



Arbitration CAS 2012/A/2789 International Paralympic Committee (IPC) v. I., Venezuelan National Paralympic Committee (COPAVEN), Venezuelan National Anti-Doping Organization (VNADO) & Sport Federation for Visually Impaired Athletes in Venezuela (FEPOCIVE), award of 17 December 2012 (operative part of 28 August 2012)

Sole Arbitrator: Prof. Michael Geistlinger (Austria)

Paralympic athletics

Doping (methenolone)

Responsibility of athletes for their choice of medical personnel and for advising medical personnel

Burden of proof by a “balance of probability” in order to rebut a presumption or establish specified facts

Violation of the athlete’s right to be timely informed of the anti-doping rule violation and CAS power of review

Equal treatment of totally blind athletes by the anti-doping organization representing the paralympic movement

1. WADA adduces the example of sabotage by a competitor despite due care of the athlete concerned as fulfilling the requirements of Article 10.5.1 WADC. On the other hand Article 10.5.2 might be applicable under particular circumstances in cases of administration of a prohibited substance by the athlete’s personal physician or trainer without disclosure to the athlete, because *“Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance”*. The same logic applies for sabotage of the athlete’s food or drink by a spouse, coach or another Person within the Athlete’s circle of associates, because *“Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink”*.
2. The Athlete has to observe established rules of evidence in proving No Fault or Negligence (Article 10.5.1) or No Significant Fault or Negligence (Article 10.5.2). When the burden of proof is upon the athlete to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a “balance of probability”. The balance of probability standard is set forth by the WADC and by the CAS jurisprudence and means that the athlete alleged to have committed a doping violation bears the burden of persuading the judging body that the occurrence of a specified circumstance is more probable than its non-occurrence.
3. The violation of the athlete’s right to be informed in a fair and timely manner of the asserted anti-doping rule violation according to Article 8.1 WADC constitutes a procedural flaw. According to general CAS jurisprudence, the virtue of an appeal system which allows for a full rehearing before an appellate body is that any defects in the procedure before the body appealed from to CAS are cured by the procedure before CAS. The Panel must however first determine whether the athlete lost any chance to demonstrate how the prohibited substance entered the athlete’s body and that there was No Fault or Negligence or No Significant Fault or Negligence through

the time that passed. Furthermore, such procedural flaw will be taken into account if it led to *“delays not attributable to the athlete”* in the understanding of Articles 10.9.1 WADC and IPC Anti-Doping Code respectively in order to determine the commencement of the period of ineligibility.

4. Even, if it has to be admitted that a totally blind athlete has not the same possibilities as an athlete without such impairment to protect against sabotage, such athlete is in totally the same position as all other totally blind athletes. Once an organization representing the paralympic movement, including the interests of all impaired athletes, has found reasonable and adequate to commit to the WADC and adopt an Anti-Doping Code which includes the same obligations for impaired athletes as for athletes without impairment, the measure for guaranteeing equality has shifted to a guarantee of equality between impaired athletes. All totally blind athletes have the same obligation, to be aware of possible sabotage and protect against by carefully selecting their entourage, in order to make sure that no prohibited substance can enter their body.

I. THE PARTIES

- 1.1. The International Paralympic Committee (hereinafter referred to as “IPC”) is the global governing body for the Paralympic Movement and the International Sport Federation (IF) for 9 sports for athletes with a disability. The IPC controls the eligibility and entry procedures for the Paralympic Games, including the 2012 London Paralympic Games. The IPC has adopted the IPC Anti-Doping Code (hereinafter referred to as “IPC-Code”) in compliance with its obligations to WADA being a signatory to the World Anti Doping Code (hereinafter referred to as “WADC”).
- 1.2. I. is an international level athlete licensed and classified within the IPC structure. On 22 October 2009 she signed the IPC Athlete Eligibility Code Form. She qualified and was selected by the Venezuelan National Paralympic Committee to represent Venezuela at the 2012 London Paralympic Games. She is member of the Sport Federation for Visually Impaired athletes in Venezuela.
- 1.3. The Venezuelan National Paralympic Committee (hereinafter referred to as “COPAVEN”) is the national representative body for the Paralympic Movement within Venezuela and member of the IPC.
- 1.4. The Venezuelan National Anti-Doping Organization (hereinafter referred to as “NADO”) is a signatory of the WADC and the National Anti-Doping Organisation for Venezuela.

- 1.5. The Sport Federation for Visually Impaired athletes in Venezuela (hereinafter referred to as “FEPOCIVE”) is the national sport federation for Venezuelan athletes with visual impairment and has the responsibility and control over I.’s competition activities.

II. FACTS

- 2.1. On 21 August 2011, on the occasion of the first Venezuelan Paranaional Games, which took place in Barquimisetto, Lara, Venezuela, the First Respondent had to undergo an in-competition doping test after running the 200 m Final. This test was conducted by the Third Respondent under the authority of the Fourth Respondent. The urine sample contained the prohibited substance Methenolone.
- 2.2. Methenolone is an anabolic agent included in the WADA Prohibited List under Class S1.a Exogenous Anabolic Androgenic Steroids (AAS).
- 2.3. On 10 October 2011, the Fourth Respondent was informed by the Third Respondent on the Adverse Analytical Finding, established by analysis of the First Respondent’s sample by the Anti-Doping Laboratory of the Institute of Medicine of Cuba. The First Respondent received this information from the Fourth Respondent on 20 October 2011. The report of the laboratory to the Third Respondent dated of 14 September 2011 and was sent on 16 September 2011. The First Respondent did not request an analysis of the B sample and did not dispute the results in her statement in writing addressed to the Fourth Respondent dated 24 October 2011. However, the First Respondent declared in this statement being innocent.
- 2.4. The First Respondent argued in her statement dated 24 October 2011, that her sport performance did not show any irregularities, that since she was already qualified for the 2012 London Paralympic Games it did not make any sense for her to take a prohibited substance and she could not have any intention to do so. Further to that she could not apply doping in-competition because she was all the time competing. A subsequent doping test in November 2011 did not show any Adverse Analytical Finding. All this together with the fact, that it would have been nonsense for her to risk her university studies and later career by losing the necessary financial support in case of doping, made her assume that she was a victim of sabotage.
- 2.5. On 3 November 2011, the Fourth Respondent’s judicial authority (Honorary Council) decided not to impose any other sanction on the First Respondent than automatic disqualification of her results, medals, points, and prizes according to Article 9 WADC athlete and held as follows:

“In reaching our decision, we investigated the athlete’s track record, prior anti-doping test history and the substance that was found in her body. We also took information from the reports supplied by both the doctor at the National Institute of Sport, Dr Leonardo Núñez, and the athlete I., as well as the list of time achieved in 2011 competitions. We had recourse to the regulation that had been breached (the World Anti-Doping Code) and finally the arguments that led to our decision

(...)

8. BASIS FOR REACHING A DECISION

Taking into account the sporting career of I., a Paralympic athlete with total visual impairment, the investigation carried out by our staff with regard to the substance (methenolone), the medical report from Dr Leonardo Núñez, the report submitted by the athlete herself, as well as the list of the times achieved over the last year and finally the Articles of the World Anti-Doping Code that have been violated, we have reached the following conclusion:

I. *According to the report submitted by the doctor, the athlete has not shown any of the effects to which the substance gives rise; in fact, among the medication that has been given to her we have L-Carnitine, whose main function is to reduce body fat, this means that this medication is necessary for her.*

II. *The investigation carried out by our working party found that it is a substance that needs to be combined with others to achieve the required results, this leads us to note that in the anti-doping test only one substance appeared in the analysis; methenolone alone would only produce an abnormal result in an anti-doping test; it would not be logical to use in an isolated form.*

III. *From the report submitted to the Blind Sport Federation of Venezuela by I., given that she is a person with total visual impairment, it is easy to imagine that someone could have given her something without her knowing what it was, who knows with what aim.*

IV. *The background of having already undergone an anti-doping test at an international level, with a negative result, indicates that the athlete has played clean in her sporting life; in addition to this is the fact that the athlete has already achieved the qualifying time for the 2012 Olympics and therefore conscious use of the substance on her part would not make sense.*

V. *From the list of the times obtained by the athlete over the last year, it can be seen that the substance only caused a changed result in the anti-doping test; there is evident instability between one event and another. Experience tells us that an athlete using prohibited substances improves his or her sporting performance considerably but there is no evidence of this with I.*

VI. *In relation to food, although it is not possible to demonstrate precisely that this was how she might have consumed methenolone, it is true to say that in our investigation we saw that sheep were given the substance with the aim of observing the muscle mass that they achieved: it is also important to say that the Coleo Federation Regulation prohibits anti-doping on animals that are to be used in competitions (bulls and horses).*

VII. *Although Article 2.1.1 of the Code states that it is each athlete's personal duty to ensure that no prohibited substance enters his or her body, athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their samples; accordingly, it is not necessary that intent, fault, negligence or knowing use on the athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1. We must ask ourselves, is this section applicable to someone with total visual impairment? Can someone under these conditions distinguish what is happening around her?*

9. DECISION

Given that I. is totally blind, it is possible that even when the World Anti-Doping Code states that: a) athletes are responsible for the products that they ingest (Article 2.1.1), and have been advised of the possibility of contamination of supplements; b) athletes are responsible for choosing their medical staff and advising these staff of the prohibition on receiving any prohibited substance; and c) athletes are responsible for what they ingest and the behaviour of the persons to whom they entrust responsibility for their food and drinks. In the case of the athlete in question, it is genuinely impossible for her to control for herself the things that anyone might give her due her total visual impairment.

With reference to the sanction, immediately after receiving the notice, in accordance with the procedure set out in the Code, the Honorary Council of the Federation provisionally suspended the athlete until a final decision could be reached. Any benefits of which she had been in receipt since she had formed part of the national team were likewise immediately suspended. We based this action on the following Article of the World Anti-Doping Code:

7.5. Principles Applicable to the Provisional Suspensions.

7.5.1 Mandatory Provisional Suspension after A Sample Adverse Analytical Finding

Signatories shall adopt rules, applicable to any event for which the Signatory is the ruling body or for any team selection process for which the Signatory is responsible or where the Signatory is the applicable International Federation or has management authority over the alleged anti-doping rule violation, providing that when an A Sample Adverse Analytical Finding is received for a Prohibited Substance, other than a Specified Substance, a Provisional Suspension shall be imposed promptly after the review and notification described in Articles 7.1 and 7.2.

However, provisional suspension shall not be imposed unless the athlete is given: (a) the opportunity to take part in a hearing prior to the provisional suspension being imposed, or at the relevant time after the provisional suspension has been imposed; or (b) an opportunity for an urgent hearing to be held as per Article 8 (Right to a Fair Hearing) immediately after a provisional suspension has been imposed. Articles 7.1 and 7.2 of the Code read as follows:

7.1 Initial Review Regarding Adverse Analytical Finding

Upon receipt of an A Sample Adverse Analytical Finding, the Anti-Doping Organisation responsible for results management shall conduct a review to determine whether: (a) applicable therapeutic use exemption has been granted or will be granted as provided in the International Standard for Therapeutic Use Exemptions, or (b) there is any apparent departure from the International Standard for Testing or International Standard for Laboratories that caused the Adverse Analytical Finding.

7.2 Notification After Initial Review Regarding Adverse Analytical Findings.

If the initial review of an Adverse Analytical Finding under Article 7.1 does not reveal an applicable therapeutic use exemption or entitlement to a therapeutic use exemption as provided in the International Standards for Therapeutic Use Exemptions, or departure that caused the Adverse Analytical Finding, the Anti-Doping Organization shall promptly notify the Athlete, in the manner set out in its rules, of: (a) the

Adverse Analytical Finding; (b) the anti-doping rule violated; (c) the Athlete's right to promptly request the analysis of the B sample or, filing such request, that the B sample analysis may be deemed waived; (d) the scheduled date, time and place for the B sample analysis if the Athlete or Anti-Doping Organisation chooses to request an analysis of the B sample; (e) the opportunity for the Athlete and/or the Athlete's representative to attend the B sample opening and analysis within the time period specified in the International Standard for Laboratories if such analysis is requested; and (f) the Athlete's right to request copies of the A and B Sample laboratory documentation package which includes information as required by the International Standard for Laboratories. The Anti-Doping Organisation shall also notify the other Anti-Doping Organisations described in Article 14.1.2. If the Anti-Doping Organisation decides not to bring forward the Adverse Analytical Finding as an anti-doping rule violation, it shall so notify the Athlete and the Anti-Doping Organisations as described in Article 14.1.2.

Since the decision was taken to provisionally suspend the athlete, almost two months have passed, from 16 September to 3 November, the time which it has taken to make all the necessary checks in order to reach a decision on the case. It is important to note that the athlete has not competed since the Paranaional games.

Finally, ob the basis of our autonomy as the Honorary Council of the Federation, and on the grounds of the aforesaid arguments, the fact that it is not possible to demonstrate how the substance arrived in I.'s body and our opinion, we have decided the following:

We have decided not to continue the suspension given that our investigation has led us to the conclusion that the athlete is innocent of what she is accused; someone did it to her in order to prejudice her. We consider that the substance was administered to her without her consent since as we have stated, the substance on its own does not cause any effect.

It is difficult to determine who could have done this.

As the substance was found in her body at the time of the competition the following article of the Code of its application:

ARTICLE 9: AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS

An anti-doping rule violation in connection with an In-Competition test automatically leads to Disqualification of the individual results obtained in that Competition with all resulting consequences, including forfeiture of any medals, points and prizes.

While the point of this article is clearly expressed, we must say that the athlete with her times achieved both in New Zealand with 28.75 in the 200 metres and in Turkey with 13.77 in the 100 metres and 1.05.26 in the 400 metres, would have still won since the athlete who came second did so in 13.85 in the 100 metres, 28.85 in the 200 metres and 1.16 in the 400 metres. This means that the substance that was in I.'s body at the time had no influence on the final result; but likewise we must comply with the provisions of the Article 9 of the Code, namely the disqualification of the results obtained by the athlete, any additional prizes to which these may have led and forfeiture of the medals.

It should be noted that in her report, the athlete deliberately made the medals that she won during the games available.

Finally, we will submit I. to anti-doping tests for a considerable length of time with the aim of keeping her under constant monitoring”.

- 2.6. On 9 November 2011, the Second Respondent asked the Appellant for admission of the First Respondent to participate at the Parapanamerican Games which took place in Guadalajara, Mexico, from 12 – 20 November 2011.
- 2.7. On 10 November 2011, a meeting between representatives of the Appellant and the Second Respondent took place in Guadalajara, Mexico. As a result of this meeting, the IPC Anti-Doping Committee Member Joseph de Pencier sent a letter to the Second Respondent on 11 November 2011, which reads as follows:

“In response to your letter dated 09 November 2011, and following the meeting with your delegation here in Guadalajara last night, the IPC understands that I. has an Adverse Analytical Finding for an anabolic steroid. The IPC also understands that under Venezuelan anti-doping rules, there has been a determination by the national federation’s Honour Committee that the athlete has committed an Anti-Doping Rule Violation but should not be sanctioned. The IPC also understands that a provisional suspension was imposed but was lifted as of November 3.

It does not appear that the decision of the Honour Committee is in accordance with the requirements of the World Anti-Doping Code and of national anti-doping rules in compliance with the Code. According to those requirements, an athlete is ‘strictly liable’ for any prohibited substance found in the athlete’s sample. Only if there are ‘exceptional circumstances’ can a suspension be partially or completely lifted. The information provided to the IPC to date does not demonstrate that there are ‘exceptional circumstances’ in this case that were properly considered by the Honour Committee. Furthermore, the IPC has no authority to consider the athlete’s circumstances because her Adverse Analytical Finding was not from a sample collected by the IPC or under the authority of the IPC.

Unless there is further information demonstrating that the Honour Committee has made a decision in accordance with the requirements of the World Anti-Doping Code and of national anti-doping rules in compliance with the Code, the IPC cannot permit the athlete to compete at the 2011 Parapan American Games.

As discussed with your delegation last night, if the athlete has received poor advice or direction from a coach or trainer or other member of the Venezuelan sport system, you should consider whether that person or persons should be investigated and disciplined”.

- 2.8. On 10 December 2011 the Honorary Council of the Fourth Respondent informed the President of the Second Respondent that in response to her communication dated 20 November 2011 the Honorary Council had decided to conduct further investigations as to the First Respondent and her entourage which shall be completed approximately by the end of January 2012. In this period and until communication of the final results of these investigations the First Respondent was not allowed to compete.
- 2.9. On 23 February 2012, the First Respondent, having been declared ineligible for participation at the Parapanamerican Games and having not received any information from the Fourth

Respondent by end of January 2012, submitted an Appeal before the Honorary Council of the Fourth Respondent and requested to decide on the following petitions:

“ONE: *That the Honorary Council admit the Appeal for Authorization and/or Reauthorization filed, as it is not contrary to the law and does not contain any offensive expressions or any that are in breach of decency or morality.*

TWO: *That the Honorary Council declare that the appeal filed is ADMISSIBLE, on the grounds that effectively the judgment passed on 03 November 2011 violates my Right to Defence, the Presumption of Innocence, the Right to Sport, the Right of Redress, the Right to Free Development of Personality and the Right to Equality, as the recipient of these rights, established in the Constitution of the Bolivarian Republic of Venezuela and in articles 2, 6 (section 1), 8, 15 (sections 2, 4 and 8), 72 (section 6), 73, 74 (sections 1, 2, 4 and 5), 77 and 78 of the Constitutional Law on Sport, Physical Activity and Physical Education.*

THREE: *That as a result of the infringement of the rights referred to in the second petition and based in reality on the Principle of Harmonization, whose area of discussion and debate in the debate has been detailed and which has been the source of jurisdictional conflicts between international bodies and national sports bodies, and the consensus reached at the World Anti-Doping Conference held in Lausanne in February 1999, I was suspended for a period of two years for an initial serious offence, based on the principle mentioned and the scale of suspension set out in article 10.2; I request the weighting of this article, based on the provisions of article 10.3, paragraph 1, i.e. applying the maximum suspension of one year but reducing the penalty not expressed in any of the communications either from the Honorary Council of FEVEPOCIVE or from the IPC Anti-Doping Committee, to six (6) months, starting from 15 August 2011, within the scope of the First Paranaional Sports Games held in Barquisimeto, State of Lara.*

FOUR: *That, accepting and admitting the proposal made in the previous petition, the Honorary Council of FEVEPOCIVE expressly declare that the athlete I., holder of identity document no. [...], specializing in visually impaired athletics (category T11), be fully Authorized and/or Reauthorized to practise the sport of her choice, especially Athletics, as from 1 March 2012, and to hold and make use of all rights and fulfil all the duties laid down in the Constitutional Law on Sport, Physical Activity and Physical Education and its Regulations.*

FIVE: *That the Honorary Council of FEVEPOCIVE, once it has given its decision, notify it to the Anti-Doping Commission of the Bolivarian Republic of Venezuela, to the Board of the Instituto Nacional de Deportes, to the Medical Directorate of that body, to the Governing Board of the Federación Polideportiva de Ciegos of Venezuela, to the Governing Board and to the athlete I., identified above in the heading of this document.*

...”

(bold letters in the English translation of the Spanish original, submitted by the Appellant).

- 2.10. On 14 March 2012 the Honorary Council of the Fourth Respondent held that the facts as described by the First Respondent in her Appeal dated 23 February 2012 were established as such and ruled as follows:

“II. POINTS TO BE DECIDED ON

*Certainly for this Council, the decision is unusual, with regard to the end of the administrative act issued, since, as the enacting clauses of the decision are exonerating, however, article 9 of the World Anti-Doping Code is contradictorily applied, which requires her to give up the prizes and places taken. Consequently, there are reasons for considering that the **Principle of Congruence** in the decision forming the subject of this appeal has been violated and therefore undoubtedly affects the essential substance thereof, namely the lack of guilt or gross negligence in the act the athlete **I.** is accused of.*

*In the decision on the case, it is also noted, in the formalities relating to the enacting terms, that the Honorary Council ends by saying, “**Without having anything further to add and hoping for a prompt response**”, when it should have informed the accused athlete of the relevant appeals, indicating the periods for filing them, if there are any (article 73 of the Constitutional Law on Administrative Procedure), or which bodies or courts they may be filed before.*

*This judicial authority admits that that is not an appropriate way to conclude an administrative act, as the lack of formality thereof is unequivocal, as it is a decision and not a report, and there is no indication of the appeal or appeals to which the party to the proceedings may have access, the time for filing them or before which authority. That invalidates the act pronounced and violates the right to defence and due process, since, until a decision or final judgment is pronounced, the party is presumed to be innocent. **Thus declared.***

*The aforesaid invalidation and violation are effectively aggravated when the athlete penalized cannot even gain access to the new authority created by the Constitutional Law on Sport, Physical Activity and Physical Education, known as the **Commission for Sports Justice** as the authority for hearing the decisions of the National Sports Federations, among others, owing to gross or very gross negligence; as **the members of the highest judicial body mentioned have not been selected and nor has the Commission been formed, making it advisable for her to have recourse to it, without fixing a date, and the damage caused irreparable; on which account it is also impossible, and totally illogical, for the aforesaid body to hear an additional penalty (removal of prizes, points and places won in competitions), when the judge sitting resolved that the athlete was not guilty. Subsequently, as a result of the lack of action of the final decision-making authority in administrative proceedings, despite the certain date of its creation (23/08/11) and the date of pronouncement of the decision of the Honorary Council (03/11/2011), one has to conclude that, owing to causes and reasons not attributable to the athlete, her Right to Defence and Due Process, to the Right of Redress, to the Right to Sport, to the Free Development of her Personality and the Right of Equality before the law, established in articles 49 (sections 1, 2, 4 and 8), 26, 111, 20 and 21 of the Constitution of the Bolivarian Republic of Venezuela, has been violated. Thus declared.***

*Moreover, this authority establishes that the confused response of the **IPC Anti-Doping Committee** member, given as a result of the opinion requested on 9 November 2011 by the **Chairman of the Paralympic Committee of Venezuela** and the aforesaid meeting, in Guadalajara city, Mexico, actually resulted in her disqualification as a high-performance athlete. It does not constitute an administrative*

*act strictly speaking, from the point of view of Administrative Procedural Law, satisfying the formalities thereof. However, the letter mentioned firmly provides the anti-doping body with the opportunity to apply the **World Anti-Doping Code** without restriction, on the presumption that the decision of the **Honorary Council of FEVEPOCIVE** does not agree with the requirements laid down in that instrument or in the **Venezuelan Anti-Doping Regulation**. The evident absence of the formalities of any administrative act by the international judicial body has certainly has submerged her in a legal world which is seriously affecting the athlete's sports career. Thus declared.*

*It should be pointed out that, in the case of the athlete **I.**, her alleged unlawful conduct in the sports context does not result from the harm or from the danger that may be caused to the athlete's health but from the fact that the denied fraud she could have committed by swallowing the substance enhanced her performance in the competition, giving her an advantage over other participants. As shown by a reading of this Council's decision, however, the substance referred to in the Cuban Laboratory Report did not affect the final result, as determined by the times obtained in the competitions in New Zealand and Turkey. Consequently, the Honorary Council of the Federación Polideportiva de Ciegos of Venezuela **RATIFIES** the criterion partially set out in the decision.*

*With regard to the concept, implications and scope of **Objective Liability** and the criteria explained resulting from the interpretation and commentaries on article 2.1 of the Code of Implementation and in view of the final defence put forward by the athlete, "**I have to responsibly deny that I acted with negligence, fraud or wilful intent with regard to the attempt to swallow, apply or howsoever fraudulently use substances or processes that produced the appearance of the result produced, without ignoring the fact that I do not have any cognitive, technical or professional means of altering the fact that the substance appeared in my body, according to the report of the Anti-Doping Laboratory of the Institute of Sports Medicine of Cuba**" (our quotation marks); this authority should point out that, having carried out all the measures and searches possible to find any persons who could have been agents encouraging, promoting or cooperating in the ingestion of the banned substance, we were unable to find anyone or the aspects of conviction in the **sportswoman's so-called circle** that, based on a relationship of trust and professional prestige, persuaded her to take the substance; setting aside any possibility that it was the athlete, as her visual impairment in well-known, who deliberately took the banned substance, without detriment to the fact that any athlete must prevent any harmful substance from entering his body, i.e. he is responsible for making sure that that does not happen. In this case, however, the aforesaid rule loses all logical force when the factual element is actually impossible to prevent, precisely owing to the blindness of the athlete, who declared, under oath, that she did not give herself the substance, and far less with fraudulent intent or significant negligence. Thus decided.*

*Nor can this Council fail to notice that, since the start of the dispute, the athlete **I.** has observed exemplary conduct, as a citizen and athlete, training alone and through the means supplied by her parents, and has also undergone doping checks by means of the tests carried out a posteriori, which have proved negative. On that account, her **SPORTS REAUTHORIZATION AND HER PARTICIPATION IN THE SPORT OF HER CHOICE** are obvious".*

(bold letters in the English translation of the Spanish original, submitted by the Appellant).

- 2.11. The operative part of the Fourth Respondent's Honorary Council's decision of 14 March 2012 reads as follows:

“DECISION

On the basis of the above, the **Honorary Council of the Blind Sports Federation of Venezuela** passes its decision as follows:

ONE: It admits the **Recurso de Habilitación [Appeal for Authorisation]** submitted, on the basis that it is not contrary to the Law, and does not contain any offensive expressions or any that are in breach of decency or morality.

TWO: The **Honorary Council** finds that the appeal lodged is **ADMISSIBLE**, on the ground that effectively the judgment passed on 03 November 2011 violates the **Right to Defence, the Presumption of Innocence, the Right to Sports, the Right of Redress, the Right to Free Development of Personality and the Right to Equality of the athlete I., (duly identified above)** as the recipient of these rights, enshrined in the Constitution of the Bolivarian Republic of Venezuela and in Articles 2, 6 (section 1), 8, 15 (sections 2, 4 and 8), 72 (section 6), 73, 74 (sections 1, 2, 4 and 5); 77 and 78 of the **Ley Orgánica [Basic Law] on Sport, Physical Activity and Physical Education**.

THREE: That as a consequence of the breach of rights referred to in the second petition and based in reality on the **Harmonisation Principle** – whose areas of discussion and debate in the debate has been detailed and which has been the source of jurisdictional conflicts between international bodies and national sporting bodies – on the grounds of this principle and the scale of suspension set out in Article 10.2, **THE FOLLOWING IS DECLARED ADMISSIBLE:** the evaluation of this article on the basis of the provision of Article 10.3 paragraph one, namely, applying the maximum suspension of one year but reducing the sanction not expressed in any of the communications either from the **Honorary Council of FEVEPOCIVE** or the **IPC’s Anti-Doping Committee** to **SEVEN (7) months, starting from 15 August 2011,**

FOUR: The **Honorary Council of FEVEPOCIVE**, expressly states that the athlete I., with identity card no. [...], specialising in visually impaired athletics (category T11), is fully Authorised to carry out the sporting activity of her choice, especially Athletics, as of 15 March 2012, and shall enjoy all the rights and fulfil all the duties set out in the **Basic Law on Sport, Physical Activity and Physical Education** and its regulations.

FIVE: That the **Honorary Council of FEVEPOCIVE**, once it has given its decision, shall notify the **Anti-doping Committee of the Bolivarian Republic of Venezuela, the Board of the Instituto Nacional de Deportes [National Institute of Sport], the Medical Directorate of this body, the Board of Directors of the Federación Polideportiva de Ciegos de Venezuela [Blind Sports Federation of Venezuela], the Board of Directors and the athlete I., identified above in the heading of this document.**

...”.

(bold letters in the English translation of the Spanish original submitted by the Appellant).

III. PROCEEDINGS BEFORE THE CAS

- 3.1. On 2 May 2012, the Appellant submitted its Statement of Appeal against the decision of the Fourth Respondent of 14 March 2012 and supplemented its Statement within the deadline set by CAS (8 May 2012). The Appellant applied to stay the execution of the decision appealed against.
- 3.2. On 14 May 2012, the Appellant filed its Appeal Brief.
- 3.3. On 18 May 2012, the First Respondent filed her Answer. None of the three other Respondents filed an answer within the prescribed deadline.
- 3.4. On 27 June 2012, the First Respondent informed CAS that the Fourth Respondent after consultation with the Appellant and the other two Respondents had revoked its decision of 14 March 2012 and replaced it by a two years' ineligibility.
- 3.5. On 5 July 2012, the Appellant informed CAS that the Second, Third and Fourth Respondents wanted to discontinue the CAS proceedings. Even though the Appellant insisted in continuing it, as it is "the only applicable procedure that is «WADC compliant»". The Appellant, however, withdrew its request to stay the decision of 14 March 2012. It further reported an agreement with the First Respondent to have the case decided by a sole arbitrator. The Appellant proposed to CAS to decide without a hearing on the basis of the written submissions and confirmed all this by letter dated 9 July 2012.
- 3.6. By letter dated 12 July 2012 the Third Respondent informed the CAS Court Office that it agreed to have the case decided by a sole arbitrator and without holding a hearing.
- 3.7. By letter dated 15 July 2012, the Second Respondent informed the CAS Court Office that it agreed to have the case decided by a sole arbitrator and without a hearing. The Fourth Respondent did not reply before the set deadline. Thus, on 10 July 2012 the CAS Court Office informed that the President of the CAS Appeals Arbitration Division, or his Deputy, would decide on the number of arbitrators.
- 3.8. By letter dated 18 July 2012, the First Respondent repeated her presentation of the case in her answer of 18 May 2012 and added a chapter on events subsequent to her communication to the CAS, further arguments for her innocence, wrote on duties and possible fault and draw the following conclusion:

"After analyzing all these arguments, I can reach the following conclusion:

Since the beginning has had malice against me, because as I stated they have had violations of my rights during this case I do not know why. They had always intended to harm me, they knew exactly what they were doing were just playing with me all this time, to finally make a decision that is illegal.

I think as all are implicated in one form or another in this case, they believed that if they sent a decision, they freed of its responsibility and this would be end without any problems".

The First Respondent proposed as follows:

“On May this situation I had so tired, that forced me to propose a suspension of one year (1) from the August 14, 2012. I took shelter in Article 10.9.1: “delays not attributable to the Athlete” to start the period of suspension the day of sample collection. In addition, Article 10.5.2 of the World Anti-Doping Code, which refers to the absence of significant fault or negligence; this article results in the reduction of the suspension period at least half, since they were about 9 months from dark to me, in which no final decision yet, also of the arguments that they had exhibited on that occasion, which took me to the reduction of the suspension period. At that time did not have the necessary and sufficient evidence that I indicate the guilt of a specific person, but now the situation is more evident. For this reason, I make this new proposal in Article 10.5.1 of the World Anti-Doping Code: “absence of fault or negligence”, this article refers to the full cancellation of a suspension imposed of the athlete.

He spent almost a year so I could to collect all the items help me show my innocence conclusively.

Thank God, I never stopped training, go to the Olympics is the goal of an athlete, I'm private unfairly currently to participate in the Paralympic Games in London, England, after I meet the requirements.

Finally, I expect a positive solution.

...”.

- 3.9. The First Respondent attached to this letter a communication of the Fourth and of the Second Respondent dated 26 June 2012, both in Spanish language, without translation into English. Further to that the First Respondent submitted a decision of the Fourth Respondent's Honorary Council dated 20 June 2012, also only in Spanish language without translation into English, which has been determined as the language of the present proceedings.
- 3.10. Both communications report on the Fourth Respondent's Honorary Council's decision of 20 June 2012 which set aside the decision of 14 March 2012 and replaced it by a two years' ineligibility of the First Respondent, starting from 15 August 2011. Both communications further state that both Respondents did not want to have the CAS proceedings continued, but preferred to have the case withdrawn in view of the Honorary Council's decision.
- 3.11. The Fourth Respondent's Honorary Council's decision of 20 June 2012 imposes the sanction of two years' ineligibility because of violation of Article 16 number 3 of the Law on Sport, Physical Activity and Physical Education of Venezuela and of Article 32 Venezuelan National Sport Regulation against the Use of Prohibited Substances in Sport which in the opinion of the Honorary Council corresponds to Articles 2 and 2.1 WADC. The ineligibility has been imposed for the period starting on 15 August 2011 until 15 August 2013. At the same time the Honorary Council's decisions of 3 November 2011 and 14 March 2012 were set aside and the First Respondent was informed about her right to appeal against this decision to the Appellant within 21 days from notification of the decision.

- 3.12. By letter dated 26 June 2012 and submitted by the First Respondent as further exclusively Spanish speaking attachment to her letter dated 18 July 2012, the Appellant asked the Second Respondent for clarification of some legal issues as to the Fourth Respondent's Honorary Council's decision of 20 June 2012 as precondition in order to withdraw the case from CAS.
- 3.13. By letter dated 19 July 2012, the First Respondent asked CAS for explanation of the contents and legal effects of the letters of the First and Second Respondents of 15 and 12 July 2012 respectively to the Appellant.
- 3.14. By letter dated 23 July 2012, the First Respondent informed CAS on a communication of the Fourth Respondent dated 19 June 2012 and identical with another of 26 June 2012, both issued by two different representatives. The communication, which the First Respondent states, not having had seen before, refers to the new Honorary Council's decision of 20 June 2012.
- 3.15. No information was provided to CAS by any of the parties concerning the date when the First Respondent was notified of the decision dated 20 June 2012, as well as whether an appeal was submitted by her within the set deadline.
- 3.16. On 8 August 2012, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided to submit the present appeals proceedings to a Sole Arbitrator and, in view of Article R54 of the CAS Code, he proceeded to appoint Prof. Michael Geistlinger as Sole Arbitrator.
- 3.17. After having consulted the parties, the Sole Arbitrator deemed himself to be sufficiently well informed and decided not to hold a hearing.
- 3.18. The Order of Procedure was signed on 24 October 2012 by the Appellant, on 29 October by the Third Respondent and on 30 October 2012 by the First Respondent.

IV. SUBMISSIONS OF THE PARTIES

(a) The Appellant:

- 4.1 The Appellant, who, when submitting its Statement of Appeal and Appeal Brief, was not provided with all necessary documentation, e.g. the copy of the Laboratory Certificate of Analysis, based its appeal on the following arguments:

As to the First Respondent:

- The prohibited substance methenolone, which is a Class S1 Anabolic Agent, was found in the A Sample of the First Respondent;
- There was no Therapeutic Use Exemption;

- The First Respondent did not contest the presence of the prohibited substance in her body;
- The First Respondent did not raise any arguments that could allow for mitigation or elimination of the otherwise applicable sanction of two years' ineligibility (Article 10.2 IPC Code and WADC) according to Articles 10.5.1 or 10.5.2 WADC/IPC Code; only stated innocence, but did not explain how the substance entered her body.
- The Fourth Respondent's decision of 14 March 2012 wrongly referred to Article 10.3 WADC, which is not applicable, and to a 1-year period of ineligibility which has no legal basis and "*is clearly incorrect*". It was based on the acceptance of the First Respondent's arguments with regard to the Fourth Respondent's decision of 3 November 2011 holding that the latter decision "*violates the Right to Defence, the Presumption of Innocence, the Right to Sports, the Right of Redress, the Right to Free Development of Personality and the Right to Equality of the athlete I. (duly identified above) as the recipient of these rights, enshrined in the Constitution of the Bolivarian Republic of Venezuela and in Articles 2, 6 (section 1), 8, 15 (sections 2, 4 and 8), 72 (section 6), 73, 74 (sections 1, 2, 4 and 5); 77 and 78 of the Ley Orgánica [Basic Law] on Sport, Physical Activity and Physical Education*".
- The Fourth Respondent's decision of 14 March 2012 set aside its decision of 3 November 2011 which was held "*both illegal and inchoate. 'Inchoate' in the sense that it was incomplete and wanting in detail sufficient to amount to a competent decision*".

As to the Other Respondents:

- Venezuela is bound by the UNESCO Convention against Doping in Sport, in particular its Article 4: Thus, the legislation of Venezuela, in particular, its Organic Sports Law, which was passed in August 2011, must be understood and applied WADC compliant. According to the Fourth Respondent's decision of 14 March 2012 this was not possible. If this opinion is correct, all three Respondents are to be considered as acting non-WADC-compliant and the Third Respondent will have to withdraw/rescind its signature of the WADC.
- The Fourth Respondent "*speculated on matters where no evidence appears to have proffered*".
- The Appellant cannot recognise a National Paralympic Committee (the Second Respondent) "*that is not able to fully implement every provision of the WADC*".
- The Third Respondent is an agency of the Venezuelan Ministry of Sport. The sample was taken under its authority. It has signed up to the WADC committing the nation of Venezuela and all its recognised sport organisations to WADA compliance.
- "*The WADC has been adopted with the express purpose of harmonising the applicable rules, the procedures and the sanctions applicable to dealing with the control of doping in sport. ... The correct approach therefore to resolving any conflict, or perceived conflict, between the national laws of Venezuela*

and the WADC is to either (1) give preference to the provisions of the WADC or (2) to resign from WADA and rescind the signature previously applied to the WADC”.

- The Appellant holds that the consequence of the Fourth Respondent’s approach not objected by the Second and Third Respondents is *“that the relevant sport bodies within the Republic of Venezuela are rendered ‘non-code-compliant’ and as such they are not permitted to participate in the world’s great sporting competitions, such as the Paralympic Games and the Olympic Games”* (emphasis in the original).

4.2. The Appellant submits the following Prayers for Relief:

“1. The Appeal of the IPC is admissible.

2. The Appealed Decision rendered on 14 March 2011 [correct: 2012] by the FEPOCIVE (Sport Federation for Visually Impaired athletes in Venezuela) in the matter of the athlete I. is set aside.

3. The athlete I. is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility served by I. (or deemed to have been served in the circumstances of this case) before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.

4. The athlete’s results from the Para National Games held in Barquisimeto during August 2011 be disqualified and all medals, points and prizes be forfeited.

5. IPC is granted an award for the reimbursement of the Court filing fee and a contribution to its costs against the 3rd and 4th respondents in such amount as the tribunal thinks fit, and in such proportion as between the 3rd and 4th Respondents as they shall determine.

In the alternative, if the determination of the CAS, having heard the evidence and submissions of the Respondents, is that the Respondents are together or individually bound to deviate from the material provisions of the WADC and the IPC Code under the compulsion and sanction of the Constitution of the Bolivarian Republic of Venezuela and the ‘Organic Sports Law’ of Venezuela that:

6. An Award that the IPC Appeal is admissible

7. That the Respondents cannot be mandated to act against their national laws

8. Therefore, the decision of the 4th Respondent of 14th March 2012 is not set aside

9. That the 2nd, 3rd and 4th Respondents are no longer WADA ‘code compliant’, in that they have proven their inability to comply with the provisions of the WADC due to the constraints of the civil and constitutional laws of Venezuela

10. IPC is granted an award for the reimbursement of the Court filing fee and a contribution to its costs against the 3rd and 4th Respondents in such amount as the tribunal thinks fit, and in such proportion as between the 3rd and 4th Respondents as they think fit” (emphasis in the original.)

(b) The First Respondent:

- 4.3. The First Respondent emphasizes that the Fourth Respondent's Honorary Council's decision of 3 November 2011 was incongruent because the application of Article 9 WADC did not respect that she had no fault or gross negligence. It was "*truly impossible for her to check for herself the things that anyone may give her due to her total visual impairment*". The rights as enumerated above have been violated. The decision did not meet the requirements of an administrative act, since it did not indicate the available legal remedies. This fact was aggravated by the inaccessibility of the Commission for Sports Justice, which was not yet constituted under the Venezuelan Organic Law on Sport, Physical Activity and Physical Education. Owing to causes and reasons not attributable to her, her rights to defense, to due process, of redress, to sport, to free development of her personality, and to equality before the law as established in Article 49, 26, 111, 20 and 21 of the Constitution of the Bolivarian Republic of Venezuela were infringed.
- 4.4. The First Respondent holds that the Appellant's prohibition of 9 November 2011 was an act of pure arbitrariness.
- 4.5. The First Respondent responsibly denies "*that I acted with negligence, fraud or willful intent with regard to the attempt to swallow, apply or howsoever fraudulently use substances or processes that produced the appearance of the result produced, without ignoring the fact that I do not have any cognitive, technical or professional means of altering the fact that the substance appeared in my body, according to the report of the Anti-Doping Laboratory of the Institute of Sports Medicine of Cuba, owing to the faults I mention*".
- 4.6. The First Respondent raises in her Answer to the Appeal and in her subsequent letters the following issues:
- The period between the laboratory analysis (14 September 2011) and the notification to the First Respondent (signed on 10 October 2011 and delivered on 20 October 2011) was unacceptably long.
 - She asked why she should use a prohibited substance, when already qualified for London.
 - She pointed out the fact that she had participated at all relevant competitions and did not hide for being able to take a prohibited substance.
 - She asked how she could apply a prohibited substance, when she was all the relevant time in competition and why she should risk her university education and professional future.
 - She does not know how the substance came into her body.
- 4.7. As arguments for having become victim of an intrigue in the favor of an unnamed rival athlete, the First Respondent brings forward as follows:
- She refers to an agreement between the Appellant and the Second Respondent on a two years' ban on her without having involved her (26 June 2012).
 - She received communication with regard to the procedure before CAS only from the Appellant, but not from the other Respondents before CAS.

- She attacks the President of the Fourth Respondent, who, when they discussed her doping case, referred to a case of complaint of her and other athletes against him at the Minister of Sport of Venezuela, where the First Respondent was one of the leaders of the group.
 - The First Respondent mentions another case of 12 June 2012, where she was wrongfully verbally attacked by the President of the Fourth Respondent. The President of the Fourth Respondent only reluctantly issued a document needed by her.
 - The President of the Fourth Respondent did not inform her on communication with the Appellant.
 - The Fourth Respondent does not cooperate with CAS.
 - The President of the Fourth Respondent continues to support the athlete guide for her, who is, however, a person of his confidence, irrespective of the fact that this guide is not assisting her anymore.
 - The President of the Second Respondent eventually supports a rival quota athlete.
 - The First Respondent raises the question why the Third Respondent was passive in the procedure before CAS.
 - The First Respondent holds that all three other Respondents violate Articles 22.3 WADC, which commits *“each government will respect arbitration as the preferred means of resolving doping-related disputes”*.
 - In her letter dated 19 July 2012, the First Respondent showed concerned that the Second and Third Respondents communicated with CAS without prior contact to her.
- 4.8. The First Respondent holds that Articles 10.5.2 IPC Code shall apply on her and submits in her Answer to the Appeal the following Prayers for Relief:

“From what I’ve taken both the World Anti-Doping Code as the CPI, I propose a year (1), i.e., from August 14, 2011 (day of onset of para-games) until 14 August 2012. I lean in Article 10.9.1, which speaks to delays not attributable to the athlete, as are 9 months and dark for me, where there is still no final decision, also of the arguments I have already stated, which lead me to the reduction of the suspension period”.

- 4.9. In her letter of 18 July 2012, the First Respondent changed her Prayers for Relief and asked the following:

“On May this situation I had so tired, that forced me to propose a suspension of one year (1) from the August 14 start date of the games until August 14, 2012. I took shelter in Article 10.9.1. “delays not attributable to the Athlete” to start the period of suspension the day of sample collection. In addition, Article 10.5.2 of the World Anti-Doping Code, which refers to the absence of significant fault or negligence; this article results in the reduction of the suspension period at least half, since they were about 9 months from dark to me, in which no final decision yet, also of the arguments that they had exhibited on that occasion, which took me to the reduction of the suspension period. At that time did not have the necessary and sufficient evidence that I indicate the guilt of specific person, but now the situation is more evident. For this reason, I make this new proposal in Article 10.5.1 of the World Anti-Doping Code: “absence of fault or negligence”, this article refers to the full cancellation of a suspension imposed on the athlete”.

(c) The Other Respondents:

4.10. The other Respondents did not cooperate with CAS and did not submit any arguments. From the Fourth Respondent's Honorary Council's decision of 3 November 2011, the following arguments for the non-imposition of any period of ineligibility can be seen:

- The First Respondent was a top level athlete since young age and achieved the 6th place at the Beijing Paralympic Games. There were no remarkable performance deviations in her sports career.
- The First Respondent tested several times earlier, but there was no adverse analytical finding.
- The prohibited substance found in the First Respondent has weak anabolic effects and is mostly used as fat burner.
- There are no disease records in the First Respondent's past.
- The First Respondent has declared not disputing the test result, but cannot explain how the substance came into her body. She believes to be innocent.
- The Fourth Respondent's Honorary Council refers to Article 2.1 WADC.
- The First Respondent was given the medication L-Carnitine which is a fat burner and a necessary medication for her.
- The Fourth Respondent's Honorary Council found it a non logical use of methenolone alone, because this does not lead to sport performance effects.
- In the view of this judicial body, since the First Respondent was an athlete with total visual impairment, it was easy that somebody gave her an ingredient which she could not identify.
- The First Respondent has a clean past, was already qualified for the Olympics, thus, the use of the substance would not make sense.
- There was no improvement of the sport performance visible.
- It was not excluded that the substance emanated from sheep which received the substance for muscle mass reasons, but this is not possible to demonstrate.
- An athlete's personal duty under Article 2.1.1 WADC is questionable to be applied on totally blind athletes, because such athlete cannot fulfill this requirement.
- The Fourth Respondent's Honorary Council assumed that somebody gave the substance to the First Respondent without her consent.

V. CAS JURISDICTION

- 5.1. The jurisdiction of CAS, which is not disputed by the First, Second and Third Respondents and has been confirmed by signing the order of Procedure, derives from Article 13.2.3 para 1 lit (c) and e read together with Articles 13.1 and 13.2 WADC. These provisions read as far as relevant as follows:

“13.1 Decisions Subject to Appeal

Decisions made under the Code may be appealed as set forth below in Article 13.2 through 13.4 or as otherwise provided in the Code. ... Before an appeal is commenced, any post-decision review authorized in the Anti-Doping Organization’s rules must be exhausted, provided that such review respects the principles set forth in Article 13.2.2 below....

...

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, ... may be appealed exclusively as provided in this Article 13.2.

...

13.2.1 Appeals Involving International-Level Athletes

In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to 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;*
- (d) the National Anti-Doping Organization of the Person’s country of residence or countries where the Person is a national or license holder;*

(e) 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

(f) WADA.

...”.

- 5.2. The Sole Arbitrator understands that Article 13.2.3 para 1 lit (c) WADC is applicable, since the Appellant is the International Federation responsible for 9 sports related to athletes with a disability, including the First Respondent’s sport, which is Athletics. At the same time Article 13.2.3 para 1 lit (e) is applicable, because the Fourth Respondent’s decision of 14 March 2012 would have allowed the First Respondent to participate at the London 2012 Paralympics Games, whereas a decision as proposed by the Appellant would make the First Respondent ineligible for Paralympic Games. The Appellant is explicitly mentioned as entitled organization in this article. Both provisions directly bind the Fourth Respondent being the organization having decided a case involving an International-Level Athlete. Therefore, a formal acceptance of this jurisdiction by the Fourth Respondent is not necessary. The Appellant as well as the three other Respondents have acknowledged the jurisdiction of the CAS during the proceedings in writing, especially by signing the Order of Procedure.
- 5.3. The Appellant and the First Respondent do not specify in their submissions, in which legal relationship the Fourth Respondent has to be seen with the Second Respondent who is the Appellant’s member for Venezuela. The Second Respondent is subject to the IPC Anti-Doping Code through its membership of the Second Respondent. The First Respondent is bound to the IPC Anti-Doping Code by having signed the IPC Eligibility Code Form on 22 October 2009. According to number 3 of this document, the First Respondent is obliged, inter alia to comply with the IPC Anti-Doping Code and has subjected to the following “Acceptance of Binding Arbitration”: *“I acknowledge and accept that any dispute outside the realm of the sports technical rules arising during the IPC Competitions shall be submitted exclusively to the Court of Arbitration for Sport (CAS). Any such dispute shall be determined in accordance with the CAS Code for Sports-Related Arbitration, save for competitions covered by the CAS Ad hoc arbitration rules where I agree that the Ad hoc rules shall govern the procedure for dispute resolution. The decisions of CAS are final, non-appealable and enforceable”.*
- 5.4. The Appellant only recalls that the Fourth Respondent is *“the national sport federation for Venezuelan athletes with visual impairment, and as such it has responsibility for and control over the 1st Respondent’s athletics competition activities. It appears to accept that it is bound to apply the WADC, subject they say to the overriding and apparently conflicting provisions of the Venezuelan Constitutional and Civil laws. ... In the field of anti-doping the 4th Respondent is the body authorised to carry out disciplinary procedures in accordance with the IPC Code, the WADC and/or other anti-doping code, policy or procedure that satisfies the requirements of the WADC in respect of Venezuelan visually impaired athletes”.*
- 5.5. In lack of more detailed information on whether the Fourth Respondent is member of the Second Respondent and as such subject to the IPC Anti-Doping Code or is otherwise bound to all provisions of this Code it cannot be excluded that the jurisdiction of CAS follows also

from Articles 13.1 read together with 13.2.1 and Article 13.2.2 para 1 IPC Anti-Doping Code. At any event Article 20.2.2 IPC Anti-Doping Code binds the Second Respondent to “*require as a condition of membership or recognition that National Federation’s Anti-Doping policies and rules are in compliance with the applicable provisions of the Code*”.

- 5.6. Since also the Third Respondent is mentioned in Article 13.2.2 para 1 lit (c) IPC Anti-Doping Code as organization being entitled to appeal certain decisions under the IPC Anti-Doping Code such jurisdiction of CAS could extend also to the Third Respondent.
- 5.7. Precondition for all parties is, however, that the decision appealed from was made under the IPC Anti-Doping Code. Since the decision of the Fourth Respondent’s Honorary Council of 14 March 2012 correctly or erroneously was not made under the IPC Anti-Doping Code, CAS does not derive its jurisdiction in this case from the IPC Anti-Doping Code.
- 5.8. Article R47 of the CAS Code and Article 13.1 WADC require the exhaustion of legal remedies offered by the Fourth Respondent’s rules. Article R49 of the CAS Code sets a time limit of twenty-one days from the receipt of the decision appealed against. Both requirements are met and have not been disputed by any of the parties.

VI. APPLICABLE LAW

- 6.1. Article R58 of the CAS Code provides 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, the application of which the Panel deems appropriate. In the latter case, the Sole Arbitrator shall give reasons for its decision”.

- 6.2. The Appellant is a signatory to the WADC and has adopted its own Anti-Doping Code (the IPC Anti-Doping Code) in compliance with its obligation towards WADA. The First Respondent is licensed under the scheme operated by the Appellant and bound by numbers 3 and 7 of the IPC Eligibility Code Form signed by her to comply with the IPC Anti-Doping Code and not to take any substance or use methods prohibited by the IPC Anti-Doping Code.
- 6.3. The Second Respondent as a member of the Appellant is bound to the IPC Anti-Doping Code and at the same time as a National Paralympic Committee and therefore signatory according to Article 23.1.1 WADC also to the WADC. The Third Respondent as the National Anti-Doping Organization for Venezuela is bound as signatory under the same provision of the WADC to the WADC. It follows from the Third Respondent’s holding the right to appeal certain decisions under Article 13.2.2 para 1 IPC Anti-Doping Code, that this Code is also applicable on the Third Respondent.

- 6.4. The Fourth Respondent, as can be seen from the rules applied by its Honorary Council in the decisions of 3 November 2011 and 14 March 2012, has not adopted its own anti-doping rules, but applies the WADC. As condition for being a member of the Second Respondent or at least recognised by the Second Respondent, the Fourth Respondent must make sure that its anti-doping rules are in compliance with the IPC Anti-Doping Code. This can happen either by means of its own rules, by means of application of the IPC Anti-Doping Code, or by means of direct application of the WADC, because the IPC Anti-Doping Code must be in compliance with the WADC. Thus, in case the Fourth Respondent directly applies the WADC only, it, nevertheless, could fulfil the requirements of membership of or recognition by the Second Respondent, unless otherwise ruled by the regulations of the Second Respondent. Since the parties did not provide the Sole Arbitrator with more detailed information, whether the Second Respondent actually requires the subjection to the IPC Anti-Doping Code as condition for membership or recognition, the IPC Anti-Doping Code cannot be considered as applicable regulation(s) chosen by the Fourth Respondent.
- 6.5. On the other hand, the WADC is applicable also on the First Respondent by means of her signature of the Doping Control Form of 21 August 2011 and by having accepted that the Third and Fourth Respondents proceeded on the basis of the WADC. She signed the form without reservation or objection and based her appeals in Venezuela and submissions and Prayers for Relief before CAS on the WADC side by side with invoking provisions of the law of Venezuela.
- 6.6. Thus, the Sole Arbitrator finds that the applicable regulations chosen by all parties to these proceedings are the provisions of the WADC. Based on the information made available by the parties, the IPC Anti-Doping Code binds the Appellant and all Respondents except the Fourth. Since the contents of the provisions of the WADC – as far as relevant for these proceedings – (Articles 9, 10.1, 10.1.1, 10.2, 10.5.1 and 10.5.2, 10.9, 10.9.1, 10.9.3, 10.9.5, 10.10, and 10.12) and the IPC Anti-Doping Code (Articles 9, 10.1, 10.1.1, 10.2, 10.5.1 and 10.5.2, 10.9.1, 10.9.3, 10.9.5, 10.10, and 10.11) are the same and nearly all the wording of these provisions in both codes is identical, the Sole Arbitrator will also refer to the IPC Anti-Doping Code for those to whom this Code is applicable.
- 6.7. Since the Fourth Respondent as the organization that has issued the challenged decision is seated in Venezuela, the law of Venezuela is subsidiarily applicable.

VII. MERITS

(a) Application of the WADC and IPC Anti-Doping Code respectively:

- 7.1. Given the facts and applicable law as described above, the relevant provisions of the WADC that are to be applied are the following:

Article 9 AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS

An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.

(Identical with art 9 IPC Anti-Doping Code).

Article 10 SANCTIONS ON INDIVIDUALS

10.1 Disqualification of Results in the Event During which an Anti-Doping Rule Violation Occurs

An anti-doping rule violation occurring during or in connection with an Event may, upon decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

(Art 10.1 IPC Anti-Doping Code reads as follows:

10.1 Disqualification of Results in IPC Sanctioned Events

An Anti-Doping Rules Violation occurring during or in connection with an IPC Sanctioned Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all the Athlete's individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1).

10.1.1 If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competitions shall not be Disqualified unless the Athlete's results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.

(Identical to Article 10.1.1 IPC Anti-Doping Code except that it uses the word 'events' instead of 'competitions').

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods

The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers) ... shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met: First violation: Two (2) years' Ineligibility.

...

(Article 10.2 IPC Anti-Doping Code reads as follows:

The period of Ineligibility imposed for a first violation of Article 2.1 (presence of Prohibited Substance or its Metabolites or Markers) ... shall be two (2) years Ineligibility, unless the conditions for eliminating or

reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided for in Article 10.6, are met. ...).

10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

10.5.1 No Fault or Negligence

If an Athlete establishes in an individual case that he bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7.

(Identical with art 10.5.1 IPC Anti-Doping Code, except that the IPC Anti-Doping Code uses 'he and she', 'his and her' in order to be gender-compliant).

10.5.2 No Significant Fault or Negligence

If an Athlete establishes in an individual case that he bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. ... When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), the Athlete must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility reduced.

...

(Identical to Article 10.5.2 IPC Anti-Doping Code, however the words "or other person" appear only in the version December 2011).

10.9 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed.

(Identical to Article 10.9 IPC Anti-Doping Code).

10.9.1 Delays Not Attributable to the Athlete or Other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred.

...

(Identical to Article 10.9.1 IPC Anti-Doping Code).

10.9.3 If a Provisional Suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed

...

(Identical to Article 10.9.3 IPC Anti-Doping Code).

- 7.2. The First Respondent did not contest the result of the analysis of her A-Sample and did not ask for confirmation by analysis of her B-Sample. She declared that she did not know how the prohibited substance came into her body and that she was innocent. In light of these facts, the Sole Arbitrator understands that it has been established that an anti-doping rule violation had been committed by the First Respondent. The First Respondent in the proceedings before the Fourth Respondent referred to Article 10.5.1, which she wanted to have applied then. In her Appeal Brief the First Respondent proposed to have Article 10.5.2 WADC applied. In her later argumentation she argued once more that Article 10.5.1 WADC has to be applied. The Sole Arbitrator has to consider the commentary to these articles as far as allegedly sabotage is concerned and the respective jurisprudence of CAS in similar cases (see e.g. CAS 2006/A/1067, at paras 6.8 – 6.17; CAS 2007/A/1399, at paras 99 – 113; CAS 2008/A/1515, at paras 114 – 126; CAS 2012/A/2797, at para 59).
- 7.3. The WADA commentary makes clear that both articles consider truly exceptional circumstances which are not given in the vast majority of cases and illustrates this with some examples. WADA adduces the example of sabotage by a competitor despite due care of the athlete concerned as fulfilling the requirements of Article 10.5.1 WADC. On the other hand Article 10.5.2 might be applicable under particular circumstances in cases of administration of a prohibited substance by the athlete's personal physician or trainer without disclosure to the athlete, because *"athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance"*. The same logic applies for sabotage of the athlete's food or drink by a spouse, coach or another Person within the Athlete's circle of associates, because *"athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink"*.
- 7.4. The Athlete has to observe established rules of evidence in proving in an individual case that she bears No Fault or Negligence (Article 10.5.1) or No Significant Fault or Negligence (Article 10.5.2). When the burden of proof is upon the athlete to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a "balance of probability". The balance of probability standard is set forth by the WADC and by the CAS jurisprudence and means that the athlete alleged to have committed a doping violation bears the burden of persuading the judging body that the occurrence of a specified circumstance is more probable than its non-occurrence (see e.g. CAS 2006/A/1067 at para 6.4; CAS 2012/A/2797 at para 61).

- 7.5. In light of the above requirements to be met by the First Respondent and to be evaluated by all the other parties to these proceedings, the decision of the Fourth Respondent's Honorary Council of 14 March 2012 and the arguments of the First Respondent in the opinion of the Sole Arbitrator do not duly respect the basic condition that needs to be fulfilled for applying Article 10.5.1 or Article 10.5.2 WADC, as well as 10.5.1 or 10.5.2 IPC Anti-Doping Code. This condition is that the athlete must establish how the prohibited substance entered her body.
- 7.6. The First Respondent stated as to this requirement that she does not know how the prohibited substance entered her body. In her last correspondence she raised the suspicion that she had become the victim of an intrigue in the interests of a rival athlete and she pointed, in particular, on the connection between her guide and the president of the Fourth Respondent without openly accusing any of them of having committed or organized sabotage. Apart from unsubstantiated assumptions and speculations the First Respondent does not provide any corroborating evidence. Such evidence would have been necessary to determine if there was No Fault or Negligence or No Significant Fault or Negligence.
- 7.7. The Fourth Respondent's Honorary Council in its first decision of 3 November 2011 discussed that a fat burning medication (L-Carnitine) or contaminated food from sheep might have been the means and ways how the prohibited substance entered the body of the First Respondent. Also this discussion, however, was based on mere assumptions and did not provide any corroborating evidence. For the medication, if this were the respective means, a TUE would have been necessary. The First Respondent did not follow such arguments, also not in her last correspondence, and did not substantiate the Honorary Council's assumptions.
- 7.8. Since the First Respondent could not give evidence to the Sole Arbitrator's comfortable satisfaction on the basis of probability that she acted with No Fault or Negligence or No Significant Fault or Negligence the requirements of Articles 10.5.1 and 10.5.2 WADC and 10.5.1 and 10.5.2 IPC Anti-Doping Code, respectively have not been met. Thus, Article 10.2 WADC and 10.2 IPC Anti-Doping Code, respectively, have to be applied. This means that apart from the automatic application of Article 9 WADC/Article 9 IPC Anti-Doping Code a period of two (2) years Ineligibility has to be imposed on the First Respondent.

(b) Procedural Flaws:

- 7.9. Articles 8.1 WADC and 8.1 and 8.2 IPC Anti-Doping Code provide for detailed procedural rights of athletes as to being provided a fair and timely information of the asserted anti-doping rule violation, an expedited hearing for provisional suspension, a fair hearing on whether the asserted anti-doping rule violation has been committed, amongst others. The First Respondent raises, in particular, (i) unfair delays as to the information on the asserted anti-doping rule violation (Second, Third and Fourth Respondents), (ii) the lack of an expedited hearing for the provisional suspension for the Parapanamerican Games imposed by the Appellant, and (iii) a general non-compliance with procedural safeguards emanating from the Constitution and Law on Sport, Physical Activity and Physical Education of Venezuela.

7.10. Article 8.1 WADC reads as follows:

“Each Anti-Doping Organization with responsibility for results management shall provide a hearing process for any Person who is asserted to have committed an anti-doping rule violation. Such hearing process shall address whether an anti-doping rule violation was committed and, if so, the appropriate Consequences. The hearing process shall respect the following principles:

- a timely hearing;*
- a fair and impartial hearing Sole Arbitrator;*
- the right to be represented by counsel at the Person's own expense;*
- the right to be informed in a fair and timely manner of the asserted anti-doping rule violation;*
- the right to respond to the asserted anti-doping rule violation and resulting Consequences;*
- the right of each party to present evidence, including the right to call and question witnesses (subject to the hearing Sole Arbitrator's discretion to accept testimony by telephone or written submission);*
- the Person's right to an interpreter at the hearing, with the hearing Sole Arbitrator to determine the identity, and responsibility for the cost, of the interpreter; and*
- a timely, written, reasoned decision, specifically including an explanation of the reason(s) for any period of Ineligibility”.*

7.11. Articles 8.1 and 8.2 IPC Anti-Doping Code read as follows:

“8.1 Hearing

The hearing body shall address whether an Anti-Doping Rule Violation has been committed and if so the appropriate Consequences.

8.1.1 The hearing body will comprise of no less than 3 members of the IPC Anti-Doping Committee and has the right to be accompanied by Committee counsel.

8.1.2 Unless agreed to by the Athlete and the IPC, the hearing shall begin thirty (30) days of the notification under Article 7.2.

8.1.3 The Athlete has the right to be represented by counsel and the right to an interpreter, approved by the IPC and at the Athlete's own expense.

8.1.4 Not more than 2 representatives of the Athlete's NPC and 1 representative from the applicable Sport concerned shall be invited.

8.1.5 The IPC will present its assertion of the Anti-Doping Rule Violation(s). Each party has the right to present evidence including submission of written material and the right to call witnesses.

8.1.6 *The IPC reserves the right to conduct the hearing by telephone conference call.*

8.2 *Expedited Hearing for Provisional Suspension*

8.2.1 *The hearing body shall address whether an Anti-Doping Rule violation has been committed and if so the appropriate Consequences, including when relevant, whether a Provisional Suspension is warranted.*

8.2.2 *Except for Article 8.1.2, the procedures of Article 8.1 shall apply. Unless agreed to by the Athlete and the IPC, the expedited hearing shall begin within ten (10) days of the provisional suspension under Article 7.5”.*

7.12 Article 8.5.2 of the IPC Anti-Doping Code reads as follows:

“If no follow-up investigation is needed, or upon completion of such investigation, and as a result of the Hearing or if the right to a hearing is waived, the IPC Anti-Doping Committee shall make a recommendation to the IPC Governing Board on the Consequences according to the Code. The IPC Governing Board shall be responsible for taking further timely action and for notifying the Athlete and the Athlete’s NPC of any sanction imposed through a written, reasoned decision”.

7.13 In the opinion of the Sole Arbitrator it is obvious that the provisions of Articles 8.2 and 8.5 IPC Anti-Doping Code have been violated by the Appellant as to the suspension of the First Respondent from the Parapanamerican Games. The Sole Arbitrator also holds that the notification of the Adverse Analytical Finding of the First Respondent’s Sample – which took place on 21 August 2011 – to the First Respondent on 20 October 2011 violated her right to be informed in a fair and timely manner of the asserted anti-doping rule violation according to Article 8.1 WADC, since the report of the laboratory dated of 14 September 2011. As can be seen from a letter of the Second Respondent to the Appellant a first suspension of the First Respondent took place on 16 September 2011 in obvious cooperation between the Fourth and Second Respondents. Nevertheless, the formal notification of the Fourth Respondent by the Third Respondent took place only on 10 October 2011, which was forwarded by the Fourth Respondent to the First Respondent only on 20 October 2011. Even if this notification only refers to Venezuelan laws, it cannot be called fair and timely in the understanding of the WADC. This means, that the Second, Third and Fourth Respondents were involved in this violation of the First Respondent’s rights.

7.14. In evaluating these procedural flaws, the Sole Arbitrator wishes first to refer to general CAS jurisprudence which before the background of the jurisprudence of the Swiss Federal Tribunal holds that the virtue of an appeal system which allows for a full rehearing before an appellate body is that any defects in the procedure before the body appealed from to CAS are cured by the procedure before CAS (see e.g. CAS 98/211 at para 8 with references to the jurisprudence of the Swiss Federal Tribunal).

7.15. The Sole Arbitrator must, however, determine whether the First Respondent through the time that passed lost any chance to demonstrate how the prohibited substance entered her body and that she had No Fault or Negligence or No Significant Fault or Negligence. The First Respondent did not ask for analysis of her B-Sample, did not dispute the result of the analysis

of the result of the analysis of her A-Sample and did not undertake any steps to explore how the prohibited substance entered her body. Thus, the time which passed and which otherwise might have had an impact on establishing evidence on how the substance entered her body, was not used by the First Respondent for such purpose. From the very beginning, the First Respondent argued that she did not know how the substance entered her body, but that she had no fault. At no possible moment the First Respondent tried to search for and provide corroborating evidence for the purposes of having Articles 10.5.1 and 10.5.2 WADC and/or IPC Anti-Doping Code respectively applied on her. The Sole Arbitrator, therefore, holds that the violation of the First Respondent's procedural rights did not affect her possibility of establishing the necessary evidence, because all the time she was not aware of which evidence was needed to demonstrate the above provisions to be applied.

- 7.16 On the other hand, the procedural flaws led to *"delays not attributable to the athlete"* in the understanding of Articles 10.9.1 WADC and IPC Anti-Doping Code respectively and allow the Sole Arbitrator to determine that the period of Ineligibility shall commence on the date of the First Respondent's A-Sample collection, i.e. on 21 August 2011.

(c) Alleged Violation of Venezuelan Law:

- 7.17. The First Respondent argues that a number of her rights under the Constitution of the Bolivarian Republic of Venezuela and her right to sport as well as the access to a body set up under the Article 77 Organic Law on Sport, Physical Activity and Physical Education of Venezuela have been violated.

- 7.18. The provisions of the Venezuelan Constitution invoked by the First Respondent read in the English translation as follows:

***Article 20:** Everyone has the right to the free development of his or her own personality, subject only to the limitations deriving from the rights of others and public and social order.*

***Article 21:** All persons are equal before the law, and, consequently:*

1.- No discrimination based on race, sex, creed or social standing shall be permitted, nor, in general, any discrimination with the intent or effect of nullifying or encroaching upon the recognition, enjoyment or exercise, on equal terms, of the rights and liberties of every individual.

2.- The law shall guarantee legal and administrative conditions such as to make equality before the law real and effective manner; shall adopt affirmative measures for the benefit of any group that is discriminated against, marginalized or vulnerable; shall protect in particular those persons who, because of any of the aforementioned circumstances, are in a manifestly weak position; and shall punish those who abuse or mistreat such persons.

3.- People will only be officially addressed as Citizens, except for diplomatic forms.

4.- No titles of nobility or hereditary distinctions shall be recognized.

Article 26: *Everyone has the right to access the organs comprising the justice system for the purpose of enforcing his or her rights and interests, including those of a collective or diffuse nature to the effective protection of the aforementioned and to obtain the corresponding prompt decision.*

The State guarantees justice that is free of charge, accessible, impartial, suitable, transparent, autonomous, independent, responsible, equitable and expeditious, without undue delays, superfluous formalities or useless reinstating.

Article 49: *All judicial and administrative actions shall be subject to due process, therefore:*

(1) Legal assistance and defense are inviolable rights at all stages and levels during the investigation and proceeding. Every person has the right to be notified of the charges for which he or she is being investigated, to have access to the evidence and to be afforded the necessary time and means to conduct his or her defense. Any evidence obtained in violation of due process shall be null and void. Any person declared guilty shall have the right to appeal, except in the cases established by this Constitution and by the law.

(2) Any person shall be presumed innocent until proven otherwise.

(3) Every person has the right to be heard in proceedings of any kind, with all due guarantees and within such reasonable time limit as may be legally detained, by a competent, independent and impartial court established in advance. Anyone who does not speak Spanish or is unable to communicate verbally is entitled to an interpreter.

(4) Every person has the right to be judged by his or her natural judges of ordinary or special competence, with the guarantees established in this Constitution and by law. No person shall be put on trial without knowing the identity of the party judging him or her, nor be adjudged by exceptional courts or commissions created for such purpose.

(5) No person shall be required to confess guilt or testify against himself or herself or his or her spouse or partner, or any other relative within the fourth degree of consanguinity or the second degree of affinity.

(1) A confession shall be valid only if given without coercion of any kind.

(6) No person shall be punished for acts or omissions not defined under preexisting laws as a crime, offense or infraction.

(7) No person shall be placed on trial based on the same facts for which such person has been judged previously.

(8) Every person shall request from the State the restoration or remediation of a legal situation adversely affected by unwarranted judicial errors, and unjustified delay or omissions. The foregoing is without prejudice to the right of the individual to seek to hold the magistrate or judge personally liable, and that of the State to take action against the same.

Article 111: *All persons have a right to sports and recreation as activities beneficial to individual and collective quality of life. The State assumes responsibility for sports and recreation as an education and public health policy, and guarantees the resources for the furtherance thereof. Physical education and sports play a fundamental role in the overall education of childhood and adolescents. Instruction in the same is obligatory at all levels of public and private education up to the diversified cycle, with such exceptions as may be established*

by law. The State guarantees full attention to athletes without discrimination of any kind, as well as support for high-level competitive sports and evaluation and regulation of sports organizations in both the public and the private sector, in accordance with law. Incentives and inducements shall be established for the persons, institutions and communities that promote athletes and develop or finance sports activities, plans and programs in the country”.

- 7.19 Article 77 of the Organic Law on Sport, Physical Activity and Physical Education of the Bolivarian Republic of Venezuela deals with the Commission of Sport Justice, which, however, had not yet been constituted while the present case was pending at the Fourth Respondent’s Honorary Council. In the First Respondent’s appeal to this body, the First Respondent also referred to Article 2 (principles for the sport promotion, organization and administration, including equality, honesty and protection of human rights), Article 6 number 1 (definition of the term “athlete”), Article 8 (right to sport, but limited by morals and public order), Article 15 numbers 2, 4 and 8 (right of athlete to access to national sports system only limited by Law of Sport, access to sport grants, access to the Commission of Sport Justice), Article 72 number 6 (Exercise of disciplinary power by the Commission of Sport Justice), Article 73 (Applicable procedure), Article 74 numbers 1, 2, 4 and 5 (systems of rules violations, differentiation of minor, severe and very severe violations of rules, corresponding system of sanctions, applicable principles, such as the prohibition of double sanctions), and Article 78 (selection of the members of the Commission of Sport Justice). The Fourth Respondent’s Honorary Council in its decision of 14 March 2012 found all these provisions violated by simply repeating the sentences chosen by the First Respondent in her appeal and by not giving any reason.
- 7.20 The Sole Arbitrator finds all references with regard to national legal norms of the Bolivarian Republic of Venezuela as unsubstantiated and as simple putting side by side a list of norms which are either of no relevance for the present case at all, or are even misleading, or at the best are applicable, but do not show any argument for their violation that might give rise to further analysis that have already been done in the context of the WADC and the IPC Anti-Doping Code, respectively. This goes, in particular, as to the First Respondent’s right to have her case dealt with by an independent judicial body, her right to due process and fair trial, as well as to her rights of defence.
- 7.21 The Bolivarian Republic of Venezuela has ratified the UNESCO Anti-Doping Convention. The Sole Arbitrator has no doubt that no provision of the Constitution or of any law of Venezuela shall and can be understood as deviating from Venezuela’s international commitments, in particular Article 4 para 1 of the UNESCO Convention. This provision commits all states parties to the Convention “*to the principles of the Code as the basis for the measures provided for in Article 5 of this Convention. Nothing in this Convention prevents States Parties from adopting additional measures complementary to the Code*”. The Sole Arbitrator wishes to highlight Article 16 number 3 of the Organic Law on Sport, Physical Activity and Physical Education of Venezuela, which obliges every Venezuelan athlete to respect the “*national and international anti-doping norms*” and which norm demonstrates that Venezuela is aware of its international commitments.

7.22 The human rights, emphasized by the First Respondent in the context of the law of Venezuela (in particular, right to equality and right to personal freedom), as far as enshrined in the Constitution of the Bolivarian Republic of Venezuela, in the opinion of the Sole Arbitrator are perfectly reflected by the material public order to be respected by the CAS under Swiss law (see e.g. decision of 21 February 2008, 4A.370/2007, of the Swiss Federal Tribunal at para 5.1 and CAS 2008/A/1654 at paras 5.20 – 5.22). The Sole Arbitrator does not see any arguments of the First and Fourth Respondents that might give rise to doubts as to due respect of this legal standard in the present case. Even, if it has to be admitted that the First Respondent, as a totally blind athlete, indeed, has not the same possibilities as an athlete without such impairment to protect against sabotage, she, nevertheless, is in totally the same position as all other totally blind athletes. Once the Appellant, as an organization representing the paralympic movement, including the interests of all impaired athletes, has found reasonable and adequate to commit to the WADC and adopt an Anti-Doping Code which includes the same obligations for impaired athletes as for athletes without impairment, the measure for guaranteeing equality has shifted to a guarantee of equality between impaired athletes. All totally blind athletes have the same obligation, to be aware of possible sabotage and protect against by carefully selecting their entourage, in order to make sure that no prohibited substance can enter their body. The First Respondent was found having committed an anti-doping rule violation, whereas other totally blind athletes who took part at the same competitions and were subject to a doping control were not found of having committed such violation.

The Court of Arbitration for Sport rules:

1. The Appeal filed by the International Paralympic Committee is admissible.
2. The decision rendered by the FEPOCIVE on 14 March 2012, in the matter of the athlete I., is set aside.
3. I. is suspended from 21 August 2011 for a period of two years. The period of any provisional suspension served by I. shall be credited against the total period of ineligibility to be served.
4. (...)
5. (...)
6. All other motions or prayers for relief are dismissed.