



**Arbitration CAS 2004/A/714 F. v. International Olympic Committee (IOC), award of 31 March 2005**

Panel: Prof. Luigi Fumagalli (Italy), President; Prof. Michael Geistlinger (Austria); Mr Dirk-Reiner Martens (Germany)

*Athletics*

*Olympic Games*

*Failure to submit to sample collection*

*Validity of the sample collection procedure*

*Doping offence*

- 1. The presence of two witnesses (instead of one) cannot be invoked as a circumstance invalidating the entire doping sample collection procedure. According to the Rules in force, the sample collection cannot take place without the testimony of at least a witness, but the presence of two witnesses is not prohibited and is not a reason for the invalidity of the procedure. In the same way, no rule provides for the presence of a representative of the athlete at the moment the athlete passes the sample. As a result, the fact that no representative assisted the Athlete while passing the urine cannot be invoked as an irregularity affecting the validity of the sample collection procedure.**
- 2. The athlete's failure to provide a full urine sample cannot be excused by an alleged ignorance or inapplicability of the anti-doping rules in force at the Athens Games. It is undisputed that a full sample of 75ml was not provided. The IOC can therefore be held as having proved that a failure to submit to sample collection has occurred. The burden to prove that a compelling justification for such failure existed lies on the athlete: the *"aggressive"* conduct of the doping control staff resulting in a *"psychological trauma"* during the doping control procedure justifying the production of an insufficient sample, has not been established, and cannot be invoked as an excuse not to continue the sample collection procedure.**
- 3. When no compelling justification for failing to submit to doping control exists, the Athlete has therefore committed an anti-doping rule infringement.**

F. (the "Athlete" or the "Appellant"), a discus thrower of international level, participated in the Athens 2004 Olympic Games as a member of the Hungarian team. More exactly, on the evening of Monday 23 August 2004, the Athlete competed in the men's discus throw event, ranking first.

After the competition, at 10.15 p.m., the Athlete was requested to report to the doping control station of the Olympic Stadium in order to provide a urine sample for a doping control.

The Athlete arrived at the doping control station at 10.19 p.m. Despite a plurality of attempts, lasting until 2.37 a.m. of Tuesday 24 August 2004, the Athlete could provide only a (partial) sample of 25 ml of urine.

At 2.37 a.m. of Tuesday 24 August 2004 the Doping Control Official Record was signed by the Athlete (as well as by Dr. Panagiotis Tsarouchas, head of the doping control station of the Olympic Stadium, by Dr. Gabriel Dollé, representative of the International Association of Athletics Federations (IAAF), and by Dr. Karoly Pikó, as the Athlete's representative). The Doping Control Official Record contained *inter alia* the following statements:

*"This may be regarded as a failure to comply and may constitute an antidoping rule violation according to the I.O.C. Rules".*

*"The athlete decide to finish the procedure because not feel good himself. The athlete was given the opportunity to continue the sample collection at the polyclinic where medical treatment could be given to him but the athlete did'nt accept".*

On the basis of such Doping Control Official Record, disciplinary proceedings were opened against the Athlete pursuant to Article 7.2 of the IOC Anti-Doping Rules applicable to the Games of the XXVIII Olympiad in Athens in 2004 (the "Athens Rules").

The hearing before the Disciplinary Commission was held on 24 August 2004.

At the end of the hearing, the Disciplinary Commission "*unanimously*" concluded that the Athlete "*had committed a doping offence*" pursuant to Article 2.3 of the Athens Rules, "*in that he had refused or failed to submit to sample collection*".

On the same 24 August 2004 the IOC Executive Board, on the basis of Articles 2.3 and 8.1 of the Athens Rules and of Rule 25.2.2.1 of the Olympic Charter decided to (i) disqualify the athlete, (ii) not award him a gold medal, (iii) exclude him from the games and (iv) withdraw his accreditation.

On 13 September 2004, the Athlete filed a statement of appeal with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the "Code"), to challenge the Decision.

On 13 October 2004, the Appellant filed his appeal brief.

In support of his requests for relief, the Appellant submits that the Decision "*is based on defective proceedings*" and that it "*is substantively unlawful*".

In a first procedural perspective, the Appellant challenges the disciplinary proceedings before the Disciplinary Commission, which led to the Decision, and submits that his right to be heard has been violated.

Under a second procedural perspective, the Appellant challenges the sample collection procedure, because he could not be accompanied by a representative, assisting him while passing the urine sample, and because two witnesses were present, while the applicable rules allow only for one witness.

As to the second argument (relating to substantive issues), the Appellant challenges the Decision as “*unlawful*” for two main reasons.

First, because “*the applicability*” of the Athens Rules “*was not reviewed*”. And in this connection the Appellant maintains that he had never been informed of such rules.

Second, because “*the element of Article 2.3 of the IOC Anti-Doping Rules [the Athens Rules] has not been met*”. In this respect, the Appellant submits that the failure (i.e., the production of an insufficient sample) is justified as being the result of a “*psychological trauma*” caused by the conduct of the doping control staff: the “*conduct of the witnesses and the general mood during the doping control*” (as well as the presence of two witnesses instead of one) prevented him from urinating; the decision that “*the same two witnesses*” would accompany him was the reason for him to withdraw his consent to go to the Village Polyclinic in order to continue the procedure.

On 22 December 2004, the IOC filed its answer to the appeal brief, together with 16 exhibits and the witness statement signed by Dr. Panagiotis Tsarouchas. The answer contained the following requests for relief:

1. *The Appellant’s appeal be dismissed; and*
2. *The Appellant pay all the costs and expenses arising out of this arbitration”.*

In support of its requests for relief, the Respondent submits that the anti-doping rule violation described in Article 2.3 of the Athens Rules (“*refusing, or failing without compelling justification, to submit to Sample collection after notification ...*”) had been committed: in the Respondent’s opinion, the Athlete had “*deliberately*” refused to submit to a sample collection; and the Appellant’s “*subjective reasons*” for refusing to provide a full urine sample are “*irrelevant*”.

In this respect the Respondent, on one hand, confirms that the Appellant did not give a full urine sample; and, on the other hand, while stressing that “[*the principle of strict liability for anti-doping rule violations leading to disqualification is the cornerstone of the legal framework*” of any anti-doping code, submits that “*a ‘compelling justification’ in the sense of Article 2.3 of the IOC’s Anti-Doping Rules [the Athens Rules] must be confined to a justification based on objective reasons external to the athlete*”. More specifically the Respondent maintains that

*“... once the athlete is physically present at the doping control station, he cannot invoke subjective reasons personal to himself to justify a refusal or inability to provide a urine sample. [...] no refusal by an athlete to give a sample while at the doping control station could ever be excused on the basis of a ‘compelling justification’”.*

As a result of the above, “*in the present case*”, in the Respondent’s opinion, the Appellant cannot rely on the reasons he is advancing: “*whether or not the Appellant suffered from ‘psychological trauma’ as a result of*

*his childhood predisposition, his religious beliefs or something else, there has been an anti-doping rule violation” in accordance with Article 2.3 of the Athens Rules.*

In any case, the Respondent exposes “*the background*” to the Appellant’s refusal to provide a full urine sample, confirms that “*each and every aspect of the procedure* [of the sample collection from the Athlete] *conforms with the exacting specifications*” of the Athens Guide, and challenges the description of the same procedure submitted by the Appellant.

With respect to “*the background*” to the Appellant’s refusal to provide a full urine sample, the Respondent submits that the Appellant was suspected of using an apparatus aimed at providing a false urine sample, and that “*the Appellant’s conduct was precisely consistent with* [an] *attempted use of* [such] *apparatus*”.

With respect to the doping control procedure the Respondent refutes the Appellant’s allegations.

A hearing was held in Lausanne on 10 and 11 February 2005.

## LAW

### Jurisdiction

1. CAS has jurisdiction to decide the present dispute between the Athlete and the IOC. The jurisdiction of CAS *in casu* is based on Rule 74 of the Olympic Charter and on Article 12.5 of the Athens Rules. In addition it has been confirmed by the signature by all the parties of the Order of Procedure issued by the CAS Court Office on behalf of the President of the Panel.

### Appellate Proceedings

2. As these proceedings involve an appeal against a decision issued, in a dispute relating to an anti-doping rule violation, by an international sports organisation (IOC) whose rules provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings, in a disciplinary case of international nature, in the meaning and for the purposes of the Code.

### Admissibility

3. The Athlete’s statement of appeal was filed within the deadline set down in Article 12.5 of the Athens Rules: irrespective of the date of actual service of the Decision upon the Appellant, the appeal was filed (on 13 September 2004) within 21-days after the adoption of the Decision

(on 24 August 2004). It complies with the requirements of Article R48 of the Code. Accordingly, the appeal is admissible.

### Applicable Law

4. According to Article R58 of the Code, the Panel is required to decide the dispute  
*“according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
5. In this case, therefore, IOC rules and regulations have to be applied primarily, with Swiss law applying subsidiarily.
6. The rules and guidelines relevant to these arbitration proceedings are the following:
  - i. Rule 45 [*“Eligibility Code”*] of the Olympic Charter (in force at the time of the Athens Olympic Games):  
*“To be eligible for participation in the Olympic Games a competitor, coach, trainer or official must comply with the Olympic Charter as well as with the rules of the IF concerned as approved by the IOC, and the competitor, coach or trainer must be entered by his NOC. The above-noted persons must notably:*
    - *respect the spirit of fair play and non violence, and behave accordingly on the sportsfield; and*
    - *respect and comply in all aspects with the World Anti-Doping Code”.*
  - ii. Rule 25 of the Olympic Charter (in force at the time of the Athens Olympic Games):  
*“2. The measures or sanctions which may be taken by the Session [or] the Executive Board (...) are:*  
*(...)*  
*2.2 In the context of the Olympic Games:*  
*2.2.1. with regard to individual competitors and teams: temporary or permanent ineligibility or exclusion from the Olympic Games (...).”*
  - iii. Article 2 [*Anti-doping rule violations*] of the Athens Rules:  
*“The following constitute anti-doping rule violations:*  
*(...)*  
*3. Refusing, or failing without compelling justification, to submit to Sample collection after notification as authorized in these Rules or otherwise evading Sample collection”.*

- iv. Article 3.1 [*Burdens and Standards of Proof*] of the Athens Rules:  
*“The IOC shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IOC has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability”.*
- v. Article 7.1 [*Procedures and general provisions with respect to anti-doping rule violations arising upon the occasion of the Olympic Games*] of the Athens Rules:  
*“...the International Olympic Committee (IOC) Executive Board has delegated to a disciplinary commission .... its powers to hear the Athletes and other persons concerned in relation to all anti-doping rule violations (including but not limited to the handling of adverse analytical findings) arising upon the occasion of the Olympic Games. The right of any person who may be subject to a measure or sanction, to be heard pursuant to Rule 25.4 of the Olympic Charter, will be exercised before the Disciplinary Commission. The Disciplinary Commission will then provide to the IOC Executive Board a report of the hearing, including a proposal as to the decision related thereto. The proposal of the Disciplinary Commission is not binding upon the IOC Executive Board, who retains the ultimate authority to decide”.*
- vi. Article 7.2.5 [*Notifying Athlete or other persons concerned of the anti-doping rule violation*] of the Athens Rules:  
*“The IOC President or a person designated by him shall, in confidence, promptly notify the Athlete or other person concerned, the Athlete’s or other person’s chef de mission, the International Federation concerned and the World Anti-Doping Agency of:*  
(...)  
*b) the anti-doping rule violation ...”.*
- vii. Article 7.3.3 [*Violation of procedures and general provisions*] of the Athens Rules:  
*“No violation of the above-noted procedures and general provisions can be invoked if the person involved has not been prejudiced by such violation”.*
- viii. Article 8.1 [*Automatic Disqualification*] of the Athens Rules:  
*“A violation of these Rules in connection with Doping Control automatically leads to Disqualification of the individual result obtained in that competition (- i.e. with respect to which the Doping Control was carried out) with all resulting consequences, including forfeiture of any medals, points and prizes”.*
- ix. Article 16.6 of the Athens Rules:  
*“Notice to an Athlete or other Person who is a member of an NOC, including the NOC’s delegation attending the Olympic Games, may be accomplished by delivery of the notice to the National Olympic Committee”.*

- x. Paragraph 5.1 [*Provision of the urine sample*] of Appendix 2 [*Sampling Procedures*] of the Athens Guide:

*“When the Athlete indicates s/he is ready to provide a urine sample, s/he will be directed into a Sample Processing Room. Only one Athlete at a time shall be called into a Sample Processing Room.*

*The DCO shall inform the Athlete about the procedures that are about to be undertaken (as follows). The Athlete shall select a sealed collection vessel, visually check that it is empty and clean (as outlined in 1.3 above), proceed to the toilet and urinate a minimum of 75ml or if the athlete has been selected for an EPO test, a minimum of 110ml into the collection vessel under the direct observation of a DCO who shall be of the same gender as the Athlete. The Athlete will be required to remove any clothing (at least pants to knees, shirt to mid-chest and sleeves rolled up) preventing the DCO’s direct observation of the urine sample leaving the Athlete’s body. The Athlete should be encouraged to provide more than the minimum volume requirements if possible.*

*The Athlete shall return to the Sample Processing Room with the collection vessel containing the urine. The Athlete shall maintain control of the Sample at all times until it is sealed.*

*If there are any doubts as to the origin or authenticity of the Sample, the Athlete shall be asked to provide an additional Sample. If the Athlete refuses to provide an additional Sample, the DCO shall inform the ATHOC Doping Control Services Program Manager who will inform the Chair of the IOC MC, through the IOC MC Director, who shall decide on further steps to be taken”.*

- xi. Paragraph 5.5 [*Partial Sample*], first period, of Appendix 2 [*Sampling Procedures*] of the Athens Guide:

*“If the Athlete has produced less than the requested urine volume of 75ml or, in the case of an EPO test, 110ml, the DCO shall inform the Athlete that a further Sample shall be collected to meet the laboratory’s volume requirements. The Athlete will be instructed to temporarily seal the partial sample and then wait until further sample can be provided”.*

- xii. Paragraph 5.7 [*Transfer to Village Polyclinic*] of Appendix 2 [*Sampling Procedures*] of the Athens Guide:

*“If an Athlete cannot complete the sample collection procedure at the Doping Control Station within the time limits determined by the Doping Control Venue Manager, the sample collection may be completed at the Village Polyclinic.*

*A member of the doping control team shall accompany the Athlete to the Village Polyclinic. All other representatives may transfer and continue observing the process at the Polyclinic. The DCO shall ensure that all the necessary material for sample collection is available at the Polyclinic. The Athlete must comply with the directions of the DCO and must remain in the sight of the DCO at all times.*

*The DCO who completes the procedure at the Polyclinic may not necessarily be the same with the one who started the procedure at the Venue”.*

- xiii. Paragraph 8 [*Failure to comply*] of Appendix 2 [*Sampling Procedures*] of the Athens Guide:

*“If the Athlete refuses to give a sample of urine, blood or breath or acts in a way which may compromise an Athlete’s test the possible consequences shall be pointed out to him/her by the Doping Control*

*Venue Manager or the IOC MC representative, if present. If the Athlete still refuses, this fact shall be noted in the Doping Control Official Record. This shall be signed by the Doping Control Venue Manager and, if present, the IOCMC Representative and/or the IF representative. The Athlete and the Athlete Representative may, if they wish, sign the Doping Control Official Record.*

*The IOCMC representative shall promptly inform the Chair of the IOCMC or the IOC Medical Director of the situation. If the IOC MC representative is not present, the Doping Control Venue Manager will inform the ATHOC Doping Control Program Manager, who will inform the Chair of the IOCMC, through the IOC Medical Director, who shall decide on further steps to be taken”.*

### **Scope of Panel’s Review**

7. Pursuant to Article R57 of the Code,

*“The Panel shall have 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. (...)”.*

### **The Merits of the Dispute**

#### *A. As to evidentiary matters*

8. Preliminarily the Panel notes that the Appellant submitted, in the course of the arbitration, together with his written pleadings, statements and expert reports from a number of witnesses. By letter dated 9 December 2004 the CAS Court Office, writing on behalf of the Panel, indicated the names of the witnesses and experts that had been allowed to give oral evidence at the hearing; at the same time, the CAS Court Office stressed that the written statement submitted by a witness would be disregarded by the Panel in the event of failure by the witness to appear to the hearing.
9. The witness Mr. Antal F. and the experts Dr. Alexander Friedmann and Dr. Wilhelm Hübner, who had submitted written statements, failed to appear at the hearing. As a result, their respective statements shall not be considered by the Panel.

#### *B. As to the procedural issues*

10. In a first perspective, the Appellant challenges the disciplinary proceedings before the Disciplinary Commission, which led to the Decision, and submits that his right to be heard has been violated.
11. In this respect, the Panel notes that, according to Article R57 of the Code, the Panel has full power to review the facts and the law. The Panel consequently hears the case *de novo* and is not limited to considerations of the evidence that was adduced before the Disciplinary Commission: the Panel can consider all new evidence produced before it. This implies that, even if a violation of the principle of due process occurred in prior proceedings, it may be



cured by a full appeal to the CAS (CAS 94/129, in *CAS Digest I*, p. 187 at 203; CAS 98/211, *CAS Digest II*, p. 255 at 257; CAS 2000/A/274, *CAS Digest II*, p. 398 at 400; CAS 2000/A/281, *CAS Digest II*, p. 410 at 415; CAS 2000/A/317, *CAS Digest III*, p. 159 at 162; CAS 2002/A/378, *CAS Digest III*, p. 311 at 315). In fact, the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the hearing before the tribunal of first instance “fade to the periphery” (CAS 98/211, *CAS Digest II*, p. 255 at 264, citing Swiss doctrine and case law).

12. The Appellant has had (and used) the opportunity to bring the case before CAS, where all of the Appellant’s fundamental rights have been duly respected. At the end of the hearing, the Appellant’s counsel expressly confirmed that the Appellant had no objections in respect of his right to be heard and to be treated equally in the arbitration proceedings. Accordingly, even if any of the Athlete’s rights had been infringed upon by the IOC – but without conceding that they had actually been infringed – the *de novo* proceedings before CAS would be deemed to have cured any such infringements.
13. In any case, the Panel wishes to stress that the proceedings before the Disciplinary Commission have taken place in accordance with the applicable provisions set forth in the Athens Rules, and that the rights of the Appellant have been fully respected: the members of the Hungarian delegation appearing before the Disciplinary Commission confirmed that they represented the Athlete; and notice of the hearing was given in accordance with Article 16.6 of the Athens Rules, which confirms that any notice to an athlete can be accomplished by delivery to his National Olympic Committee.
14. Under a second procedural perspective, the Appellant challenges the sample collection procedure, because he could not be accompanied by a representative, assisting him while passing the urine sample, and because two witnesses were present, while the applicable rules allow only for one witness.
15. Contrary to the Appellant’s submission, the Panel notes that the presence of two witnesses (instead of one) cannot be invoked as a circumstance invalidating the entire doping sample collection procedure. The Athens Rules and the Athens Guide, actually, provide for the presence of a witness in the sense that the sample collection cannot take place without (the testimony of at least) a witness, who is the only person allowed to see the athlete passing the sample; but they do not prohibit at all the presence of two witnesses and do not consider the presence of two witnesses as a reason for the invalidity of the procedure (so that, for instance, an adverse analytical finding could not be considered as an anti-doping rule infringement because the sample was collected before more than one witness). And indeed the Appellant invokes the presence of two witnesses (instead of one) as an element affecting his psychological conditions (and as such will be examined below), more than an irregularity of the sampling procedure.
16. In the same way, the Panel notes that no rule provides for the presence of a representative of the athlete at the moment the athlete passes the sample; the athlete has the right to be accompanied by a representative in the doping control station (right of which the Athlete

made use), but not in the toilet where the sample is collected. As a result, the fact that no representative assisted the Athlete while passing the urine cannot be invoked as an irregularity affecting the validity of the sample collection procedure.

C. *As to the anti-doping rule infringement*

17. The Decision is challenged in its substantive part, *i.e.* with respect to the finding that an anti-doping rule infringement has been committed, preliminarily because the Disciplinary Commission (and later the Executive Board of the IOC) applied rules of which the Athlete had not been informed.
18. In this respect the Panel notes that all athletes, as a condition of entry into the Olympic Games, have accepted to be bound by, and to comply with, the rules dictated by the IOC with respect to anti-doping controls at the Athens Summer Olympic Games (Rule 45 of the Olympic Charter). In addition, the Panel remarks that the Athlete, during the sample collection procedure at the Olympic Stadium was several times advised by those attending, including his representative (Dr. Karoly Pikó), of his obligation to provide a full sample (75ml) and warned about the possible consequences of a failure. In the same way the Panel stresses that the provision applied to the Athlete (*i.e.* Article 2.3 of the Athens Rules), describing the doping offence imputed to him, is absolutely common to all anti-doping codes (see *e.g.* Article 2.3 of the World Anti-Doping Code approved in 2003, on which the Athens Rules are based). As a result, the Athlete cannot invoke as an excuse for his failure to provide a full urine sample an alleged ignorance or inapplicability of the anti-doping rules in force at the Athens Games.
19. The main issue, therefore, turns out to be whether the doping offence described in Article 2.3 of the Athens Rules has been committed: the IOC holds that it was, the Appellant denies it.
20. Article 2.3 of the Athens Rules indicates three circumstances which constitute anti-doping violations:
  - i. refusal to submit to sample collection,
  - ii. failure without compelling justification to submit to sample collection, and
  - iii. evasion of sample collection.

The IOC maintains that the Athlete failed, and/or in any case refused, to submit to sample collection; the Athlete submits that the attitude of the doping control staff present at the doping control station constitutes a “*compelling justification*” for the Athlete’s decision to discontinue the collection procedure.

21. Preliminarily, in the Panel’s view, it has to be underlined that it is undisputed that a full sample of 75ml was not provided: the Athlete produced only a partial sample of 25ml, as recorded in the Doping Control Official Record and as confirmed by the Appellant throughout the entire arbitration proceedings. The IOC can therefore be held as having proved that a failure to

submit to sample collection has occurred, discharging the burden of proof set forth in Article 3.1 of the Athens Rules. In this respect the Panel notes in fact the objective nature of “*failing*” to act. This conclusion is based on two assumptions: first, on the traditional application of a strict liability standard to doping offences, which does not require the federation (the IOC in the current case) to establish the subjective elements (*i.e.* intent or negligence) of an action or failure to act, but only the objective factors constituting the infringement (CAS 2000/A/281, *CAS Digest II*, p. 410 at 416-417); second, on the fact that Article 2.3 of the Athens Rules already provides, in another part of the rule, by mentioning the “*compelling justification*”, for an element giving relevance to (and therefore “*exhausting*” the possibility to invoke) circumstances affecting the objective action of “*failing*” so to exclude the commission of an anti-doping rule infringement.

22. The question is therefore whether a “*compelling justification*” for such failure existed: in the Panel’s view the Appellant has the burden to prove that such justification is given. The Panel in fact sees the existence of the “*compelling justification*” as an excuse to the doping offence, to be proved, as such, by the subject that invokes it.
23. In this respect, the Appellant submits that the failure (*i.e.*, the production of an insufficient sample) is justified as being the result of a “*psychological trauma*” caused by the conduct of the doping control staff: the “*conduct of the witnesses and the general mood during the doping control*” (as well as the presence of two witnesses instead of one) prevented him from urinating; the decision that “*the same two witnesses*” would accompany him was the reason for him to withdraw his consent to go to the Village Polyclinic in order to continue the procedure.
24. The Panel notes, first of all, that the “*aggressive*” conduct of the doping control staff during the doping control procedure is far from being established. Indeed it is strongly challenged by the Respondent; and the Athlete himself, when heard at the hearing, amended in several points the description of the facts contained in the written submissions to the Panel. In any case, the Panel considers such events as being completely irrelevant. Even assuming – but without conceding – that the facts occurred exactly as described in writing by the Appellant (circumstance which even the Appellant no longer fully confirms), and even if they had actually caused a “*urinary retention*” (as the experts called by the Appellant maintain), those facts could not be invoked as an excuse not to continue the sample collection procedure at the Village Polyclinic, as provided by the Athens Guide, where medical treatment, in an arguably more comfortable environment, could be provided.
25. In this latter respect, the Appellant submits that he “*rescinded*” his consent to go to the Polyclinic when it became clear that the same two witnesses (that attended to the unsuccessful attempts at the Stadium) would accompany him; and also because he had been reassured (by an unnamed woman) that the partial sample was sufficient for testing.
26. The submissions of the Appellant cannot be accepted. The Panel, in fact, confirms that, pursuant to the applicable guidelines, the doping control officers present at the doping control station had the right to accompany the Athlete to the Village Polyclinic. In addition, the Panel remarks that the Athlete at the hearing admitted that at the end of the procedure he was

rather calm, and that he was perfectly aware of the consequences of his decision not to go to the Village Polyclinic. Finally, the Panel stresses that the Athlete could not rely on any declaration, by whomsoever made, as to the sufficiency of 25ml for testing, while it was all the way clear that he had to provide a quantity of 75ml of urine.

27. In conclusion, the Panel confirms that no compelling justification for failing to submit to doping control at the Village Polyclinic existed, and therefore that the Athlete committed the anti-doping rule infringement described in Article 2.3 of the Athens Rules. As a result, the Decision sanctioning the Athlete for such infringement has to be confirmed.

### **Conclusion**

28. In the light of the foregoing, the Panel holds that the appeal has to be dismissed and the Decision has to be confirmed.

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by F. on 13 September 2004 is dismissed.
2. The decision adopted by the Executive Board of the International Olympic Committee on 24 August 2004 is confirmed.
3. (...).