



Arbitration CAS 2015/A/4282 Kuwait Karate Federation (KKF), Kuwait Shooting Federation (KSF) & Khaled Jassim Mohammad Almudhaf v. International Olympic Committee (IOC), award of 18 January 2017 (operative part of 27 July 2016)

Panel: Prof. Martin Schimke (Germany), President; Mr Boris Vittoz (Switzerland); Mr Hans Nater (Switzerland)

Karate and Shooting

Suspension of a National Olympic Committee due to government interference

Standing to appeal in general

Standing to appeal of a national federation

Standing to appeal of an athlete

- 1. In order to have standing to sue, an appellant must have an interest worthy of protection or a legitimate interest. This is found to exist if (i) the appellant is sufficiently affected by the appealed decision, and if (ii) a tangible interest of a financial or sporting nature is at stake. Only an aggrieved party who has something at stake and thus a concrete interest in challenging a decision adopted by a sports body may appeal against that decision to CAS. A non-addressee of a decision only has a right to appeal in very restricted cases. As a general rule, the appellant's interest must be concrete, legitimate, and personal. A purely theoretical/indirect interest is not sufficient. In addition, the decision being challenged must affect the appellant directly, concretely, and with more intensity than others. Finally, the interest must exist not only at the time the appeal is filed but also at the time when the decision is issued.**
- 2. A national federation does not have a sufficient, legally protected interest that would justify granting it – as an exception – standing to sue in a matter of suspension of its National Olympic Committee due to government interference, as the national federation is not the addressee of the decision of suspension, is not party to the discussions between the IOC and the interfering government, has no legally protected interests that were violated by the appealed decision, and as a measure of suspension is only provisional.**
- 3. If an athlete, should s/he qualify for the Olympic Games or another international competition, has the guarantee that s/he will be granted an exceptional authorisation for participation to such events under the Olympic flag, respectively the international federation's flag, his/her most fundamental sporting and personal rights, i.e. the valuable protected interest of the possibility of winning a medal, are safeguarded. The mere fact of not being allowed to compete under one's country flag, as important and respectable as it is, does not constitute a sufficient, legally protected interest.**

I. THE PARTIES

1. The Kuwait Karate Federation (“KKF”) has its registered office in the State of Kuwait and is the Kuwaiti national federation governing karate. It is a member of the World Karate Federation (“WKF”) and is affiliated to the Kuwait Olympic Committee (“KOC”).
2. The Kuwait Shooting Federation (“KSF”) has its registered office in the State of Kuwait and is the Kuwaiti national federation governing sport shooting. It is a member of the Asian Shooting Confederation, itself affiliated to the International Shooting Sport Federation (“ISSF”). It is affiliated to the KOC *“and/or part of the Kuwait and International Olympic Movement”*.
3. Mr Khaled Jassim Mohammad Almudhaf (the “Athlete”) is a Kuwaiti shooter, member of the KSF.
4. The International Olympic Committee (the “IOC”) is an international not-for-profit nongovernmental organisation, established as an association under Swiss law, with its headquarters in Lausanne, Switzerland. According to the Olympic Charter, it is responsible for managing the Olympic Movement, which comprises, in addition to the IOC, the International Federations (“IFs”), the National Olympic Committees (“NOCs”), the Organising Committees of the Olympic Games, the national associations, clubs, and the persons belonging to them, particularly athletes, as well as other organisations and institutions recognised by the IOC. The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practised in the conditions described in the Olympic Charter.

II. THE FACTS

A. Introduction

5. Below is a summary of the relevant facts and allegations based on the Parties’ written and oral submissions, pleadings, and evidence. References to additional facts and allegations found in the Parties’ written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis 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 deems necessary to explain its reasoning.

B. The first suspension of the Kuwait Olympic Committee (“KOC”)

6. Initially, Sports Law in Kuwait was governed by the Decree Law n° 42 of 1978 (“Kuwaiti Law n° 42/78”).
7. Since 2007, interferences of the Kuwaiti government in the national Olympic and sports movement were reported. The Kuwaiti Law n°42 of 1978 was amended in several respects.

8. This situation triggered numerous exchanges and meetings between representatives of the IOC and delegations of the Kuwaiti competent authorities. In particular, on 23 October 2009, a delegation from the Public Authority for Youth and Sports (“PAYS”; currently Public Authority for Sport - “PAS”) in Kuwait and representatives of the IOC met in Lausanne in order to discuss a new draft law, which would govern sport in Kuwait. According to the memorandum of that meeting, dated 28 October 2009, the participants had approved the new law and PAS *“confirmed the commitment from the Kuwait Government that is willing to finalize the draft of the new Kuwait Sports law and to ensure that the new sports law will be adopted and issued before 31 December 2009 in order to meet the deadline of the agreement dated 15 July”*.
9. On 1 January 2010, the President of the IOC informed the KOC of the following:

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

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

This suspension takes effect as of today”.
10. In 2012, on the basis of personal assurances provided on 9 July 2012 by the Amir of the State of Kuwait, H. H. Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, the IOC provisionally lifted the suspension imposed upon the KOC prior to the London 2012 Olympic Games, which allowed the Kuwaiti athletes to take part in these Games under the Kuwaiti flag.
11. Eventually, the Kuwaiti government amended its Sports Legislation with a Decree Law, which bore the number 26/2012 (“Kuwaiti Law n° 26/2012”) and entered into force in November 2012. On 4 December 2012 and considering Kuwaiti Sports Law as *“fully compatible with the basic principles and rules which govern the Olympic Movement”*, the IOC decided to confirm the lifting of the suspension imposed upon the KOC.

C. The second suspension of the KOC

12. On 14 January 2014, the KOC informed the IOC of the fact that PAS had decided to amend the Kuwaiti Sports Legislation. It asked for its opinion on the compatibility of the new regulations with the basic principles of the Olympic Charter.
13. On 30 January 2014, the NOC Relations Department of the IOC answered the KOC as follows:

“First of all, please allow us to say that the IOC is extremely surprised by the contents of the proposed amendments as indicated in your letter. Indeed, we thought that the IOC’s position with respect to the meaning of the principle of autonomy of the sports organisations belonging to the Olympic Movement was clearly expressed and understood by all those concerned in Kuwait after your NOC and a number of

sports federations were suspended and after all the efforts made by all parties to make the current sports legislation compatible with the Olympic Charter.

Consequently, we invite everyone to refer to all our previous exchanges on that subject, and we should be grateful if you could make sure, together with the relevant authorities, that the extremely regrettable situation we all experienced before, and the very unfortunate implications for the Olympic Movement and the athletes in Kuwait, will never happen again.

Should there still be any doubt as to the IOC's position, please see below our specific comments on the six items/proposed amendments mentioned in your letter based on the Olympic Charter and, in particular, the principle of autonomy of the Olympic Movement:

- 1. No government/public authority can appoint a "temporary committee" to run a sports organisation belonging to the Olympic Movement. Indeed, this would be considered as undue interference. Should there be any issue within a sports organisation, this should be resolved in accordance with the statutes of this sports organisation and by decision of its competent bodies (with the General Assembly being the supreme decision-making body of the sports organisation).*
- 2. The specific conditions for potentially taking action against one or several members of the Board or the Board as a whole must be as specified in the statutes of each sports organisation and must not be determined in the law. In addition, as mentioned previously, no "temporary members or committee" can be appointed by a government body or public authority. Any potential vacancy arising within a sports organisation must be filled in accordance with the statutes of that particular sports organisation.*
- 3. No government or public authority can "dismiss" the Board of a sports organisation. Should there be any violation of the applicable rules, appropriate measures and sanctions should be taken in accordance with the statutes of each sports organisation and by its competent bodies.*
- 4. No government or public authority can "cancel" a decision taken by the competent organs of a sports organisation.*
- 5. No government or public authority can decide to "supervise" the elections of a sports organisation. Representatives of the government or public authority may be invited by a sports organisation to attend elections (or other meetings of its bodies) as observers; however, the elections must not be placed, by law, under the "supervision" of any government or public body.*
- 6. The affiliation of any member of a sport organisation must respect the applicable rules and the procedure specified in the statutes of each sports organisation and must be decided by the competent bodies of each sports organisation (usually the final decision is made by the General Assembly of the sports organisation, as the supreme decision-making body of the organisation).*

In view of the above, it is clear that the proposed amendments are not compatible with the basic principles of the Olympic Charter. As a result, none of them can be accepted.

We should be grateful if you could discuss this amicably with the competent authorities in Kuwait to make sure that these proposed amendments will not be implemented. We rely on the understanding and sense of responsibility of all parties to resolve this matter peacefully and amicably in order to avoid any further action which would not benefit anyone. On the contrary, we hope that fruitful collaboration and a productive partnership can be established between the Olympic Movement in Kuwait and the relevant

authorities for the interest of sport and the athletes in Kuwait, as per the Olympic Charter and the applicable rules of the International Sports Federations”.

14. In a letter sent to the KOC on 27 June 2014, the NOC Relations Department of the IOC a) expressed its concern regarding the revision of the Kuwaiti Sports Law, b) insisted on the personal assurances given on 9 July 2012 by the Amir of the State of Kuwait, H. H. Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, c) outlined some of the fundamental principles of the Olympic Charter and d) warned the KOC that *“should the revised Sports Law prove to be incompatible with the basic principles and rules that govern the Olympic Movement internationally, this would expose the Olympic Movement in Kuwait to the protective measures or sanctions (including suspension) provided in the Olympic Charter”.*
15. On 11 November 2014, Dr Thomas Bach, the President of the IOC, expressed his concerns to the Amir of the State of Kuwait, H. H. Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, in the following terms:

“It seems however, that attempts have been made recently to once again modify the sports legislation in a way which would be in contradiction with the basic principles of the Olympic Movement. If this is confirmed, this would unfortunately bring us back to a situation similar to that before the London Olympic Games.

Your Highness, please allow me to respectfully request your personal intervention to make sure that this will not happen, and that the sports legislation in the State of Kuwait will always be in conformity with the Olympic Charter and the regulations of the international sports federations, as per your commitment of 9 July 2012”.
16. Kuwaiti Sports Law was eventually amended by the Decree Law n° 117/2014 (“Kuwaiti Law n° 117/2014”) and then by Decree Law n° 25/2015 (“Kuwaiti Law n° 25/2015”), which entered into force on 23 October 2014, respectfully on 24 May 2015.
17. On 6, respectfully on 7 June 2015, the KOC forwarded to the IOC an English translation of Kuwaiti Laws n° 117/2014 and n° 25/2015. Each of these translations was accompanied by a brief memo explaining the reasons behind the adoption of the new regulations.
18. On 22 June 2015, the NOC Relations Department of the IOC wrote the following letter to the KOC:

“We have indeed noted, with great concern, that the recent amendments made to the sports legislation affect, once again, the autonomy of the sports organisations (in particular your NOC and the national federations including their member sports clubs) belonging to the Olympic and Sports Movement in Kuwait.

This is, unfortunately, a step backward since the situation was resolved in the year 2012 with the adoption of a new sports legislation (law 26/2012), following the personal intervention of H. H. The Amir of the State of Kuwait and the clear assurances given that the Kuwait sports legislation would always be established in line with the principles and rules which govern the Olympic Movement (...).

As most of the amendments affect the autonomy of the sports clubs and the national federations, we hereby copy all International Federations concerned for information, coordination and appropriate action, with our full support.

(...)

In view of this, we wish to reaffirm [our] support to the resolution taken by your NOC and the national federations to protect the autonomy of the Olympic and Sports Movement in Kuwait and to request that the relevant government authorities ensure that the sports legislation be fully compatible with the principle of autonomy of the Olympic Movement established in the Olympic Charter and the rules of the statutes of the International Federations (including in particular the resolution of any sports-related disputes by independent sport arbitration bodies).

We kindly ask you to convey this position to the relevant government authorities and to keep us informed of any (hopefully positive) developments no later than 30 July 2015”.

19. Pursuant to Article 2 of the Kuwaiti resolution no. 548/2015 of 29 July 2015, “*the existing inclusive specialized clubs [i. e. the clubs whose promulgation decision includes practicing one sport even if its activity varies] should amend their articles of associations to comply with the provisions of the decree by law no. 42/1978 and its amending laws (...) and the decree by law no. 26/2012 and its amending laws (the decree by law no. 134/2013 and the decree by law no. 117/2014, law 25/2015) and the law no. 5/2007 amended by the decree by law no. 26/2012. The clubs should submit their articles of associations that were approved by the extraordinary general assemblies for promulgation within ninety days as of effectiveness of this decision”.* In other words, the deadline set by this provision expired on 28 October 2015.
20. The KOC applied for an extension of the deadline set by the IOC in its letter of 22 June 2015 in order to be able to establish a constructive dialogue with the relevant Kuwaiti governmental organs.
21. In a letter dated 28 September 2015, the NOC Relations Department of the IOC invited the KOC to inform it of the outcome of the discussions by 15 October 2015 and made the following observations:

(...)

 - *As mentioned clearly in a letter dated 22 June 2015 (...), the amendments made recently to the sports legislation affect the autonomy of the sports organisations in Kuwait in a sense that they interfere with their internal governance and operations. This goes against the basic principles of the Olympic Movement (in particular the fundamental principle of autonomy of the Olympic Movement) and the clear assurances given by H. H. The Amir of the State of Kuwait in person (by letter dated 9 July 2012, attached) that the Kuwait sports legislation would always be established in line with the principles and rules which govern the Olympic Movement.*
 - *As you know, the autonomy of the Olympic Movement is a fundamental principle of Olympism as mentioned in the Olympic Charter (paragraph 5 of the Fundamental Principles of Olympism) which states: “Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement shall have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations,*

enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied". In addition, this fundamental principle of autonomy of the sport has been recognised in a historic Resolution (A/RES/69/6) adopted by the United Nations General Assembly in October 2014 in New York (please refer to the IOC President's circular letter to all NOCs dated 31 October 2014 (attached) including a copy of this Resolution).

- *The sports legislation in a country must not serve to "micro-manage" the national sports organisations or as a substitute for their respective statutes/ internal regulations. It should aim rather at establishing a general framework and clear understanding of the relationship and the necessary interactions between the government and the sports organisations in order to foster a fruitful and productive partnership for the development of sport and the athletes, with mutual respect for their jurisdiction, authority and responsibilities. It must also allow for the sports organisations to operate in accordance with the applicable principles and rules which govern the Olympic Movement, in particular the Olympic Charter and the statutes of the International Sports Federations, as a condition for retaining their affiliation to the Olympic Movement and for the athletes to take part in international sports events. To achieve this, the sports legislation must be fully compatible with the basic principles and rules which govern the Olympic Movement and, in particular, must respect the autonomy of the sports organisations.*
- *In view of this, the sports organisations must be able to freely establish their internal structure and governance (including their membership, composition of the governing bodies, meeting procedures, election processes, dispute-resolution mechanisms, etc.) in their respective statutes as decided and adopted by their respective general assemblies, in accordance with the statutes of the international sports organisations to which they are affiliated.*
- *In addition, the sports-related disputes must be resolved by independent bodies recognised by the Olympic and sports Movement in the country with a possibility of appealing to the Court of Arbitration for Sport (CAS), as recognised by the IOC and the International Sports Federations, for final decision. In accordance with these principles, the National Sport Arbitration Tribunal (NSAT) has already been established and recognised in Kuwait. Consequently, the sports-related disputes should be resolved through this body in the first instance, the decision of which may be subject to appeal to CAS for final settlement of the dispute. Therefore, there is no need to establish any other parallel body, which would not only be confusing and counter-productive, but would also be in contradiction with the sports-related disputes resolution mechanisms established and recognised by the Olympic Movement.*
- *Last, but not least, the sports organisations must recognise the World Anti-Doping Agency (WADA) and be able to comply with and implement the World Anti-Doping Code.*

In view of the above, we kindly request that you (together with the national federations) pursue your dialogue with the relevant government authorities to make sure that the amendments which go against the principles mentioned above are removed in order for the sports legislation to be fully compatible with the basic principles of the Olympic Movement and allow for the sports organisations in Kuwait to operate in accordance with the rules of the international sports organisations to which they are affiliated".

22. In the same letter, the NOC Relations Department of the IOC offered to organise a joint meeting "(IOC/ASOIF/ANOC/OCA) with [the KOC] and the relevant government authorities on

12 October 2015 (...). [In] order for this meeting to be productive, it would be expected that the government authorities come to Lausanne with concrete amendments proposals to the current legislation to make it fully compatible with the principles and rules which govern the Olympic Movement”.

23. On 8 October 2015, H. E. Sheikh Salman Sabah Al-Salem Al-Homud Al-Sabah, Minister of Information and Minister of State for Youth Affairs, accepted the IOC’s invitation to a meeting and made the following observations:

“According to the previous letters, IOC deems that the two laws amendments no 117/2014 and 25/2015 affects the autonomy of Sport bodies in the state of Kuwait In this regard, we have required identification of the Articles which IOC deems in contradiction with the Olympic Charter Principles.

In response, we have received explanation of the general rules stipulated under the Olympic Charter without specifying the relevant Articles of the purported violations under the Law Amendments.

Therefore, in order to have constructive discussions, we attach herewith the amendments made under the above-mentioned two Laws Amendments in English Language, we kindly require that the IOC personnel in charge of this subject highlight the provisions which deem contradictions with the Olympic Charter, our delegation will be happy to discuss those highlighted items in the meeting along with any additional subject you would like to suggest”.

24. On 12 October 2015, a meeting took place at the IOC’s headquarters in Lausanne between the representatives of the IOC, the KOC and the Kuwaiti government. The same day, the IOC released the following post on its website:

“The IOC group included representatives from ASOIF, ANOC and the OCA, and was headed by IOC Delegate Member for Autonomy Mr Patrick Hickey. The KOC delegation was led by H. E. Sheikh Talal Fahad Al-Sabah, KOC President, while the delegation from the Government of the State of Kuwait was headed by H. E. Sheikh Salman Sabah Al-Salem Al-Homud Al-Sabah, Minister of Information and Minister of State for Youth Affairs.

All parties agreed to fully respect and comply with the principles and rules of the Olympic Charter and the statutes of the International Federations.

To this effect, it was agreed that a working group will be immediately set up between all concerned parties to address and resolve the issues clearly identified during the meeting with a view to making them fully compatible with the principles and rules of the Olympic Charter and the statutes of the International Federations.

This work should be completed no later than 27 October 2015 following the deadline established by the IOC”.

25. On 13 October 2015, Mr Patrick Hickey, the IOC Delegate Member for Autonomy, who chaired the meeting of 12 October 2015, wrote to H. E. Sheikh Salman Sabah Al-Salem Al-Homud Al-Sabah to a) thank him for the goodwill expressed by all the participants to resolve the situation amicably, b) to confirm the agreement reached during the meeting of 12 October 2015 to immediately set up a working group *“to address and resolve the issues related to law 117/2014 and law 25/2015 (...) in order to make them fully compatible with the principles and rules of the Olympic Charter and the statutes of the International Federations”*, c) to remind him that the IOC had established

a deadline on 27 October 2015 to amend the Kuwaiti Sports Legislation accordingly, bearing in mind that “*should [he] consider that this deadline is not realistic the IOC would be ready to extend it within a reasonable timeframe, provided that an emergency decision would be issued at the appropriate level no later than 27 October 2015 to make sure that the conflictive provisions of the sports legislation (...) would not apply to the sports organisations until they are revised*”. Mr Patrick Hickey attached to his letter a 4-page long document entitled “*IOC’s opinion about Law decree N° 117 of the year 2014 and Law N° 25 of the year 2015*”, which identified the provisions in conflict with the principles and rules of the Olympic Charter (“IOC Opinion”).

26. On 13 October 2015, the President of the PAS, H. E. Sheikh Ahmad Mansour Al-Ahmad Al-Jaber Al-Sabah, informed Mr Patrick Hickey of the following:

“(...) we have noticed that the news published on your website did not reveal the accurate position of our delegation during the meeting. Therefore, we would like to confirm that our delegation did not at any time concur that the laws amendments number 117/2014 and 25/2015 are inconsistent with the provisions of Olympic Charter.

In addition, our delegation did not agree on any time frame to amend the Kuwait laws for reasons explained in our meeting. We only approved to form a team for the purpose of discussing your understanding of the recent law amendments.

Therefore, in order to resolve this misinterpretation of our position, our delegation would greatly appreciate if you could clarify this position in your website.

We further bring to your attention that we have not received the points which you promised to send by yesterday evening in relation to the purported inconsistency between each article of the amended law and opposite articles in the Olympic Charter. Therefore, we urge you to send this letter by tomorrow so we could verify the related provisions”.

27. On 20 October 2015, the Kuwaiti Minister of Information and of State for Youth Affairs, H. E. Sheikh Salman Sabah Al-Salem Al-Homud Al-Sabah, sent a letter to Mr Patrick Hickey and drew his attention to the fact that a) the IOC Opinion was not specific enough, b) many other countries have adopted similar rules as the litigious provisions identified by the IOC Opinion and, nevertheless, their National Olympic Committee had not been suspended, c) the Kuwaiti Laws n° 117/2014 and n° 25/2015 were adopted only to apply the Kuwaiti Law n° 26/2012, which was indisputably compliant with the Olympic Charter. Under these circumstances, the Kuwaiti Minister of Information and of State for Youth Affairs confirmed that he did not consider that the specific provisions identified in the IOC Opinion were in breach of the principles and rules of the Olympic Charter.
28. On 26 October 2015, the Kuwaiti Minister of Information and of State for Youth Affairs, H. E. Sheikh Salman Sabah Al-Salem Al-Homud Al-Sabah, sent a letter to Dr Thomas Bach, reiterating that, in his opinion, the Kuwaiti Laws n° 117/2014 and n° 25/2015 were compatible with the Olympic Charter and repeated the submissions presented in his letter of 20 October 2015. Nevertheless, he reaffirmed his “*sincere desire to reach a satisfactory solution avoiding any sanctions which would damage and adversely affect the Sports movement in the state of Kuwait*” and expressed his disappointment over the fact that the IOC Opinion was handed over only on 13 October 2015

“although the IOC had received the amendments on the 5th and 7th of June 2015 from KOC, and despite the fact that [he] had repeatedly requested both IOC and KOC to identify the allegedly conflicting provisions in the above-mentioned Kuwaiti laws”.

29. On 27 October 2015, the IOC notified the following decision to the KOC (the “Appealed Decision”):

“As you know, the Olympic Movement in Kuwait has been faced with a number of issues to preserve its autonomy, in particular due to the recently amended sports legislation in Kuwait. The IOC, in close collaboration with ASOIF, ANOC, OCA and the international Federations concerned, has done everything possible over the past months to resolve the situation amicably and in the interest of the Olympic Movement in Kuwait.

Upon the initiative of the IOC, a meeting took place on 12 October 2015 in Lausanne with representatives of the IOC (including ASOIF, ANOC and OCA), the Government of Kuwait and the Kuwait Olympic Committee. Following this meeting, a deadline was set on 27 October 2015 to resolve the issues at hand or, at least, freeze the application of the conflictive provisions of the sports legislation until a reasonable and mutually acceptable solution is found.

Unfortunately, the deadline has expired today and no action has been taken by the Government of Kuwait.

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

1. *To suspend the Kuwait Olympic Committee (KOC) in order to protect the Olympic Movement in Kuwait from undue government interference, with the following consequences:*
 - a. *The KOC is not entitled to participate in any activity connected with the Olympic Movement or exercise any right conferred upon it by the Olympic Charter or the IOC. This includes, in particular, any activity organised by associations of NOCs to which the KOC is affiliated.*
 - b. *The IOC Executive Board reserves the right to take further measures and to determine actions in due time with regard to the participation of Kuwaiti athletes in the Olympic Games and in any other international Olympic-related events, in close coordination with the sports organisations concerned and in particular the International Federations.*
 - c. *The IOC and the Olympic Solidarity will withhold all financial assistance to the KOC.*
2. *The decision is effective as from 27 October 2015. (...)*

30. The KOC did not appeal against this decision.

D. The events following the second suspension of the KOC

31. On 29 October 2015, the WKF decided to suspend the KKF with immediate effect. In its decision, the WKF made clear the following:

“This suspension (...) will be lifted only when the Kuwait Karate Federation and its clubs members will be able to carry on their activities independently. This means that the sports laws shall be amended as per

the recommendations of the Olympic Committee stated in the attached document (IOC opinion about Law decree No 117 of the year 2014 and Law 25 of the year 2015).

The current Executive Committee of the Kuwait Karate Federation and its clubs members will continue being considered as the legitimate office bearers and the legitimate members. Also be informed as well that in order to protect the Kuwait Karate athletes, as they are not responsible for this unfortunate situation, these will authorized to participate as independent WKF athletes in WKF official events under the WKF flag and symbols”.

32. On 5 November 2015, the ISSF decided to suspend the KSF with immediate effect. This decision reads as follows in pertinent parts:

“This decision was passed in reaction to the IOC decision to suspend the Kuwait Olympic Committee in order to protect the Olympic Movement in Kuwait from undue governmental influence in sports in Kuwait (see attached decision of the IOC). The IOC requested all Olympic IFs to consider the situation with their respective National Federation in Kuwait and take any appropriate action for the protection of the Olympic movement in Kuwait. The ISSF Administrative Council based its decision in particular on Article 25 and 26 of the Olympic Charter and on Article 1.3.2 of the ISSF Constitution.

For the time being this decision should not affect the Kuwait athletes which will be allowed to participate in all ISSF competitions under the ISSF flag. (...)”.

33. Apparently, similar suspensions were imposed upon other Kuwaiti Sport Federations.
34. On 3 December 2015, the resolution n° 832/2015 was adopted in order to amend Article 2 of the Kuwaiti resolution n° 548/2015 so that its 90-day deadline was extended to 1 year. *i. e.* until 2 December 2016.
35. In December 2015, the Special Adviser to the United Nations Secretary General on Sport for Development and Peace (hereinafter “UNOSDP”) offered his assistance to mediate in the dispute between the Kuwaiti government, the Olympic Movement in Kuwait and the IOC.
36. Mr Jérôme Poivey, Head of the IOC Institutional Relations and Governance, IOC NOC Relations Department and Head of the IOC Delegation to the meeting of 22 January 2016 at the UNOSDP Office in Geneva, drew up a report of the negotiations which were held between the Kuwaiti government and the IOC under the auspices of the UNOSDP. This document, dated 5 February 2016, provides so far as material as follows:

“2 (...) at the invitation of the Special Adviser to the United Nations Secretary General on Sport for Development and Peace, a meeting took place on Friday 22 January 2016 at the UNOSDP Office in Geneva between a Delegation of the Government of the State of Kuwait and an IOC Delegation (that I was leading), under the auspices of the Special Adviser to the United Nations Secretary General on Sport for Development and Peace.

3. The meeting started at 10 a.m. and lasted 16 hours. The following items were addressed:

- a. Situation of the Olympic Council of Asia’s headquarters, assets and staff in Kuwait City.*
- b. Protection of the participation of the Kuwaiti athletes in international sports events.*

12. *On Monday 25 January 2016, the Delegation of the Government of the State of Kuwait did not come back to sign the agreement. On the contrary, they submitted a completely revised document which the IOC received through the intermediary of the Special Adviser to the United Nations Secretary General on Sport for Development and Peace. As this document did not reflect the true contents of the discussion on 22 January 2016 and the principle agreement reached on that occasion, the IOC refused to consider this new document. However, as an another gesture of goodwill, the IOC accepted to re-consider a number of points of the initial document left in Geneva (and already signed by both (i) the Special Adviser to the United Nations Secretary General on Sport for Development and Peace and (ii) the Delegation of the IOC) should the Delegation of the Government of State of Kuwait so wish. The IOC was informed through the intermediary of the Special Adviser to the United Nations Secretary General on Sport for Development and Peace that the Delegation of the Government of the State of Kuwait agreed to take the initial document as a basis and propose a few modifications.*
 13. *After numerous exchanges, through the intermediary of the Special Adviser to the United Nations Secretary General on Sport for Development and Peace, to fine-tune the wording, a final document was agreed upon on Tuesday 26 January 2016 and was ready to be signed, which would have paved the way for a smooth resolution of the dispute and the lifting of the protective suspension of the Kuwait Olympic Committee and a number of National Sports Federations ahead of the 2016 Olympic Games in Rio de Janeiro.*
 14. *Unfortunately, the Delegation of the Government of the State of Kuwait did not sign this final document (and was apparently instructed not to sign this agreement), and left Geneva.*
 15. *According to the information received by the IOC, it seems that the Special Adviser to the United Nations Secretary General on Sport for Development and Peace was subsequently informed that the Kuwaiti Authorities would categorically refuse to consider any amendment whatsoever to the conflictive Laws N°117/2014 and N°25/2015.*
 16. *Consequently, the status quo is maintained. However, the IOC continues to express its readiness to find a solution as per the principle agreement reached on 22 January 2016 and reflected in the document finalised on 27 January 2016 under the auspices the Special Adviser to the United Nations Secretary General on Sport for Development and Peace, but not signed by the Government of the State of Kuwait”.*
37. On 12 July 2016, the Kuwaiti Law n° 34/2016 entered into force. According to Article 2 of this new set of rules, “the Law No. 5 of the year 2007; the Decree-Law No. 26 of the year 2012; the Decree-Law No. 134 of the year 2013; the Decree-Law No. 117 of the year 2014 and the Law No. 25 of the year 2015” were abrogated.
 38. The 2016 Olympic Games took place in Rio, Brazil, from 5 to 21 August 2016 (the “2016 Olympic Games”).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 17 November 2015, the Appellants filed a joint statement of appeal with the Court of Arbitration for Sport (“CAS”) in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the “Code”). They also applied for a request for a stay of the execution of the Appealed Decision as well as for a 15-day extension of their deadline to file their appeal brief.
40. On 18 November 2015, the CAS Court Office acknowledged receipt of the Appellants’ joint statement of appeal, of their payment of the CAS Court Office fee and took note of their nomination of Mr Boris Vittoz as arbitrator. The CAS Court Office invited the IOC to nominate an arbitrator from the list of CAS arbitrators within ten days.
41. On 26 November 2015, the IOC confirmed a) that it agreed to submit the dispute arising from the Appealed Decision to the jurisdiction of the CAS, b) that it accepted the Appellants’ request for an extension of 15 days of their deadline to file their appeal brief provided that it was granted a similar extension of its own deadline to file its answer and c) that it nominated Mr Hans Nater as arbitrator.
42. The Appellants asked to obtain a further extension of their deadline to file their appeal brief.
43. On 18 December 2015, within the granted extended deadline, the Appellants filed a joint appeal brief in accordance with Article R51 of the Code.
44. On 5 January 2016, the CAS Court Office advised the Parties that the Panel to hear the case had been constituted as follows: Prof Dr Martin Schimke, President, Mr Boris Vittoz and Dr Hans Nater, Arbitrators.
45. On 14 January 2016, the IOC filed its answer to the Appellants’ request for a stay of the Appealed Decision.
46. On 22 January 2016, the Appellants filed a joint reply to the IOC’s answer of 14 January 2016 regarding their request for a stay of the Appealed Decision.
47. On 8 February 2016, the IOC filed its comments to the Appellants’ reply of 22 January 2016.
48. On 15 February 2016 and within the granted time-extension, the IOC filed its answer in accordance with Article R55 of the Code. Simultaneously, it requested the joinder of the KOC, to which the Appellants were opposed and which was eventually denied by the Panel.
49. On 19 February 2016, the Parties were notified of the operative part of the order issued by the Panel, dismissing the Appellant’s application for a stay of the Appealed Decision. The original copy of the full order with grounds was eventually notified to the Parties on 23 March 2016.
50. On 23 February 2016, the Appellants, respectively the IOC, expressed their preference for a hearing to be held. On 24 March 2016 and on behalf of the Panel, hearing dates were proposed

to the Parties, who could not agree on one specific day. After many unfruitful written exchanges, the President of the Panel organised a teleconference with the Parties' representatives on 27 May 2016 in order to set a date for the hearing, which was eventually scheduled for 15 July 2016.

51. On 10 March 2016, the CAS Court Office confirmed to the Parties that, in accordance with the agreed procedural calendar, a second round of submissions was granted and that the Appellants' reply was to be filed by 1 April 2016 and the IOC's rejoinder by 26 April 2016.
52. On 1 April 2016, the Appellants filed their joint reply.
53. On 13 May 2016 and within the granted extension of the deadline, the IOC filed its rejoinder.
54. On 9, respectively on 10 June 2016, the Appellants and the IOC signed and returned the Order of Procedure in these appeal proceedings.
55. On 13 July 2016, the IOC filed new documents.
56. The hearing was held on 15 July 2016 at the CAS premises in Lausanne. The Panel members were present and assisted by Mr Antonio De Quesada, Counsel to the CAS, and Mr Patrick Grandjean, *ad hoc* Clerk.
57. The following persons attended the hearing:
 - KSF was represented by its Chairman, Mr Duaij Khalaf Al-Otaibi, assisted by Mr Olivier Ducrey and Mr Luca Beffa, who also acted on behalf of the KKF and the Athlete.
 - The Athlete did not attend the hearing but was heard via teleconference with the agreement of the President of the Panel (see Article R44.2 para. 4 of the Code).
 - The IOC was represented by its Legal Director, Mr Howard Stupp and its Deputy Director General for relations with the Olympic Movement and NOC's Relations Director, Mr Pere Miró, assisted by its legal counsels, Mr François Carrard and Mrs Sophie Roud.
58. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the composition of the Panel and had no remarks of procedural nature. In particular, the Appellants confirmed that their request for production of documents was satisfied.
59. The Panel heard evidence from the following persons, who were examined and cross-examined by the Parties, as well as questioned by the Panel:
 - Prof. Dr. Mohammad Alfili;
 - Dr Sakr Al-Mulla;
 - Mr Mishail Al Mutairi;
 - Mr Husain Al-Musallam.

60. Each witness heard was invited by the President of the Panel to tell the truth subject to the consequences provided by the law.
61. After the Parties' final arguments, the Panel closed the hearing, and announced that its award would be rendered in due course. At the conclusion of the hearing, the Parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appeal

62. The Appellants submitted the following requests for relief:

“(...) the Appellants seek the following relief:

On request for production of documents

1) (...)

On the merits

- 2) *principally, that the decision of the International Olympic Committee (IOC) dated 27 October 2015 to suspend the Kuwait Olympic Committee (KOC) with immediate effect be set aside;*
- 3) *alternatively, that the decision of the International Olympic Committee (IOC) dated 27 October 2015 to suspend the Kuwait Olympic Committee (KOC) with immediate effect be declared null and void;*
- 4) *even more alternatively, that the CAS Panel identifies clearly which specific provisions of Kuwaiti laws 117/2014 and/or 25/2015 challenged by the Respondent do violate Article 27.9 of the Olympic Charter;*
- 5) *that the Respondent be ordered to pay all the costs of these arbitration proceedings, as well as a contribution to the legal fees and other expenses incurred by the Appellants”.*

63. The Appellants' submissions, in essence, may be summarized as follows:

- The Appealed Decision is formally invalid as the IOC did not establish that it was taken in compliance with its own regulations.
- The Appealed Decision must be annulled as it has no basis anymore. The Appealed Decision was exclusively aiming at specific provisions of Kuwaiti laws n° 117/2014 and/or n° 25/2015, which have been abrogated on 12 July 2016, with the entry into force of the Kuwaiti Law n° 34/2016. The IOC cannot maintain a decision based on grounds, which do not exist anymore. If appropriate, the IOC should issue a new decision.
- Each of the Appellants has standing to participate in the present arbitration proceedings. They have an interest worthy of protection to appeal, as they are individually and directly

affected by the Appealed Decision. It is not disputed that the Appellants are not direct members of the IOC. However, they are indirect members of this organisation.

- The Appellants' standing to appeal must also be confirmed:
 - as the Appealed Decision is based on the Olympic Charter, which does not contain any limitation as to the parties entitled to challenge a decision taken by the Executive Board of the IOC;
 - as the Appellants are bound by the Olympic Charter (Article 1 (4) of the Olympic Charter) and therefore must be in a position to challenge the decisions by which they shall abide;
 - on the basis of Article 75 of the Swiss Civil Code ("SCC");
 - as the Appealed Decision unlawfully infringes the Appellants' personality rights, right to be heard, right to be treated equally and in a proportionate manner;
 - as the Appealed Decision violates competition law, insofar as it unlawfully restraints competition;
 - in view of the position of the IOC which is of such importance in the world of Sport that its decisions are of similar nature as to that issued by a public authority;
 - on the grounds of procedural fairness. The addressee of the Appealed Decision (*i. e.* the KOC) preferred not to challenge it for whatever reason. Under these circumstances, it would be unfair if the parties which are directly affected by the decision could not appeal against it. *"It cannot be tolerated that a decision which has a significant negative impact on all Kuwaiti sports organisations is left untouched without any form of review simply because its addressee decided not to challenge it for political reasons which have nothing to do with sport. This would actually grant a total immunity of action to the IOC and the KOC to the detriment of all other sports organisations of Kuwait who belong to the Olympic Movement and must have the right to defend their interests in this context"*.
- *"[The] Panel's review in the case at hand is restricted to the appraisal of the relevant provisions of Kuwait laws 117/2014 and 25/2015 from the standpoint of Article 27.9 of the Olympic Charter. The other provisions referred to by the IOC in its Opinion concerning the same issue (*i. e.*, paragraph 5 of the Fundamental Principles of Olympism, Article 27.5 and Article 27.6) may be taken into account, but only in order to interpret whether the sanction set forth in the challenged decision is justified in view of Article 27.9 of the Olympic Charter"*.
- Contrary to what is stated in the Appealed Decision, the litigious Kuwaiti Laws (*i. e.* Kuwaiti laws n° 117/2014 and/or n° 25/2015) do not violate the so-called principle of autonomy of sport organisations as provided under Article 27.9 of the Olympic Charter. It must be observed that the IOC *"did not bother to explain in any form of detail the notion and scope of the principle of autonomy, irrespective of the fact that it is 'one of the Fundamental Principles of the OC'"*.

- Some of the criticised provisions of the litigious Kuwaiti Laws are not materially different from their previous version, which was approved by the IOC.
- All of the criticised provisions of the litigious Kuwaiti Laws a) are reasonable, b) do not violate the principle of autonomy, and c) are similar to rules adopted by many other countries without the IOC raising any objection.
- The Appealed Decision unlawfully infringes the Appellants' personality rights, right to be heard, right to be treated equally and in a proportionate manner.
- The Appealed Decision violates competition law.
- Until 12 October 2015, *“the Kuwaiti government only knew that the IOC was not happy with the new laws because they allegedly violated the autonomy principle, but did not know which specific provisions and which specific issues contained in said provisions were actually targeted by the IOC. Apparently, the Kuwaiti government learned this during the meeting and after reading the IOC Opinion of 13 October 2015. (...) This and the chronology between those events and the challenged decision rendered two weeks after, i. e. on 27 October 2015, shows a timing which is difficult to reconcile with the importance of the decision at stake. In particular, it seems particularly unreasonable to invite the Kuwaiti government on 22 October 2015 to take “satisfactory action” within 5 days when such “action” consists in modifying (or suspending) the legislation of a country, especially on the basis of a particularly poor “Opinion” communicated only the week before”.*
- The Appealed Decision was rendered on 27 October 2015, *i. e.* on the same day of the “ultimatum” set by the IOC in its letter of 22 October 2015, which is questionable from a procedural point of view.

B. The Answer

64. The IOC submitted the following requests for relief:

“In view of the foregoing, [the IOC] hereby requests that the Panel issues an award:

I. Ruling that CAS dismisses the Appeal.

II. Ordering that the Appellants shall bear the entirety of the arbitration costs and pay a compensation for the legal fees and other expenses incurred by the IOCV before the [CAS].”

65. The submissions of the IOC, in essence, may be summarized as follows:

- The suspension imposed by the IOC is the ultimate measure of protection applied in a context under which the KOC called for help against interferences of the Kuwaiti government in the national Olympic and sports movement. The litigious suspension must not be considered as a sanction but as a way to safeguard the autonomy of the sports organisations such as the KOC. It was an appropriate and proportional measure.

- The fact that the Kuwaiti Laws n° 117 and n° 25 were abrogated on 12 July 2016 does not strip the Appealed Decision of its object.
- The abrogation of these laws restores indeed the *status quo ante*. However, what was acceptable in 1978 (*i. e.* when Sports Law in Kuwait was governed by the Decree Law n° 42 of 1978) is not necessarily acceptable nowadays, especially after so many years of conflictual relationships between the IOC and the Kuwaiti government. This is for instance the case for Article 30 of the new law which punishes “*by a term of imprisonment of no less than one year and not more than three years and by a fine (...) any persons who has carried out any activity of a Sport Body in contradiction with the goal for which the latter was established or has caused a disruption or a suspension of its activity (...) any person who has exercised the powers of an existing Sport Body without a prior authorization from the Ministry*”.
- In view of its *de novo* review, the Panel has the discretion to consider the principle of autonomy in its totality as well as all the relevant provisions which are referred to in the IOC Opinion and IOC’s numerous letters.
- The appellants have no standing in the present arbitral proceedings, as they a) are not (direct nor indirect) members of the IOC, b) are not the addressees of the Appealed Decision and c) don’t have a legitimate interest. Much more, the Appellants are “*instructed to act and controlled by the Kuwaiti Government*”. If their standing to appeal was accepted, it would precisely authorize the Kuwaiti government to interfere and empty the suspension of its purpose.
- The Appealed Decision is valid from a formal standpoint. It was taken by the IOC Executive Board in compliance with the applicable regulations.
- The Appealed Decision is also valid from a material standpoint. “*The suspension of the KOC was the only appropriate measure to protect the Kuwaiti Olympic Movement*”. Such a measure is expressly foreseen in the Olympic Charter.
- The Appellants “*criticize the pace of the events which according to them “would be difficult to reconcile with the importance of the decision at stake” (...). The IOC however reminds that the timing has been imposed by the Kuwaiti Government, who in July 2015 set a 90-day deadline, elapsing on 28 October 2015 to the Kuwaiti sports bodies to comply with the new legislation*”.
- “*Contrary to the Appellant’s contentions, it is obvious that the IOC cannot simultaneously control the national legislation of its 206 NOCs all over the world. It is for the NOCs to protect the Olympic Movement in their countries*”.
- The Kuwaiti Laws are conflicting with the Olympic Charter in several respects.
- The IOC had only the duty to hear the KOC and not any potential appellant or other party. The Appellants cannot claim that their right to be heard was violated.
- The principle of fairness invoked by the Appellants is not embodied under Swiss law. In any event and should such a principle exist, it was not breached.

- The Appealed Decision does not violate the principle of equal treatment because the provisions of other countries' laws referred to in the Appeal Brief are not similar to the ones provided for in Kuwait. In any event, the IOC intervenes only if the National Olympic Committee requests its assistance. This was the case with the KOC. Similar assistance was not required by other National Olympic Committees.
- The Appealed Decision does not violate any personality right of the Appellants. Personality rights are fundamental human rights. *"There is no such right to compete in a specific event, in particular when the rules of that event explicitly state that no person has a right to participate (not even to mention that karate is not a sport on the programme of the Olympic Games). Furthermore, as already stated, the qualified Kuwaiti athletes will be authorized to participate to the Olympic Games under the Olympic Flag"*.
- The Appealed Decision does not infringe the Swiss Competition Act.

V. JURISDICTION OF THE CAS

66. Article R47 para. 1 of the Code provides 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".

67. The jurisdiction of CAS, which is not disputed, derives from Articles 61 of the Olympic Charter. On 26 November 2015, the IOC expressly agreed to submit the present dispute to the CAS, the jurisdiction of which is further confirmed by the order of procedure duly signed by the Parties.

68. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. APPLICABLE LAW

69. Article R58 of the Code provides the following:

"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".

70. The Parties agree that the Panel shall decide the present matter according to the relevant IOC regulations, *i. e.* the Olympic Charter and Swiss law (para. 109 of the appeal brief; para. 1087 of the answer; para. 45 of the reply).

VII. THE FORMAL VALIDITY OF THE APPEALED DECISION

71. Pursuant to Article 27 para. 9 of the Olympic Charter *“Apart from the measures and sanctions provided in the case of infringement of the Olympic Charter, the IOC Executive Board may take any appropriate decisions for the protection of the Olympic Movement in the country of an NOC, including suspension of or withdrawal of recognition from such NOC if the constitution, law or other regulations in force in the country concerned, or any act by any governmental or other body causes the activity of the NOC or the making or expression of its will to be hampered. The IOC Executive Board shall offer such NOC an opportunity to be heard before any such decision is taken”*.
72. Article 59 of the Olympic Charter reads as follows in pertinent parts:
- “In the case of any violation of the Olympic Charter, the World Anti-Doping Code, or any other regulation, as the case may be, the measures or sanctions which may be taken by the Session, the IOC Executive Board or the disciplinary commission referred to under 2.4 below are: (...)*
- 1.4 with regard to NOCs:*
- a) suspension (IOC Executive Board); in such event, the IOC Executive Board determines in each case the consequences for the NOC concerned and its athletes; (...)*”.
73. By-law to Rule 19 of the Olympic Charter states the following:
- “(...*
- 4. The quorum required for an IOC Executive Board meeting is eight.*
- 5. Decisions of the IOC Executive Board are taken by a majority of the votes cast.*
- (...*
- 9. The IOC Executive Board may hold meetings in the form of teleconferences or videoconferences.*
- 10. In case of urgency, a resolution or decision may be submitted to a vote by correspondence, including by fax or electronic mail, of the members of the IOC Executive Board by the President.*
- 11. Minutes of all meetings and other proceedings are established under the authority of the President”*.
74. At the hearing before the CAS and with the agreement of the Appellants, the IOC made available for consultation by the members of the Panel the minutes of the meeting during which the IOC Executive Board decided to suspend the KOC.
75. It appears that the suspension of the KOC was discussed during an extraordinary meeting of the IOC Executive Board on 23 October 2015 and was to take effect on 27 October 2015 unless significant changes to the situation were observed.
76. In view of the minutes of the said meeting, the Panel is comfortably satisfied that the Appealed Decision met the formal requirements as set forth in the above-quoted provisions.

77. The Appellants also submit that the Appealed Decision was rendered on 27 October 2015, *i. e.* on the same day of the “ultimatum” set by the IOC in its letter of 22 October 2015. They claim that this situation “*raises potential procedural concerns*”, but do not explain which ones. Under these circumstances, the Panel does not need to address this argument, as it is unclear what the Appellants intend to achieve by pointing this aspect out.
78. As a result, the Panel holds that, formally, the Appealed Decision is valid.

VIII. STANDING TO APPEAL

79. The Appellants’ standing to appeal is contested. The situation is a special one as the Appealed Decision is not challenged by the addressee of said decision (*i. e.* the KOC), but only by other parties.
80. The plea relating to the lack of standing to sue, is – according to settled jurisprudence of the CAS (cf. CAS 2009/A/1869; CAS 2015/A/3959; CAS 2015/A/4131) – a question related to the merits of the case.
81. The Panel notes that the Olympic Charter – in addition to Article 60 OC, which stipulates a time limit for appeals – is silent on the issue of who has standing to sue (in contrast to, e. g., Art. 62 para. 2 of the UEFA Statutes). The issue of standing should therefore be guided by the applicable substantive law that applies subsidiarily if the legal question is not exhaustively dealt with by the federation’s statutes, which in this case would be Swiss law.
82. According to Article 75 SCC, “[*a*]ny member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof”. Article 75 SCC is therefore based on the concept of membership protection.
83. In light of the above considerations, the Panel must resolve the following issues:
- Are any of the Appellants direct members of the IOC?
 - If the Appellants are not direct members of the IOC, are they entitled to challenge the Appealed Decision?

A. Are any of the Appellants direct members of the IOC?

84. The IOC is a not-for-profit association. This international non-governmental organisation has its seat in Lausanne, Switzerland. In an agreement entered into on 1 November 2000, the Swiss Federal Council formally recognized the legal capacity of the IOC and undertook to guarantee its independence and freedom of action (RS 0.192.122.415.1).
85. Pursuant to Article 1 of the Olympic Charter, under the supreme authority and leadership of the IOC, the Olympic Movement encompasses organisations, athletes, and other persons who

agree to be guided by the Olympic Charter. The three main constituents of the Olympic Movement are the IOC, the International Sports Federations (“IFs”), and the National Olympic Committees (“NOCs”).

86. In addition to its three main constituents, the Olympic Movement also encompasses the Organising Committees for the Olympic Games (“OCOGs”), the national associations, clubs and persons belonging to the IFs and NOCs, particularly the athletes, whose interests constitute a fundamental element of the Olympic Movement’s action, as well as the judges, referees, coaches, and the other sports officials and technicians. It also includes other organisations and institutions as recognised by the IOC (Article 1 para. 3 of the Olympic Charter).
87. Article 1 para. 4 of the Olympic Charter states that “[a]ny person or organisation belonging in any capacity whatsoever to the Olympic Movement is bound by the provisions of the Olympic Charter and shall abide by the decisions of the IOC”.
88. In accordance with Article 16 of the Olympic Charter, the IOC members are natural persons and their total number may not exceed 115.
89. The mission and role of the IOC, of the IFs, and of the NOCs are detailed respectively under Articles 2, 26, and 27 of the Olympic Charter.
90. From the above it would appear that none of the Appellants are direct members of the IOC, a point that is not actually contested.

B. If the Appellants are not direct members of the IOC, are they entitled to challenge the Appealed Decision?

91. In the Gundel case, the Swiss Federal Tribunal decided that, in certain circumstances, indirect members of an umbrella association had the right to appeal that is conferred by Article 75 SCC on the members of such an umbrella association (SFT 119 II 271, c. 3b; FOËX B., in PICHONNAZ/FOËX, Commentaire romand, Bâle 2010, ad. art. 75, n 6, p. 536). The same right is also conferred on third parties when they are sanctioned by an association whose regulations they had previously agreed to comply with (SFT 119 II 271, c. 3b).
92. The Appellants are not indirect members of the IOC (IOC members are natural persons, see Art. 16.1.1 Olympic Charter) and they were not sanctioned by the IOC. But even if the suspension were to be construed as a sanction, it would only have been the KOC that had been sanctioned by the IOC. Therefore the Appellants cannot rely on the Gundel jurisprudence.
93. Regarding CAS jurisprudence, in order to have standing to sue, the appellant must have an interest worthy of protection (CAS 2013/A/3140 para. 8.3) or a legitimate interest (CAS 2015/A/3880 para. 46 with further references). This is found to exist if (i) the appellant is sufficiently affected by the appealed decision, and if (ii) a tangible interest of a financial or sporting nature is at stake (CAS 2015/A/3880 para. 46 with further references; see also to that effect CAS 2013/A/3140 para. 8.3; CAS 2014/A/3665, 3666 & 3667 para. 47; CAS

2015/A/3959 par. 143 et seqq.). According to CAS 2009/A/1880 & 1881 para. 29, only an aggrieved party who has something at stake and thus a concrete interest in challenging a decision adopted by a sports body may appeal against that decision to CAS.

94. The Appellants also rely on the application of the Swiss rules of administrative procedure. They point in this respect to the importance of the IOC and its authority to regulate the Olympic Movement, which is comparable to that of a public authority. The IOC does not deny its own importance. It particularly stresses the fact that its mission in leading the Olympic Movement was acknowledged by the General Assembly of the United Nations.
95. Even if the rules and jurisprudence in relation to the right of a party to appeal a decision that was rendered by a state authority do not directly apply to the right of a party to appeal the decision of an association, the Panel still finds it useful to take inspiration from such rules and jurisprudence in order to determine whether or not a third party may have an interest worthy of protection or a legitimate interest.
96. In this respect, the Panel notes that both academics and the jurisprudence hold that a non-addressee of a decision only has a right to appeal in very restricted cases (ATF 131 II 649 consid. 3.1 and references). As a general rule, the appellant's interest must be concrete, legitimate, and personal (DONZALLAZ Y., *Loi sur le Tribunal Fédéral*, p. 909, para. 2366 and 2369, Berne 2008 and quoted cases). A purely theoretical/indirect interest is not sufficient (ATF 133 II 353). In addition, the decision being challenged must affect the appellant directly, concretely, and with more intensity than others (ATF 131 II 649; consid. 3.1; see also CAS 2009/A/1880, 1881 par. 29). Finally, the interest must exist not only at the time the appeal is filed but also at the time when the decision is issued (ATF 137 I 296 at 4.2 p. 299; 137 II 40 at 2.1 p. 41).
97. Hence, the Swiss Federal Tribunal held that appellants who wanted to buy a piece of land adjacent to their own property for personal convenience had no standing to appeal against the decision approving the sale of this land to a foreigner. In this case, the Supreme Court found that they had not demonstrated a sufficiently direct interest in having their appeal admitted. Along the same vein, the Swiss Federal Tribunal ruled that a shareholder who held nearly half of a company's capital had no legitimate interest in appealing a decision denying authorization for the company to acquire a building because the shareholder was not affected directly enough by the decision; it would likely not be otherwise for a sole shareholder (ATF 131 II 649, consid. 3.4).
98. The Appellants also request a declaration that the Appealed Decision be declared null and void. In this context, they argue that any person that has an interest in requesting such a declaration also has standing to file such a request. Nevertheless, even in such a case, such an interest must be a qualified interest, namely a legitimate interest or an interest worthy of protection (FOËX B., in PICHONNAZ/FOËX, *Commentaire romand*, Bâle 2010, ad. art. 75, n 37, together with footnote 106 and references, p. 543).

i) Regarding KKF and KSF's standing to appeal

99. In substance, the KKF and the KSF submit the following:

- As a direct consequence of the Appealed Decision, the KKF as well as the KSF have been suspended with immediate effect by the WKF respectively by the ISSF. They are therefore prevented from participating in international competitions organized by their respective IFs and in Olympic competitions and from pursuing their very purpose, "*i. e. the preparation of and the participation in international, Olympic or non-Olympic competitions*".
- KKF and KSF "*will further suffer from the impossibility for the KOC to exercise the rights and (financial and other) duties that it is normally entitled to exercise in favour of the Kuwaiti Olympic Movement including the national federations*".

100. With reference to the KKF and the KSF, the essence of the IOC's submissions may be summarized as follows:

- Neither the KKF nor the KSF is the addressee of the Appealed Decision.
- Karate is not a sport included in the Olympic Games. In addition, national federations such as the KKF and the KSF are not participating in the Olympic Games. Only athletes are.
- Karate is not a sport set out in the programme of the Olympic Games.
- The KKF and the KSF have no legitimate interest in the present arbitral proceedings.

101. The Panel's task is to determine whether the Appellants – bearing in mind that they are third parties – have a legitimate interest, as defined above, to appeal the IOC's decision to suspend the KOC.

102. In this regard, the Panel notes that KSF athletes are entitled to take part in the competitions organised by the ISSF. Likewise and concerning KKF athletes, the WKF confirmed that "*[t]he current Executive Committee of the Kuwait Karate Federation and its clubs members will continue being considered as the legitimate office bearers and the legitimate members. Also be informed as well that in order to protect the Kuwait Karate athletes, as they are not responsible for this unfortunate situation, these will be authorized to participate as independent WKF athletes in WKF official events under the WKF flag and symbols*". Furthermore, the Olympic Council of Asia has expressly confirmed that it had not taken any formal decision as to the participation of Kuwaiti athletes in its competitions. In other words, the athletes of both federations are not deprived of the right to participate in any international competitions.

103. Under these circumstances, it is not clear on what basis the Appellants claim that "*[t]he KKF was already obliged to cancel its participation in the Junior World Championship which took place in Jakarta between 12 and 15 of November 2015 (...) [It] was also obliged to cancel its participation in the Arab Championship which took place in Cairo on 3-5 December 2015 (...). If the situation does not change, the KKF will be*

prevented from participating in other important international competitions in the coming weeks and months (...). The same is true with respect to the KSF, which will also be prevented from participating in several important international competitions in the coming weeks and months". This assertion has not been substantiated.

104. The Panel also notes that the KKF and the KSF were suspended by their own IF and not by the IOC. They did not submit that they have appealed the decision taken directly against them. This could theoretically lead to the paradoxical situation in which the Appealed Decision is set aside and the KKF and the KSF are still suspended because the ISSF and WKF uphold their suspension for one reason or another.
105. Under these circumstances, it is difficult to assess which exact and actual consequences the Appealed Decision would have for the KKF and the KSF. As stated above, the applicable case law holds that the Appellants must have a legally protected interest in order to be entitled to challenge a decision. The interest must be concrete, legitimate, and personal. An indirect interest is not sufficient. The Appellants' claim that the Appealed Decision prevents them from taking part in sporting events is vague and unsubstantiated since KKF and KSF athletes are not excluded from any competitions.
106. KKF and KSF also failed to describe, substantiate, and prove what precisely the concrete effects/disadvantages would be for them of the fact that the KOC will not be in a position to function as the Kuwaiti national Olympic committee. Furthermore, both the KKF and the KSF failed to prove that the Appealed Decision affected them more intensely than it did other organisations of the Olympic Movement in Kuwait. Granting them standing to sue would be tantamount to allowing an *actio popularis*, an instrument that is recognized neither by Swiss law nor by CAS jurisprudence.
107. In addition, it must be observed that the Appealed Decision suspends the KOC but does not withdraw its recognition as a national sport organisation. The measure enforced against the KOC is provisional and not absolute. This aspect is important when considering the intensity of the IOC's decision and its attempt to safeguard the autonomy of sports organisations such as the KOC.
108. Moreover, it must not be forgotten that the KOC agreed to its suspension and that the measure was directly aimed at improving its position vis-à-vis its government, or at least at stopping a situation that could prove harmful to the Olympic Movement. One must also keep in mind that under the Olympic Charter, it is the NOC's obligation to preserve its autonomy and to resist pressure of any kind, including political, legal, religious, or economic pressure that could prevent it from complying with the Olympic Charter (Article 27 para. 6). If under such circumstances third parties were able to successfully challenge a suspension imposed by the NOCs – a suspension that was actually being asked for or at least was not being opposed – it would rob the measure of its purpose. This is particularly true considering that the NOC is in a much better position than its affiliated national federations to decide on the proper measures to take to safeguard the interests of the National Olympic Movement.

109. Finally, denying the Appellants' standing to appeal would also not lead to a general/complete denial of justice. They can/could bring claims against the KOC if they thought that KOC should have appealed/taken action against the sanction/suspension issued against it by the IOC.
110. In light of the foregoing and bearing in mind that a) the KKF and the KSF were not the addressees of the Appealed Decision, b) that KKF and KSF are not party to the discussions between the IOC and the Kuwaiti government, c) that under such circumstances, standing to appeal may be granted in a restrictive way only, d) that no legally protected interests of the KKF/KSF were violated by the Appealed Decision, e) that the autonomy of the Olympic Movement is a fundamental principle of Olympism as is the principle of the autonomy of sport (see para. 5 of the Fundamental Principles of the Olympic Charter), f) that this autonomy is at the heart of the Appealed Decision, g) that the Appealed Decision is the result of lengthy but unfruitful discussions and negotiations between the parties directly involved in the dispute, and h) that the measure imposed against the KOC is provisional and was accepted by the latter, the Panel finds that the KKF and the KSF do not have a sufficient, legally protected interest that would justify granting them – as an exception – standing to sue in this matter.

ii) Regarding the Athlete's standing to appeal

111. In substance, the Athlete submits:
- As a direct consequence of the Appealed Decision, he may be prevented from participating in the 2016 Olympic Games for which he already qualified. “[An] athlete’s inability to compete in a major competition often entails damage that is difficult to remedy. World championships and the Olympic Games evidently qualify as major competitions. For other competitions, it should be up to the applicant to demonstrate the importance of the event for his or her career”.
 - Should he be allowed to compete under the Olympic flag, he would not be able to wear his national colours, which is of utmost importance for each athlete taking part in Olympic events.
 - Neither the KOC nor the KSF will be able to support him “in relation to his participation (if any) to the Rio Olympic Games, as well as to all other Olympic and international competitions to which he may participate under the Olympic or the ISSF flag”.
 - As a consequence of the Appealed Decision, the Athlete as well as other Kuwaiti athletes (who may qualify for the next Olympic Games) will be negatively affected in his/their preparations as well as during the Olympic competition.
112. With reference to the Athlete's standing to appeal, the essence of the IOC's submissions may be summarized as follows:
- The fact that the Athlete is bound by the Olympic Charter is a prerequisite to eligibility for participation in the Olympic Games. It is a unilateral form of commitment that does not create a contractual relationship or a membership link between the IOC and the Athlete.

- The Athlete is not the addressee of the Appealed Decision.
 - The Athlete has no legitimate interest as he is not directly affected by the Appealed Decision. Should the Athlete qualify for the next Olympic Games, he would not be harmed by the Appealed Decision as he would be granted by the IOC an exceptional authorization for participation in the Games under the Olympic flag and on an individual basis. In addition, he would be supported by a person specially appointed for such individual athletes, who can usually be accompanied by a number of technical officials.
 - Olympic Games are competitions between athletes and not between countries. The fact that the Athlete cannot compete under the colours of his country would not cause him irreparable harm.
113. It has been established during the course of the present arbitral proceedings that the Athlete as well as several other teammates would compete in the 2016 Olympic Games. Likewise, and with reference to other international competitions, the ISSF confirmed that its decision to suspend the KSF “*should not affect the Kuwaiti athletes which will be allowed to participate in all ISSF competitions under the ISSF flag*”.
114. Being authorized to compete in the 2016 Olympic Games, the Athlete’s most fundamental sporting and personal rights – e. g. the valuable protected interest of the possibility of winning a medal, which was already stated by CAS (CAS 2002/O/372 para. 23, CAS Digest III p. 17) – are safeguarded. The mere fact of not being allowed to compete under one’s country flag, as important and respectable as it is, in the case at hand does not constitute a legally protected interest as outlined above.
115. In this connection, the Panel is well aware of the fact that the general public perceives the participating athletes predominantly as representatives of their respective countries, all competing in order to receive the best possible results for their colours. Be that as it may, such public perception and the fact that an athlete may perceive himself as a representative of his nation cannot change the character of the Olympic Games. As rightfully pointed out by the Respondent, Article 6 para. 1 of the Olympic Charter clearly states that the “*Olympic Games are competitions between athletes in individual or team events and not between countries” (emphasis added). In addition, Article 44 para. 3 of the Olympic Charter reads: “*Any entry is subject to acceptance by the IOC, which may at its discretion, at any time, refuse any entry, without indication of grounds. Nobody is entitled as of right to participate in the Olympic Games*”. Notwithstanding the justiciability of this provision or the question of whether the IOC is always truly and absolutely free in its discretion, the Olympic Charter in any event does not grant a general or specific right to participate under one’s country flag.*
116. The Panel does not deem it necessary to derogate from this in the specific case at hand and acknowledge an exceptional right of the Athlete to compete under the Kuwaiti flag. The Athlete was given the option to participate as an Independent Olympian in the 2016 Olympic Games. The Appellants did not succeed in convincing the Panel that participating in the Olympic Games under the Olympic/ISSF flag would cause concrete disadvantages that the Athlete would not

have suffered if he had been granted the right to compete under the Kuwaiti flag (e. g. deprivation of public funding, loss of training opportunities, or other such disadvantages).

117. The Appellants also claimed that on account of the challenged suspension, the Athlete's federation was prevented from helping him with his preparations. However, this aspect was not substantiated by them at all. All they did was provide the Panel with mere speculations. Regarding the burden of proof, it is the Appellants' duty to objectively demonstrate the existence of what they allege (Article 8 SCC; ATF 123 III 60 consid. 3a, ATF 130 III 417 consid. 3.1.; CAS 2014/A/3836 para. 45 with further references; CAS 2015/A/3880 par. 51). It is not sufficient that they simply assert a fact for the Panel to accept as true. The Panel may not base its findings on mere assertions and speculations. Notwithstanding the above, during the hearing before the CAS, the Athlete explained that he was in Italy practicing for the 2016 Olympic Games along with other teammates. He did not complain of any lack of coaching or financial support, and therefore did not even claim any substantial disadvantage resulting from a participation under a neutral/the Olympic flag.
118. The Athlete did, however, submit that the whole situation caused a certain amount of stress and frustration unsuited to his sport, which requires concentration and lack of disturbance of any nature. Assuming that this indeed was the case, the Panel points out that this is not a valid argument to be brought up in favour of the necessity to grant the right to start under one's country flag. Even if the Panel were to decide to set aside the Appealed Decision, this decision would be of no use to the Athlete because it is unable to undo the disturbances claimed by him. Whether the Athlete actually suffered harm as a result of the Appealed Decision is an issue of a possible claim for damages, but it cannot help to cure a lack of standing. It is also the Panel's opinion that elite sportsmen such as the Athlete deal with high-pressure situations on a regular basis and are expected to maintain a peak level of performance in spite of external interferences.
119. This (or any specific/concrete disadvantages) has not, however, been proven by the Athlete in the case at hand. Finally, the Panel points out that an individual athlete – in relation to the KOC – belongs to a group of stakeholders that in the well-known pyramidal and vertical structure of sport governance is one (if not more than one) level below the national federations/associations (such as KKF and KSF here). Therefore granting everyone who might somehow be indirectly affected by the appealed decision – *i. e.* every Kuwaiti federation/association and every Kuwaiti athlete and possibly the regional associations in between – standing to appeal would all the more amount to an *actio popularis* (see also *supra* para. 106). Given that it is only in very restricted cases that someone who is not the addressee of a decision is entitled to appeal (see *supra* paras. 96 and 110), something different could only apply (if at all) in a case where a member of said group can prove to be affected more intensely than any of the other participants of the Olympic Movement in Kuwait (except of the KOC). This, however, has not been proven by the Athlete in the case at hand.
120. Based on the foregoing, the Panel finds that the Athlete has no standing to appeal in the present matter.

121. Because of the Appellants' lack of standing and in view of the foregoing submissions, the Panel does not need to consider the other arguments submitted by the Parties. Accordingly, all other prayers for relief are denied.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed jointly by the Kuwait Karate Federation, the Kuwait Shooting Federation and Mr Khaled Jassim Mohammad Almudhaf against the decision issued on 27 October 2015 by the International Olympic Committee is dismissed.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.