

**FROM SANCTION TO PREVENTION:  
SAFEGUARDING AND GOVERNANCE IN OLYMPIC SPORT  
CAS AWARD OG 26/08 (*REINSALU V ISU*)**

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*ABSTRACT: With the OG 26/08 award, the CAS Ad Hoc Division upheld the provisional suspension of an ISU coach during the Milano-Cortina 2026 Olympic Winter Games following allegations of abuse. For the Panel measure was more precautionary than punitive, applying a “reasonable possibility” *prima facie* threshold acknowledging the federation’s margin of discretion in preventive risk governance. The decision deems safeguarding objectives over the extraordinary interests attached to Olympic participation. The award consolidates a risk-based safeguarding paradigm in international sport, while underscoring the doctrinal boundaries of preventive power, including evidentiary sufficiency, proportionality, and temporal restraint.*

*Il presente contributo esamina il lodo CAS OG 26/08, con cui la Divisione Ad Hoc del TAS ha confermato la sospensione provvisoria di un allenatore dell’ISU durante i Giochi Olimpici Invernali di Milano-Cortina 2026, a seguito di accuse di abuso. Il Collegio ha qualificato la misura come cautelare e non punitiva, ha applicato la soglia probatoria della “ragionevole possibilità” *prima facie* e ha riconosciuto alla federazione un margine di discrezionalità nella gestione preventiva del rischio. La decisione conferma che le finalità di safeguarding possono prevalere anche sugli interessi eccezionali connessi alla partecipazione olimpica. Il lodo consolida un paradigma di safeguarding fondato sulla gestione del rischio nello sport internazionale, evidenziando al contempo i limiti sistematici del potere preventivo, tra cui l’adeguatezza del riscontro probatorio, il rispetto del principio di proporzionalità e la necessaria temporaneità della misura.*

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**Keywords:** *Safeguarding – Provisional Suspension – Abuse and Harassment – Participant Welfare – Proportionality – Presumption of Innocence – Interim Measures.*

*Safeguarding – Sospensione provvisoria – Abusi e molestie – Tutela dei partecipanti – Proporzionalità – Presunzione di innocenza – Misure cautelari.*

**SUMMARY:** 1. Introduction: Safeguarding and the Transformation of Regulatory Logic – 2. The Factual and Procedural Context – 3. Jurisdiction and the Functional Role of the CAS *Ad Hoc* Division – 4. The Legal Nature of Provisional Suspension: Protective, Not Punitive – 5. The Threshold Problem: *Prima Facie* Assessment and the “Reasonable Possibility” Standard – 6. Proportionality, Margin of Discretion, and the Limits of Athlete Preference – 7. Due Process, Curability, and the Presumption of Innocence – 8. Comparative Jurisprudence and the Evolution of Interim Safeguarding Doctrine – 9. Safeguarding as a Governance Paradigm: from Compliance to Culture

### 1. *Introduction: Safeguarding and the Transformation of Regulatory Logic*

Safeguarding is a significant, structural upshot in contemporary sports governance.<sup>1</sup> A wider regulatory paradigm centred on prevention, risk mitigation, and the welfare of participants<sup>2</sup> is increasingly flanking the traditional disciplinary enforcement.

The award rendered by the CAS *Ad Hoc* Division in CAS OG 26/08<sup>3</sup> is best understood against that background.

At first glance, the dispute is procedurally unremarkable: a coach and International Skating Union (ISU) technical specialist, provisionally suspended by the ISU for alleged abuses towards an athlete, challenges his exclusion from the Milano-Cortina 2026 Olympic Winter Games; the CAS Panel dismisses the application and upholds the *interim* measure.

<sup>1</sup> See S. BASTIANON and M. COLUCCI, *Protecting the Beauty of the Game: Towards a Safeguarding Culture*, 2025, SLPC.

<sup>2</sup> Some International Sports Associations have adopted safeguarding policies centred on prevention, risk management and education. See, for example, J. LAMBOY, *Safe Courts: FIBA’s Commitment to Safeguarding in Basketball*; C. Carrannante, *The International Gymnastics Federation and Safeguarding*; S. BOCH and A. DELIBERATO, *FIVB and Safeguarding: Transforming Volleyball into a Safe Sport*; G. McKENNA, L. ROTHAUER and K. GATTERER, *International Biathlon Union, the Biathlon Integrity Unit and Safeguarding*; N. FLUTTI and M. UVA, *UEFA Social and Environmental Sustainability: Youth and Child Protection Policy*; and S. SMITH, *World Rugby and Safeguarding*, all in S. Bastianon and M. Colucci (eds.), *Protecting the Beauty of the Game: Towards a Safeguarding Culture*, SLPC, 2025.

<sup>3</sup> CAS OG 26/08, award of 12 February 2026, *Reinsalu v. ISU*, available at <https://www.tas-cas.org/generated/assets/lists/feb900ba-1137-4b78-a9ff-d68af7869087/OG%202026-08%20Arbitral%20Award.pdf>.

Yet the reasoning underpinning that conclusion is an innovative, progressive doctrinal development: the jurisdictional view supporting a preventive model of governance where safeguarding objectives win over the sportive and material interests associated with Olympic participation.

Conventional sports disciplinary systems have long been organised around this sequence: allegations trigger investigation, the accused is afforded procedural guarantees, responsibility is established, and sanctions follow. Although *interim* measures exist – most prominently in anti-doping – they have generally served as ancillary instruments designed to preserve competitive integrity pending final adjudication. The prevailing logic has remained fundamentally adjudicatory: guilt is established before punishment is imposed.

Safeguarding, however, alters the organising logic. Its central objective is not sanction but rather prevention. The decisive regulatory question becomes not whether a violation has been proven, but rather whether a credible, alleged risk of abuse exists that is incompatible with the safety and integrity of the sporting environment and stakeholders.

In CAS OG 26/08 the Panel articulates that distinction with rigorous clarity, stressing that a provisional suspension “*constitutes a precautionary and protective measure, and not a disciplinary sanction. Its function is no to anticipate the outcome of the proceedings on the merits or to imply any presumption of guilt but rather to protect welfare and integrity pending a final determination*”.<sup>4</sup>

This shift – subtle in formulation, profound in consequences – recalibrates the doctrinal weight attributed to the presumption of innocence, proportionality, discretion, and procedural completeness at the *interim* stage.

The award provides a clear illustration of that sound development when affirms that provisional suspension may be justified where there exists a “reasonable possibility of a violation”<sup>5</sup> and where the measure pursues legitimate protective objectives.<sup>6</sup> The irreversibility associated with Olympic exclusion does not, in the Panel’s view, convert a preventive measure into a sanction.<sup>7</sup> Nor do the expressed wishes of an athlete, however sincere, displace the federation’s safeguarding mandate.<sup>8</sup>

Accordingly, CAS OG 26/08 should not be read merely as a product of Olympic urgency. It constitutes a doctrinal marker in the broader evolution of safeguarding into an enforceable legal framework: a risk-based paradigm marked by deference to the sports association discretion in integrity matters,<sup>9</sup> a relatively

<sup>4</sup> Ibid., paragraph 62.

<sup>5</sup> Ibid., paragraph 72.

<sup>6</sup> Ibid., paragraphs 64-66.

<sup>7</sup> Ibid., paragraphs 61-67.

<sup>8</sup> Ibid., paragraphs 66-67.

<sup>9</sup> The Panel states: “*In matters involving allegations affecting participant welfare and integrity, governing bodies necessarily enjoy a margin of discretion in adopting preventive measures aimed at mitigating potential risks pending a final adjudication. Such discretion is inherent in the*

low *prima facie* threshold for *interim* intervention,<sup>10</sup> and a formal distinction between preventive exclusion and punitive sanctioning. To appreciate the full significance of this development, it is necessary first to review the facts and procedure within which the dispute arose.

## 2. The Factual and Procedural Context

The dispute emerged from allegations of prolonged physical and psychological abuse raised by a former minor athlete against her coach. ISU Safeguarding received the complaint on 15 July 2025. Following an initial interview, ISU engaged Sportradar AG to conduct investigations. The Applicant submitted written responses denying the allegations, while subsequently challenging elements of the factual and procedural framing of the investigation.

In February 2026, the ISU commenced formal disciplinary proceedings based on alleged violations of Articles 3 and 6.1 of the ISU Code of Ethics. By Order No. 1 dated 7 February 2026, the ISU Disciplinary Commission provisionally suspended the Applicant “*from participation in all ISU activities and events including the skating events at the Milano-Cortina Olympic Winter Games*”. The Applicant filed an urgent request for revocation, but the Disciplinary Commission dismissed the application and confirmed the suspension in its decision of 8 February 2026.

The Disciplinary Commission’s reasoning, as reproduced in the award, explicitly situates the measure in a risk-management framework. It considered the suspension “*necessary due to the seriousness of the allegations*,” while simultaneously purporting to respect the presumption of innocence and the right to be heard. It further stressed that the Olympic Games are “*the pinnacle event and the protection and safety of the participating athletes is of the highest priority*”.<sup>11</sup> The provisional suspension was therefore framed as a preventive response proportionate to the alleged risks.

The timing of the measure close to the Olympic Games shaped the dispute. Olympic participation is legally and symbolically exceptional: unlike ordinary competitions, the Games are unique within a sporting career, and exclusion cannot later be meaningfully repaired. The Applicant relied on this point to argue that the

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*risk-prevention function of ethical and protective frameworks. The relevant question is therefore not whether the alleged misconduct has already been proven, but whether, having regard to the gravity of the allegations and the position of authority held by the coach, the adoption of a temporary suspension falls within the bounds of that margin of discretion and can be regarded as reasonable and proportionate*”. Ibid., paragraphs 68-69.

On the importance of risk assessment in safeguarding policies see M. LEONARD, *Organizational Policies and Procedures*, in S. Bastianon and M. Colucci (eds.), *Protecting the Beauty of the Game: Towards a Safeguarding Culture*, SLPC, 2025.

<sup>10</sup> Ibid., paragraph 72.

<sup>11</sup> Ibid., paragraph 17.

provisional suspension operated, in substance, as a sanction, because it deprived him of participating in a “*unique and non-repeatable Olympic event*”.<sup>12</sup>

The Applicant further argued that his exclusion undermined the athlete’s preparation and psychological stability in view of the Olympic Games. The athlete’s father similarly submitted that the decision, though formally directed at the coach, was effectively directed at the athlete and manifestly disproportionate. When the Lithuanian Olympic Committee cancelled the Applicant’s accreditation, the CAS *Ad Hoc* Division was confronted with a typical Olympic safeguarding dispute: an *interim* measure grounded in abuse allegations, adopted at the height of the Games, and challenged on proportionality, procedural fairness, and presumption of innocence grounds.

### 3. *Jurisdiction and the Functional Role of the CAS Ad Hoc Division*

The jurisdictional basis for the dispute is Rule 61 of the Olympic Charter and Article 1 of the CAS *Ad Hoc* Arbitration Rules. The Panel restated the cumulative requirements foreseen in those provisions, namely: the dispute must arise on the occasion of, or in connection with, the Olympic Games; it must arise during the relevant Olympic period; and internal remedies must be exhausted unless the time required would render recourse to the *Ad Hoc* Division ineffective.<sup>13</sup>

The Respondent sought to defeat jurisdiction by arguing that the dispute pre-dated the Games and therefore fell outside the temporal limits of the CAS *Ad Hoc* Division. The Panel rejected that submission. It held that the dispute concerned whether the provisional suspension – imposed by Order No. 1 and subsequently confirmed by the Appealed Decision – should be stayed or set aside insofar as it determined Olympic participation. Since the outcome was directly connected to the Applicant’s further participation in the Games, the *ratione materiae* requirement was satisfied.

On the temporal question, the Panel emphasised that the Appealed Decision was rendered during the Olympic period and therefore within the relevant temporal window. It considered immaterial that the underlying facts and investigative steps pre-dated the Games. This reflects a functional conception of the dispute: what matters is not when allegations emerged, but when the decision on the Olympic participation was taken.

As to exhaustion of internal remedies, the Panel noted that the Appealed Decision itself acknowledged that no further internal remedy was available against the provisional suspension. In those circumstances – particularly given Olympic urgency – the exhaustion requirement posed no obstacle.<sup>14</sup>

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<sup>12</sup> Ibid., paragraphs 33-37.

<sup>13</sup> Ibid., paragraphs 41-43.

<sup>14</sup> Ibid., paragraphs 47-50.

This jurisdictional reasoning is not merely procedural. It clarifies the structural role of the CAS *Ad Hoc* Division in safeguarding disputes arising at the Olympics. In the present case, the *Ad Hoc* Division was not called upon to adjudicate the merits of the underlying safeguarding allegations under the compressed Olympic timeline. Rather, its task was limited to assessing whether the *interim* measures affecting participation complied with minimum standards of legality and proportionality. This does not, however, imply that the CAS *Ad Hoc* Division is categorically precluded from addressing the merits of safeguarding cases during the Olympic Games where the circumstances so require. Having established jurisdiction and admissibility, the Panel turned to the substantive question: whether the provisional suspension was validly imposed under the applicable regulatory framework and general principles of law.

#### 4. *The Legal Nature of Provisional Suspension: Protective, Not Punitive*

The doctrinal core of the award lies in the Panel's characterisation of the provisional suspension. It states unequivocally that the measure "*constitutes a precautionary and protective measure, and not a disciplinary sanction*".<sup>15</sup> This classification is not a rhetorical choice; it is the premise upon which the remainder of the reasoning depends.

The Panel stresses that a provisional suspension is not intended "*to anticipate the outcome of the proceedings on the merits or to imply any presumption of guilt. Its function is to safeguard the integrity of the sport, the welfare of participants, and the proper functioning of the sporting environment pending a final determination*".<sup>16</sup> In other words, the measure is justified by preventive rationale rather than punitive intent.

That rationale acquires force in safeguarding cases. The Panel notes that abuse allegations "*engage concerns that transcend mere regulatory compliance and directly implicate participant protection and welfare*".<sup>17</sup> Central to the analysis is the nature of the coach–athlete relationship. A coach occupies "*a position of significant authority and influence vis-à-vis athletes*".<sup>18</sup> Where allegations concern abuse in such an asymmetrical relationship, the risk is not speculative in the abstract; it is structurally rooted in the dynamics of authority, trust, and dependency.

Against that background, the Applicant seeks to collapse the distinction between preventive and punitive measures. The argument is that exclusion from a "*unique and non-repeatable Olympic event*" makes the suspension functionally equivalent to a sanction.

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<sup>15</sup> Ibid., paragraph 62.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., paragraph 63.

<sup>18</sup> Ibid.

The Panel rejects this line of reasoning. It accepts that provisional suspension may entail indirect sporting, professional or organisational consequences, but insists that such consequences do not alter the lawful nature of the measure. The balancing exercise must focus on the rights of the suspended coach, weighed against the legitimate regulatory interest in protecting participants and preserving the integrity of the sporting environment. To treat third-party consequences as decisive would, in the Panel's view, risk subordinating the preventive and protective objectives of the ISU Code of Ethics to contingent third-party interests.<sup>19</sup>

This reasoning is significant. The Panel does not minimise the severity of Olympic exclusion. Rather, it treats severity as legally subordinate to preventive purpose. Doctrinally, this entails a formalist distinction: the classification of a measure depends on its regulatory aim, not on the magnitude of its practical impact. While this approach is consistent with CAS practice in *interim* anti-doping measures, CAS OG 26/08 extends it into the safeguarding domain, where reputational and relational consequences may be particularly acute. It thereby strengthens the proposition that preventive exclusion – even from the Olympic Games – remains legally distinct from sanctioning so long as it is temporary and oriented toward risk mitigation.

##### 5. *The Threshold Problem: Prima Facie Assessment and the “Reasonable Possibility” Standard*

Once the Panel classifies the measure as protective, the next question concerns the evidentiary threshold for its imposition.

The Panel emphasises that provisional suspension must be supported by more than speculation yet clarifies that “*a reasonable possibility that the appellant committed the alleged violation is all that is required*” and it links this standard to established CAS jurisprudence.<sup>20</sup> The test is therefore distinctly lower than the standard required on the merits. It does not require proof to the comfortable satisfaction of the Panel, still less proof beyond reasonable doubt. It requires credible indicia sufficient to justify preventive action.

The Applicant invokes the presumption of innocence in support of a burden-shifting argument, claiming that the ISU Disciplinary Commission required him to disprove causation between his alleged conduct and the complainant's psychiatric condition. The Panel dismisses that characterisation and it explains that the Commission assessed whether “*the evidence before it, including medical records and witness statements, provided a reasonable basis for protective measures*,” rather than requiring the Applicant to disprove causation.<sup>21</sup>

<sup>19</sup> Ibid., paragraphs 66 and 67.

<sup>20</sup> Ibid., paragraph 72, referring to CAS 2017/A/4968.

<sup>21</sup> Ibid., paragraph 74.

The distinction is doctrinally critical. At the *interim* stage, the question is not whether guilt has been established but whether the risk is sufficiently plausible to justify protective intervention. Consistently with its characterisation of the measure, the Panel concludes that the presumption of innocence is not required/involved because no finding of guilt has been made.

This approach reflects the underlying regulatory philosophy of safeguarding. The objective is not to adjudicate past conduct definitively but to prevent potential future harm pending final determination. The evidentiary threshold must therefore be sufficiently flexible to allow intervention where credible risk indicators exist, even if the record remains incomplete. At the same time, the Panel reiterates that speculation is insufficient. The measure must be grounded in a *prima facie* foundation, which in the present case was constituted by the seriousness of the allegations, investigative material, and the structural authority relationship at issue.

#### 6. *Proportionality, Margin of Discretion, and the Limits of Athlete Preference*

In CAS OG 26/08 the proportionality analysis takes the form of contextual balancing rather than an explicitly segmented multi-step test. The Panel's inquiry focuses on whether the provisional suspension pursues a legitimate objective, rests on a sufficient *prima facie* basis, and falls within the bounds of reasonable and proportionate preventive discretion.

The seriousness of the allegations constitutes the first pillar of the proportionality assessment. The Panel emphasises that abuse allegations, particularly involving minors and authority relationships, engage the highest level of regulatory concern.<sup>22</sup> The second pillar is the federation's discretion. The Panel affirms that governing bodies "*necessarily enjoy a margin of discretion in adopting preventive measures aimed at mitigating potential risks pending a final adjudication*".<sup>23</sup> This margin is inherent in the "risk-prevention function of ethical and protective frameworks".<sup>24</sup> Accordingly, the decisive question is not whether misconduct has been proven, but whether the temporary suspension "*falls within the bounds of that margin of discretion and can be regarded as reasonable and proportionate*".<sup>25</sup>

The third element concerns third-party consequences, especially the impact on the athlete trained by the suspended coach. The Panel accepts that indirect effects are relevant but holds that they cannot override the protective objective. It further notes that the athlete would receive the assistance of an accredited coach during the Games and therefore "*is not too much prejudiced*"

<sup>22</sup> Ibid., paragraphs 64-66 and 70.

<sup>23</sup> Ibid., paragraph 68.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., paragraph 69.

by the suspension.<sup>26</sup> This formulation suggests a threshold conception of harm: some prejudice is tolerable where protective interests are compelling and alternative support exists.

Notably, the award does not undertake an extended analysis of less restrictive alternatives. It does not examine whether conditional accreditation, supervision requirements, or limited-access arrangements might have mitigated risk while preserving Olympic participation. Instead, it proceeds on the assumption that removal from functions is the appropriate preventive response where allegations of serious abuse arise within an authority relationship. This approach reinforces the structural priority accorded to safeguarding. The Panel concludes that, “*having regard to (i) the seriousness of the allegations, (ii) the position of authority and trust occupied by the applicant, and (iii) the preventive and protective function of the ISU Code of Ethics*,” the suspension was “*reasonable, necessary and proportionate*”.<sup>27</sup> Proportionality review is therefore deferential, though not conceptually unbounded: within the margins of discretion, federations retain significant latitude in risk governance decisions.

## 7. *Due Process, Curability, and the Presumption of Innocence*

The Applicant’s due process challenge centres on alleged failures by the ISU Disciplinary Commission to consider certain submissions. In that regard, the Panel emphasises, first, that the Applicant had the opportunity to challenge the provisional suspension through an urgent revocation application. Second, it reiterates that provisional suspensions are imposed on a preliminary assessment of evidence without full adjudication of the merits. Third, it rejects the burden-shifting narrative, explaining that the Commission assessed whether the evidence provided a reasonable basis for protective measures.<sup>28</sup>

Most significantly, the Panel notes that the proceedings on the merits remain pending and that any procedural deficiencies can be remedied in those proceedings, or – if necessary – on appeal to the CAS ordinary division following a final decision. In light of this, it finds no violation of procedural rights in relation to the imposition of the provisional suspension.

This reasoning reflects a curability doctrine: *interim* procedural imperfections do not necessarily invalidate protective measures provided that full procedural safeguards remain available in subsequent merits proceedings. The Olympic context, however, introduces an unavoidable tension. Even if procedural rights are vindicated later, Olympic participation cannot be restored. The Panel resolves that tension implicitly by returning to its foundational distinction: the measure is preventive rather than punitive and thus does not concern the presumption of innocence in the same manner as a final sanction. The absence of a finding

<sup>26</sup> Ibid., paragraph 73.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid., paragraph 74.

of guilt preserves formal fidelity to that principle, even if reputational consequences may arise in practice.

#### 8. Comparative Jurisprudence and the Evolution of Interim Safeguarding Doctrine

CAS OG 26/08 forms part of a broader jurisprudential trajectory concerning provisional suspensions, *interim* measures, and the balance between preventive governance and individual rights.<sup>29</sup> Its doctrinal significance becomes clearer when situated within three overlapping lines of authority: (i) CAS jurisprudence on provisional suspensions; (ii) Olympic *ad hoc* urgency cases; and (iii) wider federation safeguarding practice.

The most developed body of CAS jurisprudence on provisional suspension historically emerged in the anti-doping context. Under the World Anti-Doping Code, a provisional suspension typically follows an adverse analytical finding and serves to protect competitive integrity and public confidence pending final adjudication. CAS panels have consistently characterised such suspensions as preventive rather than punitive, emphasising that they do not infringe the presumption of innocence because they are temporary and subject to full merits review. Their legitimacy is therefore grounded in a dual structure: the pursuit of a legitimate regulatory objective and the availability of effective *ex post* adjudication.

CAS OG 26/08 builds upon this preventive architecture. The Panel's adoption of a relatively low *prima facie* threshold, expressed in terms of a "reasonable possibility", mirrors established *interim*-measures reasoning in anti-doping disputes.<sup>30</sup> The distinctive feature lies in the transposition of that logic into the safeguarding domain. The regulatory interest at stake shifts from competitive fairness to participant protection and the integrity of authority relationships within sport. By endorsing the same structural logic of temporary exclusion pending merits review, the award implicitly recognises safeguarding as a systemic governance interest capable of grounding interventionist authority comparable to that long accepted in anti-doping jurisprudence.

This development must be read in light of the broader constitutional framework governing sports arbitration, the legitimacy of mandatory or quasi-mandatory sports arbitration under EU law and the ECHR ultimately depends on the availability of effective judicial protection, including proportionality review, meaningful scrutiny of regulatory discretion, and access to remedies capable of addressing both law and fact.<sup>31</sup>

<sup>29</sup> *Ex multis*: CAS 2013/A/3052, CAS 2008/A/1630, CAS 2007/A/1370-1376, CAS 2006/A/1088, CAS 2004/A/780, TAS 2004/A/708-709, CAS 2003/O/486, CAS 2002/A/378, and CAS 2001/A/324.

<sup>30</sup> CAS 2017/A/5296 *World Anti-Doping Agency v. Gil Roberts*, CAS OG 22/08, CAS OG 22/09, CAS OG 22/10, paragraph 89.

<sup>31</sup> S. BASTIANON and M. COLUCCI, *Sports Arbitration and Effective Judicial Protection Under EU Law: The RFC Seraing Case*, RDES, SLPC, September 2025.

Within that analytical framework, CAS jurisprudence performs a delicate constitutional function. It must reconcile deference to federation autonomy with guarantees of effective review. This tension is visible in CAS 2018/O/5794 concerning the *Semenya* case, where the Panel acknowledged that international federations operate within a sphere of discretion when balancing complex scientific, ethical and sporting considerations. Yet such discretion was not absolute: it was subjected to structured proportionality analysis. As subsequently highlighted by the European Court of Human Rights Grand Chamber in *Semenya v. Switzerland*, judicial control over sports arbitration must remain sufficiently rigorous to safeguard fundamental rights, even within a system premised on arbitral autonomy.<sup>32</sup>

CAS OG 26/08 reflects the same structural equilibrium. The Panel recognises that governing bodies “*necessarily enjoy a margin of discretion*” when adopting preventive safeguarding measures, but it frames the review in terms of reasonableness and proportionality. In safeguarding matters, this discretion is anchored in federations’ primary responsibility to ensure safe sporting environments and manage authority asymmetries. However, consistent with the standards identified in *Seraing* and reaffirmed in the Grand Chamber’s *Semenya* judgment, such discretion is constitutionally sustainable only because it remains embedded within a framework of subsequent merits review and potential judicial oversight.

Viewed comparatively and constitutionally, CAS OG 26/08 confirms the preventive classification of interim measures; it situates Olympic irreversibility within a structured balancing exercise rather than as an automatic trump. It clearly recognises participant protection as a primary normative objective, linking proportionality to the seriousness of the alleged conduct and the imbalance of authority between the parties, and situating safeguarding within the broader regulatory responsibilities of sports governing bodies. In this sense, the award reflects the gradual alignment of sports adjudication with European standards of fundamental rights and effective judicial protection. Safeguarding is thus presented not as an occasional disciplinary reaction, but as a structural governance principle, subject to proportionality review and meaningful oversight.

## 9. *Safeguarding as a Governance Paradigm: from Compliance to Culture*

The reasoning in CAS OG 26/08 is best understood as part of a broader shift from safeguarding as a matter of formal compliance to safeguarding as a central principle of sports governance. Although the Panel does not speak of “culture,” its approach treats welfare, dignity and safety as core organising values.<sup>33</sup> The case is not

<sup>32</sup> S. BASTIANON and M. COLUCCI, *The Semenya v. Switzerland ECtHR Grand Chamber Judgement: Jurisdiction, Procedural Rights, and Sports Arbitration*, RDES, SLPC, August 2025.

<sup>33</sup> On the essence of safeguarding and the need to promote a culture of respect and accountability, see E. ISIDORI, *Safeguarding in Sport, Towards a Pedagogy of Prevention, Protection and*

analysed as a narrow dispute about evidence, but as one directly affecting participant protection and the imbalance of authority in coach–athlete relationships. This preventive logic is reflected in the use of a “*reasonable possibility*” threshold at the *interim* stage, in the recognition that federations have discretion to manage safeguarding risks, and in the idea that urgent intervention can occur now, with full review taking place later. Within this framework, even the athlete’s preference for the coach’s presence cannot override broader protective concerns, since safeguarding requires attention to vulnerability and dependency.

At the same time, the award shows awareness of the need for limits. Strong preventive protection is necessary, but *interim* measures must not become disguised punishment. The Panel avoids this risk by relying on a clear legal basis, the seriousness of the allegations and the authority imbalance involved, and a *prima facie* standard that excludes mere speculation. Provisional suspension is therefore treated as preventive rather than punitive; Olympic irreversibility is acknowledged but not decisive; and fairness is preserved through full merits proceedings and appeal. Safeguarding thus emerges as a structured legal principle at the heart of sports governance – one that justifies temporary intervention where serious welfare concerns arise, but remains subject to evidence, proportionality and effective review.

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