

Is a Referee's Decision Open for Appeal?

The case: At the 2012 Summer Olympic Games in London Swiss athlete Nicola Spirig won the gold medal in the women's triathlon competition taking place on 6 August 2012, while Swedish athlete Lisa Norden was awarded silver. The outcome of the event was very tight; both athletes crossed the line in the same time, at 1.59.48. On 9 August 2012, the Swedish team filed an appeal with CAS ad-hoc division and requested that the ranking be changed to a tie between the two first athletes and that, thus, the Swedish athlete was awarded a gold medal too. On 9 and 10 August 2012, further briefs were exchanged and on 10 August 2012 at 6 pm a hearing took place before the CAS ad-hoc division. Following the hearing, the CAS ad-hoc division decided to dismiss the appeal and not to award a second gold medal to Swedish athlete Lisa Norden.

The decision: In order to come to its judgement, the CAS ad-hoc panel first discussed when, according to the relevant rules, an athlete actually finishes a triathlon race. The relevant rules of the International Triathlon Union ITU state that an athlete will be judged finished in the moment when any part of the torso reaches the perpendicular line extending from the leading edge of the finish line. In this context a torso is defined as the section of the body extending from the base of the neck to the base of the sternum. The CAS ad-hoc panel then noted that according to the decision of the referee in charge it was the Swiss athlete that crossed the line first, meaning that her torso reached the perpendicular line extending from the leading edge of the finish line first. The CAS ad-hoc panel further explained that this was *field-of-play decision* which, as a rule, is binding for the CAS. As the referee had not acted arbitrarily or in bad faith the CAS ad-hoc panel determined that it had no right and no reason to intervene and to change the final result of the event.

Conclusions: The decision of the CAS ad-hoc division and its reference to the *field-of-play principle* raises a basic question in sports arbitration and litigation. To what extent shall a decision taken during a sports event be open for appeal?

The difference between *rules of the game* and the *rules of law* are of paramount importance in this context. The rules of the game are applied by the referee during a sport event. The purpose of the rules of the game is to ensure a fair competition, and they are aimed at regulating the athletes' conduct during a competition only. In other words, they affect only the

course of the competition, but do not affect the personality or other rights of an athlete. They are, and should be, final. They do not have any legal effect. This was the case in the women's triathlon matter so that the CAS ad-hoc panel did not deem itself competent to review the referee's decision.

On the other hand, rules of law are those rules that have a legal effect after the competition and that affect an athlete's personality or other rights. There is a common consensus that rules of the game or field-of-play decisions are not open to appeal, while decisions that apply rules of law are.

There is, however, one exception to the rule that field-of-play decisions are final. It is a generally accepted principle that a decision that has been taken during a match or competition may be open for a challenge if the decision has been taken in an arbitrary manner and where the decision would qualify as a serious breach of the principle of good faith. But otherwise, any field-of-play decision, even if there is a mistake, is final and not open for appeal. In the author's view, there is also a practical, non-legal, justification for this principle. Once a sports competition is over the result shall be valid. If any sporting result was open for challenge for any kind of alleged breach of rules of the game, this would kill the special spirit of sports which lives from the momentum and where the athletes and the audience wants to be sure that a result stands when they leave the stadium.

(Source: TAS/CSAS OG 12/10; available at: <http://www.tas-cas.org/d2wfiles/document/6238/5048/0/Decision2010.PDF>; accessed 18 December 2012).