**Arbitration CAS 2017/A/5459 Isidoros Kouvelos v. International Committee of the Mediterranean Games (ICMG), award of 6 November 2018 (operative part of 11 May 2018)**

Panel: Mr Ivaylo Dermendjiev (Bulgaria), President; Mr Efraim Barak (Israel); Mr Lino Farrugia Sacco (Malta)

*Mediterranean Games*
*Election of a candidate to a top position in a sport organisation*
*Admissibility of the appeal in light of the dies a quo and the notion of decision*
*CAS jurisdiction subjected to the existence of a decision*
*Interpretation of statutes and regulations*
*Interpretation of a provision regarding the majority requisites for the election of candidates*

1. **A "decision" within the meaning of Article R49 of the CAS Code should be construed to mean the complete and final decision, including the reasons for it. In short, (i) what constitutes a decision is a question of substance not form; (ii) a decision must be intended to affect and affect the legal rights of a person, usually, if not always, the addressee and (iii) a decision is to be distinguished from the mere provision of information. Under Swiss law, the *lex fori*, *"The authority notify its decision to the parties in writing"*. As to the question of receipt of the decision, the CAS Code is silent with regard to the meaning of "receipt" in Article R49. Under Swiss law, a decision is deemed to have been received (or as the case may be, notified) at the time when it came into the so-called "sphere of control of its addressee". Furthermore, Article 75 of the Swiss Civil Code determines the obtaining of knowledge as the relevant criterion to determine *dies a quo* with regard to decision of organisation. This solution is further confirmed by CAS jurisprudence.**

2. **CAS has jurisdiction with regard a decision i.e. a ruling capable of affecting the addressee of the decision right. This impact should be examined on a case by case basis. Such impact may be a question of fact as well as a question of law and by definition should imply the occurrence of a change relating to the addressee's rights and/or interests. In this respect, CAS has obviously jurisdiction with regard the decision of the General Assembly (GA) of an association passed on the GA meeting not to declare a candidate elected at a top position in the association. However, CAS has no jurisdiction with regard a letter issued by the President of the association representing an offer to arbitrate since no negative changes occurred as a result of it towards the addressee and it does not amount to a decision under the association's rules.**

3. **Statutes and regulations of an association shall be interpreted and construed according to the principles applicable to statutory interpretation rather than those applicable to contractual interpretation. The interpretation of the statutes and rules of**

**a sport association has to be rather objective and always start with the wording of the rule which falls to be interpreted i.e. emphasis shall be put on literal and systematic interpretation. The adjudicating body will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located.**

4. **A provision according to which no absolute majority is required for the second round of an election where there is a sole candidate failing to obtain absolute majority during the first round, shall not be interpreted to mean that no majority at all is required. The respective candidate would still have to obtain higher number of positive votes than negative ones in order to be successfully elected. It would be against the democratic representativeness and the public purpose of an international association to elect someone that is not accepted by most of the electorate. The purpose of the rule, is to ensure efficient and timely election but at the same time appointment of a candidate who is acceptable by the majority of the members.**

## I. PARTIES

1. Mr. Isidoros Kouvelos (the "Appellant") is a member of the Hellenic Olympic Committee representing the Hellenic Equestrian Federation and holds the position of President of the International Olympic Academy since 2009. The Appellant was also elected and served as the Secretary General of the International Committee of the Mediterranean Games for two consecutive four-year terms from 2009 until 2017.

2. The International Committee of the Mediterranean Games ("ICMG" or the "Respondent" or the "Committee") is an international non-governmental and non-profit organisation duly organized in the form of an association governed by the legislation of Greece where it is located. The Respondent consists of 25 National Olympic Committees of the Mediterranean Stares. The Committee was established in 1961 and in 1996 was recognized by Greek Law 2433/1996 as a legal entity governed by Greek law. Its main objective is the organization of the Mediterranean Games (the "Games") as well as the promotion of sports in general among the member States.

## II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. Additional facts and allegations presented in the parties' written submissions, pleadings and evidence may also be set out, where relevant,

in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. According to Rule XI of the ICMG Charter, the Committee is administered by the ICMG Executive Committee ("EC") elected by the ICMG General Assembly ("GA") for a four-year term of office. The EC is comprised of:

- A President, who presides over all activities of the ICMG and is its permanent representative;
- A first Vice-President who replaces the President on his request in case of impediment;
- A second Vice-President who replaces the President on his request in case of impediment of the President or the first Vice-President;
- A Secretary General entrusted with the implementation of the decisions adopted by the ICMG EC and is responsible for the management of the ICMG under the President's authority;
- A Treasurer who is responsible for finances, accounting and the execution of the budget with all related obligations of any kind;
- Seven members.

5. All members of the EC, including the Secretary General, are elected by the GA by secret ballot for a four-year term of office starting from the day following the closing ceremony of the Games and ending on the day of the closing ceremony of the next Games except under exceptional circumstances. The members of the ICMG EC are re-eligible, on their own proposal or on the proposal of their respective National Olympic Committee.

6. The election of the members of the ICMG EC, namely the President, the first Vice-President, the second Vice-President, the Secretary General, the Treasurer and the additional seven EC Members is conducted through a two-round voting system that is governed by the ICMG Charter rules as follows:

*"BYE-LAW TO RULE XI*

***Preamble***

***1.*** *Only the votes of the ICMG members present at the GA will be taken into consideration.*

***2.*** *During the submission of applications, the candidate should expressly indicate the post for which he applies. Each candidate may only apply for one post.*

***Elections***

***1****. For the election to the posts of President, 1st Vice-President, 2nd Vice-President, Secretary General and Treasurer of the ICMG, the candidate who has obtained an absolute majority in the first ballot is elected.*

*If no candidate for any of these posts has obtained an absolute majority and if there are at least three candidates in the first round, a second ballot will be taken in which the candidate who has obtained the smallest number of votes in the first ballot may not participate.*

*If there are only two candidates left, a new ballot is taken. In the absence of an absolute majority, a final vote will be held and the candidate who has obtained the highest number of votes is elected.*

*When there is only one candidate for a post, he must obtain an absolute majority in the first ballot. Should he fail to obtain an absolute majority, a second ballot will be taken for which absolute majority is not required".*

7. Nonetheless, from a historical perspective, the above cited provision from the ICMG Charter was not strictly complied with during GA meetings on which elections for members of the ICMG EC took place.

8. As evident from the Minutes of the GA meeting held in Pescara, Italy on 24 June 2009, the elections for the post of some of the EC members where there was only one candidate were held through "applauds" and "cheers":

*"This last having already proposed that Mr. Amar Addadi, sole candidate to the post of President, is elected with applauds and the voting members having accepted this proposition, President Addadi is elected with applauds and takes back the presidency of the session…*

*Then President Addadi proposes that the main procedure of election will be adopted for the posts of the 1st and 2nd Vice-president, the General Secretary and the Treasurer where only one candidate was registered.*

*This proposition having been accepted, are elected with cheers:*

*- At the post of the First Vice-president : Mr. Denis Masseglia (France)*

*- At the post of the Second Vice-president : Mr. Mounir Sabet (Egypt)*

*- At the post of the General Secretary : Mr. Isidoros Kouvelos (Greece)*

*- At the post of the General Treasurer : Mr. Kikis Lazarides (Cyprus)".*

9. Similarly, during the ICMG GA meeting held on 19 June 2013 in Mersin, Turkey, the posts for EC members where there was only one candidate were elected by "applause" as demonstrated by the GA meeting Minutes:

*"Election of the President*

*There is only one candidate, Mr. Amar Addadi; he is unanimously re-elected by applause.*

*Mr. Addadi thanks the GA members for their trust and promises that he will do his best to live up to their expectations.*

*Election of the 1st Vice-President*

*There is only one candidate, Mr. Denis Masseglia; he is unanimously re-elected by applause.*

*Mr. Masseglia thanks the GA members for their trust and belief in him.*

…

*Election of the Secretary General*

*There is only one candidate, Mr. Isidoros Kouvelos; he is unanimously re-elected by applause.*

*Mr. Kouvelos thanks the GA members for their trust and says that he will continue to work hard for the ICMG.*

*Election of the Treasurer*

*There is only one candidate, Mr. Kikis Lazarides; he is unanimously re-elected by applause.*

*Mr. Lazarides thanks the GA members for re-electing him".*

10. Upon the expiration of the second consecutive four-year term of the Appellant as Secretary General, the next elections were to take place during the ICMG GA meeting in Tarragona, Spain on 13 October 2017. The Appellant was the sole candidate for the 2017 elections for the post of the ICMG Secretary General.

11. On 12 October 2017, the day before the GA meeting, the ICMG EC held a meeting on which it was expressly decided that the elections for the new four-year term of the EC members will be conducted in strict compliance with the rules of the ICMG Charter, hence, a secret ballot will be carried out regardless of the number of candidates for each respective post. According to the Minutes of the 12 October 2017 EC meeting:

*"In his capacity as President of the Ethics Commission of the ICMG, the 1st Vice-President, Mr. Masseglia, raises the issue of compliance with the ICMG Charter and expresses his opinion that they should not derogate from the rule of secret ballot for all positions.*

*After discussion it is agreed by the majority of EC members that there will be a secret ballot for all positions regardless of the number of candidates".*

12. In accordance with the foregoing decision, ballot papers were prepared for the 2017 ICMG Secretary General elections. These ballots were bilingual, with sections for the first and second round each containing a ticking box where each voter can indicate whether she/he votes "OUI /YES" or "NON/NO". It should be noted that the ballot papers for the election of other members of the ICMG EC, such as the second Vice-President and the 7 additional EC members were different than the ballot paper for the Secretary General election and did not contain YES and NO boxes. Rather, they contained a single box for indication whether the respective voter votes in favour of the respective candidate.

13. As planned, the voting for the post of the ICMG Secretary General took place during the GA meeting on 13 October 2017 in Tarragona, Spain. During the first round, the Appellant was not able to achieve the required absolute majority with 23 votes received in favour, 36 against and 17 blanks. As a result, a second voting round was held where the Appellant was also not able to achieve a majority – 26 votes in received favour, 43 against and 7 blank votes.

14. However, during the voting a dispute arose as to the interpretation of Bye-law to Rule XI of the ICMG Charter in its part which stipulates that in the event that a candidate fails to obtain

an absolute majority, a second ballot shall be taken for which absolute majority is not required. As the dispute was not resolved, it was agreed that the Appellant would not be officially declared elected for the position of Secretary General and that the dispute should be referred to the Court of Arbitration for Sport (the "CAS"). The foregoing was reflected in the Minutes of the ICMG GA meeting in Tarragona, Spain on 13 October 2017 (the "First Appealed Decision"):

*Election of the Secretary General*

*1 Candidate: Mr. Isidoros Kouvelos (Greece)*

*The total number of votes amounted to 77:*

*- 25 NOCs with 3 votes each 75 votes*

*- 1 IOC member with 1 vote 1 vote*

*- ICMG President with 1 vote 1 vote*

*Total: 77 votes*

*Abstentions: 1*

*Number of invalid ballots: 0*

*The total number of valid votes amounted to 76 and absolute majority was determined to 39 votes.*

*Results of the first round: 23 votes in favour, 36 votes against, 17 blank votes*

*Given that absolute majority was not reached in the first round there was a second round of elections.*

*Results of the second round: 26 votes in favour, 43 votes against, 7 blank votes*

*As there was a dispute over the interpretation of the ICMG Charter with regard to the results obtained in the second round and the provision stipulating that absolute majority is not required at the second ballot, it was agreed not to officially declare that the Secretary General was elected; it was agreed that Mr. Kouvelos should present his case before the CAS and then an Extraordinary meeting of the Executive Committee should be held in order to make a decision; in the meantime it was agreed that the ICMG President would appoint an interim Secretary General from among the members of the Executive Bureau".*

15. After the GA meeting, the Appellant submitted a legal opinion to the ICMG President requesting that the decision of the GA is reconsidered and his election is confirmed on the basis of the correct interpretation of the provision of By-law to Rule XI of the ICMG Charter.

16. On 21 October 2017, the Appellant received a letter from the ICMG President which, in relevant part, stated:

*"De plus, je suis également exaspéré car nous avons commis une grave erreur de conception du bulletin de vote et tout cela ne serait pas arrivé si tu avais pris le soin de vérifier les documents avant de me les envoyer : voici le nœud du problème, un manque de contrôle de ta part que j'ai déjà eu maintes fois à te reprocher et qui a fini par t'être fatal. Néanmoins, la forme inadéquate du bulletin est une faute que nous devons tous assumer et reconnaître devant les membres de l'Assemblée Générale".*

Free translation:

*"In addition, I am also exasperated because we made a serious error in the design of the ballot bulletins and all that would not have happened if you had taken care to check the documents before sending them to me: here is the crux of the problem, a lack of control on your part that I have had many times to reproach you for and which ended up being fatal to you. Nevertheless, the inadequate form of the bulletin is a fault that we must all assume and recognize before the members of the General Assembly".*

17. On 5 December 2017 and after receipt of the above-mentioned legal opinion, the ICMG President sent a letter to the Appellant (the "Second Appealed Decision") which in its pertinent parts provided that:

*"…[a]fter having examined all the relative documents presented to us regarding your case as well as the documents submitted by you directly, EB members having unanimously concluded that the best way forward is for you to appeal to CAS following the decision of the General Assembly and as clearly stated in the Minutes".*

18. On 2 January 2018, in response to a further letter sent by the Appellant, the ICMG President informed Mr. Kouvelos that:

*"I do remember, as far as I can, that it was the 1st time we used ballot papers for a position with only one candidate as the GA had always previously chosen to elect sole candidates by acclamation. And, you will remember that the decision to proceed to voting with ballot papers, even for sole candidatures, had been adopted, the previous day, during the EC meeting, after a long, heated discussion".*

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

19. On 11 December 2017, the Appellant filed its statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").

20. On 13 December 2017, the CAS Court Office acknowledged receipt of the statement of appeal and invited the Appellant within three days to duly appoint an arbitrator from the CAS list.

21. On 18 December 2017, the Appellant nominated Mr. Efraim Barak as an arbitrator.

22. On 19 December 2017, the arbitration proceedings were assigned to the Appeals Arbitration Division of the CAS. Additionally, the nomination of an arbitrator on behalf of the Appellant was noted and the Respondent was in turn given 10 days to nominate an arbitrator.

23. On 22 December 2017, the Respondent nominated Mr. Lino Farrugia Sacco as an arbitrator.

24. On 2 January 2018, the Appellant filed his appeal brief.

25. On 15 February 2018, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the CAS Code, informed the Parties that the Panel to hear this appeal was constituted as follows:

President: Mr Ivaylo Dermendjiev, Attorney-at-law in Sofia, Bulgaria

Arbitrators: Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel
Mr Lino Farrugia Sacco, Attorney-at-law in Valletta, Malta.

26. On 6 March 2018, the Respondent filed its answer to the appeal including, *inter alia*, an exception of inadmissibility of the appeal against the Decision of 13 October 2017, of lack of jurisdiction to examine the letter of 5 December 2017 and of estoppel.

27. On 20 March 2018, pursuant to Article R55.5 of the Code, the Appellant was invited to submit his observations strictly limited to the issues of inadmissibility, of estoppel and of lack of jurisdiction raised by the Respondent in its Answer.

28. On the same day, the Parties were further invited to inform the CAS Court Office whether they prefer a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

29. On 2 April 2018, the Appellant filed his observations on the exception of inadmissibility, lack of jurisdiction and estoppel.

30. On 5 April 2018 and with the Respondent' tacit agreement, the Appellant submitted a witness statement.

31. On 18 April 2018, in view of the Parties' positions, the Panel decided to issue an award based on the Parties' written submissions and invited the Parties to submit their final written observations allowing them to develop their arguments and submit legal materials but were not allowed to submit new arguments or new means of evidence. The Panel further advised that it would do its utmost to issue the operative of its decision by 4 May 2018 (i.e., before the start of the 2017 Games) but could not exclude that more time could be needed.

32. On 20 April 2018, the CAS Court office sent a letter to the Parties confirming that the Parties were not allowed to formulate any new arguments or requests for relief via their final submissions.

33. On 26 April 2018, the Appellant and the Respondent submitted their final submission.

34. On 27 April 2018, the CAS Court Office issued an Order of Procedure, which was duly signed by the Respondent on 2 May 2018.

35. On 4 May 2018, the Appellant filed some last observations. He underlined that the Respondent's final submissions was, for its most part, intended to counter the Appellant's submissions and not to develop its arguments. It requested the Panel to take that fact into

account when assessing the Respondent's final observations. The Appellant also objected to the language of the Order of Procedure in its part stating that the Respondent disputes that the CAS has jurisdiction to hear the matter. Accordingly, the Appellant signed a version of the Order of Procedure with amended text according to which the Respondent did not dispute the CAS jurisdiction to hear this matter.

36. The Parties were given the opportunity to present their cases, to make their submissions and arguments. The Panel has carefully taken into account all the evidence and the arguments presented by the Parties in their written submissions, even if they have not been summarised in the present Award.

## IV. POSITIONS OF THE PARTIES

37. The following outline of the Parties' positions is illustrative only and does not necessarily encompass every contention put forward by the Parties. The Panel, indeed, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties and the evidence produced by them, even if there is no specific reference to those submissions or evidence in the following summary.

### A. The Appellant

38. The Appellant's submissions, in essence, may be summarized as follows.

- Regarding the facts of the case, the Appellant asserts the following:
  - -- The Appellant points out that the position of ICMG Secretary General is traditionally held by a representative of the Hellenic Olympic Committee ("HOC") since the establishment of the ICMG which is evident by the fact that the Appellant has served as Secretary General as from 2009. This custom is mainly due to the fact that the ICMG's registered seat, office and administrative services are in Athens, Greece.It is also customary that some or all of the candidates for the various posts within ICMG EC are proposed by their respective National Olympic Committee ("NOC") although the ICMG Charter does not specifically require such support on behalf of the respective NOCs. It is further pointed out that the HOC was unable to formally notify ISMG for the support with regard to the Appellant's candidacy due to the legal dispute concerning the validity of the elections held in the HOC in February 2017;
  - -- With regard to the text of Bye-Law to Rule XI of the ICMG Charter, the Appellant emphasizes on its loose application since the establishment of the ICMG referring to the previously conducted elections for posts in the ICMG EC where there had been only one candidate effectively elected by applauses;
  - -- The Appellant recalls that at the Tarragona GA meeting, the GA heard and approved his report as outgoing Secretary General whereby no objections or

complaints were made whatsoever with regard to his administration of the ICMG affairs;

-- According to the Appellant, it is to be specifically noted that this was the first time when the ballot papers included YES/NO option as all previous elections were held either by acclamation, particularly when there was only one candidate for the post, or by using ballot papers where the voters had to simply select one or several names listed making a cross next to the respective name;

-- The ballot papers were prepared by the ICMG administrative staff and were approved by the ICMG EC prior to the election despite the opinions expressed during the EC meeting to the contrary. This approval has explicitly been considered as a mistake by the ICMG President as evident from his letter sent to the Appellant on 2 January 2018;

-- After recalling the events that took place during the GA meeting where it was decided that he should not be declared elected, the Appellant explains that regardless of the legal opinion provided to the ICMG to the effect that the right interpretation would result into the Appellant being considered elected for the position of a Secretary General, to this day the position remains vacant as evident from the relevant entry into the ICMG website;

- On jurisdiction and admissibility, the Appellant submits the following:

-- The Appellant refers to Article R47 of the Code and Rule VII of the ICMG Charter to establish the Panel's jurisdiction. The said provision of the ICMG Charter stipulates that any dispute relating to the application or interpretation of the provisions of the Charter must be submitted to the CAS which decisions are final. Additionally, the Appellant submits that both the Minutes of the GA meeting on 13 October 2017 and the ICMG President letter of 5 December 2017 expressly admitted that CAS has jurisdiction to decide on the dispute.

-- As to the admissibility of the appeal, the Appellant submits that all requirements are satisfied as there are no internal legal remedies to be exhausted by the Appellant and the twenty-one-day deadline according to Article R49 of the Code has been complied with. In arguing that the appeal was filed on time, the Appellant relies on the fact that the First Appealed Decision was notified to him via email on 20 November 2017 with the Minutes from the GA meeting held in Tarragona attached thereto;

-- In response to the Respondent's objections to the jurisdiction and admissibility, the Appellant submits that, the Respondent's reference to CAS jurisprudence is misleading as the cited CAS 2007/A/1413 which, according to ICMG, allegedly holds that the time-limit of Article R49 of the CAS Code commences as from the moment in which the appellant has obtained actual knowledge, is based on Art. 75 of the Swiss Civil Code. The Appellant's position is that this provision is not directly applicable at hand as the rules of federations and sports associations prevail over national law. It is the Appellant's contention that the time-limit shall be counted as from the moment of receipt of the decision, e.g. its formal notification;

-- In the Appellant's view, it bears noting that, the ratio behind this interpretation is to safeguard legal certainty for the parties and the deciding tribunal, but also to provide the appealing party with sufficient knowledge of the decision appealed against and its legal basis and grounds, so that the appealing party is able to assess the content of the decision and the likelihood of its successful challenge, which is only ensured by calculating the time limit to appeal from the receipt of a formal notification of the decision and its contents;

-- Accordingly, the Appellant suggests that the *dies a quo* for the calculation of the time limit for filing an appeal is the day when he actually received a copy of the First Appealed Decision and, most precisely, the minutes of the General Assembly meeting at issue containing the decision of his non-election (20 November 2017) when he received the email to which the minutes were annexed, a fact that is not disputed by the Respondent. This is further supported by reference to Article R48 of the Code which requires that the Appellant must file a copy of the decision appealed against together with his statement of appeal before the CAS;

-- With regard to the admissibility of the Second Appealed Decision, the Appellant submits that according to CAS case law, the actual form of the communication is of no relevance in the determination whether it represents a decision. What is of importance is that it must contain a ruling of some kind which affects the rights of the appealed party. Precisely such is the nature of the President's letter of 5 December 2017 as it was issued following a request on the Appellant's side for a review of the GA resolution;

-- As to the admissibility of the appeal regarding the legality of the ballot papers, the Appellant emphasizes on the full powers of the Panel to examine not only the formal aspects of the Appealed Decisions, but also to evaluate all facts and legal issues involved. Such a legal issue is clearly the use of ballot papers allowing for a YES/NO vote, the validity and consequences of which needs to be examined by this Panel, in order for a verdict on the merits of the appeal to be reached. The Appellant clarifies that it does not appeal the choice of the ballot papers *per se*, but challenges the validity of the said choice which directly relates to the Respondent passing the First Appealed Decision;

-- As to the estoppel argument put forward by the Respondent, the Appellant refers to the *venire contra factum proprium* (which is the equivalent of the estoppel doctrine in Swiss law), where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party. However, the Appellant asserts that his conduct during the election has not induced any legitimate expectation in the Respondent that he would refrain from challenging the legality of the format of the ballot papers in future CAS proceedings. Hence, this objection should also be rejected by the Panel.

- On the merits, the Appellant submits the following:

-- The Appellant states that the essence of the dispute which is the subject matter of the present appeal is the interpretation of the relevant provision of the constituent document of the Respondent, namely the ICMG Charter. According to the means for interpretation under the applicable Greek law, and especially the literal interpretation of the relevant provisions of the Charter, the requirement laid down in Bye-Law to Rule XI in the case of a second round of voting for an EC post is to be interpreted either that on the second round of voting (i) no majority is required at all, or that (ii) a different type of majority other than an absolute majority should be applied;

-- One is to take into account the fact that according to the ICMG Charter the absolute majority is formed from the delegates present at the meeting and by excluding all abstentions and spoiled votes. Hence, requiring any type of majority whatsoever at the second ballot does not effectively alter the number of votes required for the election. In fact, in the case of the Appellant's election the majority for both rounds was the same, e.g. 39 votes. As the purpose of having second ballot is that the scope of the ballot be always lower in order to facilitate the election of the candidate at hand, the applicable provision from the Charter shall be interpreted that no majority at all is required in the second round since another interpretation could lead to an election outcome where no position of the EC is filled;

-- Furthermore, the Appellant holds that the elections were not legal because of the use of invalid ballot papers. Although the ICMG Charter and the applicable Greek do not specifically define the type, form, and contents of the ballot papers to be used at the vote, the Appellant interprets the relevant text of Bye-Law to Rule XI that it does not regulate the possibility of voting "against" one candidate. Such situation indeed occurred as the ballot papers for the Appellant's elections contained "NON/NO" option;

-- Bye-Law to Rule XI of the ICMG Charter provides that ballot papers on which more names than the number of posts appear as well as those bearing other names than those whose nomination was properly submitted are invalid. This suggests that any irregularity as to the selection made on the ballot papers result in their invalidity. Hence, because the ballot papers for the Secretary General post contained an unregulated type of voting ("OUI/YES" and "NON/NO" option), the decision under appeal was in breach of the ICMG Charter and should be set aside by the Panel;

-- Because the applicable Greek law considers the voting for elections of position in an association as a declaration of intent which validity is to be adjudicated upon by the competent court or tribunal, the Appellant submits that the Panel should consider all "NO" votes as blank votes and therefore amend the election results to that effect. As a result, the Panel should set aside the decisions appealed and confirm the election of the Appellant at the second ballot as he has received sufficient number of votes under the applicable provision of the Charter;

-- In the alternative, the Appellant submits that the Panel should set aside the appealed decisions and order the Respondent to hold an extraordinary General Assembly meeting and repeat the election of the Appellant as a sole candidate for the post of the Secretary General. The Panel should also instruct the Respondent that the ballot papers for the future vote do not contain a "YES/NO" option and that at the second ballot the election of the Appellant should be confirmed regardless of the number of votes cast in his favour as no majority is required;

-- Additionally, the Appellant draws the Panel's attention at the severe violation of the principle of equality during the elections procedure in light of the fact that the ballot papers for the election of the second Vice-President did not contain "NO" option although one of the two candidates for the post withdrew his candidacy prior to the elections and there was a sole candidate for the post;

39. In his prayers for relief, the Appellant requests the CAS to rule as follows:

*"... **2. On Appeal**:*

*i) to rule on interpretation of the ICMG Charter, declaring that the meaning of Rule XI and of BYE-LAW TO RULE XI is that, when there is one sole candidate for the ICMG Secretary General position, a majority vote is not required at the second ballot and the negative votes cast cannot be validly considered to determine the outcome of the vote; consequently, the sole candidate is elected at the second ballot irrespective of the numbers of positive votes cast; and*

*(ii) to set aside and/or declare null and void the decision of the ICMG General Assembly of 13 October 2017 which stated that "it was agreed not to officially declare that the Secretary General was elected, it was agreed that Mr. Kouvelos should present his case before CAS and then Extraordinary meeting of the Executive Committee should be held in order to make a decision, in the meantime it was agreed that the ICMG Executive Bureau which was communicated to the Appellant on 5 December 2017 and confirmed the above decision of the General Assembly; and*

*(iii) to acknowledge and confirm (and/or order the ICMG to officially declare) that Isidoros Kouvelos has been elected to the post of Secretary General by the result of the vote in the General Assembly of the Respondent of 13 October 2017;*

*or, subsidiarily:*

*(iv) to set aside and/or declare null and void the decision of the ICMG General Assembly of 13 October 2017 not to elect Mr. Isidoros Kouvelos and the decision of the ICMG Executive Bureau which was communicated to the Appellant on 5 December 2017 and confirmed the above decision of the General Assembly, and to order the ICMG to repeat the election of the Appellant as a sole candidate for the post of Secretary General, which will be held with the use of ballot papers that do not contain a "YES/NO" option and for which no majority shall be required meaning that the Appellant's election can be confirmed at the second ballot regardless of the number of votes cast in his favour;*

*or, subsidiarily;*

*(v) to make a decision that the CAS deems appropriate in the particular circumstances of this case;*

*and*

*(vi) in any event, to order the Respondent to pay the entire costs for the Appellant's legal representation as well as other costs incurred by the Appellant in the course of the present proceedings to be submitted at a later state of the proceedings and upon request of the CAS Court Office".*

## B. The Respondent

40. The Respondent's submissions, in essence, may be summarized as follows:

- With regard to jurisdiction and admissibility, the Respondent asserts as follows:
  - -- With respect to the First Appealed Decision, the Respondent notes that according to Article R49 of the Code, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Respondent submits that this period should be counted as from 13 October 2017, the date of the GA meeting rather than from 20 November 2017 when the Minutes were dispatched to the Appellant. The dispatch of the Minutes of the said GA meeting on 20 November 2017 cannot amount to a receipt of the appealed decision within the meaning of Article R49 of the Code as the decision was already received by him on 13 October 2017 since the Appellant attended the said meeting and acquired at that moment on the spot;
  - -- support of this position, the Respondent refers to the award in CAS 2007/A/1413 which states that *"[t]he time limit starts to run when the appellant has become aware of the decision. It is not necessary that the decision be formally notified to him by the decision-making body; it is sufficient if the appellant knows of the decision"*. The Respondent also referred to CAS 2006/A/1168 to emphasize that it is the moment when the appellant receives the appealed decision regardless of the form that time starts to run and not when the said decision is received in writing and with reasons.;
  - -- The Panel does not have jurisdiction to examine the Second Appealed Decision as it does not amount to a decision that can be subject to appeal. The Respondent contends that notwithstanding the text in the letter of 5 December 2017, that according to Executive Bureau ("EB") *"members have unanimously concluded…"*, the EB does not have decision-making powers under the ICMG Charter relating to the confirmation or review of the results of an election that is within the competence of the General Assembly. Referring to the CAS jurisprudence with regard to the requisites of a decision, the Respondent submits that the Second Appealed Decision does not satisfy those criteria and hence the Panel does not have power to review it;
  - -- Furthermore, it is the Respondent's contention that the challenge of the legality of the ballot papers sought with the appeal brief is also outside of the scope of the Panel's jurisdiction. The choice of ballot papers and their alleged illegality is clearly not forming part of any of the Appealed Decisions. The Respondent alleges that the choice of ballot papers also does not amount to a decision within the meaning of Article R47.1 of the Code and the Panel cannot adjudicate on it;

-- Alternatively, even if the Panel were to establish jurisdiction to review the legality of the ballot papers, the Respondent submits that the Appellant is estopped and/or has waived his right of challenging the legality of the ballot papers since he was fully aware of their format and did not openly state any objections against the design of the ballot papers and the "YES/NO" option. In fact, the use of that ballot procedure was decided by the EC and should have been known by the Appellant in his capacity of Secretary General at the time they were prepared and adopted. In this respect, the Appellant was even given chance to comment on the election procedure during the GA meeting and did not make any objections but rather thanked all voters and expressed concerns with regard to the interpretation of Bye-Law to Rule XI of the ICMG Charter rather than the legality of the ballot papers themselves;

-- Without prejudice to the foregoing argument, the Respondent submits that the ballots were at all times legal and did not violate the provisions of the ICMG Charter or any other applicable rule or law;

- On the merits, the Respondent submits the following:

-- The Respondent points out that in order to set aside the Appealed Decisions, the Panel should conclude that they violate the provisions of the ICMG Charter and/or any applicable legal rules or law for which the Appellant entirely bears the burden of proof. Such violations are clearly not present;

-- As to the applicable law, the Respondent's position is that there needs to be no resort to Greek law in interpreting the ICMG Charter for the purpose of adjudicating the merits of the present case since the election issues raised by the appeal are regulated solely by the Charter. Moreover, the Appellant has not sought to establish that the decisions under appeal have violated any of the provisions of Greek law. It is also noted that the Opinion of Prof. Philippos Spyropoulos submitted as an exhibit does not make any reference whatsoever to any specific provision of Greek law to justify his conclusions that simply repeat the position and arguments that are taken in the appeal brief;

-- Alternatively, even if the Panel were to find that the Greek Civil Code provisions on Associations apply to the ballot papers choices, it is submitted that the said law did not prohibit the use of YES/NO Vote. As such prohibition does not exist, no violation can be established for which, as already noted, the Appellant bears the burden of proof and has failed to discharge it;

-- The Respondent also disputes the Appellant's position regarding the interpretation of the majority requirement for an election of the Secretary General position under the ICMG Charter. It is submitted that there were important policy considerations and democratic reasons requiring that the rule that an absolute majority in the second round is not required should be interpreted in a way that the person that received more negative than positive ones cannot be considered as elected. The Appellant's reference to the previous elections where members of the EC were elected by acclamation is not capable of trumping this argument and lead to illegality of the Appealed Decisions. Firstly, the past practice cannot affect

the provisions of the ICMG Charter which recognize the need for an election even where there is only one candidate. Secondly, the previous practice in fact confirms the possibility of negative votes as an opposition by any member will lead to the need for an election to take place. This practice which implies unanimity also further justifies the correctness of the present decision not to consider someone elected when more negative votes are given as the existence of more negative votes demonstrates lack of collective acceptance;

-- With regard to the different ballot papers for the election of the second Vice-President during the same GA meeting, the Respondent submits that this is due to the fact that the second candidate took the floor and announced his withdrawal from the election during the very meeting and given that the ballots were prepared in advance the only practical way of proceeding was to cross out the name of the candidate whose candidacy had been withdrawn;

-- The Respondent agrees that in calculating the absolute majority in the election of ICMG officials one should count the number of votes cast including blank votes but excluding abstentions and spoiled votes. However, the Respondent disagrees with the analysis put forward in the appeal brief that any number of votes cast in favour of a sole candidate during the second round of elections would suffice for that candidate to be elected. The rule from the Charter states that an absolute majority is not required but this cannot amount to considering that any numbers of votes would be enough. If this was the rationale behind this rule, there would be no need of having second round of votes;

-- It is asserted by the Respondent that, when a rule is capable of different interpretations, the adoption of one of those on the basis of policy considerations and democratic reasons cannot amount to a violation of the ICMG Charter. The Appellant himself recognizes in his appeal brief that the disputed provision has at least two possible interpretations. The recognition of alternative interpretations by the Appellant is in itself proof that there was no violation of the Charter. The existence of more votes against than in favour means that it was not relevant at all whether any kind of majority was obtained by the Appellant. In fact, the majority was expressed against him. The issue is that the outcome of the election demonstrated disapproval by most of the GA members which empowered the ICMG GA to pass the Appealed Decision which clearly cannot be considered to be in contradiction with any provision of the ICMG Charter and/or any law or rule.

-- Additionally, the said decision is justified by policy consideration and democratic reasons of not electing someone that is not accepted by most of the electorate as the ICMG is an international organisation entrusted with a role in public interest to play through the promotion of sport and Olympism for the benefit of the public at large which cannot be ignored. The Respondent submits, referring to CAS 2012/A/2913, that CAS should not intervene in the policy considerations adopted by ICMG as they reflect the organisation's discretion in self-organising itself, setting the procedures for the election of its bodies and the observance of the rules adopted for that purpose. In this regard, the Respondent deems it

impossible for the Panel to grant the relief sought by the Appellant to set aside the GA decision and to confirm the Appellant's election as this is a matter for the ICMG to do;

41. In its prayers for relief, the Respondent requests the CAS to issue an award:

*"(a) Dismissing the Appellant's claims and requests in their totality;*

*(b) Ordering the Appellant to pay costs and expenses in connection with this arbitration, together with interest thereon, including but not limited to:*

*(i) all legal costs and disbursements;*

*(ii) all other professional fees;*

*(iii) all costs and expenses incurred by the Respondents' witnesses;*

*(iv) all fees and expenses of the Panel and the CAS;*

*(v) any other costs associated with these arbitration proceedings; and*

*(f) Granting such further and/or other relief as the Panel in its discretion determines appropriate".*

## V. ADMISSIBILITY

42. Article R49 of the Code provides as follows:

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

43. The admissibility of the appeal in this case is contested by the Respondent on the account of late filing. The Respondent argues that the twenty-one-day term should be counted as from the date of the General Assembly meeting whereupon the First Appealed Decision was adopted. This is due to the fact that the Appellant was present at the meeting and therefore acquired knowledge of the decision "on the spot". Thus, the deadline for submission of claim before CAS commenced on 13 October 2017. As the statement of appeal was filed on 11 December 2017, the term under Article R49 of the Code had already expired and the appeal is inadmissible.

44. The Appellant, on the other hand, submits that the term under Article R49 of the Code should be counted as from the date on which the Minutes from the General Assembly meeting were sent to him via email on 20 November 2017. Therefore, the appeal is not time-barred and should be declared admissible.

45. Furthermore, the Appellant alleges that the letter sent to him by the ICMG President Mr. Amar Addadi on 5 December 2017 (that is the Second Appealed Decision) constitutes a second appealable decision the time limit to which was also not time-barred.

46. Prior to examining the legal issue at hand, the Panel wishes to note that failure to comply with the time-limit period under Article R49 of the Code results in the loss of the Appellant's substantive claim. As recognized in CAS 2013/A/3135 (par. 27 of the award), the inadmissibility, if the appeal is not lodged in time, is automatic and the party's reaction or non-reaction cannot change such consequence: the expiration of the deadline has a preclusive effect and this effect cannot be abrogated by the Panel as it does not have the discretion to extend the term.

47. The Panel should also be extremely mindful of the fact that the time limit under Article R49 of the Code is the only one that is strict and cannot be modified according to Article R32.2 of the Code: *"Upon application on justified grounds, either the President of the Panel or, if he has not yet been appointed, the President of the relevant Division, may extend the time limits provided in these Procedural Rules, with the exception of the time limit for the filing of the statement of appeal, if the circumstances so warrant"* (emphasis added). As stated in CAS 2006/A/1168: *"R32 contains an important exception to any such discretion. Neither the President of the relevant Division nor the President of this Panel has any discretion to extend the time limit for the filing of the Statement of Appeal".*

48. Having in mind the foregoing, the correct resolution of the admissibility concern *in casu* boils down to the issue of the starting point of the calculation of the twenty-one-day time limit period for appeal (*dies a quo*) and whether the Panel should adopt the view of the Appellant that the period started as from the receipt of the Minutes of the GA, or that of the Respondent, that the period started immediately after the decision was adopted on the meeting of the GA and thus the Appellant acquired knowledge of this decision.

49. As a preliminary matter, essential importance needs to be attached to the determination of the law that needs to be applied to the question of calculation of the time limit under Article R49 of the Code (such determination being without prejudice to the findings of the Panel on the law applicable to the merits). The Panel determines that it should apply Swiss law in this regard as *lex loci arbitri* (RIGOZZI/HASLER/NOTH, "Sports arbitration under the CAS rules", Chapter 5 in ARROYO M. (ed.) Arbitration in Switzerland: the practitioner's guide, Kluwer (2013) pp. 885–1083, 1002 and the CAS jurisprudence cited there, namely: CAS 2002/A/403, CAS 2002/A/408, CAS 2010/A/2315, CAS 2010/A/2401).

50. This is because the relevant time limit in the absence of anything to the contrary in the statutes and regulations of the respective federation is, as already established by the Parties, the 21 days period specified in the Code (HAAS U., *The "Time Limit for Appeal" in Arbitration Proceedings before the Court of Arbitration for Sport (CAS)*, CAS Bulletin 2/2011, pp. 3-19, at p. 10 (2011): *"In this case, however, Swiss law as the law of the place of arbitration applies to the calculation of the time limit, unless otherwise provided in the federation's regulations"*).

51. Unlike the case with other sports associations, the ICMG Charter is silent as to if the time limit to appeal starts to run from communication or notification of the decision or if a decision within the meaning of Article R47 of the Code must be written. In order to establish whether the appeal is filed within the prescribed time-limit, the Panel should analyze two issues: (i)

which acts form the decision that is appealed and (ii) what is the meaning of the "receipt of the decision" which will set out the specific *dies a quo.*

52. According to the CAS jurisprudence, a "decision" within the meaning of Article R49 of the Code should be construed to mean the complete and final decision, includingthe reasons for it (CAS 2007/A/1355). The question here is therefore which is the final decision exactly. Two options are available before the Panel in this regard. First, for a complete and final decision should be considered the decision that the Appellant was not elected that was taken during the GA meeting standing alone. Second, the Appealed Decision is completed as at the preparation of the Minutes reflecting it and their notification to the Appellant.

53. In analysing the issue of admissibility, it is necessary first to consider what is a"decision" for the purposes of Article R47 of the Code.

54. Here the Panel has the advantage of a number of previous CAS decisions, whichprovide an illuminating analysis of what is involved in the concept of a decision, withwhich the Panel respectfully agrees.The characteristic features of a "decision" stated in the relevant CAS jurisprudence are set out in the following passages:

- *"the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal"* (CAS 2005/A/899 par. 63; CAS 2004/A/748 par. 90; CAS 2008/A/1633 par. 31).
- *"In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties"* (CAS 2005/A/899 par. 63; CAS 2004/A/748 par. 90; CAS 2008/A/1633 par. 31).
- *"A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects"* (2004/A/659 par. 36; CAS 2004/A/748 par. 89; CAS 2008/A/1633 par. 31).
- *"an appealable decision of a sport association or federation "is normally a communication of the association directed to a party and based on an 'animus decidendi', i.e. an intention of a body of the association to decide on a matter […].*
- *A simple information, which does not contain any 'ruling', cannot be considered a decision"* (BERNASCONI M., "When is a 'decision' an appealable decision?" in: The Proceedings before the CAS, in RIGOZZI/BERNASCONI (ed.), Bern 2007, p. 273; CAS 2008/A/1633 par. 32).

55. In short, (i) what constitutes a decision is a question of substance not form; (ii) adecision must be intended to affect and affect the legal rights of a person, usually,if not always, the addressee and (iii) a decision is to be distinguished from the mereprovision of information.

56. The Panel further notes that Swiss law, the *lex fori*, provides that pursuant to Article 34.1 of the Federal Law onAdministrative Procedure:

*"1 L'autorité notifie ses décisions aux parties par écrit.*

*1bis La notification peut être faite par voie électronique aux parties qui ont accepté cette forme de communication. La décision comporte une signature électronique reconnue. Le Conseil fédéral règle les modalités de la notification électronique".*

Free translation:

*"1 The authority notifies its decisions to the parties in writing.*

*1 bis The notification may be made by electronic means to the parties who accepted this form of communication. The decision will include a recognised electronic signature. The Federal Counsel will determine the conditions of electronic notification".*

and, pursuant to Article 311 of the Federal Law on Civil Procedure, that:

*"1 L'appel, écrit et motivé, est introduit auprès de l'instance d'appel dans les 30 jours à compter de la notification de la décision motivée ou de la notification postérieure de la motivation (art. 239)".*

Free translation:

*"1 The appeal must be filed in writing and with a statement of the grounds with the appellate court within 30 days of service of a decision and grounds therefor or the subsequent service of the statement of grounds (Art. 239)".*

57. The Panel, therefore, needs to closely observe the relevant contents of the said Minutes in order to reach an accurate conclusion on this issue:

***Election of the Secretary General***

*1 Candidate: Mr. Isidoros Kouvelos (Greece)*

*The total number of votes amounted to 77 :*

*- 25 NOCs with 3 votes each 75 votes*

*- 1 IOC member with 1 vote 1 vote*

*- ICMG President with 1 vote .. 1 vote*

*Total: 77 votes*

*Abstentions: 1*

*Number of invalid ballots: 0*

*The total number of valid votes amounted to 76 and absolute majority was determined to 39 votes.*

*Results of the first round: 23 votes in favour, 36 votes against, 17 blank votes*

*Given that absolute majority was not reached in the first round there was a second round of elections.*

*Results of the second round: 26 votes in favour, 43 votes against, 7 blank votes.*

*As there was a dispute over the interpretation of the ICMG Charter with regard to the results obtained in the second round and the provision stipulating that absolute majority is not required at the second ballot, it was agreed not to officially declare that the Secretary General was elected; it was agreed that Mr. Kouvelos should present his case before the CAS and then an Extraordinary meeting of the Executive Committee should be held in order to make a decision; in the meantime it was agreed that the ICMG President would appoint an interim Secretary General from among the members of the Executive Bureau.*

58. Evidently, the contents of the Minutes have rather a declarative character and do not add nothing substantial to the decision already reached during the meeting itself. The brief part in the Minutes dedicated to the election of Secretary General cannot be considered as reasoning and generally does not represent a part of the decision or a separate decision.

59. Be that as it may, the incorporation of the decision into a written document has an important function in building the Appellant's case and adds more evidential weight to the latter's statement of appeal rather than an appeal which is not evidentiary supported. Thus, practically speaking, the choice of the Appellant to wait for the Minutes before submitting an appeal is not entirely devoid of reason and the Panel will not leave this fact without consideration. Even though the First Appealed Decision was taken on 13 October 2017, the Panel is mindful of one possible interpretation, namely that without being formally notified of such decision by way of the minutes (received by the Appellant on 20 November 2017), the deadline to appeal has not yet started.

60. As to the question of receipt of the decision, the Panel notes that the Code is silent with regard to the meaning of "receipt" in Article R49. Hence, the Panel should be instructed by Swiss law. As pointed out by scholars, *"under Swiss law, a decision is deemed to have been received (or as the case may be, notified) at the time when it came into the so-called "sphere of control" of its addressee"* (RIGOZZI/HASLER/NOTH, op. cit, at 1003 citing BGE 118 II 42 para. 3b.; HAAS U., op. cit., at 11).

61. Furthermore, Article 75 of the Swiss Civil Code (Code Civil Suisse) determines the obtaining of knowledge as the relevant criterion to determine *dies a quo* with regard to decision of organisation - *"du jour où il en a eu connaissance"*.

62. This solution is further confirmed by the relevant CAS jurisprudence. According to CAS 2006/A/1153:

*"As a basic rule, a decision or other legally relevant statement is considered as beingnotified to the relevant person* ***whenever that person has the opportunity to obtain knowledge*** *of its content irrespective of whether that person has actually obtainedknowledge…. (CAS 2004/A/574)"* (emphasis added).

63. This case is extraordinary in a sense because it concerns a decision of a supreme organ of an association passed via voting during a live meeting where the Appellant was present. Nonetheless, a formal application of the foregoing interpretation would necessarily lead to the

conclusion that the starting point for the calculation of the time-limit under Article R49 of the Code with regard to the Appellant's statement of appeal started to run as from the date of the GA meeting, namely from 13 October 2017.

64. The Panel is of the view, however, that there are particular circumstances in the case at hand which make the analysis with regard to the *dies a quo* calculation non-conclusive.

65. As already noted, on 5 December 2017 the ICMG President who represents ICMG sent a letter to the Appellant containing, *inter alia*, the following statements: *"I would like to inform you that after having examined all the relative documents presented to us regarding your case as well as the documents submitted by you directly, EB members having unanimously concluded that the best way forward is for you to appeal to CAS following the decision of the General Assembly and as clearly stated in the Minutes"*.

66. The Panel considers that the cited letter, sent nearly two months after the GA meeting, contains a standing offer to arbitrate the dispute before CAS which was accepted by the Appellant through its submission of the statement of appeal on 11 December 2017 as set out below.

67. According to Article R47 of the Code, an appeal against a 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.

68. As the CAS arbitration is conducted in Switzerland, the law of the seat, namely Swiss law, has a bearing on the issue of the validity of an arbitration agreement. According to Art. 178 *III. Convention d'arbitrage* of the *Loi fédérale sur le droit international privé*:

*"1 Quant à la forme, la convention d'arbitrage est valable si elle est passée par écrit, télégramme, télex, télécopieur ou tout autre moyen de communication qui permet d'en établir la preuve par un texte.*

*2 Quant au fond, elle est valable si elle répond aux conditions que pose soit le droit choisi par les parties, soit le droit régissant l'objet du litige et notamment le droit applicable au contrat principal, soit encore le droit Suisse.*

Informal English translation:

*1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.*

*2 Furthermore, 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 main contract, or to Swiss law.*

69. According to Art. XIII, para. 3 of the ICMG Charter, the President represents the ICMG in all civil acts and possibly before justice. Therefore, he has the powers to legally bind the organization with his legal statements and acts.

70. Therefore, it may be concluded that the letter of the President sent to the Appellant on 5 December 2017 which (i) admits that there is a dispute between the Appellant and ICMG as

regards the election of the Secretary General which took place during the 13 October 2017 GA meeting and (ii) informs the Appellant that the Executive Bureau Members have unanimously concluded that the best option for the Appellant is to appeal the decision before CAS, represents an offer to arbitration which is valid under the Code and the applicable Swiss law and which offer was accepted by the Appellant through the submission of its statement of appeal.

71. In reaching this conclusion, the Panel feels obliged to refer to the Swiss jurisprudence on arbitration agreements concerning sport disputes. In sport cases the Swiss Federal Tribunal reviews with certain benevolence the agreement of the parties to call upon an arbitral tribunal; this is with a view to promoting quick disposition of the dispute by specialized courts which, as the CAS, offer comprehensive guarantees of independence and objectivity (BGE 133 235 at 4.3.2.3 p. 244 ff with references). The generosity of federal case law in this respect appears in the assessment of the validity of arbitration clauses by reference (judgement 4A_246/2011; judgement 4A__460/2010 of April 18, 2011 at 3.2.2; 4A_548/2009 of January 20, 2010 at 4.1; 4A_460/2008 of January 9, 2009 at 6.2 with references).

72. The Panel therefore is of the opinion that it is to the benefit of both parties to the dispute as well as of promotion of the quick and specialized resolution of sport cases by well-versed bodies such as CAS to decide borderline cases as this one *in favorem arbitrandum*.

73. Importantly, besides the Appellant's obvious interest in deciding the case, the Panel notes that, as observed in more details below, the essence of this case concerns a dispute regarding the correct interpretation of the ICMG Charter regarding the Secretary General election procedure. As admitted by the Respondent in the Minutes of the GA meeting, as well as in the President's letter of 5 December 2017, prior to the commencement of the present proceedings it was exactly the Respondent who expressly opined that the best way for the solution of the Parties' dispute is that it be referred to the CAS in order to receive guidance on the correct interpretation of the relevant provisions of the ICMG Charter. It would therefore be unreasonable for the CAS to decline to observe the merits of the dispute given that both parties previously agreed that the case should be subject to appeal. Furthermore, it must be emphasized that the Respondent sent his offer to arbitrate on 5 December 2017, i.e. 52 days after the GA meeting, which means that it cannot reasonably argue that the statement of appeal was filed late. Finally, the Panel considers that the statement of appeal was timely whatever the *dies a quo* retained, whether it is the Respondent's letter of 5 December 2017 or the notification of the minutes of the GA meeting on 20 November 2017.

74. Based on the foregoing reasons, the Panel finds the appeal to be timely lodged and is therefore admissible.

75. The Panel finally notes that the requirement for the exhaustion of legal remedies provided for in Article R47 of the Code is considered to not have relevance in this particular case.

76. It follows that the appeal is admissible.

## VI. JURISDICTION

77. Article R47 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.*

78. The jurisdiction of the CAS principally derives from Rule VII.4 of the ICMG Charter which provides the following:

*"The decisions of the ICMG are taken in conformity with the provisionsof the ICMG Charter. Any dispute relating to their application orinterpretation must be submitted to the Court of Arbitration ofSport (CAS). The decisions of the CAS are final".*

79. CAS jurisdiction is also based on the ICMG President's letter of 5 December 2017. As explained above, the Panel considers this letter as an offer to arbitrate which was accepted by the Appellant and thus constitutes an arbitration agreement binding for both Parties.

80. As was summarised above, the Respondent objects to the jurisdiction of the Panel with regard to the Second Appealed Decision, namely the letter of the ICMG President to the Appellant of 5 December 2017.The CAS jurisdiction regarding review of the legality of the ballot papers is also disputed.

81. The Panel already had the opportunity to discuss at length what is a decision that can be appealed according to the CAS Code and relevant CAS jurisprudence. In that regard, the Panel refers to para. 56 above. Suffice it to say here that, in order to constitute a decision which can be subject to appeal, a given act should be examined on the basis of its content and substance rather than the form and the means of communications adopted by its author. In this regard, as determined by previous CAS panels, a decision must contain a ruling which is capable of affecting the addressee's rights and/or interests in a negative way either factually or legally.

82. The Panel sides with the Respondent on this issue. The question whether a certain ruling is capable of affecting the appellant's right should be examined on a case by case basis. Such impact may be a question of fact as well as a question of law and by definition should imply the occurrence of a change relating to the appellant's rights and/or interests. In the case at hand, the Panel sees no negative changes occurring as a result of the President's letter. In fact, a relevant part of the letter is even beneficial to the Appellant because, as already analysed, it establishes the Panel's jurisdiction to review the Parties' dispute. As a consequence, the First Appealed Decision does not meet the test elaborated in case law as to what would constitute an appealable decision.

83. The Panel agrees with the Respondent that under the ICMG Charter, the EB has no authority to review the resolutions passed by the GA, in particular those on the election of Secretary

General. Thus, the letter in question does not contain a ruling which affects the rights and/or interests of the Appellant and, in that sense, does not constitute a decision over which the Panel can assert jurisdiction.

84. With regard to the objection relating to the legality of the ballot papers, the Panel accepts the Appellant's clarifications that the alleged irregularities pertaining to the format of the ballot papers are not appealed *per se* but rather as relevant facts and issues forming part of the appealed GA decision. Hence, the Panel is not inclined to make any jurisdictional determination with regard to the ballot papers format and will review the substantive arguments of the Appellant in this regard below.

85. The Panel deems it appropriate at this juncture to address the Respondent's estoppel exception. As a matter of terminology, "estoppel" is a concept known in common law concept whereby a court may prevent, or "estop" a person from making assertions or from going back on his word or conduct. The estoppel bears resemblance to the civil law notion of *venire contra factum proprium* meaning that one may not set himself in contradiction to his own previous conduct.

86. The Respondent bases is argument on the fact that the Appellant being the Secretary General of ICMG was the person responsible for the way the ballot papers were prepared and thus he for sure knew that the ballot papers for the election of the Secretary General contained two boxes "YES" and "NO", and thus cannot argue now against the ballot papers.

87. The Panel observes that the essence of the dispute is not about the form of the ballot papers, but rather whether the ticked "NO" boxes should be counted or disregarded or regarded as if they were blanks, in case there are more "NO" than "YES" ticks in the second round.

88. The fact that there were "NO" boxes printed on the ballot papers for the election of the Vice-President does not give an answer to this question, since this question should be examined based on the wording of the ICMG (or the practice) and not based on the way the papers were printed.

89. The Panel is therefore of the opinion that the estoppel argument must be rejected.

90. It follows that the CAS has jurisdiction to decide this dispute with regard to the First Appealed Decision, namely the decision of the ICMG GA not to declare the Appellant officially elected as Secretary General passed on the GA meeting of 13 October 2017 in Tarragona, Spain.

91. The Panel determines that it does not have jurisdiction to review the Second Appealed Decision, namely the ICMG President's letter of 5 December 2017 as it does not amount to a decision under the ICMG Charter.

## VII. APPLICABLE LAW

92. Article R58 of the Code provides as follows:

*The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

93. The Panel considers that the applicable law, pursuant to Article R58 of the Code, should primarily be the rules of the ICMG itself as the dispute arises out of a decision passed under the ICMG Charter and concerns confusion regarding interpretation of the said rules. In addition, the Panel will also take into account the relevant rules of Greek law, as the ICMG is an association domiciled in Greece. The Panel will also be instructed by the Swiss law where it deems it appropriate. Thus, the applicable law to the merits is primarily the ICMG Charter, supplemented by Greek and Swiss law.

94. The Panel finds it useful to set out here the relevant provisions of the ICMG Charter which will be considered and interpreted in the analysis of the merits of the case:

***"X. GENERAL ASSEMBLY***

***1. Composition and operation***

***1.1*** *The General Assembly of the ICMG consists of:*

*a) the delegates of NOCs, members of the ICMG, appointed by their NOC. Their number is limited to a maximum of three for each NOC.*

*b) the active IOC members for the countries whose NOCs are members of the ICMG.*

*c) President of the ICMG.*

…

***1.3*** *Voting at the Ordinary or Extraordinary GA takes place by means of uniformly coloured ballot papers, each of which represents one vote.*

…

*During the counting of votes, only votes cast are taken into consideration, including blanks. Abstentions and spoiled votes are not counted among votes cast. Voting by correspondence or by proxy is not allowed, except under the conditions laid down in paragraph 1.6 of this article.*

***1.5*** *Decisions [of GA] are adopted by means of a simple majority of the votes of the delegates present. In the event of a tie, the President shall have a casting vote. However, decisions on amendments to the statutes, the admission of new members, the suspension or removal of members, as well as the invitation of NOCs non-members to participate in the Mediterranean Games, require a three-fourths majority of the ICMG members present at the ICMG GA.*

…

***XI. THE EXECUTIVE COMMITTEE***

***1. Composition – Mode of designation and operation***

…

- *A Secretary General entrusted with the implementation of the decisions adopted by the ICMG EC and responsible for the management of the ICMG under the President's authority.*

…

***BYE-LAW TO RULE XI***

***Preamble***

***1.*** *Only the votes of the ICMG members present at the GA will be taken into consideration.*

***2.*** *During the submission of applications, the candidate should expressly indicate the post for which he applies. Each candidate may only apply for one post.*

***Elections***

***1.*** *For the election to the posts of President, 1st Vice-President, 2nd Vice-President, Secretary General and Treasurer of the ICMG, the candidate who has obtained an absolute majority in the first ballot is elected.*

*If no candidate for any of these posts has obtained an absolute majority and if there are at least three candidates in the first round, a second ballot will be taken in which the candidate who has obtained the smallest number of votes in the first ballot may not participate.*

*If there are only two candidates left, a new ballot is taken. In the absence of an absolute majority, a final vote will be held and the candidate who has obtained the highest number of votes is elected.*

*When there is only one candidate for a post, he must obtain an absolute majority in the first ballot. Should he fail to obtain an absolute majority, a second ballot will be taken for which absolute majority is not required.*

…

***3.*** *Ballot papers on which more names than the number of posts to be filled have been selected are invalid, as well as those bearing other names than those whose nomination was properly submitted to the Secretary General".*

## VIII. MERITS

### A. Interpretation of Bye-law to Rule XI of the ICMG Charter

#### *a) Introduction*

95. The dispute between the Parties primarily revolves around the correct interpretation of the ICMG Charter, and specifically Bye-law to Rule XI which in its relevant parts reads:

*"When there is only one candidate for a post, he must obtain an absolute majority in the first ballot. Should he fail to obtain an absolute majority, a second ballot will be taken for which absolute majority is not required".*

96. According to the Appellant, during the second round vote where there is only one candidate for the post, no majority at all is needed and the candidate may be elected when there are any numbers of votes in his favour.

97. Conversely, the Respondent disagrees with the analysis put forward in the appeal brief that any number of votes cast in favour of a sole candidate during the second round of elections would suffice for that candidate to be elected. The respective rule in the Charter states that an absolute majority is not required but this cannot amount to considering that any numbers of votes would be enough. If this was the rationale behind this rule, there would be no need of having second round of votes.

98. Additionally, the Respondent believes that the ICMG GA decision not to elect the Appellant for the position of Secretary General is justified by policy considerations and democratic reasons of not electing someone that is not accepted by most of the electorate as the ICMG is an international organisation entrusted with a role in public interest to play through the promotion of sport and Olympism for the benefit of the public at large which cannot be ignored.

***b) Interpretation of statutes of sport federations in general***

99. The Panel is of the view that, when there is a dispute regarding the interpretation of certain legal rules, which as in this particular case stems from sport federation statutes, the starting point for the resolution of this dispute should normally be the setting out the applicable means for interpretation of the said rules.

100. Faced with the foregoing task, the Panel feels obliged to have due regard and seeks instruction from the CAS jurisprudence on the matter. To start off, as determined by the Panel in CAS 2016/A/4602 (para.101), statutes and regulations of an association shall be interpreted and construed according to the principles applicable to statutory interpretation rather than those applicable to contractual interpretation

101. This Panel cannot but agree with this conclusion. The regulations and statutes of sport associations have legally binding effect over the organs and the members of the said association and are generally developed, drafted and adopted through a complex legislative procedure. Hence, by their nature, statutes and regulations of sport associations stand closer to legislation rather than to contracts.

102. Having identified the category of principles applicable to the interpretation of sport association statutes, the Panel shall set out the specific principles. In this regard, the award in CAS 2010/A/2071 offers a very exhaustive enumeration of which those principles are:

> *"The interpretation of the statutes and rules of a sport association has to be rather objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body -in this instance the Panel- will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located (CAS 2008/A/1673, par. 33, p. 7; CAS 2009/A/1810 & 1811, par. 73, p. 15; see also ATF 87 II 95 considers. 3; ATF 114 II 193, p. 197, consid. 5.a; decision of the Swiss Federal Court*

*of 3 May 2005, 7B.10/2005, consid. 2.3; decision of the Swiss Federal Court of 25 February 2003, consid. 3.2; and Piermarco Zen-Ruffinen, Droit du Sport, 2002, par. 168, p. 63)"* (para. 46).

103. Accordingly, CAS jurisprudence puts the emphasis on the principles of literal and systematic interpretation which are supplement by references, where necessary, to the *travaux préparatoires* of the provision subject to interpretation. The end purpose of the aforementioned methods of interpretation is to determine the objective intent of the association in adopting the rules subject to interpretation.

### *c) The meaning of Bye-law to Rule XI ICMG Charter*

*ca) Literal interpretation*

104. Both Parties agree that the dispute between them is focused mainly on the wording of the relevant part of Bye-law to Rule XI of the ICMG Charter according to which when there is a sole candidate for posts of President, 1st Vice-President, 2nd Vice-President, Secretary General and Treasurer of the ICMG who failed to obtain an absolute majority in the first round of the elections, a second round should be conducted for which *"absolute majority is not required"*.

105. When an interpreting authority, in this case the Panel, performs literal interpretation of a given provision, it should firstly seek to construe the meaning of the said provision by relying on the ordinary and plain meaning of the words used unless it is otherwise provided for in the respective regulations.

106. It bears noting that, the exact wording of the text specifies that, during the second ballot *"absolute majority is not required"*. The Panel observes that the drafters included the adjective "absolute" in the text of the said provision. One would be inclined to argue that, had the ICMG legislator wanted to create a rule whereby in case of second ballot for the said posts in the ICMG no majority at all is required, they would have probably omitted the adjective and adopt a text according to which no majority is required or specify that the candidate shall be considered elected in case of positive votes in her/his favour irrespective of their number.

107. Consequently, for the purposes of the textual interpretation only, and because of the aforementioned grammatical circumstances, the Panel does not favour the interpretation offered by the Appellant according to which no majority at all is required.

*cb) Systematic interpretation*

108. Apart from the textual interpretation, the Panel deems it necessary to analyse the requirement of Bye-Law to Rule XI ICMG Charter in the context of the entire system of the Charter, its systematic place in the document, as well as all related provisions that may shed light on the intent of the drafters.

109. The provision in question is an addition to Rule XI which regulates the status and powers of the ICMG EC. The evident purpose of the said Bye-law is to provide for a detailed procedure governing the elections for the members of the EC. Given that those members are elected by the GA, and given that the Charter already contains principal provisions regulating the powers of the GA and the decision-making process in Rule X thereof, one must conclude that the stipulations of Bye-Law to Art. XI are *lex specialis* and derogate the common provision of Rule X of the ICMG Charter in case of elections of ICMG EC members.

110. As a next step, the Panel notes that the ICMG Charter contains a number of references to different types of majority needed for the successful adoption of certain decisions. The careful consideration of those requirements and how they exactly differ from one another is necessary in order to determine the objective intent of the ICMG Charter drafters. After all, it is prerequisite for the Panel to first find out what an absolute majority is according to the association's statute and is there any difference between such absolute majority and other types of majority within the ICMG regulatory framework.

111. In this regard, the ICMG Charter contains the following separate majority requirements:

- *three-fourths majority* of vote of the ICMG Members present at the ICMG GA – for admission of new member in the association; decision of GA to convene extraordinary meeting pursuant to Rule VIII; suspension or expulsion of ICMG member pursuant to Rule X, 2.3; Modification of the statutes and regulations pursuant to Rule X, 2.11;
- *simple majority* – principle majority for the adoption of GA decision pursuant to Rule X, 1.5; Rule X, 1.2;
- *absolute majority* – for the election to the posts of President, first Vice-President, second Vice-President, Secretary General, and Treasurer of the ICMG pursuant to Bye-law to Rule XI;
- *relative majority* – for the elections of host city for the Mediterranean Games pursuant to Bye-law to Art. XVIII.

112. Unfortunately, the ICMG Charter does not explicitly define any of these types of majority. It is only acknowledged that majority is formed from the votes present at the given meeting rather than from the number of all voters entitled to cast a vote irrespective of whether they attend the meeting during which the election takes place.

113. On the other hand, the Panel recalls that, according to Rule X, 1.5, the GA principally adopts decisions with a simple majority. As already determined, Bye-law to Rule XI has the character of *lex specialis* as it concerns a particular type of decision-making, namely election of some of the highest posts in the ICMG hierarchy. Therefore, it would be logical if the majority needed for such election is higher than the majority needed for the adoption of ordinary GA decisions.

114. Having made this preliminary observation, the Panel shall figure out what exactly the difference between such simple majority required for the adoption of ordinary GA decisions

and absolute majority required for the election of Secretary General during the first ballot in case of a sole candidate is.

115. As the ICMG Charter does not define what absolute and simple majority is, the Panel will make reference to the ordinary meaning of those terms. According to Merriam Webster dictionary, absolute majority is: *"more than half of the votes"* such as *"a: more than half of the votes actually cast; b: more than half of the number of qualified voters"*. On the other hand, majority is defined as *"a number or percentage equaling more than half of a total"*.

116. Furthermore, according to the ICMG Charter, in both cases the majority shall be formed from the votes present at the particular meeting of the GA and shall effectively mean more than the half of the votes casted. One would then wonder is there any difference between simple and absolute majority within the ICMG system. The impression that there is no difference between absolute and simple majority is further strengthened by the fact that in both cases abstentions and spoiled votes are not counted.

117. Such conclusion would tend to favour the interpretation offered by the Appellant to the effect that no absolute majority is required should be interpreted to mean that no majority at all is required. The Panel, however, is not of the opinion that this is the objective intention of the ICMG legislator. The policy considerations offered by the Respondent that it would be against the democratic representativeness and the public purpose of the international association to elect someone that is not accepted by most of the electorate are more persuasive.

118. Importantly, considering the purpose of the rule, it is to ensure efficient and timely election but at the same time appointment of a candidate who is acceptable by the majority of the members. *Per argumentum ad absurdum*, if once is to accept the Appellant's argument, during a second-round vote, a sole candidate may be elected even if there is only one vote in his favour and all other votes are negative. The danger of having a Secretary General elected by only one vote contravenes basic principles of representativeness and legitimacy and therefore should be avoided.

119. On the next place, the fact that the ICMG Charter is not entirely clear or consistent in defining the majority requisites and the way they are formed, which makes the task of the Panel to determine the exact scope of the majority requirements extremely difficult, is not a valid reason for the Panel to disregard the decision taken by the GA and to rule in favour of the Appellant's position. As held by the Panel in CAS 2009/A/1910:

> *"The Panel wishes to underline that it interpreted the various provisions in a manner "which seek[ed] to discern the intention of the rule maker, not to frustrate it" (CAS 96/149). However, CAS cannot rewrite but can only interpret rules set forth by sports authorities in the light of general principles of law. In this context, it is important for national federations to draft clear rules and, consequently, for CAS to apply them as written (CAS 2005/A/946). In the present case the EFA Statutes must be construed also in a way that promotes the principle of legal certainty for its members. This applies not only to such administrative issues as may arise, but also to the legal remedies available to all interested parties (such as the players, coaches and clubs)".*

120. Turning back to the controversial rule, the Panel holds that the proper rationale of absolute majority for the election under Bye-law to Article XI implies more than the half of the votes present at the GA meeting. The abstentions and null ballots shall not affect the requirement of achieving absolute majority in the first round of votes. However, during the second ballot the phrase *"absolute majority is not required"* means that still there should be a (simple) majority of the positive votes over negative ones. Indeed, contrary to the view expressed in the legal opinion produced by the Appellant, requiring simple majority does not amount to no majority at all.

121. Simple majority is formed by disregarding the abstentions and blank ballots - more than the half of the valid votes which number can be lower than the votes present at the meeting.

122. The Panel thus determines that the provision of Bye-law to Rule XII of the ICMG Charter, according to which no absolute majority is required during the second ballot of elections for the position of Secretary General where there is a sole candidate failing to obtain absolute majority during the first round, shall not be interpreted to mean that no majority at all is required. In the Panel's view, the respective candidate would still have to obtain higher number of positive votes than negative ones in order to be successfully elected.

123. Insofar in elections for a position with a single candidate a majority is indeed needed also in the second round, the correct voting procedure would require that the ballot papers contain a "YES" and "NO" box in order to calculate the votes and decide if the majority was reached or not. .

124. For the sake of completeness, the Panel underlines that the Appellant cannot benefit from the fact that the correct voting procedure had not been respected with regards to the second Vice-President's election. The use of different ballot papers for the Secretary General and the second Vice-President's elections was in any event explained by the fact that one of the two candidates to the second Vice-Presidency withdrew his candidacy during the meeting.

125. Based on the foregoing, the Panel finds no reasons to find the GA decision invalid which is therefore upheld.

## ON THESE GROUNDS

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

1. The Court of Arbitration has no jurisdiction to review the ICMG President letter dated 5 December 2017.

2. The appeal filed by Isidoros Kouvelos on 11 December 2017 against the decision of the General Assembly of the ICMG rendered on 13 October 2017 and relating to the election of the Secretary General is admissible.

3. The appeal filed by Isidoros Kouvelos on 11 December 2017 against the decision of the General Assembly of the ICMG rendered on 13 October 2017 and relating to the election of the Secretary General is dismissed.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.