



Arbitration CAS 2017/A/5057 Taekwondo Federation of Moldova (TFM) v. National Olympic and Sports Committee of Moldova (NOSC), award of 26 February 2018 (operative part of 9 October 2017)

Panel: Prof. Martin Schimke (Germany), President; Mr Michele Bernasconi (Switzerland); The Hon. Michael Beloff QC (United Kingdom)

Taekwondo

Provisional suspension of a national federation's membership to its National Olympic Committee

Burden of proof

Determination of the applicable standard of proof

Standard of proof applicable in cases of provisional suspension

Standard of proof of "reasonable possibility"

- 1. According to the general rules and principles of law, facts pleaded have to be proved by those who plead them. Any party wishing to prevail on a disputed issue must discharge its burden of proof, *i.e.* must give evidence of the facts on which its claim has been based. Under Swiss law, Article 8 of the Swiss Civil Code stipulates that unless the law provides otherwise, each party must prove the facts upon which it is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce such evidence.**
- 2. Sports federations are empowered to decide for themselves which standard of proof to apply in their regulations. For cases in which no legal threshold is specified in the applicable regulations, it is for the CAS panel to determine the appropriate standard to apply. When determining the applicable standard of proof the CAS panel ought to at least consider consistent jurisprudence in similar fields in deciding the appropriate standard to apply.**
- 3. Given that provisional suspensions necessarily have a preliminary character, the burden of proof and legal thresholds applicable must reflect the suspension's provisional nature and track the rules specific to its imposition. As regards the standard of proof applicable for the review of provisional suspensions, a provisional suspension must be substantiated by more than speculation alone; yet a 'reasonable possibility' is all that is required.**
- 4. The standard of proof of 'reasonable possibility' requires that the possibility is more than a fanciful one and necessitates evidence giving rise to individualized suspicion. The standard, however, is necessarily weaker than the test of 'comfortable satisfaction'.**

I. PARTIES

1. Taekwondo Federation of Moldova (“TFM” or the “Appellant”) is a sports federation governing the Olympic sport of taekwondo in the Republic of Moldova and is affiliated with the World Taekwondo Federation (“WTF”).
2. National Olympic and Sports Committee of Moldova (“NOSC” or the “Respondent”) is the National Olympic Committee of the Republic of Moldova, recognized as such by the International Olympic Committee (“IOC”) under and for the purposes of the Olympic Charter (the “OC”).

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its award only to the submissions and evidence it considers necessary to explain its reasoning.
4. The TFM is challenging the decision issued by the NOSC Executive Board (the “EB”) on 9 March 2017 to “*acknowledge the severe violation of the Olympic Charter and NOSC Statute by [TFM] [and] [t]o suspend for an indefinite period the NOSC membership of [TFM], until the above-mentioned violations are remedied*” (the “Appealed Decision”).
5. The EB’s core finding of “*severe violation of the Olympic Charter and NOSC Statute*” essentially refers to various allegations that the TFM arbitrarily, unfairly and without transparency excluded taekwondo athletes and coaches from competitions. The TFM unequivocally denies all such allegations and asserts no wrongdoing on its part in respect thereof.
6. The allegations against the TFM arise from a series of events which took place during the years 2015 through 2017, including the following:

(i) *The Moscow Competition*

7. Mr. Stepan Dimitrov, a member of the national taekwondo team of the Republic of Moldova (the “National Team”), was denied registration by the TFM for participation in the WTF World Taekwondo Grand Prix Series competition held in Moscow, Russia in August 2015 (the “Moscow Competition”).
8. The Moscow Competition was a “rating competition” in which participants could obtain points necessary to qualify for the 2016 Summer Olympic Games (the “OG2016”).

9. In the months leading up to the Moscow Competition, Mr. Stepan Dimitrov was included in the WTF Olympic “top-16” ranking of athletes by weight category. He claims that he did not receive a response to his letter to TFM President Mr. Igor Iuzefovici (the “TFM President”) requesting an explanation for his exclusion from the Moscow Competition. Mr. Stepan Dimitrov subsequently filed an application with the NOSC on 29 July 2015 seeking its intervention.
10. On 4 August 2015, the NOSC sent a letter to the TFM President, noting the NOSC’s obligation to defend the interests of athletes under Article 4.29 of the NOSC Statute and requesting an explanation for the exclusion of Mr. Stepan Dimitrov from the Moscow Competition. According to the evidence submitted, no written answer was sent by the TFM President.

(ii) *The Samsun Competition*

11. Mr. Stepan Dimitrov and Mr. Vadim Dimitrov (collectively, the “Dimitrovs”) were denied registration by TFM for participation in the WTF World Taekwondo Grand Prix Series competition held in Samsun, Turkey, in September 2015 (the “Samsun Competition”).
12. The Samsun Competition was a “rating competition” in which participants could obtain points necessary to qualify for the OG2016.
13. On 4 September 2015, the Dimitrovs filed applications with the Ministry of Youth and Sports of the Republic of Moldova (“MYS”) seeking its intervention and claiming that TFM had denied their registration for the Samsun Competition without explanation.

(iii) *Exclusion of Athletes from the National Team*

14. On 19 November 2015, the Dimitrovs requested information from the TFM President in respect of (i) their exclusion from the National Team for participation at international competitions, (ii) the procedure and criteria applied in respect of selection for the National Team, and (iii) any sanctions that had been applied against the Dimitrovs by the TFM.
15. Also on 19 November 2015, the Dimitrovs filed an application with the MYS as follows:

“[We] request hereby a response to our previous petitions of 3-4 September 2015, including information on the actions taken and findings We have not been included in the national team in spite of our performances and titles of national and international champions”.

16. On 15 December 2015, the MYS reassured the Dimitrovs that they had earned the right to be included on the National Team and that MYS had issued a warning to the TFM:

“In accordance with Article 16 of Law No 330 of 25.03.1999 on Physical Culture and Sports, athletes are included in the national teams of the Republic of Moldova on a competitive basis, depending on the level of sporting achievements. Thus, your sports achievements during 2014-2015 will secure a place for you in the

[National Team]. At the same time, [MYS] has warned [TFM] on the ungrounded measures that resulted in the failure to participate in the rating competitions for the Olympic Games”.

(iv) The Balkan Games

17. National Team members Mr. Andrei Rotaru, Mr. Vladislav Arventii, Mr. Mihail Botan, Ms. Tatiana Timbalari, Mr. Cristi Cilibiu, Mr. Dorin Palici, Mr. Ghenadii Stolbov and the Dimitrovs (collectively, the “Balkan Athletes”) were denied registration by the TFM for participation in the 2016 Balkan Taekwondo Championships held in Bulgaria in September 2016 (the “Balkan Games”).
18. On 14 September 2016, the Balkan Athletes requested the NOSC to support their participation in the Balkan Games and claimed that the TFM had denied their registration without explanation.

(v) The RBLSP & SCPNT

19. On 3 October 2016, the director of the Republican Boarding Lyceum with Sports Profile (“RBLSP”) requested that the TFM’s licensing commission permit twenty-one RBLSP students and their coach to participate in the National Taekwondo Championships of the Republic of Moldova to be held on 14 and 15 October 2016 (the “National Championships”) without a license, noting that such participation represents a mandatory condition for RBLSP students to continue their education at RBLSP.
20. On 11 October 2016, the TFM denied the participation of the RBLSP students in the National Championships on the basis that the RBLSP was not a member of the TFM. However, the TFM also stated that it would allow the RBLSP students to participate in the National Championships on behalf of any TFM member, provided that such students and their coach were licensed.
21. Also on 11 October 2016, the TFM denied the participation of eleven athletes from the Sport Centre for Preparing National Teams (“SCPNT”) in the National Championships on the basis that “[SCPNT] is not member of [TFM] and Mr Mazur Vladislav was deprived of license, that is why SCPNT athletes cannot participate in the [National Championships] on behalf of SCPNT seconded by Mr Mazur Vladislav”. However, the TFM also stated that it would allow the SCPNT athletes to participate in the 2016 National Championships on behalf of any TFM member, seconded by a licensed coach.
22. On 12 October 2016, the RBLSP director submitted a second request to the TFM to allow RBLSP students to participate in the National Championships and stating that payment of the TFM annual membership fees would be made within seven business days.
23. On 19 October 2016, the RBLSP director filed a complaint with the MYS, stating that “*the students of the sports lyceum (taekwondo section – 21 people) were not accepted [at the National Championships],*

though their access had not been restricted in the previous years. Moreover, we were informed about [TFM's] decision just before the competition, on 11 October 2016”.

24. On 22 December 2016, the RBLSP requested the NOSC's intervention in its conflict with the TFM, submitting the following arguments:
- The RBLSP is part of a traditionally cooperative network of Moldovan sports structures which includes sport federations, schools, clubs, the NOSC and the MYS.
 - Until the National Championships, the RBLSP had never encountered any barriers to the participation of its students in Moldovan sport federations' competitions.
 - In previous years, the RBLSP students had participated in other editions of the Moldovan National Taekwondo Championships without having to pay additional fees.
 - The RBLSP only received notification of the requirement to pay the TFM membership fees on 11 October 2016, a few days before the National Championships. On 12 October 2016, the RBLSP requested that the TFM allow the participation of the RBLSP students (most of which are children from underprivileged or single-parent families or are orphans) at the National Championships on the basis that the TFM membership fees would be paid by the RBLSP within seven business days.
 - One day before the National Championships, a MYS representative reminded the TFM that (i) the National Championships were funded by public money, (ii) athletes wishing to compete should be accepted and (iii) financial issues could be settled after the competition.
 - Despite the pleas of the RBLSP and the MYS, the RBLSP students were excluded from the National Championships and consequently, would not be included in the National Team. According to RBLSP regulations, only National Team members or medallists at the Moldovan National Championships are eligible to continue their education at the RBLSP.
 - The TFM's actions compromise costly efforts by the government to promote taekwondo through the RBLSP and are in violation of state policy on physical culture and sports.
25. On 2 February 2017, the RBLSP director filed a request with the MYS to include the RBLSP students (who were denied participation in the National Championships) in the National Team based on their results at international competitions.

(vi) Mr. Vladislav Mazur

26. The former National Team coach, Mr. Vladislav Mazur, was denied registration by the TFM for participation in the 2016 World Taekwondo Grand Prix Final competition held in Baku, Azerbaijan in December 2016 (the “Baku Competition”).
27. The Baku Competition was a rating competition in which participants could obtain points necessary to qualify for the 2020 Summer Olympic Games (the “OG2020”).
28. On 14 November 2016, Mr. Stepan Dimitrov filed a request with the NOSC to provide financial support to Mr. Mazur so that Mr. Mazur could attend the Baku Competition as Mr. Dimitrov’s coach.
29. Also on 14 November 2016, Mr. Mazur filed a request with the MYS to be included in the list of people travelling to the Baku Competition so that he could coach Mr. Stepan Dimitrov with the goal of obtaining rating points necessary to qualify for the OG2020.

(vii) GALs

30. On 23 December 2016, the Dimitrovs asked TFM to extend their WTF Global Athlete Licenses (“GALs”). The deadline for such extension was 24 December 2016 to ensure the Dimitrovs’ eligibility to participate in international competitions during the first three months of 2017.
31. On 27 December 2016, the Dimitrovs informed the NOSC and MYS that the TFM had not extended their GALs within the deadline and requested the assistance of the NOSC and MYS with such extension.
32. On 5 January 2017, the Dimitrovs sent a letter to the NOSC, MYS and TFM claiming that (i) the TFM had not provided an explanation in respect of the failure to extend their GALs within the deadline, and (ii) “*the license of our coach Vladislav Mazur was withdrawn one year ago on the basis of unclear grounds*”. The Dimitrovs also requested that the MYS organize a meeting with the NOSC, TFM, Mr. Mazur and the Dimitrovs to discuss the situation.
33. The TFM subsequently renewed the Dimitrovs’ GALs at the end of February 2017.

(viii) Mr. Andrei Rotaru

34. On 23 February 2017, former National Team member Mr. Rotaru sent an e-mail to the TFM President describing his difficulties with the TFM before and after his decision to leave Moldova to compete for Romania. Mr. Rotaru’s claims may be summarized as follows:
 - He was excluded from the National Team by the TFM despite (i) having achieved remarkable results at international competitions which brought fame to Moldova and particularly to the TFM, and (ii) being the first-ranked champion of Moldova in the year of his exclusion.

- At the time of his exclusion from the National Team and even today, he does not understand the TFM's decision nor its rationale for selection of National Team members.
- He had never been admonished or sanctioned and had dutifully followed the recommendations of the coach and the TFM representatives.
- Based on (i) his personal situation at the time, which included his need to further his education, have a family and pursue his sporting career, (ii) the lack of a contract with the TFM which would have provided some financial stability, and (iii) the decisions of the TFM which "*marginalized my coach and my colleagues from the same generation, in spite of the promising stages of our careers*", he decided to move to and compete for Romania.
- He informed the coach of his decision to move to Romania, and such coach confirmed that he would communicate his decision to the TFM.
- He requests that the TFM "*stop harassing me in its attempt to defame me and submit complaints in order to prevent my access on the international arena, as their actions are neither morally correct, nor lawful*".

(ix) The NOSC Executive Board Meeting

35. On 28 February 2017, the NOSC invited the TFM President to attend the EB meeting on 9 March 2017 (the "EB Meeting") to focus on the complaints of the Dimitrovs and others:

"The committed violations hinder the participation of Moldovan athletes and coaches in national and international competitions in Taekwondo WTF. Given the above-mentioned, in order to take a correct decision regarding your NOSC membership and avoid any ambiguities and uncertainties, we invite the head of [TFM] ... to be heard and provide documents and information to the Executive Board that would confirm or refute the situation described above".

36. On 9 March 2017, the EB Meeting took place and included the TFM President, other TFM representatives, the NOSC Secretary General Mrs. Cristina Vasilianov (the "NOSC Secretary General") and EB members. On the same date, the EB issued the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

37. On 30 March 2017, the TFM filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code") with respect to the Appealed Decision. In its Statement of Appeal, the Appellant requested that this procedure be referred to a sole arbitrator.
38. On 5 April 2017, the Respondent was invited to inform the CAS Court Office within five days whether it agreed with the Appellant's request that the appeal be submitted to a sole arbitrator.

39. On 10 April 2017, the Respondent requested that the appeal be submitted to a panel of three arbitrators. The parties were thereafter informed that pursuant to Article R50 of the Code, the President of the CAS Appeals Arbitration Division, or her Deputy, would decide on the number of arbitrators. On the same day, 10 April 2017, the Appellant filed its Appeal Brief pursuant to Article R51 of the Code.
40. On 13 April 2017, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the parties that the appeal would be submitted to a panel composed of three arbitrators. The Appellant was then granted a deadline to nominate an arbitrator.
41. On 28 April 2017, the Appellant nominated Mr. Michele A. R. Bernasconi as arbitrator.
42. On 8 May 2017, the Respondent nominated the Hon. Michael J. Beloff M.A. Q.C. as arbitrator.
43. On 14 May 2017, the Respondent filed its Answer pursuant to Article R55 of the Code.
44. On 17 May 2017, the CAS Court Office noted the Respondent's objection to CAS jurisdiction and invited the Appellant to file a response strictly limited to such objection.
45. On 15 June 2017, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the parties that the panel appointed to decide the appeal (the "Panel") was as follows:

President: Prof. Dr. Martin Schimke, Attorney-at-Law, Dusseldorf, Germany
Arbitrators: Mr. Michele A. R. Bernasconi, Attorney-at-Law, Zurich, Switzerland
The Hon. Michael J. Beloff M.A. Q.C., Barrister, London, United Kingdom.
46. On 22 June 2017, the Appellant filed an application asking the Respondent to produce certain documents in its possession which, in the opinion of the Appellant, were essential to its case.
47. On 26 June 2017, the Respondent was invited to submit its comments in respect of the Appellant's request for production of documents.
48. On 11 July 2017, the Panel invited the Respondent to (i) file the documents requested by the Appellant on 22 June 2017, together with a certified English translation of the NOSC Statute, (ii) file the regulation referred to in Article 23.4 of the NOSC Statute (the "Regulation"), and (iii) inform the Panel of the date of the next meeting of the NOSC General Assembly (the "GA").
49. On 17 July 2017, the Respondent (i) filed the certified English translation of the NOSC Statute and a letter from the IOC dated 18 November 2014 approving revisions to the NOSC Statute, and (ii) informed the Panel that the next meeting of the GA was scheduled for 19 October 2017 (the "GA Meeting").
50. On 20 July 2017, the Respondent filed a certified English translation of the Regulation.

51. On 24 July 2017, the parties were invited to comment on the possibility of adjourning the Appeal (the “Proposed Adjournment”) pending a decision by the GA at the GA Meeting in respect of the Appealed Decision pursuant to Article 7.11.2 of the NOSC Statute.
52. On 31 July 2017, the Respondent stated that it was in favour of the Proposed Adjournment.
53. On 2 August 2017, the Appellant stated its objection to the Proposed Adjournment and requested (i) to be allowed to file an additional written submission in respect of the Appeal, and (ii) that a hearing in respect of the Appeal be scheduled as soon as possible.
54. On 11 August 2017, the Appellant filed a request for provisional measures pursuant to Article R37 of the Code seeking that the Panel prohibit the Respondent from including questions related to the suspension or termination of the Appellant’s NOSC membership, including the question of approval by the GA of the Appealed Decision, in the agenda for the GA Meeting.
55. On 21 August 2017, the Respondent filed its response to the request for provisional measures.
56. On 1 September 2017, the Panel issued the Order on Request for Provisional Measures pursuant to which the Appellant’s request for provisional measures was denied.
57. On 22 and 26 September 2017, Respondent and Appellant, respectively, signed and returned the Order of Procedure.
58. On 3 October 2017, pursuant to Article R57 of the Code, a hearing was held in Lausanne, Switzerland. The Panel was assisted by the CAS Managing Counsel, Mr. Brent J. Nowicki and the *ad hoc* Clerk, Mr. Daniel Ratushny, and joined by the following:

On behalf of the Appellant:

Mr. Igor Iuzefovici (President of TFM)
Mrs. Olga Vinnitcaia (Assistant President of TFM)
Mr. Jorge Ibarrola (Attorney-at-Law)
Mr. Sergei Alimirzoev (Attorney-at-Law)
Mr. Yuriy Serdyuk (Attorney-at-Law)
Mr. Sebastian Permain (Attorney-at-Law)
Mrs. Dana Morales (Intern)
Mr. Yury Obozny (Interpreter)

On behalf of the Respondent:

Mrs. Cristina Vasilianov (Secretary General of NOSC)
Mr. Paul J. Greene (Attorney-at-Law)

Mr. Matthew D. Kaiser (Attorney-at-Law)

59. At the outset of the hearing, the parties confirmed that they had no objections to the constitution of the Panel. The parties were then given the opportunity to present their cases, make their submissions and arguments, and answer questions asked by the Panel. At the conclusion of the hearing, the parties confirmed that they had no complaint regarding the conduct of the proceedings and that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

60. This section summarizes the substance of the parties' main arguments as set out in their written submissions and evidence. While this section does not contain every contention and allegation made by the parties, the Panel has carefully considered all the written submissions and evidence offered by the parties, including those not specifically mentioned in the following summary.

A. The Appellant's Submissions

61. In its Appeal Brief, the Appellant requests the following relief:

- “1. To accept this Statement of Appeal for consideration;
2. To declare the decision nr. 2/1 dated 09 March 2017 appealed against null and void;
3. To invalidate all subsequent decisions resulting from the decision nr. 2/1 dated 09 March 2017 appealed against;
4. To compel the Respondent to take measures to eliminate the adverse effects for the Appellant caused by the rendered decision nr. 2/1 of 09 March 2017 appealed against;
5. To recover from the Respondent all procedural costs associated with consideration of this Appeal in CAS;
6. To compel the Respondent to reimburse the Appellant's expenses related to consideration of the Appeal in CAS, including the reimbursement of the legal representative's fee”.

62. The Appellant's submissions in support of its requests may be summarized as follows:

a) The CAS Jurisdiction

63. The NOSC is “undoubtedly a sports-related body” under Article R27 of the Code, which states:

“Pursuant to Art. R27 of the CAS Code, the procedural rules are applied ‘whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the

statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings)”.

64. Pursuant to the NOSC Statute, (i) a decision of the EB is final and binding even if such decision is unlawful or groundless, (ii) there is no possibility to appeal against decisions of the EB otherwise than to the CAS, and (iii) no body is authorized to consider appeals of decisions of the EB. Therefore, *“this dispute falls under the category of unsolved national or international disputes”* which may be appealed to the CAS pursuant to Article 23.2 of the NOSC Statute, cited by the Appellant as follows: *“The competent authority for unsolved national or international disputes shall be the Court of Arbitration for Sport in Lausanne, Switzerland”*.

b) *The Essence of the Violation of Appellant’s Rights*

65. The Appellant asserts that by suspending the Appellant’s NOSC membership, the Respondent *“committed a gross violation of the Olympic Charter, basic principles of Olympism and Appellant’s rights”*.
66. Paragraph 3 of the Appealed Decision states as follows: *“To suspend membership in NOSC for Taekwondo Federation WTF of the Republic of Moldova for an indefinite period until the above violations are remedied”*. However, *“[t]he Respondent uses the word ‘suspend’, but in fact according to p.3 the Appellant is fully expelled from the Olympic Movement, both in sporting and in administrative sense”*.
67. To highlight the consequences of its suspension pursuant to the Appealed Decision, the Appellant cites Articles 7.11.4 and 7.11.5 of the NOSC Statute as follows:

“7.11.4 A suspended member shall be deprived of his rights as affiliated member during the suspension period. Other affiliated members cannot maintain any contact, especially in relation to Olympic and sports issues, with a suspended member.

7.11.5 Suspension results in deprivation of the right to participate in NOSC competition systems during the suspension period, deprivation of that affiliate member or his or her representatives of the right to participate and vote at General Assemblies, at the sessions of the Executive Committee or other Working Commissions of NOSC in which he or she participates; deprivation of the right to elect and be elected to the governing bodies and commissions of NOSC during the suspension period”.

c) *The Groundlessness of Accusations Brought Against the Appellant*

68. The Appellant asserts that the Respondent’s conclusion that the Appellant committed violations was in fact based on *“unfounded assumptions”*, which do not constitute valid grounds for suspension of NOSC membership pursuant to Article 7.11.1 of the NOSC Statute, cited by the Appellant as follows:

“Major violation of the Olympic Charter, IOC Code of Ethics and/or this Statute, codes, regulations, directives and decisions of NOSC and of its bodies may result in suspension of NOSC membership for a determined or undetermined period of time upon decision of the General Assembly, after that affiliated member is heard in his or her defense”.

69. According to the Appellant, pursuant to Article 7.11.1 of the NOSC Statute, any decision to suspend NOSC membership requires that the violation should be (i) related to the Appellant's activity as a member of the Olympic Movement, (ii) a major violation, and (iii) stipulated by one of the regulatory documents mentioned in Article 7.11.1.
70. The Appellant only learned of the reasons for the Appealed Decision after reading the Respondent's Answer. Therefore, it wished to refute each of the specific allegations made against it by the Respondent. The Appellant denies all such allegations and asserts the following:
- (i) *The Moscow Competition*
71. Decisions in respect of which of the TFM athletes will participate in major competitions are made before each such competition by the National Team head coach and the athletes' individual coaches (collectively, the "Council of Coaches").
72. The decision to exclude Mr. Stepan Dimitrov from the Moscow Competition was made unanimously at a meeting of the Council of Coaches and the TFM board.
73. The rationale for excluding Mr. Stepan Dimitrov from the Moscow Competition was that he had not attended training sessions organized by the TFM and was not physically ready to compete in the Moscow Competition. Due to his lack of preparation, it was determined by the Council of Coaches (which included Mr. Stepan Dimitrov's personal coach) that it would be dangerous for him to compete in the Moscow Competition.
74. The TFM President had explained orally to Mr. Stepan Dimitrov and his parents the reasons why he was excluded from the Moscow Competition.
75. In respect of the NOSC's letter dated 4 August 2015, which requested an explanation for Mr. Stepan Dimitrov's exclusion from the Moscow Competition, the TFM orally responded and held a meeting with the NOSC on the matter.
76. Pursuant to Article 1.4.5 of the NOSC Statute, the TFM has autonomy, free from outside interference, to make decisions in respect of the selection of athletes for participation at competitions.
- (ii) *The Samsun Competition*
77. The decision to exclude the Dimitrovs from the Samsun Competition was made unanimously at a meeting of the Council of Coaches and the TFM board.
78. The rationale for excluding the Dimitrovs from the Samsun Competition was that they had avoided training. The Council of Coaches (which included the Dimitrovs' personal coach) had concerns about their safety if they were to compete at the Samsun Competition.

79. The TFM President had explained orally to the Dimitrovs and their parents the reasons why they were excluded from the Samsun Competition.

80. Pursuant to Article 1.4.5 of the NOSC Statute, the TFM has autonomy, free from outside interference, to make decisions in respect of the selection of athletes for participation at competitions.

(iii) Exclusion of Athletes from the National Team

81. The Dimitrovs have always been and still are included on the National Team. They received funds from the government for being on the National Team and are registered for the WTF World Taekwondo Grand Prix to be held in Great Britain in October 2017 (the “2017 GB Grand Prix”).

82. In respect of the Dimitrovs’ letter dated 19 November 2015 which requested an explanation from the TFM in respect of their exclusion from the National Team, the TFM did not reply in writing because everything was explained orally to them.

(iv) The Balkan Games

83. The TFM has no power to register athletes for competitions that are not “rating competitions” such as the Balkan Games.

84. It is the clubs’ job and not the TFM’s job to send athletes to competitions such as the Balkan Games.

(v) The RBLSP & SCPNT

85. According to the law of sports of Moldova, only clubs that are TFM members are eligible to participate in the National Championships.

86. It would not be fair to, or in the best interests of, compliant athletes for the TFM to break the rules regarding eligibility to participate in the National Championships.

87. The TFM invited the RBLSP and the SCPNT to become TFM members, but they did not accept such invitation.

88. The TFM proposed that the RBLSP and SCPNT athletes could participate in the National Championships as members of other clubs that are TFM members. This proposal was made orally by the TFM to the RBLSP and the SCPNT before 11 October 2016 and in fact, some RBLSP students did participate in the National Championships as members of other clubs.

(vi) *Mr. Vladislav Mazur*

89. The TFM did not register Mr. Mazur for participation in the Baku Competition because his coaching license was suspended at the time by the WTF for manipulation of referees.
90. The TFM must comply with the decisions of the WTF. The TFM may not register a coach for an international competition when that coach's license is suspended on an international level.

(vii) *GALs*

91. The Dimitrovs' request on Friday 23 December 2016 for the TFM to extend their GALs was simply too late. The TFM did not have sufficient administrative time to meet the deadline of 24 December 2016.
92. In respect of the Dimitrovs' claim (in their letter dated 5 January 2017) that the TFM had not provided an explanation for the failure to extend their GALs within the deadline, the TFM explained this orally to the Dimitrovs.
93. There were no international competitions in the first three months of 2017. The late extension of the Dimitrovs' GALs (on 27 February 2017) had no negative consequences in respect of the Dimitrovs' ability to participate in competitions.

(viii) *Mr. Andrei Rotaru*

94. The TFM discovered that Mr. Rotaru participated for Romania at an international competition in Israel in November 2016 without notifying the TFM as required by the international transfer rules.
95. Based on Mr. Rotaru's lack of notice to the TFM, he was excluded from the TFM.
96. The TFM could have blocked Mr. Rotaru's participation in international competitions on the basis that he breached international transfer rules, but the TFM did not do so.

(ix) *The NOSC Executive Board Meeting*

97. The TFM President attended the EB meeting on 9 March 2017 and made oral arguments. He did not provide any documents to refute the allegations against the TFM because (i) the TFM does not consider itself guilty, and (ii) the TFM and the NOSC offices are open for each other.

d) *The Abuse of Authority by the EB*

98. The Appellant asserts in the Appeal Brief that "... *the NOSC Statute does not authorize the Executive Committee to make an independent decision on suspension of membership 'for an indefinite period'*".

99. The GA is the appropriate body to decide on suspension of membership and the EB is authorized to:

(i) make proposals to the GA on suspension of NOSC membership, or

(ii) provisionally decide on the suspension of membership with immediate effect, based on Article 7.11.2 of the NOSC Statute, cited by the Appellant as follows:

“The General Assembly of NOSC shall decide on suspension of NOSC membership at the proposal of the Executive Committee. In the period between General Assemblies, the Executive Committee may independently and provisionally decide on the suspension of membership with an immediate effect, including in cases of withdrawal or termination of activity. Suspension shall be valid until the next General Assembly and shall be confirmed by it. This does not refer to the case when suspension expired or was abrogated by the Executive Committee before the date of the next General Assembly”.

e) *The Non-Conformity of the Appealed Decision to the Olympic Charter*

100. The Appellant asserts that *“the decision on suspension of membership appealed against which basically excludes the Appellant from participation in the Olympic Movement contradicts the Olympic Charter”*.

101. Paragraph 1.2 of Article 28 of the OC requires that *“whatsoever their composition NOCs must include all federations affiliated to the international federations governing sports included in the program of the Olympic Games or their representatives”*.

102. Paragraph 1.3.1 of Article 1 of the Bye-law to Rule 45 of the OC includes the WTF in the list of international federations governing the sports which are currently included in the program of the Olympic Games.

103. Pursuant to the OC, *“national federation representing Olympic sport must on mandatory basis be a member of the national Olympic committee of the relevant country”*.

104. Furthermore, the OC *“does not provide for such event as expulsion or suspension of membership in the national Olympic committee let alone authorize national Olympic committees to expel the members which are national federations representing Olympic sports”*.

f) *The Conclusions of the Appellant*

105. According to the Appellant, the Appealed Decision *“is unlawful, groundless and was rendered with abuse of authority and must be reversed as such violating the Appellant’s right to participate in the Olympic Movement”*.

106. The TFM did not commit any violation of the OC and NOSC Statute. There was no wrongdoing of any kind on the part of the TFM.

107. There is no justification for the Appealed Decision, which constitutes a breach of power by the NOSC and an attempt to take control over the TFM, which is the most important sports federation in Moldova.
108. One of the TFM's duties is to make decisions in respect of which athletes are sent to participate in competitions. The NOSC interfered in this area of the TFM's business.
109. Even if there was some kind of wrongdoing by the TFM, there has been no specific breach of an identifiable legal rule or duty and therefore, there is no legal basis for a sanction.

B. The Respondent's Submissions

110. In its Answer, the Respondent requests the following relief:

"1. To dismiss, totally, the claims of the Appellant, as submitted in the dispute CAS 2017/A5057 Taekwondo Federation of Moldova v. National Olympic and Sports Committee of Moldova and to compel the Appellant to reimburse the NOSC's expenses related to consideration of this Statement of Defense, including the reimbursement of the legal representative's fee.

Or, if the Court will decide otherwise,

2. To suspend the examination of this dispute until the Parties will submit the evidence of conciliation as provided by the legal mechanism provided by the Statute of the NOSC".

a) Objections related to the Jurisdiction of the CAS

111. In its Answer, the Respondent asserts that: (i) prior to filing the appeal with the CAS, the Appellant refused to seek an amicable solution to the conflict or wait for the decision of the GA pursuant to the NOSC Statute, and therefore (ii) the CAS does not have jurisdiction to hear the appeal because *"the Appellant, being member of NOSC, has failed to dispose of all legal mechanisms, provided by the NOSC Statute, and to wait for a final decision approved according to the NOSC Statute provisions by the GA NOSC"*.
112. At the hearing, the Respondent abandoned its objection to the jurisdiction of the CAS in respect of the appeal and expressly stated that it accepts such jurisdiction.

b) The Events leading up to the EB Meeting of 9 March 2017

113. Starting in 2015, the TFM, led by its President, undertook to exclude certain athletes from the National Team, including the Dimitrovs, Mrs. Ana Ciuchitu, Mr. Vladislav Arventii and Mr. Rotaru and the National Team coach Mr. Mazur from internal and international competitions.
114. The TFM's exclusion of athletes from the National Team and from competitions was done (i) without explanation to the athletes, Mr. Mazur or NOSC, and (ii) even though the athletes *"had*

registered very good sports results ... and were subject to sport grant provided by special Olympic Solidarity Program”.

(i) The Moscow Competition

115. Mr. Stepan Dimitrov did not receive any response to his letter to the TFM President requesting an explanation for his exclusion from the Moscow Competition. He subsequently filed an application with the NOSC on 29 July 2015 seeking its intervention.
116. On 4 August 2015, the NOSC sent a letter to the TFM President noting the NOSC’s obligation to defend the interests of athletes under Article 4.29 of the NOSC Statute and seeking an explanation for the exclusion of Mr. Stepan Dimitrov from the Moscow Competition. In respect of this request for information, “[t]here was no answer from [TFM] to this request”.

(ii) The Samsun Competition

117. The TFM denied the Dimitrovs’ registration for the Samsun Competition without explanation.
118. On 4 September 2015, each of the Dimitrovs filed applications with the MYS seeking its intervention so that they could participate in the Samsun Competition and obtain rating points to qualify for the OG2016.

(iii) Exclusion of Athletes from the National Team

119. On 19 November 2015, the Dimitrovs requested information from the TFM President in respect of (i) their exclusion from the National Team for participation at international competitions, (ii) the procedure and criteria applied in respect of the National Team, and (iii) any sanctions that have been applied against the Dimitrovs by the TFM.
120. In respect of the Dimitrovs’ request of 19 November 2015, “[TFM] refused to register their application, examine it and, generally, provide any response to such requests”.
121. On 15 December 2015, the MYS informed the Dimitrovs that it had issued a warning to the TFM “on the ungrounded measures that resulted in the failure to participate in the rating competitions for the Olympic Games”.
122. “The situation became even worse in 2016 when a number of national athletes have been refused, without any ground, in participation at various competitions. To this end, they have filed various requests with the NOSC and MYS requesting their relevant assistance and intervention”.
123. The Dimitrovs may be registered for the 2017 GB Grand Prix, but the TFM is providing no assistance with practical requirements such as visa, travel and hotel expenses.

(iv) *The Balkan Games*

124. The Balkan Athletes were denied registration by the TFM for participation in the Balkan Games.
125. On 14 September 2016, the Balkan Athletes informed the NOSC that the TFM had denied their registration without explanation and therefore requested that the NOSC support their participation in the Balkan Games.

(v) *The RBLSP & SCPNT*

126. On 11 October 2016, the TFM *“did not grant its permission, without any ground, for the students of RBLSP to participate at the [2016 National Championships].... It should be mentioned that such participation of RBLSP’s students and, consequently, their inclusion in the national team of Moldova, represents a mandatory condition for them to continue their studies at RBLSP”*.
127. Also on 11 October 2016, the TFM denied the participation of eleven members of the SCPNT in the 2016 National Championships on the basis that the SCPNT was not a member of the TFM.
128. Two sports centres were denied the possibility to compete in the National Championships, even though they had top athletes.
129. On 12 October 2016, the RBLSP director submitted a second request to the TFM to allow the RBLSP students to participate in the 2016 National Championships and stating that payment of the TFM annual membership would be made within seven business days.
130. In respect of the RBLSP director’s request of 12 October 2016, “[TFM] *left this request without an answer or, if issued, provide it to the RBLSP”*.
131. On 19 October 2016, the RBLSP director filed a complaint with the MYS, stating that *“the students of the sports lyceum (taekwondo section – 21 people) were not accepted [at the 2016 National Championships], though their access has not been restricted in previous years ... Moreover, we were informed about [TFM’s] decision just before the competition, on 11 October 2016 ...”*.
132. On 22 December 2016, the RBLSP requested the NOSC’s intervention in its conflict with the TFM and submitted the following contextual claims:
- The RBLSP is part of a traditionally cooperative network of Moldovan sports structures which includes sport federations, schools, clubs, the NOSC and the MYS.
 - Until the National Championships, the RBLSP has never encountered any barriers to the participation of its students in Moldovan sport federations’ competitions.
 - In previous years, the RBLSP students had participated in the Moldovan National Taekwondo Championships without having to pay additional fees.

- The RBLSP only received notification of the requirement to pay the TFM membership fees on 11 October 2016, a few days before the National Championships. On 12 October, the RBLSP requested that the TFM allow the participation of the RBLSP students (most of which are children from underprivileged or single-parent families or are orphans) at the National Championships on the basis that the TFM membership fees would be paid by the RBLSP within seven business days.
- One day before the National Championships, a MYS representative reminded the TFM that (i) the National Championships were funded by public money, (ii) athletes wishing to compete should be accepted, and (iii) financial issues could be settled after the competition.
- Despite the pleas of the RBLSP and the MYS, the RBLSP students were excluded from the National Championships and consequently, would not be included in the National Team. According to the RBLSP regulations, only National Team members or medallists at the Moldovan national championships are eligible to continue their education at the RBLSP.
- The TFM's actions compromise costly efforts by the government to promote taekwondo through the RBLSP and are in violation of state policy on physical culture and sports.

(vi) *Mr. Vladislav Mazur*

133. Mr. Mazur is one of the top coaches in Moldova and he raised the level of taekwondo in Moldova.
134. The TFM failed to extend Mr. Mazur's license and then "*withdrew him from the position of the head coach of the national team. This withdrawal was unjustified and there were no decision issued or, if issued, provided to the coach...*".
135. On 14 November 2016, Mr. Stepan Dimitrov filed a request with the NOSC to provide financial support to Mr. Mazur so that he could attend the Baku Competition as Mr. Stepan Dimitrov's coach.
136. Also on 14 November 2016, Mr. Mazur filed a request with the MYS for inclusion in the list of people travelling to the Baku Competition so that he could coach Mr. Stepan Dimitrov with the goal of obtaining necessary rating points for OG2020.

(vii) *GALs*

137. The renewal of a GAL is quick. If an athlete is registered in the system, such renewal takes approximately one minute.

138. On 27 December 2016, the Dimitrovs informed the NOSC and MYS that the TFM had not extended their GALs within the 24 December 2016 deadline and requested the NOSC's and MYS's assistance with such extension.
139. The Dimitrovs' applications for NOSC's assistance with their GALs *"were forwarded by the NOSC to [TFM], however, [TFM] left them without answer"*.
140. On 5 January 2017, the Dimitrovs sent a letter to the NOSC, MYS and TFM claiming that (i) the TFM had not provided an explanation in respect of the failure to extend their GALs within the deadline, and (ii) *"the license of our coach Vladislav Mazur was withdrawn one year ago on the basis of unclear grounds"*. The Dimitrovs also requested that the MYS organize a meeting with the NOSC, TFM, Mr. Mazur and the Dimitrovs to discuss the situation.
141. In respect of the Dimitrovs' request filed on 5 January 2017 with the TFM, *"[TFM] has failed to even register this request with its chancellery"*.
142. The Appellant has produced no evidence to prove that the Dimitrovs did not miss any competitions during the time period in which their GALs were not active.
143. *"The following athletes, students of [RBLSP] and members of the national team, have been subject to a similar approach from [TFM]: Mr. Demian Ion, Mrs. Timbalari Tatiana, Mrs. Ploş Nicoleta, Mr. Diordiev Vlad and others. The lack of licenses led to non-participation of the athletes in the series of competitions in the past"*.
- (viii) *Mr. Andrei Rotaru*
144. Mr. Rotaru was a double silver medallist in Europe; he left Moldova to compete for Romania because of his mistreatment by the TFM. It is a problem for the NOSC to develop athletes and then lose them to other countries. The TFM did nothing to bring Mr. Rotaru back.
145. On 23 February 2017, former National Team member Mr. Rotaru sent an e-mail to the TFM President describing his difficulties with the TFM before and after his decision to leave Moldova to compete for Romania. Mr. Rotaru's claims may be summarized as follows:
- He was excluded from the National Team by the TFM despite (i) having achieved remarkable results at international competitions which brought fame to Moldova and particularly to the TFM, and (ii) being the first-ranked champion of Moldova in the year of his exclusion.
 - At the time of his exclusion from the National Team and even today, he does not understand the TFM's decision nor its rationale for selection of National Team members.
 - He had never been admonished or sanctioned and had dutifully followed the recommendations of the coach and the TFM representatives.

- Based on (i) his personal situation at the time, which included his need to further his education, have a family and pursue his sporting career, (ii) the lack of a contract with the TFM which would have provided some financial stability, and (iii) the decisions of the TFM which “*marginalized my coach and my colleagues from the same generation, in spite of the promising stages of our careers*”, he decided to move to and compete for Romania.
- He informed the coach of his decision to move to Romania, and such coach confirmed that he would communicate his decision to the TFM.
- He requests that the TFM “*stop harassing me in its attempt to defame me and submit complaints in order to prevent my access on the international arena, as their actions are neither morally correct, nor lawful*”.

146. In respect of Mr. Rotaru’s comments: “[s]imilar to all previous requests, [TFM] left this request without an answer”.

(ix) *The NOSC Executive Board Meeting*

147. “[T]aking into account numerous applications and requests filed by athletes and their coaches, total lack of transparency in the decision-making process of [TFM], its failure to respond to NOSC’s requests for solving the issues related to unjustified non-participation of the athletes and their coaches at various competitions and the imminent risk of losing ranking points necessary to participate in the OG2020, the NOSC decided on inclusion to the agenda of the [EB] meeting of the following issue: ‘Examination of the issue related to the activity of [TFM]’”.

148. At the EB meeting on 9 March 2017, it was not possible for the NOSC to have a constructive discussion with the TFM President. The TFM President did not produce any documents (except for the NOSC Statute) and only provided his own opinions.

149. The EB voted unanimously nine to zero in reaching the Appealed Decision.

c) *Serious Violation by the Appellant of the OC and the NOSC Statute*

150. Based on its examination of the TFM’s operations on 9 March 2017 and “*following the information submitted by the Secretary General of NOSC, the explanations of the President of [TFM], the materials examined*”, the EB came to the following conclusions:

- The TFM “*created, unjustifiably, conditions of nonparticipation (exclusion and removal) of high level athletes and their coaches – members of the national and Olympic team, from internal and international competitions, endangering the possibility of qualification and participation of the athletes at OG2020 ... [and] ... violating the legal provisions regarding the inclusion of athletes in the national teams of the Republic of Moldova which are organized via contests, according to sports achievements*”.

- The TFM illegally requested that the RBLSP and SCPNT become TFM members “*this way conditioning the participation of athletes and coaches of these institutions at the National Championships of Taekwondo WTF. To note that, RBLSP and SCPNT are public institutions subordinated to Ministry of Education and the MYS*”.
- The TFM “*did not ensure the perfecting in term of sports licenses for high level athletes and their coaches – members of the national and Olympic team*”.
- The TFM “*never examined the athletes’ and coaches’ requests, did not respond to their requests, did not make or motivate any decision regarding them or similar decisions were never presented*”.
- Through its actions, the TFM is endangering the participation of the Republic of Moldova at OG2020.
- The TFM “*has neglected its legal obligation to encourage sport for everyone and performance sport by paying special attention to the creation of conditions for practice*”.
- The TFM “*endangered the access to education of RBLSP minor athletes*”.

151. Based on the EB’s conclusions, the EB unanimously determined that the TFM committed serious breaches of:

(i) the OC’s and the NOSC Statute’s “Fundamental Principles of Olympism”, and

(ii) “[t]he provisions of applicable Moldovan legislation:

(a) *Law no 330 of 25 Marche 1999 on physical education and sports, as further amended;*

(b) *Law no 837 of 17 May 1996 on non-profit organizations, as further amended;*

(c) *The Code of Education of the Republic of Moldova approved by Law no 152 of 17 July 2014*”.

d) Proportionality of the Sanction Imposed on TFM

152. The Respondent argues that the Appealed Decision is provisional and remains effective only until the GA Meeting, which will or will not confirm the Appealed Decision pursuant to Article 7.11.2 of the NOSC Statute.

153. The EB may lift the Appellant’s suspension “*by the remedy of the violations*” pursuant to Article 7.11.2 of the NOSC Statute.

154. The Appealed Decision provides for the possibility of resolution of the dispute through the LCC, but such conciliation “*is possible only when TF wants to cooperate with the other implicated parties: SCPNT, RBLSP, coaches and athletes, MYS and NOSC. With regret, we state that until the moment of perfecting the present statement of defense [TFM] has not manifested any wish to cooperate with NOSC, as*

declared by the [TFM] President in his letter dated 24 March 2017: 'Both parties will be able to declare that they have made everything in their power to avoid the examination of the conflict in court'.

155. At the GA Meeting, the TFM will be given a chance to defend itself against the NOSC's allegations and will have a full opportunity to be heard.

e) *The Powers of NOSC to Impose a Sanction*

156. According to the Respondent, the EB has the power to sanction a member of the NOSC, mainly pursuant to Article 11.3.11 of the NOSC Statute, *"that provides that the CE NOSC 'is empowered to file the proposals for stimulation and sanctioning of the NOSC members'"*.
157. The EB has the power to suspend an NOSC member pursuant to Article 7.11.2 of the NOSC Statute, cited by the Respondent as follows:

"In a period between the meetings of the General Assembly, the Executive Committee [of the NOSC], may decide, at its sole discretion and provisionally, on suspension of a membership [of a member Federation] with immediate effect, including in the cases of withdrawal or cease of their activity. The suspension will be effective until the immediately upcoming meeting of the General Assembly and should be confirmed by it. The latter should not apply for the cases when [the term of] suspension has already expired or cancelled by the Executive Committee prior to date of the immediately upcoming meeting of the General Assembly".

f) *The Conclusions of the Respondent*

158. The NOSC has a duty to protect the interests and rights of athletes and coaches pursuant to Article 4.29 of the NOSC Statute. The practical effect of the Appealed Decision was to allow deserving athletes to participate in competitions.
159. Pursuant to Article 4.15 of the NOSC Statute, the NOSC's role includes encouraging and supporting promotion of ethics and good governance in sports, as well as education of young people through sports. The NOSC did not wish to suspend the TFM but needed to stop them from trampling on athletes' rights. The EB has clear authority to suspend under Article 7.11.2 of the NOSC Statute.
160. The legal burden in respect of issuing a temporary or provisional suspension is different from the burden in respect of a decision on the merits.
161. TFM, as a member of NOSC, has obligations that it did not meet, including (i) *"[t]o comply with the Statute, Regulations, Code of Ethics and decisions of NOSC bodies, as well as with the Olympic Charter"* pursuant to Article 9.3(a) of the NOSC Statute, (ii) *"[t]o contribute to strengthening and enhancing the prestige of NOSC and Olympic Movement"* pursuant to Article 9.3(c) of the NOSC Statute, and (iii) *"[n]ot to carry out actions that, by their character, may affect the goals, interests or professional reputation of NOSC"* pursuant to Article 9.3 (d) of the NOSC Statute.

162. The TFM does not consider that they need answer to anyone, but their autonomy is not absolute and is subject to regulation by NOSC. The various appeals to NOSC by athletes are requests for help. If NOSC had not intervened, Mr. Stepan Dimitrov would not be able to participate in OG2020.
163. Since 2015, approximately ten letters have been sent from the NOSC to the TFM to which the TFM has not replied. The NOSC has been trying unsuccessfully to find common ground with the TFM since 2014.
164. The unjustified denial of participation in competitions and the trampling of athletes' rights by TFM hurts the NOSC and constitutes a violation of TFM's obligations as a NOSC member.

V. JURISDICTION

165. In accordance with the Swiss Private International Law (cf. Article 186 of the Swiss Federal Code on Private International Law), and generally well accepted principles of *Kompetenz Kompetenz* in international arbitration, the CAS has the power to decide upon its own jurisdiction.
166. Article R47 of the Code provides that “[a]n appeal against the 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”.
167. The Appellant asserts in the Appeal Brief that the NOSC is a “sports-related body” and relies on Article 23.2 of the NOSC Statute, which states: “In the case of unresolved disputes at national or international level, the responsible authority will be the Court of Arbitration for Sport in Lausanne, Switzerland”.
168. In the Answer, the Respondent objected to the jurisdiction of the CAS, asserting *inter alia* that the Appellant, being a member of the NOSC, has failed to make use of all legal mechanisms provided by the NOSC Statute and to wait for a final decision of approval by the GA at the GA Meeting pursuant to the NOSC Statute. However, at the hearing, the Respondent abandoned its objection to the jurisdiction of the CAS and expressly accepted such jurisdiction.
169. Against the background of the explicit recognition of jurisdiction of the CAS by the Respondent, the Panel is satisfied that Article 23.2 of the NOSC Statute provides for appeal to the CAS in cases, such as the present one, concerning the imposition of a suspension on a sports federation. Accordingly, the Panel deems that CAS has jurisdiction, as confirmed by the parties at the hearing.

VI. ADMISSIBILITY OF THE APPEAL

170. Pursuant to Article R49 of the Code, “[i]n the absence of a time limit set in the statutes or regulations of the federation, association, or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.
171. The time limit in Article R49 of 21 days to file the Statement of Appeal may be derogated by the statutes or regulations of the federation, association or sports-related body concerned. In this regard, Article 23.2 of the NOSC Statute provides that “... the deadline for appealing CAS is 21 days from the receipt of the decision to be contested”.
172. The Appealed Decision was issued on 9 March 2017. The Statement of Appeal was filed on 30 March 2017.
173. The Appellant filed its Appeal Brief on 10 April 2017 pursuant to Article R51 of the Code.
174. For the above reasons, the Panel is satisfied that the Appellant complied with the applicable time limits and that therefore, the Appeal is admissible.

VII. APPLICABLE LAW

175. Article R58 of the Code provides as follows:

“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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

176. The Appealed Decision against which the appeal was brought was issued under the NOSC Statute. It is undisputed by the parties that the NOSC Statute is applicable to the present dispute and the Panel accordingly refers to those rules. Given the domicile of the Respondent, the law of Moldova applies subsidiarily.

VIII. MERITS

177. The following refers to the substance of the parties’ allegations and arguments without listing them exhaustively. In its discussion, the Panel has nevertheless examined and taken into account all of the parties’ allegations, arguments and evidence on record, whether or not expressly referred to below.
178. The Panel first examines the legal framework applicable to its analysis of the suspension imposed on the Appellant.

A. The EB's authority to issue the Suspension

179. The Appellant appears to rely on Article 7.11.2 of the NOSC Statute to assert that the EB is not authorized to decide independently on suspension of membership “for an indefinite period”, but is authorized to “... [p]rovisionally decide on the suspension of membership with immediate effect”. Article 7.11.2 of the NOSC Statute states as follows:

“The General Assembly of NOSC shall take the decision to suspend the NOSC membership at the recommendation of the Executive Board. During the period between meetings of the General Assembly, the Executive Board may decide on its own to suspend temporarily the membership, with immediate effect, including in the cases of withdrawal or termination of their activity. The suspension shall be effective until the next meeting of the General Assembly and shall be confirmed by it. This does not refer to the cases when the suspension expired or was lifted by the Executive Board before the date of the next meeting of the General Assembly” [emphasis added].

180. According to the certified English translation of the Appealed Decision, the suspension is “for an indefinite period”. The original, Romanian version of the Appealed Decision uses the phrase “durata nedeterminata”, which may be strictly translated into English as “undetermined duration” and which is synonymous with “indefinite period”.
181. As Article 7.11.2 of the NOSC Statute clearly stipulates that the suspension is effective until the next GA, but also that the suspension may be lifted by the Executive Board before the date of the next GA, the Panel finds that the “indefinite period” mentioned in the Appealed Decision describes the time period from the date of such Appealed Decision until, at the latest, the next GA to be held on 19 October 2017. It cannot sensibly construe it as meaning for a period without any limit, since this would contradict the express provision in the Article that it cannot last beyond the next GA unless the suspension is confirmed. The adjective ‘indefinite’ simply means not defined e.g. for a particular period of days. In other words, whether the provisional suspension lasts a few days or up to its maximum duration, i.e. until the date of the next GA, is an open issue that makes indeed the length of the period undetermined.
182. Therefore, the EB’s suspension of the Appellant is indeed a temporary or provisional suspension (the “Provisional Suspension”) with immediate effect, which importantly can be either confirmed or cancelled, at the latest at the GA Meeting.
183. The Panel is satisfied that the EB was authorized to issue the Provisional Suspension pursuant to the NOSC Statute.

B. The Burden of Proof

184. In CAS 2007/A/1380 at paragraphs 25 & 27, the concept of the burden of proof was described as follows:

“According to the general rules and principles of law, facts pleaded have to be proved by those who plead them It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must

discharge its burden of proof, i.e., must give evidence of the facts on which its claim has been based” (see also CAS 2011/A/2430 at paragraph 9.6.).

185. In CAS 2011/A/2384 & 2386 at paragraphs 248 & 249, the Panel further explained the concept of burden of proof:

“Under Swiss law, the ‘burden of proof’ is regulated by Art. 8 of the Swiss Civil Code (the “CC”), which, by stipulating which party carries such burden, determines the consequences of the lack of evidence, i.e., the consequences of a relevant fact remaining unproven Indeed, Art. 8 CC stipulates that, unless the law provides otherwise, each party must prove the facts upon which it is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce such evidence”.

186. In this appeal, the Appellant pleads that the allegations against it are false and that it has committed no wrongdoing in relation to such allegations, while the Respondent maintains that the TFM arbitrarily, unfairly and without transparency excluded athletes and coaches from competitions in violation of the Olympic Charter and NOSC Statute.
187. Each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Panel that the facts that it pleads are established.

C. The Applicable Standard of Proof

188. Neither party made arguments in respect of the standard of proof applicable to this appeal, although the Respondent asserted at the hearing that a different burden applies to an appeal against a temporary suspension than to an appeal filed against a decision on the merits.
189. There is no rule in the relevant legislation stipulating the applicable standard of proof for appeals to the CAS.
190. Sports federations are empowered by CAS jurisprudence to decide for themselves which standard of proof to apply in their regulations (CAS 2011/A/2490 at paragraph 29). However, the NOSC Statute does not specify the standard of proof applicable to a provisional suspension of NOSC membership by the EB.
191. For cases in which no legal threshold is specified in the applicable regulations, *“it will fall to the Panel to determine the appropriate standard to apply to the case [W]here the determination of the applicable standard of proof is to be made by the Panel, consistent jurisprudence in similar fields ought to at least be considered in deciding the appropriate standard to apply”* (RIGOZZI/QUINN, Evidentiary Issues Before CAS, in: BERNASCONI M. (ed.), International Sports Law and Jurisprudence of the CAS, Bern 2014, pp. 1-54).
192. In CAS 2017/A/4968, the Panel stated: *“Provisional suspensions have a necessarily preliminary character. The burden of proof and legal thresholds applicable in this appeal must reflect the appealed suspension’s provisional nature and track the rules specific to its imposition”.*

193. As already noted, in respect of the Provisional Suspension, reference to the “rules specific to its imposition” in the NOSC Statute do not expressly or specifically prescribe for the Panel the applicable standard of proof.
194. In CAS 2017/A/4968, the judging CAS panel identified the standard of proof applicable to its review of a provisional suspension: “*The Panel has held that a provisional suspension must be substantiated by more than speculation alone; yet a ‘reasonable possibility’ that the Appellant committed an ADRV in its view is all that is required*”.
195. The standard of proof of “*reasonable possibility*” is further explained as follows:
- “A reasonable possibility is more than a fanciful one, it requires evidence giving rise to individualized suspicion. The standard, however, is necessarily weaker than the test of ‘comfortable satisfaction’ Accordingly, a reasonable possibility may exist even if the Federation is unable to show that the balance of probabilities clearly indicates an ADRV on the evidence available”* (CAS 2017/A/4968).
196. As mentioned above at para. 181, the Provisional Suspension has a maximum duration of less than eight months and purportedly does not result in any barriers to athlete participation in competitions during that period.
197. Accordingly, the Panel finds it appropriate in this appeal to ask whether based on the evidence before it, a “*reasonable possibility*” exists that the Appellant arbitrarily, unfairly and without transparency excluded athletes and coaches from competitions in violation of the NOSC Statute.
- (i) *The Moscow Competition***
198. The Appellant asserts that Mr. Stepan Dimitrov’s participation in the Moscow Competition was denied based on a unanimous decision, taken during a meeting of the Council of Coaches and the TFM board, that the athlete was not prepared to compete at the Moscow Competition due to having missed training sessions organized by the TFM.
199. The minutes of such Council of Coaches and the TFM board meeting were not submitted before the Panel as evidence, although the Appellant asserts that such minutes do exist.
200. The Appellant did not submit any evidence before the Panel to substantiate its claim that Mr. Stepan Dimitrov had missed training sessions organized by the TFM prior to the Moscow Competition.
201. The NOSC’s letter to the TFM on 4 August 2015 requested a “*concrete explanation*” on the issue of Mr. Stepan Dimitrov’s non-registration for international “*rating competitions*”. In response to the Respondent’s charge of “*no answer from TFM to this request*”, the TFM President claims that everything was explained orally to the athlete and to NOSC, but offers no substantiating evidence.

(ii) *The Samsun Competition*

202. The Appellant asserts that the Dimitrovs' participation in the Samsun Competition was denied based on a unanimous decision, taken during a meeting of the Council of Coaches, that the Dimitrovs were not prepared to compete at the Samsun Competition due to having missed training sessions organized by the TFM.
203. The minutes of such Council of Coaches and TFM board meeting were not submitted before the Panel as evidence, although the Appellant asserts that such minutes do exist.
204. The Appellant did not submit any evidence before the Panel to substantiate its claim that the Dimitrovs had missed training sessions organized by the TFM prior to the Samsun Competition.
205. The Appellant did not submit any evidence before the Panel to substantiate its claim of having communicated to the athlete and NOSC the basis for the Dimitrovs' exclusion from the Samsun Competition.

(iii) *Exclusion of Athletes from the National Team*

206. The Dimitrovs' letter to the TFM on 19 November 2015 requested information from the TFM President in respect of (i) their exclusion from the National Team for participation at international competitions, (ii) the procedure and criteria applied in respect of the National Team, and (iii) any sanctions that have been applied against the Dimitrovs by the TFM.
207. On 15 December 2015, the MYS communicated to the Dimitrovs that their sporting achievements during 2014-2015 had secured them a place in the National Team, and that the MYS had issued a warning to the TFM in respect of non-participation of athletes at "*rating competitions*" for the Olympic Games.
208. The Appellant claims but offers no substantiating evidence that it (i) explained orally, to the athletes and their parents, the reasons for their exclusion from the National Team, and (ii) held a meeting with the NOSC to discuss this issue.
209. The Appellant did not submit any evidence before the Panel to substantiate its claim that the Dimitrovs have always been and still are included on the National Team, received funds from the government for being on the National Team and are registered for the 2017 GB Grand Prix.
210. The Appellant did not submit any evidence before the Panel to challenge the validity of MYS' warning to the TFM or claim thereof.

(iv) *The Balkan Games*

211. On 14 September 2016, the Balkan Athletes informed the NOSC that the TFM had denied their registration without explanation and therefore requested the NOSC to support their participation in the Balkan Games.
212. The Appellant did not submit any evidence before the Panel to substantiate its claim that it has no authority to register athletes for competitions that are not “*rating competitions*” such as the Balkan Games and that it is “the clubs’ job” (and not “TFM’s job”) to send athletes to competitions such as the Balkan Games.

(v) *The RBLSP & SCPNT*

213. The Appellant did not submit any evidence before the Panel to substantiate its claim that according to the law of sports of Moldova, only clubs that are TFM members are eligible to participate in the National Championships.
214. The Appellant did not submit any evidence before the Panel to substantiate its claims that (i) it had informed the RBLSP and SCPNT before 11 October 2016 that their athletes were denied participation in the National Championships but could still participate as members of other clubs that are TFM members, and (ii) some RBLSP students did participate in the National Championships as members of other clubs.
215. The Appellant did not submit any evidence before the Panel that it responded to the RBLSP director’s second request (on 12 October 2016) to the TFM to allow RBLSP students to participate in the National Championships and stating that payment of the TFM annual membership fee would be made within seven business days.

(vi) *Mr. Vladislav Mazur*

216. The Appellant did not submit any evidence before the Panel to substantiate its claim that Mr. Mazur’s coaching license was suspended by the WTF at the time of the Baku Competition.

(vii) *GALs*

217. The Appellant did not submit any evidence before the Panel to substantiate its claim that the Dimitrovs’ request on 23 December 2016 was too late for the TFM to meet the 24 December 2016 renewal deadline.
218. The Appellant did not submit any evidence before the Panel to substantiate its claim that it provided an explanation to the Dimitrovs regarding the late extension of their GALs.

219. The Appellant did not submit any evidence before the Panel to demonstrate that it had responded to the Dimitrovs' request on 5 January 2017 for a meeting with the NOSC, TFM, Mr. Mazur and the Dimitrovs to discuss the situation.

(viii) Mr. Andrei Rotaru

220. On 23 February 2017, former National Team member Mr. Andrei Rotaru sent an e-mail to the TFM President summarizing his difficulties with the TFM prior to and after his decision to leave the National Team to compete on behalf of Romania.

221. The Appellant did not submit any evidence before the Panel to refute the allegations made by Mr. Rotaru in his e-mail to the TFM.

D. Concluding Remarks

222. The Appellant asserted at the hearing before the Panel that it only learned of the reasons for the Appealed Decision after reading the Answer. It was on this basis, the Appellant argued, that it previously filed a request to submit a written "response" to the Answer.

223. The Panel is not satisfied that the Appellant was, in effect, "caught by surprise" as to the basis for the Appealed Decision.

224. The Appellant attended the EB Meeting and heard the allegations made against it by the NOSC. The Appellant also did not dispute receiving (i) the NOSC's letter to the TFM on 4 August 2015 requesting, *inter alia*, an explanation for Mr. Stepan Dimitrov's exclusion from the Moscow Competition, (ii) the Dimitrovs' letter to the TFM on 19 November 2015 requesting, *inter alia*, an explanation for their exclusion from the National Team, (iii) the MYS' warning to the TFM in respect of "ungrounded measures" that resulted in the non-participation of athletes at "rating competitions" for the Olympic Games, (iv) the requests from the RBLSP and SCPNT for the TFM to allow the participation of their students in the National Championships, (v) the Dimitrovs' letter to the TFM on 5 January 2017 requesting a meeting with the NOSC, TFM and Mr. Mazur to discuss the ongoing situation, (vi) Mr. Rotaru's e-mail to the TFM on 23 February 2017 outlining the difficulties he had experienced with the TFM, (vii) the NOSC's letter to the TFM on 28 February 2017 stating that the EB Meeting would focus on the complaints of the Dimitrovs and other athletes and the violations which hinder the participation of such athletes and coaches in national and international competitions, and (viii) the Appealed Decision, which refers to "*the complaints made by the athletes ... and coach Mazur*".

225. Moreover, at the hearing, the Appellant was not precluded from responding to the allegations put "in play" by the Answer in attempts to justify its conduct. However, these attempts lacked a specific, underlying, evidentiary foundation.

226. The Appellant has not shown cause to lift the Provisional Suspension. On the totality of the evidence proffered by the parties, the cumulative effect is that the Panel accepts that there is a

reasonable possibility that the Appellant arbitrarily, unfairly and without transparency excluded athletes and coaches from competitions in violation of the NOSC Statute.

227. Finally, as indicated by the Panel with the letter sent by the CAS to the parties on 9 October 2017, together with the operative part of the present Award, the Panel is satisfied that Article 7.11.4 of the NOSC Statute is not to be interpreted as prohibiting the Appellant from communicating in any lawful manner with other NOSC members prior to and during the GA Meeting for the purpose of preparing and presenting its case in respect of the GA's review of the Appealed Decision. It is axiomatic that the Appellant shall have a full and fair opportunity to prepare and present its case and to be heard in respect of the review of the Appealed Decision by the NOSC General Assembly and to respond to the justifications for that decision found on the Respondent's website.
228. Based on the above considerations, the Panel concludes that the Appeal filed on 30 March 2017 by TFM against the Appealed Decision shall be dismissed and the Appealed Decision, therefore, shall be upheld.
229. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 30 March 2017 by Taekwondo Federation of Moldova against the decision of the National Olympic and Sports Committee of Moldova Executive Board on 9 March 2017 is dismissed.
2. The decision of the National Olympic and Sports Committee of Moldova Executive Board on 9 March 2017 is upheld.
- (...)
5. All other motions or prayers for relief are dismissed.