



**Arbitration CAS 2004/A/748 Russian Olympic Committee (ROC) & Viatcheslav Ekimov v. International Olympic Committee (IOC), United States Olympic Committee (USOC) & Tyler Hamilton, award of 27 June 2006**

Panel: Mr Massimo Coccia (Italy); President; Mr Olli Rauste (Finland); Mr Peter Leaver (United Kingdom)

*Cycling*

*Characteristics features of a 'decision'*

*No anti-doping rule violation*

*Jurisdiction of the CAS*

*Standing to appeal*

1. When a letter contains a clear statement of the resolution of the disciplinary procedure and when that statement has the additional effect of resolving the matter in respect of all interested parties it can be considered as a decision. It seems also evident from the text of the letter that its author intended such communication to be a decision issued on behalf of the IOC. The letter is therefore a true *"decision"* which can be appealed under Art. R47 of the Code.
2. The decision taken by the IOC whereby it is stated that a rider had not committed an anti-doping rule violation because the B sample did not confirm the A sample is tantamount to stating that the IOC determined that no anti-doping rule violation had been committed. Therefore, the said decision falls under Art. 12.2 of the IOC Anti-Doping Rules which allows the CAS to rule on appeals against a *'decision that no anti-doping rule violation was committed'* and the CAS has jurisdiction to review it.
3. Art. 12.2.2 of the IOC Anti-Doping Rules, corresponding to Art. 13.2.3 of the WADA Code, provides that only the following parties have the right to appeal to the CAS: *"(a) the Athlete or other Person who is the subject of the decision being appealed; (b) the IOC; (c) the relevant International Federation and any other Anti-Doping Organisation under whose rules a sanction could have been imposed; and (d) WADA"*. Neither a competitor (of the athlete subject to an anti-doping decision) nor his National Olympic Committee are among the individuals or organisations listed therein. This interpretation is confirmed by the Comment on the WADA Code – particularly relevant in light of Art. 16.5 of the IOC Anti-Doping Rules – which unambiguously states that such list of persons or organizations having standing to appeal *"does not include Athletes, or their federations, who might benefit from having another competitor disqualified"*. An application submitted to the CAS by a party having standing to appeal long after the time limit for the appeal had expired cannot be considered.

The Russian Olympic Committee (ROC) is the National Olympic Committee of Russia, responsible for the Russian Olympic Teams. It has its seat in Moscow, Russia.

Mr Viatcheslav Ekimov (“Mr Ekimov”) is a professional cyclist of Russian nationality. He was a member of the Russian Olympic Team that competed in 2004 at the Games of the XXVIII Olympiad in Athens (the “Athens Olympic Games”).

The International Olympic Committee (IOC) is the supreme authority of the Olympic Movement and is responsible for the organisation of the Olympic Games in accordance with the Olympic Charter. It has its seat in Lausanne, Switzerland.

The United States Olympic Committee (USOC) is the National Olympic Committee of the United States of America, responsible for the US Olympic Teams. It has its seat in Colorado Springs, USA.

Mr Tyler Hamilton (“Mr Hamilton”) is a professional cyclist of US nationality. He was a member of the US Olympic Team that competed at the Athens Olympic Games.

The Australian Olympic Committee (AOC) is the National Olympic Committee of Australia, responsible for the Australian Olympic Teams. It has its seat in St Leonards, Australia.

Mr Michael Rogers (“Mr Rogers”) is a professional cyclist of Australian nationality. He was a member of the Australian Olympic Team that competed at the Athens Olympic Games.

The Union Cycliste Internationale (UCI) is the international federation governing the sport of cycling worldwide. It has its seat in Aigle, Switzerland.

The cycling time-trial race of the Athens Olympic Games took place on 18 August 2004. The medallists in the event were Tyler Hamilton (gold), Viatcheslav Ekimov (silver) and Bobby Julich (bronze). Michael Rogers finished in fourth position.

The day after the race, on 19 August 2004, Tyler Hamilton underwent an anti-doping test and provided two blood samples (“A” and “B”). The A sample (code no. A680706) was then analysed by the doping control laboratory of Athens (the “Laboratory”), accredited by both the IOC and the World Anti-Doping Agency (WADA).

On 22 August 2004 the Laboratory issued an analysis report, signed by the Laboratory Director Dr Georgakopoulos, which recorded sample no. A680706 to be negative. However, the report included an annotation stating that this sample was “*suspicious for blood transfusion*”. On the same day, the report was transmitted to the IOC Medical Director.

The WADA’s Independent Observers Report on the Athens Olympic Games (the “WADA Report”) recounts that in response to the annotation quoted above the IOC Medical Director immediately contacted the Laboratory Director, who confirmed that he was not in a position to report the sample to be positive.

The WADA Report further records that it was “*apparent that at this point the Laboratory froze the athlete’s sample. Following an exchange of information between the Medical Director and the WADA Science Director, and in the light of correspondence between scientists from the laboratory involved in the analysis, the Medical Director informed the President of the IOC on 9 September 2004 of the circumstances of the case. The President of the IOC in turn informed the Chairman of the IOC Medical Commission and asked that immediate action be taken to clarify the situation. The review of the case with external experts resulted in a decision on 16 September 2004 to designate the sample as positive*”.

On 16 September 2004, the IOC President launched a disciplinary procedure, and “*pursuant to Article 7.2.4 of the IOC Anti-Doping Rules (Management of Anti-Doping Rule Violations), relating to an apparent anti-doping rule violation*” appointed a disciplinary commission (the “Disciplinary Commission”) composed of Mr Thomas Bach (Chairman of the IOC Juridical Commission) and of Messrs Denis Oswald and Sergey Bubka (Members of the IOC Executive Board).

Also on 16 September 2004, the IOC President informed Mr Hamilton, the US Olympic Team, USOC, UCI and WADA that the result of the analysis of the A sample provided by Mr Hamilton had “*given rise to an adverse analytical finding, showing two different red blood cells population*”. The IOC President announced that a Disciplinary Commission had been appointed “*pursuant to the Olympic Charter and Article 7.1 of the IOC Anti-Doping Rules applicable to the XXVIII Olympiad in Athens 2004 [...] to hear Mr Tyler Hamilton and other persons concerned*” and to “*investigate as to whether or not an anti-doping rule violation has been committed. [...] It is intended that the hearing take place at the IOC Headquarters at Château de Vidy in Lausanne. The time and date will be communicated to you in the near future*”. The IOC President also notified Mr Hamilton that he had the right to request the analysis of his B sample, and that such analysis, if requested, would occur on 21 September 2004 at the “Laboratoire Suisse d’Analyse du Dopage” (the “Lausanne Laboratory”). Mr Hamilton requested the analysis of the B sample.

On 22 September 2004, the Lausanne Laboratory informed the IOC that, in relation to the analysis of sample no. B680706 (Mr Hamilton’s B sample), “*the result is considered as non conclusive, because of lack of enough intact red blood cells*”.

On 23 September 2004, the IOC President wrote to all concerned parties the following letter:

*“Re: Analysis of the “B” blood sample*

*Dear Sirs,*

*This is in follow up to my letter to you of 16 September 2004 regarding the adverse analytical finding of the “A” blood sample from Mr Tyler Hamilton.*

*The IOC hereby informs you that the result of the laboratory analysis of the “B” blood sample was “considered as non conclusive, because of lack of enough intact red blood cells”. Therefore, the Disciplinary Commission referred to in the above-noted letter is being dissolved, and the IOC will not be pursuing sanctions regarding this matter.*

*Yours sincerely,*

*Jacques Rogge*” (emphasis in the original).

On the same date, the IOC issued an announcement entitled “*IOC statement on pending anti-doping procedure*”, as a result of which the outcome of Mr Hamilton’s case became public.

On 14 October 2004, the Appellants filed a statement of appeal with the Court of Arbitration for Sports (CAS) against the “*decision of the IOC, made 23 September 2004 not to pursue sanctions to Mr. Tyler Hamilton*”. The Appellants requested the following relief:

- “1) *Decision of the Respondent dated September 23, 2004 shall be null and void;*
- 2) *An Order that Mr. Hamilton be disqualified;*
- 3) *An Order that Mr. Hamilton return the gold medal and the diploma obtained by him;*
- 4) *An Order that the results in the Men’s 48 km Time Trial event be adjusted accordingly and the gold medal goes to Mr. Ekimov”.*

On 22 October 2004 the Appellants requested the CAS to stay the arbitral proceedings “*until there is an enforceable decision in the pending case regarding the positive A- and B-Samples taking from Tyler Hamilton, USA, by occasion of the Spanish road race Vuelta in the first half of September 2004; and to set a new deadline to file the Appeal Brief, once the final decision in above case has become known to the CAS*”. The Appellants contended that the new adverse analytical finding in respect of Mr Hamilton and the outcome of the related case would be relevant for the present procedure.

On 5 July 2005, the Deputy President of the Appeals Arbitration Division of the CAS published a decision (“*Presidential Order*”) on several requests for intervention, ruling as follows:

- “1. *Mr Tyler Hamilton and the United States Olympic Committee are allowed to participate as parties, respectively as co-Respondents together with the International Olympic Committee, in the arbitration procedure CAS 2004/A/748 initiated by the Appellants Russian Olympic Committee and Viatcheslav Ekimov.*
2. *Mr Michael Rogers, the Australian Olympic Committee and the Union Cycliste Internationale are allowed to participate as interested parties in the arbitration CAS 2004/A/748 and will be allowed, as such and in accordance with the direction issued by the Panel to be, to follow the proceedings as observers, to have access to the record of the case and to receive copies of the parties’ submissions, as well as to file written statements in support of Appellants’ or Respondents’ positions and to take part in the hearing.*

[...]

4. *The application filed by the Appellants, the Russian Olympic Committee and Mr Viatcheslav Ekimov, to stay the present arbitration proceedings is dismissed.*

[...]”.

The Presidential Order explained that Mr Hamilton and the USOC would have had the right to appeal the IOC decision but they “*evidently did not to appeal because such decision was favourable to the athlete. They are now compelled to defend themselves in an arbitration that might lead to the forfeiture of the Tyler Hamilton’s gold medal, which shows their clear and concrete interest to take part in these proceedings. Therefore, in*

*accordance with Art. R41.3 and R41.4 of the Code, Mr Tyler Hamilton and USOC shall be entitled to participate in the present arbitration and to be considered as full parties, irrespective of the current parties' disagreement".*

As to Mr Rogers and the AOC, the Presidential Order remarked that they shared the Appellants' interests that Mr Hamilton be recognised guilty of a doping offence and, thus, that they were "entitled to appeal the IOC's decision, but decided not to do it within the time limit for appeal. Should CAS allow them to acquire now the status of full parties, in fact as co-Appellants, CAS would permit them to recover their right to appeal that they have failed to duly exercise". Hence, the Presidential Order dismissed their applications for participation as full parties in this arbitration; however, they could be admitted as interested parties in view of the fact that the Appellants, the IOC, Mr Hamilton and the USOC had agreed in writing to such limited participation.

With regard to the UCI, the Presidential Order explained that, although the UCI was entitled to appeal the decision and had a clear interest in this dispute, the UCI had not challenged the IOC decision within the time limit for the appeal and, therefore, its application to intervene had to be dismissed. However, in view of the explicit or implicit agreement of the other parties, the UCI could be also granted the status of interested party.

Resuming the procedure in accordance with the Presidential Order, on 15 July 2005 the Appellants filed their appeal brief, essentially challenging the IOC's decision of 23 September 2004 to dissolve the appointed Disciplinary Commission without pressing any doping charge against Tyler Hamilton.

On 26 August 2005, Mr Rogers and the AOC jointly filed their submission as interested parties.

The IOC filed its response on 2 September 2005.

On 2 September 2005, the USOC filed an answer and a motion to dismiss.

On 2 September 2005, Mr Hamilton also filed a motion to dismiss.

On 3 October 2005, the UCI filed its brief, submitting the following conclusion:

*"It is obvious that there are sufficient elements and indications that are serious enough to justify and indeed dictate the reopening of the case by the IOC. However, it is acceptable to await the decision in CAS 2005/A/884 Hamilton v/USADA & UCI".*

Having noted the preliminary objections raised by the Respondents, the Panel determined that, before considering the merits of the case, it should render a partial award on the preliminary issues of jurisdiction and standing only ("the Preliminary Issues").

On 31 January 2006, the Panel decided to rule on the Preliminary Issues without holding a hearing.

## LAW

1. Article S20 of the Code of Sports-related Arbitration (the “Code”) provides as follows:

*“The CAS is composed of two divisions, the Ordinary Arbitration Division and the Appeals Arbitration Division.*

*[...]*

*Arbitration proceedings submitted to the CAS are assigned by the Court Office to one of these two Divisions according to their nature. Such assignment may not be contested by the parties or raised by them as a cause of irregularity”.*

2. The Panel notes that, pursuant to Article S20 of the Code, 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. As the Court Office assigned this case to the Appeals Arbitration Division, the Panel must follow the set of Code provisions applicable to the appeal arbitration procedure.

### Applicable Regulations and Rules of Law

3. Article R58 of the Code reads as follows:

*“The Panel shall 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, which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

4. The present case arose in connection with the Athens Olympic Games. The IOC-approved Entry Form for Athens 2004 (the “Entry Form”) was signed by both Mr Ekimov and Mr Hamilton, as well as by their respective National Olympic Committees (ROC and USOC), when they were admitted as competitors in the Athens Olympic Games. Thus, in accordance with the second paragraph of the Entry Form, all parties to this case expressly agreed to comply with the Olympic Charter, the World Anti-Doping Code (the “WADA Code”) and the International Olympic Committee Anti-Doping Rules applicable to the Games of the XXVIII Olympiad in Athens in 2004 (the “IOC Anti-Doping Rules”). In particular, by signing the Entry Form, the athletes expressly acknowledged that “*the relevant provisions and rules*” were brought to their attention (third paragraph of the Entry Form).
5. Therefore, the Panel finds that in the present case the applicable regulations and rules of law chosen by the parties are the Olympic Charter, the WADA Code and the IOC Anti-Doping Rules. As the IOC is domiciled in Switzerland, Swiss law may apply complementarily for any matter which is not dealt with by those regulations and rules of law.

## Jurisdiction of the CAS and Standing to Appeal

6. While the Respondents have objected to the jurisdiction of the CAS over the merits of this case, it is undisputed that the CAS has jurisdiction to determine its own jurisdiction and the *locus standi* of the parties, i.e. the CAS has the power to decide whether it may adjudicate the merits of the appeal. The so-called “*Kompetenz-Kompetenz*” of an international arbitral tribunal sitting in Switzerland is recognized by Art. 186 para. 1 of the Swiss Law on Private International Law and, furthermore, it is a generally accepted principle in international arbitration (see CAS/A/952).
7. As this is an appeal arbitration procedure (see *supra* at paragraph 0), the Panel must address any jurisdictional issue, first by considering Article R47 of the Code, which reads as follows:  
*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.*
8. The Panel observes that, in accordance with this provision, the CAS has the power to adjudicate appeals against a sports organization (i.e. a federation, association or sports-related body) only if: (a) that sports organization issued an actual “*decision*”; (b) the decision is final, i.e. any available stages of appeal within that sports organization have been exhausted; (c) the statutes or regulations of that sport organization, or any specific agreements between the concerned parties, set forth an arbitration clause providing for an appeal to the CAS against the said decision (and only within the limits imposed by those statutes or regulations or specific agreements).
9. As a consequence, the CAS does not have the power to adjudicate an appeal if there is no true decision or if the decision is not final, or if the applicable statutes, regulations or agreements do not allow the appellant to bring an appeal against the decision.
10. Accordingly, in order to determine its power to adjudicate the present case upon the merits, the Panel must first decide whether the IOC President’s letter of 23 September 2004 can be characterized as a decision (A.), whether the decision is final (B.), and whether the applicable rules allow the appellants to bring this appeal (C.).
  - A. *The nature of the IOC President’s Letter of 23 September 2004*
11. In their appeal brief, the Appellants started this arbitration procedure as an appeal “*directed against a Decision of the International Olympic Committee (IOC) dated 23 September 2004, that the disciplinary procedure against Mr Tyler Hamilton was stopped, the Disciplinary Commission was dissolved and no sanctions would be pursued*”.

12. However, the parties disagree as to whether the IOC President's letter dated 23 September 2004 (the text of which is set out *supra* at paragraph 0) was a true decision. Indeed, the Panel requested the parties to address in their brief the issue of "*the legal nature and validity of the letter by Mr. Jacques Rogge dated 23 September 2004, Ref. no.11087/18-03/2004/HMS/sls*".
13. The Panel notes that the possible characterisation of a letter as a decision was considered in two previous CAS cases (CAS 2004/A/659; CAS 2005/A/899).
14. The Panel agrees with the definition of "*decision*", and of the characteristic features of a "*decision*" stated by those CAS Panels:

*"In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties"* (CAS 2005/A/899, at paragraph 61);

*"A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects"* (2004/A/659, at paragraph 36).
15. The Panel also agrees with the CAS Panel in CAS 2004/A/659 (*q.v.* at paragraph 63) that:

*"the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal"*.
16. In light of the above CAS precedents, the Panel finds that the IOC President's letter of 23 September 2004 contained in fact a clear statement of the resolution of the disciplinary procedure against Mr Hamilton. That statement had the additional effect of resolving the matter in respect of all interested parties: "*the Disciplinary Commission [...] is being dissolved, and the IOC will not be pursuing sanctions regarding this matter*". As a consequence of this ruling, the anti-doping case against Mr Hamilton was closed and Mr Hamilton could retain his gold medal; at the same time the other competitors (and in particular Mr Ekimov and Mr Rogers) could not benefit from the possible disqualification of Mr Hamilton. In other words, the legal situations of the addressee and of the other concerned athletes were materially affected.
17. It seems also evident from the text of the letter (the "*IOC hereby informs you*" and "*the IOC will not be pursuing sanctions*") that the IOC President intended such communication to be a decision issued on behalf of the IOC.
18. Accordingly, the Panel has no hesitation in finding that the IOC President's letter dated 23 September 2004 – without taking position on whether this Presidential action was within his powers or not – is a true "*decision*" of the IOC (the "*Decision of 23 September 2004*") and, thus, can be appealed under Art. R47 of the Code.



B. *Is the Decision of 23 September 2004 final?*

19. The Decision of 23 September 2004 makes reference twice to the IOC President's earlier letter of 16 September 2004 starting the disciplinary procedure against Tyler Hamilton. In that previous letter, it was clearly stated that the disciplinary procedure was launched pursuant to the Olympic Charter and, in particular, to the IOC Anti-Doping Rules. Indeed, the letter of 16 September 2004 specifically indicated that the text of the IOC Anti-Doping Rules could be found on the IOC website "www.olympic.org" and drew "*particular attention to Article 7 of such Rules, which addresses the 'management of anti-doping rule violations' and provides further details regarding the procedures related thereto*".
20. As a consequence, it seems evident to the Panel that the Decision of 23 September 2004 was meant to be a decision within the framework of the IOC Anti-Doping Rules. It also seems evident to the Panel that the IOC meant the Decision of 23 September 2004 to be the final decision closing the anti-doping procedure against Mr Hamilton, because it was clearly so stated in the decision itself ("*the IOC will not be pursuing sanctions regarding this matter*"). The correctness of the Panel's conclusion is confirmed by the consistent conduct of all IOC organs, which never questioned the fact that the IOC disciplinary procedure was closed.
21. The IOC Anti-Doping Rules do not provide any internal stage of appeal and do not set forth any legal remedy other than an appeal to the CAS. In addition, neither the Olympic Charter nor the WADA Code provide for legal remedies other than an appeal to the CAS.
22. Therefore, the Panel finds that the IOC Decision of 23 September 2004 was final, as far as the IOC was concerned, and that the Appellants complied with the requirement of exhaustion of all available legal remedies prior to the appeal.

C. *Do the Applicable Rules Allow the Appellants to Bring this Appeal?*

23. The Panel has already held that in this case, in accordance with the Entry Form, the applicable regulations and rules of law chosen by the parties are the Olympic Charter, the WADA Code and the IOC Anti-Doping Rules. Accordingly, in order to determine its jurisdiction, in addition to the Entry Form, the Panel must look at the appeal arbitration clauses included in those regulations and rules of law.
24. The Entry Form contains *inter alia* the following statement:  
*"I agree that any dispute, controversy or claim arising out of, in connection with or on the occasion of the Olympic Games [...] shall be submitted exclusively to the Court of Arbitration for Sport (CAS) for final and binding arbitration [...]"*.
25. Rule 74 (in force until 31 August 2004) and Rule 61 (in force since 1 September 2004) of the Olympic Charter are in identical terms, and state 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"*.

26. Art. 13 of the WADA Code, in relevant parts, reads as follows:

*“13.1 Decisions Subject to Appeal*

*Decisions made under the Code or rules adopted pursuant to the Code may be appealed as set forth below in Articles 13.2 through 13.4. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise. [...]*

*13.1 Comment: The comparable OMADC Article is broader in that it provides that any dispute arising out of the application of the OMADC may be appealed to CAS.*

*13.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, and Provisional Suspensions*

*A decision that an anti-doping rule violation was committed, a decision imposing Consequences for an anti-doping rule violation, a decision that no anti-doping rule violation was committed, a decision that an Anti-Doping Organization lacks jurisdiction to rule on an alleged anti-doping rule violation or its Consequences, and a decision to impose a Provisional Suspension as a result of a Provisional Hearing or in violation of Article 7.5 may be appealed exclusively as provided in this Article 13.2.*

*13.2.1 Appeals Involving International-Level Athletes*

*In cases arising from competition in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to the Court of Arbitration for Sport (“CAS”) in accordance with the provisions applicable before such court.*

*[...]*

*13.2.3 Persons Entitled to Appeal*

*In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: (a) the Athlete or other Person who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation and any other Anti-Doping Organization under whose rules a sanction could have been imposed; (d) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and (e) WADA. [...]*

*[...]*

*13.5 Comment: [...] Note, that the definition of interested Persons and organizations with a right to appeal under Article 13 does not include Athletes, or their federations, who might benefit from having another competitor disqualified”.*

27. Art. 12 of the IOC Anti-Doping Rules is closely modelled on Art. 13 of the WADA Code and, in relevant parts, reads as follows:

*“12.1 Decisions Subject to Appeal*

*Decisions made under these Rules may be appealed as set forth below in Article 12.2 through 12.4. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise.*

12.2 *Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, and Provisional Suspensions*

*A decision that an anti-doping rule violation was committed, a decision imposing Consequences of an anti-doping rule violation, a decision that no anti-doping rule violation was committed, a decision that the IOC lacks jurisdiction to rule on an alleged anti-doping rule violation or its Consequences, and a decision to impose a Provisional Suspension may be appealed exclusively as provided in this Article 12.2.*

[...]

12.2.1 *In all cases arising from the Olympic Games, the decision may be appealed exclusively to the Court of Arbitration for Sport (“CAS”) in accordance with the provisions applicable before such court.*

12.2.2 *In cases under Article 12.2.1, only the following parties shall have the right to appeal to CAS:*

*(a) the Athlete or other Person who is the subject of the decision being appealed; (b) the IOC; (c) the relevant International Federation and any other Anti-Doping Organisation under whose rules a sanction could have been imposed; and (d) WADA.*

12.3 *Appeals from Decisions Granting or Denying a Therapeutic Use Exemption*

[...]

12.4 *Appeal from Decisions Pursuant to Article 11*

*Decisions by IOC pursuant to Article 11 may be appealed exclusively to CAS by the NOC or International Federation”.*

28. The provisions of the WADA Code, including the comments, are also relevant for the interpretation of the IOC Anti-Doping Rules. Indeed, Art. 16.5 of the IOC Anti-Doping Rules expressly states as follows:

*“These Rules have been adopted pursuant to the applicable provisions of the [WADA] Code and shall be interpreted in a manner that is consistent with applicable provisions of the Code. The comments annotating various provisions of the Code may, where applicable, assist in the understanding and interpretation of these Rules”.*

29. All the above mentioned appeal arbitration clauses are consistent in providing that the CAS has jurisdiction to rule on the appellate case brought by the Appellants, which undoubtedly arose on the occasion of or in connection with the Athens Olympic Games.

30. However, the Panel notes that while the Entry Form and the Olympic Charter are silent on the types of decision which can be appealed and on the persons entitled to appeal, both the WADA Code and the IOC Anti-Doping Rules limit the power of the CAS to adjudicate a case both in terms of subject-matter, i.e. the types of decision over which the CAS has power to render an award, and in terms of *locus standi*, i.e. the parties having the right to appeal. The Panel notes that the WADA legislators intentionally introduced such limitations to the scope of appellate review previously allowed under the Olympic Movement Anti-Doping Code. Such intention is clearly shown by the Comment to Art. 13.1 of the WADA Code (“*The*

*comparable OMADC Article is broader in that it provides that any dispute arising out of the application of the OMADC may be appealed to CAS”).*

31. It seems to the Panel that there is no contradiction between the different arbitration clauses, insofar as the WADA Code and the IOC Anti-Doping Rules apply specifically to anti-doping disputes as a matter of *lex specialis*. By the same token, the IOC Anti-Doping Rules apply specifically to anti-doping disputes arising out of the Olympic Games. The Panel points out that, in fact, in case of different rules applicable to the same matter, the interpretive principle “*lex specialis derogat generali*” requires that a rule specially targeting a specific case prevails over a rule generally encompassing all cases (the rationale being that the *lex specialis* is presumed to have been drafted having in mind particular purposes and taking into account particular circumstances). The Panel takes comfort from the fact that CAS Panels have already applied this interpretive principle on several occasions (for example, see the award CAS 2005/A/878, at paragraph 53). Accordingly, as this case undoubtedly concerns a possible anti-doping rule violation on the occasion of the Athens Olympic Games, the power of the CAS to adjudicate the Appellants’ claims upon their merits must be determined on the basis of the IOC Anti-Doping Rules.
32. However, the Appellants contend that the Panel should disregard the arbitration clause included in the IOC Anti-Doping Rules and entertain jurisdiction solely on the basis of Rule 74 (now Rule 61) of the Olympic Charter as if it was a contractual claim, analogously to what happened in the CAS 2002/O/373 case. According to the Appellants, this necessarily flows from the following circumstances: (a) the IOC materially breached the procedural rules set forth by the IOC Anti-Doping Rules for the management of anti-doping violations; (b) the IOC President exceeded his powers since the authority to close the procedure was vested with the IOC Executive Board under Art. 7.2 of the IOC Anti-Doping Rules; (c) the decision of the IOC President is also null and void under Swiss Law since it was reached in consequence of a number of serious formal flaws.
33. The Panel cannot accept the Appellants’ submissions. In the Panel’s opinion, those submissions subvert and reverse the logical sequence of steps necessary for the proper analysis of this case. In the Panel’s view, the procedural flaws and violations alleged against the IOC are relevant to a consideration of the merits of this case and should only be considered and analysed by the Panel after it has determined that the CAS has jurisdiction and that the Appellants have standing to appeal. For this Panel to discuss whether the procedure followed by the IOC was in compliance with the IOC Anti-Doping Rules, whether the IOC President was the competent IOC organ and whether the Decision of 23 September 2004 is valid under Swiss Law would require it to consider the merits of this case before determining whether it has the power to do it.
34. In a number of cases CAS panels have set aside sports organisations’ decisions because of procedural flaws (see e.g. TAS 2004/A/776; CAS 2004/A/777), and this Panel would be ready and willing to do it in this case, if it were appropriate so to do. However, the Panel can only take into account those issues and, if necessary, set aside the Decision of 23 September 2004 after it has decided that the CAS has the power to adjudicate this appeal upon its merits.

Accordingly, the Panel declines to address those issues at this preliminary stage and rejects the Appellants' submission that the arbitration clause of the IOC Anti-Doping Rules should be disregarded.

35. The Panel points out that, prior to considering the merits of the case, it can only decide whether the Decision of 23 September 2004, on its face, is subject to appeal and whether the Appellants have *locus standi*. The Panel must thus determine under the IOC Anti-Doping Rules (i) whether the Decision of 23 September 2004 is a type of decision over which the CAS has appellate jurisdiction, and (ii) whether the Appellants are entitled to appeal.
  - (i) Does the Decision of 23 September 2004 come within Art. 12.2 of the IOC Anti-Doping Rules?
36. Art. 12.2 of the IOC Anti-Doping Rules allows the CAS to rule on appeals against the following types of decisions  
*“A decision that an anti-doping rule violation was committed, a decision imposing Consequences of an anti-doping rule violation, a decision that no anti-doping rule violation was committed, a decision that the IOC lacks jurisdiction to rule on an alleged anti-doping rule violation or its Consequences, and a decision to impose a Provisional Suspension”.*
37. The Panel has already found that the communication sent by the IOC President to Mr Hamilton (as well as to the US team, the UCI, the USOC, the WADA and the WADA-appointed Independent Observer) on 23 September 2004 was in fact a decision. The Panel has also found that it was a final decision closing the anti-doping procedure against Mr Hamilton.
38. It remains to be considered whether the Decision of 23 September 2004 comes within the list of decisions amenable to appeal set out by Article 12.2 of the IOC Anti-Doping Rules. As the other types of decisions listed therein are clearly not applicable in the case at stake, the parties have limited their submissions to the question of whether such decision may be categorized as a *“decision that no anti-doping rule violation was committed”*. In particular, the Appellants contend that the case-handling of the IOC did not result in a decision that no anti-doping rule violation was committed, in the sense of Art. 12.2 of the IOC Anti-Doping Rules, because the Decision of 23 September 2004 did not truly acquit Mr Hamilton, but simply informed him that the previous adverse analytical finding was not confirmed by the B sample.
39. The Panel is of the opinion that the language used in the Decision of 23 September 2004 is not decisive in assessing its character. In the Panel's view, what matters is the true nature of the decision made and its effects, not its formal designation or the particular words used. Accordingly, it seems evident to the Panel that the IOC decided on 23 September 2004 that Mr Hamilton had not committed an anti-doping rule violation because the B sample did not confirm the A sample. Common sense dictates that the communication to the interested athlete (and the other concerned parties) that *“the IOC will not be pursuing sanctions”* was tantamount to stating that the IOC determined that no anti-doping rule violation had been

committed. Indeed, as a consequence of that communication, Mr Hamilton could retain his gold medal. From the evidence on file, it is clear that after 23 September 2004 no IOC body or IOC representative ever questioned the fact that, for all purposes, the anti-doping procedure initiated with the IOC communication of 16 September 2004 was closed with the athlete's acquittal. Hence, this Appellants' submission fails.

40. Therefore, the Panel holds that the Decision of 23 September 2004 falls under Art. 12.2 of the IOC Anti-Doping Rules and, thus, the CAS has jurisdiction to review it. However, a tribunal may have jurisdiction to decide a dispute, but it can only exercise that jurisdiction if the parties in front of it have standing to ask it to make the decision. Accordingly, the Panel must decide whether the Appellants are properly before it, i.e. whether they have *locus standi* to put the matter before the CAS under the IOC Anti-Doping Rules.

(ii) Do the Appellants have the right to appeal to the CAS under Art. 12.2.2 of the IOC Anti-Doping Rules?

41. Art. 12.2.2 of the IOC Anti-Doping Rules, corresponding to Art. 13.2.3 of the WADA Code, provides that only the following parties have the right to appeal to the CAS:

*“(a) the Athlete or other Person who is the subject of the decision being appealed; (b) the IOC; (c) the relevant International Federation and any other Anti-Doping Organisation under whose rules a sanction could have been imposed; and (d) WADA”.*

42. The Appellants contend that this provision restricting the standing to appeal is invalid and thus not applicable because it conflicts with the Olympic Charter and Swiss Law. However, in the Panel's view, the provision does not contradict the Olympic Charter because, first, the Olympic Charter does not have any specific provision on standing to appeal and, second, the IOC Anti-Doping Rules are a *lex specialis* which applies to doping matters at the Olympic Games.

43. The Panel also finds unpersuasive the Appellants' arguments based on Swiss Law, in light of the following matters: (a) both the IOC Anti-Doping Rules and the WADA Code were incorporated by explicit reference in the Entry Form and were brought to the attention of the Appellants as expressly acknowledged in the third paragraph of the Entry Form; (b) the rule on standing cannot be deemed to be an *“unusual clause”* insofar as the WADA Code, well before the Athens Olympic Games, has become the most widely accepted and known document in the history of the fight against doping; (c) apart from the fact that the rule on standing applies equally to all competitors and does not amount to an exclusion from or limitation to the Appellants' sporting activity, the restriction to the right of private prosecution against a supposed doping violation may be justified as a policy choice of the WADA (and thus of its constituency, composed both of governments and sports institutions) to be qualified as an *“overriding public interest”* under Art. 28 para. 2 of the Swiss Civil Code; (d) the Appellants did not submit any material or evidence which could satisfy their burden of proving that the IOC abused a dominant position and thus violated Art. 7.1 of the Swiss

Cartel Law. Accordingly, the Appellants' submission concerning the validity and applicability of Art. 12.2.2 of the IOC Anti-Doping Rules fails.

44. As a result, the Panel must ascertain whether the Appellants are entitled to appeal under Art. 12.2.2 of the IOC Anti-Doping Rules. It is evident that neither a competitor (of the athlete subject to an anti-doping decision) nor his National Olympic Committee are among the individuals or organisations listed therein. This interpretation is confirmed by the Comment on the WADA Code – particularly relevant in light of Art. 16.5 of the IOC Anti-Doping Rules – which unambiguously states that such list of persons or organizations having standing to appeal “does not include Athletes, or their federations, who might benefit from having another competitor disqualified”. If the appeal had been brought by parties who were entitled to bring it, the CAS would have adjudicated upon the merits. However, among those parties who did have the right to appeal the Decision of 23 September 2004, the WADA chose not to do it, while the UCI submitted its application to the CAS long after the time limit for the appeal had expired.
45. Accordingly, the Panel holds that both Appellants lack standing to appeal under Art. 12.2.2 of the IOC Anti-Doping Rules. As a result, the Panel may not entertain this appeal and must decline to adjudicate the case upon its merits.
46. In the Panel's view, this decision is fully consistent with the CAS 2002/O/373 award, in which the claimant's *locus standi* was admitted. In that case, the CAS Panel established its jurisdiction on the basis of the Olympic Charter and the Olympic Movement Anti-Doping Code (OMAC), at a time when the WADA Code and the current IOC Anti-Doping Rules were not in force yet. The Panel notes that that CAS Panel, cautioning about possible legislative changes, stated as follows:  
*“the fact that this Panel deems admissible the specific claims of a particular athlete in the circumstances of this case does not imply that competitors of sanctioned athletes will necessarily have standing to sue in other cases and circumstances [...]. It is noteworthy in this relation that under article 13.2.3 of the World Anti-Doping Code, version 3.0 of 20 February 2003, the circle of persons with standing to challenge a decision has been limited”* (CAS 2002/O/373, in *CAS Digest III*, at 29-30).
47. After the CAS 2002/O/373 award, the WADA Code did come into force and, as a consequence, the IOC abolished the OMAC and adopted the IOC Anti-Doping Rules. The new rules do not let athletes (or their NOCs) who might benefit from having another competitor sanctioned have standing to appeal. On this basis, this case is clearly distinguishable from the CAS 2002/O/373 case.

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

1. Mr Viatcheslav Ekimov and the Russian Olympic Committee have no standing to appeal against the decision issued on 23 September 2004 by the International Olympic Committee.
2. The appeal filed by Mr Viatcheslav Ekimov and the Russian Olympic Committee on 14 October 2004 against the decision issued on 23 September 2004 by the International Olympic Committee is dismissed.

(...)