

CAS 2004/A/633 IAAF v/ FFA & Mr Chouki

ARBITRAL AWARD

Pronounced by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President: Ms Carole **Barbey**, Attorney-at-law, Geneva, Switzerland

Arbitrators: Mr Yves **Fortier**, Barrister, Montreal, Canada
Mr Jean-Jacques **Bertrand**, Attorney-at-law, Paris, France

Ad hoc Clerk: Mr Patrick **Grandjean**, Attorney-at-law, Lausanne, Switzerland

in the arbitration between

International Association of Athletics Federations, Monaco

Represented by Mr Mark Gay, Attorney-at-law, London, United Kingdom,

As Appellant

and

Fédération Française d'Athlétisme, Paris, France

Represented by Mr Christophe **Zajac**, Paris, France

and

Mr Fouad Chouki, Strasbourg, France

Represented by Mr François Ruhlmann, Attorney-at-law, Strasbourg, France

As Respondents

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I. FACTUAL BACKGROUND

1. Parties

- 1.1 The International Association of Athletics Federations (hereinafter also referred to as “IAAF” or the “Appellant”) is the international federation governing the sport of athletics world-wide. It has its registered seat in Monaco.
- 1.2 The Fédération Française d’Athlétisme (hereinafter also referred to as “FFA”) is the national federation governing the sport of athletics in France. It has its registered seat in Paris and is affiliated with the IAAF.
- 1.3 Mr Fouad Chouki, born on 15 January 1978 in Strasbourg, France, is a French competitive athlete and a registered member of the FFA.

2. Facts

- 2.1 The circumstances stated below are 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. Additional facts will be set out, where relevant, in connection with the description of the CAS proceedings or with the legal discussion.
- 2.2 **Mr Fouad Chouki’s selection for the doping control**
 - 2.2.1 At a meeting held in the French Ministry of Sports in Paris, Mr Lamine Diack, on behalf of the IAAF, signed a protocol (hereinafter also referred to as “the Protocol”) relating to the handling of the anti-doping control arrangements in France from 24 June 2003 to 31 December 2004, including the 9th IAAF World Championships in Athletics, which took place in the French capital from 23 to 31 August. The other signatories to the Protocol were the French Minister of Sports Mr Jean-Francois Lamour, FFA President Mr Bernard Amsalem, and Prof Jacques de Ceaurriz, who is Director of the laboratoire de dépistage du dopage (hereinafter also referred to as “LNDD”), an IOC accredited laboratory responsible for analysis of anti-doping samples during the World Championships.
 - 2.2.2 The Protocol provides that the responsibility for selecting the athletes to be tested was vested in a team of three persons, namely one representative of the team of testing doctors, one representative of the team of Federation delegates and one representative of the IAAF anti-doping delegate.
 - 2.2.3 On 27 August 2003, during the IAAF World Championships held in Paris, the IAAF anti-doping Delegate, Dr Gabriel Dollé, was unable to take part in the selection of the athletes to be tested after the final of the 1500 metres. Nevertheless, he handed over his powers to the two other members of the abovementioned team. He gave them instructions as to the way the selection was to take place.

- 2.2.4 As far as the final of the men's 1500 metres is concerned, Dr Olivier Grondin, the representative of the team of testing doctors as well as Ms Lucille Govaere, the representative of the Federation delegates, conducted the selection procedure in the early morning of 27 August 2003. It was decided that the first three athletes to finish the race were to be tested as well as an athlete randomly selected. The latter one happened to be the eighth placed finisher. The drawn lots were kept secret until they were communicated to the escorts and doctors for the final of the 1500 meters, around 7 p.m., that is to say a couple of hours before the heat.
- 2.2.5 On 27 August 2003 at 9 p.m., Mr Fouad Chouki participated in the final of the men's 1500 metres of the said IAAF World Championships. During the race, the athlete fell, coming in the 8th and last position.
- 2.2.6 Immediately after his accident, Mr Fouad Chouki was carried out to the medical centre on a stretcher and never made it to the mixed area, where Ms Aline Leveque, the escort assigned to him, was to notify him that he was summoned to appear for doping test.
- 2.2.7 Mr Fouad Chouki did not stay in the medical centre for a long time, since Ms Aline Leveque found him in the stadium's internal express way, as he was going to the warm-up stadium to fetch his personal belongings.
- 2.2.8 It is undisputed that, at 9:35 p.m., Ms Aline Leveque notified Mr Fouad Chouki that he was to undergo an anti-doping test, which he agreed to.
- 2.2.9 It is also undisputed that, since the notification, the athlete was constantly under Ms Aline Leveque's direct observation.
- 2.2.10 Shortly after the notification, Mr Fouad Chouki became unwell. He was then taken immediately to the medical centre, where he laid in a bed under Ms Aline Leveque's constant observation.
- 2.2.11 Whilst at the medical centre, Mr Fouad Chouki's condition was examined and his blood-sugar level was checked. A solution was prepared, which was to be given to him orally using a pipette. Ms Aline Leveque inquired about the solution and was told that it was sugared water. As the doctor was monitoring Mr Fouad Chouki and standing between the athlete and Ms Aline Leveque, the latter was unable to see whether or not the solution was effectively given.
- 2.2.12 Nevertheless, Ms Aline Leveque annotated in the margin of Mr Fouad Chouki's doping control form that he had felt faint at 9:35 p.m. and that sugared water was injected by a doctor at 10 p.m. ("*malaise 21H35 → eau sucrée injectée par médecin 22H00*").

2.3 The sample collection procedure

- 2.3.1 Whilst Mr Fouad Chouki was still in the medical centre, Ms Aline Leveque was eventually replaced by somebody else, who took over as the athlete's

escort and accompanied the latter from the medical centre to the doping control centre.

2.3.2 Dr Olivier Grondin was in charge of the anti-doping controls at the 2003 World Championships in Paris. As he was conducting Mr Fouad Chouki's doping test, Dr Olivier Grondin noticed Ms Aline Leveque's manuscript note according to which sugared water had been injected by a doctor to Mr Fouad Chouki at 10 p.m.

2.3.3 Dr Olivier Grondin was concerned about that manuscript note as he could not find any evidence that Mr Fouad Chouki received any kind of injection. In particular, he could not find any witness confirming the alleged injection nor notice any puncture wound or plaster on the athlete.

2.3.4 Moreover, the fact that Ms Aline Leveque's manuscript note was written in the margin of the doping control form could not guarantee the necessary and required anonymity of the document.

2.3.5 Therefore and with the consent of the athlete, Dr Olivier Grondin ordered the doping control form to be cancelled and replaced by another one. At the request of Mr El Idrissi, Mr Fouad Chouki's coach, the first form was attached to the new document, which indicated the following in its "*comments on procedure*" box: "*Sur le 1er PV annulé, j'aurais reçu une injection à 21 h 35 d'eau sucrée par un médecin. Après enquête, la mention ci-dessus reportée a été inscrite par Mme Aline LEVEQUE*"..

2.3.6 The doping control form signed by Mr Fouad Chouki indicates that the sampling time was "*0h30 (28/08/03)*" and that his sample code number for the A and B bottles was 808745.

2.3.7 On 28 August 2003, Ms Aline Leveque was interviewed by Mr Michel Marle, Dr Olivier Grondin and Dr Tabassome Simon in connection with Mr Fouad Chouki's sample collection procedure. They signed a report in which Ms Aline Leveque confirmed in substance that:

- she is the author of the manuscript note on the first doping control form;
- she used the term "injection" by mistake as she did not know the appropriate medical term for substance taken/given via the mouth;
- Mr Fouad Chouki was given, orally, sugared water;
- no substance had been administered to Mr Fouad Chouki either by a subcutaneous or by an intravenous injection;
- when she had to leave, she was replaced by an official chaperon.

2.4 The test results

- 2.4.1 In accordance with the Protocol, the LNDD was instructed to conduct the analysis of Mr Fouad Chouki's urine sample collected during the night of 27/28 August 2003.
- 2.4.2 On 2 September 2003, the LNDD informed the IAAF that the A sample 808745 tested positive for r-EPO (recombinant erythropoietin).
- 2.4.3 On 3 September 2003, the IAAF wrote the following letter to the FFA:

“Je vous informe, par la présente, que le laboratoire national antidopage français, accrédité par le CIO, a détecté dans l'échantillon d'urine codé N° 808745, prélevé le 27.8.03 lors des Championnats du Monde d'Athlétisme de l'IAAF à Paris, la substance interdite EPO recombinante. Il s'agit du contrôle antidopage de l'athlète français M. Fouad Chouki, dont les copies du procès-verbal de contrôle et d'analyse sont ci-annexées.

En référence au règlement antidopage de l'IAAF, je vous serais reconnaissant de mettre en application les dispositions suivantes, prévues dans le cadre de la procédure en vigueur :

- *accuser réception de cette lettre en retour;*
- *informer l'athlète et lui demander une explication écrite le plus rapidement possible au sujet de ce résultat analytique;*
- *m'envoyer une copie de cette explication au plus tard le 8.9.03.*

A défaut d'une explication adéquate de l'athlète (soit directement de sa part ou bien par l'intermédiaire de votre Fédération) dans le délai indiqué ci-dessus, le contrôle sera considéré comme étant positif et l'athlète sera provisoirement suspendu, à partir de ce moment en attendant la résolution de son cas.

Je voudrais aussi vous rappeler que d'après le règlement de l'IAAF, l'athlète a le droit de demander que son échantillon de réserve B soit analysé. Une telle demande doit, toutefois, être formulée dans le 28 jours qui suivent la communication de l'information à l'athlète qu'une substance prohibée a été trouvée dans le prélèvement d'urine A”.

- 2.4.4 The same day, the FFA forwarded to the athlete the information contained in the above-quoted letter of the IAAF. It also appointed its Vice President, Mr Michel Marle, as investigator in the dispute regarding the prohibited substance contained in Mr Fouad Chouki's sample.
- 2.4.5 On 11 September 2003, Mr Fouad Chouki's representative, Mr Jean-Louis Dupont, confirmed that his client did not take any prohibited substance. He insisted on the fact that, on the 22 August 2003, his client tested negative for any prohibited substance during an unannounced doping control. Therefore, he alleged that it would be irrational and absurd to take EPO between the 23 and

the 27 August 2003, as the substance would not have had the necessary time to have any effect on the athlete's performances. Finally, he brought up the fact that the doping control form as well as the medias mentioned the injection to his client of an unidentified substance by an unidentified person. He requested the test on the "B" Sample to be carried out.

- 2.4.6 The "B" sample was analysed on 18 September 2003 in the presence of the representatives of the IAAF, of the FFA, of the LNDD and of Mr Fouad Chouki. The "B" sample was assessed with the same analytical procedures as used in the "A" sample analysis. It is undisputed that the analysis of sample B 808745 was properly conducted and found to demonstrate the presence of r-EPO and hence confirmed the results on the "A" sample. Moreover, it appeared that the percentages of r-EPO in samples A 808745 and B 808745 are the highest figure ever recorded in the relevant scientific literature in a non r-EPO using human.

2.5 The consequences of the test results

- 2.5.1 On 19 September 2003, the IAAF confirmed to the FFA that:

- the explanations given by Mr Fouad Chouki's representative on 11 September 2003 could not be considered as acceptable;
- pursuant to article 2.52 of the IAAF Procedural Guidelines for doping Control (edition 2002), the test was regarded as positive and Mr Fouad Chouki was provisionally suspended.

- 2.5.2 On 8 October 2003, a hearing was held before the FFA's Disciplinary Body of First authority ("Organe disciplinaire de 1ère instance"). On that occasion, Mr Michel Marle presented his investigation report to the said FFA's organ, which found Mr Fouad Chouki guilty of a doping offence and imposed a 2 year suspension.

- 2.5.3 On 26 November 2003, the FFA's Disciplinary Body of Appeals ("L'organe disciplinaire d'appel") took the following decision:

"Article 1 : La décision de l'organe de première instance de lutte contre le dopage est réformée.

Article 2 : Statuant à nouveau, l'Organe d'appel de lutte contre le dopage sanctionne Fouad CHOUKI de la peine suivante:

Une suspension de deux ans dont six mois avec sursis.

Article 2(sic) : La mesure de suspension est applicable sur le territoire national et en dehors du territoire national; elle s'exécutera selon les dispositions de l'article 60 des Directives de Procédure pour le contrôle antidopage et le manuel 2002/2003 de l'IAAF, ainsi que selon l'article 42 et suivants et plus généralement le titre III du Règlement Fédéral de Lutte contre le Dopage.

(...)

Article 5 : La décision sera susceptible de faire l'objet d'un recours devant le Tribunal Administratif de Strasbourg sous un délai de 2 mois."

2.5.4 On 15 December 2003, the Appellant was notified that Mr Fouad Chouki had applied to the Tribunal Administratif of Strasbourg for an interim order suspending application of the decision of the FFA's Appeals Body. The IAAF was named as a party to such proceeding and was invited to participate in the hearing to be held on 29 December 2003.

2.5.5 On 22 December 2003, the Appellant wrote to the Tribunal Administratif of Strasbourg the following letter, which reads in parts:

"(...)L'IAAF ne relève que de la compétence exclusive du Tribunal Arbitral du Sport pour tous les litiges survenant dans le domaine du sport, et notamment ceux relatifs au dopage.

Selon les Règlements de l'IAAF en vigueur (...), le Tribunal Arbitral du Sport dispose d'une compétence d'attribution exclusive pour régler les litiges survenant dans le domaine du sport, entre Fédérations nationales, entre une Fédération nationale et un athlète, entre l'IAAF et un athlète, ou entre l'IAAF et une Fédération nationale.

(...)

Au vu de ce qui précède, il n'existe pas plus de compétence du juge administrative français que du fondement juridique à la mise en cause de l'IAAF dans le cadre de cette procédure.

Vous voudrez bien excuser mon absence à votre audience du 29 décembre prochain."

2.5.6 On 31 December 2003, the Tribunal Administratif of Strasbourg rejected the athlete's application for an interim order suspending the decision of the FFA's Appeals Body.

2.5.7 On 6 January 2004, the Appellant was notified that Mr Fouad Chouki had filed a formal appeal to the Tribunal Administratif of Strasbourg seeking the cancellation of the decision of the FFA's Appeals Body.

2.5.8 On 18 February 2004 and for the same reasons as the ones exposed in the above-quoted letter dated 22 December 2003, the Appellant confirmed to the Tribunal Administratif of Strasbourg that it would not take part in Mr Fouad Chouki's appeal.

2.5.9 The Appellant was notified by letter dated 7 April 2004 of the decision issued by the Tribunal Administratif of Strasbourg. It alleged that it received the said decision on 13 April 2004.

2.5.10 According to the decision of the Tribunal Administratif of Strasbourg:

- Mr Fouad Chouki's appeal had been dismissed;
- an appeal might be lodged against its decision before the Cour Administrative d'Appel of Nancy within 2 months after notification of such decision.

2.5.11 On 8 June 2004, Mr Fouad Chouki filed an appeal against the decision of the Tribunal Administratif of Strasbourg with the Cour Administrative d'Appel of Nancy.

3. Proceedings before the Court of Arbitration for Sport

The Appellant's submission

- 3.1 The Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter also referred to as "CAS") on 11 June 2004, that is within two months after the notification of the decision of the Tribunal Administratif of Strasbourg.
- 3.2 A detailed appeal brief was sent by the Appellant on 21 June 2004, submitting the following request for relief:

"36. The IAAF submits that the FFA correctly decided that Mr Chouki committed a Doping Offence and that the IAAF's dispute with the FFA solely concerns the level of sanction to be imposed. The FFA is under an obligation pursuant to IAAF Rule 2 to comply with the IAAF Rules on ineligibility, which includes IAAF Rule 60.2(a)(i). As IAAF Rule 60.2(a)(i) mandates a minimum 2 year period of ineligibility, the FFA had no alternative but to apply this fixed sanction. The IAAF submits that, by applying a lesser sanction on Mr Chouki, the FFA thereby misdirected itself or otherwise reached an erroneous conclusion.

37. In the circumstances, the IAAF submits to this Panel that Mr Chouki, having been found guilty of a Doping Offence, should be declared ineligible for the correct period set out in IAAF Rule 60.2(a)(i). Namely, for a minimum period of 2 years from the date of the CAS decision, less any period of suspension which Mr Chouki has previously served.

38. Finally, the IAAF seeks an order from the Panel that the FFA be required to reimburse the IAAF the CAS Court Office fee of 500 CHF and that it be required to pay an appropriate contribution to the IAAF's costs of this appeal to be ascertained."

3.3 The submission of IAAF may be summarized as follows:

- Mr Fouad Chouki is guilty of a doping offence.
- The relevant tribunal of the FFA failed to impose the correct sanction when it imposed a 2 year suspension with 6 months suspended (sursis).

- The proper sanction set out in IAAF Rule 60.2(a)(i) for a first doping offence involving the presence of a prohibited substance such as r-EPO is a minimum 2 year period of ineligibility. Due to the seriousness of the offence committed and to Mr Fouad Chouki's behaviour, the Panel should consider imposing the athlete with a heavier sanction than the 2 year suspension.

Mr Fouad Chouki's submission

3.4 On 12 July 2004, Mr Fouad Chouki filed his answer and requested the Panel:

“DONNER ACTE à Maître François RUHLMANN, Avocat, de sa constitution à la défense des intérêts de Monsieur Fouad CHOUKI.

REJETER la demande d'extension de la suspension formée par l'IAAF, en constatant notamment qu'une réduction de peine a eu lieu, en raison des doutes habitant certains Juges disciplinaires.

ORDONNER la levée immédiate de la mesure de suspension affectant Fouad CHOUKI.

Au cas où par extraordinaire le Tribunal Arbitral du Sport ne se considérerait pas suffisamment informé pour donner sur le champ un tel ordre:

SURSEOIR à statuer jusqu'à première Décision favorable à intervenir au bénéfice de Fouad CHOUKI devant les Juridictions françaises saisies.

RESERVER à Fouad CHOUKI tous ses Droits à réparation des immenses préjudices subis par ses soins, sa carrière d'athlète pleine d'espoir étant désormais ruinée, et une interdiction de pratique de tous autres sports de compétition lui ayant été infligée.

CONDAMNER l'IAAF aux entiers dépens, y compris ceux supportés par Fouad CHOUKI, à titre de frais, vacations et autres honoraires”.

”

3.5 Mr Fouad Chouki's submission may be summarized as follows:

- He has never taken voluntarily any prohibited substance and is the victim of a conspiracy.
- An ill-disposed person injected him with r-EPO before the sample collection.
- The replacement of the first doping control form by a new one was organised under very suspicious circumstances.
- As indicated on the first doping control form, an injection was indeed carried out on him.

- He remembers that his veins had been tampered with on several occasions, while he was evacuated to the medical centre, after the final of the 1500 metres. Moreover, a voluntary physiotherapist saw him with an IV in his arm as he was recuperating at the medical centre.
- After the race, he was "*abandoned to his own devices in the midst of strangers*" and was not properly chaperoned.
- The selection of athletes to be tested for doping was done in breach of the procedure laid down in the Protocol.
- Before he was appointed as investigator in the dispute regarding the prohibited substance contained in Mr Fouad Chouki's sample, Mr Michel Marle was personally involved in the test procedure. Therefore the latter was not impartial when he presented his investigation report to the FFA's Disciplinary Body of First authority on 8 October 2003.
- He was refused a third analysis by an independent laboratory with no reason.

FFA's submission

- 3.6 On 27 July 2004, the FFA filed its answer and requested the Panel "*to refer to its opinion*".
- 3.7 In essence, the FFA submitted that the sanction of Mr Fouad Chouki for a period of 2 years with 6 months suspended is compatible with the applicable IAAF Rules and respectful of the European Convention of the Human Rights Protection as well as the international laws. The FFA also insisted on the fact that the decision of the CAS could be inconsistent with the one to be rendered by the national jurisdictions. Regarding this matter, it made the following submission:

"We thus draw your arbitration Formation attention to the fact that if the sentence was to confirm the opinion of the IAAF, it may be important to limit it at the international level except from French territory where the French sanction will apply."

IAAF's reply filed in response to the Respondents' answers

- 3.8 On 3 November 2004, the Appellant filed a reply and submitted:

- "(i) that r-EPO was properly detected in a sample provided by Mr Chouki on 27 August 2004;*
- (ii) that none of the procedural arguments advanced by Mr Chouki casts the slightest doubt on the reliability of such finding;*
- (iii) that there is no plausible evidence that Mr Chouki was the subject of the involuntary administration of r-EPO.*

In consequence, the IAAF submit that Mr Chouki should be subject to the mandatory minimum period of ineligibility under the IAAF rules, being 2 years from the date of the hearing before this panel less any period of suspension served up to that date.”

The Hearing

3.9 A hearing was held on 2 March 2005 at the CAS premises in Lausanne. The parties confirmed that they did not have any objection in respect of the composition of the Panel.

3.10 The Appellant was represented by its counsels, Mr Mark Gay, attorney-at-law and Ms Sally Clark, solicitor.

Mr Fouad Chouki was present and assisted by his lawyer, Mr François Ruhlmann.

The FFA was not represented and did not attend the hearing.

3.11 At the hearing, several witnesses were heard, some of them by telephone conference, with the agreement of the Panel and pursuant to art. R44.2 §4 of the Code of Sport-related arbitration (hereinafter referred to as “Code”). Prior to giving their testimony, the President of the Panel advised all the witnesses of their duty to tell the truth, subject to the sanction of perjury.

Mr Fouad Chouki and the following witnesses were heard:

- Dr Olivier Grondin, doctor responsible for conducting the unannounced out-of-competition and in-competition tests which took place during the World Championships in Paris;
- Ms Aline Leveque, Mr Fouad Chouki’s escort at the World Championships in Paris;
- Mr Michel Marle, Vice President of the FFA;
- Mr François Dreyer, Physiotherapist;
- Dr Gabriel Dollé, the IAAF anti-doping Delegate at the World Championships in Paris.

3.12 At the hearing, Mr Fouad Chouki:

- accepted the production of the following documents:
 - “Rapport d’audition de Madame Aline LEVEQUE escorte de Monsieur Fouad CHOUKI lors du contrôle antidopage de la finale du 1.500 mètres le mercredi 27 août 2003” (hereinafter referred to as “Rapport d’audition de Madame Aline LEVEQUE”)
 - “Note concernant le contrôle antidopage de Monsieur Fouad CHOUKI à la suite de la finale du 1.500 mètres lors des Championnats du Monde d’Athlétisme au Stade de France”, dated 28 August 2003

- confirmed that he did not contest the “A” and “B” samples analytical reports conducted by Dr Françoise Lasne of the LNDD in September 2003 and accepted her written statement;
- renounced to his application for a stay of the CAS proceedings pending the decision of the French Courts;
- confirmed and accepted that the CAS had jurisdiction over the present dispute;
- did not authorise Dr Olivier Grondin to disclose any information including documents protected by medical privilege and related to the care he received whilst in the medical centre.

3.13 At the end of the hearing, the President of the Panel asked the Parties whether they had had a fair chance to present their case, including all evidence they wished to submit. Both parties confirmed. They had no complaint.

II. IN LAW

4. CAS Jurisdiction

- 4.1 The jurisdiction of CAS derives from IAAF Rule 21 (2002-2003 Handbook) (hereinafter referred to as “IAAF Rule”) and R47 of the Code.
- 4.2 The IAAF invoked the jurisdiction of the CAS in its statement of appeal and the athlete expressly accepted it at the hearing.
- 4.3 Pursuant to R55 of the Code, the FFA filed an answer containing a statement of defence and the following confirmation:

“The Federation being held to apply the decisions of the national jurisdictions will have fully to conform to the decision which will be adopted by the latter. The Federation will have also fully to conform to the sentence which you will adopt in this case [emphasis added].”

In its answer, the FFA drew the attention of the Panel to the fact that “*if the sentence was to confirm the opinion of the IAAF, it may be important to limit it at the international level except from French territory where the French sanction will apply.*” Such a statement can merely be considered as a suggestion and not as an objection to the jurisdiction of CAS as provided by R55 of the Code.

- 4.4 It follows that the CAS has jurisdiction to decide the present dispute.

5. Applicable law

- 5.1 R58 of the Code provides the following:

“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 Panel shall give reasons for its decision.”

5.2 According to IAAF Rule 2 *“The IAAF shall comprise duly elected national governing bodies for athletics which agree to abide by the rules and regulations of the IAAF. The Rules and regulations of an elected national governing body must be in conformity with and not wider than IAAF eligibility rules”*.

5.3 Moreover, IAAF Rule 21 provides the following:

“8. The CAS appeal, including, but not limited to the constitution of the CAS Panel, the powers of the CAS arbitrators, the documents to be filed with CAS and the procedure of the appeal, shall be in accordance with the rules of CAS from time to time in force, provided always that the CAS Panel shall be bound to apply the IAAF Rules and Regulations (in accordance with Rule 21.9 below)(...)”

9. All appeals before CAS shall take the form of a re-hearing de novo of the issues raised by the case and the CAS Panel shall be bound by the IAAF Rules and Regulations and the Procedural Guideline for Doping Control.”

5.4 The IAAF Rules do not specify any choice of law in respect of an appeal to the CAS or otherwise (CAS 2002/A/383).

6. Admissibility

6.1 R49 of the Code provides the following:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

6.2 According to IAAF Rule 21.2 *“All appeals (i) between Members, (ii) between a Member and an athlete, (iii) between the IAAF and an athlete, or (iv) between the IAAF and a Member, however arising, whether doping or non-doping related, shall be referred to the Court of Arbitration for Sport (...) within sixty days of the communication to the prospective appellant of the decision that is to be referred”*.

6.3 IAAF Rule 21.4 states that *“A reference shall not be made to CAS until all remedies have been exhausted under the Member’s constitution”*.

6.4 The FFA’s *“Règlement fédéral de lutte contre le dopage”* adopted on 17 November 2001 provides that there are two bodies which deal with doping offence related matters: a Disciplinary Body of First authority and a Disciplinary Body of Appeals (art. 14).

Although, it is the Disciplinary Body of Appeals, which rules in the last resort (*“L’organe disciplinaire d’appel statue en dernier resort” - art. 34*), the notification of its decision must specify to which administrative court it can be appealed (*“La notification doit préciser le tribunal administrative devant lequel la decision peut faire l’objet d’un recours, ainsi que le délai de recours” – art 37*). Those regulations have not been altered with the adoption of the FFA’s new “Règlement fédéral de lutte contre le dopage” on 3 December 2004 (see art. 6, art. 23 and art. 24 of the new “règlement fédéral”).

- 6.5 In the present case, the appeal was filed with the CAS on 11 June 2004, that is within 60 days after the notification of the decision of the Tribunal Administratif of Strasbourg.
- 6.6 The Appellant could not explain to the Panel on what exact legal basis it filed an appeal with the CAS within sixty days after the notification of the decision of the Tribunal Administratif of Strasbourg rather than after the notification of the decision of the FFA’s Disciplinary Body of Appeals or after the notification of the decision of the Cour Administrative d’Appel of Nancy.
- 6.7 The Panel regrets the apparent contradiction of art. 34 of the “Règlement fédéral de lutte contre le dopage” adopted on 17 November 2001 and its art. 37 (or art. 23 and 24 of the règlement fédéral adopted on 3 December 2004). The fact that the FFA’s Disciplinary Body of Appeals is considered as the organ which rules in last resort is quite confusing, since, on the national level and in the present dispute, appeals can be filed successively with the Tribunal Administratif of Strasbourg, with the Cour Administrative d’Appel of Nancy and with the Conseil d’Etat. It might be useful for the FFA to provide for specific rules regarding the exact scope and meaning of art. 34 of the “règlement fédéral de lutte contre le dopage” (or art. 23 of the new “règlement”).
- 6.8 Before CAS proceeded to accept the jurisdiction conferred upon it by the agreement of the parties, it could have sent the matter back to the Appellant to have the local procedures exhausted or to demonstrate that its appeal was timely filed. It did not do so because the parties expressly consented to CAS’s jurisdiction.
- 6.9 Moreover, R57 of the Code provides that *“the Panel shall have the power to review the facts and the law”*. Under this provision, the Panel's scope of review is basically unrestricted. In other words the Panel has the power to establish not only whether the decision of a disciplinary body being challenged was lawful or not, but also to issue an independent decision based on the Appellant's rules. According to a rule that exists in most legal systems, a complete investigation by an appeal authority, which has the power to hear the case, remedies, in principle, most flaws in the procedure at first instance. Hence, if there had been procedural irregularities in the proceedings, it would be cured by the present arbitration proceedings (CAS 2004/A/607 Galabin Boevski v/IWF).
- 6.10 It follows that the appeal is admissible, which is undisputed.

7. The decision subject to appeal

7.1 The Panel is of the firm opinion that the decision subject to appeal is the one rendered on 26 November 2003 by FFA's Disciplinary Body of Appeals for the three following reasons:

- The FFA's "Règlement fédéral de lutte contre le dopage" does not provide that the Tribunal Administratif of Strasbourg is a FFA organ (The Panel wonders if that is why the said Règlement states that its Disciplinary Body of Appeals is considered as the organ which rules in last resort). Therefore, the decision of that national tribunal cannot be considered as a decision "*of federations, associations or other sports-related bodies*" as provided under S12 of the Code. The Panel is of the opinion that CAS is not entitled to review the decision of such a judicial authority.
- IAAF clearly informed the Tribunal administrative of Strasbourg that it did not recognise its jurisdiction. Therefore it did not formally contest the position of the said authority.
- It is IAAF which invoked the jurisdiction of the CAS in its statement of appeal. It challenged the decision of the FFA's Disciplinary Body of Appeals. The other parties accepted to proceed without any reserves related to the question of which is the decision appealed from.

8. Main Issues

8.1 The main issues are:

- a) Has a doping offence been committed?
- b) If so, who must take responsibility for it?
- c) What is the sanction and how should it be calculated?
- d) The Appellant raises several issues relating to deficiencies in the handling of the anti-doping controls during the world championships in Paris. In case such deficiencies are proven to be well founded, should they affect the application of the sanctions under the IAAF rules?

A/ Has a doping offence been committed?

- 8.2 According to IAAF rule 21.9, "*In any doping cases before CAS, the IAAF shall have the burden of proving beyond reasonable doubt, that a doping offence has been committed*".
- 8.3 IAAF rule 55.2 (i) states that "*The offence of doping takes place when (...) a prohibited substance is present within an athlete's body tissues or fluids.*"
- 8.4 IAAF Rule 55.3 states that "Prohibited substances include those listed in Schedule 1 to the "Procedural Guidelines for Doping Control".

- 8.5 Schedule 1 Part I of the IAAF Procedural Guidelines for Doping Control lists r- EPO as a prohibited substance.
- 8.6 In the present case, it is undisputed that r-EPO is a prohibited substance under IAAF Rules and that it was detected in the urine sample provided by Mr Fouad Chouki during the night of 27/28 August 2003. In addition, neither party asserts that a breach of the chain of custody occurred after the athlete entered the doping control centre, where his sample was collected during the World Championships in Paris.
- 8.7 It is clear that a doping offence has taken place under the IAAF Rules.

B/ If so, who must take responsibility for the doping offence?

- 8.8 For the reasons expressed here-above, the Panel is of the firm opinion that the Appellant has discharged its burden of proving beyond reasonable doubt that a doping offence has taken place under the IAAF Rules. As a matter of fact and according to the IAAF rule, the doping offence is defined as the presence of a prohibited substance. To establish the doping case and apply the sanctions, the Appellant had only to establish the objective presence of such substance, which it did.
- 8.9 Therefore, the burden of adducing exculpatory circumstances is shifted to Mr Fouad Chouki, who had to establish that the administration of the prohibited substance had occurred against his will, after the 1500 metres final but before his sample collection session.
- 8.10 The athlete claimed that he was involuntarily injected with r-EPO, as he was unwell and semi-unconscious, after the race. To support his position, he explained that, while he was transported to the medical centre, he was surrounded by people and felt his veins to be tampered with. At the medical centre, he advised that he was indeed injected (as mentioned in the doping control form) and/or had a perfusion placed in his arm, which had been witnessed by Mr François Dreyer.
- 8.11 It is undisputed that no prohibited substance could possibly have been injected in the athlete once he entered the doping control centre, where it is conceded that no breach of the chain of custody occurred. Thus, the following sequences of time have to be analysed:
- From the end of the race until Mr Fouad Chouki was taken to the medical centre
 - From the time the athlete was in the medical centre until he was accompanied to the doping control centre
- 8.12 From the end of the race until Mr Fouad Chouki was taken to the medical centre
- 8.12.1 Until the hearing on 2 March 2005, it had never been alleged that Mr Fouad Chouki was in such a state of shock that he did not realise what was happening to him. It is only as he was questioned by the members of the Panel that the athlete claimed for the first time that, after he took a fall during the race, he was too stunned to be aware of what was going on around him. He submitted that, as he was evacuated on a stretcher, he felt his arm being grabbed several

times. He also put forward that he recognized his escort but could not understand what she was telling him. He did not recall whether he signed the doping control form or not. He only recovered consciousness as he was laying in a bed, in the medical centre, surrounded by people.

8.12.2 The panel notes the following:

- Mr Fouad Chouki's explanations are inconsistent with the declarations made in his proceedings. In the response brief filed with the CAS, it is stated that *"Evacué du stade hors tout protocole normal et entouré longtemps de nombreuses personnes qui n'avaient aucune raison de l'accompagner, mais non de son entraîneur éloigné de lui et qui n'a pu le rejoindre que tardivement, Fouad CHOUKI, très abattu moralement, a d'abord manifesté un détachement faussement euphorique, engendré par sa fierté naturelle, avant de sombrer dans l'abattement le plus total, ne comprenant pas ce qui lui arrivait, et notamment victime d'un malaise."*

The fact that Mr Fouad Chouki firstly displayed a *"falsely euphoric detachment"* is not compatible with the alleged state of shock.

In addition, as explained hereafter, Ms Aline Leveque witnessed the moment when Mr Fouad Chouki felt unwell. In other words he did not collapse on the ground (translated from the French version of the answer brief *"victime d'un malaise"*) before the escort notified him that he was summoned to appear for a doping test.

Besides, the doping control form confirms that the time at which the athlete felt unwell coincides with the time of notification.

Finally and as pointed out by Mr François Ruhlmann during the hearing, Mr Fouad Chouki was evacuated to the medical centre twice: the first time, just after the race and the second time just after he felt faint at 9: 35 p.m. The Panel cannot conceive that the medical staff would have allowed the athlete to leave the centre if he was in a so-called state of shock. Due to the little time spent under the first medical observation, that is between 9:10 p.m. and 9:35 p.m., the athlete's condition cannot have been very worrisome since he was allowed to leave the centre to go fetch his belongings.

Until 9:35 p.m., Mr Fouad Chouki obviously was fully conscious and aware of his surroundings.

- According to the document entitled *"Rapport d'audition de Madame Aline LEVEQUE"*, which was handed over during the hearing with the express consent of Mr Fouad Chouki, the latter was on his way to the warm-up stadium. It is only after he was notified of the doping control that the athlete felt faint.
- From the moment she notified Mr Fouad Chouki that he was summoned to appear for doping control, Ms Aline Leveque kept the athlete under

constant and direct observation. In his proceedings before the Cour Administrative d'Appel of Nancy, the athlete states that (translated from French by Mr Fouad Chouki) "In relation to Ms Aline LEVEQUE, she remained at a distance, without ever losing sight of him". In her witness statement as well as in the "Rapport d'audition de Madame Aline LEVEQUE", the escort confirmed that she did not see any injection administered to Mr Fouad Chouki.

- The Panel notes that Mr Fouad Chouki, who allegedly was surrounded by many people, could not find one person to corroborate his version of the facts.

8.12.3 Mr Fouad Chouki did not establish nor make plausible that he had been injected with EPO during the analysed segment of time. He did not give any credible explanation on how nor when the administration of r-EPO could have occurred.

8.13 From the time the athlete was in the medical centre until he was accompanied to the doping control centre

8.13.1 Mr Fouad Chouki explained to the Panel that, as he recovered consciousness, he could remember lying in a bed in the medical centre, surrounded by people, with a perfusion in his left arm. During the course of his hearing, he corrected his statement, advising that the IV was actually in his right arm. To support his allegation, Mr François Dreyer was heard as a witness. The latter confirmed that he noted that the athlete was receiving a perfusion in the right arm. Mr Fouad Chouki also claimed that a drug was injected to him. He relies on the fact that the doping control form mentions that there had been an injection and that in the "Rapport d'audition de Madame Aline LEVEQUE", his escort declares that some white liquid was poured in his mouth.

8.13.2 Mr Michel Marle, whose role was to organise and supervise the doping tests which took place at the IAAF world Championships in Paris, confirmed to the Panel the following:

- Mr Fouad Chouki was escorted at all times from notification until he provided his sample.
- When Mr Michel Marle found out that Mr Fouad Chouki had been taken to the medical centre, he joined him to see what was happening. He had a permanent visual contact with the athlete, while the latter was in the medical centre. He briefly had to leave Mr Fouad Chouki's observation five or six times.
- He had not seen a perfusion nor an injection performed on Mr Fouad Chouki.

8.13.3 Mr Olivier Grondin is a medical doctor who was responsible for conducting the doping tests which took place during the IAAF World Championships in Paris. He confirmed to the Panel the following:

- As the doctor in charge of the anti-doping controls, he was constantly kept informed about what was occurring in respect of the doping controls. After having spoken to the various people involved with Mr Fouad Chouki, he reached the conclusion that nothing special happened to the athlete and that no drug was given to the latter.
- As he was in the doping control centre, Mr Fouad Chouki did not complain about having been attacked, mishandled or involved in particular circumstances under which an injection could have been administered to him. At the time, Mr Fouad Chouki did not mention unregistered medical attention, such as a perfusion or an injection.

8.13.4 Ms Aline Leveque confirmed to the Panel that:

- she did not see any perfusion nor injection administered to Mr Fouad Chouki;
- on the first doping control form, she used the word “injection” by mistake, since she did not know the proper medical term;
- she made contradictory statements as far as whether or not sugared water was given orally to Mr Fouad Chouki. It is due to the fact that the doctor, who was monitoring Mr Fouad Chouki, was standing between the athlete and Ms Aline Leveque. Therefore, she was unable to see whether or not the solution was effectively given. She assumed that it was the case.

8.14 The Panel’s opinion

8.14.1 Mr Fouad Chouki’s defence is based principally on the term “injection” used on the doping control form, on the contradictions of Ms Aline Leveques, on Mr François Dreyer’s testimony and on an alleged conspiracy of which he was the victim.

8.14.2 As far as the term of "injection" is concerned, the Panel has no difficulty believing Ms Aline Leveques when she declares that she used the word “injection” by mistake. The Panel does not see any reason to question her evidence. Mr Fouad Chouki did not present to the Panel any reason to cast doubt on Ms Aline Leveque's submission. It is correct that Ms Aline Leveque made contradictory statements. But, in the Panel’s opinion, they are credibly explained. In the Panel's view, Ms Aline Leveque was eager to accomplish her task as efficiently as possible. That is the reason why she took the unfortunate initiative to mention on the doping control form that an “injection” was administered to the athlete. The Panel is left without doubt that if a perfusion was made, Ms Aline Leveque would have made a note about it on the doping control form. Furthermore, the Panel also takes comfort in the fact that the athlete used the conditional tense on the second doping control form, where he filled in the comment box as follows: *“j’aurais reçu une injection à 21 h 35 d’eau sucrée par un médecin”*. It appears to the Panel that Mr Fouad Chouki was much less categorical a few minutes after his stay at the medical centre than a year and a half later, at the hearing held on 2 March 2005.

- 8.14.3 Mr François Dreyer's testimony seemingly confirms the hypothesis according to which Mr Fouad Chouki received a perfusion in his arm. The fact that Mr François Dreyer had an adequate accreditation giving him access to the medical centre gives weight to his statement. Nevertheless, his testimony is in contradiction with Mr Marle's, Mr Grondin's and Ms Leveque's and with the circumstances established before the Tribunal. Moreover, besides Mr Fouad Chouki, Mr François Dreyer is the only person who would have seen the perfusion. Mr François Dreyer could not give the name of any other potential witness and was not recognized by anyone else, when he observed the alleged perfusion. The Panel found the testimony of Mr Marle, Mr Grondin and Ms Leveque both credible and compelling. The athlete did not present evidence of any motive which could explain why Mr Marle and Mr Grondin, as well as Ms Leveque, could have wanted to sabotage the athlete's sample. Therefore, the Panel does not see any reason to cast doubts on Mr Marle, Mr Grondin and Ms Leveque clear evidences that they had no reason to lie about the alleged perfusion and/or injection.
- 8.14.4 Mr Fouad Chouki suggests that he is the victim of a conspiracy. Such a statement is not credible absent a basis in fact. It is unquestionable that Mr Fouad Chouki has the burden of establishing that Mr Marle, Mr Grondin and Ms Leveque are part of a plot hatched against him. The Panel, based on objective criteria, must be convinced of the occurrence of such an alleged fact.
- 8.14.5 In casu, Mr Fouad Chouki adduced no evidence at all of a possible plot. The simple fact that Ms Leveque contradicted herself does not suffice to shift the burden of proof on the IAAF and on the FFA that the athlete was set up. If Ms Aline Leveque was part of the alleged conspiracy, the Panel does not see why she mentioned the "injection" on the doping control form in the first place. The circumstances under which the second doping control form was established do not support the athlete's position. At least, he does not explain why it should.
- 8.14.6 Furthermore, Mr Fouad Chouki did not begin to make credible or even plausible the existence of such a vast conspiracy requiring the participation of so many actors:
- all the members of the team, who are highly ranked delegates of three different bodies and are responsible for selecting the athletes to be tested, must necessarily be part of the conspiracy. As a matter of fact, the selection of Mr Fouad Chouki for the doping test could have taken place only at the end of the race, when his ranking in the race was known. This would be in contradiction with the statement that the selected athletes were designated by the said team in the early morning of the racing day.
 - Mr Michel Marle and Mr Olivier Grondin, who are also highly ranked members of their respective federation and involved for years in the world of sports, must be implicated. As a matter of fact their testimony is clearly in contradiction with Mr Fouad Chouki's and with Mr François Dreyer's.

- Before the Panel, when he was asked, the athlete refused to authorize Dr Olivier Grondin to disclose any information or document covered by his medical privilege and related to the care he received whilst in the medical centre. By taking this decision, he asks the Panel to infer that his medical file has been tampered with, which implies the participation in the conspiracy of more people, notably of the members of the medical staff who took care of him.
- There must also be at least one person who administered the injection of r-EPO to Mr Fouad Chouki.

8.14.7 The Panel notes that this theory would be vain unless all the conspirators knew in advance that the athlete would be in such a physical condition that he would not be able to refuse the administration of r-EPO.

8.14.8 Finally, Mr Fouad Chouki did not adduce any evidence making plausible that EPO administered orally or by a subcutaneous or by an intravenous injection two hours before the sample collection, could result in a positive test for that prohibited substance.

8.14.9 In the present dispute, the Panel, after careful analysis of the facts and evidence submitted to it by the parties, concludes that it is simply not credible that the administration of r-EPO to Mr Fouad Chouki took place against his will after the 1500 metres final.

8.14.10 Based on the totality of the evidence, it has been proven beyond reasonable doubt by the Appellant that Mr Fouad Chouki therefore committed a doping offence prohibited by the applicable IAAF Rules and must take responsibility for it.

C/ What is the sanction and how should it be calculated?

8.15 According to the FFA, the sanction for a period of 2 years with 6 months suspended (sursis) is compatible with the applicable IAAF Rules. As a matter of fact, the FFA is of the opinion that the sanction must be distinguished from its execution, for which the FFA is free to implement the rules it desires. The 6 months suspension is an "execution rule".

8.16 IAAF Rule 55.3 states that "*Prohibited substances include those listed in Schedule 1 to the "Procedural Guidelines for Doping Control".*

8.17 Schedule 1 Part I of the IAAF Procedural Guidelines for Doping Control lists r- EPO as a prohibited substance.

8.18 According IAAF Rules 60.1 "*For the purpose of these Rules, the following shall be regarded as "doping offences"(see also Rule 55.2): (i) the presence in an athlete's body tissues or fluids of a prohibited substance"*.

8.19 IAAF Rule 60.2(a)(i), provides the following:

“If an athlete commits a doping offence, he will be ineligible for the following periods:

(a) For an offence under Rule 60.1(i) or 60.1(iii) above involving the substance listed in Part I of Schedule 1 of the “Procedural Guidelines for Doping Control” or, for any other offences listed in Rule 60.1:

*(i) first offence – **for a minimum of two years** from the date of the hearing at which it is decided that a Doping Offence has been committed. When an athlete has served a period of suspension prior to a declaration of ineligibility, such a period of suspension shall be deducted from the period of ineligibility imposed by the relevant Tribunal [emphasis added]”*

8.20 The Panel does not see any reason to depart from the position expressed in the constant jurisprudence of the CAS (CAS 2003/A/452 IAAF v/MAR and Brahim Boulami):

“As CAS has ruled in several other cases, the two-year suspension is mandatory for any athlete committing a Doping Offence under the IAAF Rules. See IAAF v/ Czech Athletic Federation & Zubek, CAS 2002/A/362, and IAAF v/ Confederação Brasileira de Atletismo & Dos Santos, CAS 2002/A/383. In the present case, it is not for the Panel to determine whether there are mitigating circumstances that should lead to a reduction of the suspension. Rather, IAAF Rule 60.9 provides a specific procedure for early reinstatement on the basis of exceptional circumstances; according to this rule, a request for early reinstatement may be addressed to the IAAF's Council, which has the jurisdiction to rule on the application, see Longo v/ IAAF, CAS 2002/A/409. In this case, Mr Boulami urges that, because of the timing of the beginning of his suspension, the two years will expire at the end of the 2004 Olympics. However, that is a consideration, if at all, for the Council rather than this Panel. Moreover, we note that r-EPO is not a substance that can be accidentally introduced into an athlete's body.”

8.21 The Panel is comforted in its position, since neither the FFA in its response brief nor its Disciplinary Body of Appeals have presented any mitigating factors that would support a reduction in suspension time in this case.

8.22 The ineligibility for a period of two years is a minimum sanction for a first doping offence as expressed under IAAF Rule 60.2(a)(i)IAAF. The Panel considered whether or not it should sanction Mr Fouad Chouki with a more severe punishment than a 2 year suspension. The Panel decided not to go beyond the minimum limits fixed by the IAAF Rules only because of the various deficiencies in the IAAF and FFA internal anti-doping control arrangements emphasised hereafter.

D/ Mr Fouad Chouki raises several issues relating to deficiencies in the handling of the anti-doping controls during the world championships in Paris. In case such deficiencies are proven well founded, should they affect the application of the sanctions under the IAAF rules?

8.23 The Panel notes that during an event as important as the present world championships, there occurred so many irregularities. This is regrettable. The Panel expresses the hope that the IAAF and the FFA will ensure that those irregularities will not recur.

8.24 IAAF Rule 55.11 states:

“Any departure or departures from the procedures set out in the “Procedural Guidelines for Doping Control” shall not invalidate the finding that a prohibited substance was present in a sample or that a prohibited technique had been used, unless this departure, was such as to cast real doubt on the reliability of such a finding.”

8.25 Mr Chouki alleged that the random selection procedure was carried out in breach of the Protocol, which provides that the responsibility for designating the athletes to be tested was vested in a limited team of three persons. In the present case, Dr Gabriel Dollé transferred his powers to the two other team members. Formally, the Appellant is correct when he advises that Mr Fouad Chouki is not a party to the Protocol, which therefore vests no enforceable rights in him. The Panel also agrees when the IAAF advises that the Protocol does not expressly state that the three members of the team must be present during the athletes' selection. Nevertheless, the Panel notes that the Protocol considers the selection of athletes to be tested as sufficiently important to put it under the responsibility of three highly ranked persons from three different bodies. The Panel is convinced that the said team could have organised itself in order to proceed with the athletes' selection in such a manner that no criticism regarding its composition could have been raised. The selection could have taken place at another time of the day or Dr Gabriel Dollé could also have been replaced by another IAAF Anti-Doping Delegate or reached on the phone, as was the case when the issue of the doping control form arose. In any case, the reliability of the finding that Mr Fouad Chouki tested positive for r-EPO is not influenced by this alleged breach of procedure.

8.26 The fact that the first doping control form was not filled in correctly is also not decisive. The said document was attached to the second doping control form, which mentions the alleged injection. Although the incident is unfortunate, for all the reasons already exposed above, it does not cast doubt on the reliability of the test results and does not invalidate the finding that a prohibited substance was present in Mr Fouad Chouki's sample.

8.27 Furthermore, Mr Fouad Chouki claimed that he was refused a third analysis by an independent laboratory. Such a request has no legal basis and must therefore be dismissed. The fact that the same laboratory analysed the athlete's A and B samples is consistent with the Protocol. Further more, Dr Gabriel Dollé confirmed that it was common practice.

8.28 Based on the foregoing, Mr Fouad Chouki cannot succeed with any argument that there were fatal irregularities in the handling of the anti-doping controls during the world championships in Paris. As a matter of fact none of the irregularities had any impact on the finding that r-EPO was found in the athlete's urine. Moreover and as expressed under 6.9 here-above, the complete investigation by an appeal authority, which has the power to hear the case, remedies, in principle, most flaws in the procedure at first instance. This applies in particular to the alleged impartiality of Mr Marle who presumably should not have presented his investigation report to the FFA's Disciplinary Body of First authority on 8 October 2003.

9. Conclusion

- 9.1 Consequently and for all the above reasons, the Panel finds that the IAAF's appeal must be allowed and the decision rendered on 26 November 2003 by the FFA's Disciplinary Body of Appeals must be set aside.
- 9.2 Hence, the Panel finds Mr Fouad Chouki guilty of a doping offense under the IAAF Rules. Accordingly, the Panel concludes that Mr Fouad Chouki is declared ineligible for two years, pursuant to IAAF Rule 60.2 (a)(i), with credit for suspension time already served from 19 September 2003 until the date of this award.
- 9.3 The FFA's attention must be drawn on IAAF Rule 21.10, which provides that *"The decision of CAS shall be final and binding on all parties, and on all Members of the IAAF, and no right of appeal will lie from the CAS decision. The decision shall have immediate effect and all Members shall take all necessary action to ensure that it is effective."*
- 9.4 It results that the present decision shall also apply on French territory.

10. Costs

- 10.1 R65.1 and R65.3 of the Code provide that, subject to Arts. R65.2 and R65.4, the proceedings shall be free; that the costs of the parties, witnesses, experts and interpreters shall be advanced by the parties; and that, in the Award, the Panel shall decide which party shall bear them, or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.
- 10.2 As a general rule the CAS grants the prevailing party a contribution toward its legal fees and other expenses incurred in connection with the proceedings. However, in the light of all of the circumstances and of the financial resources of the parties, the Panel concludes that it is reasonable for the parties to bear their own costs and other expenses incurred in connection with this arbitration.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the International Association of Athletics Federations on 11 June 2004 is upheld.
2. The appealed decision issued on 26 November 2003 by the FFA's Disciplinary Body of Appeals ("L'organe disciplinaire d'appel") is set aside.
3. Mr Fouad Chouki shall be declared ineligible for two years from 19 September 2003.
4. All other motions or prayers for relief are dismissed.
5. The Award is pronounced without costs, except for the court office fee of CHF 500 (five hundred Swiss Francs) paid by IAAF which is kept by the CAS.

Decided in Lausanne, on 2 March 2005 (communicated on 5 April 2005)

THE COURT OF ARBITRATION FOR SPORT

President of the Panel
Carole **Barbey**

Yves **Fortier**
Arbitrator

Jean-Jacques **Bertrand**
Arbitrator

Patrick **Grandjean**
Ad hoc Clerk