



**Arbitration CAS 2012/A/2813 Croatian Golf Federation (CGF) v. Croatian Olympic Committee (COC), award on jurisdiction of 23 January 2013**

Panel: Mr Manfred Nan (The Netherlands), President; Mr Michael Gerlinger (Germany); Mrs Vesna Bergant Rakocevic (Slovenia)

*Golf*

*Exclusion of membership*

*Interpretation of Rule 61.2 of the Olympic Charter*

*Meaning of an arbitration agreement under Swiss law*

*Offer to arbitrate through a text published on the official website of a National Olympic Committee*

- 1. Rule 61.2 of the Olympic Charter (OC) requires that the dispute must be closely linked to an individual edition of the Olympic Games and should not be interpreted broadly, so as not to deprive Rule 61.1 OC of any meaning. Therefore, Rule 61.2 OC does not cover disputes concerning membership of the IOC that only indirectly impact on an individual edition of the Games. Article 72 (3) of the COC Statutes should also be interpreted and applied accordingly.**
- 2. Generally, an arbitration agreement is a bilateral – or multilateral – contract, according to which two – or more – parties bindingly agree to submit one or more existing or defined future disputes before an arbitration panel/or an arbitral institution, in accordance with a directly or indirectly defined legal system and to the exclusion of the state courts. Additionally, the arbitration agreement must be clear and definite about the private jurisdiction, in the sense that the arbitral tribunal appointed must either be clearly defined or at least be definable. As such, the arbitration agreement lies in the heart of the arbitration procedure.**
- 3. A text published on the official NOC's website makes such NOC – in principle – responsible for and bound by the content of this website. If such website does not require login with password, it is accessible for everybody and its main goal is for general information to everyone and not only to its members. To know the details of jurisdiction, composition, structure, as well as the rules on arbitration and conciliation procedure, the publication on the website refers to the applicable regulations. As a consequence, the intention of the publication on the website is for information purposes only and, as such, does not qualify as an offer to arbitrate.**

## I. THE PARTIES

1. The Croatian Golf Federation (“the Appellant” or “CGF”) is the federation of Croatian golf clubs and has its seat in Zagreb, Croatia.
2. The Croatian Olympic Committee (“the Respondent” or “COC”) is the highest sports body in Croatia and has its seat in Zagreb, Croatia.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. Although the Panel has considered all the evidence, factual allegations, legal arguments and submissions of 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. On 23 January 2009 the Appellant, as a member of the COC, went into bankruptcy proceedings.
5. By decision of the Zagreb Commercial Court dated 29 June 2010, which decision entered into force on 20 July 2010, the Appellant exited the bankruptcy proceedings.
6. On 7 September 2010 the COC’s Assembly decided to exclude the Appellant from the COC.
7. On 8 August 2011, the Appellant filed a request to the COC’s “Sport Arbitration Council” for an extraordinary examination of the COC’s Assembly decision from 7 September 2010 and also seeking a resolution for financial issues regarding alleged non-payment from the Respondent to the Appellant of guaranteed annual grants as well as financial issues regarding the Respondents alleged responsibility because of financial losses.
8. On 13 April 2012, the COC’s “Sports Arbitration Council” rejected the request of the Appellant.
9. The operative part of the decision of the COC’s “Sports Arbitration Council” dated 13 April 2012 reads as follows:

*“Request from 10 August 2011 made by the Croatian Golf Federation, Zagreb (...) against the Croatian Olympic Committee, Zagreb (...) for extraordinary re-examination of decisions is rejected in the part as it requests to:*

- 1) *Set aside decision of the Croatian Olympic Committee regarding cessation of the Croatian Golf Federation membership in the Croatian Olympic Committee because of both – procedural and substantial – reasons and determine that the Croatian Golf Federation is to be considered as a Croatian Olympic Committee full member with all rights. (...)*

- 2) *Order the Croatian Olympic Committee in favour of the Croatian Golf Federation, based on the Croatian Olympic Committee official budget for 2008, 2009 and 2010, payment of (...) within 8 days counting from the date of the award.*
- 3) *Order the Croatian Olympic Committee in favour of the Croatian Golf Federation, based on the damages suffered, payment of the amount of 60.000,- EUR”.*

10. The decision was notified to the Appellant on 26 April 2012.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

11. By Statement of Appeal dated 17 May 2012, the Appellant appealed the decision of the COC’s “Sports Arbitration Council” dated 13 April 2012 (hereinafter also referred to as “the Decision”), rejecting the Appellant’s request for an extraordinary examination of the decision of the COC Assembly nr. 1206/10 dated 7 September 2010 that ordered the exclusion of Appellant as a member of COC.

12. On 10 July 2012, the Appellant submitted its Appeal Brief.

13. On 24 August 2012 and pursuant to Article R54 of the of Sports-related Arbitration (the “CAS Code”), the parties were informed that the Panel established to decide the case between them was composed of:

President: Mr. Manfred Peter Nan, Attorney-at-law in Arnhem, the Netherlands

Arbitrators: Mr. Michael Gerlinger, Director Legal Affairs in Munich, Germany, nominated by the Appellant,  
Mrs. Vesna Bergant Rakocevic, Higher Judge in Ljubljana, Slovenia, nominated by the Respondent.

14. By letter dated 4 September 2012, the Panel informed the parties of its decision to bifurcate the CAS proceedings in order for the Panel to decide as a preliminary matter on jurisdiction and the admissibility of the appeal.

15. On 19 September 2012, the Respondent submitted its Answer on jurisdiction and admissibility of the appeal.

16. On 5 November 2012, the Appellant submitted its reply on jurisdiction and admissibility of the appeal.

17. The parties confirmed to the CAS Court Office that they agreed to waive a hearing regarding the issues of jurisdiction and admissibility.

18. In the above circumstances and pursuant to article R57 of the CAS Code, the Panel decided to refrain from holding a hearing.

#### IV. SUMMARY OF THE PARTIES' POSITIONS WITH REGARD TO CAS JURISDICTION AND ADMISSIBILITY

19. The following discussion of the parties' positions on the preliminary issues of jurisdiction and admissibility is in summary form and does not purport to include every contention put forward by the parties. However, the Panel has carefully considered all of the submissions put forward by the parties, even if there is no specific reference to those submissions in the following discussion.

##### A. Appellant's submissions

20. The Appellant has illustrated his position in favour of the jurisdiction of the CAS and the admissibility of the appeal in various documents submitted all along these proceedings, in particular, in its Appeal Brief and its additional reply on jurisdiction.

21. First, the Appellant submits that all CAS jurisdictional prerequisites envisaged in article R47 of the CAS Code are met in the present case because *"there is clearly a valid and specific agreement providing for CAS arbitration (A) and that there is no provision in the COC Statutes or COC Sports Arbitration Council Rules of Procedure which restricts the possibility to legitimately appeal this matter before CAS (B)"*.

22. The Appellant points to the clear wording of an offer to arbitrate posted on the COC website since 14 July 2008, which states: *"When challenging a decision of the Sports Arbitration Council, one may appeal to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, which will make a final decision on the dispute in accordance with the Code for Sport-Related Arbitration (CAS Code)"*.

23. By reference to this offer, the Appellant accordingly contends that he has an express right of appeal to the CAS because *"It is a clear and specific offer made in a qualified fashion to the limited number of parties who are capable of going before its Sports Arbitration Council and who rely, on a daily basis, on the information that is contained on the COC website"*. The Appellant emphasises that the necessary requirements for a valid offer are met.

24. Furthermore, the Appellant states that Article 260 of the Croatian Obligations Act provides that *"(an) Offer made in writing is obligatory to the one who made offer even if that offer is not signed by an authorized person if it was made on its usual paper sheet (memorandum) which is commonly used in its business operations"*.

25. The Appellant points out that the formal requirements of an arbitration agreement as mentioned in Article 178 par. 1 of the Swiss Private International Law Act ("PILA") and the Croatian Law on Arbitration are satisfied *"by the manner which the specific offer of the Respondent to arbitrate decisions of the COC Sports Arbitration Council was accepted by virtue of the Appellant's formal Statement of Appeal filed with CAS on 17 May 2012"*.

26. Also, the Appellant refers to the "liberal approach" of the Swiss Federal Tribunal with respect to the existence of arbitration agreements in sport.

27. In continuation, the Appellant argues that he has an express right of appeal to the CAS, because the clear “*offer to arbitrate on the COC website does not contradict the COC Statutes or the Rules of Procedure*”. The Appellant emphasizes that the COC Statutes and its Rules of Procedure do not exclude the possibility of an appeal before CAS, and refers to Article 72 (3) of the COC Statutes which provision acknowledges the possibility of appeals before CAS.
28. The Appellant remarks that it has a standing to appeal because the representative of the Appellant, Mr. Dino Klisovic, was duly authorized to enter into an arbitration agreement under Croatian law on behalf of the Appellant. The Appellant refers to a decision dated 28 June 2010 of the Croatian Commercial Court in Zagreb.
29. The Appellant stresses that it is the official representative association of European Golf Association and has been an active participant to international golfing events prior to, during and subsequent to its bankruptcy proceedings.
30. Finally, the Appellant argues that the COC Sports Arbitration Council as well as the CAS have jurisdiction to hear the financial claims resulting from the original decision of the COC to terminate the membership of the Appellant.
31. Therefore, the Appellant states his conclusions on the preliminary issues requesting that the CAS issue a preliminary award:
  - “- *Dismissing the Respondents challenge to Jurisdiction and Admissibility*
  - *Granting the Appellant compensation for legal and other costs incurred in connection with the challenge*”.

## **B. Respondent’s submissions**

32. The COC challenges the jurisdiction of CAS and the admissibility of the appeal.
33. The COC points out that “*the applicable laws and regulations do not foresee the possibility to appeal to the CAS (...). Neither the Sports Act, nor the COC Statutes, nor the Rules of Procedure provide for a possibility to appeal the decision issued by the Sports Arbitration Council before the Court of Arbitration for Sport*”.
34. Moreover, the COC argues that CAS lacks jurisdiction because of “*Absence of a specific arbitration agreement providing for CAS arbitration*”. The COC emphasizes that “*the press release cannot be construed as an offer to arbitrate*” because it “*does not contain the constituent elements of an arbitration agreement as defined by the Swiss legal system, article 6 of the Croatian Law on Arbitration and Article 7(1) of the Model Law*”.
35. According to the COC, the necessary formal requirements for an arbitration agreement are not met.

36. The COC underlines that *“even assuming that the press release would constitute an offer to arbitrate issued by the COC, the acceptance to such alleged offer is not valid”*.
37. Therefore, the COC submits that the decision of the Sports Arbitration Council is final and binding.
38. In addition, the COC remarks that *“the Appellant was not represented by a duly authorized representative in accordance with Croatian Law. Therefore, it cannot have the standing to appear in the present proceedings by being represented by Mr Dino Klisovic”*.
39. The COC argues that the Appellant’s prayers for relief aiming at obtaining an award condemning the COC to pay to the Appellant monetary claims are inadmissible.
40. In conclusion on the preliminary issues the COC respectfully requests the Panel to rule as follows:
1. *“The Appeal filed by the Croatian Golf Federation on 17 May 2012 is inadmissible.*  
*Subsidiary*
  2. *The prayer for relief submitted by the Croatian Golf Federation (...) is inadmissible.*
  3. *The Croatian Golf Federation shall compensate the Croatian Olympic Committee for the legal and other costs incurred in connection with this arbitration, in an amount to be decided at the discretion of the panel”*.

## V. JURISDICTION OF THE COURT OF ARBITRATION FOR SPORT (CAS)

41. In view of the above, this award is concerned solely with the issues of jurisdiction and admissibility.

### V.1 Power of the Panel to Decide on Its Own Jurisdiction

42. First of all, the Panel observes that this case involves two sports entities domiciled in Croatia, i.e. two parties that are not domiciled in Switzerland. This arbitration procedure is thus clearly governed by Chapter 12 of the PILA, in accordance with Article 176 thereof (see CAS 2005/A/983 & 984 marg. No. 61, CAS 2006/A/1180 marg. No. 7.1).
43. That said, the Panel observes that the jurisdiction of an international arbitral tribunal sitting in Switzerland to decide on its own jurisdiction is regulated by Article 186 PILA, which article states that *“The arbitral tribunal shall decide on its own jurisdiction”*.
44. It follows that this Panel has the authority to decide the issue of its own jurisdiction and, in accordance with para. 3 of Article 186 PILA, it may adjudicate this preliminary issue by means of a partial award.

## V.2 Findings of the Panel on CAS jurisdiction

45. Article R47 of the CAS Code reads as follows:

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

*An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance”.*

46. It is therefore clear that for CAS to have jurisdiction in a matter requires that either the parties have expressly agreed to it or that the statutes or regulations of the body issuing the decision provide for an appeal before CAS.

47. CAS jurisprudence has repeatedly confirmed this position; see with regard to the latter criterion the award on jurisdiction in the case CAS 2005/A/952:

*“In order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made, must expressly recognize the CAS as an arbitral Body of appeal”...*

*“In the present case, the statutes or regulations of the relevant body – the FAPL – do not contain any reference to a right of appeal to the CAS. In fact, FAPL rule R63 states that the decision of an appeal board shall be final. The CAS therefore has no jurisdiction to hear an appeal from a decision of the FAPLAC, on the basis of the statutes or regulations of the FAPL”.*

### **A. Do the COC Statutes or Regulations provide an arbitration clause for an appeal to CAS**

48. The Panel acknowledges that the Appellant does not rely on the statutes or regulations of the COC, and that the Respondent submits that the applicable laws and regulations do not foresee the possibility to appeal to the CAS. However, the Appellant indeed makes reference to the statutes and regulations of COC, but argues *“that there is no provision in the COC Statutes or COC Sports Arbitration Council Rules of Procedure which restricts the possibility to legitimately appeal this matter before CAS”* and *“in fact, Article 72(3) of the COC Statutes expressly references the possibility of appeals against decisions of the COC Sports Arbitration Council being brought before CAS”*.

49. Therefore, the Panel first turns its attention to Article 72 of the COC Statutes, which provides:

*“(1) The Council for Sports Arbitration (hereafter referred to as the CSA) takes a decision on the request for extraordinary re-examination of sports associations’ decisions when other legal redresses have been exhausted or they do not exist and performs other duties determined by this Statute, the Procedure Regulations, Arbitration Regulations of the Court of Arbitration and other NOC of Croatia and CSA acts.*

(2) *The CSA performs the following duties:*

- *supervises the work of the Court of Arbitration within the NOC of Croatia and provides working conditions for its services;*
- *gives legal opinions at the request of the NOC of Croatia Council or at the request of national sports federations, county associations and other associations;*
- *appoints the CSA Secretary who is at the same time Secretary of the Court of Arbitration.*

(3) *The Appeal against the dispute arising from or relating to the Olympic Games is submitted exclusively to the Court of Arbitration for Sport in Lausanne in accordance with the Code of Sports-Related Arbitration”.*

50. The Panel has no doubts that Article 72 (3) of the COC Statutes opens the possibility to appeal to the CAS, but only for disputes arising from or relating to the Olympic Games. The Panel follows the Respondents submissions, which are not disputed by the Appellant, that “*this provision has been adopted by the COC Assembly in December 2005 in order for the COC to comply with the arbitration clause provided for under the Olympic Charter (current Rule 61 par. 2 of the Olympic Charter)*”.
51. The Panel notes that the Minutes of the COC Assembly on 21 December 2005 show that Mr. Dino Klisovic, as a representative of the Appellant, attended this Assembly.
52. Regarding the scope of Rule 61.2 of the Olympic Charter, the Panel refers to the reasoning of other CAS Panels in recent decisions in which is considered that Rule 61.2 OC requires that the dispute must be closely linked to an individual edition of the Olympic Games (see CAS 2011/A/2576, par. 6.13: “*if Rule 61.2 OC would be interpreted in a broad sense, this would deprive Rule 61.1 OC of any meaning (...) Rule 61.2 OC does not cover disputes concerning membership of the IOC that only indirectly affect an individual edition of the Games*”). The Panel concurs with the case law cited above which exemplifies the narrow scope of this provision.
53. As a consequence, the Panel finds that Article 72 (3) of the COC Statutes must be interpreted and applied accordingly.
54. The Panel notes that the dispute between the parties relates to the rejection of the Appellant’s request for an extraordinary examination of the decision of the COC Assembly nr. 1206/10 dated 7 September 2010 that ordered the exclusion of Appellant as a member of COC.
55. Although the Appellant submits that golf is considered an Olympic sport from October 2009 irrespective of the fact that golf will not be part of the Summer Olympic Games schedule until 2016, the Panel establishes that the current dispute concerns the membership of the COC and therefore has no hesitation to believe that the current dispute is not closely linked to an individual edition of the Olympic Games and/or arising from or related to the Olympic Games.
56. As a consequence, the Panel acknowledges that the applicable statutes and regulations do not provide for an appeal to the CAS regarding the Decision.

57. Accordingly, the Panel has to consider whether a specific arbitration agreement exists for appeal to the CAS.

**B. Does a specific arbitration agreement exist for appeal to the CAS**

58. As to this criterion, the Panel concludes that there was clearly no agreement between the parties to submit the case to the jurisdiction of CAS, not least but not only because the COC has expressly challenged such jurisdiction.

59. As an arbitration agreement is not further regulated in the CAS Code, and the Panel acknowledges that an arbitration agreement must meet the requirements of Article 178 PILA, it turns its attention to Article 178 PILA, which provides:

*“(1) As regards its form, an arbitration agreement is valid if made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.*

*(2) As regards its substance, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the law governing the main contract, or if it conforms to Swiss law”.*

60. The Panel identifies that even in the Swiss PILA there is no definition of the ‘arbitration agreement’ or details as to the essential features and the necessary content of an arbitration clause<sup>1</sup>. Generally, an arbitration agreement is a bilateral – or multilateral – contract, according to which two – or more – parties bindingly agree to submit one or more, existing or defined future disputes before an arbitration panel/or an arbitral institution, in accordance with a directly or indirectly defined legal system and to the exclusion of the state courts<sup>2</sup>. Additionally, the arbitration agreement must be clear and definite about the private jurisdiction, in the sense that the arbitral tribunal appointed must either be clearly defined or at least be definable. As such, the arbitration agreement lies in the heart of the arbitration procedure.

61. The Panel remarks that – although the Appellant refers to the “liberal approach” of the Swiss Federal Tribunal with respect to the existence of arbitration agreements in sport – the Swiss FT has consistently held that the existence of an arbitration agreement “*cannot be admitted too easily*”; one must look at the intention of the parties and arbitration clauses shall be sufficiently precise as to the subject matter of the dispute.

62. The Panel establishes that such a sufficiently precise arbitration agreement as to the subject of the matter does not exist between the Appellant and the Respondent.

63. As indicated in para.58 of this award on jurisdiction, the Panel cannot determine a factual consensus of the parties as to the arbitration clause in dispute either.

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<sup>1</sup> See DFT 4P.253-2003, 5.1; see also WENGER/MUELLER, Art. 178, N 3 (1527).

<sup>2</sup> DFT 130 III 66 ff., 70; DFT of 25.3.2004, 4P.253/2003 E. 5.1; GIRSBERGER ET AL., *Zürcher Kommentar zum IPRG* (Zurich 2007, 2<sup>nd</sup> ed.), Art. 178, N 12.

64. The Panel notes that the Appellant argues that such an agreement exists because the COC clearly and specifically offered the possibility to arbitrate and to appeal to CAS on its website, which offer was accepted by the Appellant through its Statement of Appeal.
65. Therefore, the Panel's first issue to decide is whether the publication on the COC website must be seen as an offer to the Appellant to appeal to CAS regarding the appealed decision of the Sports Arbitration Council.
66. In continuation, the Panel draws its attention to the publication on the COC website, which reads as follows:

*"Sports Arbitration*

*Published 21.04.2010*

*Sports Arbitration: To resolve sport disputes and those related to sport, to review the decisions of sports associations, against which other means of legal protection have been exhausted or do not exist, and among other things, to provide legal opinions on the request of the Council or members of the Croatian Olympic Committee, the COC Assembly founded independent bodies within the Croatian Olympic Committee – the Sports Arbitration Tribunal and the Sports Arbitration Council – at its 19<sup>th</sup> meeting held on 25 May 1999.*

*The Arbitration Rules of the Sports Arbitration Tribunal, also adopted at the 19<sup>th</sup> COC Assembly meeting, regulate in detail the issues of its jurisdiction, composition and structure, as well as the rules on the arbitration and conciliation procedure. Parties typically agree on the scope of competence of the Sports Arbitration Tribunal in advance.*

*The SPORTS ARBITRATION COUNCIL is especially authorised to resolve disputes and issues of importance for performing the tasks of the Croatian Olympic Committee. Particularly important among them are the decisions on disciplinary measures and those on doping, on disciplinary and other proceedings, which mean or imply long-term ban from sport competitions, decisions concerning Olympic candidates and top athletes (and athletes down to the 3<sup>rd</sup> category), principles and conditions of sports competitions and other issues regulated by the COC bylaws.*

*When challenging a decision of the Sports Arbitration Council, one may appeal to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, which will make a final decision on the dispute in accordance with the Code for Sport-Related Arbitration (CAS Code).*

*Members of the Sports Arbitration Council are elected by the COC Assembly among lawyers, who are also athletes or former athletes and sport officials. The Sports Arbitration Council office is in Zagreb (...)*

*SPORTS ARBITRATION COUNCIL 2009-2014:*

*(...)*

*I PERMANENT COUNCIL*

*(...)*

*II PERMANENT COUNCIL*

*(...)*

### III PERMANENT COUNCIL

(...):

67. The Appellant argues that all the necessary requirements for a valid offer are met because “*it is a clear and specific offer made in a qualified fashion to the limited number of parties who are capable of going before its Sports Arbitration Council and who rely, on a daily basis, on the information that is contained on the COC website*”.
68. On the other hand, the Respondent argues that given its general nature “*the press release cannot be construed as an offer to arbitrate*” because it “*does not contain the constituent elements of an arbitration agreement as defined by the Swiss legal system, article 6 of the Croatian Law on Arbitration and Article 7(1) of the Model Law*”.
69. As a consequence, the Panel has to analyse carefully the content of the publication on the COC website in order to assess if it could be construed as an offer to arbitrate.
70. In doing so, the Panel – also – takes into consideration whether or not the publication demonstrates that the COC intended to be bound to an agreement to arbitrate and whether or not the publication could be understood in good faith by the Appellant as the expression of an intent by the COC to activate a legal transaction and to enter into a legally binding commitment towards the Appellant. As far as required to be able to make an objective interpretation, the Panel will apply the principle of mutual trust.
71. This interpretation of the Panel is confirmed by the Swiss Federal Tribunal; in this respect, see particularly its judgement of May 3<sup>rd</sup>, 2010, 4A\_456/2009, where the Swiss Federal Tribunal addressed the issue of validity of an arbitration agreement and notably the offer to conclude an arbitration agreement in a doping-related case. The athlete (a ‘national-level’ track-and-field athlete according to the WADC and the IAAF rules) appealed against a decision rendered by its national federation (suspending him for a doping offence) to the CAS<sup>3</sup>. The CAS accepted its jurisdiction not on the basis of an arbitration clause contained in the rules/statutes of the federation but rather on the basis of a ‘specific arbitration agreement’, in the form of a letter sent by the IAAF to the athlete with the following content: “*I would remind you that the decision that will ultimately be taken by the relevant disciplinary commission of [the national federation] after ... will be subject to an appeal to the CAS in Lausanne, on your initiative if you disagree with it or on the initiative of the IAAF, if the decision is not in accordance with the IAAF Rules. This will inevitably lead to a costly and lengthy arbitration procedure until the final award is rendered by CAS*”.
72. The Swiss Federal Tribunal repeated that the conditions of Art. 178 PILA have to be fulfilled and that the material conditions (and particularly the consent of the parties to arbitrate) have to be determined according to the second paragraph of Art. 178 PILA while the arbitration agreement has to be interpreted in accordance with the general principles of law and

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<sup>3</sup> Cf. DFT 4A\_456/2009 of 3 May 2010, at 3.3 ff.

particularly the principle of good faith<sup>4</sup>.

73. The Swiss Federal Tribunal further found that, in the challenged decision, the CAS Panel could not establish the real consent of the parties. Although the CAS interpreted the letter sent by the IF to the athlete according to the principle of trust, the Swiss Federal Tribunal held that this principle presupposes the express declaration of intent<sup>5</sup>. This could not be inferred from the beginning of the letter ‘I would remind you that ...’ nor from the general content, which should be interpreted as the perception of the IAAF on the appeal procedure and not as an offer in good faith to conclude a binding arbitration agreement<sup>6</sup>.
74. The Panel establishes that the text is published on the official COC website and therefore the Panel has no hesitation to consider that the Respondent is - in principle - responsible for and bound by the content of this website.
75. The Panel further notes that the COC website is accessible for everybody, as no login with password is required. Therefore, the Panel has no hesitation to believe that the main goal of this website publication is for general information to everyone, and thus not limited to its members.
76. Furthermore, the Panel observes that the complete text on this part of the website deals with a brief statement and explanation of the following issues:
- The subject of Sports Arbitration;
  - A reference to the Arbitration Rules;
  - The Sports Arbitration Council;
77. In continuation, the Panel observes that the website publication shows the following specific referral to the applicable Arbitration Rules: *“The Arbitration Rules of the Sports Arbitration Tribunal, also adopted at the 19<sup>th</sup> COC Assembly meeting, regulate in detail the issues of its jurisdiction, composition and structure, as well as the rules on the arbitration and conciliation procedure”*.
78. According to the Panel, the part of the text as referred to by the Appellant shall be interpreted and considered in conjunction with and in the context of the entire text on this page of the COC website.
79. In continuation, the Panel observes that the publication announces the possibility to appeal to CAS, but also refers explicitly to the applicable regulations which *“regulate in detail the issues of its jurisdiction, composition and structure, as well as the rules on the arbitration and conciliation procedure”* (emphasis added).
80. Therefore, all the elements of the publication on the COC website analyzed and viewed in

<sup>4</sup> DFT 1300 II 66 E. 3.1 (70); DFT 129 III 675 E.2.3 (679) with further references.

<sup>5</sup> ‘Vertrauensprinzip’, DFT 132 III 268 E. 2.3.2 (274); DFT 133 III 61 E. 2.2.1 (67); also GAUCH/SCHLUEP/SCHMID, *Schweizerisches Obligationenrecht, Allg. Teil, Bd. I* (Zurich 2008, 9th ed.), N 208.

<sup>6</sup> See also DFT 130 III 66, 3.2 with further references.

conjunction with each other by the Panel converge towards the conclusion that the publication is intended for general information purposes regarding the subject of Sports Arbitration, the Sports Arbitration Council, their members and the applicable regulations. The text on the website only summarizes and describes the general concept regarding arbitration. To know the details of jurisdiction, composition, structure, as well as the rules on arbitration and conciliation procedure, the publication on the website refers to the applicable regulations.

81. As a consequence, the Panel is convinced that the intention of the publication on the COC website is for information purposes only and, as such, does not qualify as an offer to arbitrate regarding any decision of the Sports Arbitration Council.
82. The Panel emphasizes that the publication is clearly incomplete – as is not unusual in case of supplying general information – and clearly needs to be amended, but the Panel finds that the publication on the website lacks some essential elements to be recognized as an offer to arbitrate, *i.e.* because it is not sufficiently precise as to the subject matter. Furthermore, there is no exchange of written documents (including data messages) between the parties supporting the Appellant's position regarding a possible arbitration agreement. The file contains only the publication on the website (as the alleged offer) and the Statement of Appeal (as the alleged acceptance of the alleged offer).
83. The Panel believes that the publication on the website does not give evidence that the COC has the intention to be bound to an agreement to arbitrate at CAS in cases other than those arising from or related to the Olympic Games as governed by the applicable rules. Another interpretation would deprive the explicit rule of Article 72 (3) of the COC Statutes of its importance.
84. Moreover, the Panel considers that the publication on the website could not be understood in good faith by the Appellant, being a (former) member of the COC, as the expression of an intent by the COC to activate a legal transaction and to enter into a legally binding commitment towards the Appellant.
85. Although – as said in para.82 - the wording of the publication is clearly incomplete - it does not say that “**any**” decision of the Sports Arbitration Council may be appealed at CAS. The Panel is of the view that it must have been clear to the Appellant as a (former) member of the COC, whose representative attended the Assembly which adopted the amendments of the Statutes, that it cannot rely on the wording of a part of a website publication instead of or without consulting the applicable rules. In particular, because another part of the website publication refers to the applicable rules and these applicable rules only foresee the possibility of an appeal to CAS regarding disputes arising from or relating to the Olympic Games.
86. As a result, the Panel concludes that the publication on the website could not be understood as referring to any and all disputes, but was limited to such disputes as described in detail in the applicable regulations.
87. The Panel finds that no express declaration of intent to arbitrate at CAS in any and all disputes

can be inferred from the content of the website, which should be interpreted as to generally inform the reader of the website about the COC's Sports Arbitration and not as an offer in good faith to conclude a binding arbitration agreement.

88. In conclusion, the Panel considers that as there is no offer to arbitrate made by the COC, there could also not be a valid acceptance of such no-offer by the Appellant. As a consequence the Statement of Appeal of the Appellant must be considered to be an offer to the COC to arbitrate at CAS, which offer is clearly rejected by the Respondent.
89. Therefore the Panel concludes that no agreement to arbitrate exists which would allow the Appellant to bring his appeal to CAS. As a result, the arguments of the Appellant that it has an express right of appeal to the CAS must be rejected.

### ***C. Conclusion***

90. The Panel therefore concludes that there is no arbitration clause in favour of CAS regarding the dispute between the Appellant and the Respondent. As a consequence, the Panel concludes that there is no evidence of any agreement between the parties as to CAS arbitration.
91. In summary, based on the above-mentioned arguments and taking into account that the conditions of Article R47 of the CAS Code are not satisfied, the Panel unanimously considers that the Court of Arbitration for Sport has no jurisdiction to deal with this case. Accordingly, the issue of admissibility does not have to be discussed and the Panel will not consider the prayers for substantive relief.

## **ON THESE GROUNDS**

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

1. It has no jurisdiction to decide the present dispute between the Croatian Golf Federation as Appellant and the Croatian Olympic Committee as Respondent.
2. The arbitration procedure CAS 2012/A/2813 Croatian Golf Federation vs. Croatian Olympic Committee is terminated and shall be removed from the CAS roll.
3. (...).
4. (...).