



**Arbitration CAS 2016/A/4727 Kuwait Shooting Federation (KSF) v. International Shooting Sport Federation (ISSF), award of 12 April 2017**

Panel: Mr Mark Hovell (United Kingdom), President; Mr Reto Annen (Switzerland); Mr Patrick Lafranchi (Switzerland)

*Shooting*

*Suspension of a member federation*

*Limits of the CAS de novo power of review*

*Duty of certainty and clarity with regard to disciplinary sanctions*

1. Much as Article R57 of the CAS Code provides a CAS panel with a *de novo* power of review, the latter cannot be construed as being wider than that of the appellate body. The power of review of a CAS panel is determined by the relevant statutory legal basis and is limited with regard to the appeal against and the review of the appealed decision(s), both objectively and subjectively. If a motion was neither object of the proceedings before the previous authorities, nor in anyway dealt with in the appealed decision(s), the CAS panel does not have power to decide on it and the motion must be rejected. The power of review is also limited to the issues addressed in the appealed decision(s) and not to the decision(s) prior to that.
2. Under German law, each member of a federation should be able to identify with certainty what disciplinary sanctions it could face which could threaten its membership of the federation, in instances when the behaviour of the member would be contrary to a stated purpose of the federation or if the behaviour would bring the federation into disrepute. It should also be clear from the constitution or statutes of the federation what the sanction would be for the different behaviour of the member. If a temporary sanction is handed out, such as suspension, then the conditions to remedy the behaviour should be clear in the constitution or statutes too, so the member can regain membership.

**I. PARTIES**

1. Kuwait Shooting Federation (the “KSF” or the “Appellant”) is the governing body for shooting in Kuwait, with its registered office in Dasma, Kuwait. It is a member of the International Shooting Sport Federation and is also a member of the Kuwait Olympic Committee (the “KOC”), which is in turn a member of the International Olympic Committee (the “IOC”).
2. The International Shooting Sport Federation (the “ISSF” or the “Respondent”), is the governing body for shooting worldwide, with its registered office in Munich, Germany.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

### (A) Introductory remarks

4. The Kuwaiti law governing Kuwaiti Sport Organisations bears the number 42/1978 and has been amended several times in recent years. These amendments led the IOC to believe that there was undue governmental interference in sport in Kuwait. Since 2007, the IOC and the Kuwaiti government have had discussions about this potential undue governmental interference. The IOC ultimately suspended the KOC in 2010 (which was eventually waived) and then again in 2015.
5. This case is one of a number of proceedings recently heard before the Court of Arbitration for Sport (the "CAS") by a sports federation from Kuwait in the aftermath of the IOC's decision to suspend the KOC in October 2015.

### (B) Suspension of the KOC by the IOC in 2010

6. On 1 January 2010, after failing to reach an agreement with the KOC, the IOC suspended the KOC with immediate effect for alleged government interference. A copy of the IOC's decision was sent to all International Federations ("IFs"), including the ISSF and stated as follows:

*"We have considered the recent developments in the situation of the Olympic and sports Movement in Kuwait in light of the agreements signed between the IOC and the Government/ relevant public authorities in Kuwait since 2007.*

*Today, we take note that, despite our deepest and sincere efforts since 2007 to understand and help resolve the situation caused by the Kuwait Government and public authorities' interference in the affairs of the Olympic Movement in Kuwait, the signed agreements and commitments have not been respected by the final deadline (postponed several times) set at 31 December 2009.*

*Consequently, we regrettably inform you of the decision taken by the IOC Executive Board to suspend the Kuwait Olympic Committee, pursuant to Rule 28.9 of the Olympic Charter, in order to protect the Olympic Movement in Kuwait.*

*This suspension takes effect as of today.*

*The IOC Executive Board will be able to consider lifting the suspension of the Kuwait Olympic Committee only once the signed agreements are respected and implemented, in order to preserve the autonomy of the Olympic Movement in Kuwait.*

*We very much regret this decision, which the Government and public authorities in Kuwait have forced us to take despite our goodwill and endeavours to avoid such an outcome”.*

7. On 4 January 2010, the IOC wrote to the various IFs (the “IOC Letter”) and asked them to “... consider taking any appropriate measure vis-à-vis their National Federation in Kuwait in order to protect the whole Olympic Movement in Kuwait ...”.
8. On 27 January 2010, the ISSF sent an email to the KSF enclosing the IOC Letter and asked the KSF for “comments concerning the status of the Kuwait Shooting Federation in this regard. We do need your official information in order to see if the ISSF has to take any further action in this matter which we think will not be necessary but have to make sure”. The ISSF ultimately chose not to take any action against the KSF at that time.

**(C) The lifting of the KOC suspension in 2012**

9. On 14 July 2012, the IOC provisionally lifted the KOC’s suspension, after his Highness the Emir of Kuwait declared that the existing Kuwaiti sports law would be amended in order to ensure that the Kuwaiti laws complied with the Olympic Charter and respected the Olympic Movement.
10. On 29 November 2012, the Kuwaiti government amended the law 42/1978 with the decree law number 26/2012, which was intended to secure the autonomy of sports in Kuwait. As a result, the IOC Executive Board decided to confirm the lifting of the 2010 suspension of the KOC.

**(D) The introduction of new Kuwaiti laws in 2014/2015**

11. On 23 October 2014, the Kuwait decree law 26/2012 was amended by the law 117/2014.
12. On 24 May 2015, the Kuwait decree law 26/2012 was amended by the law 25/2015.
13. On 27 October 2015, as a result of the implementation of the new Kuwaiti laws 117/2014 and 25/2015, the IOC once again suspended the KOC due to undue governmental influence (the “Second Suspension Decision”). The Second Suspension Decision, *inter alia*, stated as follows:

*“As clearly mentioned in previous IOC letters, the case has been reported to the IOC Executive Board which took the following decision on the basis of Rules 27.9 and 59.1.4(a) of the Olympic Charter:*

1. *To suspend the Kuwait Olympic Committee (KOC) in order to protect the Olympic Movement in Kuwait from undue government influence, with the following consequences:*

- a. *The KOC is not entitled to participate in any activity connected with the Olympic Movement or exercise any right conferred upon it by the Olympic Charter or the IOC. This includes, in particular, any activity organised by associations of NOCs to which the KOC is affiliated.*
  - b. *The IOC Executive Board reserves the right to take further measures and to determine actions in due time with regard to the participation of Kuwaiti athletes in the Olympic Games and in any other international Olympic-related events, in close coordination with the sports organisations concerned and in particular the International Federations.*
  - c. *The IOC and Olympic Solidarity will withhold all financial assistance to the KOC”.*
14. On the same day, the IOC sent a copy of the Second Suspension Decision to all the IFs and requested them to “*consider the situation with their respective National Federations in Kuwait and take any appropriate action, if not done already, for the protection of the Olympic Movement in Kuwait*”.
15. As a result of this letter, 15 IFs (including FIFA, FIBA and FINA) suspended their respective Kuwaiti National Federation (“NF”) while others (including the ITF and the IAAF) did not. The ISSF did not ask the KSF to comment on if/how it had been affected by the alleged governmental interference.

**(E) Proceedings before the ISSF**

16. On 5 November 2015, the ISSF Administrative Council rendered a decision (“the ISSF AC Decision”), suspending the KSF with immediate effect. The ISSF AC Decision stated:
- “... We have to inform you that the ISSF Administrative Council with a great majority of 32 votes in favour and three votes against decided to suspend the Kuwait Shooting Federation (“KSF”) with immediate effect.*
- This decision was passed in reaction to the IOC decision to suspend the Kuwait Olympic Committee in order to protect the Olympic Movement in Kuwait from undue governmental influence in sports in Kuwait (see attached decision of the IOC). The IOC requested all Olympic IFs to consider the situation with their respective National Federation in Kuwait and take any appropriate action for the protection of the Olympic movement in Kuwait. The ISSF Administrative Council based its decision in particular on Article 25 and 26 of the Olympic Charter and on Article 1.3.2 of the ISSF Constitution.*
- For the time being this decision should not affect the Kuwaiti athletes which will be allowed to participate in all ISSF competitions under the ISSF flag”.*
17. Thereafter, in 2015, the KSF lodged or supported a series of appeals at the CAS against the Second Suspension Decision:
- *CAS 2015/A/4282 Kuwait Karate Federation, Kuwait Shooting Federation & Mr Khaled Jassim Mohammad Almudhaf v. IOC.*
  - *CAS 2015/A/4289 Kuwait Shooting Federation, Mr Saud Abdulrahman Ahmad Habeeb, Mr Pourya Mohammadreza Norouziyan & Ms Elham Hossein Harijani v. International Olympic Committee & International Shooting Sport Federation.*

- *CAS 2015/A/4336 Kuwait Shooting Federation v. International Shooting Sports Federation & International Olympic Committee.*
  - *CAS 2015/A/4339 Asian Shooting Confederation v. International Shooting Sports Federation & International Olympic Committee.*
18. On 26 November 2015, pursuant to Article 1.6.7.5 of the ISSF Constitution, the KSF appealed the ISSF AC Decision and requested the ISSF to include the item of the KSF's suspension in the agenda of the next scheduled ISSF General Assembly meeting ("GA Meeting") in Moscow on 1-2 July 2016.
19. On 30 March 2016, the KSF reminded the ISSF regarding their request to include the item of the KSF's suspension in the agenda of the GA Meeting.
20. On 10 April 2016, the KSF wrote to the ISSF stating that it had not been invited to attend the GA Meeting yet.
21. On 29 April 2016, the ISSF Executive Committee informed all the ISSF member federations ("ISSF Members") about the ISSF AC Decision and the KSF's subsequent appeal. Within the same letter, the ISSF Executive Committee also gave information about the grounds of the ISSF AC Decision, and the reasons why the KSF's suspension must be confirmed by the GA Meeting. The letter stated:
- "KSF's appeal (see Exhibit 2) to the ISSF General Assembly submits exclusively arguments against the IOC decision to suspend the KOC. The KSF appeal argues – in contrast with the IOC position – that Kuwaiti laws allegedly do not allow an undue governmental influence of the Olympic movement in Kuwait. These arguments are exactly the same as those KSF submitted to CAS in their appeal against the 27 October 2015 IOC decision. Therefore, these KSF arguments are directed against the IOC decision and not against the ISSF Administrative Council decision to suspend the KSF. Furthermore, the question as to whether the IOC decision was justified is subject to the abovementioned pending CAS case ..."*
22. Further, the letter also stated the following (emphasis added):
- "The ISSF General Assembly is not in a position to decide about KSF's arguments before the CAS because CAS – as the highest court in sport – has already issued its decision to reject these specific arguments"*.
23. In fact, the CAS had not yet at that time issued any decision on the outcome of the various appeals. Recognising their mistake, later that same day, the ISSF sent an amended version of the letter which now stated in the relevant part (emphasis added):
- "The ISSF General Assembly is not in a position to decide about KSF's arguments before the CAS because CAS – as the highest court in sport – has decided about these specific arguments"*.
24. On the same day, the ISSF's General Secretary, Mr Franz Schreiber, replied to the KSF's letters of 30 March and 10 April 2016 and invited the KSF to attend the GA Meeting only for the relevant item of its suspension. The letter stated as follows:
- "[...] KSF's Appeal against the abovementioned decision to suspend it is going to be submitted to the ISSF Members Federations with the Agenda for the ISSF General Assembly held on 1 and 2 July 2016 ..."*

3. ISSF is herewith inviting KSF to attend the ISSF General Assembly during the time its Appeal is going to be discussed within the General Assembly on 2 July 2016 (exact time will follow); ...

...

5. KSF is going to be allowed to make an oral statement (10 to 15 minutes) regarding its Appeal when this Agenda item is going to be discussed in the General Assembly in line with the practice observed in other appeals against membership decisions before; and

6. ISSF is going to ensure that the General Assembly's decision making process is going to be held in accordance with the relevant ISSF Statutes".

25. On 22 June 2016, the KSF wrote to all the ISSF Members and the ISSF Administrative Council in response to the letter from the ISSF Executive Committee dated 29 April 2016. In the letter, the KSF stated, *inter alia*:

*"It is unfortunate that the campaign waged against the Kuwait Shooting Federation (KSF) following its decision to run against the ISSF president in the last election seems to continue without boundaries. The decision of KSF to nominate its Presidential candidate was not taken in the sport spirit by the sitting President of ISSF for the past 36 years.*

*This campaign against KSF started in 2014 with a letter issued in coordination between the ISSF Management and Kuwait Olympic Committee regarding the legitimacy of KSF.*

...

*The campaign against KSF continued in our opinion by the withdrawal of the Olympic Quota places from the 13<sup>th</sup> Asian Championship, Kuwait on 2015, one day prior to the beginning of that championship. Once again, KSF was neither notified nor granted the chance to give its opinion prior to the decision taken by IOC upon the recommendation of ISSF.*

*Those acts which used the ISSF bodies against an ISSF member were accompanied by defamation campaign on ISSF webpage, including one press release of ISSF president which was published and quickly removed from ISSF webpage as it constituted in our opinion a clear violation to the German laws.*

***In all events, we are convinced that those illegal acts emanated from the ISSF management against a member Federation shall give the other ISSF member federations a valuable chance to discover the real conduct of the ISSF management towards the members' right to seek for change in the ISSF management through the election.***

...

***Based on the foregoing, it is proved that the ISSF Administrative Council suspended KSF membership in violation of its own constitution, namely articles 1.3.15, 1.3.15.1 and 1.1.1 to 1.1.3.9 of ISSF Constitution.***

...

*Thus, KSF respectfully requests the General Assembly to cancel the decision of the ISSF Administrative Council dated 5 November 2015 to suspend the Kuwait Shooting Federation (KSF)*”.

26. On 26 June 2016, the KSF wrote another letter to the ISSF Members, stating *inter alia*, that the ISSF was acting in violation of its own constitution by not providing the KSF an opportunity to present their case before suspension and noting that the ISSF demonstrated double standards when not suspending the National Rifle Association of India after the IOC suspended the Indian Olympic Association in 2012 for the same reasons. The KSF stated that this *“only means that ISSF has 2 sets of rules for its member federations depending upon the relationship which they have with ISSF Administrative Council”*.

27. Further the KSF stated that:

- The ISSF sought to mislead the ISSF Members in its letter dated 29 April 2016 when it stated that the KSF suspension was already heard by the CAS and the CAS had already rejected KSF’s arguments. The KSF stated that it had not (at that time) filed any appeal to the CAS.
- The KSF had amply demonstrated and proved its real ongoing involvement in the sport both in Kuwait and at international level as specified in the Olympic Charter.
- The KSF was affiliated to and recognised by the KOC until at least 2 October 2014. *“Suddenly, KSF was not recognised by KOC in the next seven days because KSF nominated its candidate for the post of ISSF President. This was done by ISSF President in association with his friend, an important IOC member, who happens to be the brother of KOC President”*.
- *“The KSF filed a case against the KOC in the State of Kuwait for illegal coordination with ISSF and providing false letter of non-recognition, and has won the case in both, first degree and appeal courts making KOC forced by law to recognize KSF, correct their illegal action and communicate this recognition to the ISSF. Both court judgments prove the allegations made against KSF are hasty, incorrect and illegal.*
- *“[...] KSF is only being penalized for using its legal right provided by ISSF constitution to nominate its candidate for the post of ISSF President which has not been taken in the right spirit by the sitting President for ISSF for last 28 years. ISSF higher officials decided to suspend KSF only to teach a lesson to all other members that nobody dares to nominate a candidate for elections in ISSF against their wishes”*.

28. On 30 June 2016, i.e. the day before the GA Meeting, 38 ISSF members wrote to the ISSF President and the General Secretary (“the ISSF Members’ Letter”) and requested that a *“secret and non-electronic”* voting procedure be conducted on the following items of the agenda:

- Item 5: *“Approval of the report of the Auditors and discharge of the Executive Committee”*. And
- Item 15: *“Proposal to approve a new edition of the ISSF Constitution, in the wording attached to this Agenda”*. And
- Item 18: *“Kuwait Shooting Federation appeal about suspension of Membership Status”*.

29. Further, in the ISSF Members' Letter the 38 members stated that "*in case our Federations /Associations do not constitute 20% (or more) of the members that will be represented in the General Assembly as required under article 1.6.13.1 of the ISSF Constitution, we kindly ask you to vote during the General Assembly on the issue of conducting secret and non-electronic voting on the above items of the Agenda, pursuant to the ISSF Constitution*". The 38 members also stated that they wished to appoint Mr Javaid S Lodhi (Pakistan) and Mr Mushin Saad Ahmed (Sudan) as scrutinizers for all the voting procedures.

**(F) The ISSF GA Meeting – 1 and 2 July 2016**

30. The GA Meeting took place on 1 and 2 July 2016 in Moscow. The events relevant to this dispute have been outlined below.

*i. Appointment of the scrutinizers*

31. On 1 July 2016, i.e. the first morning of the GA Meeting, after the roll call was completed, when the meeting moved to point 3.2 of the Agenda (i.e. the issue of scrutinizers), the ISSF General Secretary, Mr Franz Schreiber, informed the GA Meeting about the ISSF Members' Letter. Mr Schreiber stated that this letter was received before the GA Meeting was in session and explained that any such proposal had to be presented and decided during the GA Meeting. Proposals on the GA Meeting's procedure would have to be brought up when the respective Agenda item was discussed by the ISSF Members present at the GA Meeting. Accordingly, the ISSF Members' Letter could not be considered as a valid proposal on the GA Meeting's procedure. None of the ISSF Members present challenged these explanations.
32. Mr Schreiber then reported that the ISSF Administrative Council had proposed the following persons as scrutinizers for the GA Meeting and that the GA Meeting had to decide on this proposal:
- Alexandros Dimakakos, GRE
  - Abhinav Bindra, IND
  - Kevin Kilty, IRL
  - Rodrigo de Mesa Ruiz, ESP
33. Mr Schreiber then asked if there were any objections against the scrutinizers. Mr Duaij Al-Otaibi, the President of the KSF, took the floor referring to the ISSF Members' Letter and requested that two more scrutinizers were added, namely Mr Javaid S. Lodhi (PAK) and Mr Muhsin Mehanni Ahmed (SUD).
34. Mr Schreiber thanked Mr Al-Otaibi for his comment and pointed out that if a delegate (other than Mr Al-Otaibi who represented the suspended KSF) proposed any other candidate as scrutinizer during the GA Meeting, the latter would have to decide on the matter. Mr Schreiber then asked all delegates twice if anyone proposed to add scrutinizers. Since no delegate asked

for the floor and no delegate asked for additional scrutinizers, the initial scrutinizers as proposed by the ISSF Administrative Council were accepted.

***ii. Approval of the report of the Auditors and discharge of the Executive Committee***

35. When the GA Meeting moved to Agenda item 5 (Approval of the report of the Auditors and discharge of the Executive Committee) Mr Abdulghani Al-Wajih, delegate from Yemen asked for the floor, and requested to have a secret vote on the approval of the report of the auditors and discharge of the ISSF Executive Committee.
36. Mr. Schreiber thanked the delegate of Yemen for this proposal and informed the GA Meeting that according to Article 1.6.19.1 of the ISSF Constitution, decisions in the GA Meeting in general would be taken by open vote and required a simple majority except in the case that a secret vote is requested by a minimum of 20% of possible votes. Mr Schreiber continued to inform the GA Meeting that since Yemen had asked for a secret vote, the GA Meeting now had to decide by about the proposal and therefore, an open vote would decide on this question.
37. A vote was taken as follows: 30 votes were in favour of a secret vote, the remaining votes were in favour of an open vote. The requested 20% would have meant that out of the 237 votes cast, at least 47.4 (i.e. 48 votes), were necessary for a secret vote. The open vote conducted thereafter unanimously approved the report of the Auditors Committee and discharged the ISSF Executive Committee.

***iii. Proposal to approve a new edition of the ISSF Constitution***

38. At the opening of the second day of the GA Meeting, Mr Schreiber once again explained that the ISSF Members' Letter could not be considered a proposal made within the GA Meeting and that instead such proposals would have to be raised once the respective Agenda items were up for discussion within the GA Meeting.
39. Accordingly, when moving to Agenda item 15 (Proposal to approve a new edition of the ISSF Constitution) a delegate from the Lebanon Shooting Federation requested the appointment of two additional scrutinizers and the holding of a secret vote. Both votes were conducted and the votes counted as follows: With regard to the vote whether to appoint two additional scrutinizers only 52 votes out of 239 (the roll call) were in favour of such request, meaning that a majority, i.e. more than 50%, was not achieved. With regard to the vote on whether to hold a secret vote on Agenda item 15, 58 votes were cast in favour of a secret vote, meaning the required 20% was reached (roll call: 239 votes; 20% equating to 47.8, i.e. 48 votes). A secret vote on agenda item 15 was conducted thereafter.

***iv. The Suspension of the KSF***

40. When the GA Meeting reached Agenda item 18 concerned with the suspension of the KSF, Mr Schreiber gave an introduction about the issue to the GA Meeting which summarized the proceedings to this stage. Mr Schreiber explained the next steps and clarified that KSF had 10

to 15 minutes to explain its appeal to the GA Meeting. All delegates had received the documents in advance and they were also in possession of the documents handed out for the GA Meeting. After the KSF's presentation, questions by the delegates of the GA Meeting to the KSF would follow. Afterwards, the ISSF would explain the ISSF's answer to KSF's appeal also for 10 to 15 minutes. Questions by delegates to the ISSF would follow and finally, the vote on the KSF appeal by the GA Meeting would be conducted.

41. After the introduction of the Mr Schreiber, Mr. Al-Otaibi took the floor for KSF and presented its appeal to the GA Meeting. The ISSF's legal advisor thereafter explained the ISSF's answer.
42. Before a vote was taken on the appeal of KSF, Mr Schreiber once again asked the ISSF Members whether any of them wished to request to conduct a secret vote. Some delegates requested a secret vote. Therefore, the GA Meeting took a vote on whether to hold a secret vote.
43. Mr Schreiber asked the delegates to raise the red cards if they were in favour of a secret vote, and asked those who were in favour of an open vote to hold up the green cards. For abstentions, the white cards were to be raised. After the delegates had raised their respective cards and the scrutinizers had counted the votes, the President announced that votes were in favour of an open vote, which meant that the required 20% (i.e. 48 votes) for a secret vote, were not reached. Therefore, the President informed the delegates that an open vote would be conducted on the appeal of KSF and not a secret vote.
44. Mr Schreiber then asked those delegates who wished to confirm the ISSF AC Decision and to dismiss the appeal of the KSF to show the green card. All those voting against the ISSF AC Decision and accepting the KSF's appeal had to show the red cards. All delegates who abstained were to raise the white cards. Mr. Schreiber repeated: green card to confirm the suspension of KSF, red card not to suspend the KSF and white card for abstention.
45. The vote was taken and the scrutinizers counted the votes. The President announced the result: 174 votes in favour of confirming the ISSF AC Decision suspending the KSF, and 65 votes against. There were no abstentions. Therefore, the ISSF GA approved the ISSF AC Decision and dismissed the KSF's appeal ("the Appealed Decision").
46. After the decision was taken, Mr Al-Otaibi thanked the President and all delegates for attending the GA Meeting. He declared that the KSF "respected democracy" and accepted the Appealed Decision taken by the GA Meeting.
47. A press release by the ISSF on the same date stated the following:

*"In a following vote, the ISSF General Assembly confirmed the decision of the ISSF Administrative Council dated 5 November 2015 to suspend the Kuwait Shooting Federation, expressing a majority vote (174 in favour of the suspension and 65 against). As a consequence, the ISSF Administrative Council member Duajj Khalaf Al-Otaibi of Kuwait resigned".*

**(G) Subsequent events**

48. On 2 August 2016, the Swiss Civil Court rejected a lawsuit filed by the Kuwaiti government against the IOC. The Kuwaiti government had allegedly sued the IOC for alleged financial loss of USD 1bn because of the suspension of the KOC by the IOC.
49. On 9 August 2016, Kuwaiti police forces raided the headquarters of the Kuwaiti Football Association (the “KFA”).
50. On 25 August 2016, the Public Sports Authority (“PSA”) in Kuwait decided to dissolve the KOC as well as the KFA due to alleged financial irregularities. Both were replaced with interim administrations, installed by the Kuwait government.
51. On 29 August 2016, Kuwaiti police conducted a second raid, this time of the KFA and KOC offices. Officials were ordered to leave and they were told that force would be used to evict them if they refused to go.
52. As a result of the suspension of the KOC and the KSF, Kuwaiti athletes competed as independent athletes in the 2016 Asian Olympic Shooting Qualifying Tournament (winning 4 medals) and at the 2016 Summer Olympic Games in Brazil (winning 2 medals).

**III. PROCEEDINGS BEFORE THE CAS**

53. On 25 July 2016, in accordance with Article R47 of the Code of Sports-related Arbitration (the “CAS Code”), the KSF filed a Statement of Appeal with the CAS challenging the Appealed Decision and requesting the following prayers for relief:

***“Preliminarily***

*A) that the 10-day deadline to file the Appeal Brief provided for in Article R51 of the CAS Code, be extended by additional 20 days;*

***On the merits***

*B) principally, that the final decision of the ISSF General Assembly of July 2, 2016 and the underlying decision of the ISSF Administrative Council of November 5, 2015 be annulled, and the KSF’s suspension lifted;*

*C) more alternatively, that the CAS panel finds that*

*C.1) the ISSF Administrative Council, in taking the decision to suspend the KSF, breached art. 1.3.15.1 of the ISSF Constitution, and did not take into account the Guidelines of the ISSF Constitution to art 1.3.15;*

*C.2) the vote of the ISSF General Assembly of July 2, 2016, that confirmed the KSF’s suspension, was irregular and in breach of art. 1.6.13.1 of the ISSF Constitution;*

*C.3) the ISSF President Mr. Olegario Vazquez Raña and the ISSF General Secretary Mr. Franz Schreiber disregarded the request made by 38 ISSF members on June 30, 2016 and July 1, 2016 to appoint Mr. Javaid S. Lodhi and Mr. Mushin Saad Ahmed as scrutinizers for certain voting items of the ISSF General Assembly Agenda, including the vote on the KSF's suspension;*

...

*D) in any event, that the Respondent be ordered to pay all the costs of these arbitration proceedings, as well as contribution to the legal fees and other expenses incurred by the Appellant”.*

54. In its Statement of Appeal, the KSF nominated Mr Reto Annen, Attorney-at-Law, Chur, Switzerland, as an arbitrator.
55. On 2 August 2016, the CAS Court Office wrote to the parties informing them that the KSF had been granted an extension of 20 days in order to file its Appeal Brief and that the ISSF would get a similar extension when filing its Answer.
56. On 9 August 2016, in accordance with Article R53 of the CAS Code, the ISSF nominated Mr Patrick Lafranchi, Attorney-at-Law, Bern, Switzerland, as an arbitrator.
57. On 23 August 2016, in accordance with Article R51 of the CAS Code, the KSF filed its Appeal Brief with the CAS with the following prayers for relief:

***“Preliminary***

*A.1) that the Respondent be ordered to clarify under which circumstances it gained access to the submissions of the CAS proceeding 2015/A/4282;*

*A.2) that the CAS Panel finds that the Respondent unduly disclosed to ISSF Members confidential information contained in the submissions of the CAS proceeding 2015/A/4282, contrary to R.43 of the CAS Code, and took advantage of that;*

*A.3) that the CAS Panel adopts adequate remedies, including a monetary one, it deems satisfactory, against the Respondent for the above infringement.*

***On request for production of evidentiary measures***

*B) that the Respondent be ordered to produce the minutes and video-recording of the ISSF General Assembly meeting held in Moscow on July 1-2, 2016*

***On the merits***

*C) Principally, that the final decision of the ISSF General Assembly of July 2, 2016 and the underlying decision of the ISSF Administrative Council of November 5, 2015 be annulled, and the KSF's suspension lifted.*

*D) Alternatively, that the CAS Panel:*

*D.1) finds that the ISSF Administrative Council, in rendering the underlying decision of November 5, 2015 violated Article 1.3.15.1 of the ISSF Constitution and the Guideline to Article 1.4.15 of the ISSF Constitution; and/ or*

*D.2) finds that the ISSF Executive Committee unduly influenced the ISSF Members to vote in confirmation of the Appellant's suspension, breaching Article 1.8.2 of the ISSF Constitution; and/ or*

*D.3) finds that the ISSF President Mr. Olegario Vasquez Raña and the General Secretary Mr. Franz Schreiber, unduly denied to execute the request i) of secret vote on certain items of the ISSF General Assembly meeting, and ii) of the appointment of certain scrutinizers, made by thirty eight (38) ISSF Members, breaching Article 1.6.13.1 of the ISSF Constitution; and/ or*

*D.4) finds that during the ISSF General Assembly meeting, the voting procedure and the counting of votes on the request of secret vote on the item related to the Appellant's suspension was confusing and with errors; and*

*D.5) adopts adequate remedies, including a monetary one, it deems satisfactory, against the Respondent for the above infringements.*

*E) In any event, that the Respondent be ordered to pay all the costs of this arbitration proceedings, as well as contribution to the legal fees and other expenses incurred by the Appellant”.*

58. On 25 August 2016, the CAS Court Office wrote to the parties to inform them that the ISSF had an additional 20 days (i.e. 40 days in total) to submit its Answer.

59. On 14 September 2016, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to this case was constituted as follows:

President: Mr Mark A. Hovell, Solicitor, Manchester, England

Arbitrators: Mr Reto Annen, Attorney-at-Law, Chur, Switzerland

Mr Patrick Lafranchi, Attorney-at-Law, Bern, Switzerland

60. On 4 October 2016, in accordance with Article R55 of the CAS Code, the ISSF filed its Answer to the KSF's Appeal. In its Answer, the ISSF made the following requests for relief:

*“1) to dismiss the Appeal filed by the KSF on 25 July 2016 against the Decision taken by the ISSF General Assembly on 2 July 2016;*

*2) to uphold the Decision taken by the ISSF General Assembly on 2 July 2016;*

*3) to dismiss all other prayers for relief filed by the KSF;*

*4) to order the KSF to pay the costs of the present arbitration proceedings;*

- 5) *to order the KSF to pay the legal fees and expenses of the ISSF in connection with these proceedings, to be specified at a later stage of the proceedings”.*
61. On 6 October 2016, the CAS Court Office wrote to the parties acknowledging receipt of the Answer and also invited the parties to state by 13 October 2016 whether they preferred for a hearing to be held in this matter or wished for the parties to issue an award solely on the written submissions.
62. On 13 October 2016, the KSF wrote to the CAS Court Office stating, *inter alia*, that the ISSF’s Answer relied on (i) facts which occurred after the submission of the Appeal Brief; (ii) on exhibits which the KSF had not known until the receipt of the ISSF’s Answer; (iii) on minutes and video-recordings of the GA Meeting which the KSF was not in possession of and (iv) raised arguments that the KSF was not aware of when filing its Appeal Brief. Accordingly, in the event that the Panel determined that there would not be a second round of written submissions, the KSF requested that a hearing was held.
63. On 14 October 2016, the CAS Court Office wrote to the parties stating that based on the KSF’s letter of 13 October 2016 and the silence of the ISSF, the Panel had decided not to allow a second round of written submissions and instead, had decided to hold a hearing in the matter.
64. On 19 October 2016, the CAS Court Office wrote to the parties confirming that a hearing would be held in this matter on 16 December 2016.
65. On 24 October 2016, the CAS Court Office wrote to the parties with the Order of Procedure for this matter.
66. On 26 October 2016, both the KSF and the ISSF submitted signed copies of the Order of Procedure.
67. On 31 October 2016, the ISSF submitted a copy of the complete written minutes of the GA Meeting.
68. On the same day, the KSF wrote to the CAS Court Office requesting the video-recording in relation to 4 particular sequences of events during the GA Meeting.
69. On 7 November 2016, the CAS Court Office wrote to the parties and granted the ISSF a deadline of 3 days to state whether it voluntarily wished to submit the footage requested by the KSF on 31 October 2016.
70. On 9 November 2016, the ISSF wrote to the CAS Court Office stating that it was willing to provide the video footage requested by the KSF on 31 October 2016 but requested a deadline of 16 November 2016 to provide it.
71. On 10 November 2016, the CAS Court Office wrote to the parties granting the ISSF a deadline of 16 November 2016 in which to submit the video footage requested by the KSF.

72. On 16 November 2016, the ISSF submitted the video footage requested by the KSF.

#### **IV. THE HEARING**

73. A hearing was held on 16 December 2016 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the composition of the Panel. The Panel were all present and was assisted by Mr William Sternheimer, Deputy Secretary General at the CAS. The following persons attended the hearing:

- i. the KSF: Mr Alessandro Oliverio, Mr Nicola Noth, external counsel; Mr Duaij Al-Otaibi, President, Mr Obaid Al-Ossaimi, General Secretary and Mr Peter Jalkh and Mr Javaid Lodhi, witnesses.
- ii. the ISSF: Mr Christian Keidel, external counsel and Mr Franz Schreiber, General Secretary.

74. Messrs Al-Otaibi, Jalkh and Lodhi all gave evidence as witnesses before the Panel during the hearing, by telephone. Mr Schreiber, who was physically present, confirmed the content of his written statement and answered questions from the Panel and the Appellant. At the hearing, the KSF sought to provide the Panel and the ISSF with a letter dated 9 December 2016 from the State of Kuwait's attorneys, which clarified that the Swiss Courts had not dismissed a financial claim by the State against the IOC, as no such claim had been made. As the KSF had only recently been able to procure such letter, and as the Panel found it to have little relevance to the case at hand, it determined to accept it to the CAS file.

75. All the witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury. The parties and the Panel had the opportunity to examine and cross-examine the witnesses. The parties then were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The hearing was then closed and the Panel reserved its detailed decision to this written Award.

76. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

#### **V. THE PARTIES' SUBMISSIONS**

77. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered all the submissions made by the parties, even if no explicit reference is made in what immediately follows.

**A. KSF's Submissions**

78. In summary, KSF submitted the following in support of its Appeal:
79. The KSF is challenging the Appealed Decision, as well as the underlying ISSF AC Decision, on the basis that they were rendered in violation of their right to be heard, the principle of equal treatment, various provisions of the ISSF Constitution and also German Law.
- i. The ISSF AC Decision violated the KSF's right to be heard*
80. The KSF noted that the fundamental principle of the right to be heard had been confirmed by the CAS in several decisions. As one example, the KSF cited *CAS 2010/A/2275*, stating that this case similarly concerned the expulsion of a member federation and noted that in that case, the panel set aside the challenged decision for the clear violation of the appellant's right to be heard.
81. The KSF submitted that under German law, the right to be heard was embodied in Article 103 of the 'Grundgesetz: the German Constitution or Basic Law' ("GG") as well as in Article 6 of the European Convention of the Human Rights ("ECHR")<sup>1</sup>, which is ascribed into German Constitutional Law by the Preamble and Articles 1(2) and 59(2) GG. Accordingly, the KSF argued that the text and jurisprudence of the ECHR served as interpretive tools for German norms of a constitutional nature. Moreover, the ECHR applied to associations (the KSF cited *CAS 2013/A/3139* in this regard) and CAS panels have repeatedly found that arbitral tribunals were indirectly bound by the ECHR as well (*CAS 2015/A/4304* and *CAS 2011/A/2384 & 2386*).
82. Further, the right to be heard was protected by the ISSF Constitution (in "The Guideline to Article 1.3.15 ("Suspension and Expulsion")) which provided that "*before the Administrative Council takes action the member concerned shall be given the opportunity to present its case (...)*".
83. The KSF argued that it was not allowed to defend itself before the ISSF AC Decision was rendered and the ISSF did not investigate if and how the alleged governmental interference was really affecting the management of the KSF. The KSF noted that the IOC suspended the KOC on 27 October 2015 and just a few days later on 5 November 2015, the ISSF Administrative Council suspended the KSF with immediate effect via the ISSF AC Decision. It was only after the ISSF AC Decision was passed that the ISSF informed the KSF about the suspension. This was not only a violation of KSF's right to be heard but was also contrary to its previous conduct in similar situations.
84. The KSF noted that the last time the ISSF dealt with a suspension/expulsion of an ISSF member, i.e. the expulsion of the Bulgarian Sport Shooting Federation ("BSSF"), the ISSF granted the BSSF reasonable time (approximately 8 months) to present its case and make its

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<sup>1</sup> Article 6(1) of the ECHR reads as follows: "*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent tribunal established by law (...)*".

observations before the decision to expel it was rendered. The case was reported by the ISSF General Secretary during the 2014 ISSF GA meeting in Munich in December 2014.

85. The KSF submitted that the guidelines to the ISSF Constitution have the same binding force as the provisions of the ISSF Constitution itself, in that they are annexed to it and provides an authentic interpretation to the provisions they refer to. In the event that the Panel found that the guidelines to the ISSF Constitution were not binding and the ISSF Administrative Council was not obligated to hear the KSF before taking any action against it, the KSF submitted that *“the compliance of the [ISSF AC Decision] with fundamental principles (such as Article 6(1) ECHR and 103 GG) must be reviewed by the CAS Panel since the autonomy of a private association to self-govern finds its absolute limit in front of such principles”*.
86. The KSF also noted that the ISSF Constitution had been the subject of a full review by initiative of the ISSF Executive Committee, led by the ISSF Vice President Vladimir Lisin. This review led to a proposed new ISSF Constitution which removed the ‘Guideline to the Article 1.3.15’. Although the proposed new ISSF Constitution was not adopted by the ISSF Members during the GA Meeting, the KSF submitted that it was noteworthy for the present matter that the ISSF Executive Committee attempted to amend the ISSF Constitution in such a way.
87. In summary, in rendering the ISSF AC Decision, the ISSF were in violation of the KSF’s fundamental right to be heard as well as ‘The Guideline to Article 1.3.15 of the ISSF Constitution’.
- ii. *The Appealed Decision did not cure the abovementioned violation of the KSF’s right to be heard***
88. The KSF argued that the abovementioned violation of the right to be heard was not cured in the Appealed Decision because although the KSF submitted its arguments against the suspension, these arguments had not been concretely taken into account by the ISSF.
89. The KSF noted that the right to be heard was a procedural right with a substantive nature and while the parties of a proceeding had the right to present their arguments, *“this right can only be seen to be effective if the observations are actually heard”*<sup>2</sup>. The effect of Article 6(1) of the ECHR is, *inter alia*, to place the ‘tribunal’ under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision<sup>3</sup>.
90. The KSF submitted that in the present case, it was not substantially ‘heard’ pursuant to Article 6(1) of the ECHR and Article 103 GG, either by the ISSF Administrative Council or by the GA Meeting, despite the fact that the KSF respected the appeal procedure provided by the ISSF Constitution.

<sup>2</sup> Guide to Article 6 of the ECHR, per section 172.

<sup>3</sup> [1994] ECHR 14, 16034/90, 18 EHRR 481, *Van der Hurk v the Netherlands*, per section 59.

91. The KSF noted that Article 1.6.7.5 of the ISSF Constitution provided that if an ISSF Member was suspended, the GA Meeting would hear the matter on appeal. Accordingly, on 25 November 2016, the KSF, following its suspension, filed a statement of appeal. However, it was only much later, on 29 April 2016, when the ISSF Executive Committee enclosed the statement of appeal with a letter addressed to all its Members (i.e. the GA Meeting voters).
92. Moreover, the ISSF Executive Committee letter of 29 April 2016 (“the ISSF EC Letter”) further violated the KSF’s right to be heard *“because it provided misleading, denigratory and false information on the KSF’s suspension, and it unduly influenced the ISSF [m]embers to vote in confirmation of the suspension”*.
93. The KSF argued that the ISSF EC Letter included irrelevant and incorrect information on the KSF’s suspension relating to the KSF’s affiliation in the KOC. The KSF also argued that the ISSF misled its members about the reasons for the ISSF AC Decision. In the ISSF EC Letter, it stated that:

*“pursuant to Article 25 and 26 of the Olympic Charter, all International Olympic Sports are obliged to contribute to achieving the goals of the Olympic Movement that are set out in the Olympic Charter. Following the IOC decision to suspend the KOC and in accordance with this obligation (...) the ISSF Administrative Council followed the IOC request and decided to suspend the KSF”*.
94. The KSF stated that based on the above, the ISSF Executive Committee suggested to the ISSF’s Members that the ISSF Administrative Council suspended the KSF because it was obligated to do so by the provisions of the Olympic Charter (i.e. Rules 25-26) and due to a request from the IOC. The KSF submitted that this is misleading because, in reality, the ISSF was not obligated to suspend the KSF and the IOC did not demand that either.
95. Additionally, in its Appeal Brief, the KSF argued that in the ISSF EC Letter, the ISSF repeatedly stated that the KSF appeal must be dismissed because (emphasis added by the Panel):

*“the ISSF General Assembly is not in a position to decide about the KSF’s arguments before the CAS 2015/A/4248 – as the highest court in sport – **has already issue a decision to reject these specific arguments**”*.
96. Moreover, the KSF noted that the CAS case reference in the letter was incorrect as *CAS 2015/A/4248* referred to an unrelated case. The ISSF Executive Committee meant to refer to *CAS 2015/A/4282*, which was an appeal against the IOC’s decision to suspend the KOC on 27 October 2015.
97. The KSF noted that contrary to what was stated in the ISSF EC Letter, the GA Meeting *was* in a position to decide about the KSF’s arguments and there was no provision in any regulations of the ISSF that forbade the GA Meeting to vote on the matter. The GA Meeting was entitled to decide any appeal filed by any suspended ISSF Member, pursuant to Article 1.6.7.5 of the ISSF Constitution.

98. Substantially, the *petitum* between the proceedings *CAS 2016/A/4727* and *CAS 2015/A/4282* were different. The former relates to the ISSF's decision to suspend the KSF, whereas the latter related to the IOC's decision to suspend the KOC. In any event, at the time of the ISSF EC Letter, the CAS panel in *CAS 2015/A/4282* had only decided to reject the request for provisional measures. The KSF claimed that "*the ISSF Executive Committee reached out to the ISSF General Assembly voters, filling them with wrong and misleading information in order to have the KSF's suspension confirmed*".
99. The KSF also stated that it was "bewildering" that the ISSF disclosed confidential information to its members relating to *CAS 2015/A/4282* which not only did not involve the ISSF as a party, but was also protected by the confidentiality rule of Article R43 of the CAS Code. Moreover, the ISSF stated in the ISSF EC Letter that "*these arguments are exactly the same as those KSF submitted to CAS in their appeal against the 27 October IOC decision*". The KSF noted that if the arguments were "*exactly the same*", it meant that the ISSF had the chance to access, read and analyse the submissions made by the KSF in *CAS 2015/A/4282*. In doing so, the ISSF unduly took advantage of knowledge it received from the submissions made in *CAS 2015/A/4282*. The ISSF unduly influenced the ISSF members, misleading them to believe that any argument put forward by the KSF was "*useless and inconsistent*" because it was already rejected by the CAS in *CAS 2015/A/4282*.
100. The ISSF Executive Committee thereby exceeded its statutory prerogatives and functions and was in breach of Article 1.8.2 of the ISSF Constitution. Its statutory duty was to "*ensure that decisions of the (...) Administrative Council are put into effect*", which meant that they had to inform the ISSF members about the ISSF AC Decision and the KSF's statement of appeal. Instead, the ISSF Executive Committee took a firm position against the KSF and wanted the KSF's suspension to be confirmed. The ISSF EC Letter served this purpose. Under those circumstances, the KSF was in a position whereby it had to defend itself against both the suspension and also the ISSF Executive Committee.
101. The ISSF Executive Committee dealt with the KSF's suspension in an arbitrary way in violation of the KSF's right to be 'effectively heard' pursuant to Article 6(1) ECHR and Article 103 GG. Formally, the KSF was 'heard' by way of its statement of appeal and the speech given by Mr Al-Otaibi during the GA Meeting. However, in substance, the ISSF Executive Committee effectively deprived the KSF of its right to be heard "*in a way that curing was no longer feasible*".
102. In addition, the KSF noted that during the GA Meeting, before and after Mr Al-Otaibi's speech, the ISSF's lawyer provided the ISSF's reasons to suspend the KSF, confirming the arguments of the ISSF EC Letter. Further, he stated that since the KOC was suspended twice in the last 5 years, that provided sufficient grounds for the ISSF to suspend the KSF.
103. The KSF argued that the GA Meeting failed to conduct a proper examination of the arguments presented by the KSF, namely that the alleged governmental influence did not actually affect the autonomy and independence of the KSF. Further, the KSF submitted that the GA failed to do this because they were "*mised, manipulated and unduly influenced*" by the ISSF

Executive Committee. As a result, there was a violation of the KSF's fundamental right to be heard.

104. The KSF submitted that according to the jurisprudence of the Federal Constitutional Court of Germany (BVerfG), as long as there is no certainty that a full compliance with the "*rechtliches Gehör*" (i.e. the right to be heard) would not have led to a different decision in favour of the deprived party, the *rechtliches Gehör* is violated and the relevant decision has to principally be annulled.
105. Moreover, the KSF submitted that there was a potential breach of the confidentiality rule by the ISSF, pursuant to Article R43 of the CAS Code, which raised questions as to how the ISSF gained access to confidential information contained in the CAS proceeding *CAS 2015/A/4282* and whether the IOC (being the counterparty in that case) was the infringer of the rule. The KSF requested the ISSF to clarify how it gained access to the aforementioned information and also requested the Panel to inform the CAS Court Office and CAS panel in *CAS 2015/A/4282* about the violation in confidentiality. In any event, the KSF also stated that the ISSF was also in violation of Article 43 of the CAS Code, because although it was obliged to not disclose the confidential information, it chose to disclose this information (i.e. the arguments raised by the KSF in *CAS 2015/A/4282*) to the GA Meeting.

*iii. The ISSF AC Decision and the Appealed Decision were taken in violation of the principle of equal treatment*

106. The KSF submitted that the ISSF AC Decision and the Appealed Decision were taken in violation of the principle of equal treatment for the following reasons:
- The ISSF Administrative Council was not obligated to suspend the KSF, contrary to what it claimed;
  - The ISSF Administrative Council, in rendering the ISSF AC Decision violated Article 1.3.15.1 of the ISSF Constitution; and
  - In comparable situations (the suspension of a National Olympic Committee ("NOC") by the IOC for governmental interference), the ISSF arbitrarily treated the KSF's suspension differently.
107. The IFs (being non-governmental private associations) are granted the power to enact their own norms in order to create and enforce their own rules and regulations. In Germany, the autonomy of sports federations to create their own by laws is granted by Article 9(1) of the GG, and under EU law, it is guaranteed by Article 12(1) of Charter of the Fundamental Rights of the European Union. Whilst the ISSF had the statutory authority to suspend the KSF, this authority was not without limits and the principle of equal treatment is one such limit, which the ISSF violated.
108. The KSF submitted that based on the ISSF AC Decision, the ISSF suspended the KSF because the IOC suspended the KOC, which meant that according to the ISSF, there was a

direct and causal link between the ISSF AC Decision and the IOC's decision. Thus, the IOC decision was a *condition sine qua non* for the suspension of the KSF, without the IOC's decision, the KSF would not have been suspended. However, the KSF submits that this link was not justified because (i) there was no obligation for the ISSF to suspend the KSF; and (ii) the IOC did not demand the IFs to suspend the respective Kuwaiti NFs.

109. The KSF argued that the ISSF had incorrectly interpreted the IOC's request for the IFs to "*consider the situation*" as a request to mandatorily suspend the KSF without giving it a right to be heard. The KSF noted that other IFs (e.g. the ITF and the IAAF) did not suspend their relevant Kuwaiti NF which confirmed that there was no obligation placed on the ISSF by the IOC to suspend the KSF. The KSF also noted that in 2010, the IOC also requested their IFs to "*consider*" suspending the Kuwaiti NF, and some IFs – including the ISSF – chose not to do so.
110. The ISSF argued that it was obligated to suspend the KSF by mandatory rules (suspension *ex lege*). The ISSF claimed that the ISSF AC Decision was based in particular on Article 25 and 26 of the Olympic Charter and on Article 1.3.2 of the ISSF Constitution. However, none of these provisions provided for a suspension *ex lege*.
111. Article 25 of the Olympic Charter stated as follows:
- "In order to develop and promote the Olympic Movement, the IOC may recognise as IFs international non-governmental organisations administering one or several sports at world level and encompassing organisations administering such sports at national level. The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code. Subject to the foregoing, each IF maintains its independence and autonomy in the administration of its sport".*
112. Article 26 of the Olympic Charter stated as follows:
- "1. The mission and role of the IFs within the Olympic Movement are:*
- 1.1 to establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application;*
  - 1.2 to ensure the development of their sports throughout the world;*
  - 1.3 to contribute to the achievement of the goals set out in the Olympic Charter, in particular by way of the spread of Olympism and Olympic education;*
  - 1.4 to support the IOC in the review of candidatures for organising the Olympic Games for their respective sports;*
  - 1.5 to assume the responsibility for the control and direction of their sports at the Olympic Games;*
  - 1.6 for other international multisport competitions held under the patronage of the IOC, IFs can assume or delegate responsibility for the control and direction of their sports;*

- 1.7 *to provide technical assistance in the practical implementation of the Olympic Solidarity programmes;*
  - 1.8 *to encourage and support measures relating to the medical care and health of athletes.*
  2. *In addition, the IFs have the right to:*
    - 2.1 *formulate proposals addressed to the IOC concerning the Olympic Charter and the Olympic Movement;*
    - 2.2 *collaborate in the preparation of Olympic Congresses;*
    - 2.3 *participate, on request from the IOC, in the activities of the IOC commissions”.*
113. The KSF submitted that the mere reference made by the ISSF to Rules 25 and 26 of the Olympic Charter was unclear, unjustified and without an explanatory reasoning and further, did not support the ISSF AC Decision to suspend the KSF.
114. Similarly, the KSF argued that the reference to Article 1.3.2 of the ISSF Constitution was also unclear, unjustified and without an explanatory reasoning. The Article states that “*the National Olympic Committee of the country must be a full member of the International Olympic Committee*”. The KSF noted that the KOC was a full member of the IOC, albeit a currently suspended one and that Article 1.3.2 did not provide for a suspension *ex lege* of an ISSF member when the respective NOC was suspended. Moreover, the ISSF was contradicting itself if it argued that it was obligated to suspend the KSF, because it failed to take that action in other identical situations.
115. The ISSF Administrative Council, in rendering the ISSF AC Decision, breached Article 1.3.15.1 of the ISSF Constitution as (i) it was not obligated to suspend the KSF; (ii) the references made to Article 25 and 26 of the Olympic Charter and on Article 1.3.2 of the ISSF Constitution were not reasoned or justified and (iii) the ISSF did not explain what statutory purposes it was more likely to achieve as a result of suspending the KSF.
116. Whilst the ISSF had the discretionary power to suspend the KSF under Article 1.3.15.1 of the ISSF Constitution within certain circumstances, this power had to be justified and was not limitless. The KSF submitted that the ISSF abused this discretionary power and violated Article 1.3.15.1 of the ISSF Constitution and the KSF’s right to equal treatment in rendering the ISSF AC Decision.
117. Further, the ISSF had no legal basis upon which to state that the KSF’s suspension was justified as the KOC had been suspended twice in the last 5 years. This reason was given with the purpose of unduly influencing the GA Meeting voters to confirm the ISSF AC Decision.
118. The KSF also noted that in recent years, the IOC had suspended for reasons of governmental interference, the NOCs of Iraq (2008), India (2012) and Kuwait (2010). In none of these prior situations did the ISSF suspend the respective NF despite the circumstances being identical both factually and legally. The KSF submitted that the reason for the different treatment this

time was politically and personally motivated. The KSF believed that the ISSF used the KOC's suspension the Appellant believes that the ISSF used the KOC's suspension as an opportunity to retaliate for the events which occurred (i) during the controversial ISSF Presidential election of 2014, and (ii) the dispute on the Olympic qualification status of the 2015 Asian Shooting Championship.

**iv. *The ISSF violated Article 1.6.13.1 of the ISSF Constitution which had an impact on the Appealed Decision***

119. The KSF submitted that the Appealed Decision was rendered in violation of Article 1.6.13.1 of the ISSF Constitution. The KSF noted that 38 members of the GA signed the request for a secret and non-electronic vote on items 5, 15 and 18 of the Agenda of the GA Meeting. This represented more than the required 20% quorum required under Article 1.6.13.1 of the ISSF Constitution. Moreover, the KSF submitted that the rationale for requesting this secret vote was to allow ISSF Members to express their opinion independently from any influencing factors. In that regard, the KSF submitted that items 5, 15 and 18 of the Agenda of the GA Meeting (including the vote on their appeal of the ISSF AC Decision) were sensitive and political in nature given that the ISSF was experiencing governance issues regarding, *inter alia*, their transparency and democratic process.
120. However, at the GA Meeting, the ISSF General Secretary did not execute the request for the secret vote because "*according to him, any proposals for the ISSF General Assembly must be presented and decided during the ISSF General Assembly meeting and that any proposal must be produced when the referred item of agenda point is under discussion*". The KSF submitted that this was a violation of Article 1.6.13.1 of the ISSF Constitution.
121. The KSF argued that Article 1.6.13.1 of the ISSF Constitution did not require a request for a secret vote to be submitted during the GA Meeting and there was nothing preventing it from being filed earlier. The ISSF General Secretary should have instead simply checked that the required 20% quorum was met and then executed the secret vote.
122. In any event, the KSF noted that Mr Jalkh (on behalf of the 38 members of the ISSF) did submit a further request during the GA Meeting. Once again, the ISSF General Secretary denied the request, in violation of Article 1.6.13.1 of the ISSF Constitution.
123. The KSF then noted that when the GA Meeting moved onto item 18 of the Agenda (i.e. their appeal of the ISSF AC Decision), the vote on the request for a secret vote did not reach the required 20% quorum. The KSF allege that this could have happened for 2 reasons; (A) some of the 38 ISSF Members changed their mind; or (B) there were confusion and errors (i) among the voters with the voting procedure; and (ii) the counting of votes made by the scrutinizers.
124. The KSF alleged that voters apparently got confused by the use of voting cards and did not understand whether the "yes" green card was a vote in favour or not of the secret vote, or alternatively if the "no" red card was a vote against the secret vote. The KSF allege that the voters showed the "yes" green card, "no" red card and "abstention" white card altogether

which led to the error in the counting of votes by the scrutinizers. To clarify this matter, the KSF requested that the Panel review the video footage submitted by the ISSF.

125. Further, the KSF stated that the GA Meeting experienced the same issues on the previous day in relation to item 5 of the Agenda which the ISSF General Secretary did not fix.
126. The KSF submits that a secret vote would have led to a different outcome on the Appealed Decision as a secret vote would have allowed the ISSF Members to express their opinion confidentially and independently (which was important given the sensitive political situation) and also would have avoided the alleged errors in the counting of votes and the voting procedure. In any event, the KSF submitted that ISSF General Secretary acted in violation of Article 1.6.13.1 of the ISSF Constitution in denying the request for a secret vote both prior to, and during, the GA Meeting.

## **B. ISSF's Submissions**

127. In summary, the ISSF submitted the following:
128. The ISSF rejected all the claims made by the KSF and submitted that in taking the Appealed Decision, it did not violate the KSF's right to be heard and there was also no infringement of Article 1.6.13.1 of the ISSF Constitution. The Appealed Decision was valid under the ISSF Constitution and also did not violate the principle of equal treatment.

### ***i. No violation of the KSF's right to be heard***

129. The ISSF submitted that there was no violation of the KSF's right to be heard as any possible violation was firstly cured through the appeal proceeding at the GA Meeting and secondly through the *de novo* nature of the current CAS proceedings, pursuant to Article R57 of the CAS Code.
130. The ISSF noted that the right to be heard intends to protect a person from receiving an adverse decision without having the possibility to present their arguments to the deciding body. The KSF had the opportunity to state its view on the present case in the ISSF appeal proceeding before the GA Meeting.
131. After the ISSF AC Decision was rendered on 5 November 2015, the KSF appealed this decision before the GA on 26 November 2015 by filing a statement of appeal containing KSF's arguments against the ISSF AC Decision in a submission comprised of 46 pages. The ISSF stated that this statement of appeal was sent by letter by the ISSF on 30 April 2016 which was sent to all ISSF Members. Thus, all the ISSF Members were able to take notice of the KSF's arguments more than 2 months before making their decision at the GA Meeting. Moreover, the KSF's President, Mr Al-Otaibi, was invited to present the KSF's position directly to the GA Meeting for 10 to 15 minutes before the GA Meeting decided over the KSF's appeal.

132. Consequently, the ISSF submitted that the KSF had the opportunity to explain its position twice (i.e. in writing and orally) to the GA Meeting and to convince the ISSF Members of its arguments. Thus, the ISSF failed to see how the KSF's right to be heard was violated if the most important organ of the ISSF took into account the comprehensive appeal brief submitted by the KSF as well as its direct oral statement of the KSF before taking a decision.
133. The ISSF also rejected the KSF's claims that its right to be heard was compromised by the ISSF providing false and misleading statements on the KSF's suspension. The ISSF submitted that it did not mislead the ISSF Members about the reasons of the ISSF AC Decision and in fact, with its letter of 30 April 2016, the ISSF Executive Committee merely explained to the ISSF Members the grounds on which the ISSF Administrative Council had taken its decision to suspend the KSF, that the Executive Committee supported the arguments applied against the KOC by the IOC and that therefore, the members should vote in favour of the suspension of the KSF.
134. The ISSF submitted that it was irrelevant that the ISSF stated that, pursuant to Article 25 and 26 of the Olympic Charter and Article 1.3.2 of the ISSF Constitution, there might have been a legal obligation to suspend the KSF. In making such a statement, the ISSF Executive Committee was merely making a legal argument based on its interpretation of the relevant Articles of the Olympic Charter in connection with the relevant Articles in the ISSF Constitution.
135. Furthermore, contrary to the KSF's claims, the ISSF submitted that it did not give false information when it stated that the GA Meeting was not in a position to decide about the arguments presented by the KSF against the IOC decision to suspend the KOC. In its corrected letter to the ISSF Members, the ISSF Executive Committee merely stated its legal opinion that as long as the CAS had not decided on these arguments in a pending CAS proceeding, the GA Meeting was not in a position to prejudge this matter.
136. The ISSF submitted that the KSF tried to build an argument on the alleged misinformation contained in the first ISSF letter sent on 30 April 2016 which included a clerical error. However, the ISSF noted that this error was immediately corrected on the same day and accordingly, there was no misinformation whatsoever.
137. In any event, the ISSF noted that any potential breach of the KSF's right to be heard would be cured by the present CAS proceedings according to Article R57 of the CAS Code, which states that:
- “The Panel has the full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.*
138. In *CAS 2006/A/1177*<sup>4</sup>, the CAS panel stated in relation to the CAS' *de novo* powers:

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<sup>4</sup> *CAS 2006/A/1177*, award of 28 May 2007, at 19.

*“According to Art. R 57 of the Code, the Panel has full power to review the facts and the law. In consequence, even if a violation of the principle of due process or of the right to be heard occurred in prior proceedings, it may be cured by an appeal to the CAS (see CAS 94/129, published in Digest of CAS Awards I, pp. 187 at 203; CAS 2005/A/1001). The virtue of an appeal system which allows for a rehearing before an appealed body is that issues relating to the fairness of the hearing before the Tribunal of First Instance ‘fade to the periphery’ (CAS 98/211, published in Digest of CAS Awards II, pp. 255 at 264, citing Swiss doctrine and case law)”.*

139. Accordingly, any alleged violation of the KSF’s right to be heard would be cured by the current *de novo* CAS proceedings.

**ii. No violation of Article 1.6.13.1 of the ISSF Constitution**

140. The ISSF submitted that it did not violate Article 1.6.13.1 of the ISSF Constitution when rendering the Appealed Decision.

141. Article 1.6.13.1 of the ISSF Constitution states as follows:

*“All decisions are made by open vote and must require a simple majority, except when secret vote is requested by 20% or more of members represented. Electronic voting may be used if agreed by a simple majority by open vote”.*

142. The ISSF submitted that an interpretation of Article 1.6.13.1 of the ISSF Constitution was that a request for a secret vote must be done within the GA and that the General Secretary acted pursuant to the ISSF Constitution when he asked the GA specifically before each of the respective Agenda items 5, 15 and 18, whether the GA was in favour of conducting a secret vote.

143. The ISSF submitted that it follows from the wording of Article 1.6.13.1 of the ISSF Constitution that a secret vote must be requested by 20% of ISSF members “*represented*” in the GA Meeting. Moreover, the relevant Article is listed under the title “*General Assembly*” and the heading “*Balloting*” in the ISSF Constitution. The ISSF argued that this implied the Articles hereafter govern the proceeding during the GA, not prior to it. The only Article that regulated an action prior to the GA Meeting is Article 1.6.4 which expressly states that a proposal for the Agenda has to be received 3 months in advance. *A contrario* this meant that Article 1.6.13.1 of the ISSF Constitution only applied within the GA Meeting and not prior to it because it did not expressly state that the request for the secret vote can, or has, to be submitted prior to the GA Meeting.

144. The ISSF submitted that this conclusion was corroborated by an interpretation of Article 1.6.13.1 based on its purpose. The purpose of a secret vote is that the members who vote shall be able to make their decision without any influence or external pressure. There may be situations where an independent decision can only be guaranteed if a secret vote is conducted, but the request to conduct a secret vote can only apply to members who actually vote in the GA Meeting because they are the only ones who might face such conflict. Hence, the decision on whether to conduct a secret vote could only be taken by those members who actually

attended the GA Meeting. That said, the ISSF General Secretary correctly raised the question of a secret vote within the GA Meeting prior to the respective Agenda items, even though some ISSF members had already requested a secret vote in a letter sent directly before the GA Meeting.

145. In the vote held prior to Agenda item 18 (i.e. the KSF's appeal of the ISSF AC Decision) on whether to conduct a secret vote, only 30 votes were cast in favour of a secret vote, which meant that the required 20% for a secret vote was not reached. 20% of 239 possible votes would have required at least 48 votes. Therefore, an open vote was conducted on the KSF's appeal.

*iii. Validity of the Appealed Decision under the ISSF Constitution*

146. The ISSF also stated that the suspension of KSF was justified as the KSF lost the requirement for ISSF membership, pursuant to Article 1.3.2 of the ISSF Statutes.

147. The Preamble of the ISSF Constitution states:

*“The International Shooting Sport Federation is formally recognized by the International Olympic Committee as the sole controlling body of International Amateur Shooting Sports at international and worldwide levels of competition”.*

148. Article 1.3.1 and 1.3.2 of the ISSF Constitution stipulated the following requirements for ISSF Membership:

*“1.3.1 The Federation must be composed of those National Shooting Organizations, which are duly recognized by the Federation as the sole controlling body of shooting sports, and further recognized by and affiliated with their National Olympic Committee.*

*1.3.2 The National Olympic Committee of the country must be a full member of the International Olympic Committee”.*

149. In a case comparable to the one at hand (*CAS 2014/A/3863*<sup>5</sup>), concerning the validity of an expulsion of an ISSF Member because it was no longer recognized by its NOC pursuant to Article 1.3.1 of the ISSF Constitution, the CAS panel stated the following:

*“As a matter of fact, the preamble of the ISSF Constitution follows the Olympic Charter by explicitly referring to the ISSF's recognition by the International Olympic Committee as 'the sole controlling body at international and worldwide levels of competition.*

*It is fair to state that article 1.3.1 of the ISSF Constitution on the composition of membership is part of the system of worldwide sport in so far as the sport of shooting is governed by the Olympic Movement. The Panel takes the view that it is in the interest of the sport of shooting and the athletes participating [in] this sport that*

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<sup>5</sup> *CAS 2014/A/3863*, award of 25 August 2015, at 79.

*the national federations are 'recognized and affiliated with their National Olympic Committee', as article 1.3.1 of the ISSF Constitution explicitly states.*

*Following a systematic approach in constructing and interpreting Article 1.3.1 of the ISSF Constitution on membership and article 1 of the ISSF Constitution on the purpose of the ISSF, the Panel concludes that the recognition of the national shooting and rifle organization by and its affiliation to the National Olympic Committee and to the Olympic Movement is a sine qua non-condition for a membership with the ISSF".*

150. In paragraph 86 of the abovementioned case, the CAS panel stated:

*"A valid reason for expulsion must not be easily accepted and requires that the interest of the ISSF to strictly apply the core provision on membership outweighs the individual interest of a national shooting and rifle organisation to keep its membership with the ISSF. This is obviously the case where the national shooting and rifle organisation does not meet the membership requirement of article 1.3.1 of the ISSF Constitution anymore. Under such circumstances, it would be unreasonable for the ISSF to maintain the status of membership of a national organization".*

151. The ISSF submitted that 2 important findings arose from the above:

- The ISSF constitution and the requirements for ISSF membership are "governed by the Olympic Movement" according to the Olympic Charter; and
- The ISSF may expel a Member in case it "does not meet the membership requirement of article 1.3.1 of the ISSF Constitution anymore" which affects its affiliation with the Olympic Movement.

152. The ISSF noted that Article 1.3.2 of the ISSF Constitution stated:

*"The National Olympic Committee of the country must be a full member of the International Olympic Committee".*

153. The ISSF submitted that it was undisputed that when the Appealed Decision was rendered, the KOC was not fully recognized by the IOC but instead was suspended, as a result of which it lost all its rights as a recognized NOC pursuant to Article 27 of the Olympic Charter. In the meantime, this suspension was also confirmed by the CAS. Further, it should also be taken into account that the panel in *CAS 2014/A/3863* confirmed in para. 85 of its Award, that pursuant to the applicable German law even an expulsion did not require fault by the expelled member. Hence, it does not matter that the suspension of the KSF was ultimately based on the wrongdoing by the Kuwaiti government. Accordingly, the ISSF was entitled to expel the KSF as it had lost the requirement for ISSF membership concerning its affiliation to the IOC and the Olympic Movement.

154. *A fortiori* the less restrictive measure, i.e. the suspension of the KSF without restricting the rights of Kuwaiti athletes to participate in ISSF competitions with the reservation to review the Appealed Decision in case the IOC lifted the suspension of the KOC, was also justified according to the ISSF Constitution.

155. The ISSF noted that the suspension was also justified pursuant to Article 1.3.15.1 of the ISSF Constitution which states:

*“A member may be suspended if, in the opinion of the Administrative Council, the ISSF is better able to achieve any of its purposes by the suspension of a member”.*

156. The ISSF submitted that one of its main purposes was to maintain their status as the only recognized international federation for shooting sport by the IOC, which allows its athletes to participate in the Olympic Games. In order to maintain its recognition by the IOC, it has to abide by the Olympic Charter, which stipulates the following (emphasis added by the ISSF):

*“The Olympic Charter (OC) is the codification of the Fundamental Principles of Olympism, Rules and By-laws adopted by the International Olympic Committee (IOC). It governs the organisation, action and operation of the Olympic Movement and sets forth the conditions for the celebration of the Olympic Games. In essence, the Olympic Charter serves three main purposes:*

*a) The Olympic Charter, as a basic instrument of a constitutional nature, sets forth and recalls the Fundamental Principles and essential values of Olympism.*

*b) The Olympic Charter also serves as statutes for the International Olympic Committee.*

*c) In addition, the Olympic Charter defines the **main reciprocal rights and obligations** of the three main constituents of the Olympic Movement, namely the International Olympic Committee, **the International Federations** and the National Olympic Committees, as well as the Organising Committees for the Olympic Games, **all of which are required to comply with the Olympic Charter**”.*

157. Paragraph 5 of the Fundamental Principles of Olympism states the following (emphasis added by the ISSF):

*“Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement shall have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections **free from any outside influence** and the responsibility for ensuring that principles of good governance be applied”.*

158. Article 25 of the Olympic Charter states the following (emphasis added by the ISSF):

*“In order to develop and promote the Olympic Movement, the IOC may recognise as IFs international non-governmental organisations administering one or several sports at world level and encompassing organisations administering such sports at national level.*

*The statutes, **practices and activities** of the IFs within the Olympic Movement **must be in conformity with the Olympic Charter**, including the adoption and implementation of the World Anti-Doping Code. Subject to the foregoing, each IF maintains its independence and autonomy in the administration of its sport”.*

159. Article 26 of the Olympic Charter defines the “*mission and role of the IFs within the Olympic Movement*” as the following (emphasis added by the ISSF):
- “1.1 *to establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application;*
  - 1.2 *to ensure the development of their sports throughout the world;*
  - 1.3 ***to contribute to the achievement of the goals set out in the Olympic Charter, in particular by way of the spread of Olympism and Olympic education***”.
160. The ISSF submitted that it was an IF within the Olympic Movement. Hence, its Constitution, its regulations and activities have to be in conformity with the Olympic Charter, which included supporting the Olympic Movement. Therefore, the protection and the support of the Olympic Movement was an unwritten purpose of the ISSF which guided the written purpose of promoting and guiding the development of shooting sports. Thus, the ISSF was within its rights to suspend the KSF pursuant to Article 1.3.15.1 of the ISSF Constitution, if the purpose of supporting the Olympic Movement could be achieved better by taking such an action.
161. The ISSF argued that it had been established that the Kuwaiti laws 117/2014 and 25/2015 prevented Kuwaiti sports associations from managing their affairs independently from the Kuwaiti government. The laws provided for far-reaching competences for Kuwaiti state authorities, in particular the Public Authority for Youth and Sports, to intervene in the internal dealings of Kuwaiti sports associations, including allowing the Kuwaiti government to attend general assemblies of sports associations and to investigate the validity of its meeting and voting measures; to substitute itself for the jurisdiction and responsibilities of the sports organisations; to invite extraordinary general assemblies and to dissolve sports organisations. Furthermore, the new laws did not follow the general concept that sports-related disputes should be resolved by independent bodies recognised by the Olympic and sports movement in the country with a possibility of appealing to the CAS for a final decision. The ISSF also noted that in *CAS 2015/A/4282*, the CAS confirmed that the respective Kuwaiti laws constituted an undue governmental interference in the functioning of the Olympic sports movement in Kuwait.
162. The ISSF argued that the IOC had no choice but to suspend the KOC as “*all attempts by the IOC to convince the Kuwaiti government to change its laws to comply with the principles of the Olympic Movement had failed*”. For the ISSF, the suspension of the KSF was the appropriate action in order to support the Olympic Movement and to live up to its statutory purpose. The new laws by the Kuwaiti government had shown that the sole suspension of the KOC by the IOC was not enough to prevent the Kuwaiti government from interfering in the autonomy of sports. Therefore, “*a comprehensive and extensive prevention of Kuwait’s participation in the international sports world was necessary*”.
163. The ISSF also argued that the Appealed Decision was proportionate because the only way for the Olympic Movement to influence legislation in a country was through its member

federations. At the same time, the ISSF did not infringe the rights of any Kuwaiti athletes through the Appealed Decision as they were allowed to continue to participate in ISSF competitions for the time being. The KSF's suspension from the ISSF would immediately be reviewed in case the IOC lifted its suspension of the KOC.

164. The ISSF noted that 174 ISSF Members voted in favour of the Appealed Decision (compared to only 65 votes against), meaning that a vast majority of ISSF Members in the GA Meeting confirmed that the ISSF could better reach its purposes by suspending the KSF.
165. Lastly, the ISSF submitted that when assessing the Appealed Decision, the Panel had to also take into account that Article 1.3.15.1 of the ISSF Constitution granted discretion to the deciding body in finding that it was better able to achieve its purpose by suspending an ISSF Member. The ISSF noted in particular the wording “*opinion of the Administrative Council*” and “*better able to achieve*”. Accordingly, the level of review by the CAS pursuant to Article R57 of the CAS Code with regard to the Appealed Decision taken on the basis of Article 1.3.15.1 of the ISSF Constitution was limited. The ISSF noted that the CAS respected the discretion given to deciding bodies in the rules of sports organisations and in this regard, it quoted *CAS 2011/A/2525*, in which the panel stated:
- “CAS ‘enforces a strict approach in the definition of its power reviewing the exercise of the discretion enjoyed by the disciplinary body of an association to set a sanction’ (cf. CAS 2006/A/1175, para. 90). This Panel confirms the CAS jurisprudence according to which the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules, can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (cf. CAS 2004/A/690, para. 86; CAS 2005/A/830, para. 10.26; CAS 2005/C/976 & 986, para. 143)”.*
166. The ISSF submitted that given that the decision in *CAS 2011/A/2525* was rendered with regard to a disciplinary (penal) sanction, it meant that the CAS had to respect the discretion of a deciding body *a fortiori* in connection with a decision taken outside disciplinary proceedings in an administrative matter such as this one.
167. In conclusion, the suspension of the KSF by the ISSF was justified under the ISSF Constitution. The suspension could either be based on Article 1.3.2 or Article 1.3.15.1 of the ISSF Constitution. With regard to Article 1.3.15.1 of the ISSF Constitution, the Panel must respect the discretion granted to the ISSF in deciding whether it was better able to achieve its purposes by the suspension of the KSF.

***iv. No violation of the principle of equal treatment***

168. The ISSF rejected the KSF's claims that the Appealed Decision constituted a violation of equal treatment, as that would have required an unequal treatment of similar cases without any justification.
169. The ISSF acknowledged that there had indeed been cases before in which the IOC suspended an NOC of a country for undue governmental interference, and the ISSF chose not to suspend the respective national shooting federation. However, the ISSF claimed that there was a

significant difference between this case and the suspension of the NOCs of Iraq (2008), Kuwait (2010) and India (2012) which allowed the ISSF to act differently in this case. In the aforementioned cases, it was the first suspension of the respective NOC by the IOC, whereas KOC's suspension in 2015 was the second suspension of the NOC within 5 years. The first suspension of the KOC in 2010 was imposed because 3 years of discussions and negotiations did not stop the Kuwaiti government from interfering in the autonomy of sports in Kuwait and it took the Kuwaiti government 2 further years to finally amend its laws to comply with the Olympic Charter, following which the suspension of the KOC was lifted by the IOC. However, less than 2 years later, the whole procedure started again because of the new Kuwaiti sports laws which again violated the Olympic Movement. The ISSF argued that this was what made the present situation unique.

170. The KOC's second suspension showed that the lack of action by the ISSF in the first instance in 2010 was insufficient in stopping the Kuwaiti government from interfering in the autonomy of sports in Kuwait. Thus, this time it had to react to the suspension of the KOC by suspending the KSF. In this situation, the ISSF claimed that the suspension of the KSF was the only measure that could help to substantially influence the behaviour of the Kuwaiti government towards the Kuwaiti sports federations.
171. Accordingly, the KSF was actually treated in the same way as the national shooting sport federations of Iraq and India. All 3 were not suspended by the ISSF when the NOC of the respective country was suspended by the IOC for the first time for undue governmental influence. It was only when the KOC was suspended for a second time for undue political interference did the KSF get suspended.

**v. *Response to the KSF's evidentiary requests and prayers for relief***

172. In addition to stating that the KSF's request for the Appealed Decision to be annulled be rejected, the ISSF submitted that the KSF's alternate requests for declaratory and compensatory relief also be dismissed.
173. Further, the ISSF stated that it had not disclosed any legally confidential information relating to *CAS 2015/A/4282* to its members and rejected the KSF's requests for declaratory relief.

**VI. JURISDICTION OF THE CAS**

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

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

175. The KSF relied on Article 1.3.16.2 of the ISSF Constitution which states as follows:

*“Disputes between the ISSF and one (1) or several of its members which are not settled finally by a decision by a body of the ISSF, may be submitted for arbitration by one (1) or other of the parties to the Court of Arbitration for Sport (CAS) in Lausanne. Any decision taken by the said Court must be without appeal and binding on the parties concerned”.*

176. The jurisdiction of CAS was not disputed by either of the parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by both parties.
177. It follows that the CAS has jurisdiction to hear this dispute.

#### **VII. ADMISSIBILITY**

178. The Statement of Appeal, which was filed on 25 July 2016, complied with the requirements of Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.
179. It follows that the Appeal is admissible.

#### **VIII. APPLICABLE LAW**

180. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS, the *“Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
181. Both parties in this dispute agreed that the various rules and regulations of the ISSF and German law were applicable in accordance with Article R58 of the CAS Code.
182. The Panel is therefore satisfied to accept that the various Statutes and Regulations of the ISSF (namely the ISSF Constitution) shall apply, but also the subsidiary application of German law should the need arise to fill any *lacuna* in the former Statutes and Regulations.

#### **IX. SCOPE OF THE APPEAL**

183. The Panel notes there were three procedural issues to consider. Firstly, that the KSF has amended its prayers for relief during the various appeals both before and at the CAS. In its statement of appeal before the GA Meeting, it requested that the ISSF AC Decision be annulled, confirming in its oral statement before the ISSF Members, that it be cancelled.
184. Before the CAS, in its Statement of Appeal, the KSF requested that the Panel cancel the Appealed Decision and the underlying ISSF AC Decision – i.e. – lift the suspension against it. Alternatively, it requested the Panel to declare that the ISSF had violated its constitution by (a) a failure to follow the guidelines to Article 1.3.15; (b) irregular voting at the GA in breach

of Article 1.6.13.1; and (c) Mr Schreiber dealing wrongly with the 38 Member request regarding secret voting and scrutinisers.

185. Finally, in its Appeal Brief, the prayers in the Statement of Appeal were further extended by a reference to two further declarations being sought regarding breaches of the ISSF Constitution, namely (d) that the ISSF Executive Committee breached Article 1.8.2, by influencing the ISSF Members before the GA Meeting; and (e) that the voting was confusing. In addition, the KSF requested a financial remedy for these irregularities/failures.
186. The Panel notes that the KSF commenced its appeal process against the ISSF AC Decision by requesting it be cancelled by the GA Meeting. This continued initially at the CAS, but at a later stage, the KSF included a request for damages against the ISSF. The Panel notes that the KSF has produced absolutely no evidence of financial losses that it may have suffered as a result of its suspension and that a financial claim was never before the GA Meeting and forms no part of the Appealed Decision. Much as Article R57 of the CAS Code provides the Panel with a *de novo* power of review, this is not without limits. The Panel notes that in MAVROMATI/REEB, “The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials”, at page 522, it states that “... *the de novo power of review cannot be construed as being wider than that of the appellate body*”.
187. The Panel notes that the KSF failed to make any request for financial relief before the GA Meeting. As such, this claim cannot now be entertained before the CAS. The Panel notes the position taken in *CAS 2011/A/2500 & 2591* at para. 109 “*The power of review of a CAS panel is also determined by the relevant statutory legal basis and is limited with regard to the appeal against and the review of the appealed decision, both objectively and subjectively; if a motion was neither object of the proceedings before the previous authorities, nor in anyway dealt with in the appealed decision, the Panel does not have power to decide on it and the motion must be rejected*”.
188. Secondly, the KSF had sought to challenge both the Appealed Decision, as well as the underlying ISSF AC Decision. The Panel notes that in MAVROMATI/REEB, “The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials”, at page 522, it further states that “*In a similar context, the power of review is also limited to the issues addressed in the challenged decision(s) and not to the decision(s) prior to that*”. As such, the Panel only considers the Appeal insofar as it is addressed against the Appealed Decision.
189. Thirdly, the Panel notes that the KSF allege that the ISSF disclosed confidential information to its Members relating to *CAS 2015/A/4282* to which the ISSF was not a party and was also protected by the confidentiality rule contained in Article R43 of the CAS Code. The Panel also notes that the ISSF deny breaching any confidences. The Panel has read the prayer for relief of KSF numbered *A 2*), but to make such a declaration concerning this matter goes beyond the scope of review of this Panel. If there has been any breach of confidentiality, then it would be for the panel in *CAS 2015/A/4282* to consider and to deal with. The KSF also asked the Panel to make the CAS Court Office aware of these allegations. The Panel notes that the CAS Court Office has seen all the submissions made in the case at hand by the KSF, so is now fully aware.

**X. MERITS OF THE APPEAL**

**A. The Main Issues**

190. The Panel observes that the main issues to be resolved are:

- What was the nature of the Appealed Decision?
- Was the Appealed Decision legally issued?
- If so, in passing the Appealed Decision, was the KSF's right to be heard violated?
- In passing the Appealed Decision, was the KSF's right to equal treatment violated?
- Did the Appealed Decision violate Article 1.3.15.1 of the ISSF Constitution and the Guideline to Article 1.3.15 of the ISSF Constitution?
- Did the ISSF Executive Committee unduly influence the ISSF Members in passing the Appealed Decision, in violation of Article 1.8.2 of the ISSF Constitution?
- Did Mr Schreiber and Mr Raña unduly refuse to execute the requests contained in the ISSF Members' Letter, in breach of Article 1.6.13.1 of the ISSF Constitution?
- Was the voting procedure and the counting of votes on the request for a secret vote relating to the KSF's suspension confusing and/or with errors?
- Should the Appealed Decision be annulled?

*i. The nature of the Appealed Decision*

191. The Panel notes the original reasoning given by the ISSF Administrative Council for suspending the KSF:

*"The ISSF Administrative Council based its decision in particular on Article 25 and 26 of the Olympic Charter and on Article 1.3.2 of the ISSF Constitution".*

192. This decision was then appealed to the GA Meeting by the KSF. The Panel has noted the KSF's written statement of appeal, the ISSF EC Letter to the GA Members, the statement made by the KSF at the GA and the response made by the ISSF's attorney, both of which were set out in the GA minutes. Throughout these the focus of the Appeal relates to the Olympic Charter and Article 1.3.2 of the ISSF Constitution. In the ISSF's Answer, it additionally refers to its ability under Article 1.13.5 of the Constitution to suspend the KSF. This does not seem to the Panel to be an additional reason, rather, for the ISSF to invoke Article 1.13.5.1 of the ISSF Constitution, a "purpose" of the ISSF must be better achieved. In the case at hand that purpose appears to be compliance by the ISSF with the Olympic Charter.

193. In the opinion of the Panel, a distinction needs to be drawn between these two justifications given by the ISSF to suspend the KSF. Article 1.13.5 of the ISSF Constitution is titled

“*Suspension and Expulsion*” and requires the ISSF to exercise its discretion if it believes that the suspension of a Member would enable it to better achieve its purposes. The Panel classifies this as a disciplinary issue.

194. On the other hand, any Member’s NOC must be a “*full member*” of the IOC. If it isn’t then the ISSF would, pursuant to Article 1.3.2 of the ISSF Constitution, automatically be able to remove that Member from its membership, as that Member would no longer fulfil the stated condition required for membership. The Panel classifies this as an administrative issue.

**ii. *The legality of the Appealed Decision***

195. The Panel notes that the suspension or expulsion of a member by any association or body is a serious matter and should be carried out strictly in accordance with that association’s constitution and the relevant law of the land. In the matter at hand the constitution is the ISSF Constitution and the relevant law is German law.

196. The Panel refers to REICHERT B., Handbuch Vereins- und Verbandsrecht, 13<sup>th</sup> edition, Köln 2016, which summarises the position under German law for associations, such as the ISSF, (free translation):

*“Para 1.2.4. (marginal note 2916 – 2919, page 523) The necessary statutory basis for the establishment of a regulation*

*While the misconduct can be determined in a generalized manner, this is not possible with ordinances. Here the principle of legal certainty will be fully applied. The rules shall be clearly defined in the Articles of Association; a subordinate clause not stated in the statutory component is thus not sufficient. Furthermore, only the statutory provisions may be imposed. Each member must be able to ascertain from his or her statutes, which penalties are threatened, in the event of failure to comply with the obligations of the Association which is determined by the Association; they must be able to recognize the “punishment”. The statutory provisions also set out the difference between the non-disciplinary ordinances which are not necessarily anchored in a statute.*

*In addition, a statutory definition requires the Member concerned to incriminate particular burdens, such as the obligation to bear the costs of the procedure, or to have the sanction imposed on the person concerned published in the notice of the association. The same applies if the legally binding ordinance is entered into a penal register (see § 144 HVT-TRO).*

*From all this follows: The articles of incorporation may not leave it up to the competent body of the association to determine which regulations are imposed. If the statutes provide for an exclusion from the association, the suspension of membership rights cannot be ordered. Furthermore, it is not permissible to impose a fine, which is not mentioned in the Articles of Association, instead of a more stringent clause (e.g. temporary exclusion). The Articles of Incorporation may determine that several provisions may be imposed side by side.*

*The determination of the amount is not subject to the principle of determinateness in quantitatively graded regulations; the competent body shall be given a selection survey.*

...

2.7.2. (marginal note 2969 – 2971, page 533) Major reason for exclusion

*If a conduct is not subject to any explicitly stated grounds for exclusion, or if the articles of association regarding any expulsions of members as a whole come to an end, Article 314 of the Civil Code.*

*An important reason i. S. d. § 314 BGB is given if a member is attributable to a behavior which is likely to endanger the association's purpose or to damage and/or impair the prestige of the association. It must be unacceptable for the association to continue the membership relationship with this member.*

*If a particularly serious exclusion is not given, it is necessary that the association, considering the interests of both parties, should no longer be expected to continue the membership.*

...

2.9. (marginal note 2984 – 2986, page 535) Conditional and temporary closure

*As the right to design, the exclusion of the association is, conditional. The conditional exclusion is only effective if there can be no doubt as to the occurrence of the condition, as in the case of the potential condition, which depends entirely on the will of the declarant. The exclusion can, for example, be made dependent on whether the member to be excluded performs a specific action within a certain period of time (e.g. paying back his or her membership fees or rejecting the exclusion in a certain form). The Management Board has to determine the occurrence of the condition and thus the exclusion and notify the person concerned.*

*The statutes may leave the competent body to decide whether the exclusion shall be pronounced on a permanent or temporary basis. Even without a constitutional arrangement, exclusion on a temporary basis can be considered as the milder measure against exclusion in the long term. In such a case, however, the person concerned must have fulfilled the exclusion clause, the exclusion of time is not permissible for consideration, there is doubt as to the (final) exclusion status.*

*The case of exclusion, membership is suspended with all its rights and obligations. There is no need for a new member of the member concerned. A partial withdrawal of membership rights (suspension) is a disciplinary measure (cf Rdn. 2920); it must be expressly provided for in the Articles of Incorporation”.*

197. In summary, under German law, the starting point is the ISSF Constitution. Each Member should be able to identify with certainty what disciplinary sanctions it could face which could threaten its membership of the ISSF, in instances when the behaviour of the Member would be contrary to a stated purpose of the ISSF or if the behaviour would bring the ISSF into disrepute. It should also be clear from the Constitution what the sanction would be for the different behaviour of the Member. If a temporary sanction is handed out, such as suspension, then the conditions to remedy the behaviour should be clear in the Constitution too, so the Member can regain membership.
198. The Panel notes that the ISSF had attempted to amend its Constitution at the GA Meeting. The new version would have been clearer for the Members, but the GA Meeting voted against

the change, so it is the 2013 edition of the ISSF Constitution that is applicable to the matter at hand.

199. The Panel notes that the ISSF effectively relies upon 2 grounds for the suspension of the KSF: (1) Article 1.13.5.1 of the ISSF Constitution and that the ISSF was obliged to suspend the KSF under the Olympic Charter and/or (2) the ban of the KOC resulted in it losing its full membership of the IOC, which in turn triggered the suspension of the KSF pursuant to Article 1.3.2 of the ISSF Constitution.

(1) *Article 1.13.5.1 of the Constitution and the Olympic Charter*

200. The use of this provision in the ISSF Constitution to suspend the KSF should invoke a disciplinary process. The Panel would have expected some form of investigation by the ISSF into whether there was some actual conduct by the KSF that was affecting the purposes of the ISSF. The Panel would have expected the ISSF to have put the findings of such investigation to the KSF and to have given it the opportunity to comment, before any decision was taken, as in a normal disciplinary process. The KSF rightly directed the Panel to the Guidelines relating to the Article 1.13.5 of the Constitution, which state that before the ISSF Administrative Council took any decision under this Article, the KSF should have been heard. The Panel notes that it is dealing with an Appeal against the decision of the GA Meeting, where the Panel finds that the KSF was heard.

201. However, what is less clear is whether there was any actual behaviour of the KSF which was affecting a stated purpose of the ISSF. The Panel notes that nowhere in the ISSF Constitution is there a reference (as was added to the draft ISSF constitution that was rejected at the GA Meeting) to the list of purposes that the ISSF must conform with the Olympic Charter. That said, in the Olympic Charter itself, all IFs are obliged to “*to contribute to the achievement of the goals set out in the Olympic Charter, in particular by way of the spread of Olympism and Olympic education*”. Whether that goes as far as saying a purpose of the ISSF is to mirror the IOC if it decides to suspend a NOC, is debatable.

202. The Panel has the impression that before and at the GA Meeting, the ISSF Members were rather lead to believe that the ISSF Administrative Council were satisfied that it was obliged to suspend the KSF by the IOC. In the ISSF EC Letter, which sent the pleadings to the ISSF Members, it stated that (emphasis added by the Panel):

*“pursuant to Article 25 and 26 of the Olympic Charter, all International Olympic Sports are obliged to contribute to achieving the goals of the Olympic Movement that are set out in the Olympic Charter. Following the IOC decision to suspend the KOC and in accordance with this obligation (...) the ISSF Administrative Council followed the IOC request and decided to suspend the KSF”.*

203. In addition, the Panel notes from the section of the minutes of the GA Meeting, when the ISSF attorney addressed the ISSF Members:

*“The International Olympic Committee had informed the International Federations and asked them to consider this matter in respect of their National Federations from Kuwait. For this reason, the ISSF Administrative Council had decided to suspend the Kuwait Shooting Federation.*

...

*Further, the Olympic Charter, article 25 and 26, state that the International Federations are obliged to support the Olympic Movement. This includes also the obligation to protect the Olympic Movement from undue governmental interference. Also for that reason, the Administrative Council was obliged to act. Mr. Keidel also pointed out that especially since this was the second suspension of the Kuwait Olympic Committee for the same reason within five years the case had to be treated differently than past suspension cases.*

...

*Mr. Keidel summarized that the ISSF Administrative Council’s decision was a mere consequence of the suspension of the Kuwait Olympic Committee by the International Olympic Committee, the ISSF Administrative Council according to the Olympic Charter was even obliged to suspend the Kuwait Shooting Federation”.*

204. Much as the above gives the impression that the ISSF was obliged to suspend the KSF, the Panel notes that the ISSF has in 3 previous circumstances where a NOC has been suspended by the IOC (India, Iran and Kuwait) not determined that a suspension of the relevant Member was required. Indeed, it does not appear that the IOC itself demanded such a suspension (as the ISSF EC Letter tends to imply), nor does the IOC allege that by not suspending the Member, the ISSF has breached the Olympic Charter. At least there is no evidence that the IOC complained on these previous 3 occasions or that it has taken action against any other IF that determined not to suspect its NF. Rather, then Panel notes that the IOC wrote to the ISSF on 27 October 2015, stating the following (emphasis added by the Panel):

*“We naturally leave it up to each one of your International Federations to consider the situation with their respective National Federations in Kuwait and take any appropriate action, if not done already, for the protection of the Olympic Movement in Kuwait”.*

205. It does not appear to the Panel that the IOC were directing each IF to suspend each NF at all, more to consider each NF’s situation. The ISSF Administrative Council did not appear to carry out any review of the whether there was any danger of the Kuwait Government interfering with its member, rather, it appears to have felt that as this was the second time the KOC had been suspended by the IOC, it would immediately react and support the IOC by suspending the KSF, however, this was not required by the Olympic Charter, nor was it required by the IOC. The GA Meeting was simply asked to confirm the ISSF AC Decision, which it did with the Appealed Decision. The Panel notes that the ISSF (through its executive Committee and its lawyer) provided some misleading information to the ISSF members, as summarised above. The Panel has the impression that since the KOC was suspended twice in the last 5 years, that provided sufficient grounds for the ISSF to suspend the KSF this was used as the reason for the GA Meeting’s decision to suspend the KSF.

206. For completeness, the Panel notes that the ISSF Constitution was silent as to whether a Member need be suspended if its NOC has been suspended for a second time and failed to clearly state that one of its purposes is to support the goals set out in the Olympic Charter.
207. The Panel is not convinced that the GA Meeting had to suspend the KSF as it was compelled to by the IOC or that there is any rule compelling suspension of a NF, if its NOC has been suspended itself 2 times in 5 years, yet these were the messages put to the ISSF Members at the GA Meeting and directly resulted in the Appealed Decision. These were wrong and the Panel determines that these arguments should not have been considered as grounds to suspend the KSF, rather the GA Meeting (and the ISSF Administrative Council before it) should have treated this Article as a disciplinary one, looked for evidence that the behaviour of its Member was in contravention of a clearly stated purpose and only after hearing from the Member, then take a decision that the ISSF could better achieve its purposes by suspending that Member.
208. Finally, the Panel notes the arguments of the ISSF that Article 1.13.5.1 gives it a wide discretion to suspend its Members, citing *CAS 2011/A/2525*. The Panel maintains that there has to be a clear purpose to better serve and some evidence of behaviour by the Member that is putting this purpose in danger. A disciplinary sanction such as suspension should not be at the whim of the association.
- (2) *Was the KOC a full member of the IOC?*
209. The ISSF additionally relied upon Article 1.3.2 of the ISSF Constitution, arguing that as the KOC was suspended by the IOC, it was no longer a “full member” of the IOC. The Panel notes that the ISSF brought no evidence that the suspension had removed the KOC from full membership of the IOC, however, the following was stated to the ISSF Members at the GA Meeting:
- “Mr. Keidel explained that the ISSF Administrative Council’s decision was based on article 1.3.2 of the ISSF Constitution, which states under the headline “Membership” that the National Olympic Committee of an ISSF members country must be a full member of the International Olympic Committee. This is a requirement for ISSF membership. Mr. Keidel stated that after the International Olympic Committee’s decision to suspend the Kuwait Olympic Committee, the Kuwait Olympic Committee was obviously no longer a full member of the International Olympic Committee”.*
210. The Panel concurs with the KSF who submitted that Article 1.3.2 does not provide for a suspension *ex lege* of an ISSF Member when the respective NOC was only suspended. The position would be different if the KOC had been expelled. Moreover, the Panel notes that the ISSF on the one hand argue that it is obliged to suspend any ISSF Member under Article 1.3.2 when the relevant NOC is suspended by the IOC, while on the other hand it has failed to take that action in the 3 other identical situations referred to above.
211. The Panel did not find *CAS 2014/A/3863* particularly comparable to the case at hand, as that was concerned with Article 1.3.1 of the ISSF Constitution. The issue at hand is whether or not the KOC had lost its full membership of the IOC. In the Panel’s opinion, the KOC was

suspended, not expelled (as it could have been pursuant to Article 27 of the Olympic Charter) and no evidence was brought before the CAS to satisfy the Panel that its suspension took away its full membership of the IOC, as would be required to trigger Article 1.3.2 of the ISSF Constitution. Further, if the ISSF believed that the suspension of the KOC by the IOC meant that it was no longer a full member of the IOC, then the correct reaction by the GA Meeting should have been to remove the membership from the KSF, rather than to suspend it, as it would apparently no longer meet the criteria in Article 1.3.2. Ultimately, the Panel is not convinced that the GA Meeting should have relied upon this Article in the way it did.

212. Having concluded that the GA Meeting, when reviewing the initial ISSF AC Decision, should not have arrived at the same conclusion in the Appealed Decision for all the grounds set out above, the Panel annuls the Appealed Decision thus immediately lifting the suspension on the KSF.

## **B. Conclusion**

213. This Panel does not seek to condone the actions of the Kuwaiti Government in any way at all, however, the suspension or expulsion of a member by an International Federation is a serious matter and must be done in accordance with its own constitution and in accordance with the applicable law. Without calling into question the right of the General Assembly of an IF to take disciplinary measures against its national members, it appears in the present case that the reasons retained by the ISSF to suspend the KSF are not justified by any applicable rule. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel partially allows the Appeal by the KSF and annuls the Appealed Decision.
214. The suspension on the KSF's membership with the ISSF is hereby lifted with immediate effect.
215. Finally, the Panel determines that any further claims or requests for relief are dismissed. As such, there is no need for the Panel to consider the other arguments of the Parties.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 25 July 2016 by Kuwait Shooting Federation against the decision rendered by the General Assembly of the Members of the International Shooting Sport Federation on 2 July 2016 is partially allowed.

2. The decision rendered by the General Assembly of the Members of the International Shooting Sport Federation on 2 July 2016 is annulled and replaced by this award.
3. The suspension on the Kuwait Shooting Federation's membership with the International Shooting Sport Federation is hereby lifted with immediate effect.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.