

CAS 2024/A/10565 Christopher (James) Bacueti v Fédération Internationale de Gymnastique (FIG) & Mahdi Olfati

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Hans Nater, Attorney-at-Law in Zürich, Switzerland

Arbitrators: Prof. Richard McLaren, Professor, Barrister in London, Ontario, Canada
Prof. Dr Denis Oswald, Attorney-at-Law and Professor in Colombier, Switzerland

Ad Hoc Clerk: Ms. Chui Ling Goh, Advocate & Solicitor in Singapore, Singapore

in the arbitration between

Christopher (James) Bacueti, Canberra, Australia

Represented by Mr. Paul Horvath, Solicitor at SportsLawyers in Melbourne, Australia; Mr. Robert Heath, and Ms. Lucy Dawson, Barristers from Melbourne, Australia

Appellant

and

Fédération Internationale de Gymnastique (FIG), Lausanne, Switzerland

Represented by Mr. Riccardo Coppa and Mr. Loïc Theilkaes, Attorneys-at-Law at Kellerhals Carrard in Lausanne, Switzerland

First Respondent

Mahdi Olfati, Tehran, Iran

Represented by Dr Amir Saed Vakil, Attorney-at-Law in Tehran, Iran.

Second Respondent

I. THE PARTIES

1. Mr. Christopher (James) Bacueti (the “Appellant” or “Athlete”) is an Australian gymnast who specialises in the vault apparatus.
2. *Fédération Internationale de Gymnastique* (the “First Respondent” or the “FIG”) is an associated incorporated under Swiss law and has its registered office in Lausanne, Switzerland. The FIG is the worldwide governing body for the sport of gymnastics.
3. Mahdi Olfati (the “Second Respondent”) is an Iranian gymnast who specialises in the vault apparatus.

II. FACTUAL BACKGROUND

A. Introduction

4. The dispute in these proceedings is centred upon a decision rendered by the FIG to allocate to the Second Respondent the second quota place for the vault apparatus competition at the Summer Olympic Games in Paris, France (the “**Paris Olympic Games**”), arising from the 2024 Apparatus World Cup (the “**Selection Decision**”). The Appeal turns on the correct interpretation of FIG’s qualification system as recorded in its document titled “*Qualification System – Games of the XXXIII Olympiad - Paris*” (the “FIG Rules”).
5. Below is the summary of the relevant facts and allegations based on the Parties’ written and oral submissions, pleadings, and evidence adduced in these proceedings. References to additional facts and allegations found in the Parties’ written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in its award only to the submissions and evidence he deems necessary to explain its reasoning.

B. Background Facts

6. On 16 October 2021, the International Olympic Committee (IOC) adopted and published the “*Paris 2024 Qualification System Principles*” (the “IOC QS Principles”), which contains – in relevant parts – the following:

“[...]

[b]y-law to Rule 40 of the Olympic Charter stipulates that each IF needs to establish its sport's rules for participation in the Olympic Games, including qualification criteria in accordance with the Olympic Charter [...].

Qualification systems are the regulations established by IFs that consist of rules, procedures and criteria for athletes to be able to participate in competitions of the Olympic Games Paris 2024 subject

to final selection by each National Olympic Committee (NOC) upon recommendation of the respective National Federation (NF) [...]

Each qualification system shall be clear and easy to comprehend for NOCs/NFs, athletes and coaches and should leave no room for interpretation.

[...]

All qualification systems for the Olympic Games in Paris 2024 should be developed based on the following principles:

[...]

- *Each qualification system shall establish the rules for fair and equal opportunities for all NOCs/ athletes/ teams (including for refugee athletes) to obtain a quota place/ qualify for the Olympic Games Paris 2024 with no form of discrimination in the framework of the Olympic Charter.*
- *Each qualification system shall include the qualification pathway, allocation process, reallocation process and timeline for qualification events.*

[...]”

7. On 5 April 2022, the FIG published the FIG Rules, as required under the bye-law 1 to Rule 40 of the Olympic Charter. The FIG Rules provides for the allocation of quota places to National Olympic Committees (NOCs), or athletes by name. The FIG Rules, at Section D.1, provides the seven “Criteria” based on events “*listed in chronological order of qualification for Paris 2024*”, which includes – in relevant parts – the following:

Criteria 1: 2022 World Championships – Teams

“The three highest ranked eligible NOCs, based on the Team Finals results, will obtain a Team quota place of five athletes (no reserves) for their NOC. [...]”

Criteria 2: 2023 World Championships – Teams

“The nine highest ranked eligible NOCs not qualified through Criteria 1, based on the Team Qualifications results, will obtain a Team quota place of five athletes (no reserves) for their NOC. [...]”

Criteria 3: 2023 World Championships – Individual Athletes from Non-Qualified Teams

“The three highest ranked eligible NOCs not qualified through Criteria 1 or 2, based on the Team Qualifications results, will obtain 1 individual athlete quota place for their NOC. [...]”

Criteria 4: 2023 World Championships – All-Around Athletes

“The eight highest ranked eligible men's All-Around athletes and the 14 highest ranked eligible women's All-Around athletes, based on the All-Around Qualifications results, will obtain a quota place by name, with a maximum of 1 quota place per NOC. Athletes from NOCs with a qualified team through Criteria 1 or 2 are not eligible to receive a quota place. [...]”

Criteria 5: 2023 World Championships – Apparatus Athletes

“The highest ranked eligible athlete on each Apparatus, based first on the Apparatus Finals results and then, if needed, on the Apparatus Qualifications results, will obtain 1 quota place by name. The following athletes are not eligible to receive a quota place:

- *Athletes from NOCs with a qualified team through Criteria 1 or 2.*
- *Athletes already qualified through Criteria 4. [...]*”

Criteria 6: 2024 Apparatus World Cup Series – Apparatus Athletes

“Participation Rights:

All FIG Member Federations in good standing may participate at each competition with a maximum of 2 athletes per federation per apparatus.

Qualification Places:

The two highest ranked eligible athletes per apparatus, based on the Olympic Qualification World Cup Ranking List, will obtain a quota place by name, with a maximum of 1 quota place per apparatus per NOC. The following athletes are not eligible to obtain a quota place:

- Athletes from NOCs with a qualified team through Criteria 1 or 2,*
- Athletes already qualified through Criteria 4 and 5,*
- NOCs with a maximum of three individual athletes already qualified through Criteria 3, 4, and 5.*

At Paris 2024, these Apparatus Athletes may participate on all apparatus in the Qualifications.

The Olympic Qualification World Cup Ranking List will be established as follows:

- World Cup Points towards the Olympic Qualification World Cup Ranking List will be recalculated and assigned in accordance with the ranks allocated outlined in the Rules for the FIG Apparatus World Cup Series 2022-2024, Art. 16.*
- The maximum three best competitions out of 4 will be considered*
- Only eligible athletes will be taken into account*
- Athletes with no Apparatus World Cup Points will receive no World Cup points towards the*

Olympic Qualification World Cup Ranking List. On each apparatus, the eligible athlete with the highest World Cup Points towards the Olympic Qualification World Cup Ranking List will be considered.

If, for any reasons, the dates set for the 2024 Apparatus World Cup series result in delaying the announcement of qualified athletes in light of the chronological order of qualification for Paris 2024, the two highest ranked eligible athletes per apparatus, based on the Olympic Qualification World Cup Ranking List of the last Apparatus World Cup series edition held, will obtain a quota place by name, with a maximum of 1 quota place per apparatus per NOC. The following athletes are not eligible to obtain a quota place:

- Athletes from NOCs with a qualified team through Criteria 1 or 2.*
 - Athletes already qualified through Criteria 4 and 5*
 - NOCs with a maximum of three individual athletes already qualified through Criteria 3, 4, and 5.”*
- [emphasis in original]

[hereinafter referred to as “Criteria 6”]

Criteria 7: 2024 Continental Championships (or the other Continental Qualifying Event approved by the FIG) – All-Around Athletes

“Participation Rights:

Participation will be open to all NOCs in good standing of the respective continent and in accordance with the continent's specific participation rights.

Qualification Places:

The highest ranked eligible athlete based either on the All-Around Qualifications results or the All-Around Final results (i.e., at the discretion of the respective Continental Union and as outlined in the Directives concerned) will obtain 1 quota place by name. The following athletes are not eligible to obtain a quota place:

- Athletes from NOCs with a qualified team through Criteria 1 or 2.*
- Athletes already qualified through Criteria 4, 5, and 6*
- NOCs with a maximum of three individual athletes already qualified through Criteria 3, 4, 5, and 6.*

If, for any reasons, the dates set for the 2024 Continental Championships (or the other Continental Qualifying Event approved by the FIG) result in delaying the announcement of qualified athletes in light of the chronological order of qualification for Paris 2024, the highest ranked eligible athlete based on the All-Around Qualifications results of the last Continental Championships edition held in this Continent with All-Around participation, will obtain 1 quota place by name. The following athletes are not eligible to receive a quota place:

- Athletes from NOCs with a qualified team through Criteria 1 or 2.
- Athletes already qualified through Criteria 4, 5, and 6
- NOCs with a maximum of three individual athletes already qualified through Criteria 3, 4, 5, and 6.

Continental Representation:

The minimum continental representation is guaranteed with the qualification through the Continental Championships (or the other Continental Qualifying Event approved by the FIG)” [emphasis in original]

[hereinafter referred to as “Criteria 7”]

8. The FIG Rules also contain the criteria and procedure to allocate two “*Universality*” places – one for each gender, as follows:

“D.3 UNIVERSALITY PLACES

Two (2) Universality places allocated by name will be made available to one Men’s athlete and one Women’s athlete at Paris 2024, provided that the athlete has met the eligibility criteria as outlined in section C. Athlete Eligibility.

On 1 October 2023, the International Olympic Committee (IOC) will invite all eligible NOCs to submit their requests for Universality Places. The deadline for NOCs to submit their requests is 15 January 2024. The Tripartite Commission will confirm, in writing, the allocation of Universality Places to the relevant NOCs after the end of the qualification period for the sport concerned.

[...]”

9. The FIG Rules further sets out the Qualification Timeline, which stipulates the following:

G. QUALIFICATION TIMELINE	
Date	Milestone
October – November 2022	Artistic Gymnastics World Championships
October 2023	Artistic Gymnastics World Championships
January – March 2024	Apparatus World Cup Series
April – May 2024 or another date approved by the FIG	Continental Championships (or the other Continental Qualifying Event approved by the FIG)
June 2024	Immediately after the last Paris 2024 Qualification Event, the FIG shall inform NOCs/NFs of their allocated quota places for Paris 2024
+ two weeks	Two weeks after confirmation by the FIG, the NOCs must confirm in writing the use of allocated quota places to the FIG.
15 January 2024	Deadline for NOCs to submit their requests for Universality Places
In relation to the end of the qualification period for each sport	The Tripartite Commission to confirm in writing the allocation of Universality places to the NOCs
Up until the start of the Paris 2024 Technical Meeting for Artistic Gymnastics	FIG to reallocate all unused quota places
8 July 2024	Paris 2024 Sport Entries deadline
26 July – 11 August 2024	Olympic Games Paris 2024

i. The 2024 Continent Championships (or the other Continental Qualifying Event approved by the FIG)

10. Sometime in 2022, the FIG decided that the 2023 Pan American Games (the “**2023 PanAm Games**”) which were to be held in Santiago, Chile, would serve as the qualifying Continental event for the American continent under Criteria 7. This decision was announced on the FIG and IOC official websites, and no objections were received then.
11. Sometime between 20 October 2023 and 5 November 2023, the 2023 PanAm Games were held, wherein one Dominican athlete, Mr. Audrys Nin Reyes, who placed 5th, was the highest-placed gymnast who has not already earned a quota place (by team or name) for the Paris Olympic Games. The athletes who were placed ahead of Mr. Nin Reyes had already qualified according to Criteria 1, 2, 3 or 4.
12. The other Continental Championships for Criteria 7 of the FIG Rules were held on the following dates:
 - African Championship: 3 to 6 May 2024
 - Asian Championship: 16 to 19 May 2024
 - European Championship: 24 to 28 May 2024
 - Oceania Championship: 25 to 26 May 2024

ii. The 2024 Apparatus World Cup

13. Prior to the World Cup, on 22 January 2024, Mr. Paul Szyjko, a national judging coordinator for gymnastics in Australia, sent an email to Mr. Stéphane Détraz of the FIG to make some clarifications on the points calculation for qualifications for the Paris Olympic Games.
14. On 24 January 2024, Mr. Détraz sent an email to Mr. Szyjko mentioning, *inter alia*, the following:

“Your understanding is completely correct. One list will be the "regular" Apparatus World Cup Ranking List which contains all participants. The second one (Olympic List) will contain only eligible gymnasts (not yet qualified). Points will be recalculated in this second list.

*Example: I'm ranked 2nd on FX in Cairo World Cup
I will get 25 points in the first list.*

If the winner is already qualified to Paris (or part of a NOC already qualified), points will be recalculated so I will get 30 points in the second list.”(sic)

(the “**FIG Email**”)

15. Between February and April 2024, the 2024 Apparatus World Cup Series (the “2024 World Cup”) was conducted across four events, viz:

S/No	Date	Location
a.	15 to 18 February 2024	Cairo, Egypt
b.	22 to 25 February 2024	Cottbus, Germany
c.	7 to 10 March 2024	Baku, Azerbaijan
d.	17 to 20 April 2024	Doha, Qatar

16. According to Criteria 6 of the FIG Rules, the 2024 World Cup allowed two quota places to be awarded to the “*two highest ranked eligible athletes per apparatus*”.
17. Both the Appellant and the Second Respondent participated in the 2024 World Cup across all events in the vault apparatus. The official overall results of the 2024 World Cup of the Appellant and Second Respondent for the vault apparatus are as follows:

S/No	Date	Location	Appellant	Second Respondent
a.	15 to 18 February 2024	Cairo, Egypt	7 th Place	5 th Place
b.	22 to 25 February 2024	Cottbus, Germany	5 th Place	2 nd Place
c.	7 to 10 March 2024	Baku, Azerbaijan	15 th Place	9 th Place
d.	17 to 20 April 2024	Doha, Qatar	5 th Place	25 th Place
Overall Ranking			5 th Place	4 th Place

18. Pursuant to Article 16 of the FIG Apparatus World Cup Series Rules 2022-2024 (the “FIG World Cup Rules”), Apparatus World Cup points are assigned to each apparatus to the competitor by name for ranking, as follows:

“ART.16 ASSIGNMENT OF POINTS FOR THE FIG APPARATUS WORLD CUP SERIES

At the end of each competition, Apparatus World Cup points are assigned on each apparatus to the competitors by name as follows:

Rank	Apparatus World Cup points
1	30
2	25
3	20
4	18
5	16
6	14
7	12
8	10
9	8
10	7
11	6
12	5
13	4
14	3
15	2
16	1

[...]

These Ranking Lists are established after the first Apparatus World Cup event of the year and end with the last Apparatus World Cup event of the year.”

iii. The FIG World Cup Ranking List

19. On 22 April 2024, the FIG released its World Ranking List. According to the FIG World Ranking List, there are two sets of ranking for the 2024 World Cup, viz,
 - The 2024 Apparatus World Cup Ranking List (the “**WC Ranking List**”); and
 - The Olympic Qualification World Cup Ranking List (the “**OQ Ranking List**”).
20. The WC Ranking List is calculated in accordance with Article 16 of the FIG World Cup Rules, based on the unlimited participation of athletes at the 2024 World Cup, regardless of whether the athletes are part of a qualified NOC or have qualified by name. On the other hand, the OQ Ranking List – also in accordance with Article 16 of the FIG World Cup Rules – is calculated based on the athletes who are *not* part of a qualified NOC or have qualified by name. In particular, for both the WC Ranking and OQ Ranking Lists, only the top three performances will be calculated.

21. Based on the FIG World Cup Rules, the Appellant and the Second Respondent were allocated the following points for WC Ranking and OQ Ranking for the vault apparatus:

S/No	Date	Location	Appellant		Second Respondent	
			WC	OQ	WC	OQ
			Ranking (Points)			
a.	15 to 18 February 2024	Cairo, Egypt	7 th (12)	5 th (16)	5 th (16)	3 rd (20)
b.	22 to 25 February 2024	Cottbus, Germany	5 th (16)	2 nd (25)	2 nd (25)	1 st (30)
c.	7 to 10 March 2024	Baku, Azerbaijan	15th (2) ¹	12th (5)	9 th (8)	7 th (12)
d.	17 to 20 April 2024	Doha, Qatar	5 th (16)	3 rd (20)	24th (0)	17th (0)
Total Points			44 pts	61 pts	49 pts	62 pts
Rank			5 th	3 rd	4 th	2 nd

22. In particular, in awarding the OQ Ranking List for the Doha World Cup, the FIG considered Mr. Nin Reyes as eligible to accumulate points for both the WC Ranking and OQ Ranking Lists and allocate the following points for the vault apparatus finals therein:

Name	NOC	WC Ranking List		OQ Ranking List		Remarks
		Rank	Points	Rank	Points	
Arthur Davtyan	ARM	1 st	30	Ineligible		Qualified at 2023 World Championship – All Around
Carlos Edriel Yulo	PHI	2 nd	25	Ineligible		Qualified at 2023 World Championship – Floor
Yahor Sharamkou	AIN	3 rd	20	1 st	30	
Audrys Nin Reyes	DOM	4 th	18	2 nd	25	Highest-Ranked Athlete (who has not qualified) at 2024 Continental Championships
James Bacueti	AUS	5 th	16	3 rd	20	

¹ Only top three performances are calculated for both the WC and OQ Ranking Lists.

Niccolo Vannucchi	ITA	6 th	14	Ineligible		Qualified at 2023 World Championship – NOC
Ng Chun Chen	MAS	7 th	12	4 th	18	
Aurel Benovic	CRO	8 th	10	5 th	16	

23. From the above calculations, the Second Respondent was ranked 2nd overall for OQ Ranking List.
24. On the same day, viz, 22 April 2024, the results of the 2024 World Cup were publicly reported on the FIG official website, confirming that the Second Respondent earned the one of the two quota spots for the vault apparatus. The said press release also confirmed that Mr. Nin Reyes would have earned the quota place from the 2023 PanAm Games under Criteria 7 of the FIG Rules upon the conclusion of the 2024 World Cup:

“Men’s Vault: Shek Wai Hung (HKG) 72 points, Mahdi Olfati (IRI) 62 points

Though neither gymnast competed in the Doha final, when the final points were tallied Shek Wai-Hung (HKG) and Mahdi Olfati (IRI) had done enough at the first three World Cups to remain as the two atop the men’s Vault leaderboard, guaranteeing 32-year-old Shek a third trip to the Olympic Games. Olfati will be the first Iranian gymnast to compete at the Games in 60 years.

[...]

Following the Olympic qualification via the World Cup series, the Pan American continental qualifiers have now also been confirmed. Their performances at the Pan American Games last year in Santiago (CHI) secured Luisa Blanco (COL) and Audrys Nin Reyes (DOM) the women’s and men’s quota places respectively.”

iv. Clarification with the FIG

25. On 21 April 2024, Mr. Chris O’Brien, the Chief Executive Officer of Gymnastics Australia, emailed Mr. Détraz of the FIG to seek clarification on the calculation of the quota place awarded to the Second Respondent.
26. On 23 April 2024, Mr. Détraz asserted that the Selection Decision was consistent with the FIG Rules as Mr. Nin Reyes was eligible to collect points for OQ Ranking List at the Doha World Cup.
27. On 26 April 2024, Mr. O’Brien informed the FIG that Gymnastics Australia is not satisfied with the Selection Decision made and would like to pursue avenues to have the Decision reviewed, and sought clarification on the process.
28. On the same day, Mr. Détraz informed Mr. O’Brien that *“if [Gymnastics Australia] contests the procedure applied, a complaint with the Court of Arbitration for Sport (CAS) can be lodged”*.

v. Submissions for Earned Quota Places for the Paris Olympic Games

29. On 30 May 2024, the FIG sent an email to the presidents of National Olympic Committees (NOCs) with team(s) and/or gymnast(s) who have earned quota place(s) for the Paris Olympic Games and invited the NOCs to confirm or decline their quota place(s) in order for the FIG to finalise the participation of athletes at the said Games.
30. On 8 June 2024, the NOC of the Islamic Republic of Iran (IRI) informed the FIG that they will use the quota place achieved by the Second Respondent.
31. On 10 June 2024, Mr. Détraz, on behalf of the FIG, acknowledged receipt of email from the NOC of the Islamic Republic of Iran dated 8 June 2024.

III. THE APPEAL PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 9 May 2024, the Appellant lodged a Statement of Appeal (the “**Statement of Appeal**”) with the Oceania Register of the Court of Arbitration for Sport (CAS) pursuant to Article R48 of the CAS Code of Sports-related Arbitration (2023 edition) (the “**CAS Code**”), which included a request for expedited procedure under Article R52 para. 4 of the CAS Code. The Appellant nominated Ms. Anita DeFrantz as arbitrator. The Appellant also nominated, in case of unavailability of Ms. DeFrantz, Mr Mark Hovell.
33. On 13 May 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal and invited, *inter alia*, the Respondents to inform of their position on the request for expedited procedure, and to jointly nominate an arbitrator.
34. On 15 May 2024, the Second Respondent acknowledged receipt of the CAS Court Office’s letter dated 13 May 2024, and objected to the Appellant’s request for expedited procedure. In the same letter, the Second Respondent provided its power of attorney.
35. On 16 May 2024, the Appellant requested for an urgent telephone direction hearing to be set for preliminary matters to be discussed, including the seeking of any order to serve documents on the Second Respondent via Facebook as he has not been able to contact the First Respondent, the Iranian Olympic Committee, or the Iranian Gymnastics Federation for the same matter. In the same communication, the Appellant indicated that he might decide to remove the Second Respondent as a party in order to facilitate an expedited proceeding, which he would like to raise at the requested directions hearing.
36. On the same day, the CAS Court Office acknowledged receipt of the Second Respondent’s letter dated 15 May 2024, and the Appellant’s communication on even date. The CAS Court Office noted, *inter alia*, that a Case Management Conference can only be held with the Panel, which has yet to be constituted. In the same letter, the CAS Court Office reminded the Appellant that the naming of the Second Respondent as a party is solely within the responsibility and purview of the Appellant, a matter which will not and should not be discussed with the CAS Court Office.

37. On 21 May 2024, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.
38. On the same day, the First Respondent informed the CAS Court Office that as there is no agreement being reached by the Parties on the issue of the expedited procedure request by the Appellant, no expedited procedure should be implemented.
39. On 22 May 2024, the CAS Court Office acknowledged receipt of the Appeal Brief, and informed the Respondents of their deadline to file their Answers, pursuant to Article R55 of the CAS Code.
40. On 24 May 2024, the CAS Court Office acknowledged receipt of the First Respondent's email dated 21 May 2024.
41. On 27 May 2024, the First Respondent informed the CAS Court Office that it intends to appoint Prof. Dr Denis Oswald as arbitrator.
42. On the same day, the CAS Court Office acknowledged receipt of the First Respondent's email of even date and invited the Second Respondent to confirm his agreement with the nomination.
43. Still on the same day, the Second Respondent informed the CAS Court Office that he approves the nomination of Prof. Dr Denis Oswald as arbitrator and reiterates that he firmly disagrees with the implemented of expedited procedure as requested by the Appellant.
44. On 28 May 2024, the CAS Court Office acknowledged receipt of the Respondents' emails of 27 May 2024 and the nomination of Prof. Dr Denis Oswald.
45. On 30 May 2024, the First Respondent requested for the CAS Court Office to suspend the time limit for its filing of the Answer until after the Appellant's payment of its share of the advance on costs.
46. On the same day, the CAS Court Office acknowledged receipt of the First Respondent's email of even date and set aside the time limit for the First Respondent to file its Answer until after the Appellant's payment of his share of the advance of costs in accordance with Article R55 para. 3 of the CAS Code
47. Still on the same day, the Second Respondent requested for the CAS Court Office to suspend the time limit for his filing of the Answer until after the Appellant's payment of its share of the advance on costs.
48. Still on the same day, the CAS Court Office acknowledged receipt of the Second Respondent's email of even date and set aside the time limit for the Second Respondent to file his Answer until after the Appellant's payment of his share of the advance of costs in accordance with Article R55 para. 3 of the CAS Code

49. On 4 June 2024, the CAS Court Office acknowledged receipt of the Appellant's payment of his share of the advance of costs and granted a new time limit for the Respondents to file their Answers.
50. On 6 June 2024, the CAS Court Office informed the Appellant that despite several attempts to reach Ms. Anita DeFrantz, she did not revert on her nomination. The CAS Court Office further informed the Appellant that, unless stated otherwise by the Appellant, it will proceed to inform Mr. Mark Hovell about his nomination.
51. On the same day, the CAS Court Office informed the Appellant that Mr. Mark Hovell is unable to take on nominations on urgent proceedings, and invited the Appellant to nominate, by 10 June 2024, a new arbitrator from the CAS list, failing which the appeal shall be deemed withdrawn.
52. On 7 June 2024, the Appellant informed the CAS Court Office of its further nominations of Prof. Richard McLaren and, alternatively, Mr. Stephen Townley.
53. On the same day, the CAS Court Office acknowledged receipt of the Appellant's alternative nominations.
54. On 12 June 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, that the Panel to decide the present dispute was constituted as follows:

President: Dr Hans Nater, Attorney-at-Law in Zürich, Switzerland
Arbitrators: Prof. Richard McLaren, Professor, Barrister in London, Ontario, Canada
Prof. Dr Denis Oswald, Attorney-at-Law and Professor in Colombier, Switzerland
55. The CAS Court Office also forwarded to the Parties copies of the Arbitrators' Acceptance and Statement of Independence from the Panel.
56. On 13 June 2024, the CAS Court Office informed the Parties that the Panel considers it appropriate to reserve a date for a hearing, and request for the Parties to reserve Wednesday, 3 July 2024, starting from 09:00 CEST, in their calendar for the same. In the same letter, the Parties were advised that the Panel will only consider compelling, justified and evidenced reasons for their unavailability.
57. On 14 June 2024, the CAS Court Office informed the Parties that Ms. Chui Ling Goh, Advocate & Solicitor in Singapore, has been appointed as *ad hoc* Clerk in the matter, and forwarded her *Ad Hoc Clerk's Acceptance and Statement of Independence*.
58. On 19 June 2024, the First Respondent requested an extension of time to file his Answers, as well as a change in the hearing date due to the alleged unavailability of one of his witnesses
59. On 20 June 2024, the Second Respondent requested a short extension of three days to file its Answers.

60. On the same day, the CAS Court Office acknowledged receipt of the First Respondent's email dated 19 June 2024 and the Second Respondent's email of even date. The CAS Court Office informed the Parties that their request for a three-day extension to file their Answers are noted and granted, with no further extension to be given. The CAS Court Office further informed that the Second Respondent's request for an adjournment of the hearing is denied due to the urgency of the matter, and reminded the Parties that it is the Parties' sole responsibility to ensure the availability of their witnesses.
61. On 27 June 2024, the First Respondent and Second Respondent filed their Answers.
62. On 28 June 2024, the CAS Court Office acknowledged receipt of the Answers of the First Respondent and Second Respondent, and informed the Parties that the hearing will be held via videoconference on 3 July 2024, at 09:00 CEST. The CAS Court Office also invited the Parties to inform the CAS Court Office of the names and contact details of all persons who will be attending the hearing. In the same letter, the CAS Court Office informed the Parties that the Panel does not anticipate having any specific questions for the witnesses called by both the Appellant and the Second Respondent, and invited the Appellant and the Second Respondent to inform the CAS Court office if they agree to rely solely on the Witness Statements produced and waiving the oral appearance of the witnesses.
63. On the same day, the CAS Court Office, noting that the Second Respondent raised jurisdictional objections in his Answer, invited the Appellant and the First Respondent to comment on the same in accordance with Article R55 para. 5 of the CAS Code.
64. On 29 June 2024, the Appellant and the Second Respondent informed the CAS Court Office that they waive the oral appearance of the witnesses indicated in their submissions.
65. On 1 July 2024, the First Respondent informed the CAS Court Office that it accepts the CAS jurisdiction by way of a specific agreement during the proceedings in order to facilitate access to justice for an FIG-licensed athlete but seeks for the Panel to analyse the Appellant's lack of standing to sue in a preliminary and ex officio manner.
66. On the same day, the Appellant submitted his comments to the First Respondent's objections to jurisdiction, including letters of support from the Australian Olympic Committee (AOC) and Gymnastics Australia dated 1 July 2024 (the "Letters")
67. Still on the same day, the CAS Court Office acknowledged receipt of the Appellant and First Respondent's comments on the Second Respondent's jurisdictional objections. The CAS Court Office noted that the Appellant's submissions contain unsolicited comments on the issue of standing, and provided the Respondents the opportunity to object to the admissibility of the same, filing which the said comments on standing will be admitted on file and considered by the Panel.
68. Still on the same day, the First Respondent informed the CAS Court Office that it does not object to the admission of the Appellant's arguments concerning standing, but objects to the Appellant's late submission of the Letters.

69. On 2 July 2024, the CAS Court Office acknowledged receipt of the comments filed by the First Respondent on the Appellant's submission on standing, and informed the Parties that the Appellant's late submission of evidence will be addressed by the Panel. The CAS Court Office further issued an Order of Procedure ("**OoP**") and invited the parties to return a signed copy thereof.
70. On the same day, the Respondents returned signed copies of the OoP to the CAS Court Office.
71. On 3 July 2024, the Appellant returned a signed copy of the OoP.
72. On the same day, a hearing took place by videoconference before the Panel. Besides Ms. Chui Ling Goh (*Ad Hoc* Clerk) and Mr. Giovanni Mares Fares (Counsel of the CAS), the following persons attended the hearing:

For the Appellant:

- Rob Heath (Barrister for the Appellant)
- Lucy Dawson (Barrister for the Appellant)
- Paul Horvath (Counsel for the Appellant)
- Chris O'Brien (Chief Executive Officer, Gymnastics Australia)
- Monty Little (Operations Support Officer, Gymnastics Australia)
- James Bacueti (the Appellant)

For the First Respondent:

- Riccardo Coppa (Counsel for the First Respondent)
- Loic Theikaes (Counsel for the First Respondent)

For the Second Respondent:

- Amir Saed Vakil (Counsel for the Second Respondent)
- Mahdi Olfati (the Second Respondent)
- Mohsen Soleimani (Secretary of the IRI Gymnastics Federation)
- Seyed Milad Mohammadi (Paralegal for the Second Respondent)
- Mahdi Saeidi (Translator)

73. At the end of the hearing, the Parties acknowledged that their right to be heard had been respected in these proceedings.

IV. SUBMISSIONS OF THE PARTIES

74. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all the 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 Appellant's Position

75. The Appellant seeks the following relief before this Court:

- “(a) An order setting aside the Decision.*
- (b) An order declaring that:*
 - (i) Mr Nin Reyes was ineligible to receive World Cup Points at the Doha Meet; and*
 - (ii) in the circumstances, having regard to the World Cup Points awarded to other athletes at the Doha Meet, the Appellant should have received World Cup Points that Mr Nin Reyes received at the Doha Meet.*
- (c) Further, if the Court grants the above relief, an order requiring FIG to re-allocate the relevant quota places on the bases that:*
 - (i) Mr Nin Reyes was ineligible to receive World Cup Points at the Doha Meet; and*
 - (ii) The Appellant was the second-highest ranking athlete for the vault apparatus in Criteria 6, in which case he is entitled to one of the quota places in question.”*

76. If the present appeal is allowed, the Appellant also further seeks for the Panel to make recommendations to the IOC and/or the FIG that:

- “(a) The Second Respondent should receive the ‘Universality’ place; or*
- (b) The IOC should create an additional Quota place, and that the IOC and/or FIG allocate that additional place to the Second Respondent.”*

77. However, if the present appeal is not allowed, the Appellant then seeks for the Panel to make a recommendation to the IOC and/or the FIG that the Appellant should receive the “Universality” place or an additional quota place so that he can participate in the Paris Olympic Games.

i. Applicable Law

78. The Appellant makes no submissions on the applicable law, only that the IOC QS Principles, the FIG Rules, and the FIG World Cup Rules – as incorporated in the FIG Rules – are to be considered as applicable in the present matter.

ii. Jurisdiction

79. The Appellant submits that the Panel has jurisdiction to hear the present matter on grounds that found in the IOC QS Principles, Article 36 of the FIG Statutes, and Article 61.2 of the Olympic Charter.
80. The Appellant further submits that the FIG has already accepted the jurisdiction of the CAS to hear and determine the present case, as the FIG invited the Appellant to pursue the appeal through the CAS in the FIG's email to Gymnastic Australia on 26 April 2024.

iii. Merits of the Dispute

81. The Appellant contends that the Selection Decision, which includes the ordering of points to Mr. Nin Reyes for the OQ Ranking List, despite Mr. Nin Reyes qualifying at PanAm Games, was an unreasonable and erroneous interpretation of the FIG Rules, and submits the following:
- The reading of the FIG Rules must be read in line with the “*core meaning of the provision under review*” (CAS 2020/A/7008).
 - The context and purpose of the FIG Rules is to set up a system of sequential exclusion from eligibility, designed to give fair and equal opportunities for all athletes to obtain a quota place for the Paris Olympic Games.
 - On the strict reading of Criteria 6 of the FIG Rules, Mr. Nin Reyes was eligible to obtain a quota place as he had not “*already qualified through Criteria 4 and 5*”; however, there is no reference to Criteria 7 in that sentence, of which event has already occurred.
 - According to the FIG, the results from the 2023 PanAm Games (arising from Criteria 7) is irrelevant to the competition for quota places in Criteria 6 events, like the 2024 World Cup. The local context and purpose are not considered in this interpretation and creates inconvenient and unfair outcomes.
 - The literal reading of Criteria 7 contemplates that Continental Events will only occur after Criteria 4, 5, and 6 events, but the FIG Rules at section G – stipulating that Continental Championships can be from April to May 2024, or “*another date approved by the FIG*” – then entitles the FIG to reschedule any Criteria 7 events to be held even prior to Criteria 6 events.
 - When Mr. Nin Reyes competed at the Doha World Cup, he had not qualified through Criteria 4 or 5 but secured a quota place through a Criteria 7 event.

- The FIG should not be allowed to interpret the FIG Rules strictly if it approved a change to the sequence of relevant events for Criteria 6 and 7. Athletes and coaches made plans on the basis that FIG would maintain the system of sequential exclusion in all circumstances, including any changes in the sequence of events.
- The purpose of the FIG Rules is to exclude from the qualification pathway those athletes who have already qualified by name or secured a quota place, ensuring that they do not interfere with the fair adjudication of whoever is the “next best” athlete at those competitions.
- It is unreasonable and against common sense to allocate points under the OQ Ranking List to Mr. Nin Reyes, as it would reduce the pool of available points for athletes who had not yet managed to secure a quota place.

iv. Additional Submissions at Hearing

82. With regards to standing of the Appellant to bring the present case, the Appellant argues that he has sufficient interest in the outcome of the appeal in the present case, thereby conferring him standing to sue. Further, it was determined in the case of CAS 2021/A/8140 that the standing of NOCs – in that case Canadian Olympic Committee – to sue is not exclusive, and other parties with “*interest worthy of protection, of a sporting nature*” have standing to bring the case too.
83. In any event, the crux of the Appellant’s claim in the present case pertains to the interpretation of the FIG Rules, from which the allocation and re-allocation of quota places is a consequence therein. As such, the Appellant has standing to bring a case against the FIG on the present matter and does not require the involvement of the AOC or Gymnastics Australia.
84. The involvement and support of AOC and Gymnastics Australia is evident from the witness statements and documents provided, but the Appellant submitted, albeit late, the additional letters of support from AOC and Gymnastics Australia to quell any doubts about the support from these two entities. The inclusion of the support (and Letters) from AOC and Gymnastics Australia do not prejudice the Respondents.
85. With regards to the Appellant’s lack of involvement at the Continental Event for Oceania continent for Criteria 7 cluster of events, it was submitted that the Appellant is a vault specialist and to attempt to qualify for an all-around competition at the Oceania Continental Championship would be pointless.
86. The purpose of the FIG Rules is the sequential exclusion of athletes who have already qualified to provide an even playing field with no possibilities of manipulation, thereby securing the integrity of the qualification process for athletes to perform to the best of their abilities. This is illustrated in all the Criteria found in Section D.1 of the FIG Rules. The literal reading of the FIG Rules does not give due weight to the purposes of the FIG Rules as it does not account for the change to the sequence of Criteria 6 and 7 events.

87. While Mr. Nin Reyes was not yet formally announced as having obtained the quota spot for the American Continent under Criteria 7 until after the FIG World Cup, in reality and substance, there was no misunderstanding that Mr. Nin Reyes had already achieved his spot and there was no possible scenario that the NOC of Dominican Republic would not accept the quota spot or for the FIG to exclude Mr. Nin Reyes from that earned spot. As such, Mr. Nin Reyes should not be entitled to collect points for OQ Ranking List.
88. The regulation in CAS 2021/A/8140 might contemplate similar wording as the FIG Rules, but they are not exactly the same; as such, it is not safe for the Panel to adopt the said case as determinative pronouncement of the interpretation of the FIG Rules. Further, the FIG Rules or the regulation in CAS 2021/A/8140 does not expressly provide for the situation like in the present case where an event in a lower category (Criteria 7) occurred before an event in a higher category (Criteria 6). The strict and literal reading of the FIG Rules do not provide for sequential exclusion and eligibility for obtaining a quota spot.
89. The FIG, by way of emails from Mr. Détraz, provided subjective views and contemporaneous reading of the FIG Rules, which contributed to the ambiguity of the reading of Criteria 6. There was also no disclaimer from the email from Mr. Détraz that his clarification of the FIG Rules was not binding on the FIG.

B. The First Respondent's Position

90. The First Respondent seeks the following relief before this Panel:

- “1. The appeal filed by Mr. Christopher (James) Bacueti on 9 May 2024 is dismissed/rejected, to the extent it is admissible.
2. The decision to allocate the quota place to Mr. Mahdi Olfati for Artistic Gymnastics (vault apparatus) for the Paris 2024 Olympic Games issued on 22 April 2024 is fully confirmed.
3. All other prayers for relief of Mr. Christopher (James) Bacueti are dismissed/rejected.
4. The arbitration costs shall be borne exclusively by Mr. Christopher (James) Bacueti.
5. The Fédération Internationale de Gymnastique (FIG) is granted a significant contribution to its legal and other costs.”

i. Jurisdiction

91. The FIG does not formally raise any objection to the jurisdiction of the CAS, but raises objections to the grounds for which the Appellant had raised, viz:
- The Appellant does not provide the content of the email wherein it was alleged that “the FIG invited the Appellant to pursue his case through the Court of Arbitration for Sport (CAS)”, pursuant to Article R48 of the CAS Code which requires the Appellant to submit “a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to CAS”.
 - In the email from the FIG to Mr. Chris O’Brien dated 26 April 2024, it was only mentioned that a complaint to the CAS can be lodged should Gymnastic Australia

“*contests the procedure applied*”, which does not constitute a valid arbitration clause in favour of the CAS which the Appellant can rely in good faith.

- The Appellant only relies on Rule 61.2 of the Olympic Charter and Article 36 of the FIG Statutes for the jurisdiction of the CAS in the present case, but not any valid bases on which he can invoke the said provisions to bring the present dispute to the CAS.

ii. Applicable Law

92. Article R58 of the CAS Code provides that:

"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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

93. The FIG submits that, pursuant to Article R58 of the CAS Code, the present proceedings are to be governed primarily by the FIG Rules, the IOC QS Principles, and subsidiarily apply Swiss law as the FIG has its official headquarters in Switzerland.

iii. The Appellant's Standing to Sue

94. The FIG highlights, first and foremost, that the Appellant has no standing to bring the present matter against the FIG for his request for a quota place for the participation at the Paris Olympic Games, as the quota places are awarded *exclusively* to the NOCs:

- Rule 44(2) of the Olympic Charter stipulates expressly that “[o]nly NOCs recognised by the IOC may submit entries for competitors in the Olympic Games”.
- The IOC QS Principles also stipulate that participation at the Paris Olympic Games are “*subject to final selection by each National Olympic Committee (NOC) upon recommendation of the respective National Federation (NF)*” and that “[t]he NOCs have the exclusive authority for representation of their respective countries at the Olympic Games even if the quota is allocation to the athlete by name”.
- The allocation of quota places must be distinguished from how the allocated quota places may be *exercised*, wherein the NOCs who earned a quota can use it by sending athletes of their choice or – for allocation to athlete by name – the NOCs can use the quota through the athletes whose performance earned the quota for their NOC.
- As such, for quotas allocated by name, while the athletes have a direct and personal entitlement to the quota itself, their personal entitlement would only be against the NOC (upon recommendation of the National Federation) e.g., if the NOC exercises the quota thus earned, it must do so through the athletes who earned it.
- Under Swiss law, standing to sue belongs to the person who can avail themselves of a substantive right of which they are the holder in their own name, and must

demonstrate that they avail themselves of a claim by declaring that they are the holder of the right in their own name (CAS 2012/A/3027, para. 88; CAS 2012/A/2830, para. 204).

- Neither the AOC nor Gymnastics Australia – the national federation for gymnastics in Australia – have challenged the Selection Decision, as they are formally not parties in the present proceedings.
- The Appellant alone has no right to obtain a quota place, and even if the CAS overturns the Selection Decision, the AOC can still refuse to grant him the relevant quota and such quota can be reallocated. As the AOC is not a party to the present proceedings, it is not bound by the conclusion of the Panel.
- There is nothing on the file to show that the AOC supports the appeal brought by the Appellant.

iv. Merits of the Dispute

95. The FIG underlines that the reading of the FIG Rules has to primarily be an objective one, taking into account the text and the purpose of the rules:
- The interpretation of statutes of sport associations has to be objective and begin with the wording of the rule, while taking into account the historical elements, such as the intention of the association when establishing the said rules (CAS 2020/A/6681, para. 83-84)
 - The CAS has to consider an objective interpretation of the rules, evaluating principally the text and purpose of the rules (CAS 2015/A/4222, para. 1).
 - There are four different methods of interpretation under Swiss law, *viz*, literal, systematic, teleological, and historical (CAS 2020/A/7008-7009, para. 61), which begins with literal interpretation unless there are objective reasons to think that it does not reflect the core meaning of the provision under review.
96. The FIG submits that the Panel should adopt the above-mentioned approach for the reading of the FIG Rules, and not the approach suggested by the Appellant:
- It is clearly worded that the Criteria in the FIG Rules are “[e]vents listed in chronological order of qualification for Paris 2024”, which are classified regardless of when such competitions would have taken place.
 - Under Criteria 7, the relevant qualifying events can be the “2024 Continental Championships or the other Continental Qualifying Event approved by the FIG”, which has been determined to be the 2023 PanAm Games since 2022.

- Under the FIG Rules, it was expressly mentioned under the qualifying timeline that the Continental Championships or other Continental Qualifying Event approved by the FIG can take place in April-May 2024, or “*another date approved by the FIG*”.
- Under Section F.1 of the FIG Rules, it is mentioned that the “*chronological order*” refers to the Criteria, and the reallocation of unused quota places system explains how the unused quota places are to be reallocated in the chronological order of the qualification criteria.

97. The FIG Rules are clear and precise, and leaves no room for interpretation, but the purpose of the FIG Rules is also clear, wherein Criteria 7 is a last-resort criterion to ensure that the minimum continental representation is guaranteed at the Paris Olympic Games, and it is logical for Criteria 7 to be the final criterion for the allocation of quota places, regardless of when the said event(s) take place.

- Criteria 7 is designed to be used only when athletes from less represented continents have not qualified through other priority criteria.
- Criteria 7 aims to provide a pathway for athletes who might not otherwise qualify through global competitions, to maintain a minimum level of diversity and representation from all continents, ensuring a global participation of athletes at the Paris Olympic Games.
- Both the timing and nature of the Continental Championship or another Continental Event are irrelevant vis-à-vis Criteria 7 of the FIG Rules, although all the Continental Championships took place in May 2024.
- The FIG was free to approve another relevant event or have the said event take place another time (outside of April-May 2024) under Criteria 7 of the FIG Rules. By approving the 2023 PanAm Games, the FIG acted within the framework of the FIG Rules.

98. The FIG maintains that Mr. Nin Reyes was eligible to receive points for OQ Ranking under Criteria 6, as stipulated in the said Criteria.

- There is no mention that an athlete who has already competed (or is likely to receive the quota place) at the Criteria 7 event is not eligible to participate in the 2024 World Cup.
- Pursuant to Criteria 6, Mr. Nin Reyes was eligible to participate and attempt to obtain the quota place at the 2024 World Cup.
- Under the FIG Rules, it was necessary to wait until the end of the 2024 World Cup to announce the athletes who have obtained a quota place under Criteria 7.
- The FIG is not in a position to make any amendments to its own FIG Rules based on a “*strict interpretation of the key text*” as alleged by the Appellant. The FIG is also not

entitled to withdraw a quota place validly earned by an athlete through sporting results, as it would be contrary to the principle of fairness [CAS 2015/A/4222, par. 139(d)]

- A similar issue has already been decided on the chronological qualifying order of the rules for the 2021 Olympic Games in Tokyo, Japan, wherein the sole arbitrator confirmed the FIG's interpretation of the qualification rules then – which contains the same sentence on “[t]he events are listed in chronological order of qualification” (CAS 2021/A/8140).

99. The Appellant had the opportunity to obtain the quota place through the 2024 Continental Championship for Oceania but chose not to participate. Another Australian athlete, Mr. Jesse Moore, obtained the said quota place for Criteria 7.

100. The FIG does not admit the request for the Appellant to obtain a “*Universality*” spot, or an additional quota place as the Appellant is not eligible.

- The “*Universality*” quota places have been specifically reserved to offer the opportunity to NOCs which have traditionally sent small delegations to the Paris Olympic Games to be represented, and the selection follows a restrict procedure dealt with by a specific commission of the IOC, viz, the Olympic Games Tripartite Commission.
- The time limit to claim the universality quota have already passed at this stage.
- Granting any additional quota place constitutes a significant amendment to the FIG Rules as approved by the IOC and would not be possible since the FIG has correctly applied the FIG Rules.
- IFs like the FIG do not have the authority to grant any “*Universality*” spots or additional quota places, only the IOC. However, the IOC is not a formal party to these proceedings since the Appellant decided not to summon it, as such the Panel is not in a position to issue an award which affect the rights of IOC – who is a third party of the present proceedings – since the IOC was not correctly summoned and be fully heard in the proceedings (CAS 2021/A/8140, para. 51).
- The allocation of additional quota places should only be considered as a last resort solution and only in particularly exceptional circumstances, which the Appellant has manifestly not proven. Additional quota places cannot be granted to athletes who did not manage to qualify through the ordinary criteria/events, as a kind of “side door” to attend the Paris Olympic Games.

v. *Additional Submissions at Hearing*

101. With regards to standing and relevant parties to the present proceedings, there are various parties which are absent:

- The Appellant has no standing to sue, and the appropriate party should have been the AOC, given that only NOCs accrue quota places for the Olympic Games under the Olympic Charter. AOC's letter of support is belated, inadmissible, and does not cure the lack of standing of the Appellant. In any event, the Panel is unable to rule on rights affecting parties who are not party to the proceedings.
- Only NOCs can participate in proceedings at the CAS pertaining to the Olympic Games, and if the Panel here agrees to hear non-qualified athletes, the CAS will be confronted with an avalanche of appeal from individuals. Athletes with interest in the Olympic Games is not sufficient standing to bring a claim for quota place without the full support of the NOC as co-appellant.
- The NOC of IRI was not brought in as respondent, who is the appropriate party to defend the earned quota place by the Second Respondent. The NOC of IRI stands to lose a quota place and lost the opportunity to be heard as it was not properly brought in as a party to the present proceedings.
- Mr. Nin Reyes and/or the NOC of Dominican Republic was not brought in as a party to the present proceedings, despite them potentially losing the points for Mr. Nin Reyes' OQ Ranking for Criteria 6. Further, the Appellant did not formalise any protest of Mr. Nin Reyes' participation at the Doha World Cup and his alleged ineligibility, but only did so after the OQ Ranking List was released. This goes against the principle of good faith.
- The IOC is not brought in as a party to the present proceedings, despite the subsidiary request by the Appellant to obtain "*Universality*" or additional quota spots, which can only be granted by the IOC and not FIG alone.

102. In any event, the Appellant failed to take his last opportunity to qualify for the Olympic Games at Oceania Continental Championship, and now claims that he had the right to participate at the Olympic Games.

103. Mr. Détraz is an employee of the FIG, who has the right to answer questions raised by anyone, but whose words should not have any legal meaning. The Appellant should solely rely on the wording of the FIG Rules.

C. The Second Respondent's Position

104. The Second Respondent seeks the following relief before this Panel:

"On the basis of the foregoing, the Second Respondent respectfully requests the Court to adjudge, order and declare as follows:

- (a) The Court has jurisdiction under the Code of Sports-related Arbitration to entertain the matter and to rule upon the claims submitted by the Appellant;*
- (b) The FIG decision conforms the applicable rules and the Appeal be dismissed;*
- (c) The Second Respondent is an eligible athlete through Criteria 6 to participate in the 2024 Paris Olympic Games.*

- (d) *The Appellant is under an obligation to make full and effective compensation on damages induced against the Second Respondent as well as all costs of proceedings including administrative fees, arbitration fees, Court Office fees, and lawyers' fees and retainers which the Second Respondent had to afford for this matter.*” (sic)

105. By way of a correspondence from the Second Respondent dated 29 June 2024, the Second Respondent clarified that he was contesting the jurisdiction of the CAS in the present matter.

i. Jurisdiction

106. Article R27 of the CAS Rules stipulate the following:

“R27 Application of the Rules

These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport.”

107. Article 36 of the FIG Statutes stipulate the following:

“ARTICLE 36 – DISPUTES WITHIN THE FIG

The Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, is the sole competent authority, with the exclusion of state courts, to adjudicate disputes between FIG and its Member Federations or Continental Unions, Regional Groups or disputes between Member Federations.”

108. The Second Respondent disputes that the CAS has jurisdiction in relation to the appeal filed by the Appellant, although Article R27 of the CAS Code and Article 36 of the FIG Statutes provide general foundation for the jurisdiction of the CAS. In particular:

- The IOC QS Principles, especially the principles described on page 3 therein, cannot be referred to as the legal foundation for the jurisdiction of the CAS.
- Rule 61.2 of the Olympic Charter is not adequate to establish the jurisdiction of the CAS for the present matter because the dispute has not arisen in the occasion of the Olympic Games or in connection with the Olympic Games. Each international federation's (IF) qualification process for the Paris Olympic Games does not take place in the context of the Olympic Games and should be considered beyond the jurisdiction of the CAS; determining otherwise would render the internal dispute resolution processes within each federation meaningless as most IF competitions are used to earn points for qualification for the Paris Olympic Games, and disputes therein are not submitted to the CAS.

- Article 36 of the FIG Statutes only mandates that the CAS as the sole competent authority to adjudicate disputes (1) between FIG and its member federations; (2) between FIG and continental unions; (3) between FIG and regional groups; and (4) between member federations. However, the present case is not just a dispute between the FIG or Gymnastics Australia, as the Second Respondent is a party to this dispute. The Appellant and the Second Respondent are both natural persons and the involvement of natural persons put the present dispute outside the jurisdiction of the CAS.

ii. Applicable Law

109. The Second Respondent makes no submissions on the applicable law, only that the FIG Statutes, the FIG Rules, and the CAS Code are to be considered as applicable in the present matter.

iii. Merits of the Dispute

110. The Second Respondent maintains that he is recognised as the second highest ranked eligible athlete under Criteria 6 in the vault apparatus, and therefore has qualified to take part in the Paris Olympic Games. In particular, the Second Respondent submits that the FIG Rules are adequate, and the FIG is the best authority to interpret and enforce the said Rules, as follows:
- The Appellant does not claim that the FIG has behave discriminatorily against him, or that there was special interest to allocate the quota place to the Second Respondent instead of the Appellant. There are no such grounds to challenge the Selection Decision, in any event.
 - The FIG Rules were approved on 5 April 2022 and the Appellant did not object to the said Rules during the preceding two years before the present appeal.
 - While the Appellant assumed that Mr. Nin Reyes was eligible to qualify for the Paris Olympic Games through Criteria 7, the Appellant failed to raise any issue on the acquiring of OQ Ranking Points by Mr. Nin Reyes at the Doha World Cup before or during the said meet.
 - In CAS 22/005, it was expressed by the panel therein that a member of an IF is estopped from raising issues about a qualification system approved two years ago that it would have raised before, or at least while its athletes were participating within the IF-approved qualification system. The effects of the said qualification system on its own interest are not a sound basis to attach the qualification system, when there is no assertion or evidence that the IF failed to apply the approved qualification system as written.
111. The Second Respondent maintains that Mr. Nin Reyes was eligible to receive OQ Ranking Points as the eligibility of athletes under Criteria 7 cannot be finalised until the eligibility under Criteria 6 was determined, under the FIG Rules, as follows:

- The FIG did not announce Mr. Nin Reyes as the qualified athlete under Criteria 7 until the qualified athletes through Criteria 6 was determined.
- Criteria 7 stipulates that Mr. Nin Reyes will not be eligible to obtain a quota place if he had already qualified through Criteria 4, 5, or 6. As Mr. Nin Reyes has not qualified through 4 or 5, he correctly received OQ Ranking Points at the Doha World Cup.
- The Appellant's argument that Mr. Nin Reyes was ineligible to collect OQ Ranking Points is contrary to the fact that the FIG Rules were considered in chronological order.
- Mr. Nin Reyes had the opportunity to attend the FIG World Cup and earn a quota place there under Criteria 6, as his quota spot from Criteria 7 is not secure definitely until the eligible athletes from Criteria 6 was confirmed. If Mr. Nin Reyes obtained the quota place from Criteria 6, his earned quota place from Criteria 7 could be allocated to another eligible athlete from the 2023 PanAm Games. Mr. Nin Reyes had reasonable interest to attend the Doha World Cup and for his points to be calculated for OQ Ranking, even if he had obtained the quota spot from Criteria 7.
- There was an additional step for NOCs to confirm their earned quota places for the team(s) and/or athlete(s), as shown by the email from the FIG dated 30 May 2024.

112. The Second Respondent raises mistakes that the Appellant made in his submissions, as follows:

- The Appellant misrepresented the results of the Second Respondent in the vault apparatus for the FIG World Cup.
- The Appellant opined that Mr. Nin Reyes should not be eligible to receive points for OQ Qualifying, despite Criteria 6 stipulating otherwise. This is coupled with the fact that the FIG is unable to ascertain an eligible athlete through Criteria 7 at that point, before the quota places for Criteria 6 was allocated.

113. The Second Respondent contends that the FIG has full authority to allocate quota places for the Paris Olympic Games, and not based on the opinion of fellow athletes, observers, or officials. The official results of the competitions and the earned quota spot(s) from the FIG World Cup should be declared by the FIG, and not based on information disseminated by others, of which mistakes in the interpretation of the FIG Rules could be made, as highlighted by the analysis of a French former gymnast and reporter, Mr. Zhoxxy on his Instagram account on 21 April 2024.

114. The Appellant's position of adopting teleological interpretation over literal interpretation is not justified, as there is no objective reason to think that the requirements of Criteria 6 (Part D1) of the FIG Rules do not reflect the core meaning of the said provision, as follows:

- Part C of the FIG Rules require four pillars of the athlete eligibility for individuals who intend to participate in the Paris Olympic Games, viz, the Olympic Charter, the World Anti-Doping Code, the Olympic Movement Code on the Prevention of the Manipulation of Competitions, and the rules of the FIG. As the FIG Rules on athlete

eligibility do not violate any of the above-mentioned rules, the Appellant's purported purposive interpretation is not justified.

- The provisions under the FIG Rules on athlete eligibility are sufficiently clear and does not need to be interpreted in any other manner. A literal reading of the relevant provisions in the FIG Rules would suffice, and departing from a literal reading is unreasonable.
- In any event, departing from a literal reading of the FIG Rules on athlete eligibility for each Criteria does not change the final outcome of the qualified athletes:
 - The FIG does not invite the athletes of the quota places for Criteria 7 until the athletes of the quota places from the previous Criteria are determined. Doing so otherwise would open the competition up for manipulation.
 - The literal reading of the FIG Rules does not contravene the past transparent practices of the FIG.
 - All athletes have the right to enjoy maximum opportunities to qualify for the Paris Olympic Games, and until the quota places have been allocated through Criteria 6, the quota place for Criteria 7 is left open. As such, Mr. Nin Reyes had the right to participate in the Doha World Cup and obtain points to avoid any issues which might deprive him from his quota place through Criteria 7.
- General rules of interpretation should be applied for legal documents like the FIG Rules, wherein the ordinary meaning of the words used must be considered as a whole (CAS 10/003). This ensures that a maximum number of competitors can attend the Paris Olympic Games for each event, which also prevents the transfer of unallocated quota positions across events, or the increase in the number of athletes in any given event.
- While the FIG Rules envisages a system of sequential exclusion for the allocation of quota places, no athlete can obtain the quota place in Criteria 7 until Criteria 6 is complete, so the Appellant had wrongly assumed that the sequence of 2023 PanAm Games and the FIG World Cup would undermine FIG's reading of the FIG Rules. Mr. Nin Reyes was not allocated a quota spot in Criteria 7 until the FIG World Cup was completed and quota spots therein allocated.

115. The Second Respondent questions the authenticity and credibility of the witness statements of the Appellant:

- It is the CAS Panel's duty to assess the credibility and authenticity of the witness statements; by taking into account potential relationships the witnesses have with the parties and the interests he or she may have in connection with the outcome of the proceedings (CAS 2017/A/4947).

- The Appellant has close relationships with witnesses, who are his coach (Mr. Sean Wilson) and the CEO of Gymnastic Australia (Mr. Christopher O'Brien). Further, although there is a Syrian FIG judge (Mr. Negal Alyousef), he is the managing partner of an Australian gymnastic club for several years, and one of the coaching members of the Australian delegation at the Doha World Cup.
- The Second Respondent submits his own list of witnesses who will be able to elaborate on the points allocation for the FIG Rules and the eligibility of the Second Respondent to participate in the Paris Olympic Games through Criteria 6.

iv. Additional Submissions at Hearing

116. Rule 61.2 of the Olympic Charter focuses heavily on the definition of the “*Olympic Games*”, which is clearly defined by the Olympic Charter as a stipulated and defined period of the said Games. To expand the reading of the “*Olympic Games*” to include all qualifying competitions would render all dispute resolution mechanisms by the IFs as meaningless.
117. Article R47 of the CAS only provides for CAS jurisdiction if the statutes of the set bodies so provide, which is not present in the FIG Statutes, IOC QS Principles, or the Olympic Charter.
118. The Appellant failed to challenge the use of the 2023 PanAm Games as a Continental Event for Criteria 7, despite the news being released since 2022. This is not a sound basis to challenge the qualification system two years later when it could have been raised at that time (CAS OG 22/005).
119. While FIG Rules provides for a system of sequential exclusion of athletes for the allocation of quota places, the said Rules also provide for sequential inclusion of athletes, for which Mr. Nin Reyes was not yet included in a qualified athlete under Criteria 7 until the FIG World Cup was concluded.
120. The FIG Rules is an IF qualification system and a legal document, which attracts the general rule of interpretation. Ambiguity does not just exist because parties disagree on interpretation, but only if the provision is capable of more than one meaning, which is not the case here (CAS OG 22/003).

V. JURISDICTION

121. According to Article R47 of the CAS Code, the Panel has jurisdiction to hear:

“[a]n 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”.

A. The Parties' Position

122. The jurisdiction of the CAS to hear the present appeal is presently only contested by the Second Respondent, who contends that the three grounds for which the Appellant raised to claim jurisdiction of the CAS are not adequate, *viz*:
- There is no legal foundation for the jurisdiction of the CAS in the IOC QS Principles.
 - Rule 61.2 of the Olympic Charter does not apply as the dispute has not arisen in the occasion of the Olympic Games or in connection with the Olympic Games.
 - Article 36 of the FIG Statutes only mandate the CAS as the sole competent authority to adjudicate disputes (1) between FIG and its member federations; (2) between FIG and continental unions; (3) between FIG and regional groups; and (4) between member federations.
123. The FIG, on the other hand, does not formally object to the jurisdiction of the CAS but merely makes several objections to the grounds for which the Appellant relied on to claim jurisdiction of the CAS. The FIG signed the OoP without any reservation.
124. The Appellant submits that the CAS has two main bases to hear the present appeal, *viz*, that the present dispute pertains to a dispute under Article 61.2 of the Olympic Charter as it arises “*on the occasion of, or in connection with, the Olympic Games*”. Secondly, Article 36 of the FIG Statutes provide for the CAS to be the “*sole competent authority*” to adjudicate disputes, which should include individual athletes of a Member Federation, such as the Appellant. In any event, the Appellant highlights that the FIG confirmed that the Appellant has exhausted the possible avenues of dispute resolution available to him, and the FIG directed the contested matter to be brought by way of a “*complaint with the Court of Arbitration for Sport*” by way of the email from the FIG dated 26 April 2024.

B. Legal Framework and Position of the Panel

125. Based on the consistent jurisprudence of CAS panels pursuant to R27 (ordinary proceedings) and R47 (appeal proceedings) of the CAS Code, there are three prerequisites that have to be met in order for the CAS to have jurisdiction (see *inter alia*: CAS 2008/A/1514; CAS 2009/A/1919; CAS 2011/A/2436; CAS 2014/A/3771; CAS 2019/A/6274):
- the Parties must have agreed to the competence of the CAS;
 - there must be a “*decision*” of a federation, association or another sports-related body; and
 - the (internal) legal remedies available must have been exhausted prior to appealing to the CAS.
126. The Panel starts its examination by underlying the principle of consent in arbitration, wherein the Panel is tasked to first verify whether an agreement exists between the Parties (jurisdiction

ratione personae) covering the dispute at stake (jurisdiction *ratione materiae*) and providing for CAS arbitration.

127. The Appellant grounds the CAS jurisdiction to hear the present appeal, *inter alia*, on Rule 61.2 of the Olympic Charter, which provides that “[a]ny dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration”. With regard to this provision, the Panel notes that it undoubtedly provides for CAS arbitration and covers the dispute between all the Parties, as the dispute concerns that reading of the FIG Rules for qualifying for the Paris Olympic Games. Therefore, it is without a doubt that it is a dispute “*arising on the occasion of, or in connection with, the Olympic Games*” (CAS 2019/A/6274).
128. The Second Respondent’s contention that the qualifying process for the Paris Olympic Games only falls within the ambit of the IF – and therefore not on the occasion of or in connection with the Olympic Games – cannot stand because the FIG Rules clearly falls within the ambit, and approval, of the IOC for the Olympic Games. This is unlike world championship qualifying procedures which fall solely within the ambit and jurisdiction of the IFs, and therefore falling within the available internal dispute resolution process within each IF. The FIG Rules, read together with the FIG World Cup Rules, pertain directly to the qualification system for the Olympic Games with a fixed set of events recognised for qualification, and a dispute pertaining to its interpretation would constitute a dispute “*arising on the occasion of, or in connection with, the Olympic Games*” (c.f. CAS 2011/A/2474).
129. As such, the Panel finds that Rule 61.2 of Olympic Charter provides jurisdiction *ratione materiae* for the present dispute.
130. The crux of the issue, however, concerns the existence of an agreement to arbitrate between the Appellant and the FIG, and the Appellant and the Second Respondent (jurisdiction *ratione personae*), giving the Appellant the right to start CAS proceedings against the First and Second Respondents, and obliging the Respondents to submit to a dispute with the Appellant covered jurisdiction *ratione materiae* by such agreement.
131. The Panel note that the agreement to arbitrate between the Appellant and the FIG is undisputed, given the FIG’s decision not to formally object to the jurisdiction of the CAS in the present proceedings, and submit the present dispute to arbitration under the CAS pursuant to Article 178 of the Swiss Private International Law (PILA). In particular, the FIG had also advised Gymnastic Australia (by an email dated 26 April 2024) that if it contests the procedure applied, “*a complaint with the Court of Arbitration for Sport (CAS) can be lodged*”, implying that there is no further dispute resolution mechanism internally for the resolution of the matter.
132. The outstanding issue at present is whether there is an agreement to arbitrate (jurisdiction *ratione personae*) between the Appellant and the Second Respondent. Unlike the FIG, the Second Respondent did not submit the present dispute to the jurisdiction of the CAS under Article 178 of the Swiss PILA, and expressly objects to the jurisdiction of the CAS on grounds that there is no arbitration agreement obliging the involvement of the Appellant and the Second Respondent.

133. The Panel notes that the question of jurisdiction *ratione personae* in CAS arbitration case often involves a procedural and substantive aspect, which are not always clearly distinguished. The question of jurisdiction *ratione personae* concerns the existence of an arbitration agreement giving the Appellant the right to bring a case (in this situation, against the Second Respondent) (procedural aspect), as well as the substantive aspect of whether the Appellant has an underlying right to sue the Second Respondent (CAS 2011/A/2474, para. 23 et seq.). However, the procedural and substantive aspects of jurisdiction *ratione personae* are not always aligned and could be mutually exclusive in context. For example, in the general category of persons having an arbitration agreement or being able to benefit from an offer to arbitrate in a statute (procedural), not all of them will have an underlying substantive right upon which to base their claim. Simultaneously, a party “*stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law*” may be found to be in a situation without a valid arbitration agreement (cf. CAS 2017/A/5227, para. 35).
134. Some confusion has been caused in this case by the Parties conflating to some extent in their submissions these two different aspects.
135. The Panel acknowledges that the involvement of the Second Respondent as a party to the matter is based on his legal interests in the matter i.e., his quota place at the Paris Olympic Games. The Appellant brought the Second Respondent as party to the present proceedings on the sole basis – and to the advantage of the Second Respondent – that the Second Respondent is personally obliged by the “*disputed right*” at stake (CAS 2006/A/1206, para. 4; CAS 2011/A/2747, para. 23-25), and “*stands to be sufficiently affected by the matter at hand*” (CAS 2017/A/5227, para. 35); however, the Second Respondent contests its inclusion as respondent in the present proceedings.
136. This is an issue of the substantive right of jurisdiction *ratione personae*, rather than the procedural aspect therein, and the Panel is still tasked to determine whether it has jurisdiction to hear a dispute between the Appellant and the Second Respondent in the absence of a specific agreement to arbitrate, or an applicable arbitration agreement in the statutes and regulations of the FIG.
137. The provisions in Article R47 of the CAS Code is clear, wherein the Panel only has jurisdiction to hear disputes if “*the statutes or regulations of the said body so provides*” or “*if the parties have concluded a specific arbitration agreement*”, and in the absence of either, the Panel does not have jurisdiction to hear the dispute. This is the present situation with the dispute between the Appellant and the Second Respondent, and the Panel finds that it does not have jurisdiction *ratione personae* to hear the dispute between the Appellant and the Second Respondent.
138. In any event, the Panel finds that they have jurisdiction to decide the present dispute between the Appellant and the FIG, and will proceed with the merits of the case.

VI. ADMISSIBILITY

A. Preliminary Issues: Admissibility of Additional Letters

139. In response to the FIG's arguments on the Appellant's lack of standing and absence of evidence of support from the AOC and Gymnastics Australia, the Appellant submitted the Letters from the Australian Olympic Committee (AOC) and Gymnastics Australia on 1 July 2024. The FIG objected to the late admission of the Letters as no agreement has been reached between the Parties on this matter, and the Appellant did not explain what the exceptional circumstances are to justify the late admission of evidence. The FIG, nevertheless, agreed to the admission of the Appellant's additional and unsolicited arguments on standing, despite the absence of directions from the Panel or the CAS Court Office for the same.
140. The Panel opines that the FIG is not prejudiced by the admission of the Letters into the present proceedings, given that it has agreed to the admission of the Appellant's additional and unsolicited arguments on standing. The Panel agrees with the FIG that the Letters do not add or buttress the Appellant's prevailing position on standing, and will address the relevance and weight of the Letters later in the Merits.

B. Admissibility of Appeal

141. Article R49 of the CAS Code provides – in its pertinent parts – as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.”

142. The Statement of Appeal was timely filed and complied with the requirements set by Article R49 of the CAS Code. No further recourse against the Selection Decision is available within the legal framework of the FIG. Accordingly, the appeal filed by Appellant is admissible.

VII. SCOPE OF REVIEW

143. Article R57 of the CAS Code provides – in its pertinent parts – as follows:

“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.”

144. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

VIII. THE APPLICABLE LAW

145. Article R58 of the CAS Code stipulates that,

“[t]he 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

146. It is undisputed between the Parties that the rules and regulations of the FIG should apply in the present case, viz, the FIG Rules and FIG Statutes. The FIG submits further that Swiss law should apply subsidiarily.
147. The Panel agrees and finds that the rules and regulations of FIG will apply primarily on the matter at hand, while Swiss law shall apply only if there is a *lacuna* in the rules and regulations of FIG which needs to be filled. In such a situation, when questions of interpretation arise over the application of the rules and regulations of FIG, Swiss law shall apply.

IX. MERITS

A. The Issue of Standing: *Légitimation Active*

148. The issue of standing has been raised substantially in all the Parties' submissions and corresponds to the standing to sue (*légitimation active*).

i. The Parties' Position

149. The FIG raised the preliminary issue of the Appellant's standing to sue (*légitimation active*), in particular, since only NOCs are recognised by the IOC to submit entries for competitors at the Paris Olympic Games, the Appellant has no standing to bring the present dispute against the FIG. In particular, even for quotas allocated by name to the athletes, the athletes only entitlement is against the NOC, as the NOC has exclusive right to exercise the earned quotas and submit entries for the Paris Olympic Games. Similarly, the FIG also raised the issue of whether the Second Respondent is the appropriate respondent to the proceedings given that the NOC of IRI should have been afforded the opportunity to defend the earned quota place by the Second Respondent, therefore raising the issue of the Second Respondent's standing to be sued (*légitimation passive*).
150. The FIG also further raised the absence of:
- Mr. Nin Reyes and/or the NOC of Dominican Republic, who were not brought in as a party to the present proceedings, despite them potentially losing the points for Mr. Nin Reyes' OQ Ranking for Criteria 6.
 - The IOC, given that the Appellant's subsidiary request to obtain "*Universality*" or additional quota spots, which can only be granted by the IOC and not FIG alone
151. The Appellant maintained that it has standing to sue as he has an interest worthy of protection and a sufficient interest in the matter being appealed (CAS 2013/A/3140, para. 8.3) and suggested that it is absurd to suggest that an athlete who stands to gain or lose a quota position has no sufficient interest to bring the case in his own name. The Appellant further contended that the allocation of quota places by NOC and by name give rise to a legitimate interest worthy of protection, and the Appellant has standing to seek for the quota place in dispute. To

support his position on standing and to alleviate concerns regarding legal interests of the AOC and Gymnastics Federation, the Appellant provided letters of support from the AOC and Gymnastics Australia.

152. The Appellant also denied the need to bring Mr. Nin Reyes and/or the NOC of Dominican Republic as parties to the present case as the outcome of the Appellant's request for relief does not affect Mr. Nin Reyes' qualification and eventual participation at the Paris Games.

ii. Legal Framework for Standing

153. At the outset, the notion of standing refers to the question of whether the Appellant has a claim on the merits according to the applicable law. According to settled jurisprudence of the CAS and the Swiss Federal Tribunal, the question of standing to sue (*légitimation active*) relates to the merits and not the admissibility of the case (see among many references: CAS 2015/A/3959, para. 81; CAS 2015/A/4289, para. 110; SFT 128 III 50, 55; SFT 108 II 216, cons. 1; see also MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, 2015, R27, no. 82). The principle is similar for the question of standing to be sued (*légitimation passive*) (SFT 128 III 50 of 16 October 2001, at 55; SFT 4A_424/2008 of 22 January 2009, para. 3.3.; CAS 2008/A/1639, para. 3).
154. On the issue of standing, the Panel shall primarily apply the rules and regulations of the FIG, namely the FIG Rules, the FIG World Cup Rules, and the FIG Statutes; Swiss law shall apply subsidiarily. The Parties did not dispute the law applicable to the issue of standing in the present proceedings. As the FIG Rules and the FIG Statutes do not specify who is the proper applicant or defendant for such claims, the Panel shall fill this *lacuna* with Swiss law, more precisely by Article 75 of the Swiss Civil Code (SCC). Article 75 of the SCC determines whether a party has standing to appeal a decision of an association under Swiss law. This provision states as follows:

“Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof.”

155. In Swiss civil procedural law, the basic principle is that a claimant has standing to sue providing the person is invoking a substantive right of its own, i.e. a right deriving from contract, tort or another source. The conditions for standing to sue coincide with the conditions of the substantive right invoked and they shall exist at the latest at the moment of the decision (F. HOHL, Procédure civile, Tome I, 2e éd., Berne 2016, p. 135- 136, N° 759-761). The SFT expressed this basic principle in the following terms:

“Selon la jurisprudence, la qualité pour agir et la qualité pour défendre appartiennent aux conditions matérielles de la prétention litigieuse. Elles se déterminent selon le droit au fond et leur défaut conduit au rejet de l'action, qui intervient indépendamment de la réalisation des éléments objectifs de la prétention litigieuse. De même que la reconnaissance de la qualité pour défendre signifie seulement que le demandeur peut faire valoir sa prétention contre le défendeur, revêtir la qualité pour agir veut dire que le demandeur est en droit de faire valoir cette prétention. Autrement dit, la question de la qualité pour agir revient à savoir qui peut faire valoir une prétention en qualité de titulaire d'un droit, en son propre nom. En conséquence, la reconnaissance de la qualité pour agir ou pour défendre n'emporte pas décision sur l'existence de la prétention du demandeur, que ce soit quant au principe ou

à la mesure dans laquelle il la fait valoir.” (SFT 125 III 82, para. 1a; see also ATF 114 II 345 para. 3a and cited legal authorities.)

[Free Translation: “According to case law, standing to sue and standing to be sued belong to the material conditions of the litigious claim. They are determined according to the substantive law, and their absence leads to the dismissal of the action, which occurs independently of the realization of the objective elements of the litigious claim. Just as the recognition of standing to be sued only means that the plaintiff can assert his claim against the defendant, the granting of standing means that the plaintiff is entitled to assert this claim. In other words, the question of standing comes down to who can assert a claim as the holder of a right, in his or her own name. Consequently, recognition of standing to sue or to be sued does not determine the existence of the plaintiff’s claim, either in principle or in terms of the extent to which it is asserted.”]

156. Therefore, in order for a claimant to have standing to sue under Swiss law, it shall demonstrate that he/she has a substantive right of its own in the matter at stake.
157. According to the jurisprudence of the SFT, Article 75 of the SCC grants the right to challenge an association’s resolution to “*any member*” of that association, a notion that includes direct members as well as indirect members affected by a decision of the umbrella association to which the association of which they are a member is affiliated, as well as third parties who are subject to a sanction and who have submitted to the regulations of the association that has imposed the sanction, to the exclusion of non-members such as former members, creditors or interested third parties (4A_314/2017 para. 2.3.2.2., with references to ATF 119 II 271, para. 3b and legal authorities).
158. Moreover, according to CAS settled jurisprudence, a member who was not entitled to take part in the decision-making process of the decision being challenged is only entitled to challenge such decision according to Article 75 of the SCC if he/she is affected by it in its membership rights, which will occur if the decision in question is addressed to said member and personally affects its membership rights as to their substance (CAS 2016/A/4602, para. 66 and cited references; see also U. HAAS, Standing to appeal and standing to be sued, International Sport Arbitration, 6th conference CAS & SAV/FSA Lausanne 2016, no. 16). In doing so, CAS settled jurisprudence has held that an appellant has to demonstrate that “*he or she is sufficiently affected by the appealed decision and has a tangible interest, of financial or sporting nature, at stake*” (CAS 2018/A/5658, para. 58; CAS 2013/A/3140, para. 8.3; CAS 2008/A/1583-1584, para. 9.5.5.1).

iii. *The Position of the Panel*

159. At the outset, the Panel wishes to state that it is not tasked to direct which parties should have brought the present proceedings, or which parties should have been brought to defend the present proceedings. The Panel is bound, in procedure and substance, by the present parties to the proceedings, and is constrained to issue an award which will affect the rights of parties summoned and fully heard in the present proceedings (CAS 2013/A/3228, para. 8.1 et seq.; CAS 2021/A/8140, para. 51).
160. Notwithstanding the submissions of the Parties on standing, the Panel is in agreement that its task is distilled to only determine the following issue pertaining to standing: Must the AOC

be brought in as a co-appellant to the present case, in order for the Appellant to have a substantive claim and standing to sue the FIG on the interpretation of the FIG Rules?

161. The Panel shall first examine whether the Appellant holds a substantive claim deriving from the FIG Rules, given that the primary claim of the Appellant is derived from the said Rules and its interpretation thereof.
162. According to the FIG Rules, there are two types of entry for Artistic Gymnastics, which centres on the role of the NOCs:
 - Team quotas of five athletes for their NOCs; and
 - Individual quotas of up to three athlete's quota places per NOC.
163. The process found in the FIG Rules is also centred upon the rights of the NOCs. Based on the allocation of earned quota places from the FIG Rules for both Team and Individual quotas, at the end of the qualification period, NOCs are invited to confirm whether they wish to use the earned quota places, failing which the unused places will be reallocated to the next best Team or Individuals, of which procedure is set out in Part F.1 of the FIG Rules.
164. To the Panel, it is clear that while individual athletes earn quota places for Individual quotas by name i.e., the allocation of the quota is accrued by the NOC and not by the individual athletes directly. This is made abundantly clear in the process, wherein NOCs are approach and empowered to accept or decline the use of the earned quota places, and evident in the present dispute, wherein the FIG invited NOCs who have earned quota places to confirm or decline the said earned quota places by way of email on 30 May 2024.
165. Looking closer at the IOC QS Principles which guides the qualification systems of IFs like the FIG Rules, the IOC QS Principles also provide for the process of final selection of athletes by NOC, as follows:

“Qualification systems are the regulations established by IFs that consist of rules, procedures and criteria for athletes to be able to participate in competitions of the Olympic Games Paris 2024 subject to final selection by each National Olympic Committee (NOC) upon recommendation of the respective National Federation (NF). These Qualification Systems must conform to the Qualification System Principles (QSP) set forth below (as approved by the IOC Executive Board in October 2021).”

166. The Olympic Charter also sets out clearly and unequivocally that the rights of the NOCs pertaining to the selection of athletes and teams for the Olympic Games. Rule 44 of the Olympic Charter provides – in relevant parts – the following process for submission of entries for the Olympic Games:

“[...]

2 Only NOCs recognised by the IOC may submit entries for competitors in the Olympic Games.

3 Any entry is subject to acceptance by the IOC, which may at its discretion, at any time, refuse any entry, without indication of grounds. Nobody is entitled as of right to participate in the Olympic Games.

4 An NOC shall only enter competitors upon the recommendations for entries given by national federations. If the NOC approves thereof, it shall transmit such entries to the OCOG. The OCOG must acknowledge their receipt. NOCs must investigate the validity of the entries proposed by the national federations and ensure that no one has been excluded for racial, religious or political reasons or by reason of other forms of discrimination.

5 The NOCs shall send to the Olympic Games only those competitors adequately prepared for high level international competition. Through its IF, a national federation may ask that the IOC Executive Board review a decision by an NOC in a matter of entries. The IOC Executive Board's decision shall be final."

167. It is supported by CAS jurisprudence that the NOCs are the appropriate party with standing to bring a case against IFs for disputes arising out of qualification for the Olympic Games (CAS 2021/A/8140, para. 35-42; CAS 2024/A/10487, para. 45-53), but one issue to be considered as present is whether the NOCs are the *only* appropriate party with standing to bring a case against such disputes. The Appellant contends that while the NOCs are the appropriate party, the Appellant is also an appropriate party to bring the case against the FIG (CAS 2021/A/8140, para. 41-41).
168. The Panel concurs with the FIG that the inclusion of the letter of support from the AOC does not add or buttress the issue of standing of the Appellant in the present case. Without the AOC as an appellant or co-appellant in the present case, there is no substantive claim which can arise out of the present proceedings which the Panel can consider. The Panel is not entitled to consider a substantive claim based purely on a letter of support from the AOC, which – nevertheless – only includes content that the AOC will exercise its right to confirm the quota spot, should the Panel agree with the Appellant's claim and request for relief.
169. The Panel is in agreement that the NOCs are the only parties with the right to enter names for the Olympic Games, but this does not be misinterpreted to mean that the NOCs must be included as party to all proceedings in order for the athletes to have access to justice at the CAS. The Panel acknowledges that there is also a role for the national federation (NFs) to play within the qualification systems for the Olympic Games, wherein NFs like Gymnastics Australia could be deemed to have an interest worthy of protection, *inter alia*, to have one of its athletes compete at the Paris Olympic Games (CAS 2021/A/8140, para. 41-42). However, it still stands in the present case that Gymnastics Australia was not brought in as a sole or co-appellant, but only the Appellant.
170. The question stands as to whether the Appellant has standing to bring a case against the FIG as the sole appellant. The FIG raised the argument that if individual athletes have standing to bring proceedings against federations on their interpretation of the qualification rules for the Olympic Games without their NOCs, it would open a floodgate of proceedings at the CAS. At the same time, the Panel considers that the NOCs should collaborate with their athletes who wish to take action before the CAS on matters "*on the occasion of, or in connection with, the Olympic Games*" so as not to make access to justice too difficult for them.
171. In the present context, should this Panel follow the decision of the sole arbitrator in CAS 2021/A/8140, Gymnastics Australia potentially has standing to challenge the interpretation of the FIG Rules, which was similar in the above-cited case. The sole arbitrator in CAS

2021/A/8140 stipulated that the national federation therein had “*an interest worthy of protection*”, in accordance with Swiss law.

172. There is, however, no cases on whether an individual athlete has or can have standing to solely bring a case against his/her IF if the dispute pertains to the issue of the Olympic Games. It is undisputed by the FIG that the Appellant is a FIG-licensed athlete, which entails the Appellant rights and obligations arising therein. However, the FIG licensing of the Appellant, in itself, is not relevant for the issue of standing for the Appellant to contest the FIG Rules for the qualification systems for the Olympic Games, which is structured in a different framework from other qualification rules for FIG events unrelated to the Olympic Games. The only relevant framework for the Panel to consider is the FIG Rules and the IOC QS Principles, and other regulations incorporated therein.

B. Conclusion: Requests for Relief

173. Given that the Panel has determined that the Appellant has no standing to sue the FIG, there is no need for the Panel to delve into the interpretation of the FIG Rules and the subsequent parts of the Merits. However, even if the AOC brought the present case, or is brought in as a co-appellant in the present proceedings, the Panel is of the opinion that the suggested interpretation by the Appellant is not likely to have succeeded but does not need to be commented upon because the appeal is dismissed on the basis of standing.

X. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The CAS has no jurisdiction regarding the appeal filed on 9 May 2024 by Christopher (James) Bacueti against Mahdi Olfati.
2. The appeal filed on 9 May 2024 by Christopher (James) Bacueti against the decision issued on 22 April 2024 by *Fédération Internationale de Gymnastique* (FIG) is dismissed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Operative part of the Arbitral Award notified on 8 July 2024

Date: 21 May 2025

Seat of the arbitration: Lausanne (Switzerland)

THE COURT OF ARBITRATION FOR SPORT

Hans Nater
President of the Panel

Richard H. McLaren
Arbitrator

Denis Oswald
Arbitrator

Chui Ling Goh
Ad hoc Clerk