

CAS 2024/A/10882 Comitato Italiano Paralimpico & Giacomo Perini v. World Rowing & Erik Horrie

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Anton **Jagodic**, Attorney-at-Law in Ljubljana, Slovenia
Arbitrators: Mr Michele A.R. **Bernasconi**, Attorney-at-Law in Zurich, Switzerland
Mr Mark A. **Hovell**, Solicitor in Manchester, United Kingdom
Clerk: Mr Adrián **Hernández**, Lausanne, Switzerland

in the arbitration between

Comitato Italiano Paralimpico, Rome, Italy

– First Appellant –

Giacomo Perini, Rome, Italy

– Second Appellant –

Both represented by Messrs Federico Venturi Ferriolo and Lorenzo Vittorio Caprara,
Attorneys-at-Law in Milan, Italy.

and

World Rowing, Lausanne, Switzerland

Represented by Mr Jorge E. Ibarrola and Ms Monia Karmass, Attorneys-at-Law in Lausanne,
Switzerland.

– First Respondent –

Erik Horrie, Sydney, Australia

Represented by Ms Lucy Dawson, Barrister in Melbourne, Australia, Mr Paul Horvath and
Ms Elizabeth Seddon, Solicitors in Melbourne, Australia.

– Second Respondent –

I. PARTIES

1. Comitato Italiano Paralimpico (the “**First Appellant**” or the “**CIP**”) is the Italian Paralympic Committee, with its headquarters in Rome, and is responsible for the development and management of paralympic sports in Italy. The CIP in turn is recognized by and affiliated with the International Paralympic Committee (“**IPC**”).
2. Giacomo Perini (the “**Second Appellant**” or “**Mr Perini**”) is an Italian paralympic rower, having represented Italy in the Paris 2024 Paralympic Games.
3. Where appropriate, the First and Second Appellants shall be jointly referred to as the Appellants (the “**Appellants**”).
4. World Rowing (the “**First Respondent**” or “**WR**”) is the international federation governing the sport of rowing worldwide, with its headquarters in Lausanne, Switzerland.
5. Erik Horrie (the “**Second Respondent**” or “**Mr Horrie**”) is an Australian paralympic rower, having represented Australia in the London 2012, Rio de Janeiro 2016, Tokyo 2020, and Paris 2024 Paralympic Games.
6. The First and Second Respondent shall be jointly referred to as the Respondents (the “**Respondents**”) where appropriate. Furthermore, the Appellants and the Respondents shall be referred to, when needed, as the Parties (the “**Parties**”) to the present arbitration.

II. FACTUAL BACKGROUND

7. What follows is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence examined in the course of the present proceedings. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (the “**Award**”) only to the submissions and evidence it considers necessary to explain its reasoning.

A. The Race and Mr Perini’s exclusion

8. On 1 September 2024, the final race of the PR1 M1X for the Paris 2024 Paralympic Games took place in Vaires-sur-Marne, France (the “**Race**”), which yielded the following provisional order of arrival:
 - A. Benjamin Pritchard (Great Britain);
 - B. Roman Polianskyi (Ukraine);
 - C. Giacomo Perini (Italy);
 - D. Erik Horrie (Australia);
 - E. Shmuel Daniel (Israel); and
 - F. Alexis Sanchez (France).

9. After crossing the finish line, Mr Horrie approached Mr Daniel Gutiérrez Praena, the Race's umpire (the "**Race Umpire**"), who was following the rowers with his catamaran, and filed an objection. Mr Horrie informed the Race Umpire that Mr Perini had been in possession of a mobile phone during the warmup and during the Race.
10. Following Mr Horrie's protest, the Race Umpire approached Mr Perini, both in their respective vessels, and asked if he was in possession of a phone. In response to the Race Umpire's query, Mr Perini shook his head. Upon Mr Perini's apparent denial of possession of a mobile phone, the Race Umpire returned to Mr Horrie's side, who again reiterated his objection. This prompted the Race Umpire to repeat his question to Mr Perini, who remained silent.
11. The Race Umpire informed the President of the Jury, Jérôme Mouly, about Mr Horrie's objection via radio. In turn, Mr Mouly paused the announcement of race results.
12. Due to the logistical complications involved in the Race Umpire's ability to inspect Mr Perini's boat, an International Technical Office ("**ITO**") standing by the pontoon, Ms Monika Kuczma, was requested by the Race Umpire to investigate Mr Horrie's allegations. Ms Kuczma approached Mr Perini's boat and asked again if he was in possession of a mobile phone, to which he replied in the affirmative. When asked to produce it, Mr Perini reached inside his boat, close to where his legs rested, and retrieved a small sports bag. The sports bag contained a mobile phone wrapped in a white towel. Mr Perini took the phone out of the bag and handed it to Ms Kuczma.
13. Once in possession of the phone, Ms Kuczma first raised it in the air to bring it to the Race Umpire's attention and then returned the phone to Mr Perini. Thereafter, the Race Umpire decided to exclude Mr Perini from the Race, resulting in Mr Horrie's promotion to third place (the "**Umpire Decision**"). In his decision, the Race Umpire provided the following reasons:

"Summary:

Exclusion of ITA PR1 M1x

Details:

*In the final of the PR1 M1x, the ITA PR1 M1x was found to be using communications equipment during the race, in breach of Rule 28 and Appendix R2, Bye-Law to Rule 28 [the "**Contested Rule**"].*

As a result, the crew has been excluded from the event and will be ranked last" (emphasis added).

B. Proceedings before the Board of Jury

14. After the Race was concluded and the Umpire Decision had been issued, the CIP and the Italian Rowing Federation filed a protest before the Board of the Jury on behalf of Mr Perini and pursuant to Article 76 of WR's Rules of Racing and related bye-laws (the "**Rules of Racing**"). In their protest, the CIP and the Italian Rowing Federation

argued that, while the Umpire Decision stated that Mr Perini had been “*found to be using communications equipment during the race*”, the phone had not been used and, instead, its presence in the boat “*was the result of a mere forgetfulness of the athlete*”. Given that the device had not been used, the CIP and the Italian Rowing Federation argued that the Contested Rule had not been breached since the rule prohibits the act of communicating.

15. A meeting of the Board of Jury was convened in order to deliberate on the protest filed by the CIP and the Italian Rowing Federation. The Board of Jury was chaired by Mr Mouly and formed by two other ITO jury members, namely Mr Michael Pachis and Ms Jercyl Lerin. During said meeting, Mr Mouly opened a phone delivered to him by the CIP and the Italian Rowing Federation as Mr Perini’s mobile phone and inspected solely the call log. Mr Mouly noted that no calls had been made or received while traffic rules (*i.e.*, a set of rules published by a competition’s organizing committee intended to “*control the movement of boats on the water*”, in force between the warm up and cool down, pursuant to Rule 53 of the Rules of Racing and its Bye-Law) were in force.
16. On 1 September 2024 – the same day of the Race and the meeting of the Board of Jury – the Board of Jury issued its decision (the “**BoJ Decision**”), confirming the Umpire Decision. The BoJ Decision stated the following:

“ITA PR1 MIX – Race 25 at 11.30am – Final A

Italian NPC lodge a protest against the decision of exclusion made by the race Umpire (Daniel Gutiérrez Praena) about using a communication equipment [sic] during the race, in breach of the rule 28 in appendix R2 Bye law to rule 28.

According to bye-law of Rule 28 paragraph 5a and 5b, the only allowable data that could be available are Time, Stroke rate, Boat velocity / acceleration, heart rate.

No other data could be measured, recorded or stored.

By consequence, no device like a mobile phone is allowed in a boat due to possible share of other kind of data (not allowable [sic] data) as well as direct communication (during the race and in any case with when racing ‘traffic rules’ are in force, as mentioned in paragraph 5a).

As a conclusion, the Board of the Jury is confirming the decision of the umpire” (emphasis added).

C. Proceedings before the WR Executive Committee

17. Following the BoJ Decision, the CIP filed an appeal before WR’s Executive Committee against the BoJ Decision pursuant to Article 77 of the Rules of Racing. The CIP reiterated that Mr Perini had not used the mobile device. Furthermore, the CIP disputed the punishment of exclusion, which it found disproportionate given the lack of use of the phone, which, coupled with the language used in the BoJ Decision, was misleadingly indicative of cheating.

18. On the same day, the WR's Executive Committee rendered its decision (the "**Appealed Decision**") on the CIP's appeal, upholding BoJ Decision, which stated *inter alia* that:

"Following receipt of your appeal to the World Rowing Executive Committee regarding the decision of the Board of the Jury at the Paralympic Regatta on 01 September 2024, the Executive Committee has reviewed the appeal and considered all elements relating to the exclusion of the Italian PR1 M1x in the Final A.

The World Rowing Executive Committee concluded that the decision made by the Board of the Jury will be upheld, and the Italian PR1 M1x will remain excluded."

19. On 2 September 2024, the Italian Rowing Federation requested the reasons underpinning the Appealed Decision. In doing so, the Italian Rowing Federation reiterated the impropriety of the implication that Mr Perini had gained an advantage from "*an honest mistake*", which had caused reputational damage to Mr Perini, the Italian Rowing Federation and the CIP. Additionally, the Italian Rowing Federation called for a distinction between possession and use to be drawn, pointing at the wording of the Contested Rule.

20. On 4 September 2024, WR's Executive Committee provided the reasoning behind the Appealed Decision, arguing the following:

"The principal reasons for the decision and its subsequent confirmations are contained in the attached letter issued by the Board of the Jury on 1 September 2024.

In addition to the relevant bye-law of Rule 28 paragraph 5a and 5b which justifies such decision, we add that it is, amongst all elite rowers and coaches, of very general knowledge and practice that no mobile devices such a mobile phone can be brought on board of a boat competing at any International Regatta.

The relevant rule, general practice, and their implications, could not have been ignored by the Italian PR1 M1x athlete competing in a Final A at the Paris 2024 Paralympic Games.

We note that the presence of a mobile phone in the ITA PR1 M1x boat is not being contested by either Rowing Italia or the rower concerned. The World Rowing Executive Committee therefore confirmed that the exclusion of the rower was the appropriate penalty in the circumstance." [emphasis added]

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 23 September 2024, the Appellants filed a joint Statement of Appeal, pursuant to Articles R47 and R48 of the Code for Sports-related Arbitration (the "**CAS Code**"), against the decision issued by WR Executive Committee on 1 September 2024. Further to their appeal against the Appealed Decision, the Appellants requested for their case to be heard by a panel composed of three arbitrators and appointed Mr Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland as arbitrator.

Finally, while naming WR and Mr Horrie as respondents, the Appellants listed the IPC as an interested party.

22. On 30 September 2024, the CAS Court Office, noting that the Appellants have indicated the IPC Paralympic Committee as an interested party and not as a respondent, informed the Parties that IPC would not have been included as a party to the proceedings. Notwithstanding this, and while emphasizing that no provision of the Code obliges CAS to do so, the CAS Court Office notified a copy of the Statement of Appeal to the IPC, drawing its attention to the possibility of participating in the present arbitration as a party pursuant to Article R41.3 of the CAS Code. The IPC did not express any intent to participate in the proceedings within the notice period outlined in Article R41.3 of the CAS Code.
23. On 9 October 2024, the Respondents nominated Mr Mark A. Hovell, Solicitor in Manchester, United Kingdom, as arbitrator.
24. On 23 October 2024, the Appellants filed their joint Appeal Brief, pursuant to Article R51 of the CAS Code and within the allotted deadline.
25. On 3 December 2024, the First Respondent filed its Answer, pursuant to Article R55 of the CAS Code and within the allotted deadline.
26. On the same day, the Second Respondent filed its Answer, pursuant to Article R55 of the CAS Code and within the allotted deadline.
27. On 4 December 2024, the CAS Court Office, pursuant to Article R54 of the CAS Code and in the absence of any challenge under Article R34 of the CAS Code, notified the Parties that the President of the CAS Appeals Arbitration Division had decided to constitute the Panel hearing the present matter as follows:

President: Dr Anton Jagodic, Attorney-at-Law in Ljubljana, Slovenia
Arbitrators: Mr Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland
 Mr Mark A. Hovell, Solicitor in Manchester, United Kingdom
28. On 9 December 2024, the CAS Court Office informed the Parties that the Panel would be assisted by Mr Adrián Hernández, Clerk with the CAS.
29. On 10 December 2024, the Appellants requested for a hearing to be held in the present proceedings in response to the CAS Court Office letter in that regard.
30. On 11 December 2024, the First Respondent did not oppose the Appellants' request for a hearing to be held.
31. On the same day, the Second Respondent stated it did not intend to cross-examine any witnesses and, as such, it submitted that the Panel could render its decision solely on the basis of the written submissions. In the alternative, were the Panel to decide a hearing to be necessary, the Second Respondent requested to attend the hearing remotely.

32. On 28 January 2025, the CAS Court Office confirmed that a hybrid hearing would take place on 15 May 2025, with the Appellants and the First Respondent attending in person at CAS' headquarters in Lausanne Switzerland, and with the Second Respondent attending remotely.
33. On 6 March 2025, the Appellants filed a letter before the CAS Court Office requesting the following: (i) to exclude the testimony of Mr Jean-Christophe Rolland as he lacked direct knowledge of the disputed events; (ii) reject the testimonies of Mr Jérôme Mouly, Mr Daniel Gutiérrez Praena, and Ms Monika Kuczma on grounds that they were redundant or, in the alternative, to be granted the opportunity to cross-examine them; (iii) to exclude Mr Mitchell Colins, General Manager of Operations at Rowing Australia, as he was not a party to the proceedings; and (iv) grant the Appellants the right to cross-examine Mr Horrie.
34. On 14 March 2025, the First Respondent replied to the Appellants' submissions, arguing that: (i) the Appellants' objections had been filed late, as the First Respondent had disclosed the objected witness three months prior; (ii) Articles R44.2 and R55 of the CAS Code, as well as CAS practice, justified Mr Rolland's testimony and renders the Appellants' objections without merit; and (iii) the testimonies of Mr Mouly, Mr Gutiérrez Praena, and Ms Kuczma could not be excluded on the basis that the Appellants consider them irrelevant.
35. On the same day, the Second Respondent also filed its response to the Appellants' objections, submitting that Messrs Collins and Horrie were not named as witnesses, instead attending the hearing merely as observants. Thus, the Appellants' request to cross-examine Mr Horrie, in the absence of listing him as a witness in the Answer, should be rejected.
36. On 17 March 2025, the CAS Court Office informed the Parties of the Panel's decision pertaining to the Appellants' objections, finding the following:
 - "a) Mr Collins shall be permitted to attend the hearing as an observer;*
 - b) The witnesses called by the First Respondent are admitted and the Appellant will be given the opportunity to cross-examine them at the hearing if it so wishes; and*
 - c) If the Second Respondent attends the hearing, both the Panel and other Parties will be entitled to put questions to him, if so desired".*
37. On 28 March 2025, the Appellants, replying to the Respondents' proposed hearing schedule, submitted on the same day, requested the Panel to confirm its amendment to the proposed hearing schedule, including the examination of Mr Horrie.
38. On 2 April 2025, the Respondents replied to the Appellants' request pertaining to Mr Horrie's cross-examination in separate communications, both reaffirming their position that such cross-examination was not admissible as Mr Horrie had not been named as a witness in the written submissions.

39. On 7 April 2025, the CAS Court Office notified the Parties of the Panel's modified hearing schedule, allotting time for Mr Horrie's questioning and reminding the Parties of the Panel's ruling on 17 March 2025. Additionally, the CAS Court Office sent the Order of Procedure to the Parties, requesting its signature.
40. On 14 April 2025, the Parties signed and delivered their respective Orders of Procedure.
41. On 15 May 2025, the hearing took place at the CAS' facilities in Lausanne, Switzerland. Alongside the Panel, Mr Giovanni Maria Fares, Counsel with the CAS and Mr Adrián Hernández, Clerk, were present. In addition, the following persons attended the hearing:

For the Appellants:

Mr Giacomo Perini, Party
 Mr Federico Venturi Ferriolo, Counsel
 Mr Lorenzo Vittorio Caprara, Counsel

For the First Respondent:

Mr Jorge E. Ibarrola, Counsel
 Ms Monia Karmass, Counsel
 Mr Jean-Christophe Rolland, Witness and WR representative
 Mr Jérôme Mouly, Witness
 Mr Daniel Gutiérrez Praena, Witness
 Ms Monika Kuczma, Witness

For the Second Respondent:

Ms Lucy Dawson, Counsel
 Ms Paul Horvath, Counsel
 Ms Liz Seddon, Counsel
 Mr Mitchell Collins, Observer and Rowing Australia representative.

42. Prior to the hearing, the Second Respondent informed the CAS Court Office that Mr Horrie would not attend the hearing. Additionally, at the outset of the hearing, the Appellants stated they intended to adduce statements made by Mr Horrie during a podcast. The Respondents contested the belated admission of said evidence, arguing that the Appellants should have produced the podcast alongside their Appeal Brief, and that – were the podcast to be admissible – they would have no time to review it and appropriately respond to the Appellants' submissions. After considering the Parties' submissions, the Panel ruled that the interview would not be added to the file.
43. During the hearing, the Parties had full opportunity to present their case, submit their arguments and answer the questions posed by the Panel. Furthermore, the Parties and the Panel heard and had the opportunity to question Mr Giacomo Perini – the Second Appellant – and Jean-Christophe Rolland, in representation of the First Respondent, as well as Ms Monika Kuczma, Mr Daniel Gutiérrez Praena and Mr Jérôme Mouly as witnesses and after being reminded by the President of the Panel of their duty to tell the truth with all respective consequences under Swiss law.
44. At the conclusion of the hearing, all Parties confirmed to the Panel that they had no objections as to the constitution of the Panel, the Parties' right to be heard or to be treated equally in the hearing and throughout the proceedings.

IV. SUBMISSIONS OF THE PARTIES AND PRAYERS FOR RELIEF

45. This section of the Award contains a summary of the Parties' factual and legal arguments. Whilst it does not contain an exhaustive list of all the Parties' contentions, it provides a summary of the substance of the Parties' main arguments. However, in considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all the legal and factual submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellants' Arguments

46. The Appellants' submissions are summarised as follows:

- Field of play: the circumstances in which the Appealed Decision was rendered do not warrant the application of the field of play doctrine. Particularly, the Appealed Decision was not issued by a referee or umpire given the change from use to possession that occurred between the Umpire Decision and the BoJ Decision. The Appellants further submit that their challenge of the Appealed Decision stems from the unjustified application of the Contested Rule and not to change the results of the Race, particularly since Mr Perini's exclusion occurred after the conclusion of the Race;
- Procedural rights: Mr Perini's was deprived from the opportunity to properly exercise his right of self-defence by WR's judicial bodies. In all three instances, WR's judicial bodies failed to identify with the required precision the conduct incurred by Mr Perini that contravened the Rules of Racing, thus impeding the Appellants' ability to mount an effective defence;
- Communication v. possession: the Contested Rule prohibits communication between a rower and individuals outside the boat and the exchange of certain data, but not the mere possession of a mobile device. In applying the four methods of statutory interpretation under Swiss law, applicable to the regulations of international federations, in particular the teleological method of interpretation, it becomes clear that the intention of the Rule is not an outright ban of communication devices, but rather to prevent rowers from gaining an unfair advantage through means of communication. This is consistent with WR's practice of allowing rowers to wear smartwatches during races, which could potentially allow for communication or exchange prohibited data. Consequently, given that the mobile device was not inspected until the BoJ Decision and that it has been proven that the phone was not in use, it is clear that Mr Perini did not breach the Rules of Racing;
- The sanction: the sanction imposed on Mr Perini (*i.e.*, exclusion from the Race) violates the principles of predictability and legality, as well as proportionality. In terms of predictability and legality, the Contested Rule does not adequately connect the prohibited conduct with the sanction. This lack of specificity creates uncertainty as to the potential violation and its consequences. On the proportionality, given that the Contested Rule prescribes a sanction up to disqualification, a lesser sanction, if

any, would have been more appropriate in this case, such as a reprimand or a yellow card. Such a sanction would have been proportional to the conduct given that Mr Perini never communicated with his team nor used his phone in any way; and

- Standing issue: the Appellants submit that their request to award a bronze medal to Mr Perini arises as the natural consequence of their main request, namely for the original finishing order to be reinstated. As such, the Appellants named the correct respondent, WR as the event organizer, as well as Mr Horrie as someone who would potentially be directly affected by the Award. The Appellants granted the opportunity for the IPC to participate in these proceedings and, after being consulted by the CAS Court Office, the IPC declined to participate.

47. In addition to their Appeal Brief and oral arguments at the hearing, the Appellants produced an expert report titled “*Digital Forensics Report*” (“**Digital Forensics Report**”) and drafted by Mr Michele Ferrazzano of BIT4LAW SRL. The Digital Forensics Report reached the following conclusions:

“Completed the full acquisition of Mr. Perini’s smartphone, we analyzed data focusing when traffic rules were in force (from 10:47 a.m. to 11:40 a.m. on Sep. 1st 2024).

App and network usage: Mr. Perini used several app the morning before the traffic rules were in force (web browser Safari, Spotify, Find my iPhone, Instagram, some videogames, Podcasts, Facebook), but **we do not find any app that requires interaction where traffic rules were in force.** The network traffic generated during the period when the traffic rules were in force is related to two entities: 1) iOS operating system, and 2) Fitness app (which took action autonomously as a result of activity detection by sensors).

Calls before and after the traffic rules were in force: the last call was at 7:22:46 p.m. of the previous day (Aug. 31st 2024); it was an incoming call, with answer, duration 14 minutes and 2 seconds. The first call after 11:40 a.m was at 13:36:54 a.m.; it was a missed call. **Any call (neither phone call nor VoIP call) was found before the traffic rules came into force on Sep. 1st 2024.**

Sent messages: the last messages before 10:47 a.m. was sent by Mr. Perini at 09:09:59 a.m. The first messages after 11:40 a.m was sent by Mr. Perini at 12:08:48 a.m. Obviously, **any message was sent when traffic rules were in force, as he was competed.**

Received messages: before, during and after the period in which traffic rules were in force, the smartphone received many messages. The messages received when traffic rules were in force. The smartphone received messages in several app, like WhatsApp [sic] or Facebook Messenger. We do not find any SMS messages or FaceTime messages. During the period of validity of the traffic rules, the smartphone received some messages via WhatsApp: 1) one message was received at 11:07 a.m.; all other messages were received when the competition was in progress (approximately between 11:29 a.m. and 11:40 a.m.). It is clear from the tenor of the messages that they are incitement messages, and it seems obvious by force of circumstance (even before technical data) that they could not have been read before the end of the validity period of the traffic rules. **All these**

messages were received because the smartphone was turned on and connected to the Internet. No messages were read during the validity period of traffic rules.

First interaction: *as traffic rules were in force from 10:47 a.m. to 11:40 a.m., the first interaction after 10:47 a.m. is 12:08 p.m. and is related to a WhatsApp message sent by Mr. Perini.*

In conclusion, we do not find any kind of interaction between the user (Mr. Perini) and the smartphone from 10:47 a.m. to 11:40 a.m.” (emphasis in the original).

48. On this basis, the Appellants submitted the following prayers for relief to the CAS in their Appeal Brief:

- “I. the appeal filed by the Italian Paralympic Committee and Mr Giacomo Perini against the decision rendered by the World Rowing Executive Committee on 1 September 2024 is formally admitted;*
- II. the Appealed Decision is set aside; and*
- III. it is ordered to reestablish the ranking of the PR1 M1x of the Paris 2024 Paralympic Games to the extent that Mr Giacomo Perini is reinstated in the third place and, as a result, awarded with the bronze medal;*
- IV. it is ordered that World Rowing bears the costs of this arbitration (if any) and pays to the Appellants a significant contribution to their legal costs”.*

B. The First Respondent’s Arguments

49. The First Respondent’s submissions are summarised as follows:

- **Field of play:** the Appealed Decision is not reviewable by the Panel per the established field of play doctrine. The Appealed Decision is clearly a decision taken originally by the Race Umpire based on his appreciation of the facts and the rules of the game. The Panel should exercise restraint and give deference to the Race Umpire, the Board of Jury and WR’s Executive Committee given their technical expertise and training in the particularities of the sport of rowing. Additionally, the Panel should note the expediency with which the internal appeals procedure occurred, happening hours after the Umpire’s Decision, further lends weight to the Appealed Decision being one within the applicability of the field of play doctrine.

Per the CAS’ jurisprudence, a field of play decision can only be reviewed by a panel when there is clear evidence of serious bias, malice, bad faith, arbitrariness or legal error. The Appealed Decision suffers from none of these vices. Per WR regulations, communication and exchange of data between rowers and their team is prohibited, leading to only three types of communication devices being allowed on the boat, thus rendering possession of a mobile device in breach of the Contested Rule. Consequently, given that Mr Perini has not disputed his possession of the phone, even admitting to having done so inadvertently or by mistake, it cannot be argued

that the Appealed Decision was vitiated in any way by a misapplication of the law, arbitrariness, bad faith, bias or malice given the clear breach of the regulations;

- Procedural rights: the Appellants' right to be heard and to defend themselves were guaranteed throughout all proceedings before WR. Firstly, Mr Perini was questioned twice about his possession of a phone during the inspection. Thereafter, the Appellants and the Italian Rowing Federation had ample opportunity to present their case before the Board of Jury and WR Executive Board. The fact remains that the Appellants' contention of the phone not being used for communication and the explanation of its presence in the boat being a mistake are irrelevant; possession was sufficient to impose a sanction. In any event, the alleged procedural infringements cannot lead to the annulment of the Appealed Decision by virtue of the well-established principle of *de novo* reviews pursuant to Article R57 of the CAS Code;
- Communication v. possession: as highlighted above, the Contested Rule prohibits communication and the exchange of non-allowable data. To that end, WR has provided a list of allowable communication devices, namely the MinimaxX GPS Unit, the Sping GPS Unit and the ACCROW GPS Unit. Thus, the fact that Mr Perini did not communicate with his team during the race is irrelevant, mere possession of a device capable of communication is strictly prohibited. This strict prohibition from, in particular, carrying a mobile phone on a boat is well-known amongst experienced rowers, such as Mr Perini. As such, there was no need to inspect Mr Perini's mobile phone after Ms Kuczma confirmed the communication device had been inside Mr Perini's boat during the Race. In any event, the Digital Forensics Report confirmed that Mr Perini's mobile phone received non-allowable data during the Race;
- The sanction: the sanction imposed by the Appealed Decision is proportional to Mr Perini's breach of the Rules of Racing and does not breach any fundamental principles of law. In the first place, WR recalls the CAS' jurisprudence on proportionality, often deferring to federations' criteria and expertise when imposing sanctions. Furthermore, the sanction of exclusion is within the bounds of the sanctions prescribed by the Contested Rule (*i.e.*, up to disqualification). Specifically, Rule 65 of the Rules of Racing provides for the sanction of exclusion. As such, there can be no breach of the principle of legality and predictability given that the sanction of exclusion is prescribed as a possible sanction for a breach of the Contested Rule. Moreover, the sanction of exclusion is not the *ultima ratio* sanction – such a sanction being disqualification – as argued by the Appellants. Considering the impact to the Race's integrity that the possession of a phone implies, exclusion was the appropriate sanction in order to restore the sporting integrity of the event, rather than a less onerous measure such as a reprimand or yellow card; and
- Standing issue: the Appellants, in requesting that a bronze medal be awarded to Mr Perini, have failed to name the appropriate respondent, namely the IPC. In doing so, the Appellants have placed this request for relief beyond the Panel's scope of review and thus the appeal should be dismissed.

50. On this basis, the First Respondent submitted the following prayers for relief in its Answer:

- “I. The appeal filed by the Comitato Italiano Paralimpico and Mr Giacomo Perini against the decision issued by World Rowing is dismissed.*
- II. The Comitato Italiano Paralimpico and Mr Giacomo Perini shall bear all the arbitration costs, if any.*
- III. The Comitato Italiano Paralimpico and Mr Giacomo Perini shall be ordered to pay to World Rowing a significant contribution towards its legal and other costs incurred within the framework of these proceedings, in an amount to be determined at the discretion of the Panel, upon submission of World Rowing’s statement of costs at or after the hearing”.*

C. The Second Respondent’s Arguments

51. The Second Respondent’s submissions are summarised as follows:

- Field of play: the Appealed Decision meets the criteria applicable to the field of play doctrine (*i.e.*, the decision was taken on the playing field, and its effects were limited to the Race), thus placing said Decision beyond the Panel’s remit. As submitted by the First Respondent, the Appealed Decision does not suffer from any malice, bad faith, bias or legal error warranting its review in spite of the field of play doctrine;
- Character attacks: the Appellants’ engage on baseless character attacks against Mr Horrie, all of which are unfounded, spurious and irresponsible. Mr Horrie at all times behaved within the bounds of the Rules of Racing, filing an objection in line with his right under said Rules;
- Procedural rights: the Appellants’ objections as to the conduct of the proceedings before the Race Umpire, the Board of Jury and the WR Executive Committee are baseless, ran contrary to the principle of good faith and, in any event, could be cured though the Panel’s *de novo* review;
- Communication v. possession: the Contested Rule prohibits communication and exchange of data, functions that are intrinsic to the functioning of a mobile device. Thus, a strict application of said Rule is necessary to guarantee the Race’s integrity, warranting a broad application and prohibiting possession of such a mobile device. In any event, the Digital Forensic Report confirms that Mr Perini received messages whilst on the boat, said messages constituting an impermissible form of data. Importantly, the Contested Rule does not require intent, nor for the messages to have been read;
- The sanction: Mr Perini’s exclusion from the Race is an appropriate sanction, imposed by WR and its officials by applying their expertise and discretion. The sanction is not evidently or grossly disproportional. Instead, the sanction was

imposed due to Mr Perini's own actions, which contravened the Rules of Racing at the most prestigious regatta in the para-rowing calendar, leaving the Race Umpire with no option but to exclude Mr Perini from the Race. Notably, exclusion is not the most severe sanction that the Race Umpire could have imposed as per the Contested Rule, that being disqualification; and

- Standing issue: the appeal being heard in this arbitration must be dismissed. Principally, given that the IPC is the sole entity authorized to issue medals, the Appellants' failure to name the IPC as a Respondent while simultaneously requesting for the Panel to grant Mr Perini a bronze medal is critical to the success of their appeal.

52. On this basis, the Second Respondent submitted the following prayers for relief in its Answer:

"In the premises of the above matters, the Second Respondent respectfully requests that the learned Panel dismiss the Appellants' appeal, confirm the appealed decision, and make an order that the Appellants shall bear the arbitration costs (if any) and pay a significant contribution towards his legal costs".

V. THE HEARING: SUMMARY OF THE WITNESS' TESTIMONIES

53. During the hearing, the Panel heard testimony from the following persons:

A. Mr Giacomo Perini

54. Mr Perini is an Italian paralympic rower who has represented the Italian Paralympic team since 2017, having been achieved international success in the European Rowing Championships and the World Rowing Championships.
55. Mr Perini declared that he inadvertently left his mobile phone in his wrist bag, which he uses to carry his personal belonging while walking with the assistance of crutches instead of placing it in a larger bag stored at the team's facilities – the place where he would leave normally his mobile phone. While this was his regular practice, Mr Perini firmly stated he had never been told, nor was it his understanding from the Rules of Racing, that there was a strict prohibition from carrying mobile devices while the traffic rules were in place. Instead, Mr Perini affirmed he understood communication was prohibited. When asked, Mr Perini stated he regularly leaves his phone on land during competitions not from a belief of regulatory compliance, but instead because carrying a mobile device during a competition provides no benefit. Rather, Mr Perini stated that he believed that carrying a mobile phone while competing would likely lead to the phone breaking or becoming waterlogged.
56. At no point, Mr Perini stated, did he use the mobile phone during the Race or while the traffic rules were in place. During the cooldown, Mr Perini denied possession as he was not aware the mobile phone was on the boat when initially asked by the Race Umpire. Thereafter, once Ms Kuczma approached his boat in the pontoon, Mr Perini checked his wrist bag and admitted to having had the device on the boat. Mr Perini stated that

Ms Kuczma merely showed the phone to the Race Umpire, who did not inspect it. Instead, the mobile phone was immediately returned to Mr Perini without him having to request it back.

57. After Mr Perini was informed of the Umpire's Decision, he approached the Race Umpire and asked why he had been excluded as he understood that Rules of Racing only banned communication, but not possession in itself. Once the Race Umpire confirmed the decision, Mr Perini left.
58. During cross-examination, Mr Perini confirmed that he did not take a mobile phone with him during international races, except for one instance when he also forgot he was carrying his phone on his personal wrist bag. Rarely, Mr Perini declared, he would take the mobile phone for training on the boat, in particular to use for communication with the mainland when alone.

B. Mr Jean-Christophe Rolland

59. Mr Rolland is the President of WR.
60. During his testimony, Mr Rolland explained that WR, in its regulatory function, aims *inter alia* to provide a level playing field. In doing so, WR places certain parameters and restrictions on the boat and other equipment through, *inter alia*, the Contested Rule; the aim being to prioritize the rower's athletic performance as opposed to reliance on equipment. As part of a rower's athletic performance, per Mr Rolland's testimony, WR intended for rowers to be left to their own devices once traffic rules are in place in order for said rowers to not gain an advantage by communicating with their team.
61. At an international level, Mr Rolland stated that WR's responsibilities lay in the event organization and the enactment and enforcement of regulations. Furthermore, Mr Rolland stressed that WR did not have direct access to international rowers and was instead communicating with the federations. As such, Mr Rolland declared that a rower's education on WR regulations happened during a rower's learning phase at a national level. Mr Rolland also added, in terms of rower's awareness of WR regulations, that all competitors are obliged to sign participation agreements in order to compete in international regattas; an agreement by which rowers commit to comply with WR regulations.
62. Mr Rolland further stated that international rowers are well aware that they are not allowed to take a mobile phone with them on a boat while traffic rules are in place. The Contested Rule, continued Mr Rolland, is absolutely clear. On the issue of use and possession, in particular relating to smartwatches, Mr Rolland stated that WR regulations prohibit the possession of connected devices; a mobile phone always being a device capable of establishing a connection. On that point, Mr Rolland affirmed that WR regulations, in a general and strict manner, prohibit the presence of connected devices on the boat, whether that be a mobile phone or smartwatches capable of connecting to networks. The Contested Rule was drafted in such a way since it would be too onerous for WR to have to teach umpires the minutiae of all devices capable of connection and conduct checks on all participating rowers on that basis. Instead, Mr Rolland stated that

it was incumbent on the rowers to know WR regulations and comply with them. Prompted by the Appellants' counsel questions, Mr Rolland confirmed that, while some athletes had used smartwatches during the Race, the Race Umpire had not inspected whether said devices were connected devices.

C. Mr Jérôme Mouly

63. Mr Mouly was the President of the Jury for the Race. He has been involved in the sport of rowing since 1991, initially as a regional and national-level rower, and as a jury member since 1998. By 2005, Mr Mouly had obtained his international jury member license and has participated in multiple international regattas.
64. As President of the Jury, Mr Mouly was stationed in the finish tower for the Race and had a clear view of the event. Following the conclusion of the Race, Mr Mouly was informed by the Race Umpire of Mr Horrie's objection and, following the investigations of the Race Umpire and Ms Kuczma, which he was able to observe from the tower, Mr Mouly was informed of Mr Perini's exclusion, following which he announced the modified result of the Race.
65. The Italian Rowing Federation filed a protest to the Umpire Decision, triggering the Board of Jury's review, which Mr Mouly oversaw as President. During the Board of Jury's deliberations, Mr Mouly stated that the Jury began by noting that the Contested Rule prohibited possession of devices capable of communication, with certain exceptions per WR's publications. Additionally, Mr Mouly recounted that the Board of Jury had been given a mobile phone, specifically an iPhone, with its passcode by the Italian Rowing Federation, which they stated was the phone found in Mr Perini's boat (*i.e.*, his personal iPhone). While the Board of Jury initially reviewed the phone's call log, noting that no calls had been made or received during the Race, Mr Mouly stated the Board of Jury ultimately decided not to investigate the phone further as they considered it an unnecessary intrusion given that possession was sufficient to establish a breach of the Rules of Racing and because they could not verify the iPhone was indeed the same device as the one found in Mr Perini's phone. In particular, Mr Mouly stated that the Board of Jury understood that a mobile phone far exceeded the communication capabilities permissible under the Rules of Racing.
66. After the BoJ Decision was rendered, Mr Mouly noted the Italian Rowing Federation's discontent, in particular the initial wording stating Mr Perini had used the phone in the Umpire Decision. Regardless, Mr Mouly believed that the wording was responsive to the fact that the Race Umpire was not a native-English speaker and, in any event, the sanction was proportional to the breach.
67. Additionally, when asked about smartwatches, Mr Mouly noted that, while some smartwatches are capable of communication, not all smartwatches have that functionality. Consequently, smartwatches that are not capable of communication are permissible in international regattas organized by WR. In general, when asked about the investigation of use of connected devices for communication, Mr Mouly stated that a per-boat review of such devices would go beyond WR's control capabilities.

68. Prompted by the Panel's questioning, Mr Mouly submitted that, in addition to a breach of the Contested Rule, Rule 72 – which prohibits coaching during racing and is linked to the Contested Rule – also prohibits the possession of a mobile device.

D. Mr Daniel Gutiérrez Praena

69. Mr Gutiérrez Praena is a former rower (active between 1995 and 2001) and a race umpire since 2003, having passed the exam for the International Umpire License in 2014. Furthermore, Mr Gutiérrez Praena was the Race Umpire during the Race.
70. After the conclusion of the Race, Mr Gutiérrez Praena stated he was approached by Mr Horrie, who reported he had heard Mr Perini using a mobile phone during the warm-up and throughout the Race. In response to Mr Horrie's objection, Mr Gutiérrez Praena asked Mr Perini if he was in possession of a mobile device, to which Mr Perini shook his head. After Mr Horrie confirmed his objection, Mr Gutiérrez Praena approached Mr Perini with the same question and noted that he had been rummaging through the boat. This time, according to Mr Gutiérrez Praena, Mr Perini simply remained silent. Following this interaction, Mr Gutiérrez Praena decided to inform the President of the Jury of the situation.
71. After Ms Kuczma confirmed that Mr Perini indeed was in possession of a mobile phone, Mr Gutiérrez Praena decided to exclude the Italian rower from the Race on the basis of the Contested Rule. Mr Gutiérrez Praena stated that it is widely known that rowers are barred from being in possession of a mobile device while traffic rules are in place. In any event, Mr Gutiérrez Praena stated, it is highly unusual for a rower to carry a mobile device during a competition as rowers zealously guard their boat's weight given the impact that the weight has on a boat's speed. Mr Gutiérrez Praena, in response to the Appellants' counsel, confirmed that Ms Kuczma had conducted the investigation into Mr Perini's possessions, given that it was impractical for him to do so. Furthermore, Mr Gutiérrez Praena confirmed that he was close enough to Ms Kuczma to communicate with her and see the phone. Given Mr Gutiérrez Praena's understanding of the Contested Rule, further investigation into whether the mobile device had been used by Mr Perini was unnecessary because the difference between possession and use is immaterial to a finding of a breach of the Contested Rule.
72. Mr Gutiérrez Praena further stated that Mr Perini's reaction was muted, simply being in shock and not directing any questions or protests towards Mr Gutiérrez Praena. When asked why the Umpire Decision found that Mr Perini had used a phone, Mr Gutiérrez Praena stated that he is not a native English speaker and, thus, his wording was imprecise.

E. Ms Monika Kuczma

73. Ms Kuczma is PhD in physiotherapy, specializing in patients with disabilities. Moreover, Ms Kuczma has 17 years of experience as an international rowing umpire in both Olympic and Paralympic games. In the context of the present case, Ms Kuczma was an ITO during the Race.

74. During the Race, Ms Kuczma was positioned on the victory pontoon in order to assist the medal winners to secure their boats and receive their medals. In that capacity, Ms Kuczma stated she was asked by the Race Umpire to investigate whether Mr Perini had a mobile phone onboard. Following said request, Ms Kuczma calmly asked Mr Perini, in clear English, whether he indeed was in possession of a mobile phone. Mr Perini – who’s demeanour Ms Kuczma perceived to be nervous and non-responsive – then confirmed he had a phone and showed Ms Kuczma the mobile, which wrapped in a towel inside his personal wrist bag. During cross-examination, Ms Kuczma confirmed that, upon seeing the mobile phone, she did not conduct any further checks (*i.e.*, whether is turned on, connected or was used). Instead, Ms Kuczma promptly and discreetly raised the phone in order to bring it to the Race Umpire’s attention. Thereafter, Ms Kuczma handed the phone back to Mr Perini.
75. When asked about the Contested Rule and, more generally, the prohibition of mobile devices during traffic rule, Ms Kuczma stated all rowers are aware that mobile devices are prohibited. Mr Kuczma added that, if she had been the race umpire, she would have reached the same determination as in the Umpire Decision. In Ms Kuczma’s view, the likelihood that Mr Perini had used the phone, given its location within the boat, was not determinative to the sanction as possession of a mobile device was a breach of the Rules of Racing.
76. Finally, as to Mr Horrie’s objection, Ms Kuczma recalled that Mr Horrie stated he had heard voices other than Mr Perini’s coming from his boat.

VI. JURISDICTION

77. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

78. Article 66 of the WR Statutes and related Bye-Laws (“**WR Statutes**”) provides that:

“Any party penalised by a judicial body of World Rowing may appeal the decision to CAS in Lausanne only, to the exclusion of any court of law of any country or any other arbitration body. The appeal brief shall set out the facts and reasons on which it is based. It shall be sent to CAS within 21 days following receipt by the party of the decision in question. The CAS conducts the appeal and rules on it in accordance with its own regulations. In addition, the CAS applies Swiss law and the rules of Swiss federal procedure. The seat and place of the arbitration is in Lausanne. The decisions made by the CAS Appeals Arbitration Division are final and may not be appealed”.

79. The Appellants argue in favour of the CAS’ jurisdiction on the basis of Article 66 of the WR Statutes, understanding that the Appealed Decision was issued by a WR judicial body (*i.e.*, WR Executive Committee) pursuant to Article 62 of the WR Statutes. While

the Respondents advocate for the Panel's restraint in reviewing the Appealed Decision on the basis of the field of play doctrine and submitted a *litis consortium* issue, they did not contest the CAS' jurisdiction to hear the present dispute. Moreover, all Parties duly signed the Order of Procedure, which ratified the Panel's jurisdiction to adjudicate the present dispute.

80. Considering the foregoing, the Panel finds the CAS has jurisdiction to hear and resolve the present dispute.

VII. ADMISSIBILITY

81. The Panel finds that the Appellants' Statement of Appeal is admissible given it was filed within the 21-day deadline, pursuant to Article 66 of the WR Statutes. In this regard, the Panel takes note that the Respondents did not present any objections to the admissibility of the Appellants' appeal.

VIII. APPLICABLE LAW

82. Article R58 of the CAS Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

83. Additionally to Article R58 of the CAS Code, the above-quoted Article 66 of the WR Statutes provide that “[t]he CAS conducts the appeal and rules on it in accordance with its own regulations. In addition, the CAS applies Swiss law and the rules of Swiss federal procedure”.
84. The Appellants submit that the law applicable to the present dispute is primarily WR's regulations and, in addition, Swiss law. The Respondents concur with the Appellants, specifically adducing the Rules of Racing as the primary WR regulation applicable to the present dispute.
85. On the basis of the foregoing, the Panel finds that the present dispute shall be resolved by primarily applying the various statutes and regulations of WR, in particular the Rules of Racing, and, additionally, Swiss law and the rules of Swiss federal procedure.

IX. PRELIMINARY ISSUES

86. At the outset of the hearing, the Appellants attempted to produce an interview given by Mr Horrie, made publicly available in the form of a podcast. According to the Appellants, the interview was admissible given it was publicly available.

87. The Respondents protested the belated submission of the interview, arguing that the Appellants should have filed it alongside its Appeal Brief pursuant to Article R56 CAS Code.
88. The Panel decided, after considering the Parties' arguments, not to admit the interview into the file. In doing so, the Panel recognized the public nature of Mr Horrie's interview. Nonetheless, the Panel was not satisfied by the arguments presented by the Appellants to justify the belated submission of the contested interview. The Panel recalls Article R56(1) of the CAS Code, which provides that "*[unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to [...] to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer]*". Evidently, the Parties did not agree on the admissibility of the interview, meaning that only exceptional circumstances would give way to the interview's admissibility. Notably, the interview was made public on 15 October 2024, a week before the submission of the Appeal Brief. The Panel cannot find exceptional circumstances to justify a belated evidentiary submission when said evidence could have been reasonably submitted alongside the Appeal Brief.
89. Finally, the Panel understands that the interview is publicly available, thus putting into question the necessity of its admissibility into the record in order to formulate arguments on its basis. Regardless, the Panel found that the lengthy nature conventionally found in podcast interviews placed significant practical restrictions on the Respondents' and the Panel's ability to review, comment and put forth questions related to Mr Horrie's statements in said interview.
90. Considering the foregoing, the Panel chose to reject the admission of the interview into the record.

X. MERITS

91. Having reviewed the arguments put forth and evidence adduced by the Parties, the Panel will pursue the following analytical framework for adjudicating the merits of this dispute:
 - A. Is the Panel restricted in its scope of review of the Appealed Decision on account of the field of play doctrine?
 - B. Do the Rules of Racing, in particular the Contested Rule, prohibit possession of a mobile phone, or connected devices in general, when traffic rules are in place?
 - C. Did Mr Perini commit a breach of the Contested Rule?
 - D. Can the Panel, were it to find that Mr Perini had not committed a breach of the Contested Rule, award Mr Perini with a bronze medal in the absence of the IPC?

A. On the applicability of the field of play doctrine

a. Introduction and legal framework

92. The Respondents submit that the Appealed Decision, by its nature, falls outside the Panel's scope of review on the basis of the field of play doctrine. Thus, the Respondents argue that the Panel should wholly dismiss the Appellants' requests, giving deference to the expertise and technical knowledge of WR's officials.
93. Indeed, multiple CAS panels have exercised judicial self-restraint when requested to review decisions taken on the playing field and on the basis of the so-called rules of the game, giving rise to the cornerstone principle of the field of play doctrine in CAS jurisprudence. The field of play doctrine was defined by the panel in CAS 2010/A/2090 as follows:

"The essence of the field of play doctrine is that it is for sporting bodies via their appropriate officials to take decisions relevant to the conduct of particular events. They only lose their immunity from review by CAS in circumstances of arbitrariness and bad faith, (meaning fraud, corruption or malice), or some equivalent vice. This proposition, he asserted, is supported by a long and consistent line of authority [...] The doctrine concerns not only the evaluation of the conduct of an event but whether a protest has been properly filed (see CAS 2008/A/1641, para. 89)" (CAS 2010/A/2090, para. 21. See also, CAS 2021/A/8119, para. 1 of CAS summary; CAS OG 24-15 & CAS OG 24-16, paras. 104-105).
94. The Panel fully subscribes to this doctrine. It stands to reason that the CAS refrains from reviewing *"decisions made on the playing field by judges, referees, umpires and other officials, who are responsible for applying the rules of a particular game"* (CAS 2021/A/8119, para. 1 of CAS summary). There are multiple reasons justifying the exercise of judicial self-restraint in this ambit are apparent. For instance, CAS Panels are not sufficiently trained in the rules of the games of any particular sport, nor do they have the advantage of witnessing the events leading to the decision. Moreover, as put forth by the Swiss Federal Tribunal ("SFT"), not only is deference to federations warranted in this respect, but there is a general consideration underpinning the field of play doctrine that *"the game must not be constantly interrupted by appeals to the courts"* (SFT 118 II 12, para. 2; free translation from German original. See also, CAS OG 96/006, para. 3; CAS OG 00/12, para. 12; CAS 2004/A/727, para. 9).
95. Nevertheless, not all decisions rendered in the playing field by match officials are beyond the CAS' scope of review. CAS panels have repeatedly found that the decisions suffering from vices which would otherwise have fallen under the field of play doctrine become reviewable. In particular, a decision that would have been otherwise vested with immunity from review by the CAS on the basis of the field of play doctrine loses said immunity from review when the decision has been rendered arbitrarily, with bias, malice, bad faith or legal error (see, CAS 2004/A/727, para. 9, stating: *"the CAS accepts the decision reached as final except where it can be demonstrated that there has been arbitrariness or bad faith in arriving at this decision"*; CAS 2010/A/2090, para. 21, stating: *"[t]hey only lose their immunity from review by CAS in circumstances of*

arbitrariness and bad faith, (meaning fraud, corruption or malice), or some equivalent vice"; CAS 2017/A/5373, para. 50(a), stating: "*a referee's decision affecting the result of a race or game cannot be reviewed on appeal absent proof of bias, malice, bad faith, arbitrariness or legal error*"). A decision may also be reviewable by CAS panels when there is sufficient separation from the initial decision rendered on the field and the appealed decision, in particular when said decision has been the consequence of a separate appeals procedure (see, CAS 2018/A/5916, para. 59; CAS 2023/A/9413, paras. 92-93, where the panel draws a distinction between the on-field decision to issue a red card and the subsequent disciplinary proceedings before the Russian Football Union imposing a disciplinary sanction).

b. The Parties' positions

96. The Respondents argue that the Appealed Decision is not subject to any of the abovementioned exception. Instead, the Respondents emphasize that the Rules of Racing are intricate and highly technical in nature, requiring technical expertise and an intimate familiarity with the sport of rowing. The Respondents contend that WR, through its different official and regulatory bodies, is better placed to apply the Rules of Racing, in particular in the heat of the competition, than the CAS. The Respondents further argue that the Appealed Decision was rendered in close proximity to the Umpire Decision (*i.e.*, within a day). Pursuant to the Rules of Racing (*i.e.*, Bye-Laws to Rule 73 and Rules 75-77), appeals, objections and protests must be adjudicated and issued expediently. Thus, the Panel should not intrude in the results of the Race months later when the final results were confirmed shortly thereafter.
97. The Contested Rule, as conveyed by the Respondents, prohibits possession of a device capable of communicating with individuals outside the boat. As such, there was no need to investigate whether Mr Perini used a mobile phone for communication; possession is sufficient to establish a breach of the Contested Rule. In any event, the Respondents argue that Mr Perini, through the Digital Forensic Report, has admitted to receiving messages while traffic rules were in place. The receipt of such data, which is explicitly prohibited by the Contested Rule, coupled with Mr Perini's possession of a mobile phone during the Race, warrants the imposition of a sanction as prescribed by the Contested Rule. Consequently, the Respondents affirm that the Appealed Decision does not suffer from any legal error.
98. Conversely, the Appellants argue that the Appealed Decision is not protected by the field of play doctrine for the following reasons: (i) the Appealed Decision was not issued by a referee or umpire, but rather by WR Executive Committee; (ii) the CAS is competent to review decision rendered by WR per Article 66 of WR Statutes, without carving out decisions not amenable to review by the CAS; (iii) the Appealed Decision was not taken in the field, the Appellants rather request for the original results of the Race; (iv) the decision is not a purely technical decision, but rather one that pertains to the application and interpretation of WR Regulations; and (v), even if the Appealed Decision were to be considered as a field of play decision, it would nevertheless be subject to review as it was rendered arbitrarily.

c. *The Panel's analysis*

99. The Panel recognizes the experience and technical expertise of the Race Umpire, the members of the Board of Jury and the members of WR's Executive Committee. Moreover, the Panel has taken note of the Race Umpire's and Ms Kuczma's first-hand account of the events leading to the Umpire Decision, ultimately altering the Race's finishing order. Nonetheless, the Panel does not believe that these attributes and circumstances warrant granting a margin of deference such that the Panel would exclude itself for reviewing the Appealed Decision. In doing so, the Panel is cognizant that any exercise of arbitral self-restraint consequently restricts an athlete's right to natural justice (see, CAS 2018/A/5916, para. 59). Thus, the Panel is of the belief that, while the field of play doctrine is well-established and premised on well-tested legal principles, it must be exercised with caution and its limits must not be stretched beyond what is needed to preserve the good functioning of the sport.
100. Overall, in proceeding with the review of the Appealed Decision, the Panel has not been convinced by the arguments put forth by the Respondents as to the *in casu* applicability of the field of play doctrine. Instead, the Panel finds that there are multiple vectors by which the Appealed Decision falls short from being immune to the Panel's review.
101. Firstly, the Panel is not convinced that a review of the Appealed Decision would result in the judicial rewriting of the Race's results. Contrary to the Respondents' analogous argument, comparing Mr Perini's exclusion with a red card issued in football (*i.e.*, a typical decision protected by the field of play doctrine), the Umpire Decision was not issued during the course of the Race. Instead, the Race's competitive order was only modified by the Umpire Decision after Mr Horrie field his objection. Albeit, the Panel notes that, strictly speaking, per Bye-Law to Rule 73, the Race had not officially concluded until the Race Umpire had taken account of any objections and then a white flag or white light had been issued by the President of the Jury. Regardless, the Panel is comfortably satisfied that a review of the Appealed Decision would not affect the competitive integrity of the Race given that the Appealed Decision was not rendered while the rowers were in the midst of competing for placements.
102. Moreover, the Panel notes the separation between the Umpire Decision in relation to the BoJ and Appealed Decisions. The Panel does not disagree with the Respondents' contention that the aforementioned decisions were issued in a compressed-time frame (*i.e.*, within a day of the Race). Regardless of this temporal closeness, the Panel still finds that there is a sufficiently substantive difference between the factual finding in the Umpire Decision and the later decisions. Originally, the Umpire Decision found that Mr Perini was "*using communications equipment during the race*". On appeal, the BoJ Decision disposed with any concrete finding of use by Mr Perini, instead stating that "*no device like a mobile phone is allowed in a boat due to possible share of other kind of data*". The change in finding from use to possession became clear by the additional reasoning furnished in the Appealed Decision, stating "*amongst all elite rowers and coaches, of very general knowledge and practice that no mobile devices such a mobile phone can be brought on board of*". In this regard, the Panel is not convinced by the assertion that Mr Gutiérrez Praena mistakenly drafted the Umpire Decision to state Mr Perini had used a phone because he is not a native-English speaker. During the hearing, Mr Gutiérrez

Praena demonstrated a command of the English language that, while not his native language, leads the Panel to believe that he could not have committed such a fundamental mistake in drafting the Umpire Decision.

103. Therefore, the Panel understand that there was a substantive change between the decision taken most proximate to the playing field (*i.e.*, the Umpire Decision) and its subsequent appeals. This change is not trivial. The BoJ Decision, in effectively changing the finding of breach from use to possession of a phone, modified the Race Umpire's stated appreciation of the facts. This finding by the BoJ Decision was contextualized by the WR Executive Committee in the Appealed Decision by adding that possession of a mobile phone is known amongst "*elite rowers and coaches*" to be prohibited. Meaning, the nature of the conduct leading to the breach was changed by WR judicial bodies on appeal, largely composed by persons that were not present at the Race, namely certain members of the Board of Jury and the WR Executive Committee. Consequently, the Panel is not convinced that a review of the Appealed Decision by the Panel would constitute an overreaching intrusion on the decision made on the field by an adjudicating body as this has already occurred.
104. Thirdly, the subject matter of the dispute places the Appealed Decision beyond the remit of a decision taken on the playing field. The central contention in the present dispute is whether the Contested Rule – or the Rules of Racing in general – prohibits possession of a connected device while traffic rules are in place. In the Panel's view, the dispute is purely legal in nature as it revolves around the legal interpretation of the Rules of Racing. The logical consequence of this premise is that the legal expertise of an adjudicating body – *in casu* the Panel – gains comparative weight when contrasted with the *in situ* appreciation of the events leading to the decision and their sports-specific expertise. Simply, there is no comparative advantage between the Race Umpire's appreciation of the facts on the day of the Race and the understanding of the facts by latter judicial bodies. In fact, the facts leading to Mr Perini's sanction are not contested; the Parties agree that Mr Perini was in possession of a phone, which he did not use to communicate with his team, but did receive certain messages that he did not read while traffic rules were in place (an undisputed fact, that only came to the Respondents' knowledge long after the Appealed Decision was taken, when the Appellants filed the Digital Forensic Report, yet is a fact that the Respondents now look to rely upon in support of the Appealed Decision, putting further distance between that issue and the field of play). Likewise, the Panel does not view the subject matter of the dispute to be technical in nature. The Contested Rule, while being part of a highly technical section of the Rules of Racing, is not in itself a highly technical rule. The Contested Rule merely prohibits communication and the exchange of certain types of data. The device in question, a mobile phone, is not a device foreign to the Panel or specific to the sport of rowing, it is instead a ubiquitous devices used by most people around the world in their daily lives.
105. In other words, without intending the delve into a detailed interpretative exercise, the Panel believes that the Appealed Decision might have *prima facie* be vitiated by legal error. Namely, the Appealed Decision asserts that the Contested Rule imposes something akin to a strict liability obligation on rowers not to carry devices capable of communication, particularly mobile phones. This obligation, per the Appealed Decision and the arguments adduced by the Respondents, is such that possession of a phone leads

to a breach of the Contested Rule when the text of the rule seems to only address actual communication and exchanges of data.

106. Under the above understanding of the dispute, the Panel finds that precluding the review the Appealed Decision would be an unjustifiable restriction on the Appellants' right to challenge an association's decision which materially affects him. Particularly, an athlete should not be precluded from challenging an association's decision which sanctions them on the basis of an interpretation of a rule that is not intelligible by the plain reading of the text or supported by a robust body of case law. On the later point, the Panel notes that neither Mr Rolland nor Mr Mouly could adduce any concrete cases where rowers had been excluded from race solely on the basis of possession of a mobile device.
107. Considering the foregoing, the Panel finds that an application of the field of play doctrine in this case, leading the Panel's preclusion from reviewing the Appealed Decision, is unwarranted. In particular, the Panel finds that the nature of the dispute and the manner in which the Appealed Decision was rendered do not support, contrary to the Respondents' submission, the exercise of arbitral restraint. Consequently, the Panel dismisses the Respondents' arguments pertaining to the field of play doctrine and will proceed with its analysis of the Appellants' claims.

B. On the alleged prohibition of possession of connected devices pursuant to the Contested Rule

a. Introduction and the Parties' positions

108. As previously established (see *supra* para. 104), the Panel understands that the crux of the dispute lies in the diverging interpretations given to the Contested Rule. In its most narrow sense, the Parties disagree on whether the Contested Rule strictly prohibits *possession* of a mobile phone – more broadly any connected device – or if it is limited to prohibiting *communication* and the exchange of data between rowers and other individuals outside the boat.
109. The Appellants contend that the Contested Rule does not proscribe possession. Instead, the Appellants submitted, on the basis of SFT jurisprudence on legislative interpretation, that the wording and meaning of the Contested Rule only prohibited communication and the exchange of data. Additionally, the purpose of the Contested Rule, *i.e.* preventing rowers from gaining an unfair advantage, did not justify the finding of a sanction solely on the basis of possession of a mobile phone. The Appellants argue that, were its intention to prohibit possession of mobile devices on boats, WR should have clearly provided for such a prohibition in the Rules of Racing. In the Appellants' view, neither the Contested Rule nor any other provision in the Rules of Racing provide such a restriction. This lack of prohibition is highlighted by the allowance of smartwatches during regattas. In this line, the Appellants adduced evidence of other rowers, including Mr Horrie, wearing smartwatches during the Race. Some of these devices, the Appellants posited, are capable of establishing communications and record non-allowable data, allowing rowers wearing such devices to more effectively cheat when compared to a phone (*i.e.* the placement of a smartwatch on a rower's wrist is comparatively more convenient than holding a phone while rowing).

110. The Respondents agree with the Appellants assertion that the Contested Rule prohibits communication and the exchange of non-allowable data. Nevertheless, the Respondents affirm that the prohibition of the Contested Rule extends to possession of a mobile phone. In doing so, the Respondents adduce a presentation issued for an umpire clinic titled “Control Commission and Appendix R6”, which in its subheading states “[t]his presentation reflects the World Rowing Statutes, Rules of Racing and interpretation of them in effect on Jan 31, 2022” (the “**Umpire Presentation**”). On page 63 of the Umpire Presentation, under the heading “*Permitted Electronic Devices*”, it is stated that three devices were “*shown to World Rowing & were approved by the World Rowing Equip [sic] & Technology Commission*”, those being (i) the MinimaxX GPS Unit, (ii) the Spin GPS Unit, and (iii) the ACCROW GPS Unit. Given that a mobile phone far exceeds the recording and transmission capabilities of these devices, the Respondents assert that the mere possession of a mobile phone is sufficient to establish a breach of the Contested Rule. Overall, the Respondents emphatically asserted that the Contested Rule prohibits all connected devices, including smartwatches with connection capabilities akin to a mobile phone (*i.e.*, establishing communication and transmitting data), with the exception of the devices listed as permissible in the Umpire Presentation. This assertion was echoed by Mr Rolland, Mr Mouly, Mr Gutiérrez Praena and Ms Kuczma during the hearing. In their testimonies, all of the aforementioned individuals stated that it is well-known amongst the rowing community that rowers are not allowed to enter a race in possession of a mobile device.

b. Legal framework

111. Taking note of the diverging view of the Parties on the extent of the restrictions prescribed by the Contested Rule and its determinative impact on Mr Perini’s sanction, the Panel begins its analysis by outlining a sporting federation’s regulatory duties. Repeated CAS panels have stressed that international federations cannot impose sanctions without a clear regulatory ground, requiring disciplinary rules to be sufficiently clear under the principle *nulla poena sine lege clara* (see, CAS 94/129, paras. 21, 28 & 30; CAS 2014/A/3365, 3666, 3667, para. 3 of CAS introductory summary; CAS 2020/A/7008 & 7009, para. 53; CAS 2023/A/9413, paras. 64-68). In cases where an international federation’s statutes are unclear, CAS panels have often applied the *contra proferentem* principle, resulting in an interpretation of the unclear text against the author (see, CAS 2013/A/3274, para. 80; CAS 2013/A/3435, paras. 88-89; CAS 2014/A/3765, para. 70).

112. Proceeding to the interpretation of the Contested Rule, the Panel notes that, under both the jurisprudence of the SFT and the CAS, “*it is generally admitted that rules and regulations of international sports federations are subject to the methods of interpretation applicable to statutory provisions rather than contracts*” (CAS 2020/A/7331, ¶ 105. See also, CAS 2022/A/8915, 8918, 8919 & 89120, ¶ 71, citing CAS 2020/A/7356; SFT Judgement 4A_314/2017, stating “*the Federal Court has interpreted the statutes of major sports associations, such as UEFA, FIFA and the IAAF, in the same way as a statute*” (free translation)). Consequently, any interpretation of the Contested Rule must follow the principles of regulatory interpretation under Swiss law, which can be summarised as follows:

“*According to Swiss Law, there are four coequal methods of interpretation. They are the*

grammatical (seeks after the semantic meaning of the word or phrase), the systematical (seeks after the systematic position of an article in the legal texture of the greater whole), the historical (seeks after the original intention of the rule) and the teleological method (seeks after the spirit and purpose of the statute) of interpretation (KRAMER Ernst A., Juristische Methodenlehre, p. 57 ff., p. 85 ff.; 116 ff.; BGE 135 III 112 E. 3.3.2). While interpreting a statute, the judge has to seek for an objectively right and satisfying decision, taking account of the normative context and the ratio legis (BGE 135 III 112 E. 3.3.2). Thereby no interpretation method prevails over another. Rather, the judge has to choose those methodical arguments that allow approximating the ratio legis as close as possible (KRAMER Ernst A., Juristische Methodenlehre, p. 122)” (CAS 2013/A/3047, ¶ 71. See also, CAS 2020/A/7331, ¶ 106, citing CAS 2013/A/3365-3366; SFT Judgement 4A_314/2017, stating “Any interpretation begins with the letter of the law (literal interpretation), but this is not the decisive factor: it must also convey the true scope of the provision, which also derives from its relationship with other legal provisions and its context (systematic interpretation), the aim pursued, in particular the interest protected (teleological interpretation), and the legislature's intention as it emerges in particular from the preparatory work (historical interpretation)” (free translation; CAS 2022/A/8915, 8918, 8919 & 89120, ¶ 71, citing CAS 2020/A/7008 & 7009 ¶ 61; CAS 2013/A/3365 & 3366, ¶ 88).

113. While there is no hierarchy between the four methods of interpretation (*i.e.*, textual, systematic, historical and teleological), “[t]here is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review” (CAS 2013/A/3365 & 3366, ¶ 89).

c. Interpretation of the Contested Rule

114. Beginning with the text of the Contested Rule, paragraph 5 provides the following:

“5 Communication and Electronics

- a. Data Transmission – During racing (which shall mean at all times when racing ‘traffic rules’ are in force), no communication with the crew is permitted from outside the boat using electric or electronic equipment. In addition, no data may be sent to, or received from the boat except as provided for in paragraph 5.c).*
- b. Allowable Data – During racing, the only information allowed to the crew in the boat shall be:*
 - i. Time*
 - ii. Stroke rate*
 - iii. Boat Velocity / Acceleration*
 - iv. Heart rate*

This information shall be designated as “allowable data”. This data and any information derived directly from it, may be recorded during racing for later use. No other data or information may be measured, recorded or stored except as provided for in paragraph 5) c)”.

115. The text of the Contested Rule is clear. Firstly, crews are barred from establishing any communication with individuals outside the boat while traffic rules are in place through the use of electric and electronic devices. Secondly, no data can be sent or received from the boat, with the exception of four categories of data (*i.e.*, time, stroke rate, boat velocity/acceleration and heart rate).
116. The Panel is not satisfied, purely from reading the text of the Contested Rule, that possession of a mobile phone is strictly prohibited by the Contested Rule. Rather, the text of the Contested Rule is limited to prohibited actions, specifically stating that “no communication with the crew is permitted [...] using electric or electronic equipment” and “no data may be sent to, or received from the boat” (emphasis added). Here, the Panel find the verbiage “using” to be indicative of a requirement to establish communication through an electric or electronic device. Simply, per the wording of the Contested Rule, one must *use* an electronic or electric device to communicate with one’s team in order to commit a breach of the Contested Rule. From a semantic perspective, use and possession of a device are sufficiently distinct; being in possession of a device capable of communicating does not imply that said device is at all times used for communication. Thus, mere possession of a device capable of establishing communication and sharing data, absent actual use of said device, is not proscribed by the wording of the Contested Rule.
117. Insofar as the Contested Rule is clear, the Panel could refrain to proceed to its interpretation. Nevertheless, the Panel considers appropriate, in view of the submissions made by both the Parties, to conduct such exercise, not to leave any doubt open on the meaning of the Contested Rule.
118. A systematic interpretation of the Contested Rule is likewise insufficient to establish a violation based on mere possession of a mobile phone. The Contested Rule functions as a bye-law to Rule 28 of the Rules of Racing, which governs the free construction of boats for WR competitions. Rule 28 of the Rules of Racing provides that “[t]he construction, design and dimensions of boats and oars shall, in principle, be unrestricted subject to the Bye-Laws to this Rule and to Rule 29. However, except for the rowers’ seats, all load bearing parts including the axes of moving parts must be firmly fixed to the body of the boat”. In addition to paragraph 5 of the Contested Rule, dealing with communication devices, the remaining sections of the Contested Rule pertain to (i) different technical aspects of the construction of the boat, (ii) the boat’s oars, (iii) identification of the boat, (iv) prohibition on devices or substances modifying the structure or properties of water, and (v) promotional equipment. It is patently clear to the Panel that the Contested Rule regulates highly technical aspects of the construction of boats. As such, while the Contested Rule does prohibit communication, its placement in the WR regulatory framework appears to conducive to a prohibition on fixing communication devices on the boat rather than wearable devices worn by rowers. Thus, for possession of a communication device not intended to be affixed onto a boat, such as mobile phones or smartwatches, to be presumptive of actual communication resulting in a breach of the Contested Rule, the Panel finds that the language of the Contested Rule should clearly indicate that presumption. In other words, a presumption of communication by possession of a mobile is not supported by the Contested Rule’s placement in a section of the Rules of Racing intended for equipment mounted on a boat.

119. Another relevant provision in the Rules of Racing is Rule 72, which was raised in Mr Mouly's statement. Rule 72 of the Rules of Racing prohibits coaching, *i.e.*, a rower receiving instructions for their coaching staff, and reads as follows: "*[i]n addition to the provisions of Bye-Law to Rule 28 (Appendix R2), it is prohibited to give any instructions, advice or directions to rowers or crews that are racing with any electric, electronic or other technical device, either directly or indirectly from outside the boat*". In the Panel's view, Rule 72 of the Rules of Racing further reaffirms that the prohibition established in the Contested Rule is the act of communicating or exchanging data, not the possession of communication equipment. Rule 72 of the Rules of Racing clearly establishes that, in addition to prohibiting overall communication with individuals outside the boat, communication with the rower from outside the boat with the intent to give instructions, advice or directions is strictly prohibited. Again, in the same line as the wording in the Contested Rule, Rule 72 prohibits an action, with no mention of possession as presuming said prohibited action. Rather, Rule 72 of the Racing Rules adds an element of specific intent that gives rise to a particular prohibition.
120. Finally, in terms of systematic interpretation of the Contested Rule, the Panel is not convinced by the Respondents' assertion that the Umpire Presentation contains a list of allowable communication devices resulting in all other devices capable of communicating being strictly prohibited.
121. Firstly, it is clear from the contents of the Umpire Presentation that the intent of the document was for instructing umpires of how to conduct several technical inspections, not for athletes. While it is indeed incumbent on athletes to comply with the applicable regulations for the competitions they participate in, it is not reasonable to expect athletes to inspect all documents published by an international federation, in particular when such publications are not addressed to them and are not foreseen in the applicable regulations. Moreover, the Umpire Presentation is not, in the Panel's view, a source of law. As such, the Panel cannot accept the Umpire Presentation as an interpretative source that clarifies a rule that is unclear as to the enforcement action being sought by WR.
122. The assertion by the panel in CAS 94/129 is prescient in this respect, which is replicated below:
- "[R]ule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorised bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders"* (CAS 94/129, para. 34).
123. WR cannot rely on the Umpire Presentation as a source that further clarifies. Such an intention is correlative to an attempt to substitute its legislative process, which must be transparent and clear, with an obscure presentation purely on the notion that it represents its technical knowledge and expertise. If anything, this reliance is tantamount to attempting to enforce a rule "*only on the basis of the de facto practice over the course of many years of a small group of insiders*".

124. Even if the Panel were to consider the Umpire Presentation to be a valid source of systematic interpretation, the wording of the relevant section raised by the Respondents does not support their interpretation of the Contested Rule. The relevant slide of the Umpire Presentation states that the devices listed in it had been reviewed and approved by WR. Nowhere is it stated that those three devices represent an exhaustive list of communication devices to the exclusion of mobile phones (*i.e.*, the approval of three devices does not suppose the disapproval of all other devices). Additionally, the Panel again notes that the devices listed in the relevant section of the Umpire Presentation are devices that are presumably mounted on a boat, not wearable devices. As such, the Panel understands that the relevant section of the presentation addresses the construction and subsequent inspection of boats, not the equipment worn or carried by rowers.
125. Proceeding to the third interpretative method, *i.e.*, teleological, the Panel finds no support to suggest that Mr Perini could be sanctioned solely on the basis of possession. As stated by Mr Rolland, the purpose of the Contested Rule is to prevent rowers from gaining a competitive advantage through equipment, instead prioritizing a rower's athletic performance. The purpose of paragraph 5 of the Contested Rule specifically is to ensure that, once traffic rules are in place, rowers are left to their own devices and do not gain any advantage through communication with people outside the boat (*e.g.*, information about changes in the conditions or changes in the rower's strategy). The Panel finds that, strictly speaking, the purpose of the rule does not necessitate a prohibition of possession. Rather, from a purposive standpoint, the Contested Rule seeks to prevent actual communication and not specifically possession of a communication device. Thus, contrary to the Respondents' interpretation, the aim being sought by the Contested Rule is prohibiting the act of communicating, further reaffirming the Panel's initial appreciation of the text of the rule.
126. On the final interpretative tool available to the Panel, the historical interpretation of the Contested Rule, the Panel understands this to entail a review of the preparatory works leading to the norm being interpreted (see, SFT 132 III 226, para 3.3.5). The Parties have not produced any documentary evidence exhibiting the preparatory works of the Contested Rule or any contemporary document to the enactment of the Contested Rule that would allow glean WR's deliberative process.
127. Despite the above, the Panel has decided to apply Mr Rolland's statement *mutatis mutandis* as a source of historical interpretation on account of his role as President of WR. Mr Rolland stated that the Contested Rule was enacted in a way that would not require extensive inspections of all communication devices or thorough investigations on whether actual communication occurred. This overarching prohibition had the functional goal of not overstressing WR's capabilities, understanding that undertaking such inspections would go beyond what WR could logistically achieve.
128. The Panel understands the practical considerations adduced by Mr Rolland. Technological advances in telecommunications make it exceedingly complicated to train referees and umpires in the minutia of what certain devices are capable of doing, in particular whether a smartwatch has connective functionality. Moreover, beyond the remit of technological innovation, Mr Rolland stressed that conducting individualized checks on all boats after races was an exercise beyond WR's operation capabilities.

Despite this well-founded practical consideration, the Panel is not convinced that the final draft of the Contested Rule reflects the WR's perceived scope of enforcement. As highlighted above, while adjudicating bodies should have some deference to the technical expertise and logistical capabilities of international federation, said federations still have the duty to promulgate clear rules, in particular when said rules can carry grave consequences to an athlete's career (*i.e.*, losing sporting competitions and being branded as a cheater). As such, the Panel cannot interpret the Contested Rule in such a way that it redrafts it to comply with a regulatory intent that was not properly executed in the final draft, especially when such redrafting would carry grave consequences to Mr Perini's career and reputation.

129. Considering the foregoing, none of the interpretative tools available to the Panel can lead to the conclusion that the Contested Rule prohibited the mere possession of communication devices, such as mobile phones. The Panel considers the text of the Contested Rule to exclusive encompass a prohibition on communication and exchange of data, without making any allusion to a prohibition on possession connecting devices or that possession of mobile phone is tantamount to actual communication.

d. Additional considerations

130. As a final remark, the Panel wants to address the Respondents' submission, also asserted in the Appealed Decision, that it is well-known amongst the rowing community that carrying a mobile phone on the boat while traffic rules are in place is prohibited. In this respect, the Panel does not find, as supported by the jurisprudence quoted above, that a communities' understanding of a regulation constitutes a valid source of interpretation under Swiss law. This is not to say that the Panel dismisses the assertions made by the witnesses during the hearing. It does indeed seem that the Race Umpire, the Board of Jury and WR Executive Committee excluded Mr Perini from the Race from a true belief that carrying a mobile phone on the boat was strictly prohibited. Nonetheless, as already found above, the Contested Rule invoked by WR's judicial bodies does not proscribe possession, rather communication. Instead, the Panel believes that WR sought to impose a sanction on the basis of a custom, rather than a statutory provision.
131. Pursuant to Article 1(2) of the Swiss Civil Code ("SCC"), a customary practice can be a supplemental source of law in the absence of a written law. Article 1(2) SCC provides that "[i]n the absence of a provision, the court shall decide in accordance with customary law and, in the absence of customary law, in accordance with the rule that it would make as legislator". Without unequivocally asserting that customary law can serve as a basis for imposing a sanction, in particular in light of the *nulla poena sine lege clara* principle, were the Panel to consider imposing such a sanction on this basis, the Panel finds that the Respondents failed to submit sufficient evidence for the Panel to reach said finding. In order for an adjudicatory body to establish a customary practice as a valid supplemental source of law it must have at its disposal a voluminous body of evidence of said custom (see, CAS 2019/A/6330, paras. 99-104), beyond the testimony of four witnesses, albeit highly credible ones.
132. In any event, the Panel believes that WR has the regulatory tools to easily translate this purported customary practice into a clearly drafted regulatory provision. Here, the Panel

again stresses that the legal basis for a sanction of the nature of the one imposed on Mr Perini – effectively removing him from the Race and altering the finishing order of the most significant regatta organized by WR – must be sufficiently clear, allowing athletes to apprehend the prohibited conduct and the consequences therefrom. Furthermore, a well-written provision would eliminate any perceived arbitrariness stemming from prohibiting mobile devices and not wearable devices such as smartwatches. Indeed, a provision clearly prohibiting connected devices, and not solely the act of communicating through electric or electronic means, would be clearly understood to prohibit mobile phone and wearables capable of connecting, but not wearables that do not have connection capabilities.

133. Beyond regulation, the Panel further notes that any new provision banning possession of connected devices should be enforced clearly and consistently in order to avoid any misunderstanding in the future. Enforcement is not straightforward nor inexpensive, particularly when it comes to keeping pace with an ever-evolving technological landscape. As in other sports, such as football and the VAR or the FIS' equipment-evaluation procedure, WR should aim to develop enforcement mechanisms that remove the burden from athletes having to object, or to pre-emptively restrict their equipment.
134. Considering the foregoing, the Panel dismisses the Respondents' contention that the Appealed Decision could exclude Mr Perini from the Race solely on the basis of possession of a device capable of communication.

C. On Mr Perini's alleged breached of the Contested Rule

135. The Appealed Decision's finding that Mr Perini breached the Contested Rule is left without merit as a consequence of the Panel's finding in the preceding section. Thus, no breach can be established on the basis of Mr Perini's possession of a phone. But, strictly speaking, this does not presuppose that Mr Perini did not breach the Contested Rule.
136. The Parties do not contest the fact that (i) Mr Perini was in possession of a mobile phone, (ii) which was turned on and connected while traffic rules were in place, and (iii) that received messages while the Race was ongoing. These facts are corroborated by the Digital Forensic Report, which concluded, *inter alia*, that while traffic rules were in force (i) only two apps generated network traffic while traffic rules were in force, namely the phone's operating system and fitness app, all which are automatically triggered by sensors; (ii) the phone was not used to initiate or receive a call; (iii) no messages were sent; (iv) 18 messages were received through several applications; and (v) no interactions were registered by the mobile phone after the entry into force of the traffic rules (*i.e.*, 10:47am to 11:40am) until 12:08pm.
137. On the basis of the findings in the Digital Forensic Report, the Respondents submitted that, irrespective of a breach based on possession, Mr Perini had breached the Contested Rule by receiving messages while on the boat and while traffic rules were in force. The Respondents argue that the messages received by Mr Perini constitute non-allowable data as they do not fall under the four categories listed by the Contested Rule as allowable data. This contention, in the Panel's view, is the sole remaining basis by which the sanction imposed by the Appealed Decision could be sustain on appeal.

138. The Panel has no doubt that Mr Perini at no point intended to gain an unfair advantage through use of his mobile phone or cheat in any form. The purported reason for the presence of the mobile phone on the boat is perfectly plausible; Mr Perini carries his personal belongings on a small wrist bag, and he inadvertently forgot to take his mobile phone out of the bag prior to the Race. Not only is the Panel sufficiently convinced that there was no intent to cheat from Mr Perini, but the Panel is also satisfied by the Digital Forensic Report's conclusion that Mr Perini did not use the phone until well past the time traffic rules had ceased to be in force. This conclusion gains further plausibility by the statements adduced in relation to the investigation conducted by WR. The testimonies of Mr Gutiérrez Praena, Ms Kuczma and Mr Perini coincide in the fact that the mobile phone was found inside Mr Perini's wrist bag and wrapped in a towel. The Panel understands that the placement of the mobile phone made it exceedingly hard for Mr Perini to access the phone and interact with it while simultaneously rowing. Thus, Mr Perini did not intend to cheat, nor did he incur in any behaviour that could be perceived as cheating, *i.e.*, Mr Perini did not take his phone in order to gain an unfair advantage, nor did he interact with the mobile phone or engage in any communication with people outside the boat.
139. Moreover, WR admittedly did not conduct any reviews of Mr Perini's phone beyond checking the call log prior to the BoJ Decision. WR did not inspect whether the phone found in Mr Perini's boat was active or in which mode it operated. Overall, WR failed to prove that prohibited communication occurred. As found above, the fact that Mr Perini had a phone in the boat without further evidence of the real possibility to use the phone during the race for getting any information is not sufficient to recognise that Mr Perini breached the Contested Rule.
140. Under the above understanding, the Panel is not convinced by the Respondents' contention regarding the messages received by Mr Perini. Faced with a regulatory restriction aiming to prevent rowers from gaining an unfair advantage, located in a highly technical section of the applicable regulation, the Panel finds it would be exceedingly artificial to sanction Mr Perini, to his exclusion from the Race, on the basis that he received messages of encouragement during the Race, which, additionally, he did not read until after the Race had concluded. While the Panel agrees that the relevant section of the Contested Rule strictly prohibits all types of data, except for allowable data, given the nature of the restriction, the Panel understands that the term "*data*" to mean information of a technical nature from which a rower could gain an advantage. In this respect, considering the aim of the provision and its technical nature, the Panel is not convinced by the Second Respondent's submission that "*data*" should be understood solely as "*information in an electronic form that can be stored and used by a computer*" in order to capture messages of encouragement or incidental usage inherent to a smartphone's functioning. In reference to allowable data, the Contested Rule itself envisages that said data is recorded for the purpose of analysing it after a race (*i.e.*, "[*the allowable data*] and any information derived directly from it, may be recorded during racing for later use" (emphasis added)). The Panel does not find that the messages and operations of the iPhone that occurred during the Race fall within the scope of non-allowable data under the Contested Rule.

141. Even considering the messages as a form of communication – as opposed to data exchange – the Panel does not find a basis to impose a sanction. The content and meaning of any communication is, without doubt, that the message sent is received by the intended recipient. The receipt of messages which Mr Perini could not identify in such a way as to be able to discern the content can hardly be regarded as communications which are not admissible, as prohibited by the second part the sentence of the Contested Rule (“*no data may be sent to or received from the boat*”). If the recipient of a communication message cannot understand the content of the message, the communication cannot be considered to have been made. The nature of the messages detected by the phone during the course of the competition do not constitute information that could be used by the recipient to gain any advantage over competitors.
142. Consequently, and given the finding in Section X.91.B, the Panel finds that Mr Perini did not commit any breach of the Rules of Racing by being in possession of a mobile phone that incidentally performed functions typical of a smartphone and received messages of encouragement. On account of the lack of a legal basis for Mr Perini’s suspension, the Panel sets aside the Appealed Decision and order the reestablishment the Race’s finishing order prior to the Umpire Decision.
143. Finally, the Panel would like to comment on the reaction of the Second Respondent, Mr Horrie. In his statement, Mr Horrie could have possibly shed light to the statements of Ms Kuczma and Mr Gutiérrez Praena. In both of these statements, the witnesses stated that Mr Horrie objected because he heard voices coming out of Mr Perini’s boat. He could also explain when he noticed that Mr Perini had a phone in the boat and whether he would only have been able to make a protest after the Race finished. Strictly speaking, if Mr Horrie saw Mr Perini take his phone on the boat inadvertently, he was not obligated to let Mr Perini know. Despite this, the Panel still believes that sportsmanship and fair play should have prompted Mr Horrie to notify Mr Perini, especially if he was convinced that possession of a phone on the boat was not allowed. Mr Horrie decided not to be present during the Hearing. The Panel is confounded by this decision as he knew he could be directly affected by the decision of CAS it seems not logical that he showed no personal interest to send a written statement or express his opinion as a witness.

D. On the Appellants’ request to award Mr Perini with a bronze medal

144. The final issue to be addressed by the Panel pertains to the Respondents’ contention that the Appellants’ claims should be dismissed because the IPC was not named as a respondent. The Respondents argue that, by requesting a bronze medal, the Appellants placed their appeal beyond the Panel’s scope of review as the IPC is the sole entity competent to award a medal.
145. The Appellants urged the Panel to dismiss the Respondents’ contention regarding the IPC’s standing in the present arbitration. Firstly, the Appellants submitted that there were no statutory obligations to name the IPC as a respondent. Moreover, the Appellants argued that the request for a medal came as a logical consequence to the Appellants’ main request, namely for the Race’s finish order prior to the Umpire Decision to be reinstated.

146. As a starting point, the Panel recalls that, according to the jurisprudence of the CAS, questions of standing to be sued are analysed as part of the merits of a case; the lack thereof resulting in the appeal's dismissal (see, CAS 2022/A/8737, para. 107; CAS 2023/A/10209, para. 113; MAVROMATI & REEB, *'The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials'*, para. 65 of R48; CAS 2020/A/6922, para. 95; CAS 2015/A/4131, para. 95; CAS 2009/A/1869; CAS 2008/A/1639, para. 26; CAS 2008/A/1620, para. 4.1; CAS 2007/A/1367, para. 37; CAS 2012/A/3032 para. 42). It is generally understood that a party has standing to be sued when it is personally obliged by disputed right at stake in the dispute; in a nutshell: a party has standing to be sued when something is sought from it (see e.g., CAS 2021/A/7768, para. 188; CAS 2021/A/8225, para. 75; CAS 2023/A/10209, para. 114; CAS 2020/A/6922, para. 96; CAS 2022/A/8225, para. 75; CAS 2007/A/1329&1330, para. 27; CAS 2008/A/1620, para. 4.1; CAS 2007/1367, para. 37; CAS 2012/A/3032, para. 42).
147. Precedents from CAS show that the analysis of standing to be sued and passive mandatory joinders is not limited to the party against whom something is sought. In this regard, CAS panels have found that a party has standing to be sued when it "*stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law*" (CAS 2017/A/5227, para. 35. See also, CAS 2021/A/8225, para. 76; CAS 2023/A/10209, para. 115; CAS 2016/A/4787, para. 109; CAS 2015/A/3910, para. 138; CAS 2016/A/4602, para. 81; CAS 2021/A/8225, paras. 76-77). This concept is often translated as a Panel being prevented to grant a request for relief that directly affects a party who has not had the opportunity to defend itself before it (see e.g., CAS 2021/A/8225, para. 76; CAS 2020/A/7061, para. 125; CAS 2019/A/6334, para. 57; CAS 2016/A/4642, para. 120; CAS 2004/A/594, para. 51).
148. Considering the foregoing, the concrete relief sought by the Appellants is crucial in assessing whether there is a passive *litis consortium* issue. As put forth by the sole arbitrator in case CAS 2021/A/8225:
- "Consequently, while noting that he would be in principle prevented from granting any request for relief that would directly affect the rights of an absent third party, the Sole Arbitrator deems that he must deal with the Appellant's requests for relief in accordance with the abovementioned test, i.e. in a manner which takes into account all the interests involved, the role assumed by the federation as well as the rights of defence and in particular the right to be heard of the directly affected parties"* (CAS 2021/A/8225, para. 81).
149. The specific request for relief giving rise to the Respondents challenge on standing reads as follows "*it is ordered to reestablish the ranking of the PR1 M1x of the Paris 2024 Paralympic Games to the extent that Mr Giacomo Perini is reinstated in the third place and, as a result, awarded with the bronze medal*" (emphasis added). On the basis of a plain reading of the Appellants' request, the Panel concurs with the Appellants' contention that their request for a medal arose merely as a result of their request to reestablish the original finishing order. As such, the Panel does not find that it is prevented from granting the Appellants' principal request to reestablish said order given that (i) WR is the competent authority to determine the finishing order of the Race; (ii) the party directly affected by a possible reversal of the results based on the Appealed Decision,

Mr Horrie, is a Respondent. Thus, both the party from whom something is being sought – *in casu* being WR – and the party who could be directly affected by the decision – *in casu* Mr Horrie – are parties to this arbitration and have had the opportunity to defend their respective interests.

150. Consequently, the Panel is not convinced by the Respondents' submission that the Appellants' case should be dismissed on grounds of standing. Therefore, the Respondents' arguments in this regard are dismissed.
151. Nonetheless, the foregoing conclusion does not encompass the subsidiary request for a medal. Indeed, the absence of IPC as a party to these proceedings precludes the Panel issuing any orders relating to medals.
152. While there are no statutory provisions explicitly outlining the IPC's sole authority to award medals, the Panel understands that the IPC, as the global governing body for the Paralympic movement, in fact holds said authority. By analogy, the Panel recalls Rule 56 of the Olympic Charter, which provides that "*[a]ny decision regarding the awarding, withdrawal or reallocation of any victory medal or diploma falls within the sole authority of the IOC*". In fact, Article 9 of Appendix 11 to the Rules of Racing explicitly recognizes this authority, providing that "*[m]edals at the Olympic Games shall be awarded and ceremonies conducted in accordance with Rule 56 of the Olympic Charter*". Despite not explicitly mentioning the IPC in this regard, the wording of the 2025 version of the Rules of Racing, not *per se* applicable to this case, adds to be previously quoted wording by stating that "*[m]edals and ceremonies at the Paralympic Games shall be awarded and conducted in accordance with the requirements of the IPC with Rule 56 of the Olympic Charter*". Additionally, the Panel notes that Article 4.14 of the IPC Handbook provides that "*[a] medal event is a specific competition in a Paralympic sport that results in a ranking giving rise to the award of medals and diplomas*". This, in the Panel's understanding, is an analogous recognition of the well-established regulatory framework for awarding medals in Olympic Games: international federations set the rankings that give rise to the International Olympic Committee's awarding of medals. As a further note on the IPC's authority to award medals, the Panel adduces Article 5.5.2 of the IPC Handbook governing medal ceremonies, which provides that "*[t]he look and format of the medals, the design of podia, the artistic approach and the protocol elements are subject to approval from the IPC. Overall, the medal ceremonies shall be held in strict compliance with the IPC Protocol Guide and Technical Manual on Protocol*".
153. Under the understanding that the IPC holds the authority to award medals based on the ranking of medal events held in the Paralympic games, in addition to the fact that the Appellants did not name the IPC as a respondent, and IPC chose not to be a party in these proceedings, as it was its legitimate right to do, the Panel is barred from ordering the IPC from awarding Mr Perini with a bronze medal. As a basic principle of arbitration, the Panel's ruling solely binds the Parties to this arbitration. Consequently, the awarding of medals falls outside the Panel's remit. In other words, whether or not Mr Perini shall one day receive a bronze medal in relation with the Race is not a question that can be answered, today, by this Panel. Thus the Appellants' request for an award of a bronze medal as a consequence of the setting aside of the Appealed Decision, leading to a new finish order, is dismissed.

154. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

XI. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Comitato Italiano Paralimpico and Mr Giacomo Perini against the decision issued by World Rowing on 1 September 2024 is partially upheld.
2. The original racing order of the PR1 M1x of the Paris 2024 Paralympic Games, prior to the decision issued by the Race Umpire, placing Mr Giacomo Perini in third and Mr Erik Horrie in fourth, is reinstituted.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 24 October 2025

THE COURT OF ARBITRATION FOR SPORT

Anton Jagodic
President of the Panel

Michele A.R. Bernasconi
Arbitrator

Mark A. Hovell
Arbitrator

Adrián Hernández
Clerk