal Supreme Court also takes into account the **temporal dimension** (BK-STACHER/CLEIS, PILA 190a N 87 with references). It cannot be expected that the Applicant undertakes efforts in the arbitration proceedings that are disproportionate given the circumstances (BK-STACHER/CLEIS, PILA 190a N 84). Only negligent conduct of the proceedings should not be "rewarded with revision" (SFC 5A_111/2014, cons. 2; BERGER/KELLERHALS, *op. cit.*, N 1926).

2. No Knowledge and No Obligation of the Applicant to Be Aware of the Existence of the RoS Video or its Footage

⁶⁷ First of all, the Applicant has explained in detail above and in the request for revision (act. 2, para. 120 et seq.) that she had no knowledge of the RoS video or the existence of the video and audio recordings contained therein from the Verbal Inquiry during the arbitration proceedings. Contrary to the submissions of Respondents 1 and 2, it cannot be held against her that she should have known about the RoS video or the existence of these recordings, since:

- the focus of the RoS filming for "*Simone Biles: Rising*" was exclusively on Simone Biles (above, para. 17 et seq.);
- the Applicant was therefore hardly ever filmed by RoS during and in the run-up to the 2024 Olympic Games (above, para. 22 et seq.);

- Cécile Canqueteau-Landi was only recorded sporadically, in connection with Simone Biles' training or routines and in her role as Simone Biles' coach (above, para. 25);
- Cécile Canqueteau-Landi had only irregularly worn a lapel microphone from RoS in the past (above, para. 35);
- neither the Applicant nor Cécile Canqueteau-Landi had knowledge of the details of the production of "*Simone Biles: Rising*" or the RoS filming and were otherwise not familiar with the RoS filming (above, para. 15);
- the RoS staff at the 2024 Olympic Games did not have comprehensive access rights, unlike NBC and OBS, they were not allowed in the Floor Area and therefore had no access to the zone where the Applicant and Cécile Canqueteau-Landi stayed after the routine and where the technical assistants responsible for receiving inquiries were stationed (above, para. 30);
- the RoS filming was practically difficult in various respects because the RoS team could only film from the spectator area, the cameras' field of view was often obstructed, and due to the spectator noise in the Bercy Arena, good quality audio recordings were not to be expected (above, para. 32 and 42);
- the RoS filming was initially and in agreement with Simone Biles focused on the all-around and team finals and not at all on the floor exercise final on August 5, 2024 (above, para. 36); and
- given the above, it was not to be expected that RoS had recordings of the Verbal Inquiry made by Cécile Canqueteau-Landi on behalf of the Applicant, and – as the aleatory recordings of the RoS video show – it was indeed a coincidence that RoS had recordings of the Verbal Inquiry made by Cécile Canqueteau-Landi on behalf of the Applicant.

68 The level of attention demanded by Respondents 1 and 2 would not have been reasonable for the Applicant in any case. As shown, the Applicant had to devote her full attention and concentration to her performance during the floor exercise final on August 5, 2024, as well as during the entire training and preparation phase leading up to the 2024 Olympic Games. She therefore had to consciously ignore the presence of media personnel and the activity of cameras, including those of RoS (above, para. 44).

69 Another circumstance also shows that it was not to be expected that RoS had recordings of the Applicant's Verbal Inquiry: Even Respondent 4 – who, according to the representations of Respondents 1 and 2, knew about and explicitly supported the RoS filming (act. 26, para. 50) – did not think to ask RoS for possible recordings of the Verbal Inquiry. This, although Respondent 4 was responsible for the floor exercise final and the timekeeping and was explicitly requested by the CAS Panel via email on August 9, 2024, at 09:02 AM, to produce evidence of the timing of the Applicant's Verbal Inquiry (act. 4/27, p. 1; see also award, para. 31).

3. No Negligent Conduct of the Proceedings by the Applicant Given the Exorbitant Time Pressure Imposed by the CAS Panel

70 Even if the Federal Supreme Court were to unexpectedly assume that the Applicant should have known about the RoS video or the existence of the video and audio recordings contained therein during the arbitration proceedings (*quod non*), the reproach of negligent conduct of the proceedings would be untenable and misplaced.

71 The Respondents 1 and 2 completely misunderstand the extraordinary circumstances of the present arbitration proceedings, especially the time pressure that the Applicant and her lawyer were unexpectedly and groundlessly subjected to on the evening of August 9 and 10, 2024 (already detailed in act. 2, para. 170 et seqq.). At the same time, the Respondents 1 and 2 do not dispute that:

- At the time of receiving the extensive download folder of the arbitration file on Friday evening at 5:16 PM, attorney Greene had about **two and a half hours** left for an instruction meeting with the Applicant, obtaining powers of attorney, studying the extensive files and pleadings of numerous parties (regarding the volume: act. 2, para. 87), legal studies, particularly on the complex issues related to the field-of-play doctrine, a legal analysis of the case, and the preparation of the only written statement within the finally extended deadline (see act. 2, para. 90 et seq.);
- just a **few hours later**, on Saturday morning at 8:30 AM – for attorney Greene, in the middle of the night at 2:30 AM – the nearly five-hour arbitration hearing began (act. 2, para. 98), leaving only a few hours for further file and legal studies, contacting and preparing potential witnesses, drafting the pleadings, and compiling questions for witness examinations (direct and cross-examination) as well as searching for additional exhibit (act. 2, para. 177);
- according to Art. 15 lit. d CAS OG Rules, the end of the hearing marked **the end of the record**, and new exhibit could only be introduced in justified exceptional cases (act. 4/2, p. 7); and
- between the end of the hearing and the issuance of the dispositive part of the award at 5:56 PM, only **four and a half hours** passed, during which attorney Greene was engaged in settlement discussions with the Respondents and other parties involved in the proceedings (act. 2, para. 106 et seq.).

72 Furthermore, the Respondents 1 and 2 do not dispute that the extraordinary time pressure was particularly – unnecessarily – caused by:

- the CAS Ad hoc Division using incorrect email addresses for notifying the Applicant for three days, resulting in the Applicant being informed about the arbitration proceedings late (detailed in act. 2, para. 73 et seqq.); and

- the CAS Ad hoc Division rejecting the referral to the ordinary CAS procedure requested by respondent 4 and the Applicant according to Art. 20 lit. c CAS OG Rules despite the lack of time urgency (act. 2, para. 176).

73 As already stated in the request for revision, the artificially and unnecessarily created time pressure by the CAS Ad hoc Division deprived the Applicant from the outset of any opportunity to thoroughly and comprehensively address the question of what means of evidence, besides the Omega report, was available and to dispute the false information contained therein (act. 2, para. 6 and 103 et seq.).

74 As already mentioned, Respondent 4 explicitly acknowledges this, as it states that the Applicant was subjected to "*des contraintes temporelles extrêmement contraignantes*" and that "***[c]es contraintes ont eu un impact important sur la capacité des parties à apporter des moyens de preuve nécessaires et celle de la formation arbitrale à les apprécier***" (act. 24, para. 62, emphasis added). As Respondent 4 also acknowledges, it would have been easy to counteract this time pressure by referring the dispute to the ordinary CAS procedure according to Art. 20 lit. c CAS OG Rules (act. 24, para. 63 et seqq. and 80), especially due to the late notification of the Applicant (act. 24, para. 68). As a result of the obviously incomplete state of evidence, the CAS Panel ultimately made a grossly erroneous decision (act. 29, para. 24: "*[S]ans être en possession de tous les moyens de preuve nécessaires, elle a pris le risque de rendre une décision matériellement incorrecte et qui prive injustement une athlète de sa médaille olympique*").

75 The fact that attorney Greene was among the thousands of spectators in the Bercy Arena who attended the floor exercise final does not change anything (act. 26, para. 34 and 161). The assertion by Respondents 1 and 2 that he already knew the facts of the case from his own perception is absurd (act. 26, para. 34).

D. The RoS Video Is Capable of Effecting a Change in the Arbitral Award in Favor of the Applicant

76 In act. 26, para. 163 et seqq., the Respondents 1 and 2 fail to recognize that it is solely for the arbitral tribunal to determine whether the new evidence or the newly established facts based on it would result in a more favorable decision for the Applicant (SFC 4P.117/2003, cons. 1.2; see also act. 2, para. 152). As already stated in the request for revision, the Federal Supreme Court examines under Art. 190a para. 1 PILA only whether the subsequently discovered evidence or the newly established fact is "*suitable to change the factual basis of the challenged arbitral award in such a way that it may, with proper legal assessment, lead to a different decision*" (SFC 4A_42/2008, cons. 4.1; KuKo-DASSER, CPC 396 N 9). Only if it is excluded from the outset that the subsequently discovered evidence or the newly established fact can lead to a different decision in view of the arbitral tribunal's approach, the request for revision must be dismissed (BK-STACHER/CLEIS, PILA 190a N 100).

- 77 This means that in the present case, it is for the CAS Panel to decide on the arguments of the Respondents 1 and 2 regarding the "*reliability*" or authenticity of the RoS video (act. 26, para. 164 et seqq.) as well as the question of whether the RoS video provides evidence for the timeliness and completeness of the Applicant's Verbal Inquiry (act. 26, para. 166 et seqq. and 173 et seqq.) (see also above, para. 10 and 47). The only question to be answered in the present revision procedure is whether the RoS video is suitable to change the facts established in the arbitral award and the decision on the timeliness of the Applicant's Verbal Inquiry.
- 78 For this reason alone, the decision of the Federal Supreme Court 4A_317/2019 of June 30, 2019, prominently cited by the Respondents 1 and 2, is not relevant from the outset (act. 26, para. 165). The Federal Supreme Court decides *ex officio* on the observance of the appeal deadline, which was the subject of this decision. In the present case, it is for the arbitral tribunal to decide on the reliability of the evidence ("*fiabilité des preuves*"), if at all.
- 79 However, the Respondents 1 and 2 do not rightly assert that the RoS video is not relevant for the decision of the CAS Panel. Their lengthy explanations and assertions regarding the credibility of the RoS video precisely demonstrate that the RoS video is indeed relevant for the decision of the CAS Panel.
- 80 As shown in the request for revision, the RoS video is the only available piece of evidence that shows the timing of the Verbal Inquiry. It is thus the true "*preuve maîtresse*" (act. 31, para. 67, in the set-aside procedure No. 4A_494/2024) in the matter at hand. This is also acknowledged by Respondent 4 (act. 24, para. 82: "*il existe actuellement **un nouveau moyen de preuve qui tendrait à contredire les constatations de fait** que la formation arbitrale a cru pouvoir tirer sur la base des preuves dont elle disposait à l'audience*").
- 81 The allegations of the Respondents 1 and 2 regarding the credibility of the RoS video therefore do not require any comment in the present revision procedure. However, since the Respondents 1 and 2 make numerous false allegations in this regard, the Applicant has taken the liberty to briefly address them above in para. 50 et seq.

* * * * *

Yours sincerely

Gabrielle Nater-Bass
Dr. Stefanie Pfisterer
Richard G. Allemann
Frédéric Fitzi

Exhibits: 6-fold / according to separate list