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## **STUDY GUIDE**

### **COURT OF ARBITRATION FOR SPORT**

**"Camilla Maria  
Peña Martinez  
v. IAAF"**

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## **I. LETTER from SECRETARY GENERAL**

Honourable participants;

It is an immense honour for me, as the Secretary-General of the conference, to introduce to you Themis Court Simulations 2022 edition.

As a leading example for the moot court conferences in Turkey, whether at academic expertise, organizational excellence, dedication for the utmost pleasure for the participants or in our persistency to outdo the previous editions, Themis Court Simulations has always advanced itself each passing year.

In this year, we are more than excited to continue this tradition and announce our courts. Ranging from human rights discussions to various types of international arbitrations, from English to Turkish, we have prepared five unique and interesting courts which are, in no specific order; The European Court of Human Rights (ECtHR), International Chamber of Commerce (ICC), Court of Arbitration for Sports (CAS), Istanbul Tahkim Merkezi (ISTAC) and T.C. Anayasa Mahkemesi.

As you could suspect besides the courts and magnificent academy, Themis Court Simulation's magnificent organization team will welcome with their kind hospitality to make your experience as convenient as possible. Through these regards I would like to thank our Director-General Edige Doğan and his team of colleagues for their exquisite efforts for the conference and its organizational excellence.

On behalf of the Themis Court Simulations, I would like to express my excitement to host all of you once more and say that we cannot wait to define justice together once again.

**Kind Regards,**

**Tolga Yeşil**

**Secretary General, TCS'22**

## II. LETTER from UNDER SECRETARY GENERAL

Distinguished participants,

It is a privilege to serve you as Under Secretary General of the Court of Arbitration for Sport at Themis Court Simulations, 2022. I'm Arda Özkan, junior law student at Istanbul Bilgi University.

This year, in our court, we are simulating a case which includes great importance of sport regulations, human rights and some other hidden sides of an athlete's case against the federation. While we were writing and making alterations on the Mr. Leeper v. IAAF case, one of the mots elaborated concept was "equality". This key concept is crucial for a fair trial and especially in this case for justice. Although the case at hand is inspired from a real case, it should be remembered that alterations and additions have been made. All participants must only refer to and analyze the case according to the merits of the case.

Concerning the importance of the right to a fair trial, it is your duty to make sure that justice is served and come up with a righteous, equitable award that is in accordance with the Code of Sports-related Arbitration. In this scope, this document has been provided by the TCS Secretariat to give background and general knowledge about our case, Court of Arbitration for Sport and Code of Sports-related Arbitration. Please be reminded that participants are expected to read and understand this guide to the fullest extent.

During the entire process, I had opportunity to work with an amazing group of people. Firstly, I would like to thank to my Academic Assistants, İdil Gezer & Simge Erdem for making this journey incredibly joyful and for their endless efforts in this process. Once again, thank you from the bottom of my heart. Secondly, I would like to thank to our friends, Secretary General Mr. Tolga Yeşil, Director General Mr. Edige Doğan and Deputy Director General Mr. Mehmet Oğuz Koç for giving us the opportunity, believe in us and making this court simulation possible.

Concluding my letter, I would like to welcome you all to Themis Court Simulations 2022. Looking forward to meeting you soon.

Best Regards,

Arda Özkan

### III. LIST of ABBREVIATIONS

ARG	Assistance Review Group
Art.	Article
CAS	Court of Arbitration for Sport
CAS Code	Code of Sport-related arbitration
CRPD	Convention on the Rights of persons with Disabilities
CPC	Colombian Paralympic Committee
ECHR	European Court of Human Rights
FECODATLE	Colombian Athletics Federation
IAAF	International Association of Athletics Federation
ICAS	International Council of Arbitration for Sport
IOC	International Olympic Committee
IPC	International Paralympic Committee
TCS	Themis Court Simulations

## **IV. INTRODUCTION TO THE COURT**

### **A. General Structure of Arbitration**

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. Parties decide to go for a private dispute resolution procedure instead of going to court.

Arbitration agreements can be divided into two types. The first type of arbitration agreement is a contract that contains an arbitration clause, which stipulates the parties to the contract will arbitrate. The second type of arbitration agreement occurs after the dispute has arisen. The two parties reached an agreement on the dispute solved through arbitration. Sometimes called a submission agreement.

Parties are inclined to resolve disputes through arbitration due to some potential advantages pro-rata to judicial proceedings. Arbitration grants the parties to choose their arbitral tribunal whereas in judicial courts there is no possibility for judge selections. The proceedings are generally non-public and often faster than court proceedings. Provisions of the New York Convention 1958 enable arbitral awards to be enforceable in other nations in contrast to court decisions.

### **B. Sports-Related Arbitration**

#### **1. Code of Sports-Related Arbitration**

The Code of Sports-related Arbitration entered into force on 22nd September 1994. In order to regulate some of the long-established principles of CAS case law and practices, the Code was revised on the 1st of January 2021. The current form of the Code was established in 2010.<sup>v</sup> The Code consists of 70 articles in total, and it is divided into two sections. The first section, articles S1 to S26 (S1-S3 joint dispositions, S4-S11 ICAS, S12-S22 CAS, S23-S26 miscellaneous provisions.)

The second section, articles R27-R70 (R27-R37 general provisions, R38-R46 special provisions applicable to the ordinary arbitration procedure, R47-R59 special provisions applicable to the appeal arbitration procedure, R60-R62 consultation proceedings, R63 interpretation, R64-R66 costs of arbitration proceedings, R67-R70 miscellaneous provisions)

The Code constitutes of rules for four separate procedures:

- the ordinary arbitration procedure.
- the appeals arbitration procedure.

- the advisory procedure, which is non-contentious and allows certain sports bodies to seek advisory opinions from the CAS.
- the mediation procedure.

Written and oral proceedings are the two classic phases of arbitration. An exchange of statements of the case is reviewed in the written proceedings and the phase where the parties are heard by the arbitrators, generally at the seat of the CAS in Lausanne, is the oral proceedings.

## **2. The International Council of Arbitration for Sport**

ICAS is the supreme organ of the CAS and serves as the management and administrative branch of the CAS. The purpose for ICAS establishment is distinctly disclosed in Article S2 of the Code: “The purpose of ICAS is to facilitate the resolution of sports-related disputes through arbitration or mediation and to safeguard the independence of CAS and the rights of the parties. It is also responsible for the administration and financing of CAS.”

ICAS protects the independence of CAS and parties’ rights. ICAS is also responsible for the management and financing of the CAS. ICAS is composed of 20 high-level jurists who must all be well-acquainted with the issue of the arbitration along with knowledge of sports law. ICAS members sign a declaration that states that they will be undertaking to exercise their function with total objectivity and independence which also means that members should not have taken a part in the proceedings before CAS as an arbitrator or counsel. The exercise power of ICAS is listed under article S6 of the Code.

## **3. Court of Arbitration**

### **a. History**

“The Court of Arbitration for Sport (CAS) is an institution independent of any sports organization which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world.”

The Court of Arbitration for Sport was established in 1984 in Lausanne, Switzerland where the headquarters are today. The courts of the CAS are located in New York City, Sydney and Lausanne.

In the early 1980s, the increase in international sport-related disputes revealed the necessity of an international and independent institution that could resolve sport specialized conflicts and be authorized to make mandatory settlements. In 1981, International Olympic Committee (IOC) President Juan Antonio Samaranch had an idea to form a sport-separated jurisdiction which led to the establishment of the CAS.

The purpose for the creation of a separate jurisdiction for sports was to have an authority that can efficiently resolve direct or indirect international sport related disputes offering quick, flexible, and inexpensive procedures. In 1983, the IOC officially ratified the statutes of the CAS, which came into force on 30 June 1984 and became operational as of that date, under the leadership of President Mbaye and the Secretary General, Mr Gilbert Schwaar. Procedural Regulations accompanied the CAS Statute, which both were slightly modified in 1990. IOC, International Federations (IF), the National Olympic Committees (NOC) and President of the IOC appointed 60 members to the CAS. In addition, the IOC Executive Board had the power to propose a modification of the CAS Statute. Furthermore, the operating costs of the CAS were funded by the IOC before it went through reform in 1994. The impartiality and independence of CAS started to create suspicion as a consequence of the aforementioned facts. The CAS also had a lack of procedural matters. There was only one type of attainable contentious proceeding which prohibited different approaches to different types of conflicts. A guide which provided a base for appeals was published by CAS in 1991 with the following clause:

*“Any dispute arising from the present Statutes and Regulations of the ... Federation which cannot be settled amicably shall be settled finally by a tribunal composed in accordance with the Statute and Regulations of the Court of Arbitration for Sport to the exclusion of any recourse to the ordinary courts. The parties undertake to comply with the said Statute and Regulations, and to accept in good faith the award rendered and in no way hinder its execution.”*

The reform of the CAS system began with an appeal made to the Swiss Federal Tribunal by a horse rider named Elmar Gundel who objected to the validity of the award given by CAS. He claimed that the court did not meet the conditions of impartiality and independence thus it should not be considered as a proper arbitral court. In its judgment of 15 March 1993, the Federal Tribunal recognized CAS as a court of arbitration but also stated that CAS had to break off its compact relation with the IOC to become independent and impartial. Following the Gundel judgment, CAS Statutes and Regulations were revised to make the institution effectively independent from the IOC. The International Council of Arbitration for Sport (ICAS) was founded to finance and operate CAS, with the sole purpose of replacing the IOC. The creation of ICAS and the new structure of CAS were approved in Paris, on 22 June 1994. The agreement that constituted the ICAS was signed in Paris therefore it is also known as the Paris Agreement.

#### **b. Structure**

CAS operates through the intermediary of arbitrators, of whom there are at least 150, with the help of the Court Office headed by the Secretary-General. ICAS is the responsible body to appoint arbitrators of CAS. ICAS must appoint personalities with “appropriate legal training, recognized competence with regard to sports law and/or international arbitration, a good knowledge of sport in general and good command of at least one CAS working language, whose names and qualifications are brought to the attention of ICAS, including by the IOC, the IFs, the NOCs, and by the athletes’



commissions of the IOC, IFs, and NOCs”. CAS consists of two divisions: `Ordinary Arbitration Division and `Appeals Arbitration Division. The Ordinary Arbitration Division is responsible for the resolution of the disputes submitted to the ordinary procedure. Appeals Arbitration Division is responsible for the resolution of disputes concerning the decisions of federations, associations, and other sports-related bodies considering that statutes or regulations of the said sports-related bodies or a specific agreement provides it so.

## **V. CASE: CAMILLA MARIA PEÑA MARTINEZ v. IAAF**

### **A. Case: Camilla Maria Peña Martinez v. IAAF**

#### **1. Camilla Maria Peña Martinez**

Camilla Maria Peña Martinez (“Ms. Martinez”) was born on April 26th, 1988, in Medellín, Colombia. She was born with both legs missing below the knee. Therefore, she started using prosthetics at 9 months of her age.

She was an ambitious student during her educational life. She recognized her interest in sports such as baseball, basketball, and such during middle school but this interest did not keep her apart from her academic life. She managed to get into law school while she was still focusing on athletics. Yet, her passion for athletics got ahead of her academic life.

Camilla Martinez began competing in official para-athletics events in 2009. In such a short time, she started gathering the gold, bronze, and silver medals at the competitions. Her success as a bilateral transtibial amputee sprinter was the ground topic in a Women’s Day Show Race on March 8th, 2018. got IAAF’s attention based on the fiber-running-specific prostheses (“RSPs”) she uses during competitions. Therefore, Mr. Carlo de Angeli, Senior Manager of Competitions for the IAAF send a notice to Mr. Duffy Mahoney, Chief of Sport Performance at FECODATLE about whether her RSPs were giving her an advantage on the competitions or not. This way, the long process between IAAF and Mrs. Martinez began.

#### **2. International Association of Athletics Federation (“IAAF”)**

The International Association of Athletics Federation (IAAF) is a sports federation, which is the management center of athletics at the international level. It is also a federation that is recognized by International Olympics Committee (IOC). IAAF was established in 1912 in Stockholm by 17 countries but reached 214 members at present. The Federation aims to be the governing authority for competition programs, athletes, the field of sports, equipment, and such.

IAAF is the respondent in this case and is represented by Mr. Jonathan Taylor Q.C. and Mr. Chris Lavey.

The President of the Federation is Sebastian Coe since 2015 who is former track and field athlete. He is also the president during the case process.

The Lead Counsel Sports Law & Governance of IAAF is Mr. Vijay Parbat.

### **3. International Paralympic Committee (“IPC”)**

International Paralympic Committee (IPC) is a non-profit organization that supports para-athletes to attend sports competitions and encourages them to achieve their goals in the field. The Organization was founded in 1989 in order to organize the Olympic competition for para-athletes. Several countries support and attend sports competitions to help para-athletes which led the IPC to advance. The organization aims to show that para-athletes are as capable as non-para-athletes in sports.

The President of the IPC is Andrew Parsons since 2017. He is also the president during the case process.

### **4. Colombian Athletics Federation (“FECODATLE”)**

Colombian Athletics Federation (FECODATLE) is the governing body for the sport of athletics in Colombia. It is a part of CONSUDATLE which is the governing body for sports athletes in South America. CONSUDATLE has 13 members and Colombia was one of them to join which occurred in the same year that the Colombian Athletics Federation was founded, 1937. It is also a member of IAAF.

The President of the FECODATLE is Lino Ramiro Varela Marmolejo. He is also the president during the case process.

### **5. Colombian Paralympic Committee (“CPC”)**

Colombian Paralympic Committee represents Colombian para-athletes in the International Paralympic Committee. It encourages athletes about sports rehabilitation by executing different programs so that it leads the para-athletes to do sports professionally. By supporting the disabled athletes in the field, CPC beats a path for them at the national and international levels.

### **6. Assistance Review Group (“ARG”)**

Assistance Review Group (ARG) is in charge of making recommendations upon the issue to IAAF’s chief executive officer. ARG would produce a report containing a “provisional recommendation based on that assessment”. The relevant party of the case would then have the opportunity to provide comments on the draft report. Later on, ARG would finalize its report and make its recommendation to the IAAF’s chief executive officer so that decision can be made. The report would be referred to the IAAF Council, in which case the IAAF Council would take a “final and binding” decision.

The Chair of the ARG is Mr. Brian Roe.

The Chief Executive Officer of IAAF is Mr. Ridgeon.

## **7. El Tiempo News Article (“the Article”)**

El Tiempo is a daily newspaper that was founded in 1911 in Bogotá, Colombia by liberal party members. What makes it famous is the fight this newspaper gives against bribery and drug dealing, especially after the 1980s. This brave attitude made the newspaper one of the most powerful voices in the country since drug dealing is a massive problem for ages. Journalism, in general, became known as a risky business. Nonetheless, El Tiempo maintained its stance and reached for the peak.

In the present day, El Tiempo is still one of the best investigative journals. It has now more than 350.000 readers daily and the paper is known to be a respected and trusted source of news.

## **8. Relevant Individuals**

### Camilla Maria Peña Martinez

Elite athlete. She is a bilateral transtibial amputee sprinter. Because both of her legs have been amputated, Ms. Martinez uses passive-elastic carbon-fiber running-specific prostheses (“RSPs”) to enable her to run. She states that the Rule unlawfully places the burden of proof on me to demonstrate that I did not derive an overall competitive advantage from the use of RSPs. She claims all of these processes tainted her name and efforts.

### Coach Harvey

Ms. Martinez’s coach. He has been coaching Ms. Martinez for 18 years. Mr. Harvey states that he witnessed Miss Martinez training tirelessly, running many hundreds of miles and undergoing comprehensive weight training and even though Ms. Martinez’s RSPs changed due to changes in sponsorships, Ms. Martinez’s progress is related to her incredible athletic ability and an unwavering work ethic.

### Old Member

This witness insisted on stay as anonymous due to security reasons. He/she was former member of World Athletes. He/she states that he/she has the knowledge that the Federation has due to his/her previous position in the Federation, Ms. Martinez is a great para-athlete and Federation will do anything to prove its perception.

### Nai Ki

Former member of the Colombian National Paralympic Team. She is a bilateral transtibial amputee sprinter likewise Camilla Martinez. She has been in the team for 3 years, in which she has also been teammates with Camilla for the last 2 years of it. Also, both Ms. Martinez and Ms. Nai Ki specialize in the 400-meter races. She races with using RSP’s as well, however,

hers differ from Ms. Martinez's as also examined in the Laboratory Report. As she was former teammate and also a friend of Ms. Camilla Martinez, she alleges that Ms. Camilla Martinez owes her success to her new sponsored RSP's. This allegation is elaborated with her ranking comparisons to Ms. Martinez's.

#### ARG's Doctor

ARG's Doctor remains as an anonymous individual who is linked to the case. He/she requires to stay anonymous due to his/her concerns for his/her job at the laboratory. He/she is involved in the case since he/she prepared a counter-report to the report which the appellant filed ("Miuccia Report").

#### Massimo Dutti

Multi-millionaire, one of the respective businesswomen in worldwide business life. Also, the owner of Miuccia Laboratory, which necessary tests were run, and reports was prepared in this case. One of her company has ongoing case. In that case, her company accused by document forgery.

### **9. The Problem**

#### **STATEMENT OF FACTS**

The Appellant, **Camilla Martinez**, is an elite athlete. She is a bilateral transtibial amputee sprinter the who specializes in the 400-meter event. Because both of her legs have been amputated, Ms. Martinez uses passive-elastic carbon-fiber running-specific prostheses ("RSPs") to enable her to run.

The Respondent, the **International Association of Athletics Federations** (the "IAAF"), is the international governing body of the sport of athletics, recognized as such by the International Olympic Committee. It has its seat and headquarters in Monaco. The IAAF has recently renamed itself "World Athletics" but for ease of comprehension, the Respondent is referred to as the "IAAF" throughout this Award.

In **2009**, Ms. Martinez began competing in official para-athletic events.

In **2012**, after qualifying for the Colombian Paralympic team, Ms. Martinez competed in the London Paralympics, where she won the silver and bronze medals in the 400m and 200m events. The following year she won silver medals in the 100m, 200m, and 400m events and was a member of the gold medal-winning 4x100m relay team at the International Paralympic Committee ("IPC") World Championships.

In **June 2017**, Ms. Martinez broke the 400m Paralympic world record, running a time of 45.25 seconds at the USA Track & Field Outdoor Championships.

On **8 March 2019**,

On **4 June 2019**, Ms. Martinez participated in an IAAF-approved track event in Prague, Czech Republic. He completed the 400m event in a time of 44.42 seconds. This was 0.48 seconds faster than the qualifying time set by the IAAF for the 2020 Olympic Games.

On **19 June 2019**, Ms. Martinez received an email that indicates that her achievement in Prague has been ruled illegal due to not having provided a record to the IAAF that she didn't gain a competitive advantage via the use of the "blades" which she competed with.

On **15 August 2019**, Ms. Martinez, sent a response for the process of identifying the criteria to satisfy the burden of proof.

Ms. Martinez did not receive a response to this response email.

On **15 December 2019**, after repeating the request several times, Ms. Martinez wrote again, stressing that the 2018 season was fast approaching and that he was "*trying to do everything I can to make sure I have the right information and approval to compete*".

The following day, Ms. Martinez received an email that contains an apology and explained that Mr. Brian Roe, a member of the IAAF Technical Committee, would provide "*an update on the process envisaged for you to be able to move forward*".

On **30 April 2020**, which explained that any athlete who wishes to obtain a decision from the IAAF that they are permitted to use a prosthetic aid under the Rule must apply to the IAAF which includes "supporting evidence, including a full description of the research project – the hypotheses addressed research design, participants, all measures, statistical analyses, results, discussion, and conclusions.

On **3 July 2020**, Ms. Martinez's legal representatives thus made the Application for, as noted above, "*a ruling that the prosthetics that Ms. Martinez currently uses, and plans to continue using, in competition in pursuit of his qualification for the 2020 Olympic Games are allowable under IAAF Rule 144.3(d)*". The Application stated that Ms. Martinez's use of RSPs did not provide him with any competitive advantage over able-bodied competitors, and instead merely provided her with the opportunity to be able to compete with them. The Application contended that the IAAF "*has not met its burden*" because it had not produced any "*convincing scientific proof*" that Ms. Martinez's RSPs provide him with an "*an overall net advantage over other athletes*".

In support of the Application, Ms. Martinez's legal representatives enclosed a report by Dr. Karen Yeun (the "Miuccia Report"). The Miuccia Report contained a summary and analysis of

various tests carried out on Ms. Martinez by the authors for the purpose of assessing “*his ability to perform athletic tasks that contribute to 400m running performance*”, together with a comparison between Ms. Martinez and non-amputee athletes and other athletes with bilateral transtibial amputations.

On **19 July 2020**, following Ms. Martinez’s submission of the Application and the Miuccia Report to the IAAF, Ms. Martinez’s legal representatives received an email including that:

*“The IAAF has established a process...by which to determine whether or not Ms. Martinez has met his burden and demonstrated that, in accordance with Rule 144.3(d), the use of his prostheses ‘would not provide him with an overall competitive advantage over an athlete not using such aid’. The aim of Rule 144 is to ‘facilitate the athletes’ participation in the competition as much as possible’, ‘whilst always ensuring the competition is conducted fairly to all. Until it has been determined that Ms. Martinez has satisfied the eligibility requirements, the IAAF cannot permit him to compete and have his results listed alongside athletes not using a mechanical aid. If the IAAF permitted Ms. Martinez to compete before the determination of whether or not he has met his burden under Rule 144.3(d), it would be failing its responsibility, as the international federation for athletics, to ensure that competition is conducted fairly for all athletes.*

*In the meantime, Ms. Martinez is eligible to compete alongside athletes not using a mechanical aid in accordance with Rule 132.3.”*

Furthermore, the letter explained that the IAAF was considering the Application and that, “*pending determination of the Application, the general position – the status quo – continues to apply, meaning no mechanical aid is permitted to be used in IAAF competitions...the only exception to that general position is that Ms. Martinez may compete with mechanical aids in accordance with Rule 132.3.*”

Moreover, “plain from the express wording of Rule 144.3(d) that the burden is on the athlete” and that the IAAF “has repeatedly explained that the burden to show no ‘overall competitive advantage’ sits with Ms. Martinez”. The letter went on to state that the IAAF’s Technical Committee had made appointments to a new “Assistance Review Group” (“ARG”) which would assess the Application. The letter explained that the ARG would produce a report containing a “provisional recommendation based on that assessment”.

On **15 November 2020**, the ARG produced a report which was provided to Ms. Martinez. This explained that the ARG’s “provisional recommendation” was that the Application be denied “on the basis that Ms. Martinez has not met her burden of proof to show that his use of prostheses would not provide him with an overall competitive advantage over an athlete not using such prostheses”.

The ARG Provisional Report contained a critique (counter view) of the Miuccia Report’s conclusion.

On **18 February 2022**, IAAF Chief Executive Officer sent a letter to Ms. Martinez which stated that he had failed to discharge the burden of establishing that his RSPs do not provide him with an overall competitive advantage. The letter stated:

*“I have now considered the letter and its enclosures and determined, in my capacity as Chief Executive Officer of World Athletics, to accept the ARG’s recommendation in respect of Ms. Martinez’s application. Accordingly, World Athletics’ final decision is that Ms. Martinez’s application is denied on the basis that Ms. Martinez has not met his burden of proof to show on the balance of probabilities that his use of prostheses would not provide him with an overall competitive advantage over an athlete not using prostheses. Ms. Martinez has a right of appeal against World Athletics’ decision, which you will be aware of from World Athletics’ previous correspondence in relation to this matter.”*

On **27 February 2022**, Ms. Martinez filed his Statement of Appeal with the CAS against the IAAF with respect to the Appealed Decision. Pursuant to Articles R44.2 and R52 of the CAS Code, Ms. Martinez also requested an expedited hearing of the appeal, with a decision to be rendered by 1 May 2020.

On **2 March 2022**, Ms. Martinez informed the CAS Court Office that he wished for his Statement of Appeal to be considered as his Appeal Brief pursuant to Article R51 of the CAS Code.

On **6 March 2022**, the IAAF confirmed its agreement for an expedited hearing to take place by mid-April 2020 on the condition that (i) Article R56 of the CAS Code would apply; (ii) the IAAF would have 30 days to submit its Answer; and (iii) Dr. Yeun would provide an explanation of her rejection of the position set out in the ARG Report within seven days.

On **17 March 2022**, the CAS Court Office informed the parties that the procedure would be considered expedited in accordance with Article R52 of the CAS Code.

On **28 March 2022**, the Appellant filed “Miuccia Report”, and the Respondent filed “ARG Report” as a reply.

On **4 May 2022**, the Panel specified the main questions to be discussed as procedure and merits.

On **13-14-15 May 2022**, the hearing will be held at the CAS headquarters in Lausanne, Switzerland.



## **B. Applicable Law**

### **1. CAS Code: Procedural Rules**

#### **44.2 Hearing**

If a hearing is to be held, the President of the Panel shall issue directions with respect to the hearing as soon as possible and set the hearing date. As a general rule, there shall be one hearing during which the Panel hears the parties, any witnesses, and any experts, as well as the parties' final oral arguments, for which the Respondent is heard last.

The President of the Panel shall conduct the hearing and ensure that the statements made are concise and limited to the subject of the written presentations, to the extent that these presentations are relevant. Unless the parties agree otherwise, the hearings are not public. The hearing may be recorded. Any person heard by the Panel may be assisted by an interpreter at the cost of the party which called such person.

The parties may only call such witnesses and experts which they have specified in their written submissions. Each party is responsible for the availability and costs of the witnesses and experts it has called.

The President of the Panel may decide to conduct a hearing by videoconference or to hear some parties, witnesses and experts via tele-conference or videoconference. With the agreement of the parties, she/he may also exempt a witness or expert from appearing at the hearing if the witness or expert has previously filed a statement.

The Panel may limit or disallow the appearance of any witness or expert, or any part of their testimony, on the grounds of irrelevance.

Before hearing any witness, expert or interpreter, the Panel shall solemnly invite such person to tell the truth, subject to the sanctions of perjury.

Once the hearing is closed, the parties shall not be authorized to produce further written pleadings, unless the Panel so orders.

After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing.

#### **R44.3 Evidentiary Proceedings Ordered by the Panel**

A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant.

If it deems it appropriate to supplement the presentations of the parties, the Panel may at any time order the production of additional documents or the examination of witnesses, appoint and hear experts, and proceed with any other procedural step. The Panel may order the parties to contribute to any additional costs related to the hearing of witnesses and experts.

The Panel shall consult the parties with respect to the appointment and terms of reference of any expert. The expert shall be independent of the parties. Before appointing her/him, the Panel

shall invite her/him to immediately disclose any circumstances likely to affect her/his independence with respect to any of the parties.

#### **R45** Law Applicable to the Merits

The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law. The parties may authorize the Panel to decide *ex aequo et bono*.

#### **R51** Appeal Brief

Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit.

In its written submissions, the Appellant shall specify the name(s) of any witnesses, including a brief summary of their expected testimony, and the name(s) of any experts, stating their area of expertise, it intends to call and state any other evidentiary measure which it requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise.

#### **R52** Initiation of the Arbitration by the CAS

Unless it appears from the outset that there is clearly no arbitration agreement referring to CAS, that the agreement is clearly not related to the dispute at stake, or that the internal legal remedies available to the Appellant have clearly not been exhausted, CAS shall take all appropriate actions to set the arbitration in motion. The CAS Court Office shall communicate the statement of appeal to the Respondent, and the President of the Division shall proceed with the formation of the Panel in accordance with Articles R53 and R54. If applicable, she/he shall also decide promptly on any application for a stay or for interim measures.

The CAS Court Office shall send a copy of the statement of appeal and appeal brief to the authority which issued the challenged decision, for information.

The CAS Court Office may publicly announce the initiation of any appeals arbitration procedure and, at a later stage and where applicable, the composition of the arbitration panel and the hearing date, unless the parties agree otherwise.

With the agreement of the parties, the Panel or, if it has not yet been appointed, the President of the Division may proceed in an expedited manner and shall issue appropriate directions for such procedure.

Where a party files a statement of appeal in connection with a decision which is the subject of a pending appeal before CAS, the President of the Panel, or if she/he has not yet been appointed,

the President of the Division, may decide, after inviting submissions from the parties, to consolidate the two procedures.

#### **R56** Appeal and answer complete - Conciliation

Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.

The Panel may at any time seek to resolve the dispute by conciliation. Any settlement may be embodied in an arbitral award rendered by consent of the parties.

#### **R57** Scope of Panel's Review, Hearing

“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...”

**R64.4** At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,
- the administrative costs of the CAS calculated in accordance with the CAS scale,
- the costs and fees of the arbitrators,
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,
- a contribution towards the expenses of the CAS, and
- the costs of witnesses, experts, and interpreters.

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.

## **2. IAAF Competition Rules/WA Technical Rules**

### **(25.) Rule 132 of IAAF Competition Rules - Competition Secretary, Technical Information Centre**

25.3 *“Where the applicable regulations for a competition other than under Rule 1.1(a) permit the simultaneous participation of athletes:*

*(a) competing with the assistance of another person, i.e., a guide runner; or*

*(b) using a mechanical aid which is not authorized under Rule 144.3(d);*

*their results shall be listed separately and, where applicable, their para classification shown.”*

Rule 25.3 of the World Athletic Competition Rules is in materially identical terms.

## **(6.) Rule 144 of IAAF Technical Rules - Assistance to Athletes**

### Medical Examination and Assistance:

6.1 *medical examination / treatment and/or physiotherapy may be provided either on the competition area itself by the official medical staff appointed by the Organizers and identified by armbands, vests or similar distinctive apparel or in designated medical treatment areas outside the competition area by accredited team medical personnel specifically approved by the medical or technical delegate(s) for the purpose. In neither case shall the intervention delay the conduct of the competition or an athlete's trial in the designated order. such attendance or assistance by any other person, whether immediately before competition, once athletes have left the Call Room or during competition, is assistance. Note: The competition area, which normally also has a physical barrier, is defined for this purpose as the area where the competition is being staged and which has an access restricted to the competing athletes and personnel authorized in accordance with the relevant rules and regulations.*

6.2 *Any athlete giving or receiving assistance from within the competition area during an event) shall be warned by the Referee and advised that, if there is any repetition, they will be disqualified from that event.*

*Note: In cases under Rule 6.3.1 of the Technical Rules, disqualification may be made without warning.*

### Assistance not Allowed

6.3 *For the purpose of this Rule, the following examples shall be considered assistance, and are therefore not allowed: 6.3.1 Pacing in races by persons not participating in the same race, by athletes lapped or about to be lapped or by any kind of technical device (other than those permitted under Rule 6.4.4 of the Technical Rules).*

*6.3.2 Possession or use of video recorders, radios, Cd, radio transmitters, mobile phone or similar devices in the competition area.*

*6.3.3 except for shoes complying with Rule 5 of the Technical Rules, the use of any technology or appliance that provides the user with an advantage which they would not have obtained using the equipment specified in, or permitted by, the Rules.*

*6.3.4 The use of any mechanical aid, unless the athlete can establish on the balance of probabilities that the use of an aid would not provide them with an overall competitive advantage over an athlete not using such aid.*

*6.3.5 Provision of advice or other support by any official of the competition not related to or required by their specific role in the competition at the time (e.g., coaching advice, indication of the take-off point in a jumping event except to indicate a failure in Horizontal Jumps, time or distance gaps in a race etc.).*

*6.3.6 Receiving physical support from another athlete (other than helping to recover to a standing position) that assists in making forward progression in a race.*

## Assistance Allowed

6.4 *For the purpose of this Rule, the following shall not be considered assistance, and are therefore allowed:*

6.4.1 *Communication between the athletes and their coaches not placed in the competition area. In order to facilitate this communication and not to disturb the staging of the competition, a place in the stands, close to the competition area of each Field event, should be reserved to the athletes' coaches. Note: Coaches and other persons otherwise complying with Rules 54.10 and 55.8 of the Technical Rules may communicate with their athlete(s).*

6.4.2 *medical examination / treatment and/or physiotherapy necessary to enable an athlete to participate or continue participation once on the competition area under Rule 6.1 of the Technical Rules.*

6.4.3 *Any kind of personal safeguard (e.g. bandage, tape, belt, support, wrist cooler, breathing aid etc.) for protection and/or medical purposes. The Referee, in conjunction with the medical delegate, shall have the authority to verify any case should the Referee judge that to be desirable. (see also Rules 32.4 and 32.5 of the Technical Rules.)*

6.4.4 *Heart rate or speed distance monitors or stride sensors or similar devices carried or worn personally by athletes during an event, provided that such device cannot be used to communicate with any other person.*

6.4.5 *viewing by athletes competing in Field events, of images of previous trial(s), recorded on their behalf by persons not placed in the competition area (see note to Rule 6.1 of the Technical Rules). The viewing device or images taken from it must not be taken into the competition area.*

6.4.6 *Hats, gloves, shoes, items of clothing provided to athletes at official stations or when otherwise approved by the relevant Referee.*

6.4.7 *Receiving physical support from an official or other person designated by the organisers to recover to a standing position or to access medical assistance.*

6.4.8 *electronic lights or similar appliance indicating progressive times during a race, including of a relevant record.*

## **(17.) Rule 163 of IAAF Technical Rules - The Race**

### Indication of Intermediate Times

17.14 *Intermediate times and preliminary winning times may be officially announced and/or displayed. Otherwise, such times must not be communicated to the athletes by persons in the competition area without the prior approval of the appropriate Referee who may authorise or appoint no more than one person to call times at each of no more than two agreed timing points.*

*Athletes who receive intermediate times that have been communicated in violation of this Rule shall be considered to have received assistance and shall be subject to the provisions of Rule*

*6.2 of the Technical Rules. Note: The competition area, which normally also has a physical barrier, is defined for this purpose as the area where the competition is being staged and which has an access restricted to the competing athletes and personnel authorised in accordance with the relevant Rules and Regulations*

Both parties debate upon the validity of the relevant rules. Athlete Camilla Maria Pena Martinez's prosthetics are refuted under the definition of "*mechanical aid*". Specifically, as directly stated in the provision itself, it is debated whether these prosthetics give her a "*competitive advantage*" or not. As further elaborated in the case file, Ms. Martinez is trying to prove if her mechanical aid mechanism does not give an advantage to her competing by numerous lab tests.

It is also disputed that the 6.3.4 of the aforementioned rules form a "discrimination" for disabled persons, this provisions' relevance to the dispute at hand will also be demonstrated.

In order to determine the validity and effect of the Rule, it is first necessary to determine exactly what the Rule means. As noted above, the Rule provides that (together with Rule 144.2 for contextual sense):

*"Any athlete giving or receiving assistance from within the competition area during an event (including under Rule 163.14, 163.15, 230.10 and 240.8) shall be warned by the Referee and advised that, if there is any repetition, he will be disqualified from that event."*

*"For the purpose of this Rule, the following examples shall be considered assistance, and are therefore not allowed: [...]"*

*The use of any mechanical aid, unless the athlete can establish on the balance of probabilities that the use of an aid would not provide him with an overall competitive advantage over an athlete not using such aid."*

293. At the Panel's request, the parties made submissions on the proper construction of the Rule. (It is common ground that prosthetic limbs are a mechanical aid for the purposes of the Rule.)

294. Mr. Leeper submitted that the Rule requires a comparison to be undertaken between the disabled athlete who wishes to use a mechanical aid (in this case Mr. Leeper) and an able-bodied athlete who is not using such an aid. It does not require a comparison between the athlete who wishes to use the mechanical aid and the performance that same athlete would be capable of achieving if (hypothetically) they had intact biological legs. According to Mr. Leeper, the construction of the Rule he advocates is consistent with the natural meaning of the text of the Rule and reflects the fact that it is impossible to know how Mr. Leeper (or any other amputee athlete) would perform if he had intact biological legs.

### 3. ECHR and CRPD Rules

ARTICLE 14 *Prohibition of discrimination*: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

In the further stages of the case, Camilla Maria Pena Martinez also puts forth that the aforesaid rule of ECHR alongside the rule of CRPD mentioned below is violated through the IAAF Competition rules, since it creates a “*restriction on the basis of disability*” which “*has the purpose or effect of impairing*” Mr. Leeper’s participation in IAAF-sanctioned athletics competitions “*on an equal basis with others*.”

Article 30(5) of the CRPD provides that: “*With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures: (a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels...*”

IAAF argues that these provisions of the CRPD AND ECHR are not applicable to the present case, In particular, the IAAF submits that the CRPD and ECHR only apply to State Parties and public authorities exercising State powers, and do not apply to private bodies which are not exercising such powers. The Panel accepts that the CRPD and ECHR are international treaties that are directed towards, and binding upon, State Parties and do not impose obligations on purely private bodies. The materials before the Panel do not establish that under Monegasque law the IAAF itself owes any obligations to Mr. Leeper by virtue of either the ECHR or the CRPD. In this regard, the Panel notes the observation of the CAS Panel in *A v FIFA CAS 2011/A/2426* that, “*international treaties on human rights are meant to protect the individuals’ fundamental rights vis-à-vis governmental authorities and, in principle, they are inapplicable per se in disciplinary matters carried out by sport’s governing bodies, which are legally characterized as purely private entities*”. While the present appeal does not concern a “disciplinary matter”, the Panel considers that those observations are equally applicable to the Appellant’s reliance on the ECHR and CRPD in this case.

CRPD’s definition regarding discrimination: “Discrimination on the basis of disability” means any distinction, exclusion, or restriction on the basis of disability that has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation...”

### **C. Procedural Matters**

- Admissibility
- Anonymity

### **D. Merits Matters**

- Burden of prof
- Finding of facts
  - The depositions of witnesses
  - Credibility/Reliability of the witness' depositions and The Panel's assessment of the evidence
- Further motions



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