



Arbitration CAS 2008/A/1594 Ruslan Sheykhov v. Fédération Internationale des Luttes Associées (FILA), award of 8 August 2008

Panel: Mr Olivier Carrard (Switzerland), Sole Arbitrator

Wrestling

Olympic Qualification

Athlete's unethical behaviour

Standard of proof

- 1. According to the general principles of law, in order to discover whether an athlete has participated in any disloyal behaviour, the Sports Federation alleging the disloyal behaviour bears the burden of proof. The applicable standard of proof should be similar to that used in doping cases, given that the FILA regulations do not expressly provide for a specific standard of proof. Thus, given that, as in doping cases, the athlete is accused of a serious form of cheating, a similar standard of proof can be applied. Pursuant to the jurisprudence developed by CAS in doping cases, this standard must be established to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made.**
- 2. If the dishonest behaviour of an athlete is not proven to the comfortable satisfaction of the Panel by the Federation, the fault of the athlete is not established.**

Mr Ruslan Sheykhov (“the Appellant”) is an international level free-style wrestler who competes for Belarus.

The International Federation Of Associated Wrestling Styles (FILA or “the Respondent”) is at the head of the National Federations of all wrestling styles. It is based in Corsier-sur-Vevey, Switzerland.

On 19 April 2008, during the first free-style Olympic qualifying tournament in Martigny, Mr Sheykhov wrestled in a bout against Armenian wrestler Shamil Gitinov, in a match having as a stake the third place of that competition and, by way of consequence, the Olympic qualification license. The match took place in the late afternoon.

The match comprised two rounds¹. During the first round, the mat chairman summoned both wrestlers to his table and made them comments. The wrestlers then returned to the mat and resumed fighting. In this round, Mr Sheykhov was awarded three points, one of which was a result of the warning given to Mr Gitinov, because of this latter's unwillingness to fight. The second round was also won by Mr Sheykhov, by two points to zero.

At the end of the second round, after the bell showing the end of that period, the referee stood in the middle of the mat, facing the officials' table, with both wrestlers at her side. She then raised Mr Sheykhov's hand in sign of victory. After that, both wrestlers left the mat and returned to their changing rooms. On the way to his changing room, Mr Gitinov behaved in a violent manner and randomly damaged some objects.

This victory meant that Mr Sheykhov won the third place of the competition, which allowed him to be eligible for the Beijing Olympic Games.

Some time later, as Mr Sheykhov was about to go to the awarding ceremony, he was not allowed to leave his changing room, being told by the security that he had been disqualified.

As a matter of fact, some time after the match, the "Refereeing body"² of the FILA took the decision to disqualify both wrestlers and their coaches and annulled the result of the bout considering that the fight was rigged. This decision was only communicated to the Appellant orally, after the bout, by a third party, and no written decision was rendered or has been produced.

In a letter from the Belarus Delegation to the FILA Referee Committee ("Comité d'Arbitrage") dated 20 April 2008, this delegation tried to obtain a modification of the decision.

Thereupon, a letter was sent on 21 April 2008 by FILA President, Mr Raphael Martinetti, to the Belarus and Armenian Wrestling Federations. In this letter, the President explained the grounds for the decision taken by the "Refereeing body". He underlined that this decision was final and could not be contested. Furthermore, he notified to these Federations the opening of a disciplinary procedure against the two wrestlers and the two coaches and invited them to produce their defence elements to the FILA secretariat by no later than 25 April 2008.

No formal notification of the proceedings was received by the Appellant.

On 28 April 2008, the FILA Sporting Judge, in the person of Mr Aldo Albanese, rendered his decision, based on a report from FILA, which has not been produced in the present proceedings. This decision was taken without a hearing and without any further investigation.

The Judge considered, after having examined the film of the bout, that it was obvious that both wrestlers merely simulated the fight. The Sporting Judge added that the Armenian Federation had already taken adequate measures, while the Belarus Federation refused to do so, claiming that it was

¹ The Sole Arbitrator and the Parties watched both the official and an unofficial film of the bout, during the hearing on 29 July 2008.

² The exact composition of this authority is not known.

the Armenian athlete alone who had refused to wrestle. The Judge considered that such a position was unsustainable and that it was obvious that both athletes and their coaches had acted in conscience. All the more so as the report concerning this bout had been signed by several FILA officials.

Based on these grounds, the FILA Sporting Judge, making use of Art. 46 of the FILA Disciplinary Regulations, rendered a decision against Mr Sheykhov (and his coach Mr Valentin Mourzinkov), banning (*“disqualifying”* according to the text of the decision) the athlete from participation in any national or international competition for one year. This decision also imposed that same sanction upon Mr Gitinov and his coach Mr Arayik Baghdadyan, as well as a CHF 10'000.-- fine each upon the Belarus and Armenian Federations.

On 15 May 2008, Mr Gitinov sent a letter to FILA President Mr Martinetti explaining that he had approached Mr Sheykhov before the bout, asking him to let Mr Gitinov win the bout. Mr Gitinov added that he was injured at the shoulder and that he had seen that he could neither win against Mr Sheykhov in such a state, nor recover before the second Qualifying Tournament which was to be held in Poland. However, Mr Sheykhov had refused his offer and this refusal had caused Mr Gitinov to refuse to compete and deliberately give up the points during the bout. Mr Gitinov adds that he regrets having lost control of himself during and after that bout.

The next day, on 16 May 2008, Mr Sheykov and his coach wrote to the President of the Belarus Wrestling Federation to express their positions. Mr Sheykhov furthermore mentioned the letter sent by Mr Gitinov to FILA and asked the President of his Federation to request FILA *“to eliminate the sanctions against [him and his] coach in light of the newly open facts, proving [according to him, he is] not guilty, so as [his coach] in that incident, provoked by Sh. Gitinov”*.

Then, on 21 May 2008, the Armenian Federation informed the FILA that it had withdrawn Mr Gitinov from the National Wrestling Team, but appealed to the FILA President for a lifting of the sanction against Mr Arayik Baghdadyan, his coach.

On 27 May 2008, the Wrestling Federation Of Belarus, acting on behalf of Mr Mourzinkov and Mr Sheykhov wrote a letter to the FILA Secretary General to acknowledge receipt of the decision taken by the FILA Sporting Judge and to request FILA Secretary General to take into account the declaration of Mr Gitinov, to cancel their disqualification and to allow them participating to the Beijing Olympic Games.

Considering this letter as an appeal to the FILA Federal Appeal Commission against the FILA Sporting Judge's decision to impose a disciplinary sanction of one year of ineligibility upon Mr Sheykov and Mr Mourzinkov, this letter was submitted to the FILA Federal Appeal Commission, as results from the letter dated 13 June 2008 of the FILA President, under *“concern”*.

By letter of 13 June 2008, the FILA informed the Belarus Federation of the fact that the Federal Appeal Commission had taken a decision confirming the ban pronounced by the Sporting Judge. In its letter, the FILA asked the Belarus Federation to inform Mr Sheykhov of that decision. No

hearing was held by the Commission. Furthermore, a formal decision has not been notified to the Appellant since, who also ignores the composition of the Federal Appeal Commission.

Finally, on 1 July 2008, the Appellant filed an appeal with the Court of Arbitration for Sport (CAS) against the decision issued on 13 June 2008 by the FILA Federal Appeal Commission, against the decision of the Sporting Judge dated 28 April 2008, as well as against the decision of the Refereeing Body dated 19 April 2008.

The Appellant filed his Statement of Appeal on 1 July 2008 and his Appeal Brief on 14 July 2008.

An Order on language was finally rendered by the Deputy President of the Appeals Arbitration Division, on 14 July 2008, considering that the present arbitration would be conducted in English, given that the Appellant did not speak French, whilst the Respondent was an international federation.

The Respondent didn't file any answer to the CAS. The FILA simply repeated, by a letter dated 21 July 2008, that it still disagreed with the jurisdiction of the CAS in judging the quality of a fight. The FILA also communicated to the CAS a letter it had received from Mr Arayik Bagdadyan, explaining that after the match it had "*appeared*" that the two wrestlers had decided not to wrestle honestly. This coach added that Mr Sheykhov and Mr Gitinov both came from Dagestan and that they lived in the same building.

In his Statement of Appeal and Appeal Brief, the Appellant requests the following relief:

- “1) *Decision of the FILA refereeing body dated 19 April 2008 shall be null and void;*
- 2) *Decision of the FILA Sporting Judge dated 28 April 2008 shall be null and void;*
- 3) *Decision of the FILA Federal Appeal Commission dated 13 June 2008 shall be null and void;*
- 4) *An Order that the result of the 96kg match between Mr Ruslan Sheykhov and Mr Shamil Gitinov is valid and Mr Ruslan Sheykhov is eligible for the participation in the Games of the XXIX Olympiad 2008”.*

The Respondent did not file a written response. From the FILA's letters, it can be deduced that it considers that the CAS does not have jurisdiction to decide upon the case, given the fact that the appeal is directed against a sportive decision.

A hearing was held on 29 July 2008.

LAW

Jurisdiction of the CAS

1. As the Court of Arbitration for Sport is an international arbitral tribunal has its seat in Switzerland and as one of the parties does not have his/her domicile or habitual residency in Switzerland, pursuant to Article 176 of the Swiss Private International Law Act (PIL), chapter 12 of this act (articles 176 to 194 PIL) is applicable to this arbitration (cf. CAS 2005/A/983 & 984; CAS 2006/A/1180).
2. According to article 186 of the Swiss Private International Law Act, the arbitral tribunal shall rule on its own jurisdiction. Therefore, CAS is competent to rule on its own jurisdiction.
3. In the case under scrutiny, the Respondent contested the jurisdiction of the CAS and indicated that the sportive nature of its own decision prevented the CAS from deciding upon the matter.
4. A decision of a sportive nature is based on a “rule of the game”, as opposed to a “rule of law”. The definition of these two bodies of rules is controversial, but it can be retained, in accordance with Swiss legal scholars, that a rule concerning a disciplinary sanction is clearly a rule of law (ZEN-RUFFINEN P., *Droit du sport*, Zurich 2002, n. 1368 and 1376).
5. In the present case, as will be explained below, the decision of the FILA Federal Appeal Commission is not of a sportive nature, but is clearly a disciplinary measure, based on Art. 46 of the Disciplinary Regulations of the FILA, that is on a rule of law. This conclusion is not only sustained by the nature of the decision under scrutiny, but also by the chronology of the events which took place after the first free-style Olympic qualifying tournament in Martigny.
6. However, as underlined in article S1 of the Code of Sports-related Arbitration (“the Code”), *“the disputes to which a federation, association or other sports-related body is party are a matter for arbitration in the sense of this Code, only insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide”*.
7. Article R47 of the Code also states that *“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. In the FILA’s regulations, CAS jurisdiction is addressed at Art. 36 of the FILA Constitution, as well as Art. 7.4 and 14 of the FILA Disciplinary Regulations.
9. Entitled *“Disciplinary procedure”*, Art. 36 of the FILA Constitution reads as follow:
“a) Introduction

In order to deal with legal disputes in sporting matters which cannot be settled by FILA's judicial bodies, an arbitration institution called the "Court of Arbitration for Sport" (CAS) has been created under the aegis of the International Council of Arbitration for Sports (ICAS).

b) Procedure

In the event of an infringement of the FILA Constitution, Wrestling Rules and other Regulations, a case will be opened and measures taken. FILA's disciplinary bodies are as follows:

- The FILA attorney*
- The Sporting Judge – the only judge*
- The FILA Sporting Appeal Commission (three members)*

Members are nominated to these posts by the FILA Bureau at the suggestion of the FILA President. The FILA judicial bodies decide whether leave to appeal the first decision will be given. Affiliated National Federations and all the FILA members (FILA Bureau members, wrestlers, coaches, referees, doctors and leaders), through their FILA membership, can appeal only to FILA in the event of disputes arising from the current Constitution and all the FILA Regulations or of all sporting conflicts which can arise between them and which they cannot settle amicably.

c) Appeal against the decision

Conflicts between FILA and one of its members or between members among themselves which are not resolved by a decision of the FILA Sports Judge, Disciplinary Commission or FILA Bureau will be submitted to the CAS for judgment, any state jurisdiction being excluded. As a last resort, the "Court of Arbitration for Sport" (CAS) will decide and judge all the valid appeals which are submitted to it by the affiliated National Federation or one of the FILA members against the decision(s) made by the FILA Sports Judge, the Disciplinary Commission or the FILA Bureau.

The appellants must be willing to conform exclusively to the CAS Constitution and Regulations and to the decision it makes”.

10. *Articles 7.4 and 14 of the FILA Disciplinary Regulations notably provide that “[c]onflicts opposing the FILA with one of its members, or with members against each other, as mentioned in article 3, which are not resolved by the decision of the Federal Appeal Commission, will be submitted to the Court of Arbitration” and that “[w]ith the aim of resolving lawsuits more easily in sport which cannot be settled by the Federal Appeal Commission, an arbitration body, the Court of Arbitration for Sport (CAS) has been created”.*
11. *Those provisions clearly provide for the jurisdiction of the CAS against decisions of the Federal Appeal Commission of the FILA. For all the above reasons, the CAS has jurisdiction to decide upon the appeal lodged by Mr SHEYKHOV, in the extent that it is directed against the decision of the FILA Federal Appeal Commission. Furthermore, pursuant to art. R57 of the Code, the Sole arbitrator has full power to review the facts and the law and may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.*
12. *As far as the appeal requests the decision of the Sporting Judge to be set aside, it is not admissible, given the fact that, as will be explained below (see § 30 ff), this decision has been*

submitted to the Federal Appeal Commission as a second instance and that the applicable provisions of the FILA regulations do not provide for a direct appeal to the CAS against decisions of the Sporting Judge. CAS has therefore no jurisdiction with respect to an appeal which would be directed against the decision of the FILA Sporting Judge as such.

13. Finally, regarding the decision of the FILA Refereeing Body, the CAS has no jurisdiction either. Indeed, the FILA regulations do not provide for any appeal against such decision and therefore no CAS jurisdiction to hear appeal against any decision from the FILA Refereeing Body. This does however not mean that no appeal at all would have been possible against such decisions, which should be, under certain circumstances, challengeable. Such challenges should however be addressed to state courts and not to CAS which can be seized of such appeals only *“insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement”* (art. R47 of the Code).
14. For the sake of completeness, the Sole Arbitrator notes here that the signature of the Order of Procedure does not amount to recognition of CAS jurisdiction to review the decision of the FILA Refereeing Body. Indeed, under CAS jurisdiction the Order of procedure reads: *“According to the Appellant, the jurisdiction of CAS in the present case is based on article 36 (c) of the FILA Constitution and on articles 7.4 and 14 of the FILA disciplinary rules. It is confirmed by the signature of the present order by the parties unless the Respondent alleges, in its answer CAS’ lack of jurisdiction”*. Even if the Respondent does not file any formal answer, it alleges in several letters and at the hearing CAS’ lack of jurisdiction, especially to review a decision taken *“by the unanimous referee pursuant to the International wrestling rules”*.

Applicable law

15. According to Art. R58 of the Code, *“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 [...] which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. [...]”*.
16. In the case under scrutiny, the applicable regulations are those of the FILA. The parties did not choose any other rules of law to govern their relationship. The FILA being domiciled in Switzerland, Swiss law will be applicable where the FILA regulations are silent.
17. The relevant provisions of the FILA regulations are, first of all, Art. 36 of the FILA Constitution, and some provisions of the FILA Disciplinary Regulations, which are also applicable in the present case. Some of the most relevant provisions for the present case will be summarized below.
18. First of all, Art. 1 lit. c of the Disciplinary Regulations stipulates that the right to a defence is guaranteed.

19. The decisions in disciplinary matters are taken in the following manner. The Federal Procurer, who is replaced by the Secretary General (Art. 9.1), receives an official competition report for violations committed by members during sporting events (art. 11.1 lit. b Disciplinary Regulations). The exactitude of the contents of official acts from a FILA body and reports from officials at competitions are valid until proved otherwise (Art. 11.2 Disciplinary Regulations). Upon receipt of such a report, the Procurer can start disciplinary action, if he deems it necessary, by notifying the person charged of the complaint against him (Art. 11.5 Disciplinary Regulations). The proceedings must be conducted in accordance with Art. 11.5 – 11.7, which also contain the right of the accused person to defend himself and to consult the file of the FILA.
20. At the end of the investigations, the Federal Procurer can decide to transmit the file to the Sporting Judge (Art. 11.8 Disciplinary Regulations). This latter can conduct further investigation (Art. 8.3 and 11.9 Disciplinary Regulations). Thereafter, the Sporting Judge takes a decision on the disciplinary offences put to him (Art. 8.2 Disciplinary Regulations). This decision, which must be *“brief although complete”*, comes into effect immediately upon notification to the interested parties (Art. 11.10 and 11.11 Disciplinary Regulations).
21. Against the decision taken by the Sporting Judge, an appeal can be lodged before the Federal Appeal Commission (Art. 7.3 Disciplinary Regulations), in the form stipulated by Art. 12 Disciplinary Regulations.
22. The possibility of appeal to the CAS against the decision of the Federal Appeal Commission is contained in Art. 7.4 and 14 Disciplinary Regulations.
23. The disciplinary sentences which can be imposed on wrestlers are the following: warning; reprimand; disqualification from the competition; suspension from participating in international competitions for a fixed length of time; disqualification for life (art. 43 Disciplinary Regulations). These can be cumulated.
24. The offences which might justify such sentences are listed in Art. 43 ff Disciplinary Regulations. In the present case, the decision of the Sporting Judge is based on Art. 46 (Infringements with the wrestling rules). This clause stipulates:

“The wrestler who competes with the intention of letting his opponent win will be sentenced in the following way:

 - *from disqualification to a ban on participating in any meet for between one and two years.*

If the aforementioned opponent is also recognised as being at fault, he will be eliminated from the match or will be disqualified for the duration of the competition or will be banned from taking part in any meeting for one year to two years”.
25. Therefore, the offence of wrestling without serious intention can be punished by either elimination from the match or disqualification from the competition or ban from further meetings.

26. Furthermore, in order to understand the way a winner is declared in a bout, the CAS examined the International Wrestling Rules of the FILA, which also specify the regulations to be respected during bouts and define the FILA officials and their functions. These Rules are designed to implement among others the Disciplinary Regulations (art. 1 IWR).
27. Art. 15 IWR provides:
“If a wrestler commits an obvious offence against fair play within the spirit and concept of total and universal wrestling enunciated by FILA, and openly cheats, commits a serious error or engages in brutality, he will be disqualified immediately from the competition and eliminated by a unanimous decision of the officiating team. In this situation, he will not be placed”.
28. According to Art. 16 IWR, the officials present during competitions are the following: a mat chairman, a referee and a judge. The mat chairman coordinates the work of the officials and directs the other two (Art. 17 lit. b and 21 IWR). The referee is the official conducting the bout itself and is positioned on the mat (Art. 19 IWR), while the judge supervises the bout from outside the mat and records the points; he also gives his opinion to the referee concerning particular questions (Art. 20 IWR).
29. The result of the bout is given by the referee, in agreement with the mat chairman (Art. 19 lit. g IWR), however, the decisions of the judge and the referee are valid without the intervention of the mat chairman if they are in agreement (except for proclamation of victory by technical superiority) (Art. 20 lit. g IWR). At the end of the bout, the referee stands in the centre of the mat with the two wrestlers, as these await the decision. After the decision has been announced, the two wrestlers shake hands with the referee and with the opponent’s coach and leave the mat (Art. 29 § 7 IWR).
30. An interruption of the bout is possible, by the mat chairman, if he notices a serious error on behalf of the judge or the referee (Art. 21 lit. g IWR). If the mat chairman, the judge and the referee cannot come to a majority decision, the dispute is settled by the Person responsible for refereeing, who decides as a last instance (Art. 22 and 28 lit. c IWR).
31. Furthermore, Art. 49 IWR forbids the wrestlers to agree the match result between them.
32. Art. 56 IWR provides that no protest may be lodged at the end of a match and that only the result obtained on the mat counts. This same provision states: *“Under no circumstances may the result of a match be modified after victory has been declared on the mat”.* If the refereeing body abused their power to modify a match result, the FILA president or the *“responsible person for refereeing”* can sanction the concerned officials.

Merits of the case

A. Disrespect of the procedure provided for by the FILA Disciplinary Regulations

- a) The violation of the procedure before the Sporting Judge
 33. The ordinary procedure before the Sporting Judge was described above. It is placed under the imperatives of the FILA Disciplinary Regulations, which in the present case were not followed.
 34. First of all, the Federal Procurer does not seem to have been seized by a denunciation or complaint of the Secretary General of the FILA, as prescribed by Art. 9.2 Disciplinary Regulations (or, at least, such a document was not produced by the Respondent).
 35. Then, the Federal Procurer did not notify the person charged of the complaint against him, leaving him at least ten days to prepare his defence (Art. 11.5 Disciplinary Regulations), given that the notification was made by the letter of 21 April 2008, signed by the FILA President and that Mr Sheykhov was only given four days to prepare his defence.
 36. Furthermore, the Federal Procurer did not conduct an investigation and did not prepare his requests, as Art. 11.6 – 11.8 Disciplinary Regulations prescribe (or, again, this document was not produced to the CAS).
 37. All these violations are contrary also to Art. 1 lit. c of the Disciplinary Regulations and affect seriously the Sporting Judge's decision.
- b) The violation of the procedure before the Federal Appeal Commission
 38. Against the decision of 28 April 2008 of the Sporting Judge, the Belarus Federation lodged an appeal, on behalf of Mr Sheykhov and Mr Mourzinkov. Even if this appeal brief did not respect the form provided for by Art. 12.1 and 12.2 Disciplinary Regulations (in particular, it is not signed by Mr Sheykhov), its validity is unambiguous, for the following reasons.
 39. The Federal Appeal Commission accepted the appeal, without raising any objections, as it was obvious that the Belarus Federation acted on behalf of Mr Sheykhov too. This latter certainly also considered that the appeal was in his interest. Finally, in the letter dated 13 June 2008, the FILA asked the Belarus Federation to transmit the decision to its wrestler.
 40. Furthermore, the text of the appeal (asking for reconsideration of the disqualification) seems to indicate that both the decision of the Refereeing body and the decision of the Sporting Judge are attacked, because both these decisions pronounce the disqualification of Mr Sheykhov. The FILA interprets this appeal as challenging only the FILA Sporting Judge's decision imposing a disciplinary sanction of one year of ineligibility upon Mr Sheykhov and Mr Mourzinkov. This interpretation of the 27 May 2008 letter of the Belarus Federation is shown

by the “concern” of the letter dated 13 June 2008 of the FILA. Such an interpretation is consistent with the FILA’s position, as the Respondent always considered that the decision of the FILA Refereeing Body was final and could not be contested.

41. As to the procedure before the Federal Appeal Commission, the Appellant was not allowed to participate in it, violating again Art. 1 lit. c of the Disciplinary Regulations.
42. What’s more, no formal decision was rendered by this authority, because the only document communicated to the Appellant is the letter of the FILA of 13 June 2008, informing him of the fact that the Federal Appeal Commission allegedly took the decision to confirm the Sporting Judge’s decision. The FILA obviously did not prepare a formal decision and the sick leave of the Federal Procurer or the lack of time does not excuse such a blatant violation of procedural rights.
43. In addition, the composition of the Federal Appeal Commission, the date of its decision and the way such a decision was taken are totally unknown. The FILA again did not file any documents concerning the proceedings before the Federal Appeal Commission.
44. The considerations above lead to the conclusion that the decision of the Federal Appeal Commission, instead of repairing the procedural breaches contained in the previous decision, added more violations of Art. 12 and 1 lit. c of the FILA Disciplinary Regulations. Thus, the decision of the Federal Appeal Commission must be set aside. However, as CAS has complete power to review the facts and the law and to rule the case de novo, the procedural deficiencies which affected the procedures before FILA disciplinary bodies may be cured by virtue of the present arbitration proceedings (see e.g. CAS 2006/A/1175, paras. 61 and 62; CAS 2006/A/1153, para. 53; CAS 2003/O/486, para. 50). The Sole arbitrator will therefore consider whether the decision taken by the FILA Federal Appeal Commission was substantially well founded or not.

B. The lack of sufficient proof

45. If the FILA had acted according to its procedural rules, it should have investigated, in order to discover whether Mr Sheykhov had participated in any disloyal behaviour.
46. Indeed, according to the general principles of law, the FILA bears the burden of proof in this regard. This common rule can be deducted from Art. 8 of the Swiss Civil Code, which provides that each party must prove the facts it alleges and from which it deducts its rights.
47. Furthermore, the Sole arbitrator considers that the applicable standard of proof should be similar to that used in doping cases, given that the FILA regulations do not expressly provide for a specific standard of proof. Thus, given that, as in doping cases, the athlete is accused of a serious form of cheating, a similar standard of proof can be applied.

48. Pursuant to the jurisprudence developed by CAS in doping cases, this standard is defined as follows: *“Ingredients must be established to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made”* (see e.g. CAS 2005/A/908, no 6.2.; CAS 98/211, n° 26 with further references; CAS 2001/A/337, p. 21; CAS 2001/A/345 Digest III, p. 238, 243; see also RIGOZZI A., L’arbitrage international en matière de sport, Basel et al. 2005, no 1094).
49. It is true that Art. 11.2 Disciplinary Regulations provides that the exactitude of official acts from a FILA body and reports from officials at competitions are deemed valid until proved otherwise.
50. However, in the case under scrutiny, none of the documents upon which the decisions were allegedly taken by the FILA were produced to the CAS. The FILA did not produce the official match sheet, the report of Ms Nobs³, the report of the Secretary General to the Federal Procurer or the Federal Procurer’s requisition to the Sporting Judge. It also resulted of the declaration of Ms Nobs that the “Refereeing body” took its decision based on a mere speculation and on the impressions of the officials taking part in it. Furthermore, the decision of the Federal Appeal Commission does not seem to exist.
51. In addition, in order to respect the defence’s rights and the burden of proof set upon the FILA, this latter should have heard the two wrestlers and their coaches, the representatives of the Federations and other witnesses. The video of the bout can certainly be an indication of the honest or dishonest character of the match, but other evidence should have been collected before declaring that the wrestlers had cheated.
52. Also, the statement of Mr Gitinov, admitting on 15 May 2008 that he alone caused the incident at Martigny, should have been taken into consideration, at least by the Federal Appeal Commission.
53. Finally, the suggestion of the FILA concerning a possible bribe is not proved either and would any way not demonstrate *per se* that Mr Sheykhov was aware of such a deal.
54. Given the total lack of cooperation of the FILA, the Sole Arbitrator examined all available elements of proof brought before him and came to the conclusion that the dishonest behaviour of Mr Sheykhov was not proved to his comfortable satisfaction by the FILA, all the more so as Mr Sheykhov was dominating the bout and the allegation that he did not compete in a truthful manner is weakened by the result of the bout. Indeed, Mr Sheykhov was declared as the winner of the bout by the referee, as provided for by the IWR.
55. Therefore, the Sole arbitrator deems that the Respondent has not established to his comfortable satisfaction that Mr Sheykhov was at fault under art. 46 paragraph 3 of the Disciplinary Rules and therefore considers that the decision of the Federal Appeal Commission of 13 June 2008 (confirming the decision of the Sporting Judge) is ill founded, by way of lack of evidence.

³ Ms Nobs is a FILA instructor expert in technical affairs. She was present during the fight between Mr Sheykhov and Mr Gitinov on 19 April 2008, as “FILA Delegate”. She allegedly wrote a report on the bout,

C. Conclusion

56. The Sole Arbitrator, based on the above reasons, decides to set aside the decision of 13 June 2008. The sanction of one year of ineligibility imposed on Mr Sheykhov is therefore cancelled and Mr Sheykhov can therefore participate in all competitions which will take place after the notification of the present decision.
57. This does however not mean that Mr Sheykhov is eligible for the participation in the Games of the XXIX Olympiad 2008. Indeed, this ineligibility results from his disqualification and the non classification decided by the FILA Refereeing Body on 19 April 2008, which cannot be reviewed by the CAS, but only by a State Court.
58. Furthermore, the annulment of the FILA Federal Appeal Commission's decision concerns only Mr Sheykhov, given that the appeal was made in his sole name and that, in particular, Mr Mourzinkov was not a party to the proceedings before the CAS. Therefore, the Sole Arbitrator cannot render an award concerning third parties.

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Ruslan Sheykhov against the decision of the FILA refereeing body dated 19 April 2008 is inadmissible.
2. The appeal filed by Mr Ruslan Sheykhov against the decision of the FILA Sporting Judge dated 28 April 2008 is inadmissible.
3. The appeal filed by Mr Ruslan Sheykhov against the decision of the FILA Federal Appeal Commission, announced by letter of 13 June 2008, is admissible.
4. The decision of the FILA Federal Appeal Commission, announced by letter of 13 June 2008, is set aside, as far as it concerns Mr Sheykhov.
5. (...).
6. All other claims are rejected.