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Cases no. 4A_494/2024 and 4A_510/2024: Submission on the right of reply

Dear Mr. President
Dear Federal Judge Kiss
Ladies and Gentlemen Federal Judges

1 By order dated February 26, 2025, received on February 27, 2025, the comments of the Respondents 1 and 2 of the dated February 19, 2025, were notified to the Applicant and Appellant (B-act. 55 and 58; R-act. 50 and 53).[1]

2 The way in which the CAS and Respondents 1 and 2 safeguard their interests in the comments of February 19, 2025, unfortunately require the Applicant and Appellant to comment on this very briefly within the framework of its constitutionally guaranteed right of reply.

3 In its orders of January 15, 2025, the Federal Supreme Court explicitly pointed both the Respondents 1 and 2 and the CAS to the fact that there would be no second exchange of written submissions. Thus, in their comments of February 19, 2025, they should have strictly limited themselves to disputing new submissions in the comments of the Applicant and Appellant of January 7, 2025. Instead of adhering to these legal requirements, however, they misused the opportunity to make in-depth submissions peppered with numerous new allegations. This is particularly blatant in the case of the CAS which, in its consultations of November 27, 2024, even expressly refrained from

[1] Actors in the appeal proceedings 4A_494/2024 are referred to as B-act, and actors in the revision proceedings 4A_510/2024 are referred to as R-act.

submitting any comments in the revision proceedings 5A_510/2024 and 5A_512/2024 (B-act. 22 and R-act. 28). Also, the comments of Respondents 1 and 2 of February 19, 2025, contain numerous new and thus belated allegations.

4 The new submissions of the CAS and of the Respondents 1 and 2 must therefore be dismissed out of hand and are, in the alternative, contested in their entirety. Within the scope of its unlimited constitutional right of reply, the Applicant and Applicant takes the liberty to comments on specific new allegations.

Re B-act. 58 and R-act. 53, paras. 1 - 4 (late, incorrect and disputed):

5 A first example of the inadmissibility of the comments CAS's are the lengthy explanations on the history of the CAS Ad hoc Division. These submissions are new, belated and should therefore be dismissed out of hand. Furthermore, the fundamental concern of the CAS OG Rules to resolve disputes in connection with the Olympic Games as quickly as possible naturally does not alter the elementary and mandatory guarantees of an assessment by an independent and impartial arbitral tribunal (Art. 190 para. 2 lit. a PILA) and of the right to be heard (Art. 180 para. 3 in conjunction with 190 para. 2 lit. d PILA). This is also expressly clarified in the CAS OG Rules, cf. e.g. Art. 12 and Art. 20 lit. c. Significantly, the CAS continues to ignore the fact that the Applicant and Appellant only became aware of the existence of the arbitration on the evening of August 9, 2024, due to a gross procedural error on the part of the CAS (cf. B-act 1, para. 5).

Re B-act. 58 and R-act. 53, paras. 11 - 13 and 16.1, as well as B-act. 55, para. 130, and R-act. 50, para. 200 (late, incorrect and disputed):

6 Furthermore, CAS asserts for the first time in its comments, with reference to para. 121 of the Award, that the CAS Panel and all participating parties agreed at the arbitration hearing on August 10, 2024 that the CAS Panel (a) should decide the dispute on the basis of the Omega Report and (b) that the Omega Report was clear and relevant. The accuracy of the Omega Report would not have been disputed or questioned by any party.

7 Respondents 1 and 2, in turn, argue for the first time in their comments that this concerns a question of the CAS Panel's assessment of the evidence (B-act. 55, para. 130), which cannot be the subject of a review by the Federal Supreme Court.

8 These assertions are late and therefore irrelevant. They are also contrary to the file and legally incorrect:

- Both Attorney Greene and Cécile Canqueteau-Landi disputed the Omega Report at the arbitration hearing. Even the FIG stated in the arbitration proceedings that the Omega Report **does not** record the date of the *Verbal Inquiry*. The Applicant and Appellant refers to the corresponding statements in its previous submissions and the clear statements of the parties during the arbitration hearing (B-act. 1, para. 105 et seq. and 43, para. 27 et seq.; R-act. 2, para. 102 et seq., and 38, para. 53 et seq.).
- FIG made it clear during the hearing that the Omega report only records the time at which the technical assistant manually registered the *Verbal Inquiry* in the system and not the time at which the *Verbal Inquiry* was made. Rather, between these points in time, there is inevitably "*some delay*" (see B-act. 1, para. 106, 38, and 27; R-act. 2, para. 103, 38, and 53).
- Contrary to the submissions of Respondents 1 and 2, this does not concern a question of the assessment of the evidence by the CAS Panel (B-act. 55, para. 130) but is simply a false assertion and an untrue reproduction of the statements made at the arbitration hearing.

- Even to the extent that the CAS, with reference to para. 136 of the award, suggests that the FIG ultimately conceded that the Omega Report is relevant for the question of the timeliness of the *Verbal Inquiry*, this is simply wrong. In para. 136 of the arbitral award (B-act. 1/1 or R-act. 2/1), the CAS Panel merely summarizes FIG's statements on the applicability of the *field-of-play doctrine*.
- Even the CAS Panel came to the conclusion that the Omega Report as evidence was "*not fully responsive to the information the Panel had sought"* (act. 1/1 or R-act. 2/1, para. 125). The CAS Panel obviously felt compelled to rely on the Omega Report (wrongly and without any reason) solely because of the lack of evidence, even though the Omega Report did not address the question posed to the arbitral tribunal. This is recognized also by the CAS in para. 16.1, where it states that the CAS Panel merely relied on the Omega Report "*à défaut d'autres moyens de preuve*".
- The burden that the *Verbal Inquiry* had not been made in good time was with the Respondents 1 and 2. The lack of proof that the *Verbal Inquiry* had not been made in good time was therefore to the detriment of the Respondents 1 and 2, with the result that their legal claims should have been dismissed (B-act. 1, para. 108; R-act. 2, para. 105).

9 Finally, both CAS and the Respondents 1 and 2 claim for the first time that the Appellant and Applicant should have expressly reserved the right to submit further evidence at the end of the arbitration hearing. This argument is not only misleading, but also irrelevant from the outset, as the Applicant and Appellant were under no obligation to make such a reservation:

- First of all, as already mentioned (para. 7 above), the Applicant and Appellant did not bear the burden of proof in these arbitration proceedings.
- As the responsible organizer of the floor exercise final, FIG was then expressly requested by the CAS Panel to all submit available evidence on the disputed question of fact (cf. R-act. 38, para. 69). Since FIG was unable to comply with this request, none of the parties to the proceedings had to assume that further meaningful evidence existed with regard to the point in time when the Appellant had raised the *Verbal Inquiry* (cf. R-act 38, para. 12 et seq.).
- Finally, the fact that the Applicant and Appellant did not expressly reserve at the arbitration hearing the right to submit additional evidence does not preclude her appeal or her request for revision. The subliminal attempt by the CAS to tighten the conditions for a revision lacks any legal basis.

10 In any event, as stated in the request for revision, the petitioner also requests a revision of the arbitral award based on facts subsequently discovered (R-act. 1, para. 186 et seq.).

Re B-act. 58, paras. 18 - 23, and B-act. 55, para. 154 f. (late, incorrect and disputed):

11 Finally, both CAS and Respondents 1 and 2 attempt to artificially extend the scope of the *duty to investigate (devoir de curiosité),* by reproaching the Appellant and Applicant that she should have informed herself about potential conflicts of interest of Mr. Gharavi already from June 11, 2024 - about **two months before** their first notification.

12 This also argument is not only belated and should therefore be dismissed out of hand, but is simply untenable. The Applicant and Appellant was first informed of the identity of its counterparties and their nationality on the evening of August 9, 2025. Clarifications regarding specific conflicts of interest would not have been possible from the outset before this point in time. According to the argumentation of the CAS and the Respondents 1 and 2, Olympic athletes always before the start of the Olympic Games would have to carry out comprehensive investigations into the

vested interests of all arbitrators on the CAS list - prophylactically, abstractly and without the existence of a concrete dispute.

13 Finally, the CAS even goes so far as to claim that it would have been up to the Applicant and Appellant to request the missing declaration of acceptance and independence from the CAS - after the CAS and the CAS Panel had demonstrably and unlawfully failed to provide this declaration to the Applicant and Appellant (para. 21: "*A supposer que ce formulaire n'eût pas été joint, il aurait été possible de le remarquer et de demander à la Chambre ad hoc du TAS de le renvoyer*"). The appellant refers to its statements in this regard in B-act. 43, para. 21 et seq. This argument, as well as the entire conduct of the CAS in the present appeal and revision proceedings, is simply unworthy of an institution of the importance of the CAS.

* * * * *

In conclusion, we ask you, ladies and gentlemen of the Federal Supreme Court, to approve the appeal and the request for revision.

With kind regards

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