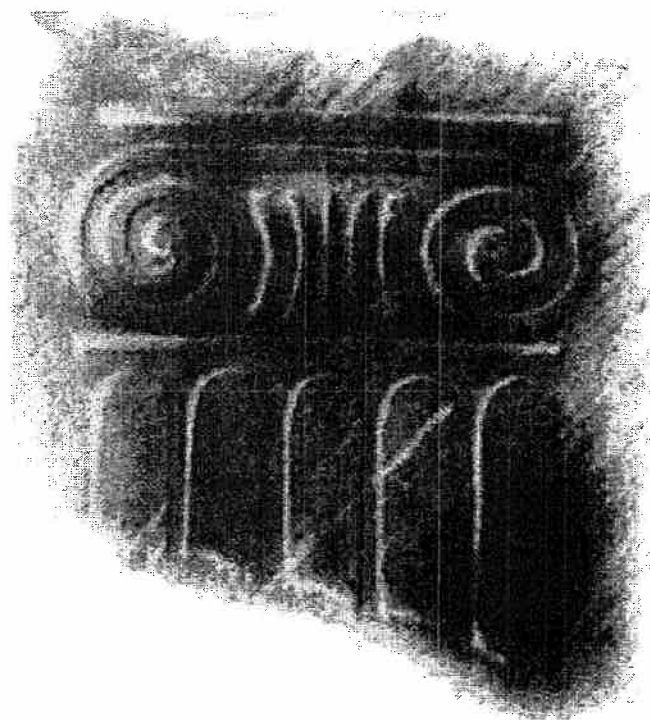


**Tribunal
Arbitral du Sport**

**Court of Arbitration
for Sport**



ARBITRAL AWARD

Varteres SAMURGASHEV, Russia

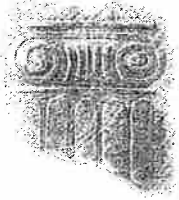
v/

INTERNATIONAL FEDERATION OF ASSOCIATED WRESTLING STYLES (FILA),
Corsier-sur-Vevey, Switzerland

&

Mr Mario SALETNIG, USA

CAS 2008/O/1640 Lausanne, February 2009



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2008/O/1640 Varteres Samurgashev v/FILA & Mario Saletnig

ARBITRAL AWARD

pronounced by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Michael **Geistlinger**, Professor, Salzburg, Austria

Arbitrators: Dr Sergey **Belyaev**, Counsellor-at-Law, Frankfurt/Main, Germany

Mr Quentin **Byrne-Sutton**, Attorney-at-Law, Geneva, Switzerland

in the arbitration between

Mr Varteres Samurgashev

represented by Mr Oleg V. Mikhaylenko, Attorney-at-Law, Rostov-na-Donu, Russian Federation

- Claimant -

and

INTERNATIONAL FEDERATION OF ASSOCIATED WRESTLING STYLES (FILA),
Corsier-sur-Vevey, Switzerland

and

Mr Mario Saletnig

Chelford Court, NAPLES, USA

both represented by Mr François Carrard, Attorney-at-Law, Lausanne, Switzerland

- Respondents -

I. The Parties to the Proceedings

- 1.1. The Claimant is Mr Varteres Samurgashev, a Russian wrestler of the Men's Greco Roman 74 kg class, and topclass athlete. Besides many other championships he achieved a gold medal at the Olympic Games in Sydney 2000, a bronze medal at the Olympic Games in Athens 2004, was World Champion in 2002 and 2005 and European Champion in 2006. He was qualified for the Olympic Games in Beijing 2008 and reached the quarter final after having succeeded against Mark Madsen and Ildar Abdulov.
- 1.2. The First Respondent is the International Federation of Associated Wrestling Styles ("FILA"), which is the international federation that governs and administers the sport of wrestling worldwide.
- 1.3. The Second Respondent is Mr Mario Saletnig, a Canadian citizen, living in the US, Vice-President of the FILA and FILA responsible for refereeing. At the Olympic Games in Beijing 2008 he acted as one of the two members of the Refereeing Department nominated to supervise all refereeing matters at Olympic Games according to article 22 of the FILA International Wrestling Rules.

Article 22 of the International Wrestling Rules reads as follows:

"The Person responsible for refereeing

In all Olympic Games, World Championships, Cups, Championships, Continental Cups and Games and Regional Games, two members of the Refereeing Department will be nominated to supervise all refereeing matters.

In case of dispute and after viewing the video, if the person responsible for refereeing agrees with the mat chairman, their decision will be applicable."

- 1.4. There is no dispute with regard to the parties to the proceedings.

II. The Facts and Submissions of the Parties

- 2.1. On 13 August 2008 at the 2008 Beijing Olympic Games, the Men's Greco Roman 74 kg quarterfinal (bout 81) took place between the Claimant and the Hungarian wrestler Peter Bacsı. In the first period the Claimant performed a hold, which brought Bacsı into a danger position. The Jury (1 mat chairman, 1 referee, 1 judge, 1 person responsible, 1 controller), after three of them had observed together a video recording, consulted, and the Claimant received 3 points, which were indicated on the official scoreboard.
- 2.2. Shortly after the bout has been restarted, the mat chairman interrupted the bout. Mr Saletnig approached the video screen, consulted with two members of the Jury, and the three points previously given to the Claimant, were cancelled. The bout was restarted. The first period ended 2:2 and was awarded to Bacsı due to a technical point. After the end of the first period a controversy took place between the Russian coach and the mat

chairman who showed the yellow card to the Russian coach. The Claimant stated that the Russian coach wanted to raise a protest against the reversed Jury decision.

- 2.3. In the second period, when the Claimant made a counterattack, the mat chairman interrupted the bout. Mr Saletnig approached the members of the Jury present at the video screen immediately, observed a video recording together with three Jury members and obviously took part in the decision making. The second period ended 1:4. Basci, thus, was declared winner of the bout after the second period with a total score of 6:3.
- 2.4. On 22 August 2008, one day after the last competitions in wrestling at the 2008 Beijing Olympic Games, the Claimant by email filed an application with both the CAS ad hoc Division in Beijing and the CAS Court Office in Lausanne. The Claimant, his legal representative, the FILA Vice President and the FILA President and Secretary General had already left Beijing at that moment.
- 2.5. By letter of 22 August 2008, the CAS Secretary General invited the Claimant to clarify whether he wanted to file an application with the CAS ad hoc Division or with the CAS head office in Lausanne and which CAS procedure he wanted to use. By email of 22 August 2008, Counsel for the Claimant replied that he intended to file an application with the CAS ad hoc Division in Beijing, but that he would not object if the case were to be directly referred to the CAS head office in Lausanne. FILA representatives could not be reached that weekend.
- 2.6. In consideration of article 4 and article 20 of the CAS Arbitration Rules for the Olympic Games, on 23 August 2008, the ad hoc Division of the CAS referred the dispute *ex officio* to regular CAS procedure in accordance with articles R47 ff of the Code of Sports-related Arbitration (Code). The Claimant was granted a deadline of 3 September 2008 to bring the dispute before CAS according to articles R49 ff of the Code. The ad hoc Division of the CAS ruled that the time-limit for the initiation of regular CAS arbitration provided in the Statutes or Regulations of FILA, if any, or the time-limit set by article R49 of the Code shall not apply. The ad hoc Division of the CAS further decided that the CAS Court Office fee provided for by article R48 of the Code was to be paid by the Claimant on or before 3 September 2008.
- 2.7. The Panel was formed in accordance with the applicable rules of the appeals arbitration procedure set out in the Code.
- 2.8. On 1 September 2008, the Claimant filed a Statement of Appeal which was addressed against the involvement of Mr Saletnig in the decision making in bout 81 of 13 August 2008. The jurisdiction of the CAS was based on rule 59 of the Olympic Charter, which reads as follows:

“Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.”
- 2.9. Referring to articles 16, 22 and 56 of the FILA International Wrestling Rules, the Claimant argued that *“no one except the referee, judge and mat chairman can refer the bout. That means that no one except the mat chairman can interrupt the bout and argue with the referee and judge. That means that Mr. Mario Saletnig had no right to*

interrupt the bout and make the officials change their decision.” With reference to the fourth fundamental principle of olympism, set in the Olympic Charter, and rules 2 and 41 of the Olympic Charter, the Claimant also argued that Mr. Saletnig’s behaviour was unethical. Since according to article 56 of the FILA International Wrestling Rules the match’s result could no longer be changed, the Claimant did not ask for annulment of the result, but asked for compensation for moral damage from FILA in the amount of 5’000’000 €. Further to that the Claimant requested the unconditional dismissal of Mr Saletnig for unethical behaviour according to article 23 of the FILA International Wrestling Rules.

2.10. On 11 September 2008, the Claimant filed an Appeal Brief, in which, invoking article 36 of the FILA Constitution, he contended that Mr Saletnig’s intervention also violated the FILA Constitution and the FILA Code of Ethics. The same goes for the “*referee’s denying the Russian coach his right to protest*”, which according to the Claimant violated the Olympic Charter, the FILA Constitution, the FILA International Wrestling Rules and the FILA Code of Ethics. The Claimant also cited rule 47 of the Olympic Charter and the respective By-Law.

2.11. By letter fax, the Claimant confirmed that he requests the following relief from the CAS:

“1) A statement that the CAS considers the intervention of Mr. Saletnig during the refereeing of Bout 81 at the first and second periods as inappropriate and violating the Olympic Charter, the FILA Constitution, the FILA International Wrestling Rules and the FILA Code of Ethics;

2) A statement that the CAS considers the referee’s refusal to examine the Russian coach’s right to protest as illegal violating the Olympic Charter, the FILA Constitution, the FILA International Wrestling Rules and the FILA Code of Ethics;

3) An order pronouncing the unconditional dismissal of Mr. Saletnig for unethical behaviour;

4) An order against FILA to pay an amount of EUR 5 000 000 as a compensation for moral damages in favour of Mr. Samurgashev.”

2.12. On 13 October 2008, the Respondents filed their Answer while reserving their right to supplement their arguments.

2.13. With regard to jurisdiction of the CAS, the Respondents referred to article 36 of the FILA Constitution (Disciplinary procedure) and objected that the Claimant failed to appeal to FILA pursuant to that provision. If the Claimant were to argue that he is entitled to initiate an ordinary arbitration procedure against FILA without having to comply with article 36 of the FILA Constitution, the Respondents would object that according to their understanding the Claimant intended to file an appeal. In their view, an immediate appeal to the ad hoc Division of the CAS would have been possible during the period of the Olympic Games. The transformation of the procedure into “*an ordinary appeal*”, however, raises the question of the application of article 36 of the FILA Constitution and the issue that there was no decision of FILA which could be appealed. Furthermore, the Respondents submit that there is no valid arbitration agreement or clause “*by which FILA would be bound to acknowledge at this stage CAS’ jurisdiction*”. Due to the relief being sought by the Claimant, the Respondents argue that the jurisdiction of CAS cannot be derived from the original appeal. The Respondents

asked the CAS to deny its jurisdiction for the above reasons and refused to pay any advance on arbitration costs.

- 2.14. With regard to the merits the Respondents considered the first and second prayers for relief as “*so vague and entirely unsubstantiated that*” they “*cannot be entertained*”. They did not see any legal basis or grounds for an order to unconditionally dismiss Mr Saletnig, and stated that the claim for compensation is “*not only unsubstantiated and frivolous, but there is not the slightest beginning of evidence in support for such a claim.*” Referring to the CAS ad hoc Division decision (OWG Salt Lake City 2002) 007, Korean Olympic Committee (KOC) v/International Skating Union of 23 February 2002, CAS Awards III (2001 – 2003), p 611), the Respondents held that the issues at hand were matters of “*field of play decisions*” not reviewable by CAS “*unless there is evidence, which must be direct evidence, of bad faith or prejudice*”. The Respondents seek the following relief:

- “1. *As principal relief, CAS to declare that there is no valid arbitration agreement or clause to consider this dispute and to declare itself without jurisdiction over this dispute.*
2. *Subsidiarily to the relief requested under 1. above, any and all claims of Mr Varteres Samurgashev be dismissed.*
3. *The Claimant/Appellant’s be ordered to pay FILA’s costs and expenses arising out of this procedure.”*

- 2.15. On 11 November 2008, the Claimant filed a Statement of Claim, wherein the Claimant continued to invoke rule 59 of the Olympic Charter as the basis for exclusive jurisdiction of the CAS, which, together with article 22 of the FILA International Wrestling Rules, excludes the application of article 36 of the FILA Constitution. The Claimant submits that only the Olympic Charter and the FILA International Wrestling Rules, but not Swiss law is applicable with regard to the questions of violations of the bout 81 at the 2008 Beijing Olympic Games. The Claimant invokes the fourth fundamental principle of Olympism, rules 41 and 47 of the Olympic Charter, By-Law to rule 47 of the Olympic Charter, articles 16, 21, 22, and 56, with respect to prayers 1 and 2 of his original relief. The Claimant argues that Swiss law applies to the issue of compensation for moral damage and generally as supplementary law. The Claimant’s final prayers for relief are as follows:

- “*Because it is impossible to modify the match’s result now according to Article 56 of the International Wrestling Rules, we demand:*
1. *That the FILA’s intervention in a person of Mr. Saletnig during the refereeing of Bout 81 at the first and second periods be recognized as illegal, as it was inappropriate and violated the Olympic Charter, the FILA Constitution, the International Wrestling Rules (FILA) and the Code of Ethics (FILA);*
 2. *That the referee’s denying the Russian coach(’s) right to protest, violated the Olympic Charter, the FILA Constitution, the International Wrestling Rules (FILA) and the Code of Ethics (FILA);*
 3. *That compensation be rendered for moral damage in the amount of 5 000 000 Euro from the International Federation of Associated Wrestling Styles (FILA).”*

2.16. On 5 December 2008, the Respondents filed an Answer to the Statement of Claim confirming the arguments contained in their Answer dated 13 October 2008, while adding that the Claimant in their view did not adduce “*any fact of any kind in support of his legal arguments and claims*”. They point out that FILA has established a comprehensive set of disciplinary regulations and procedures which should be applied to this case, in particular in view of articles 11 and 35 of the FILA Disciplinary Regulations. With respect to jurisdiction, the Respondents added the following:

“The Claimant has chosen to simply ignore the rules of FILA. The consequence of this situation is that the CAS should consider that it has no jurisdiction over the dispute. Having stated that, in an effort to contribute to the simplification of the procedure and the reduction of the costs, as well as to bring an end to this dispute, the Respondents are prepared to waive the relief and order sought under 1.” (see above number 2.14) “if it is agreeable the Panel, so that the CAS might render a final award on the merit and thus bring the subject matter of this dispute to a conclusion.”

2.17. With regard to compensation for moral damage, the Respondents argue that Swiss law remains fully applicable, in particular, articles 41 ff of the Swiss Code of Obligations. They invoke three conditions that must be fulfilled by the Claimant and point to his burden of proof. They submit that the FILA acts were “field of play” decisions and are not unlawful acts in the sense of the Swiss Code of Obligations. Furthermore, “*moral damages are provided for under article 49 of the Swiss Code of Obligations and may only be considered if “the particular seriousness of the injury and of the fault justify it ...”*”, and any amounts allocated on such basis are always very low.

2.18. The Respondents in their Answer to the Statement of Claim consider the other arguments developed by the Claimant on the basis of the Olympic Charter and the FILA International Wrestling Rules as “*confusing, unclear and should entirely be discarded.*” They argue that items 1 and 2 of the Claimant’s Relief “*have no clear legal basis and shall be rejected*” and item 3 has “*absolutely no legal ground*”. With regard to the costs of the arbitration proceedings, the Respondents refer to articles R64.4 and R64.5 of the Code. Since the Respondents consider the procedure undertaken by the Claimant to be “*entirely abusive*”, they request that the Claimant be ordered to bear all costs of the arbitration and to contribute to the Respondents’ fees and expenses in an amount of CHF 25’000. They seek the following final relief and order:

“1. As to CAS jurisdiction, the Respondents leave it entirely up to the CAS to declare itself with or without jurisdiction over this dispute.

2. Any and all claims of the Claimant/Appellant Mr. Varteres Samurgashev be dismissed.

3. The Claimant/Appellant Mr. Varteres Samurgashev be ordered to pay all arbitration costs as well as to contribute towards the Respondents’ legal fees and other expenses incurred in connection with this arbitration with an amount of CHF 25’000.-.”

III. The Jurisdiction of the CAS and Proceedings before the Panel

- 3.1. On 10 December 2008, the parties signed an Order of Procedure.
- 3.2. On 15 December 2008, a hearing took place in Lausanne, where only the parties and no witnesses were present.
- 3.3. At the beginning of the hearing, all sides agreed to accept the jurisdiction of the CAS and of the Panel to decide the case, thereby waiving all previous jurisdictional objections.
- 3.4. The Panel watched videos of bout 81 of 13 August 2008, which took place at the 2008 Beijing Olympic Games, presented by the Claimant and an official video presented by the Respondents and heard the parties.
- 3.5. Before the closing statements began, the Panel proposed to the parties to make use of its right under article R42 of the Code to seek to resolve the dispute by conciliation and to embody such settlement in an arbitral award rendered by consent of the parties.
- 3.6. The parties agreed to such manner of proceeding and after a discussion reached a settlement under the terms indicated below.

IV. Amicable Settlement by the Parties

- 4.1. The parties reached the following final settlement of their dispute, which, herewith, are incorporated into this formal award:
 - “1) CAS confirms that the parties resolved the dispute by conciliation.
 - 2) FILA and Mr Mario Saletnig understand that the Russian top-level athlete Varteres Samurgashev may feel having been violated in his rights as an athlete at the Olympic Games Beijing 2008 during bout 81 with Peter Basci on 13 August 2008.
 - 3) FILA and Mr Mario Saletnig agree to reconsider FILA rules and to redraft them as soon as possible in accordance with the FILA Constitution, in order to have all the refereeing procedures and practices, including the appeal proceedings, properly codified, as they apply in the field of play.
 - 4) The parties agree to withdraw their prayers of relief and to bear their own costs in the CAS proceedings CAS 2008/O/1640 Varteres Samurgashev v/FILA & Mario Saletnig and agree that they have no further claims against each other.
 - 5) The parties agree to have the award published.”

V. The Costs of the CAS

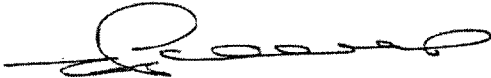
5.1 The Claimant accepted to bear all the costs of the CAS in these proceedings *ex gratia*.

Done in Lausanne, 10 February 2009

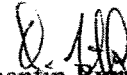
THE COURT OF ARBITRATION FOR SPORT



Michael Geistlinger
President of the Panel



Dr Sergey Belayev
Arbitrator



Quentin Byone-Sutton
Arbitrator

