CAS 2024/O/10870 Aziza Sbaity v. Lebanese Athletics Federation

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Prof. Philippe Sands KC, Barrister and Professor of Law in London, United Kingdom

Clerk: Ms Stéphanie De Dycker, Clerk with the CAS, Lausanne, Switzerland

in the arbitration between

Ms Aziza Sbaity, Lebanon

Represented by Ms Monica Feria-Tinta and Mr Luke Pearce KC, Barristers, Twenty Essex, London, United Kingdom, and by Mr Alastair Campbell, Attorney-at-Law, Level Law Ltd, London, United Kingdom

Claimant

and

Lebanese Athletics Federation, Lebanon

Represented by Mr Peter Nunn, Ms Elyssia White and Ms Ruby Eslava-Pentelow, Mishcon de Reya LLP, Attorneys-at-Law, London, United Kingdom, and Mr Rowan Stennett, Attorney-at-Law, Blackstone Chambers, London, United Kingdom

Respondent

I. PARTIES

1. Ms Aziza Sbaity is a 33-year-old female athlete from Lebanon (the "Athlete" or the "Claimant").

2. The Lebanese Athletics Federation ("LAF" or the "Respondent") is the national governing body for athletics in Lebanon. Its headquarters are located in Dekwenneh, Lebanon. It is a member of World Athletics ("WA"), the world governing body for the sport of athletics.

3. The Athlete and the LAF are jointly referred to as the "Parties".

II. INTRODUCTION

4. The present ordinary proceedings are aimed at obtaining compensation and guarantees of non-repetition for the damage allegedly caused to the Athlete as a result of the decision of the LAF not to recommend her for selection to represent Lebanon at the 2024 Olympic Games in Paris (the "2024 OG"). The Athlete submits that this decision was based on an unfair procedure and was discriminatory in her regard, as she was the only eligible athlete to be selected for the Universality Place.

5. Below is a summary of the key facts and allegations drawn from the Parties' written submissions. In the circumstances of this case, the Sole Arbitrator has determined that no hearing is usefully needed. Additional facts and allegations may be set out, where relevant, in later sections of this award (the "Award"). The Sole Arbitrator has considered all of the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings. He nonetheless refers in this Award only to those submissions and evidence that he considers necessary to explain his reasoning and conclusions.

III. FACTUAL BACKGROUND

A. World Athletics' Qualification System for the 2024 OG

6. On 16 April 2024, WA sent to its member federations, including the LAF, a document titled *"Games of the XXXIII Olympiad – Paris, France 1-11 August 2024 (Athletics)"*. This reads *inter alia* as follows:

> *"*
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> ***4. ENTRIES and QUALIFICATION PROCESS***
>
> ***4.1. Individual Entries***
>
> *NOCs* ["National Olympic Committees"] *may enter up to three (3) qualified athletes for each event on the athletics programme. In addition, they can enter a maximum of*

one reserve or P alternate athlete for the same event, provided he/she has achieved the Entry Standard or has qualified by World Ranking"

[…]

4.3. Universality Places

NOCs with no male or female qualified athlete or relay team will be allowed to enter their best ranked male athlete OR their best ranked female athlete in either the 100m, 800m or Marathon. This applies equally to unqualified female entries from a NOC with qualified males, and vice versa.

Unqualified entries in the 800m will be limited to three (3) in each gender and acceptance will be at the discretion of the World Athletics Technical Delegates, based on the technical standard of the athlete.

A specific application form indicating the event in which the entry is requested, and the proof of the technical level and international participation of the nominated athlete, must be submitted to World Athletics.

World Athletics will subsequently confirm, in writing to NOCs, with a copy to the Paris 2024 Sport Entries department, the approval or otherwise of the entry of the specified athlete. The form must be sent to […], with a copy to the respective NOC, by the following deadlines:

- *23 April 2024 for the Marathon*
- *31 May 2024 for 100m and 800m*

In case of applications received after 31 May, unqualified athletes will only be allowed to enter the 100m.

[…]

4.4. Qualification Process

4.4.2. Individual athletes

Individual athletes can qualify in one of two ways:

• Achieve the entry standard within the applicable qualification period;

• By virtue of their World Ranking position at the end of the qualification period until the combined (approved universality places plus entry standard plus world ranking) established entry number per event is reached, while respecting the maximum quota per NOC per event.

Please note:

• Entry Standards have been set to qualify around 50% of the athletes with the remaining 50% to fill the quota from World Rankings.

• All athletes who achieve the entry standard will be considered as qualified, regardless of having reached or surpassed the 50% target. The number of athletes qualified by World Rankings will be calculated accordingly, and will therefore vary, in order to reach the quota in each event.

• In the case of the World Rankings, the event specific Ranking Rules (including the specific ranking periods) apply.

• In the men's and women's 100m, universality athletes will not count towards the quota places (as they will compete in a preliminary round)."

B. The nomination of Mr. Noureddine Hadid by the LAF

7. On 28 June 2024, the LAF contacted World Athletics regarding the participation of athletes in the 2024 OG and mentioned three athletes, Mr Marc Anthony Ibrahim, Mr Noureddine Hadid and the Athlete. In particular, the LAF stated that (i) *"If Marc Anthony cannot qualify so the competition will be limited between Noureddine and Aziza"*, and asked World Athletics (ii) *"Can* [World Athletics] *advise* [LAF] *which one between Noureddine HADID and Aziza SBAITY will represent Lebanon in the Olympic Games Paris 2024 if Marc Anthony did not get qualified in 400mh."*.

8. On 1 July 2024, World Athletics replied to the LAF that *"If Marc Anthony does not qualify, then it is up to* [LAF] *to decide which of the two athletes will be* [LAF's] *universality place although* [World Athletics] *do acknowledge that Noureddine is slightly better placed. If Marc Anthony qualifies, will* [LAF] *still enter Aziza SBAITY as* [LAF's] *female universality in the 100m?"*. On the same day, the LAF replied that World Athletics' reply had been "*well noted*".

9. By letter dated 3 July 2024, the LAF informed the Lebanese Olympic Committee as follows:

"[…] With regards to Lebanon's participation in athletics at the Olympic Games-Paris 2024, and following the non-direct qualification of any of our athletes in any event, where athlete Marc Anthony Ibrahim came close to qualifying, ranking 58th globally in the 400m hurdles. His time during the allowed qualification period was 49.26 seconds, while the required time for qualification is 48.70 seconds, or a ranking within the top forty in the 400m hurdles event.

According to the regulations of World Athletics, the National Athletics Federation has to nominate their best ranked male or female athlete in either the 100m, 800m, and marathon. The Lebanese Athletics Federation has full discretion in selecting the participant for the Olympic Games in accordance with the applicable laws and regulations. Given that athlete Noureddine Hadid (Athlete ID: 14603447) in the men's 100m race (10.27 seconds) is currently ranked 266th globally, is the highest rank among Lebanese athletes in the said events, therefore, the Lebanese Athletics Federation nominates:

Noureddine Hadid to represent Lebanon in the men's 100m race at the Olympic Games-Paris 2024. […]"

10. On 4 July 2024, the LAF published a statement in which it declared that it had *"chosen NOUREDDINE HADID who holds the highest world ranking in the 100m to represent LEBANON in the upcoming Olympic Games PARIS 2024."* Further, the statement stated that: (i) *"For universality places and with no direct qualification, it is important to clarify that the selection criteria at the World Athletics strictly limit participation to athletes who specialize in the 100m, 800m and marathon events, regardless of their ranking in other disciplines. Therefore, the World Athletics platform restricts athlete selection to those who compete specifically in the 100m, 800m and marathon events."*; and (ii) the LAF *"has the authority to select any athlete who competes in the 100m, 800m and marathon events. The Lebanese Athletics Federation adheres to the rules and criteria established to select the most qualified athlete to represent Lebanon in the Olympics"*.

11. On 5 July 2024, the LAF published a second statement on a social media account, according to which (i) the LAF referred to the *"letter from the High Center for Military Sports No. 219/HCMS dated July 5, 2024, which stated that athlete Nour El-Din Hadid would not be able to participate in the Paris 2024 Olympics"*, and (ii) the LAF declared that it *"reaffirms once again the rightful participation of the athlete Nour El-Din Hadid in the Paris 2024 Olympics. This comes after he arrived in Lebanon on July 3, 2024, upon the request of the Lebanese Athletics Federation, and after he submitted a written letter of apology to the High Center for Military Sports explaining his situation and requesting permission and clemency to be able to participate with the Lebanese Army team in the Lebanese Championship on July 18, 2024, as well as in the Paris 2024 Olympics"*. Further, the LAF stated that it *"has always and continues to hope that the champion athlete Nour El-Din Hadid will be granted clemency and allowed to participate in the upcoming Olympic event, representing the Cedar Nation"*.

12. On 23 July 2024, the LAF published a third statement on a social media account, which read as follows:

"The administrative committee of the Lebanese Athletics Federation reaffirms the right of athlete Nour Al-Din Hadeed to participate in the Paris 2024 Olympic Games. The federation has made every effort to rectify the legal status of Nour Al-Din Hadeed, who was requested to come to Lebanon on 3/7/2024 because he is unable to participate as he is considered a deserter from the Lebanese army and is currently outside Lebanon. Therefore, he cannot be part of an official national delegation. (It should be noted that his issue pertains to his job in the Lebanese army, not his status as a member of the Lebanese Army Club. We have not received any official notification from the Higher Center for Military Sports stopping Nour Al-Din Hadeed before 30/6/2024.)

The federation has tried all legal means to resolve this issue with the Higher Center for Military Sports and requested an official meeting to explain Nour Al-Din Hadeed's situation and the importance of his participation in the world's biggest sporting event. He submitted an official apology letter to the Higher Center for Military Sports, putting himself at their disposal. Unfortunately, the Lebanese Army Club issued several

decisions on 1/7/2024 (No. 211), 5/7/2024 (No. 219), and 15/7/2024 (No. 229) "not approving his participation in the Paris 2024 Olympic Games." Based on solid evidence, it appears that other parties have intervened to prevent the resolution of Nour Al-Din Hadeed's status to allow his participation.

The Lebanese Athletics Federation officially requested the Olympic Committee to finalize the nomination of Nour Al-Din Hadeed and not approve the replacement of the nominated athlete through several official letters dated 3/7/2024 (No. 60/2024), 5/7/2024 (No. 61/2024), and 18/7/2024 (No. 63/2024). We were surprised by the press announcement of the delegation's names for the Olympic Games, replacing Nour Al-Din Hadeed with Mark Anthony Ibrahim. Mark Anthony Ibrahim was the closest to direct qualification for the Olympic Games this year through his records and high scores in the 400m hurdles event. However, as no athlete qualified directly, participation in the Olympic Games in athletics is limited to the 100m event (world rankings), which is not Mark Anthony Ibrahim's specialty.

Based on this, the Lebanese Athletics Federation has decided as follows:

1. *Suspend the participation of the Lebanese Army Club in the activities of the Lebanese Athletics Federation from the date of this decision.*

2. *Suspend coach Georges Assaf and prohibit him from participating in any activities of the Lebanese Athletics Federation or representing Lebanon in any Lebanese athletics events inside or outside Lebanon from the date of this decision.*

3. *Do not approve the nomination of any other athlete to participate in the Paris 2024 Olympic Games other than Nour Al-Din Hadeed, under penalty of suspension. Therefore, if he cannot participate, the Lebanese Athletics Federation will not participate in the Lebanese delegation with any athlete or official.*

4. *Correspond with the International Athletics Federation and the Integrity Unit, informing them of all the decisions of the Lebanese Athletics Federation."*

13. On 12 August 2024, the "Let's Run" club wrote to the LAF to obtain a clarification with regard to the selection process for the 2024 Olympic Games, namely *"concerning the non-selection of runner Aziza Sbaity following the unfortunate circumstances that prevented the selection of runner Noureddine Hadid"*. In this regard, the "Let's Run" club requested detailed explanations regarding the non-selection of the Athlete for the 2024 OG, together with reasons for the LAF's decision, details about its evaluation process and information about any appeal procedures. Finally, the "Let's Run" club stated that the *"lack of transparency in this matter has raised significant concerns within* ["Let's Run"] *club, not only regarding Aziza Sbaity but also about the fairness of the selection process as a whole"*.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 13 September 2024, the Athlete filed a Request for Arbitration before the Court of Arbitration for Sport (the "CAS") against the LAF, pursuant to Article R38 of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code"). In her Request for Arbitration, the Athlete considered that the appointment of a three-person panel would be appropriate and informed the CAS Court Office that she had decided to nominate Ms Blondel Thompson, Barrister in Birmingham, United Kingdom, as arbitrator.

15. On 18 September 2024, the CAS Court Office informed the Parties that the present arbitration proceedings had been assigned to the Ordinary Arbitration Division of the CAS and invited the LAF to file its Answer within the prescribed time limit as well as to comment on the Athlete's request to have the present dispute decided upon by a three-person panel.

16. On 3 October 2024, the LAF informed the CAS Court Office that it did not have any objection to the arbitrator nominated by the Athlete, Ms Blondel Thompson, and that it had decided to nominate The Right Honourable Lord John Dyson, Arbitrator in London, United Kingdom, as its suggested arbitrator.

17. On 14 October 2024, the LAF filed its Answer with the CAS Court Office, raising *inter alia* an objection to the jurisdiction of the CAS to decide in the present proceedings.

18. On 14 November 2024, the Athlete informed the CAS Court Office of her wish to submit the present proceedings to a Sole Arbitrator.

19. On 19 November 2024, the LAF objected to the request of the Athlete for a Sole Arbitrator.

20. On 21 November 2024, the CAS Court Office informed the Parties that, following their disagreement, the President of the CAS Ordinary Arbitration Division had decided, in accordance with Article R54 of the CAS Code, to submit the procedure to a Sole Arbitrator.

21. On 9 December 2024, the CAS Court Office noted the agreement of the Parties to jointly nominate Prof. Philippe Sands KC, Professor of law in London, United Kingdom, as Sole Arbitrator.

22. On 30 December 2024, the CAS Court Office informed the Parties that, pursuant to Article R40.3 of the CAS Code and on behalf of the President of the CAS Ordinary Arbitration Division, the arbitral tribunal appointed to hear the present case was constituted as follows:

    Sole Arbitrator: Prof. Philippe Sands KC, Professor of Law in London, United Kingdom

23. On 20 January 2025, the CAS Court Office informed the Parties that Ms Stéphanie De Dycker, Clerk with the CAS, would assist the Sole Arbitrator in the present proceedings.

24. On 27 January 2025, the CAS Court Office invited the Athlete to file a submission on the issue of jurisdiction, including whether the issue needs to be bifurcated or joined to the merits.

25. On the same day, the Athlete informed the CAS Court Office that she objected to bifurcation of the issue of jurisdiction and therefore requested the issue of jurisdiction to be joined to the rest of the case and that her submission on jurisdiction should be incorporated into her Statement of claim. The Athlete also proposed a procedural calendar.

26. On the same day, the Respondent objected to the procedural timetable suggested by the Athlete inviting the Sole Arbitrator to decide on the issue of jurisdiction upon receiving the Athlete's written submission on the issue of jurisdiction as provided under Article R39 of the CAS Code.

27. On 17 February 2025, the Athlete filed her submission on jurisdiction with the CAS Court Office, in which the Athlete confirmed that she "*was content for the question of jurisdiction to be dealt with by way of preliminary issue, and the proceedings therefore to be bifurcated for this purpose*".

28. On 25 February 2025, the CAS Court Office informed the Parties of the decision of the Sole Arbitrator to grant a second round of written submissions on jurisdiction.

29. On 11 March 2025, within the agreed time limit, the LAF filed its reply on jurisdiction.

30. On 2 May 2025, within the agreed time limit, the Athlete filed her rejoinder on jurisdiction.

31. On 19 June 2025, the CAS Court Office informed the Parties that the Sole Arbitrator had decided that in light of the Parties' agreement he would proceed to bifurcate the present proceedings and that he would render a decision on jurisdiction without need for a hearing.

V. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

32. Following the Parties' agreement to bifurcate the present proceedings, the present section shall be limited to the issue of jurisdiction of the CAS in the present proceedings. The aim of this section of the Award is therefore to provide a summary of the Parties' main arguments on the issue of jurisdiction. Additional elements of the Parties' claims and arguments may be addressed in subsequent sections of the Award, if and as necessary. As stated above, the Sole Arbitrator reiterates that in deciding upon the Parties' claims he has carefully considered all of the submissions made and all of evidence adduced by the Parties on the issue of jurisdiction, whether or not expressly referred to in this section of the Award or in the discussion that follows.

A. The Athlete

33. In her Request for Arbitration, the Athlete requested the following reliefs:

> *"*
>
> *i. That the CAS declare that the no-selection of the athlete to represent Lebanon in the 100m at the Olympics Paris 2024, carried out by the Lebanese Athletics Federation, followed an unfair procedure and discriminated against the Claimant, contrary to the Olympic Charter;*
>
> *ii. That the CAS award a compensation by the Respondent for the moral and economic damage that the exclusion from participation in the Olympics has caused the Claimant;*
>
> *iii. By way of guarantee of non-repetition, that the CAS order the Respondent*
>
> *(i) to update its selection procedures to meet the requirements of procedural fairness and respect for the human rights of the athletes, including issuing a written selection policy and the specific provision in its rules providing for the prohibition of discrimination;*
>
> *(ii) in order to ensure the effective implementation of these reforms, that the Respondent appoint an athlete as representative in the permanent seat in the Federation so as to ensure that the voices, concerns, and interests of athletes are properly heard and considered. This representative should be democratically elected by athletes, ensuring they are trusted to speak on behalf of the athletic community; and*
>
> *(iii) that regular audits and reporting take place: ie that an independent body conducts regular audits of the Federation's processes, particularly in terms of transparency and accountability. Public reports should ensure the Federation is adhering to established guidelines, and that a fair and accessible dispute resolution process is established within the Federation, overseen by the athlete representative and other independent bodies, allowing athletes to raise concerns without fear of retaliation.*
>
> *iv. Grant any other relief that the Arbitral Tribunal shall find just and appropriate.*"

34. In the Rejoinder on jurisdiction, the Athlete requested the following relief:

> *"For all these reasons, the Claimant invites the Panel to rule that the CAS has jurisdiction over the present claim".*

35. The Athlete's submissions on the issue of jurisdiction are summarised as follows. The Athlete contends that the CAS has jurisdiction to decide on the present case:

- The CAS has exclusive jurisdiction pursuant to Rule 61.2 of the Olympic Charter:
  - The present dispute arose *"on the occasion of, or in connection with,"* the 2024 OG.
  - The position of the LAF according to which only *"Olympic persons"*, meaning *"athletes duly accredited by the International Olympic Committee"*, may rely upon Rule 61.2 of the Olympic Charter is incorrect insofar as the CAS has held

in various awards that it holds jurisdiction to decide on claims submitted by athletes who have not been selected for the Olympic Games. In this regard, the jurisprudence raised by the LAF in its Answer is inconsistent and not applicable to the Athlete's situation.

- Moreover, the argument raised by the LAF whereby the CAS does not have jurisdiction to decide on the present case as there is no contractual link supporting the agreement to arbitrate is incorrect. As a matter of fact, it should be noted that:

  - The direct contractual link between the Athlete and the LAF is established by the membership of the former to the latter;
  - The LAF must abide by the Olympic Charter in application of Rule 29 of the Olympic Charter;
  - Both the Athlete and the LAF are members of the Olympic Movement and thus bound by the arbitration clause contained in the Olympic Charter;
  - There is a connection to the Olympic Games as this dispute concerns the participation of the Athlete to the 2024 OG;
  - The LAF has accepted the jurisdiction of the CAS by being a member of an international federation that is bound by the jurisdiction of the CAS and the Athlete has accepted the jurisdiction of the CAS by filing her Request for Arbitration with the CAS.

- Article 1 of the Arbitration Rules applicable to the CAS *Ad Hoc* division for the Olympic Games has no bearing on the jurisdiction of the CAS in the present matter, as (i) the present dispute was assigned to the ordinary arbitration procedure, and (ii) this provision does not by itself confer jurisdiction but rather a procedure for the expedited resolution of disputes falling within its scope for which the CAS otherwise has jurisdiction.

- Article R49 of the CAS Code is not applicable as this case is not an appeal proceeding, and therefore, the time-limit set out in Article R49 of the CAS Code is not applicable:

  - The CAS Court Office assigned this case to the CAS Ordinary Arbitration Division, and this decision is binding on the Parties in accordance with Article S20 of the CAS Code. The LAF is not in a position to affirm whether the CAS Court Office correctly or incorrectly assigned this case to the CAS Ordinary Arbitration Division.

  - Notwithstanding the above, the CAS Court Office was correct in assigning this case to the CAS Ordinary Arbitration Division. The present case is not about appealing and overturning the decision of the LAF not to select her for the 2024 OG but rather to seek an *"independent cause of action"* against the LAF for its decision and process.

  - Having said this, in the event that this case would be reclassified as an appeal procedure, it should be noted that the Athlete never received a complete and

final decision from the LAF or the National Olympic Committee for Lebanon (the "LOC") to inform her that she had not been selected to represent Lebanon in the 2024 OG. Moreover, the letter of the club "Let's Run" dated 12 August 2024 asking for an explanation of the LAF's decision not to select her for the 2024 Olympic Games remained unanswered. Consequently, the Request for Arbitration was filed within the time limit set out at Article R49 of the CAS Code.

- The Claimant was not required to exhaust internal remedies before initiating the present proceedings, since the present proceedings were assigned by the CAS Court Office to the Ordinary Arbitration Division. Even if such a requirement did apply – *quod non* – it would be considered as illusory or non-existent because (i) the General laws of the LAF (the "LAF Rules") are not publicly accessible so that athletes are not aware of the internal arbitration procedure available, (ii) the LAF never replied to the Athlete's request for information as to available legal remedies, (iii) there is no indication whatsoever towards that the athletes' procedural and substantive rights would be safeguarded, and (iv) there are discrepancies between different versions of the LAF Rules, with the document titled "General Rules of the LAF" annexed to the LAF's Answer differing from "The Lebanese Athletics Federation (LAF) Bylaws" obtained by the Claimant's lawyers, which emphasizes the lack of clarity surrounding the LAF's internal arbitration procedure.

B. The LAF

36. In its Answer to the Request for Arbitration, the LAF requested the following relief:

"the LAF invites the Panel to dismiss the Request (i) on the basis of lack of jurisdiction; and/or (ii) for the reasons set out at paras. 29-31 above [Brief statement of defence]*."*

37. In its Reply on jurisdiction, the LAF requested the following relief:

"The LAF therefore invites the Sole Arbitrator to rule that the CAS lacks jurisdiction over the Claimant's Request and to dismiss it on that basis."

38. The submissions of the LAF on the issue of jurisdiction are summarised hereafter. The LAF contends that the CAS does not have jurisdiction to decide on the present case:

- CAS lacks jurisdiction *ratione personae* to decide on the present matter on the basis of Rule 61.2 of the Olympic Charter: CAS jurisdiction in the context of the Olympic Charter is contractual in nature which means that there has to be an arbitration agreement between the relevant parties conferring jurisdiction on CAS to resolve the specific dispute. In the present matter, there is no such agreement to submit potential disputes to the CAS: the Athlete was not recommended for selection in the 2024 OG by the LAF, was not selected by the LOC to participate in the 2024 OG and signed no agreement to submit disputes to the CAS.

- The present case is in essence an appeal against a decision by a federation and therefore Articles R47 and following of the CAS Code should apply:

- The request essentially seeks to establish that the decision of the LAF not to recommend the Athlete for the 2024 OG, was illegal, and the compensation is sought on the basis that the decision was unlawful and caused damage to the Athlete.

- The fact that the Athlete invoked Article R49 of the CAS Code in the Request for Arbitration clearly demonstrates that it is in fact an appeal.

- The CAS Court Office's decision to assign the present case to the Ordinary Arbitration Division or the Appeal Arbitration Division of the CAS is purely administrative and should therefore have no consequence on the substantive arguments raised by the Parties.

- The challenged decision is the decision of the LAF not to recommend the Athlete's selection for the Universality Place to the LOC for the 2024 OG. This decision was made on 3 July 2024 and the Athlete was at the latest informed of this decision on 23 July 2024, when the LOC formally announced the athletes who would represent Lebanon in the 2024 OG. At the very latest, the Athlete should have taken note of the decision of the LOC at the beginning of the 2024 OG. Pursuant to Article R49 of the CAS Code, the Athlete should therefore have submitted her challenge within 21 days from then, which she failed to do. Moreover, the date of 27 August 2024 invoked by the Athlete (i.e. the expiry of a period of 15 days as from the Athlete's club's letter to the LAF dated 12 August 2024 requesting explanation for the decision not to select her) is without any basis and should be rejected. Indeed, the Athlete is claiming that her non-selection for the 2024 OG was unlawful, not that the failure of the LAF to explain her non-selection was unlawful.

- The Claimant no longer submits that Article 1 of the Arbitration Rules applicable to the CAS *Ad Hoc* division for the Olympic Games confers jurisdiction to the CAS to hear the present dispute. In any event, for the avoidance of doubt, the Athlete cannot claim on the one hand that the dispute arose on 23 July 2024 when discussing the application of Article 1 of the Arbitration Rules applicable to the CAS *Ad Hoc* division for the Olympic Games and, on the other hand claim, for the purpose of Article R49 of the CAS Code, that she only received the decision of her non-selection for the 2024 Olympic Games on 27 August 2024.

- The Claimant failed to exhaust legal remedies available to her before initiating the present proceedings:

  - The exhaustion of legal remedies is a prerequisite provided under Article R47 of the CAS Code, which should be considered as applicable in the context of the present proceedings which are in fact appeal proceedings.

  - Pursuant to Article 58 of the LAF Rules, the Athlete should have filed this dispute to the LAF Arbitration Board prior to submitting it to CAS.

  - The legal remedies available under Article 58 of the LAF Rules are not illusory: the LAF Rules are periodically sent to all clubs and associations affiliated with

the LAF, including the Athlete's club, which was also invited to LAF workshops and general assemblies to discuss proposals to amend the LAF Rules; Article 60 of the IAAF Competition Rules (to which Article 58 of the LAF Rules refers) makes it clear that the LAF Arbitration Board shall respect the fundamental procedural safeguards; finally, to the extent that the Claimant would have considered the arbitration before the LAF arbitration board as inadequate, Article 88 of the LAF Rules would have directed her (or her club) to file a claim with the Lebanese Ministry of Youth and Sports or a competent judicial authority.

VI. PROCEDURAL MATTERS

39. The present case was assigned to the Ordinary Arbitration Division by the CAS Court Office. The LAF contends that this case should be reassigned to the Appeals Arbitration Division because it is in essence an appeal against the Athlete's non selection for the 2024 OG. The Athlete argues that it is not open to the LAF to challenge the CAS Court Office's assignment of the present case to the Ordinary Arbitration Division of the CAS and that, in any event, the present case is not appellate in nature.

40. Article S20 of the CAS Code provides that *"Arbitration proceedings submitted to CAS are assigned by the CAS Court Office to the appropriate Division. Such assignment may not be contested by the parties nor be raised by them as a cause of irregularity. In the event of a change of circumstances during the proceedings, the CAS Court Office, after consultation with the Panel, may assign the arbitration to another Division."*

41. The traditional position of CAS panels on the issue of reassignment can be summarized as follows: *"the decision of the CAS Court Office as to the assignment of a case to either CAS Division is administrative in nature; no arguments are heard, no reasons are given, no appeal is allowed. The Panel must thus disregard the arguments put forward by the parties with respect to the characterization of this arbitration as an 'appeal' or an 'ordinary' arbitration"* (CAS 2004/A/748, para. 2).

42. The Sole Arbitrator further considers that the "administrative" character of the CAS Court Office's assignment of a specific case as ordinary or appellate cannot alter its substantive nature, which a panel is allowed to review in light of the Claimant's/ Appellant's motions for relief.

43. In any event, the Sole Arbitrator is of the view that, in the circumstances of the present matter, the Athlete does not seek to set aside or change the decision not to recommend her for selection for the 2024 OG; rather, the Athlete is pursuing an independent cause of action against the LAF which arises out of that decision and the process leading to it.

44. As a result, the Sole Arbitrator finds that the present matter may be examined as ordinary arbitration proceedings as originally characterized by the CAS Court Office. It follows that the Parties' argumentation on the timeliness of the proceedings under Article R49 of the CAS Code and the exhaustion of local remedies, are moot.

VII. JURISDICTION

45. Article R27 of the CAS Code provides as follows:

"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) […]"

46. The CAS has its seat in Switzerland and none of the Parties are domiciled in Switzerland. It follows that the present proceeding is an international arbitration procedure governed by Chapter 12 of the Swiss Private International Law Act ("PILA"), whose provisions are thus applicable.

47. Article 186(1) of the PILA states that the arbitral tribunal shall itself decide on its jurisdiction. The same is explicitly stated in Article R39 (4) of the CAS Code, according to which the Panel has the power to decide upon its own jurisdiction. This general principle of *Kompetenz-Kompetenz* is a general and mandatory provision of the *lex arbitri* and has been recognized by CAS for a long time (see for instance CAS 2004/A/748).

48. The jurisdiction in the present matter is disputed among the Parties. The Athlete submits that CAS has jurisdiction in the present matter under Rule 61.2 of the Olympic Charter. Although the Athlete initially contended that the present claim was brought also under the Arbitration Rules applicable to the CAS *Ad Hoc* division for the Olympic Games, she no longer sustained this latter submission in her arguments on jurisdiction. Under Rule 61.2 of the Olympic Charter, the Athlete considers that the issue at stake is related to the 2024 edition of the Olympic Games which took place in Paris and that Athlete is a member of the Olympic Movement and as a result, based on Rule 1.3 of the Olympic Charter, bound by the provisions of the Olympic Charter including the arbitration clause; moreover, the Athlete submitted to the jurisdiction of the CAS by submitting the present application; the LAF, as national federation recognised by its National Olympic Committee, is also bound the Olympic Charter under Rule 29 of the Olympic Charter including the arbitration clause; in addition, by being a member of the IAAF, which in turn is bound to the Olympic Charter as one of the main constituent of the Olympic Movement, it accepted the jurisdiction of the CAS.

49. The LAF submits in turn that there is no arbitration agreement in force between the Parties to the present dispute as this provision can only be relied on by "Olympic persons" and that neither the LAF, as national sporting federation nor the Athlete, who is not accredited to the Olympic Games, fall within that category.

50. The Sole Arbitrator shall thus determine whether there exists a valid arbitration agreement that is binding on the Parties in relation to the present case. The jurisdiction of the CAS in the present matter is allegedly based on the arbitration clause contained in Rule 61.2 of the Olympic Charter, which provides as follows:

"Any dispute arising on the occasion of, or in connection with, the Olympic Games shall

be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration."

51. Article 178 of the PILA establishes a number of prerequisites as to the form and substance that any arbitration agreement shall meet in order to be valid. In particular, pursuant to Art. 178 of the PILA:

« *La convention d'arbitrage est valable si elle est passée en la forme écrite ou par tout autre moyen permettant d'en établir la preuve par un texte.*

Quant au fond, elle est valable si elle répond aux conditions que pose soit le droit choisi par les parties, soit le droit régissant l'objet du litige et notamment le droit applicable au contrat principal, soit encore le droit suisse.

[…]

Les dispositions du présent chapitre s'appliquent par analogie à une clause d'arbitrage prévue dans un acte juridique unilatéral ou des statuts. »

Free Translation :

"The arbitration agreement must be made in writing or any other means of communication allowing it to be evidenced by text.

As regards its substance, an arbitration agreement is valid if it conforms either to the law chosen by the parties, to the law governing the subject-matter of the dispute, in particular the law governing the main contract, or to Swiss law.

[…]

The provisions of this Chapter apply by analogy to an arbitration clause in a unilateral transaction or in articles of association. […]"

52. The Sole Arbitrator shall therefore examine whether the above clause encompasses both Parties' acceptance of the jurisdiction of CAS.

53. According to the jurisprudence of the Swiss Federal Tribunal ("SFT"), a rather strict standard applies when it comes to the consent to arbitrate: the parties' intention to resort to arbitration must be clear and unequivocal as such consent is to be treated as a waiver of the right to have recourse to otherwise competent state courts. Such mutual intent may be expressed in an agreement or by submitting to the rules and regulations of a sports organisation that contain an arbitration clause. In its decision rendered in 2020, the SFT stated as follows:

"Unter einer Schiedsvereinbarung ist eine Übereinkunft zu verstehen, mit der sich zwei oder mehrere bestimmte oder bestimmbare Parteien einigen, eine oder mehrere, bestehende oder künftige Streitigkeiten verbindlich unter Ausschluss der ursprünglichen staatlichen Gerichtsbarkeit einem Schiedsgericht nach Massgabe einer unmittelbar oder mittelbar bestimmten rechtlichen Ordnung zu unterstellen (BGE 140

III 134 E. 3.1 S. 138; E. 3.1 S. 70). Entscheidend ist, dass der Wille der Parteien zum Ausdruck kommt, über bestimmte Streitigkeiten ein Schiedsgericht, d.h. ein nichtstaatliches Gericht, entscheiden zu lassen (BGE 142 III 239 E. 3.3.1 S. 247; 140 III 134 E. 3.1 S. 138; 138 III 29 E. 2.2.3 S. 35; 129 III 675 E. 2.3 S. 679 f.).

Die Auslegung einer Schiedsvereinbarung folgt den für die Auslegung privater Willenserklärungen allgemein geltenden Grundsätzen. Massgebend ist danach in erster Linie der übereinstimmende tatsächliche Wille der Parteien (BGE 142 III 239 E. 5.2.1; 140 III 134 E. 3.2 S. 138; 130 III 66 E. 3.2 S. 71 mit Hinweisen). Diese subjektive Auslegung beruht auf Beweiswürdigung, die der bundesgerichtlichen Überprüfung grundsätzlich entzogen ist (BGE 142 III 239 E. 5.2.1 mit Hinweisen). Steht bezüglich der Schiedsvereinbarung kein tatsächlich übereinstimmender Wille der Parteien fest, so ist diese nach dem Vertrauensprinzip auszulegen, d.h. der mutmassliche Wille ist so zu ermitteln, wie er vom jeweiligen Erklärungsempfänger nach Treu und Glauben verstanden werden durfte und musste (BGE 142 III 239 E. 5.2.1; 140 III 134 E. 3.2; 138 III 29 E. 2.2.3). Bei der Auslegung einer Schiedsvereinbarung ist deren Rechtsnatur zu berücksichtigen; insbesondere ist zu beachten, dass mit dem Verzicht auf ein staatliches Gericht die Rechtsmittelwege stark eingeschränkt werden. Ein solcher Verzichtswille kann nach bundesgerichtlicher Rechtsprechung nicht leichthin angenommen werden, weshalb im Zweifelsfall eine restriktive Auslegung geboten ist (vgl. BGE 144 III 235 E. 2.3.4 S. 246; 140 III 134 E. 3.2 S. 139; 138 III 29 E. 2.3.1; 129 III 675 E. 2.3 S. 680 f.)." (SFT 4A_124/2020, consid. 3.1.2.).

Free Translation:

"An arbitration agreement is understood to be an arrangement by which two or more specific or specifiable parties agree to submit one or more existing or future disputes to binding resolution by an arbitral tribunal, in accordance with a legal system defined directly or indirectly, to the exclusion of the original state courts (BGE 140 III 134 E. 3.1 p. 138; 130 III 66 E. 3.1 p. 70). The decisive factor is that the parties express their intent to have certain disputes resolved by an arbitral tribunal, i.e., a non-state court (BGE 142 III 239 E. 3.3.1 p. 247; 140 III 134 E. 3.1 p. 138; 138 III 29 E. 2.2.3 p. 35; 129 III 675 E. 2.3 p. 679 f.).

The interpretation of an arbitration agreement follows the general principles applicable to interpreting private declarations of intent. Accordingly, what matters first and foremost is the parties' actual common intention (BGE 142 III 239 E. 5.2.1; 140 III 134 E. 3.2 p. 138; 130 III 66 E. 3.2 p. 71, with references). This subjective interpretation is based on an assessment of the evidence, which is essentially not subject to review by the Federal Supreme Court (BGE 142 III 239 E. 5.2.1 with references). If there is no actual common intention of the parties concerning the arbitration agreement, then it must be interpreted according to the principle of good faith. That is, the presumed intention must be identified as it could and should have been understood by the respective recipient of the declaration in good faith (BGE 142 III 239 E. 5.2.1; 140 III 134 E. 3.2; 138 III 29 E. 2.2.3). In interpreting an arbitration agreement, its legal nature must be considered; in particular, it must be borne in mind that waiving recourse to a state court significantly restricts the available legal remedies. According to the case law of the Federal Supreme Court, one cannot assume such a waiver lightly, which is why a

restrictive interpretation is warranted in case of doubt (cf. BGE 144 III 235 E. 2.3.4 p. 246; 140 III 134 E. 3.2 p. 139; 138 III 29 E. 2.3.1; 129 III 675 E. 2.3 p. 680 f.).”

54. The Sole Arbitrator shall follow the above-described approach when examining whether Rule 61.2 of the Olympic Charter constitutes a valid arbitration agreement between the Parties with respect to the present dispute.

55. The core issue in the present proceedings concerns the scope *ratione personae* of Article 61.2 of the Olympic Charter, and especially whether this provision allows an athlete to start CAS arbitration proceedings against a national federation.

56. CAS panels already had the occasion to examine the *ratione personae* scope of Rule 61.2 of the Olympic Charter. In the matter CAS 2019/A/6225, the panel made the following analysis:

“[T]the arbitration clause contained in Rule 61.2 of the OC describes the jurisdiction of the CAS as exclusive. […] Such exclusive character of the arbitration clause means that the parties concerned are not only entitled, but also compelled to bring the disputes covered by the arbitration clause to the CAS. […] In the Panel’s view, the corollary of the exclusive character of Rule 61.2 of the OC is that it can only be binding on, and invoked by, persons on a “pre-existing” different basis. Hence, the Appellants would not only have the right to accept an offer to arbitrate at CAS, but also the obligation to do so, so that recourse to ordinary courts would be precluded (because CAS would have “exclusive” jurisdiction). […] The Panel is of the view that it is not enough to be part of the Olympic Movement in order to benefit from the arbitration clause contained in Rule 61.2 of the OC, as was confirmed by other CAS awards (CAS 2000/A/288; CAS 2000/A/297; CAS (OG Nagano) 98/001; CAS 2011/A/2474).” (CAS 2019/A/6225, paras. 92-98; see also CAS 2019/A/6274, paras. 65-71).

57. In the matter CAS 2024/A/10760, the sole arbitrator expressed the following view on this issue:

“Rule 61(2) of the OC cannot be construed as a contract “offer” by the OC to any third party that wishes to litigate with the IOC in relation to the Olympic Games. First of all – absent any clear indications to the contrary – statutes of a Swiss association cannot be construed as awarding rights to non-members akin to Article 112(1) of the Swiss Code of Obligations (“SCO”). In principle, the rights and duties arising from the internal relationship between the association and its members do not extend to third parties (BK-ZGB/RIEMER, 2n ed. 2023, Art. 70 no. 134). Nothing in the [Olympic Charter] points to the IOC’s willingness to be bound with respect to its dispute resolution mechanism in Rule 61(2) of the OC to any third party. Furthermore, the Sole Arbitrator notes that the rules and regulations of an association are to be interpreted – according to the jurisprudence of the SFT – applying the same methodology as for laws.[…] Similar to the literal interpretation also a systematic interpretation points against interpreting Rule 61(2) of the OC as awarding third parties the right to litigate against the IOC before the CAS. If one were to follow this approach, all persons, including sports bodies and individuals at the national level, would have access to bring a claim against the IOC before the CAS. It is not, however, in the objective interest of

the IOC to extend the scope of application of its statutes to an unknown multitude of third parties around the world and in this way to enter into innumerable legal relationships with an unmanageable number of persons. Thus, the better arguments speak in favour of applying Rule 61(2) of the OC only to those instances, where the parties mutually and unequivocally have expressed their willingness to be bound vis-à-vis each other either by entering into a membership relationship or by contractually subordinating their legal relationship in full or in part to the OC." (CAS 2024/A/10760 para. 107-108).

58. The Sole Arbitrator adheres with the above-mentioned analysis. This is all the more so in the circumstances of the present case, since – quite differently than in the case CAS 2024/A/10760 and CAS 2019/A/6225 and CAS 2019/A/6274 – the present case has not been brought against the IOC by a third party to the Olympic Charter but rather by a third party to the Olympic Charter (the Athlete) against another third party to the Olympic Charter (the LAF).

59. In the present matter, the fact that the Athlete is a member of the LAF and that the LAF is bound to comply with the rules of the Olympic Charter *as per* Rule 29 of the Olympic Charter or *as per* Rule 1.4 as being part of the "Olympic Movement", is not sufficient to constitute a valid arbitration agreement under Rule 61.2 of the Olympic Charter.

60. The Sole Arbitrator further notes that in cases cited by the Athlete, in particular CAS OG 24/08, CAS OG 24/05 and CAS OG 12/06, the CAS *Ad hoc* Division for the Olympic Games decided that it held jurisdiction under Article 1 of the Arbitration Rules applicable to the CAS *Ad Hoc* division for the Olympic Games, which refers back to Rule 61.2 of the Olympic Charter, to decide in cases where athletes challenged the decision taken by their National Olympic Committee/national sport federation not to select them for the Olympic Games.

61. The Sole Arbitrator is of the view that these cases do not serve the Athlete's position. The cases cited by the Athlete are indeed fundamentally different than the present proceedings. Firstly, they were decided upon by a specific *Ad Hoc* division of the CAS operating according to a specific set of rules containing a specific jurisdictional basis and not by the CAS Ordinary Arbitration Division. Secondly, these cases concerned the immediate participation of athletes to a specific edition of the Olympic Games, which is fundamentally different than a claim for compensation of the damage allegedly caused by the selection process within a national federation.

62. In the present matter, the core of the claim consists of a damage claim filed by an athlete against a national federation. The Athlete's proposed interpretation of the arbitration clause would render the arbitration clause virtually unlimited. According to Athlete's theory, any dispute involving any person or entity directly or indirectly related to the Olympic Movement with respect to any dispute directly or indirectly related to the Olympic Games would be covered by the clause. Again, as was put by the sole arbitrator in the matter CAS 2024/A/10760, *"also a systematic interpretation points against interpreting Rule 61(2) of the OC as awarding third parties the right to litigate against the IOC before the CAS. If one were to follow this approach, all persons, including sports bodies and individuals at the national level, would have access to bring a claim*

against the IOC before the CAS. It is not, however, in the objective interest of the IOC to extend the scope of application of its statutes to an unknown multitude of third parties around the world and in this way to enter into innumerable legal relationships with an unmanageable number of persons." (CAS 2024/A/10760, para. 108).

63. The Sole Arbitrator therefore finds that the Athlete is not entitled to bring an arbitration case before the CAS against the LAF based on Rule 61.2 of the Olympic Charter. In light of the forgoing considerations, the Sole Arbitrator finds that the CAS has no jurisdiction to determine the claim brought by the Athlete against the LAF.

64. All other motions and arguments are rejected.

VIII. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport lacks jurisdiction to hear the claim filed on 13 September 2024 by Ms Aziza Sbaity against the Lebanese Athletics Federation.

2. (…).

3. (…).

4. All other claims or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 2 April 2026

THE COURT OF ARBITRATION FOR SPORT

Prof. Philippe Sands KC
Sole Arbitrator

Stéphanie De Dycker
Clerk with the CAS