



Arbitration CAS 2019/A/6330 Sara Castillo Martínez v. World Skate, award of 18 February 2020 (operative part of 9 July 2019)

Panel: Mr Efraim Barak (Israel), Sole Arbitrator

Roller sport (artistic skating)

Nationality

Principle of predictability of regulations

Principle of legality

Application of the principles of legality and predictability to rules on eligibility to participate in competitions

Scope of application of Rule 41 of the Olympic Charter

1. Regulations that may affect the careers of dedicated athletes must be predictable. They should not be the product of an obscure process of accretion.
2. Sports organisations cannot impose sanctions without a proper legal or regulatory basis for them. Such principle requires that offences and sanctions must be clearly and previously defined by law and precludes the “adjustment” of existing rules to apply them to situations or behaviours that the legislator did not clearly intend to penalise.
3. Eligibility rules of sports organisations are usually administrative rules and usually not disciplinary in nature nor have any sanctioning purpose. Yet, considering the overall framework of the sport activity at (inter)national levels, the affiliation of athletes to a sport organisation, being subject to its statutes and rules, and especially considering the importance of the participation of an athlete in the events organised by the sport organisations, the rules that define the eligibility to participate in the sport events, and for sure the major sport events, should be drafted in a very clear and predictable way. This important goal should also be imposed and achieved by applying the “principle of legality” either directly or by analogy.
4. The wording of Rule 41 of the Olympic Charter suggests that such rule applies only to the participation in the Olympic Games organised by the International Olympic Committee and that there is no rule in the Olympic Charter which provides for a general application of Rule 41 in competitions organised by International Federations. This is even more so in a sport that at present is not part of the Olympic Program.

I. PARTIES

1. Mrs Sara Castillo Martínez (hereinafter: the “Appellant”) is an artistic skater of both Spanish and Brazilian nationalities.
2. World Skate (hereinafter: “World Skate” or the “Respondent”) is the international governing body for Roller sports, including artistic skating.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background facts

4. In June 2018, the Appellant competed in the 2018 RFEP Spanish Championship of Artistic Skating and was ranked in 3rd place.
5. This 3rd place gave the Appellant the right to be selected to compete in the European Artistic Roller Skating Championships 2018 (hereinafter: the “European Championships”) and in the World Roller Games 2019 as a member of the Spanish national team. The ranking was a prerequisite to be selected to participate as a member of the national team, however, the actual selection was not automatic and required a decision of the *Real Federación Española de Patinaje* (hereinafter: the “Spanish Federation”) that the Appellant would indeed be selected.
6. During the summer 2018, the Appellant indeed competed in the European Championships representing Spain.
7. However, later the Appellant was not selected by the Spanish Federation to compete in the World Roller Games 2019 representing Spain despite her 3rd place granting her right to be selected.
8. On 12 November 2018, and based on the fact that the Appellant holds also the Brazilian nationality, the Appellant sent an email to the Spanish Federation requesting the transfer of her federation card from Spain to Brazil in order to be registered with the Brazilian Federation and apparently also for the purpose of her selection to compete in the future representing Brazil.
9. On the same day, Mr Francisco Jansà Solé, Vice President of the Spanish Federation, replied by email that the *Federación Catalana de Patinaje* was the sport organization competent in the matter of her registration, nevertheless, and for information, and referring to the question at

stake, *i.e.* the possibility for the Appellant to represent Brazil while she previously had represented Spain, he enclosed to his email a copy of the Olympic Charter and made a reference to its rule regarding the possibility to represent different countries in competitions, such rule being Rule 41 of the Olympic Charter which provides, in its Bye-law, in particular as follows¹:

- “1. A competitor who is a national of two or more countries at the same time may represent either one of them, as he may elect. However, after having represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognised by the relevant IF, he may not represent another country unless he meets the conditions set forth in paragraph 2 below that apply to persons who have changed their nationality or acquired a new nationality.*
 - 2. A competitor who has represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognised by the relevant IF, and who has changed his nationality or acquired a new nationality, may participate in the Olympic Games to represent his new country provided that at least three years have passed since the competitor last represented his former country. This period may be reduced or even cancelled, with the agreement of the NOCs and IF concerned, by the IOC Executive Board, which takes into account the circumstances of each case”.*
10. Early 2019, the Appellant, as a Brazilian national, competed in the Brazilian Artistic Skating Championship 2019.
 11. The Appellant was later selected by the *Confederação Brasileira de Hóquei e Patinação* (hereinafter: the “Brazilian Federation”) to compete, representing Brazil, in the World Roller Games 2019 to be held in Barcelona in July 2019 (hereinafter: the “World Roller Games 2019”).
 12. The registration period to participate to the World Roller Games 2019 was opened on 15 April 2019 and originally was supposed to be closed on 31 May 2019, but was however later postponed to 6 June 2019.
 13. On 29 March 2019, the Brazilian Federation requested World Skate to clarify whether or not the Appellant was eligible to compete in the World Roller Games 2019 representing Brazil considering her participation in the European Championships representing Spain in the past year.
 14. On 8 April 2019, Mrs Paula A. Contarino, on behalf of World Skate, informed the Brazilian Federation that the Appellant should wait three (3) years from the date of her participation in the European Championships before she will be eligible to represent Brazil in view of the application of Rule 41 of the Olympic Charter. In particular, Mrs Paula A. Contarino

¹ In its email, the Spanish Federation refers to a wrong rule of the Olympic Charter (Rule 42 at page 84) but it is clear, in the Sole Arbitrator’s opinion, that such mention is only a clerical mistake and that the reference should have been Rule 41. In the present award, the (wrong) reference to Rule 42 by the Respondent in its submissions will be corrected directly as a reference to Rule 41 for ease of reading.

indicated that *“this decision does not depend on the artistic regulation nor our old By-Laws (at least by now). For this scenarios, World Skate applies Rule 41 of the Olympic Charter”*.

15. On 3 May 2019, Mr Roberto Marotta, Secretary General of World Skate, convened all Member Federations to the 2019 World Skate Ordinary Congress to be held on 3 July 2019 in Barcelona, Spain. The agenda of the Congress included, *inter alia*, the topic presented as *“Amendments to the World Skate Statutes (Att. 2)”*.
16. On 28 May 2019, the Counsel for the Appellant sent a letter to World Skate requesting it to allow the participation of the Appellant in the World Roller Games 2019 as a member of the Brazilian national team. The letter included a detailed legal argumentation where the Counsel for the Appellant claimed in particular that the World Skate regulations did not contain any provision regarding the eligibility of athletes with double nationality, that the World Roller Games 2019 were not the Olympic Games, that Artistic Skating was not an Olympic discipline and that therefore Rule 41 of the Olympic Charter could not apply.
17. On 5 June 2019, the Brazilian Federation registered the Appellant for the World Roller Games 2019 on the dedicated internet platform, indicating the music and set of elements that the Appellant would use during the competition.
18. On the same day, Mr Roberto Marotta, Secretary General of World Skate, replied by email to the Appellant and its Counsel (hereinafter: the “Appealed decision” or the “Email of 5 June 2019”) answering to the letter sent on 28 May, and *inter alia* wrote the following:

“World Skate is an International Federation recognized by the IOC, therefore, its commitment to the Olympic Charter it’s not limited to those disciplines which have been declared part of the Olympic Programme.

Our Statutes clearly state at Art. 2.5 that “The general and fundamental principles of the Olympic Charter shall be enforced, and no provisions of these Statutes and of the Regulations of World Skate shall be either in conflict with or depart from these principles”.

The principles you quoted include also point 7 “Belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC”, consequently, our Nationality criteria as well as terms and conditions of Country representation on an International level, have been transposed from Rule 41 of the Olympic Charter (...).

As per Rule 41 which we enforced in our system and which we are fully compliant to: “A competitor who has represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognised by the relevant IF, and who has changed his nationality or acquired a new nationality, may participate in the Olympic Games to represent his new country provided that at least three years have passed since the competitor last represented his former country”.

Therefore, World Skate cannot authorize Sara Castillo Martínez participation in the forthcoming World Championship representing Brazil”.

19. Being informed about the Email of 5 June 2019, the Brazilian Federation removed immediately the registration of the Appellant for the World Roller Games 2019.
20. On 21 June 2019, Mr Francesco Jacopo D’Urbano, legal counsel of World Skate, informed the Counsel for the Appellant by email that, *inter alia*, it would be willing to evaluate the possibility to make an exception to Rule 41 of the Olympic Charter and allow the Appellant to represent Brazil in the World Roller Games 2019 should both the Brazilian and Spanish Federations agree to it.
21. On 24 June 2019, Mr Moacyr Neuenschwander Junior, President of the Brazilian Federation, sent an email to Mr Carmelo Paniagua, President of the Spanish Federation, requesting the Spanish Federation to allow the Appellant to compete representing Brazil in the future, in particular in the World Roller Games 2019.
22. On 25 June 2019, Mr Carmelo Paniagua, President of the Spanish Federation, replied by email that Rule 41 of the Olympic Charter should apply in this case and that therefore the Spanish Federation could not accept the Brazilian Federation’s request.
23. On 3 July 2019, the World Skate Ordinary Congress took place in Barcelona, Spain, and, *inter alia*, approved new Statutes (hereinafter: the “New Statutes”) and By-Laws (hereinafter: the “New By-Laws”), which included expressly the application of Rule 41 of the Olympic Charter at Paragraph 10C (vi) of the New By-Laws, which provides in particular as follows:
 - “vi. *World Skate applies Rule 41 of the Olympic Charter. Consequently, athletes who wish to represent a Country during World Championships or any other World Skate International Event or Competition, must be citizen of the Country concerned and must carry the relevant passport.*
 - vii. *Athletes who carry a second Passport (dual citizenship), shall choose once the Country to compete for and shall not compete for the other Country whom they are citizen of.*
 - viii. *The first time an athlete competes representing a Country during World Championships or any other World Skate International Event or Competition, he/she shall only represent that Country from then on.*
 - ix. *An athlete who has represented one Country during World Championships or any other World Skate International Event or Competition and has changed his/her nationality or acquired a new one, may participate in the abovementioned competitions representing his/her new Country provided that at least three years have passed since the athlete last represented his/her former Country.*
 - x. *This period may be reduced or even cancelled by World Skate Executive Board, with the agreement of the NOCs and the NFs concerned, taking into account the circumstances of each case”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 19 June 2019, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter: the “CAS”), in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (hereinafter: the “CAS Code”), challenging the content of the Email of 5 June 2019. The Appellant requested the appointment of Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, as Sole Arbitrator, and that the matter be expedited in accordance with Article R52 of the CAS Code.
25. On 20 June 2019, the CAS Court Office acknowledged receipt of the Statement of Appeal filed on 19 June 2019 and, *inter alia*, invited the Respondent to inform the CAS Court Office by 24 June 2019 whether it agreed with the Appellant’s request that the matter be expedited and whether it agreed to submit the matter to a Sole Arbitrator and, if this was the case, if the Respondent agreed to the appointment of Mr Efraim Barak.
26. On 22 June 2019, the Counsel for the Appellant informed the CAS Court Office that the parties were discussing a possible settlement of the dispute and requested to postpone all time limits for a three (3) days period, which was subsequently accepted by the CAS Court Office.
27. On 27 June 2019, the Counsel for the Appellant, copying the Respondent, informed the CAS Court Office that the parties agreed that the matter be expedited in accordance with Article R52 of the CAS Code according to a detailed timeline and that Mr Efraim Barak be nominated as Sole Arbitrator.
28. On 28 June 2019, the CAS Court Office acknowledged receipt of the Appellant’s letter of 27 June 2019 and noted that the parties agreed on the following expedited procedural calendar and agreed that no hearing would be necessary in the matter:
 - The Appellant shall file by email her Appeal Brief on 28 June 2019;
 - The Respondent shall file by email its Answer on 4 July 2019;
 - The operative part of the award shall be rendered before 10 July 2019.
29. Also on 28 June 2019, the CAS Court Office informed the parties that Mr Efraim Barak was available to serve as an arbitrator in this matter and could commit itself to the procedural calendar agreed by the parties. Furthermore, the parties were informed that, despite of the parties’ preference not to hold a hearing, in case the Sole Arbitrator will consider necessary to hold a hearing, such hearing will take place on 9 July 2019 and the operative award will be issued on the agreed date. The Appellant also filed her Appeal Brief in accordance with R51 of the CAS Code.
30. On 2 July 2019, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Sole Arbitrator appointed to decide the present matter was Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, and that Mr Pierre Turrettini, Attorney-at-Law in Geneva, Switzerland, was

appointed as *Ad hoc* Clerk. The CAS Court Office also informed the Respondent that the ICAS Legal Aid Commission had granted Legal Aid to the Appellant.

31. On 4 July 2019, the Respondent filed its Answer in accordance with Article R55 of the CAS Code. In the Answer, the Respondent included the fact that its Congress approved, on 3 July 2019, the amendments to the Statutes including the new rule that applies Rule 41 of the Olympic Charter. Amongst its other arguments, the Respondent also relied on this fact in support of its position.
32. On 5 July 2019, the CAS Court Office, *inter alia*, acknowledged receipt of the Respondent's answer.
33. On 5 July 2019, the Appellant filed certain comments with respect to the Respondent's Answer and requested for leave to file a second written submission considering new facts submitted by the Respondent.
34. Also on 5 July 2019 at 12:10 (CET), the CAS Court Office, on behalf of the Sole Arbitrator, informed the parties, *inter alia*, that, considering the relevance and importance of the new information contained in the Answer of the Respondent, the Appellant's request for leave to file a second round of written submission was granted.
35. On same letter, the CAS Court Office invited the Appellant to submit by 14:30 (CET) on the same day her comments limited only to the new information and invited the Respondent to submit its reply by 18:00 (CET) on the same day and provide:
 - a. any further comments on the comments of the Appellant on the issue of the new Rules and Regulations;
 - b. the full detailed information about all the past cases where Rule 41 of the Olympic Charter was applied by World Skate (the decision, the date of the decision of World Skate, name of the athlete and both nationalities);
 - c. the full text of the new Rules and Regulations that were approved the day before by the Congress and the Executive Board of World Skate;
 - d. the duly signed full minutes of the meetings of the Board of Directors & the Congress that approved the new Rules and Regulations; and
 - e. the information as to when was the last day on which the National Federations had to complete the entry procedure to the world championship and if any instructions in this respect were sent to the National Federations.

36. The CAS Court Office further informed the parties that the Sole Arbitrator considered that indeed a hearing would not be needed, this being however subject to the last submissions to be filed by the parties.
37. Both parties filed their second round of written submissions on 5 July 2019 within the time limits set by the Sole Arbitrator, which was undisputed.
38. On 8 July 2019, the CAS Court Office informed the parties that, following the parties' preference not to hold a hearing and after due consideration of the second round of written submissions, the Sole Arbitrator had decided to respect the request of the parties and to render the award based on the written submissions only.
39. Also on 8 July 2019, both parties returned duly signed copies of the Order of Procedure.
40. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidences, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

IV. REQUESTS FOR RELIEF

41. The Appellant submitted the following requests for relief:
 - “a) Set aside the Decision of the WORLD SKATE notified on June 5, 2019 and allow CBHP to confirm the previous registration of SARA CASTILLO MARTINEZ and allow her to compete in the WORLD SKATE CHAMPIONSHIP, to be held in Barcelona on July 11.*
 - b) Proclaim that there is no impediment for Sara Castillo Martinez to compete internationally representing Brazil.*
 - c) Order the WS to communicate to the Confederação Brasileira de Hóquei e Patinação and the Real Federación Española de Patinaje the CAS award in time to no affect the participation of Sara in WORLD SKATE CHAMPIONSHIP, to be held in Barcelona in July 10.*
 - d) Grant this party a contribution towards its legal fees and other expenses incurred in connection with the proceedings according to the Art. R65.3 of the CAS Code, for an amount of not less than CHF 6,000”.*
42. The Respondent submitted the following requests for relief:
 - “a) Proclaim that the Rule 41 of the Olympic Charter is applicable to this case or apply Paragraph 10.C of the World Skate By-Laws and, consequently, proclaim the application to compete for Brazil in the forthcoming Artistic Skating World Championship as unacceptable and prohibit her to compete as a Brazilian athlete for the abovementioned reasons;*

- b) Dismiss the Appeal submitted by Sara Castillo Martínez;*
- c) Order Sara Castillo Martínez to respect the three years term;*
- d) Apply R64.5 of the CAS Code and order that all costs shall be borne by the losing party”.*

V. SUBMISSIONS OF THE PARTIES

- 43. The following outline of the parties’ positions is a summary of the submissions only and does not necessarily encompass every contention put forward by the parties. However, the Sole Arbitrator has carefully considered all the written submissions made by the parties, even if there is no specific reference to those submissions in the following summaries.
- 44. The Appellant’s submissions, in essence, may be summarised as follows:
 - The Appellant claims that the rules applicable for her participation in the World Roller Games 2019 are the Official Regulation Artistic – General 2019 which establish the criteria that National Federations must accept and the formal requirements to be met. Such rules do not include specific rules regarding double nationality athletes nor any rule which prohibits an athlete who has double nationality to compete in the World Roller Games 2019, such prohibition having never been discussed at any time during a World Skate Congress. The Appellant adds that the Respondent, to justify the content of its Email of 5 June 2019, is only referring to the Olympic Regulations which are not even mentioned in the applicable rules for the competition.
 - In the Appellant’s opinion, Rule 41 of the Olympic Charter should apply only if a specific rule of the World Skate applicable regulations expressly provides such application.
 - Analysing Article 2 of the World Skate Statutes, the Appellant submits that World Skate acknowledges and recognizes the Statutes and the purposes of the International Olympic Committee (hereinafter: the “IOC”) but enforces only the general and fundamental principles of the Olympic Charter in the sense that the regulations of World Skate shall only not be in conflict or depart from these principles, which in any case do not include the Olympic Charter as a whole.
 - The Appellant sustains also that Article 25 of the Olympic Charter clearly states that while the statutes, practices and activities of an International Federation must be in conformity with the Olympic Charter, each International Federation shall maintain its independence and autonomy in the governance of its sport. In the Appellant’s view, the International Federations are therefore only required to comply with the World Anti-Doping Code and the Olympic Movement Code on the Prevention of Manipulation of Competitions and not with the entire Olympic Charter.

- The Appellant maintains that the restriction of a right, namely the right to participate in a world championship, must be clearly stated in a specific rule including such restriction. A general reference to general principles of the Olympic Charter is not sufficient to allow the application of all rules of the Olympic Charter to international competitions of international federations. Concluding that Rule 41 of the Olympic Charter is applicable to the World Roller Games 2019 would constitute an extensive interpretation. Citing CAS OG 00/005 Angel Perez v. IOC, the Appellant submits additionally that when a text is ambiguous, the ambiguity must be resolved in favour of the athlete.
- The Appellant further argues that the three (3) years waiting period of Rule 41 of the Olympic Charter was designed for the Olympic Games which are organised every four (4) years and not for a competition of World Skate. Applying Rule 41 of the Olympic Charter would deprive the Appellant from participating in six (6) championships (European, South American and World Championships) which would be excessive. In the Appellant's view, the Olympic Charter applies to the Olympic Games only and to no other competition, more particularly if such competition, like artistic skating, is not an Olympic discipline.
- The Appellant submits also that the fact that World Skate has amended its By-Laws after the occurrence of the present matter to include about the wording of Rule 41 of the Olympic Charter and that World Skate is requesting the CAS to either declare that Rule 41 of the Olympic Charter is applicable to the case or apply the New By-Laws is an indication that, in fact, Rule 41 of the Olympic Charter was not part of the World Skate regulations before.
- The Appellant finally argues that the general principle of the non-retroactivity shall apply to the present matter and that the New By-Laws of World Skate shall therefore not be applicable, in particular considering the fact that the Respondent has not proven that the formal procedure to amend the By-Laws has been respected and that, in any case, the Appellant was selected by the Brazilian Federation to participate to the World Roller Games 2019 and requested clarification regarding her opportunity to represent Brazil several weeks before the amendments of the By-Laws of World Skate.

45. The Respondent's submissions, in essence, may be summarised as follows:

- The Respondent submits that it has always applied Rule 41 of the Olympic Charter and has never authorized an athlete to change his/her nationality, in particular when the request was coming from an athlete who had competed for another country a few months earlier and had not received the approval of the two National Federations involved.

- The Respondent claims that it does not make any distinction between the sports it governs when applying rules. World Skate applies the same rules to all sports, being an Olympic discipline or not.
- The Respondent also argues that it has been included in the Olympic Program three (3) years ago and since then has put all its efforts to comply with all rules of the IOC, including the Rule 41 of the Olympic Charter.
- The Respondent sustains that, since September 2017, it has been working on new rules and regulations and that, on 3 July 2019, respecting the internal governance rules, the Executive Board and the Congress have adopted a new Paragraph 10.C in the By-Laws which enforces the principle of Rule 41 of the Olympic Charter. Such adoption is a clarification of a specific practice it has always applied, an evidence of such practice being the email sent by the Spanish Federation to the Appellant including a reference to the principles of Rule 41 of the Olympic Charter.
- The Respondent argues also that it has complied with the process described in Rule 41 of the Olympic Charter by asking the Executive Board to adopt an urgent resolution to allow the Appellant to compete representing Brazil but, unfortunately, the two National Federations involved did not reach an agreement on the matter.
- The Respondent maintains that the reference to the Official Regulation Artistic – General 2019 is out of context as it is an operational guideline, nationality matters being not regulated by technical rules.
- The Respondent claims that there is no violation of the Appellant’s personal rights but only an application of a strong and clear internationally recognized rule that the Appellant, her entourage and the Brazilian Federation knew about, the Appellant trying to take advantage of a rule gap which in fact was enforced by a practice and now by the New By-Laws. Furthermore, the Respondent sustains that the Appellant did not refer to any case law in favour of her arguments.
- The Respondent also sustains that as its New By-Laws came into force on 4 July 2019 and as the competition should start on 11 July 2019, the New By-Laws should apply in the event the CAS finds that Rule 41 of the Olympic Charter is not applicable.

VI. JURISDICTION

46. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

47. The Appellant relies on Article 2(4) of the World Skate Statutes (2017) as conferring jurisdiction on CAS. Such article provides as follows:

“World Skate requires all its members to acknowledge and agree that any dispute shall be settled by the Court of Arbitration for Sport. According to these Statutes, only the Federations that are lawfully member of World Skate shall have the right to appeal to the Court of Arbitration in seeking legal remedy against World Skate or any other Member Federation of World Skate”.

48. The Sole Arbitrator observes that Article 3 of the World Skate Statutes provides notably that *“Membership shall be open to National Federations and Associations”*.
49. The Sole Arbitrator finds that the wording of Articles 2(4) and 3 of the World Skate Statutes (2017) may not be sufficient to allow the Appellant disputing the content of the Email of 5 June 2019 and that therefore the jurisdiction of CAS could have been questioned.
50. However, the jurisdiction of CAS was not contested by the Respondent at any stage of the proceedings, being reminded that the plea of lack of jurisdiction must be raised prior to any defence on the merits (Article 186(2) PILA and Article R55 CAS Code) failing of which such plea shall be considered as having been irrevocably waived (BERGER/KELLERHALS, *International and Domestic Arbitration in Switzerland*, 3rd edition, Bern, 2015, 601, N 1721.).
51. To the contrary, the Respondent expressly agreed in writing with the Appellant to submit the present matter to CAS. The Sole Arbitrator is therefore satisfied that (and welcomes) the Respondent’s understanding and interpretation of its own Statutes grants also the athletes the right to appeal to CAS against the World Skate and any of its Member Federation’s decisions.
52. The jurisdiction of CAS was further confirmed by the Order of Procedure duly signed by both parties.
53. It follows that CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

54. The appeal arbitration procedure in the sense of Article R47 ff. of the CAS Code is available only for disputes whose subject matter concerns an appeal against a *“decision”*.
55. CAS jurisprudence is abundant in relation to what constitutes a decision within the meaning of Article R47 of the CAS Code (CAS 2005/A/899; CAS 2008/A/1633; CAS 2013/A/3148; CAS 2014/A/3744 & 3766; CAS 2015/A/4174). According thereto the characteristic features of a decision may be described as follows:

- the term *“decision”* must be construed in a large sense;

- the form of the communication in question is irrelevant for its qualification;
 - in principle, for a communication to be qualified as a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties;
 - a decision is a unilateral act, sent to one or more determined recipients that is intended to produce or produces legal effects;
 - an appealable decision of a sport organization is normally a communication directed to a party and based on an *“animus decidendi”*, i.e. an intention of a body of the association to decide on a matter [...]. A simple information, which does not contain any ruling, cannot be considered a decision (BERNASCONI M., *“When is a ‘decision’ an appealable decision?”* in: RIGOZZI/BERNASCONI (eds.), *The Proceedings before the CAS*, Bern, 2007, p. 273).
56. Based on the facts described here above, the Sole Arbitrator considers that the Email of 5 June 2019 constituted indeed a decision that is capable of being challenged because it affects the legal rights of the Appellant, namely her right to participate to a world competition.
57. Having established that the decision included in the Email of 5 June 2019 may be challenged, the Sole Arbitrator must then determine whether the Appeal was made on time.
58. In this respect, Article R49 of the CAS Code provides in particular as follows:
- “In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*
59. In light of the chronology set out in paragraphs 18 and 24 above, the Appeal is admissible.

VIII. APPLICABLE LAW

60. Article R58 CAS Code provides as follows:
- “The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
61. Article 1(5) of the World Skate Statutes (2017) provides as follows:

“The headquarters of World Skate shall be established in the President’s country of residence or in any other place proposed by him/her, as subsequently approved by the Executive Board (EB) and ratified by the Congress. Furthermore, the President may set up operational offices wherever deemed appropriate”.

62. There is no choice of law in the World Skate Statutes (2017).
63. In all its communications in the present proceedings, World Skate indicated *“Maison du Sport International, Avenue de Rhodanie 54, CH – 1007 Lausanne (Switzerland)”* as its seat. Additionally, the Sole Arbitrator notes that Article 1(5) of the New Statutes and Paragraph 1.1 of the New By-Laws indicate that the headquarters of World Skate shall be in Lausanne, Switzerland.
64. Accordingly, the Sole Arbitrator finds that the World Skate regulations and, subsidiarily, Swiss law are applicable to the present case.
65. The Sole Arbitrator has however to decide whether the World Skate Statutes (2017) or the New Statutes and the New By-Laws (approved on 3 July 2019 during the World Skate Ordinary Congress) are applicable to the present matter.
66. The Appellant submits in particular that the New Statutes and the New By-Laws cannot apply to the present matter considering the general principle of non-retroactivity.
67. In its requests for relief, the Respondent requested that, (only) in the event the Sole Arbitrator finds that Rule 41 of the Olympic Charter is not applicable, Paragraph 10.C of the New By-Laws shall apply to the present matter considering that the New By-Laws entered into force on 4 July 2019 and that the competition in which the Appellant wishes to participate starts on 11 July 2019.
68. The Sole Arbitrator notes that Paragraph 13.C of the New By-Laws provides as follows:

“These By-Laws and their further amendments shall come into force on the day after their approval by World Skate Executive Board.

These By-Laws shall be ratified by the World Skate Congress”.
69. The Sole Arbitrator further observes that the World Skate Congress approved the New By-Laws on 3 July 2019 and that therefore the New By-Laws entered into force as from 4 July 2019, which is not disputed by the Respondent.
70. The Sole Arbitrator notes that the registration period to participate to the World Roller Games 2019 was initially opened from 15 April to 31 May 2019 and was later postponed to 6 June 2019, namely before 4 July 2019. The Appealed Decision was rendered on 5 June 2019 and the Appellant appealed such decision on 19 June 2019, namely also before 4 July 2019.

71. In view of the above findings, the Sole Arbitrator concludes that the regulations of World Skate as were in force until 6 June 2019 are applicable to the substance of the case, in particular the World Skate Statutes (2017) (hereinafter: the “Applicable Statutes”), and, subsidiarily, Swiss law, should the need arise to fill a possible gap in the regulations of World Skate.

IX. MERITS

A. The main issues

72. The main issues to be resolved by the Sole Arbitrator in assessing and deciding the validity of the Appealed Decision are:
- a) Did the wording of the Applicable Statutes contain any rule that may have validly prevented the participation of the Appellant to the World Roller Games 2019 representing Brazil, including by means of application of Rule 41 of the Olympic Charter?
 - b) If the answer to (a) is negative, did any other applicable legal source exists that could support and validate the decision of World Skate to refuse the Appellant’s request to participate to such games representing Brazil?
 - c) If the answer to (b) is negative, could Rule 41 of the Olympic Charter have been considered part of the Applicable Statutes based on customary law?
- a) *Did the wording of the Applicable Statutes contain any rule that may have validly prevented the participation of the Appellant to the World Roller Games 2019 representing Brazil, including by means of application of Rule 41 of the Olympic Charter?*
73. It is firstly reminded that the Appellant is an athlete who holds double nationality, who represented Spain in past international competitions and who now wants to represent Brazil in future international competitions.
74. The Appellant claims that no regulations of World Skate prevent her from participating to the World Roller Games 2019 representing Brazil.
75. The Appealed Decision states, and the Respondent submits, that Rule 41 of the Olympic Charter is applicable by an indirect reference in the Applicable Statutes, in particular at its Article 2(5), and in the fundamental principles of the Olympic Charter, in particular at its point 7, which provide as follows:

Article 2(5) of the Applicable Statutes

“The general and fundamental principles of the Olympic Charter shall be enforced, and no provisions of these Statutes and of the Regulations of World Skate shall be either in conflict with or depart from these principles”.

Point 7 of the fundamental principles of the Olympic Charter

“Belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC”.

76. The Sole Arbitrator notes also that Articles 1(3) a) and 2(2) of the Applicable Statutes may be relevant to decide on the present matter. Such articles provide as follows:

Article 1(3) a) of the Applicable Statutes

“(3) World Skate is recognized by:

a) The International Olympic Commission (IOC), whose rules World Skate already abides by”.

Article 2(2) of the Applicable Statutes

“World Skate acknowledges and recognizes the Statutes and the purposes of the International Olympic Commission (IOC), the IOC anti-doping rules, the WADA CODE and the Global Association of International Sports Federations (GAISF)”.

77. The Sole Arbitrator starts his analysis by reviewing the wording of the abovementioned rules to determine whether or not the Applicable Statutes include the application of Rule 41 of the Olympic Charter.
78. In this context, with reference to the Applicable Statutes, the Sole Arbitrator observes that at no point and in no place the Statutes expressly mention the application of the Olympic Charter as a whole, including its Rule 41.
79. Article 1(3) a) of the Applicable Statutes states solely that World Skate is recognized by the IOC, whose rules World Skate abides by. Such wording does not entail the full automatic “import” of the whole Olympic Charter into the Applicable Statutes and therefore cannot be legitimately considered as a source supporting the arguments of World Skate with regards to the application of Rule 41 of the Olympic Charter.
80. Article 2(2) of the Applicable Statutes states that World Skate acknowledges and recognizes the Statutes and the purposes of the IOC, the IOC anti-doping rules, the WADA CODE and the Global Association of International Sports Federations (GAISF). Here, specific

regulations are clearly indicated but, again, one cannot conclude that the whole Olympic Charter is included in the reference to the Applicable Statutes and the purposes of the IOC.

81. The Sole Arbitrator observes that the only clear reference to the Olympic Charter stands at Article 2(5) of the Applicable Statutes, a rule that indicates that the general and fundamental principles of the Olympic Charter shall be enforced and that no provision of the World Skate regulations shall be in contradiction with such principles.
82. The Sole Arbitrator further notes that the fundamental principles of the Olympic Charter include mainly values to which the IOC adheres such as (without being exhaustive) joy of the effort, social responsibility, peace, human dignity, non-discrimination, solidarity, fair play, political neutrality. In its last point (point 7), it is stated that *“Belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC”*.
83. The Sole Arbitrator must therefore determine whether the reference to the fundamental principles of the Olympic Charter at Article 2(5) of the Applicable Statutes is sufficient to justify the application of Rule 41 of the Olympic Charter to the Applicable Statutes.
84. In this respect, the Sole Arbitrator finds that such article must be interpreted according to Swiss law and related CAS jurisprudence.
85. As a starting point, the Sole Arbitrator considers and fully adheres to the following consideration retained by a previous important CAS panel (CAS 94/129, para. 34):

“Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorised bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders”.

86. The Sole Arbitrator finds that this longstanding jurisprudence is also applicable to regulations that govern procedures that may have very important consequences on a party (as it was retained in CAS 2014/A/3621, para. 115), such as the refusal to accept the participation of an athlete to a world competition based on a double nationality issue.
87. Consequently, the Sole Arbitrator finds it important to refer to the “principle of legality” (*“principe de légalité”*) which must be respected when interpreting Article 2(5) of the Applicable Statutes, being reminded that such principle requires that offences and sanctions must be clearly and previously defined by law and precluding the “adjustment” of existing rules to apply them to situations or behaviours that the legislator did not clearly intend to penalize (CAS 2011/A/2670, para. 8.13). In this respect, the Sole Arbitrator observes that CAS awards have consistently held that sports organizations cannot impose sanctions without a proper legal or regulatory basis for them and that such sanctions must also be predictable (“predictability test”). CAS case law (for example CAS 2011/A/2670, para. 8.13; CAS 2007/A/1437 para.

8.1.8) has also held that inconsistencies in the rules of a federation will be construed against the federation (*contra proferentem principle*).

88. The Sole Arbitrator is of course aware of the fact that the eligibility rules of a sport organization, including the ones at stake in these proceedings, are usually administrative rules, are usually not disciplinary in nature nor have any sanctioning purpose (although in some cases it may also be related to disciplinary issues). Yet, considering the overall framework and organization of the sport activity in national and international levels, and the affiliation of the athletes to a sport organization, being subject to its statutes and rules, and especially considering the importance of the participation of an athlete in the sport events organized by the sport organizations, the rules that define the eligibility to participate in the sport events, and for sure the major sport events such as the national, continental or world competitions, should be drafted in a very clear and predictable way. This important goal should also be imposed and achieved by applying the “principle of legality” either directly or by analogy.
89. When interpreting Article 2(5) of the Applicable Statutes according to the above principles, the Sole Arbitrator agrees with the Appellant that its reference to the fundamental principles of the Olympic Charter is not sufficient to predict an automatic direct application of the Olympic Charter as a whole, including its Rule 41, to the Applicable Statutes. One can indeed hardly deduct from such reference that all rules of the Olympic Charter – which govern mainly the IOC, the National Olympic Committees and the Olympic Games – will be applicable to an international competition organized outside the scope of the IOC’s powers. It is clear that any sanction or rule in the Olympic Charter that may affect the rights of athletes is not predictable when reading Article 2(5) of the Applicable Statutes.
90. The Sole Arbitrator further notes that Rule 25 of the Olympic Charter provides as follows:

*“The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code as well as the Olympic Movement Code on the Prevention of Manipulation of Competitions. Subject to the foregoing, **each IF maintains its independence and autonomy in the governance of its sport**”* (emphasis added).
91. In the Sole Arbitrator’s opinion, the fact that the Olympic Charter itself allows the International Federations to maintain their independence and autonomy to govern their sport is evidence that Rule 41 of the Olympic Charter, which pertains to a very specific rule regarding the eligibility of athletes to represent specific countries in the Olympic Games in cases of double nationality, is not part of the fundamental principles of the Olympic Charter in the meaning of this term within the Applicable Statutes. In this respect, and in support of his finding, the Sole Arbitrator notes that other International Federations which are part of the Olympic Movement have provided for different rules regarding the double nationality issue (see notably regulations of FIFA, IAAF, FIBA) which evidences that they have autonomy to provide for different rules even if they are part of the Olympic Movement.

92. Finally, the Sole Arbitrator observes that, in any event, the wording of Rule 41 of the Olympic Charter suggests that such rule applies only to the participation in the Olympic Games organized by the IOC and that there is no rule in the Olympic Charter which provides for a general application of Rule 41 in competitions organized by International Federations. This is even more so in a sport that at present is not part of the Olympic Program.
93. In view of the above findings, the Sole Arbitrator concludes that the Applicable Statutes did not include in any direct way the application of Rule 41 of the Olympic Charter and therefore the Applicable Statutes could not prevent the participation of the Appellant to the World Roller Games 2019 representing Brazil.
- b) If the answer to (a) is negative, did any other applicable legal source exists that could support and validate the decision of World Skate to refuse the Appellant's request to participate to such games representing Brazil?***
94. Since it has been determined that the wording of the Applicable Statutes does not allow the application of Rule 41 of the Olympic Charter by any legitimate mean of interpretation, the Sole Arbitrator has however to examine whether there is any other applicable legal source that could support and validate the Appealed Decision.
95. In this context, the Sole Arbitrator observes that neither the regulations of World Skate nor Swiss law (in particular the Swiss Civil Code which applies to all associations domiciled in Switzerland) contain any rule that could support the Appealed Decision.
96. In particular, the Sole Arbitrator notes again that the New Statutes and the New By-Laws cannot apply to the present matter considering the general principle of non-retroactivity.
97. In the Sole Arbitrator's opinion, an international federation should indeed not impose new rules regarding the eligibility to participate in a competition when the registration period to participate to that competition is already closed. The eligibility rules in force until the closing of the registration period should indeed be the only relevant rules with respect to the eligibility to participate in a competition, otherwise the organising body of the competition may create discrimination situations between the athletes.
98. In this context, the Sole Arbitrator concludes that no other applicable legal source exists to support and validate the Appealed Decision.
- c) If the answer to (b) is negative, could Rule 41 of the Olympic Charter have been considered part of the Applicable Statutes based on customary law?***
99. Since it has been determined that the wording of the Applicable Statutes does not allow the application of Rule 41 of the Olympic Charter by any legitimate mean of interpretation and that no other applicable legal source exists to validate the Appealed Decision, the Sole

Arbitrator has finally to examine whether such rule could apply because, according to the Respondent, it was applied in the past by World Skate.

100. In this respect, Swiss doctrine and jurisprudence recognizes indeed the potential importance of customary law within an association (*i.e.* in German the so-called “*Vereinsübung*” or “*Observanz*” and in French the so-called “*droit coutumier*”). In addition, CAS has recognized the institution of customary law in an association in its jurisprudence, for instance in CAS 2004/A/589.
101. The majority of Swiss scholars agree that a custom consists of two elements: objective and subjective. The ordinary meaning of the term “custom” presupposes the existence of widespread practice for a very long time (*longa consuetudo*). The practice should emerge out of the spontaneous and unforced behaviour of various members of a group. The parties involved must subjectively believe in the obligatory or necessary nature of the emerging practice (*opinio juris sive necessitatis*) (WERRO F., in PICHONNAZ/FOËX (eds.), *Commentaire romand, Code civil I*, Basel, 2010, ad art. 1 CC, N. 7, p. 6 and N. 27, p. 12). In this context, the concerned party must objectively demonstrate the existence of its allegations with regard to a longstanding and undisputed practice that acquired force of customary law (Article 8 of the Swiss Civil Code; ATF 123 III 60 consid. 3a); ATF 130 III 417 consid. 3.1.). In order to convince that such customary law indeed was established it is not sufficient to simply assert a statement of such a practice.
102. In the case at hand, the Sole Arbitrator had no intention to dismiss the argument without giving the Respondent the opportunity to produce sufficient evidence to support the possibility that Rule 41 of the Olympic Charter was actually applied by World Skate as a matter of customary law. For this purpose, the Sole Arbitrator, on his own initiative, requested the production of more information (CAS letter dated 5 July 2019, para. 35 (a) above).
103. The Sole Arbitrator observes that the Respondent has produced no evidence as to the existence of any longstanding practice while it was expressly given the opportunity to do so following a direct question addressed by the Sole Arbitrator. In particular, the Sole Arbitrator notes that the Respondent stated only that it has no jurisprudence on the matter because the rule has always been respected and that it received only requests of information. In this respect, the Sole Arbitrator observes that the Respondent also did not submit any evidence of such requests of information.
104. In view of the above findings, the Sole Arbitrator denies the allegation of the Respondent in respect of the past practice in respect of the application of Rule 41 of the Olympic Charter, and concludes that the Appealed Decision could not have been legitimately issued based on a “longstanding practice”, and therefore Rule 41 of the Olympic Charter did not become part of the Applicable Statutes as a customary law.

B. Conclusions

105. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:
- a) Rule 41 of the Olympic Charter does not apply to the Applicable Statutes by reference in the Applicable Statutes or as customary law.
 - b) The Appealed Decision had no legal basis and therefore must be set aside.
 - c) The Appellant is eligible and allowed to compete, representing Brazil, in the World Roller Games 2019 to be held in Barcelona in July 2019.
106. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 19 June 2019 by Mrs Sara Castillo Martínez against the decision issued on 5 June 2019 by the Secretary General of World Skate is upheld.
2. The decision issued on 5 June 2019 by the Secretary General of World Skate is set aside.
3. Mrs Sara Castillo Martínez is eligible and allowed to compete, representing Brazil, in the World Roller Games 2019 to be held in Barcelona in July 2019.
4. World Skate is ordered to communicate the present award to the *Confederação Brasileira de Hóquei e Patinação* and the *Real Federación Española de Patinaje* immediately following the notification of the present award.
5. (...).
6. (...).
7. All other motions or requests for relief are dismissed.