Dispute Resolution Hotline

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WRESTLING WITH JUSTICE: VINESH PHOGAT'S APPEAL TO COURT OF ARBITRATION FOR SPORT

- On 7 August 2024, Indian wrestler Vinesh Phogat was disqualified from the women's 50 kg freestyle final of the 2024 Paris Olympics for exceeding the weight limit by 100 grams. She has appealed her disqualification to the ad-hoc division of the Court of Arbitration for Sport ("**CAS**").
- To facilitate faster dispute resolution during the Olympics, the CAS establishes ad-hoc divisions that operate under a specialized procedure. The CAS Ad-Hoc Division has appointed Hon Dr. Annabelle Bennett AC SC, a retired Judge of the Federal Court of Australia, as the sole arbitrator, to review Phogat's plea.
- Phogat now seeks to be awarded a shared silver medal, arguing that her qualification for the final justifies this recognition. However, given CAS' general reluctance to overturn decisions made by the International Olympic Committee and International Federations during the 2024 Olympics, the outcome of Phogat's plea to CAS remains uncertain.

On 7 August 2024, Indian wrestler Vinesh Phogat was disqualified from the women's 50 kg freestyle final of the 2024 Paris Olympics. Phogat's journey to the final was a groundbreaking achievement, marking her the first Indian woman to compete in an Olympic wrestling final. Her path included a notable victory over defending Olympic champion Yui Susaki in the Round of 16 and a decisive 5-0 win in the semifinals.

However, on the day of the final, the United World Wrestling ("**UWW**") disqualified Phogat for exceeding the weight limit by 100 grams. This disqualification not only prevented her from competing for the gold medal but also made her ineligible for the silver medal, which she would have received had she lost the final.

On 7 August 2024, an hour before the final match, Phogat appealed her disqualification to the ad-hoc division of the Court of Arbitration for Sport ("**CAS**"). Initially, she prayed for a new weigh-in before the final match and asked to be declared eligible and qualified to compete in the final.[1] However, according to the CAS Media Release, a final decision on the merits could not be issued before the final round, which was set to occur within the hour. The Media Release also notes that no urgent interim relief was sought by Phogat. Had she done so, a decision on urgent interim relief may have been granted on an *ex-parte* basis(i.e. without hearing the UWW).

Phogat now seeks to be awarded a shared silver medal, arguing that her qualification for the final justifies this recognition. A sole arbitrator, Hon Dr. Annabelle Bennett AC SC, a retired Judge of the Federal Court of Australia, has been appointed to review Phogat's plea. The hearing is currently in progress, with a decision likely before the conclusion of the 2024 Olympic Games on 11 August 2024.

THE OLYMPIC GAMES AND DISPUTE RESOLUTION

The Olympic Charter, under Rule 61, provides that a dispute arising on the occasion of or in connection with the Olympic Games shall be referred to the CAS. In certain situations, disputes regarding the application or interpretation of the decisions of the International Olympic Committee ("**IOC**") may also be referred to the CAS. Athletes explicitly consent to this method of dispute resolution when they sign the entry form for the Olympics.

The CAS, established in 1983 by the IOC, is a private arbitral institution designed to resolve international sports-related disputes through a flexible, efficient and cost-effective procedure.[2] Typically, the CAS has a standard procedure for resolving sports-related disputes under the Code of Sports-Related Arbitration. However, to facilitate faster dispute resolution during the Olympics, the CAS establishes ad-hoc divisions that operate under a specialized procedure. These ad-hoc divisions follow distinct rules designed for expedited dispute resolution. However, they have the discretion to refer all or part of the dispute to be resolved through arbitration under the CAS standard procedure, which involves appointing arbitrators and following the more detailed processes outlined in that procedure. In such instances, the ad-hoc divisions may grant preliminary relief, which remains in effect until the dispute is resolved through the CAS standard procedure.

PROCESS BEFORE THE CAS AD-HOC DIVISION FOR THE 2024 OLYMPICS

The arbitration rules for the CAS Ad-Hoc Division ("**Ad-Hoc Division Rules**") are designed to efficiently resolve disputes covered by Rule 61 of the Olympic Charter that arise during the Olympics or within ten days before the opening ceremony, prioritizing athletes and the integrity of sport.[3] To initiate this process, claimants can submit disputes through an application form available on the CAS website.[4]

Before submitting a request for arbitration under these rules, the Claimants are required to exhaust all internal

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remedies against decisions made by the IOC, National Olympic Committees, International Federations, or the Organizing Committee.[5] This requirement may be waived if exhausting such remedies would render an appeal to the CAS Ad-Hoc Division ineffective.[6] From the publicly available information, it is currently unclear if, and to what extent, any other internal remedies were sought by Phogat before filing the appeal.

To facilitate the arbitration process, the International Council of Arbitration for Sport publishes a special list of arbitrators prior to the Olympic Games. Upon initiating a claim, a three-member arbitral panel is typically constituted from this list; however, the President of the Ad-Hoc Division retains the discretion to appoint a sole arbitrator.[7] As mentioned above, in the present case, a sole arbitrator was appointed. The rules also include provisions for challenging and disqualifying arbitrators, which are consistent with those of major arbitral institutions.

All arbitrations under these rules are seated in Lausanne, Switzerland, and are governed by Chapter 12 of the Swiss Act on Private International Law.[8] Notably, parties without a domicile, habitual residence, or business establishment in Switzerland may not initiate set-aside proceedings for such awards if they have waived such rights.[9]

The rules also provide for *ex-parte* interim relief in cases of "*extreme urgency*", allowing the President of the Ad-hoc Division to grant such relief even before the arbitral panel is constituted.[10] While granting such relief, the ad-hoc division considers whether the relief is necessary to protect the applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the interests of the applicant outweigh those of the opponent or of other members of the Olympic Community.[11] At this juncture, it is unclear why urgent interim relief was not sought by Phogat.

Decisions by the arbitral panel are required to be given within 24 hours of lodging the application, although this time limit may be extended by the President of the Ad-Hoc Division.[12] Given the tight timelines, many standard arbitration practices - such as case management conferences, expert reports, written witness statements, procedural calendars, and detailed submissions - are often bypassed in these proceedings. Professor Antonio Rigozzi, a founding partner and head of the Sports Arbitration Department at Levy Kaufmann-Kohler, has famously described the proceedings before the ad-hoc divisions of CAS as "*rock 'n' roll, with no safety net*," reflecting their fast-paced, time-sensitive nature.[13] Despite these expedited procedures, any set-aside proceedings for such awards have rarely succeeded.[14]

This emphasis on time-effective results within the Ad-Hoc Division Rules allows the operative part of the award to be issued even before the reasons for the decision are fully disclosed.[15] These awards are published on the CAS website unless the parties request confidentiality. The rules also incorporate a scrutiny process, enabling the President of the Ad-Hoc Division to review the panel's decisions and suggest amendments as needed.[16]

INTERNATIONAL WRESTLING RULES

The UWW's International Wrestling Rules ("**UWW Rules**") govern women's freestyle wrestling in the Olympics.[17] The UWW Rules require each weight category that sees participation of 16 or more wrestlers, to be organised over two days, with two weigh-ins being held. The first weigh-in is held on the morning of the first day when the qualifying rounds are scheduled and the second weigh-in is held on the morning of the second day when the finals and repechages are scheduled.[18] The medical control and first weigh-in lasts for 30 minutes and the second weigh-in lasts for 15 minutes. Throughout the duration of the weigh-ins, the wrestlers are permitted to get on the scale as many times as they wish.[19]

In case an athlete fails any weigh-ins, they are eliminated from the competition and ranked last, without a rank in the competition.[20] The only exception to such elimination is in case of a Medical Service Intervention ("**MSI**").[21] The MSI exception can be relied on to seek an exemption from the second weigh-in provided (a) the injury has taken place during the competition (b) the injured wrestler announces their injury to the UWW doctor within an hour after the end of the first day. A wrestler availing the MSI exemption will be considered to have lost the match due to injury and will be ranked based on the points earned until the injury. However, if the UWW doctor proves that a wrestler has feigned an injury to avoid competing, the wrestler will be disqualified and placed last in the ranking.[22]

PRIOR DECISIONS OF THE CAS AD-HOC DIVISION

During the 2024 Olympics, the Ad-Hoc Division of the CAS reportedly heard several cases, most of which resulted in rejected appeals. In many instances, the Ad-Hoc Division determined that it lacked jurisdiction to resolve the disputes, while in others, it dismissed the appeals after consideration. One notable case involved the dismissal of an appeal by the Canadian Olympic Committee and Canada Soccer, who challenged FIFA's decision to dock six points from Canada's standings.[23] This penalty, which also included a one-year ban for the team's coach, was imposed due to the team's use of drones over New Zealand team's training sessions prior to their opening match.

However, in one reported instance, the CAS set aside the decision of the Athletics Integrity Unit and upheld the appeals of three Brazilian athletes, permitting them to participate in the 2024 Olympics based on exceptional circumstances.[24]

WAY FORWARD

The outcome of Phogat's appeal to CAS remains uncertain. Given CAS' general reluctance to overturn decisions made by the IOC and International Federations during the 2024 Olympics, her chances of success appear slim. Compounding the challenge is the UWW Rules, which clearly state that any athlete who fails a weigh-in is automatically eliminated from the competition and ranked last, without a rank.

However, it is possible that the CAS review the proportionality of the sanction in this case by prioritizing its mandate to resolve disputes in the interests of the athletes and the sport. Notably, the International Olympic Jury of Appeal previously reduced the sanction against Kenya's Faith Kipyegon, despite finding non-compliance, by reinstating her silver medal and issuing only a yellow card instead of a disqualification.[25]

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Should Phogat's appeal be dismissed by CAS, she may pursue set-aside proceedings before the Swiss Federal Tribunal if such a right has not been waived by her. However, as mentioned above, these proceedings rarely succeed.

In the wake of Phogat's disqualification, the Indian Olympic Association has proposed to the UWW that the UWW Rules be modified regarding the consequences of failing a weigh-in, suggesting that a disqualification should not apply to the rounds held on the day when the wrestler met the weigh-in requirements. The power to make such modifications to the UWW Rules, based on suggestions put forward by auxiliary bodies, rests solely with the UWW Congress.[26] While the UWW President has agreed to discuss this proposal, any modification arising from it would not be made applicable retrospectively.[27] Therefore, Phogat is unlikely to benefit from any such modification of the rules.

For more details on sports arbitration in India and internationally, please see our sports arbitration paper here.

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You can direct your queries or comments to the relevant member.

[1]Media Release dated 9 August 2024 for CAS OG 24/17 *Vinesh Phogat v. United World Wrestling & the International Olympic Committee (IOC)*: see here.

[2]See https://www.tas-cas.org/en/general-information/index/.

[3]Ad-Hoc Division Rules, Article 1.

[4]Ad-Hoc Division Rules, Article 10; *also see* here.

[5]Ad-Hoc Division Rules, Article 1.

[6]Ad-Hoc Division Rules, Article 1.

[7]Ad-Hoc Division Rules, Article 11.

[8]Ad-Hoc Division Rules, Article 7.

[9]Ad-Hoc Division Rules, Article 21.

[10]Ad-Hoc Division Rules, Article 14.

[11]Ad-Hoc Division Rules, Article 14.

[12]Ad-Hoc Division Rules, Article 18.

[13]*See* here.

[14]*See* 2024 PAW: Sports Law and the Upcoming Olympics – What Role for Arbitration?

[15]Ad-Hoc Division Rules, Article 19.

[16]Ad-Hoc Division Rules, Article 19.

[17]UWW Rules, Article 3.

[18]UWW Rules, Article 8.

[19]UWW Rules, Article 11.

[20]UWW Rules, Articles 11, 13, 14.

[21]UWW Rules, Articles 11 and 55.

[22]UWW Rules, Article 14.

[23]*See* here.

[24]CAS OG 24/05 *Livia Avancini v. World Athletics*; CAS OG 24/06 *Max Batista v. World Athletics*; and CAS OG 24/07 *Hygor Bezerra v. World Athletics*: see here.

[25]*See* here.

[26]UWW Rules, Chapter 12.

[27]United World Wrestling Press, 'UWW Statement: Lalovic meets IOA President, WFI in Paris' (UWW, 7 August 2024): see here.