

# Legal & Constitution Committee Meeting Minutes

26 September 2024 – 1 pm CEST - Zoom

## Participants :

- Johan Druwé – Chair
- Gale Bernhardt – Vice Chair
- Suzanne Tang – Member
- Ian Howard - World Triathlon Executive Board Representative
- Antonio F. Arimany – World Triathlon Secretary General
- Paola Turconi – Staff Liaison
- Ninon Jeanneret Troboas – Staff Liaison
- Sándor Péter Mészáros – Legal Intern

## Excused :

- Stuart Corbishley – Member
- Patrice Brunet – Member
- Jan Sterk - Member
- Elizaveta Danko - Legal Intern

Duration: 1 pm – 2:07 pm CEST via Zoom.

*\*For ease of minute taking only first names of the members will be referred to in the minutes. You can see full names above.*

Discussion Items:	Action Items and notes:
<b>Welcome</b>	The Chair welcomes the participants.
<b>Approval of the minutes</b>	The minutes of 29 August 2024 are approved and to be published on the TRI website.
<b>Denmark resolution</b>	Regarding the resolution of the Danish NF, the Chair suggests the evaluation of the election rules to be done after elections, which would enable any amendments to the rules to be evaluated by all the different stakeholders. This suggestion has been accepted by all the Members. The SG says the rules should be reviewed after the first-hand experience of the upcoming elections.
<b>Ukraine resolution</b>	

**Questions for clarification of the Rules from the Credentials Committee**

The Chair says the content of the resolution has already been implemented by TRI with the Operating Policy. The SG says the Neutral Panel already handled the issue outlined in the resolution.

At 13:20, the SG declares having a conflict of interest with the following items on the agenda. Therefore he leaves the meeting.

At 13:30, Ian H. joins the meeting and is updated by the Chair on the previous conversations about the resolutions. Ian H. mentions the IOC Elections Rules and asks if they apply to TRI Elections. The Chair replies that the TRI Elections Rules are the rules applicable to TRI elections and that the Election rules TRI are based on the rules of the IOC, ASOIF and other IFs.

Ian H. leaves the meeting as he has a conflict of interest with the following items on the agenda.

The Credentials Committee received complaints around the elections and asked the L&CC for clarification/interpretation on certain rules as is foreseen in the Constitution Art 47.4.b.3.:

**1. When is somebody considered a Delegate, Attendee or Observer?**

Decision L&CC (unanimous)

Delegates, Attendees and Observers are identified as such when they are approved by the Credentials Committee (Art 47.3.a and b.2).

Motivation: Similar to the process for candidates, Election Rules Art 7.1 and 7.2.

**2. May an Athlete, Executive Board member or a Candidate give their public support to a candidate?**

Decision L&CC (unanimous)

EB-members are not mentioned in Art 11.2. of the Election Rules (this should be amended before the next elections). An EB-member may make public declarations in support of a candidate if he/she is not a Delegate, Attendee, Observer, or Committee or Commission member.

An Athlete may make public declarations in support of a candidate if he/she is not a Delegate, Attendee, Observer, or Committee or Commission member.

Affiliated members may make public declarations in support of a candidate if they are not Delegates, Attendees, Observers, or Committee or Commission members.

A Candidate may make public declarations in support of another candidate if he/she is not a Delegate, Attendee, Observer, or Committee or Commission member.

### **3. Who can lodge a complaint to the Credentials Committee under the Election rules?**

The L&CC looked at CAS case law to clarify who is an interested party under Art 19.1..

To have legal standing, the appellant/official would need to have a **direct, personal and actual interest**.

Third parties generally have standing before the CAS in two cases. First, when a regulation **explicitly** confers it.

Secondly, when an association's measure affects not only the **rights** of the addressee, but also and directly those of a third party, that third party is considered "**directly affected**" and thus enjoys standing to sue.

There is a category of third-party applicants who, in principle, do not have standing, namely those deemed "**indirectly affected**" by a measure.

As regards the differentiation of directly affected parties from indirectly affected parties, CAS jurisprudence displays a "**common thread**". Where the third party is affected because he is a competitor of the addressee of the measure/decision taken by the association, - unless otherwise provided by the association's rules and regulations - the third party does not have a right of appeal. Effects that ensue only from competition are only **indirect consequences** of the association's decision/measure. If, however, the association disposes in its measure/decision not only of **the rights** of the addressee, but also of those of the third party, the latter **is directly affected** with the consequence that the third party then also has a right of appeal.

(CAS 2016/A/4924 & 4943).

In general terms standing to sue corresponds to any party that in a certain case **has a legitimate interest which is worthy of protection**. Even though legitimate interest is a broad, flexible and undetermined legal concept, that must be determined and concretized on a case-by-case basis, CAS jurisprudence has clarified that it exists if the party intending to appeal

- (i) is **sufficiently affected** by the decision at stake and
- (ii) has a **specific and tangible interest** ad casum, either of financial or sporting nature.

<p><b>LCC Report for 2024 Congress</b></p>	<p>In addition, for a party to have standing to appeal, a <b>third prerequisite</b> should be met, which consists of the fact that such party shall <b>be aggrieved by the decision</b> against which it intends to appeal. It is not necessary that the person at issue is the addressee of the decision against which the appeal is filed.</p> <p>(CAS 2018/A/5888)</p> <p><b>Conclusion and Decision L&amp;CC (unanimous)</b> To have legal standing, the appellant/official would need to have a <b>direct, personal and actual interest</b>.</p> <p>In general terms standing to sue corresponds to any party that in a certain case <b>has a legitimate interest that is worthy of protection</b>. The party:</p> <ul style="list-style-type: none"><li>(i) is <b>sufficiently affected</b> and</li><li>(ii) has a <b>specific and tangible interest</b></li></ul> <p>In addition, for a party to have standing, a <b>third prerequisite</b> should be met, which consists of the fact that such party shall <b>be aggrieved by the decision</b> against which it intends to appeal.</p> <p>Decision L&amp;CC (unanimous):</p> <p>Above decisions of the CAS will be applied in determining who can lodge a complaint with the Credentials Committee.</p> <p>The Chair went through the PowerPoint for the 2024 Congress Report. The Members make some comments and the PowerPoint will be updated accordingly.</p>
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Next meeting: 17 October 2024 at 13:00 am CEST - in person, in Torremolinos.

Minutes taken by Sándor Péter Mészáros (Legal Intern) and Ninon J. Troboas (Legal Counsel)