Arbitrations CAS 2020/A/7590 Hungarian Canoe Federation (HCF) v. International Canoe Federation (ICF) & CAS 2020/A/7591 Russian Canoe Federation (RCF) v. ICF, award of 23 December 2021

Panel: Mr Bernhard Welten (Switzerland), President; Prof. Pascal Pichonnaz (Switzerland); Prof. Denis Oswald (Switzerland)

Canoe
Olympic Games program
Existence of a decision
Proposal to remove a sports discipline
Standing to sue of third parties
Standing to sue of national federations
Standing to be sued of associations
Division of competences under the Olympic Charter
Admissibility of declaratory reliefs

1. **Generally, the term "decision" must be interpreted in a broad manner so as not to restrain the relief available to the persons affected. Under Swiss law, a decision is a common declaration of will resulting from multiple unidirectional declarations of individual members to determine the association's will. Overall, the principal criterion for the qualification of a communication as a decision is its binding character and the *"animus decidendi"*, namely the intention of a sports body to decide binding on a specific subject, thus affecting the addressee(s) of the decision.**

2. **The proposal of an international federation to the IOC to remove a sports discipline from the Olympic Games programme for the benefit of another one within its own sport is not a decision in the legal sense. Any appeal against such proposal should, therefore, be declared inadmissible. Alternatively, this appeal should be dismissed on the merits, in light of the usual rules on standing.**

3. **Third parties have standing to sue before the CAS in two cases. First, when a regulation explicitly confers it. Secondly, when an association's measure affects not only the right of the addressee, but also and directly those of a third party, that this party is considered "directly affected" and thus enjoys standing to sue. This is consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial of sporting nature at stake may bring a claim, even if they are not the addressees of the measure challenged. Consequently, third party applicants who are deemed "indirectly affected" by a measure do not, in principle, have standing.**

4. **National federations are not the addressees of the so-called "decision" of their**

international federation reshaping the Olympic Games programme, and their rights are not directly disposed of by such "decision". In the absence of an explicit provision to this effect, they lack standing to challenge it.

5. Only the association itself has standing to be sued. The subject of the appeal should concern decisions rendered by the organs of the association and rights related to the association. This means that a decision cannot be subject to an appeal where rights related to the association do not come into play.

6. The Olympic Charter clearly states that the Olympic programme is decided by the IOC itself. No international federation has any such right. A request aimed at obtaining the annulation of the change of the Olympic Games programme has primarily to be filed directly against the IOC, which took this decision, rather than the international federation, which "merely" proposed such solution. An international federation, alone, lacks standing to be sued within this framework.

7. Declaratory reliefs can only be granted if the requesting party establishes a special legal interest to obtain such declaration. National federations that seek to ensure that their leading sports discipline is represented in the Olympic Games programme lack legal interest to pray for a declaratory relief regarding the lawfulness of their international federation's proposal.

I. THE PARTIES

1. The Hungarian Canoe Federation (the "First Appellant" or the "HCF") is the national governing body for the sport of canoeing in Hungary with its registered seat in Budapest, Hungary. It is a member of the International Canoe Federation.

2. The Russian Canoe Federation (the "Second Appellant" or the "RCF") is the national governing body for the sport of canoeing in Russia with its registered seat in Moscow, Russia. It is a member of the International Canoe Federation.

3. The International Canoe Federation (the "Respondent" or the "ICF"), is an association under Swiss law with its registered seat in Lausanne, Switzerland. It is the international governing body for the sport of canoeing and recognized by the International Olympic Committee (the "IOC"). The sport of canoeing is one of the sports included in the programme of the Games of the Olympiad in accordance with Bye-law 1.3.1 to Rule 45 of the Olympic Charter.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established by the Panel on the basis of the Parties' written and oral submissions, the exhibits produced during these proceedings and the statements made during the hearing. Additional facts and allegations found in the Parties' submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered carefully 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.

A. Facts

5. On 23/24 November 2018, the ICF held its ordinary Congress in Budapest, Hungary for which the agenda has foreseen under point 8: *"Discussions and Resolutions on the proposals submitted by the National Federations, the Executive Committee and the Board of Directors […] c) Proposal new ICF Rule Format"*.

6. The minutes of the ICF Congress 2018 in Budapest, Hungary stated in relation to the Draft Competition Rules 2019: *"ICF propose a new layout for ICF Technical Rules. There would be three levels of rules. First level is applicable to all Federations. Second level - universal, but can be tailor made for each discipline. Third level - ICF sport rules, solely applicable to each discipline.*

   First level - Rules made by Board/National Federation and vote by Congress. For second level, Congress gives direction and Board finalises wording. Third level - technical committee and national federation make rules, decided at ICF Board level.

   The proposal hopefully improves clarity of rules and make more logical order in the formatting of the rulebooks. […].

   ICF assures that Congress will remain the ultimate body and new structure clearly identifies Congress input in rule changes for the sport without any weakening of the role of Congress".

   This "change to three levels of new rule definitions" was accepted with 59 votes in favour against two "no" and one abstention.

7. In January 2019, the ICF published the new competition rules 2019 (the "Competition Rules 2019"), taking effect from 1 January 2019.

8. On 6/7 March 2020, the first ICF Board of Directors meeting of the year 2020 was held in Barcelona, Spain. In the minutes, the ICF President is cited as follows: *"The possibility of having Extreme Slalom in the Paris 2024 Olympic Games was under discussion with the IOC. Decision after Tokyo 2020"*. Further, agenda point 8 was *"ICF Statutes and Technical Rule Changes"*. The minutes of this meeting stated for this point: *"The ICF statutes sport discipline proposals were discussed and voted upon"*.

9. On 24 March 2020, due to the COVID-19 pandemic, the IOC decided to reschedule the Tokyo 2020 Olympic Games to a date beyond 2020, but not later than summer 2021.

10. On 24 November 2020, the ICF Board of Directors decided in a virtual meeting to propose to the IOC to transfer in the Paris 2024 Olympic Games programme two medals from the canoe sprint event to the extreme canoe slalom (the "Appealed Decision"). This decision was taken with a majority of one vote; the vote was 14:14 before the President decided with his casting vote. The minutes of this meeting stated to the agenda point 3: *"The vote was 14 votes for option 1 and 14 votes for option 2, no abstentions. As agreed and general practice in ICF BoD meetings the President had the casting vote and announced that he supported option 2. The ICF BoD officially confirmed option 2 (10 Canoe Sprint medals, 4 Canoe Slalom medals and 2 Extreme Slalom medals) as the ICF recommendation to the IOC for Paris 2024 Olympic games"*.

11. On 25 November 2020, the ICF published the Appealed Decision taken by its Board of Directors on 24 November 2020 on its official website:

    "The ICF Board voted to include men's and women's extreme slalom on its proposal for the Paris 2024 canoe program as it strives to continue to innovate and to deal with a reduction of Olympic quota places. […] As the IOC has indicated no new medal events will be added to the Paris 2024 program, the ICF board voted to put a proposal to transfer two medals from the canoe sprint program, and add the two medals to extreme slalom. […] The ICF board will now examine options regarding the canoe sprint Olympic program. If the new proposal is accepted by the IOC, it will give canoe sprint 10 medals and canoe slalom six medals at the 2024 Olympics".

12. On 25 November 2020 at 10:45 am, Mr. Simon Toulson, Secretary General of the ICF, informed Mr. Kit McConnell Sports Director of the IOC as follows: *"There were two tide votes during the meeting on this subject and with the ICF President breaking the tie, the ICF Board of Directors agreed to remove 2 Canoe Sprint events and add Extreme Slalom to the Paris 2024 Olympic Programme"*.

13. On 25 November 2020 at 20:59 Mr. Kit McConnell replied to Mr. Simon Toulson as follows on behalf of the IOC: *"The formal request of the ICF to remove two (2) Canoe Sprint events and add two (2) Extreme Slalom events will be presented to the Olympic Programme Commission at its upcoming meeting on 30 November, along with the additional proposal to increase the overall number of medals by retaining the current sprint programme and adding the 2 Extreme Slalom events, supported by the concerns that you have outlined in your email"*.

14. On 2 December 2020, several ICF member federations, including the Appellants, sent an email to the ICF Board of Directors expressing their worries about the timing of the decision to change the Olympic programme, the internal process of the ICF leading to this decision, the negative impact the decision has on the athletes, coaches and national federations and requesting to reverse the Appealed Decision:

    "Notwithstanding that, given the Decision was not made within the ICF's powers, it should be reversed immediately. This reversal should be communicated to stakeholders, including athletes and NFs. This is an

urgent matter, both because of the damage that the Decision is causing to NFs and athletes, and because of the domino effect of the Decision on IOC decision-making, and Paris 2024 planning".

15. On 4 December 2020, the ICF President replied to all member federations explaining in detail how and in what circumstances this decision was taken. He pointed out that based on the new sports added by the IOC to the Programme of Paris 2024 Olympic Games, the IOC informed the ICF about an athlete quota reduction. To counter this athlete quota reduction, the ICF offered several options to the IOC which were all rejected, except the extreme slalom event.

16. On 5 December 2020, the ICF published a media release on its homepage which stated:

"The board approved a program it believes will provide incentives for all athletes to continue to strive to compete at the Olympics. […]

The ICF canoe sprint Olympic programme proposal will be presented to the IOC Executive Board on December 7th for their consideration as part of the Olympic Games programme for Paris 2024.

The men's and women's K1 200 will not be contested in Paris. […]

The ICF board previously approved adding men's and women's extreme slalom to the proposed Paris 2024 canoe slalom programme".

17. On 7 December 2020, the IOC published on its official website that its Executive Board accepted, amongst others, the Event Programme for the Paris 2024 Olympic Games and with this also the ICF's proposal to replace two canoe sprint events by two extreme slaloms.

18. On 14 December 2020, Mr. David Joy, Chief Executive of British Canoeing, a member of the ICF, sent an email to the ICF's Secretary General:

"[…] I know that you are very aware that many NFs are concerned about the process behind the decision taken by the ICF Board, which recommended to IOC the introduction of Extreme Slalom and the reduction of the Sprint programme from 12 to 10 events at the Paris Games

There is recognition by many, that the IOC decision has been taken and this cannot now be reversed. Despite your letter to the contrary, there is not the same acceptance that the Board of the ICF followed its own procedures in reaching their decision. […]

Article 44 sets out some of the regulations for the ICF Court of Arbitration. […]

Could you provide me with the following please

1. The names and details of the Arbitrators on the ICF list

2. The detailed ICF Court of Arbitration Policy and Procedures, which provides the further detail about how the ICF Court of Arbitration operates and the associated procedural timelines".

19. Still on 14 December 2020, the ICF's General Secretary, Mr. Simon Toulson, replied by email to Mr. David Joy:

"[…] For that matter the ICF court of arbitration would be the wrong place for this issue as ICF Board would not accept the decision being turned over therefore the only place to go is the International court of arbitration. ICF will waiver its rights to use icf arbitration (we have done this before when cases have been clear cut that the icf needs to defend its position regardless of outcome).

Another point is we would make IOC an interested party as a lot [sic!] of the evidence involved their instructions to us and the weekly meetings with them on this subject. That means icf arbitration could.not be used as it's no longer an internal matter and it's not equipped for external partner involvement […]

In discussions with IOC and icf lawyers before the icf board made the decision they were comfortable that the board could make such a decision".

20. On 16 and 18 December 2020 respectively, the Second Appellant and the First Appellant respectively requested the ICF to appoint the ICF court of arbitration pursuant to Article 44 of the ICF Statutes and to cancel the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 16 December 2020, the HCF and the RCF, filed their Statement of Appeals pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code"). Thereby, the HCF nominated Prof. Dr Pascal Pichonnaz as an arbitrator, meanwhile the RCF requested for a sole arbitrator to decide this case.

22. On 18 December 2020, the CAS Court Office acknowledged receipt of both Statements of Appeal directed against the ICF with respect to the Appealed Decision. It invited the Parties to inform the CAS Court Office within three days, whether they agreed to consolidate both procedures in accordance with Article R52 of the Code.

23. On 24 December 2020, the HCF filed its Appeal Brief pursuant to Article R51 of the Code and informed the CAS Court Office that it agreed to consolidate both proceedings.

24. On 5 January 2021, the Respondent informed the CAS Court Office that it would be represented by Mr. Jorge Ibarrola, Attorney-at-law and it consented to consolidate both procedures. Further, it requested that a panel consisting of three arbitrators shall decide these cases.

25. On 5 January 2021 as well, the CAS Court Office informed the Parties that the proceedings CAS 2020/A/7590 and CAS 2020/A/7591 were consolidated.

26. On 12 January 2021, the CAS Court Office informed the Parties based on the statement received from the RCF that a Panel of three arbitrators would decide this case and Prof. Dr Pascal Pichonnaz was jointly nominated by the Appellants as arbitrator.

27. On 14 January 2021, the RCF filed its Appeal Brief pursuant to Article R51 of the Code.

28. On 19 January 2021, the CAS Court Office confirmed to the Parties having received both Appeal Briefs and set the Respondent a deadline of 20 days to file its Answers pursuant to Article R44 of the Code.

29. On 22 January 2021, the Respondent informed the CAS Court Office that it nominated Prof. Dr Denis Oswald as arbitrator.

30. On 27 January 2021, the CAS Court Office set aside the time limit set to the Respondent to file its Answer until the Appellants' payments of their shares of the advance of costs.

31. On 1 February 2021, the HCF and the RCF opposed to the nomination of Prof. Dr Denis Oswald as arbitrator by the Respondent. They informed that they would challenge the nomination of Prof. Dr Denis Oswald as arbitrator in accordance to Article R34 of the Code, should he accept his appointment. The main reason of their challenge was the fact that Prof. Dr Oswald was a member of the IOC Executive Board.

32. On 8 February 2021, Prof. Dr Denis Oswald informed the CAS Court Office that he considered the challenges to be ill-founded, especially as the IOC is not a party to the present dispute and he has no relation with any of the Parties.

33. On 9 February 2021, the Respondent sent a letter to the CAS Court Office requesting that the challenges against Prof. Dr Denis Oswald to be nominated as arbitrator shall be dismissed.

34. On 11 February 2021, the CAS Court Office informed the Parties that the totality of the advanced of costs has been paid and it set the Respondent a deadline of 20 days to file its Answer pursuant to Article R55 of the Code.

35. On 16 February 2021, the HCF and the RCF informed the CAS Court Office about the withdrawal of their challenges against the nomination of Prof. Dr Denis Oswald as arbitrator.

36. On 19 February 2021, pursuant to Article R54 of the Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

- Mr. Bernhard Welten, Attorney-at-law in Bern, Switzerland, as President;

- Prof. Dr Pascal Pichonnaz, Law Professor at the University of Fribourg, Switzerland; and

- Prof. Dr Denis Oswald, Attorney-at-law in Colombier, Switzerland, as Arbitrators.

37. On 18 March 2021, after having received an extension, the Respondent filed its Answer in accordance with Article R55 of the Code. Later, on the same day, the Respondent sent a second letter to the CAS Court Office stating that the previous letter enclosed the wrong version of the PDF file containing the Answer and sent the correct version of the Answer.

38. On 26 March 2021, the Respondent informed the CAS Court Office that it did not deem it necessary to hold a hearing in the present case.

39. On 26 March 2021 as well, the Appellants informed the CAS Court Office that they wish for a hearing to be held in the present matter.

40. On 8 April 2021, the CAS Court Office informed the Parties that, pursuant to Article R57 of the Code, the Panel had decided to hold a hearing in this case.

41. On 16 April 2021, the CAS Court Office confirmed to the Parties that the hearing would be held on Thursday, 6 May 2021, at the Office of the CAS Anti-Doping Division in Lausanne Switzerland.

42. On 30 April 2021, the CAS Court Office informed the Parties that the Panel agreed to hold a hybrid hearing in the sense that the Representatives of the Appellants, Mr. Péter Kárai and Mrs. Elena Iskhakova, would attend the hearing by videoconference.

43. On 3 and on 4 May 2021 respectively, the Appellants and the Respondent respectively signed the Order of Procedure.

44. On 5 May 2021, the Respondent sent the requested minutes of the ICF Board of Directors meeting of 24 November 2020 under the restriction to keep them strictly confidential and not to disclose them to anyone or make them public.

45. On 6 May 2021, the hearing was held in Lausanne. The following persons attended the hearing:

    - For the First Appellant: Mr. Péter Kárai, Board Member of the HCF, assisted by Mr. Pierre Ducret, Attorney-at-law;

    - For the Second Appellant: Ms. Elena Iskhakova, General Secretary of the RCF, assisted by Mr. Emmanuel Kilchenmann, Attorney-at-law;

    - For the Respondent: Mr. Simon Toulson, General Secretary of the ICF, Mr. Jorge Ibarrola, Attorney-at-law and Mrs. Alexandra Veuthey, Attorney-at-law.

    In addition, Mrs. Sophie Roud, Counsel to the CAS assisted the Panel at the hearing.

46. At the outset of the hearing, all Parties confirmed that they had no objections with regard to the constitution and composition of the Panel. At the end of the hearing, all Parties expressly

declared that they did not have any objections with respect to the procedure and that their rights to be heard and treated equally had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

47. In the following summaries, the Panel will not include every argument put forward to support the Parties' prayers for relief. Nevertheless, the Panel has carefully considered and taken into account all of the evidence and arguments submitted by the Parties and brought forward in the hearing, but limits its explicit references to those arguments that are necessary in order to justify its decision.

A. The First Appellant's Submissions and Requests for Relief

48. The First Appellant's submissions, in essence, may be summarized as follows:

- By reference to CAS 2015/A/4222, even where the statutes provide that internal legal remedies should be exhausted before appealing to the CAS, the parties may jointly agree to waive such requirement. The ICF has implicitly agreed to waive internal legal remedies provided in its Statutes when it indicated in its email of 14 December 2020, that an appeal can only be made to the CAS.

- The Appealed Decision was published on the ICF homepage on 25 November 2020, where the First Appellant took note of it. However, neither the Appealed Decision, nor the minutes of the ICF Board of Directors meeting of 24 November 2020 were ever officially communicated to the First Appellant or to any other member federations.

- Based on Swiss law and CAS jurisprudence, e.g. CAS 2013/A/3272, a declaratory relief may only be granted under specific conditions: first, the party requesting such declaratory relief must show a legal interest and such declaratory judgment must be necessary to resolve a legal uncertainty threatening the requesting party (see CAS 2011/A/2612, CAS 2009/A/1870, CAS 2011/O/2574 and CAS 2013/A/3272); second, the legal uncertainty must relate to the existence or non-existence of a claim or a defined legal relationship between the parties to the dispute (see CAS 2011/A/2612, CAS 2009/A/1870 and Decision of the Swiss Federal Tribunal ("SFT") 137 II 199).

- The Appealed Decision is prejudicial to the First Appellant because it will lead to an important reduction of the funds received. As canoeing is not a very popular sport, it only generates financial revenues directly or indirectly in connection with the Olympic Games. The indirect financial revenues are mainly funded by the government of Hungary in relation to the First Appellant and such funding is related, amongst other criteria, to the number of athletes participating in the Olympic Games. The IOC is not bound by the Appealed Decision and, therefore, the setting aside of the Appealed Decision would not impact the

Olympic Games Programme for 2024. The First Appellant has no other possibility than requesting for a declaratory relief to establish that the modification of the Olympic Programme is the result of a decision taken in gross violation of the applicable rules, the effects of which are concrete for the First Appellant.

- In the present case, mainly the ICF regulations and, subsidiarily, Swiss law are applicable. It is unclear, however, whether the Competition Rules 2019 were adopted in accordance with the ICF Statutes; the Draft Competition Rules 2019 as a whole were never adopted by the Congress. Nevertheless, in January 2019, the ICF published on its website the new version of the Competition Rules 2019.

- The Appealed Decision was taken by the ICF Board of Directors in violation of the ICF Statutes and the Competition Rules 2019; its Article 4.2 states that the Olympic Games Programme shall be considered as a "Principle Rule".

- The Competition Rules 2019 are contradictory with respect to the category of rules the Olympic Games Programme falls within. On the one hand, Article 4.2 states that the Olympic Games Programme is a "Principle Rule", on the other hand, Articles 12.1 and 12.2 state that the requirements to be met for and the different events of the Olympic Games Programme are defined as "Sport Rule". Interpreting the applicable wording leads to the result that the Olympic Games Programme in the Competition Rules 2019 shall be considered as a Principal Rule and, therefore, it is up to the Congress to take decisions affecting the Olympic Games Programme.

- Article 17 of the ICF Statutes provides: *"The Congress has the responsibility to: […] Approve changes to the ICF Statutes, Sports Governance Rules (CR) and give direction to ICF Principle Rules (PR) that relate to all disciplines of the sport […]"*. The only exception to this rule is stated in Article 21 para. 5 of the ICF Statutes, giving the ICF Board of Directors the power to amend or change a decision of the Congress provided that (i) the ICF President has decided that the circumstances which prevailed at the time the decision was taken by the Congress have changed significantly to a material extent, and (ii) the decision of the Board of Directors is taken by not less than 80% of the members present.

- As the circumstances did not change significantly to a material extent since the Competition Rules 2019 were adopted by the Congress and the Appealed Decision was not taken by a majority of 80% or more of the Board Members present, such exception does not apply in the present matter. Therefore, the amendment of the Olympic Games Programme should have been voted by the Congress and not the Board of Directors and the Appealed Decision was taken in violation of the ICF Statutes and the Competition Rules 2019.

- Assuming that the Olympic Games Programme could be considered as a "Sport Rule", the Appealed Decision was still taken in violation of the ICF Statutes and the Competition Rules 2019. The Board of Directors has the power to amend the bylaws of the ICF Statutes and

the Sport Rules every two years during the first Board of Directors meeting in the year of the Congress (Article 21 para. 3 of the ICF Statutes). An exception is possible in exceptional circumstances where the ICF Sport Rules need to be amended in order for the sport to function efficiently. In such cases, the decisions can be taken in the first Board of Directors meeting of that year. In 2020, no Congress was held, as it was canceled because of the Covid-19 pandemic. However, on 6/7 March 2020, when the Board of Directors took a decision, the Congress for the year 2020 had not been canceled yet. It is questionable, if the year 2020 shall still be considered as "the year of the Congress". Therefore, the Board of Directors had the power to amend the Olympic Game Programme as an exception in its first meeting of 2020. On 6/7 March 2020, however, the Board of Directors did not amend the Olympic Games Programme even if the agenda included the topic *"ICF Statutes and Technical Rule Changes"*. Therefore, such changes were made in violation of the ICF Statutes and the Competition Rules 2019. Further, no exceptional circumstances could justify the transfer of two medals events for the Paris 2024 Olympic Games Programme as stated in the Appealed Decision.

- The same finding of violation shall be made if the Competition Rules 2019 would not apply, as it remained unclear in what circumstances these rules were adopted. In such case, the Olympic Games Programme in force at the time of the Appealed Decision would be the one decided during the Congress 2018. Article 15 of the ICF Statutes provides that the decisions of the Congress are final and, on the other hand, that the exception set out in Article 21 para. 5 of the ICF Statutes did not apply.

49. In its prayers for relief, the First Appellant requests as follows:

"1. To declare that the decision of the ICF Board of Directors dated 24 November 2020 was taken in violation of the Statutes of the International Canoe Federation (2019 edition) and the ICF Canoe Sprint Competition Rules (edition 2019).

2. To order the International Canoe Federation to pay all costs of these proceedings and to compensate the Hungarian Canoe Federation for all its costs incurred in connection with these proceedings, including the attorney's fees and such other costs as the Hungarian Canoe Federation will specify in due course.

3. To dismiss any other relief sought by the International Canoe Federation".

B. The Second Appellant's Submissions and Requests for Relief

50. The Second Appellant's submissions are similar to the First Appellant's submissions and, in essence, may be summarized as follows:

- By reference to CAS 2015/A/4222, even where the statutes provide that internal legal remedies should be exhausted before appealing to the CAS, the parties may jointly agree to waive such requirement. The ICF has implicitly agreed to waive internal legal remedies

provided in its Statutes when it indicated in its email of 14 December 2020, that an appeal can only be made to the CAS.

- The Appealed Decision was published on the ICF homepage on 25 November 2020, where the Second Appellant took note of it. However, neither the Appealed Decision, nor the minutes of the ICF Board of Directors meeting of 24 November 2020 were ever officially communicated to the Second Appellant or to any other member federations. Further, the Second Appellant was granted an extension to file its Appeal Brief.

- Based on Swiss law and the CAS jurisprudence, e.g. CAS 2013/A/3272, a declaratory relief may only be granted under specific conditions: first, the party requesting such declaratory relief must show a legal interest and such declaratory judgment must be necessary to resolve a legal uncertainty threatening the requesting party (see CAS 2011/A/2612, CAS 2009/A/1870, CAS 2011/O/2574 and CAS 2013/A/3272); second, the legal uncertainty must relate to the existence or non-existence of a claim or a defined legal relationship between the parties to the dispute (see CAS 2011/A/2612, CAS 2009/A/1870 and STF 137 II 199).

- The Appealed Decision is prejudicial to the Second Appellant because it will lead to an important reduction of the funds received. As canoeing is not a very popular sport, it only generates financial revenues directly or indirectly in connection with the Olympic Games. Such indirect financial revenues are mainly funded by the government of Russia in relation to the Second Appellant and such funding is related, amongst other criteria, to the number of athletes participating in the Olympic Games. The IOC is not bound by the Appealed Decision and, therefore, the setting aside of the Appealed Decision would not impact the Olympic Games Programme for 2024. The Second Appellant has no other possibility than requesting for a declaratory relief to establish that the modification of the Olympic Programme is the result of a decision taken in gross violation of the applicable rules, the effects of which are concrete for the Second Appellant.

- In the present case, mainly the ICF regulations and, subsidiarily, Swiss law are applicable. It is, however, unclear whether the Competition Rules 2019 were adopted in accordance with the ICF Statutes; the Draft Competition Rules 2019 as a whole were never adopted by the Congress. Nevertheless, in January 2019, the ICF published on its website the new version of the Competition Rules 2019.

- The Appealed Decision was taken by the ICF Board of Directors in violation of the ICF Statutes and the Competition Rules 2019; its Article 4.2 states that the Olympic Games Programme shall be considered as a "Principle Rule".

- The Competition Rules 2019 are contradictory with respect to the category of rules the Olympic Games Programme falls within. On the one hand, Article 4.2 states that the Olympic Games Programme is a "Principle Rule", on the other hand Articles 12.1 and 12.2

state that the requirements to be met for and the different events of the Olympic Games Programme are defined as "Sport Rule". Interpreting the applicable wording leads to the result that the Olympic Games Programme in the Competition Rules 2019 shall be considered as a Principal Rule and, therefore, it is up to the Congress to take decisions affecting the Olympic Games Programme.

- Article 17 of the ICF Statutes provides that: *"The Congress has the responsibility to: […] Approve changes to the ICF Statutes, Sports Governance Rules (CR) and give direction to ICF Principles Rules (PR) that relate to all disciplines of the sport […]"*. The only exception to this rule is stated in Article 21 para. 5 of the ICF Statutes, giving the ICF Board of Directors the power to amend or change a decision of the Congress provided that (i) the ICF President has decided that the circumstances which prevailed at the time the decision was taken by the Congress have changed significantly to a material extent, and (ii) the decision of the Board of Directors is taken by not less than 80% of the members present.

- As the circumstances did not change significantly to a material extent since the Competition Rules 2019 were adopted by the Congress and the Appealed Decision was not taken by a majority of 80% or more of the Board Members present, such exception does not apply in the present matter. Therefore, the amendment of the Olympic Games Programme should have been voted by the Congress and not the Board of Directors and the Appealed Decision was taken in violation of the ICF Statutes and the Competition Rules 2019.

- Assuming that the Olympic Games Programme could be considered as a "Sport Rule", the Appealed Decision was still taken in violation of the ICF Statutes and the Competition Rules 2019. The Board of Directors has the power to amend the bylaws of the ICF Statutes and the Sport Rules every two years during the first Board of Directors meeting in the year of the Congress (Article 21 para. 3 of the ICF Statutes). An exception is possible in exceptional circumstances where the ICF Sport Rules need to be amended in order for the sport to function efficiently. In such cases, the decisions can be taken in the first Board of Directors meeting of that year. In 2020, no Congress was held, as it was canceled because of the Covid-19 pandemic. However, on 6/7 March 2020, when the Board of Directors took a decision, the Congress for the year 2020 had not been canceled yet. It is questionable, if the year 2020 shall still be considered as "the year of the Congress". Therefore, the Board of Directors had the power to amend the Olympic Game Programme as an exception in its first meeting of 2020. On 6/7 March 2020, however, the Board of Directors did not amend the Olympic Games Programme even if the agenda included the topic *"ICF Statutes and Technical Rule Changes"*. Therefore, such changes were made in violation of the ICF Statutes and the Competition Rules 2019. Further, no exceptional circumstances could justify the transfer of two medals events for the Paris 2024 Olympic Games Programme as stated in the Appealed Decision.

- The same finding of violation shall be made if the Competition Rules 2019 would not apply, as it remained unclear in what circumstances these rules were adopted. In such case, the

Olympic Games Programme in force at the time of the Appealed Decision would be the one decided during the Congress 2018. Article 15 of the ICF Statutes provides that the decisions of the Congress are final and, on the other hand, that the exception set out in Article 21 para. 5 of the ICF Statutes did not apply.

51. In its prayers for relief, the Second Appellant requests as follows:

"Principally

1. To cancel the Decision of the ICF of the 24th November 2020 that included the "Extreme slalom" in the program of the Olympic Game of Paris in 2024 and excluded the "K1 men 200m" and "K1 women 200m";

2. To order the International Canoe Federation to pay all costs of these proceedings and to compensate the Russian Canoe Federation for all its costs incurred in connection with these proceedings, including the attorney's fees and such other costs as the Russian Canoe Federation will specify in due course.

3. To dismiss any other relief sought by the International Canoe Federation.

Subsidiarily

1. To declare that the decision of the ICF Board of Directors dated 24 November 2020 was taken in violation of the Statutes of the International Canoe Federation (2019 edition) and the ICF Canoe Sprint Competition Rules (edition 2019).

2. To order the International Canoe Federation to pay all costs of these proceedings and to compensate the Russian Canoe Federation for all its costs incurred in connection with these proceedings, including the attorney's fees and such other costs as the Russian Canoe Federation will specify in due course.

3. To dismiss any other relief sought by the International Canoe Federation".

C. The Respondent's Submissions and Requests for Relief

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

- Article 44 of the ICF Statutes provides for an internal remedy against decisions taken by the Respondent. Based on Article 47 of the ICF Statutes a party to a dispute has the right to appeal against a decision of the Court of Arbitration of the ICF, exclusively to the CAS. As the Respondent agreed that the Appellants may directly appeal to the CAS, the Respondent accepted the CAS jurisdiction to decide on the present dispute.

- Pursuant to Article R58 of the Code, the ICF regulations, including the ICF Statutes and Competition Rules, shall be applicable and subsidiarily Swiss law.

- The challenged proposal ("Appealed Decision") does not constitute a decision which can be appealed against as it does not produce any legal effects (CAS 2015/A/4213), materially affecting the legal situation of the Parties (CAS 2008/A/1633). Only the IOC Executive Board's decision on the Olympic Events Programme triggers legal consequences (Rule 45 of the Olympic Charter). As the International Federations may only submit proposals to the IOC, the ICF Board of Directors' proposal ("Appealed Decision") is not a decision as no legal effects were produced which materially affected the Appellants' interests. The appeals against the challenged proposal are inadmissible.

- In any event, the Appellants do not have standing to appeal as they are only indirectly affected (CAS 2016/A/4924; CAS 2017/A/4946; CAS 2015/A/4343 and CAS 2008/A/1533). No International Federation has any right to impose on the IOC any discipline of the Olympic Events Programme. Rule 45 of the Olympic Charter gives this right exclusively to the IOC Executive Board. As the Respondent does not have any right regarding the Olympic Events Programme, neither has any of its member associations, such as the Appellants, any right on such Olympic Games Programme. The ICF regulations did always grant and still grant the ICF Board of Directors the exclusive prerogative to adopt the proposal of the Olympic Events Programme and to submit it to the IOC Executive Board for approval. Such proposal was never subject to the ratification of or to any resolution by the ICF Congress. Accordingly, the Appellants cannot have been deprived of a right, which does not exist, regarding either the Olympic Programme or the proposal of the ICF events for the Olympic Games.

- The HCF did not request the annulment of the challenged proposal, but only the declaratory relief stating that such proposal would have been issued in violation of the ICF regulations. The RCF, on the other hand, requested the "cancellation" of the challenged proposal and the same declaratory relief as the HCF. These prayers raise a major and insolvable issue in the sense that the ICF's proposal for the Olympic Events Programme and the IOC's decision to adopt it are intrinsically related to each other. The IOC's decision may not stand without ICF's proposal and, therefore, canceling the challenged proposal would thus result in emptying of all substance the Olympic Events Programme decided by the IOC for the Canoe competitions. However, the IOC will not be granted the opportunity to express its views and defend its right in that regard, although it would be affected by the CAS award if the Appellants' prayers for relief were upheld. The failure of joining the IOC as the Respondent in this Arbitration, together with the ICF, results in the lack of standing to be sued of the ICF, at least of the standing to be sued alone, without the IOC.

- The Appellants alleged that the special legal interest needed to ask for a declaratory relief is given with the resolution of the question of whether the challenged proposal ("Appealed Decision") was made in violation of the ICF rules or not. However, such legal interest does not exist as they do not explain why there would be any unacceptable uncertainty that could not be resolved otherwise as requested by Swiss law in order to allow a declaratory relief. In addition, the Appellants did further not prove or allege any possible urgency in resolving the

purported and non-existent uncertainty in a declaratory judgment. As a consequence, the first Appellant's appeal, not asking for anything else than a declaratory relief, shall be dismissed in full.

- The interpretation of the ICF rules shall be made in application of the jurisprudence of the Swiss Federal Tribunal which relates to the method of statutory interpretation; the Respondent may be considered a major sports association such as UEFA or FIFA. The literal and systematic interpretation as well as the historical and teleological interpretation lead to the conclusion that it was up to the ICF Board of Directors to adopt the proposal of the Olympic Events Programme and submit it for approval to the IOC Executive Board. Therefore, the challenged proposal was adopted in accordance with the ICF regulations.

- The decisions related to the Canoeing Olympic Programme pertained to the exclusive authority of the ICF Board of Directors and may, therefore, at worst, be classified as Sports Rules and not Principal Rules. Therefore, the conditions stated in Article 21 para. 5 of the ICF Statutes are not relevant. The Olympic Games Programme has never been decided by the ICF Congress and the IOC decision to cut Olympic quotas in September 2020 was undeniably a significant change in circumstances any way.

- On 6/7 March 2020, the first meeting of the Board of Directors of 2020 took place and it did not adopt the proposal for the Canoeing Olympic Programme of the 2024 Paris Olympic Games because it was not yet aware of the IOC's decision to cut Olympic quotas. The ICF closely followed the consultation process with its member federations, athletes and coaches. The ICF Board of Directors did not amend any ICF Competition Rules, including any Sport Rules Article. All it did was to obtain the approval of the Canoeing Olympic Programme by the IOC Executive Board which will give rise to either the amendment of the Competition Rules or the inclusion of an annex in the future Competition Rules which will be submitted to the ICF Congress.

- The ICF Board of Directors acted in full compliance with Article 26 of the ICF Statutes which grants a broad residual policy competence to the Board of Directors. The member federations, athletes and coaches were involved in the consultation process and, on 24 November 2020, the Board of Directors adopted the challenged proposal with the view to best deal with the exceptional situation resulting from the IOC unexpected decision to cut Olympic quotas.

53. In its prayers for relief, the Respondent requests as follows:

"*I. The appeals filed by the Hungarian Canoe Federation and the Russian Canoe Federation are inadmissible, respectively dismissed.*

II. The Hungarian Canoe Federation and the Russian Canoe Federation shall bear the arbitration costs.

III. *The Hungarian Canoe Federation and the Russian Canoe Federation shall be ordered to pay to the International Canoe Federation a contribution towards its legal and other costs incurred within the framework of these proceedings, in an amount to be determined at the full discretion of the Panel".*

V. JURISDICTION

54. Article R47 of the Code states:

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

55. Article 44 of the ICF Statutes provides as follows:

"In the case of a dispute, other than at ICF competitions where the ICF Competition Rules apply, a Court of Arbitration of the ICF will be appointed, consisting of three (3) Arbitrators. Arbitrators will be selected from the list of ICF appointed arbitrators by a draw (secret ballet) at the ICF Headquarters within a time limit of fifteen days set by the ICF Executive Committee upon receipt of the request. […] No matter what the difference between the disputing parties, no case may be taken to a court of law. The ICF would only recognize and accept the decisions of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland) should the necessity of an appeal against an ICF decision arise. […]".

56. Article 47 of the ICF Statutes states:

"A party to a dispute has the right to appeal against the decision of the Court of Arbitration of the ICF. Any appeal to a body outside the ICF shall be made exclusively and only to the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland)".

57. The Appellants referred to the Respondent's email of 14 December 2020 and pointed out that the Respondent had waived the need for exhaustion of any internal legal remedy provided in Article 44 of the ICF Statutes.

58. In its submission, the Respondent expressly agreed that the Appellants may directly appeal to the CAS. Therefore, it accepted the CAS jurisdiction to decide on the present case. Further, the Parties have agreed to the CAS jurisdiction in signing the Order of Procedure without any reservation on the issue of jurisdiction.

59. Therefore, it follows that based on Article R47 of the Code and the Parties' agreement, the CAS has jurisdiction to decide the present matter.

VI. ADMISSIBILITY

60. As in the present matter the Respondent denies that the Appealed Decision is considered a "decision" in the sense of Article R47 of the Code, the Panel deals with the issue of admissibility in two parts: the formal admissibility in relation to the deadlines to be met and the material admissibility in relation to the Appealed Decision being a "decision" in the sense of Article R47 of the Code.

A. Formal Admissibility

61. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. […]".

62. According to the Parties' submissions, the Appealed Decision was not officially notified to the Appellants. Both, the First and the Second Appellant learned about the Appealed Decision on 25 November 2020 by means of a press release posted by the Respondent on its official website.

63. The First Appellant and the Second Appellant separately lodged a Statement of Appeal on 16 December 2020. The Panel is satisfied with the Parties' statements that 25 November 2020, the date of the publication on the Respondent's homepage, shall be considered as the date of which they became aware of the decision, which would be deemed as the date of the notification of the Appealed Decision. Furthermore, the Respondent has not contested this point. As a consequence, the Statements of Appeal were filed within the time limit set forth in Article R49 of the Code.

64. In addition, the First Appellant filed its Appeal Brief on 24 December 2020, the Second Appellant, within the granted extension of deadline by the CAS Court Office, on 14 January 2021. Both Appeal Briefs were compliant with the requirements set forth in Article R51 of the Code, including the payment of the CAS Court Office fees.

65. Based on the above, the Appeals are admissible from a formal point of view, as they have complied with the time limit of Article R49 of the Code.

B. Material Admissibility

66. In the present case, there is a dispute between the Parties as to whether the decision of the ICF Board of Directors of 24 November 2020 regarding the proposal which was made to the IOC regarding the Olympic Events Programme is to be considered as a decision in the legal sense.

67. Pursuant to Article R47 of the Code, an appeal is only possible against the "decision" of a federation, association or sports-related body. The Panel has, therefore, to decide if the Appealed Decision can be considered as a "decision" in the sense of Article R47 of the Code.

68. In their commentary of the Code of the Court of Arbitration for Sport, MAVROMATI/REEB state at Article R47 N12: *"If the 'decision' challenged before CAS is not a decision in the meaning of Article R47, CAS would have jurisdiction but the appeal would be dismissed (if there is no "decision", the appellant has no claim to request the annulment/modification of a decision)"*.

69. Without giving any details, the Appellants considered the decision taken by the ICF Board of Directors on 24 November 2020 as a decision in the legal sense. Based on their proposal, the ICF Board of Directors decided to propose to the IOC, for the Olympic Games Programme of Paris 2024, to delete two Canoe Sprint events and to replace them with two medal events of Extreme Canoe Slalom. They further referred to the IOC press release posted on the website on 7 December 2020, confirming that the IOC had accepted the ICF's proposal in relation to the Olympic Games Programme for Paris 2024.

70. The Respondent, on the other hand, submits that the decision taken by the ICF Board of Directors on 24 November 2020 is not a decision in the legal sense and considers it as a "challenged proposal". The Respondent's reasoning for its view is that the challenged proposal does not produce any legal effects, materially affecting the legal situation between the Parties.

71. MAVROMATI/REEB, previously mentioned, state in N13/14 to Article R47: *"[…] Generally, the term "decision" must be interpreted in a broad manner so as not to restrain the relief available to the persons affected (see CAS 2005/A/899; CAS 2004/A/748; CAS 2004/A/659 and CAS 2008/A/1583 &1584). In principle, simple letters addressed from a federation to a club/athlete cannot qualify as "appealable decisions" unless they affect the legal situation of their addressee(s). The relevant criterion is not the form of the communication but it's content: […] However, the form of a communication may offer an indication of the intent of the body issuing the communication (see CAS 2007/A/1293).*

In general, a communication is qualified as a decision if it contains a ruling intending to affect the legal state of the addressee of the decision or other parties (see CAS 2012/A/2750, CAS 2005/A/899 etc.)".

72. The Swiss Federal Tribunal defines a decision, on the one hand, in accordance with the notion defined in administrative law, on the other hand, in accordance with the meaning given to it by Article 75 Swiss Civil Code ("CC"): *"A decision is a common declaration of will resulting from multiple unidirectional declarations of individual members to determine the association's will"* (free translation of SCHERER/BRÄGGER, Basler Kommentar, 6th ed, Basel 2018, Art. 75 CC N 3: *"Ein Beschluss ist eine aus mehreren gleichgerichteten Willenserklärungen der einzelnen Mitglieder hervorgehende einheitliche Willenserklärung zur Bestimmung des Verbandswillens)"*.

73. N26 to Article R47 of MAVROMATI/REEB, previously mentioned, states: *"Overall, the principal criterion for the qualification of a communication as a decision is the binding character of the latter and the "animus decidendi", which is the intention of a sports body to decide binding on a specific subject, thus affecting*

the addressee(s) of the decision. In this sense, a simple communication lacking this intent and especially failing to affect the legal status of its addressee cannot qualify as a decision, even if the form of a communication is not relevant for its characterization".

74. Article 75 CC states, in its unofficial English translation by the Federal administration[1]: *"Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof".*

75. This Article 75 CC is the general basis in Swiss law to appeal against a decision of an association such as the ICF. While commenting the Article in the "Berner Kommentar", RIEMER states that only decisions of the general meeting of the associations may be appealed. Later on, the Swiss Federal Tribunal decided in its decision SFT 108 II 18/19 that even decisions from other organs of *the* association, e.g. the committee, may be appealed against in case such decisions concern membership rights. This has been reaffirmed in SFT 118 II 12, reason 3a: *"this provision refers not only to decisions of the general meeting, as the supreme body of the association, but also to those taken by a lower organ within the limits of its competence" ("cette disposition ne vise pas uniquement les décisions de l'assemblée générale, comme organe suprême de l'association, mais également celles qu'un organe inférieur prend dans les limites de sa compétence")*. SCHERER/BRÄGGER, Basler Kommentar, 6th ed, Basel 2018, Art. 75 CC N 3, take up this point and state: *"Not only resolutions of the general meeting of the association (art. 66 para. 1) and any substitute forms of the same […] but also (final) decisions of all organs of the association, including executive or board resolutions, are subject to challenge" ("Der Anfechtung unterliegen dabei nicht nur Beschlüsse der Vereinsversammlung (Art. 66 Abs. 1) und allfällige Ersatzformen derselben […] sondern schlechthin (endgültige) Entscheide aller Vereinsorgane, mithin auch Exekutiv- bzw. Vorstandsbeschlüsse")*. The commentary of RIEMER which limits the appealable decisions taken by/within an association may reflect an earlier understanding of Article 75 CC. Case law of the Swiss Federal Tribunal and the CAS, as well as the majority of doctrinal works consider, rightly, that the challenged decision can be the one of the general meeting or any other organ within the limits of its powers in last resort (see also OSWALD D., Associations, Fondations et autres formes de personnes morales au service du sport, ed. Peter Lang, 2010, page 115, note 636: *"… la décision attaquée peut être le fait de l'assemblée générale ou de tout autre organe qui a statué dans les limites de sa compétence en dernière instance".*).

76. The Panel is of the opinion that the Appealed Decision is a decision made by the ICF's Board of Directors (committee) to propose to the IOC a change in the Olympic Event Programme for the sports of canoeing. The Parties stated in their submissions that the only competent body to adopt such a change in the Olympic Event Programme is the IOC Executive Committee, based on Article 45 of the Olympic Charter. It is the IOC Executive Committee which decided to change the Canoeing Olympic Event Programme with its decision published on 7 December 2020. It is this decision which produces legal effects, which materially affects the legal situation between the Parties and the IOC. Therefore, for the Panel, it is obvious that the ICF Board of Director's decision of 24 November 2020 did not produce any legal effects and was certainly not affecting the ICF's/Appellants' membership rights or affecting the legal situation between

[1] On page: <https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en>.

the Parties. In other words, even if the decision taken by the ICF Board of Directors is called a decision, it is not a decision in the sense of Article R47 of the Code. It is, however, true that the ICF Board of Director's decision is a proposal that may influence or impact any future decision taken by the IOC Executive Committee in its scope of powers. The Parties did, however, not bring any evidence which would suggest that any decision taken by the IOC Executive Committee has necessarily to rely on a decision by the ICF's Board of Directors to be valid. In any case, even if a (valid) decision by the ICF's Board of Directors would be needed for a valid decision by the IOC Executive Committee, the latter decision would not be necessarily void, but at most voidable. In other words, the only possibility to change the legal situation produced by the IOC Executive Committee would be to challenge that decision.

77. The Panel, therefore, is of the opinion that the Appeals are not admissible, as the Appealed Decision is not a decision within the meaning of Article R47 of the Code.

78. As the question of the (material) admissibility is closely related to the question whether the Appellants have standing to sue and if the Respondent has standing to be sued (alone), the Panel will assess these rather formal points in relation to the Appeals filed under the section "Merits", even if the Panel already decides to fully dismiss the Appeals for lack of decision to be appealed.

VII. APPLICABLE LAW

79. Article R58 of the Code provides as follows:

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

80. The Parties concur that primarily the ICF regulations and, subsidiarily, Swiss law shall be applicable to the present matter.

81. Looking at the ICF Statutes, the Panel did not find any clause confirming the ICF being an association pursuant to Articles 60 seq. CC. Article 4 of the ICF Statutes only states that the Headquarters shall be in the country decided by the ICF Board of Directors. However, it is notorious (letterhead, press releases, IOC Directory and website) that the administration of ICF has been in Lausanne, Switzerland, for many years. Therefore, the Panel does not hesitate to consider that the ICF has its seat in Switzerland and is an association pursuant to Articles 60 seq. CC.

82. Therefore, based on the above and pursuant to Article R58 of the Code, the Panel decides that in the present matter primarily the ICF regulations and, subsidiarily, Swiss law shall be applicable.

VIII. MERITS

83. Based on the Parties' submissions, the Panel has to clarify several points in this section, some of them related to the question of the admissibility. First of all, the question is whether the Appellants have a standing to sue; second, whether the Respondent has a standing to be sued (alone) and third, whether the declaratory reliefs sought for by the Appellants are admissible. Only in case the Panel will not deny any of these three points, the Panel will have to decide if the ICF Board of Directors acted in accordance with the applicable ICF rules when it took its decision.

A. Appellant's Standing to Sue

84. Based on CAS jurisprudence (CAS 2018/A/5888; CAS 2017/A/4943; CAS 2016/A/4924; DE LA ROCHEFOUCAULD E.; Standing to sue, a procedural issue before the CAS, in CAS Bulletin 1/2011), an appellant has standing to sue, if she/he has an interest worthy of protection. In other words, in principle, a request is inadmissible, if it lacks the legal interest ("Rechtsschutzinteresse"). This condition of admissibility is explicitly provided for in Article 59 para. 2 lit. a of the Swiss Code of Civil Procedure ("CCP"). Thus, a reasonable legal interest is a condition for access to justice. A court shall only have to decide the merits of a request, if the applicant has a sufficient legal interest in the outcome of the decision. If, on the contrary, the request is not helpful in pursuing the applicant's final goals, the judicial resources shall not be wasted on such matter.

85. This condition of sufficient legal interest serves mainly and foremost public interests, i.e. to restrict the caseload for the courts by striking "purposeless" claims from the court's registry. Such aspects of public interest before state courts are not easily transferable *mutatis mutandis* to arbitration proceedings (see GIRSBERGER/VOSER, International Arbitration, 4th ed. 2021, no. 1194).

86. MAVROMATI/REEB, previously mentioned, Article R48 N 65 state that, based on decisions by the Swiss Federal Tribunal, both "standing to sue" and "standing to be sued" are related to the merits of the case, leading thus to the dismissal of the appeal and not to its inadmissibility. (SFT 126 III 59; SFT 125 III 82; SFT 114 II 345).

87. MAVROMATI/REEB, previously mentioned, further state in Article R48 N67: *"A right to contest a resolution of an association pursuant to article 75 CC is a mandatory right of membership (see CAS 2008/A/1700 & 1710). The threshold of standing to appeal for a member of an association is low, meaning that such member may appeal against a decision of the association (see CAS 2012/A/2943). As members of an IF, NFs have a direct interest to intervene when their opinions and views diverge from those of the IF on the interpretation of the IF rules, especially when fairness in sport is at stake (see CAS 2013/A/3140). This provision applies to resolutions made not only by the highest decision-making organ, but also by a lower internal body, provided that all internal procedures and remedies have been exhausted and provided that the resolution is final (see SFT 118 II 12; SFT 5C.67/2006)".*

88. The Appellants pointed out that they were affected by the Appealed Decision as the change in the Olympic Games Programme will lead to fewer athletes from their countries to participate in the Olympic Games and to their governments to pay less money to the Appellants. Therefore, the Appellants consider they have a legal interest to challenge the Appealed Decision.

89. The Respondent, on the other hand, pointed out to CAS 2016/A/4924 & 4943 and denied that the Appellants have a "direct, personal and actual interest" and as a consequence do not have a standing to sue.

90. The Panel acknowledges that the Appealed Decision was taken by the ICF Board of Directors and contained a proposal to the IOC to change the Olympic Games Programme. Therefore, directly involved were the ICF and the IOC. The Appellants, as member federations of the Respondent, were not directly involved in this process which is confirmed by the fact that they did not directly receive the Appealed Decision, but only took note of it on the ICF's homepage when it was published.

91. CAS 2016/A/4924 & 4943 states: *"Third parties generally have standing before the CAS in two cases. First, when a regulation explicitly confers it. Secondly, when an association's measure affects not only the right of the addressee, but also and directly those of a third party, that third party is considered "directly affected" and thus enjoys standing to sue (see CAS 2008/A/1583 & 1584). This is consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake may bring a claim, even if they are not addressees of the measure being challenged"*.

92. There is a category of third party applicants who, in principle, do not have standing, namely those deemed *"indirectly affected"* by a measure. As regards the differentiation of directly affected parties from indirectly affected parties, CAS jurisprudence displays a *"common thread"*, which has been succinctly put as follows: *"Where the third party is affected because he is a competitor of the addressee of the measure/decision taken by the association, - unless otherwise provided by the association's rules and regulations - the third party does not have a right of appeal. Effects that ensue only from competition are only indirect consequences of the association's decision/measure. If, however, the association disposes in its measure/decision not only of the rights of the addressee, but also of those of the third party, the latter is directly affected with the consequence that the third party then also has a right of appeal"*.

93. CAS 2015/A/4343, para. 116 states: *"In a nutshell, the correct approach when dealing with standing is to deem competitors indirectly affected - and thus exclude them from standing – when the measure does not have tangible and immediate direct consequences for them"*.

94. The Panel holds that in the present case the Appellants were not the addressees of the Appealed Decision, and as a consequence were and will only be indirectly affected by the Appealed Decision. Therefore, they do only have a standing to sue in case a rule provides so, or if the Appealed Decision disposed of one of their rights.

95. The Appellants did not mention any rule foreseeing their right to sue against the Appealed Decision. Further, based on the submissions and applicable regulations, the Panel acknowledges

that the Appellants were and might only be indirectly affected by the Appealed Decision, given that no right of the Appellants was disposed of by the Appealed Decision. As correctly pointed out by the Respondent, Article 45 of the Olympic Charter only grants to the IOC the right to decide on the Olympic Event Programme. Therefore, no International Federation has any right to impose an Olympic Event Programme on the IOC. If, however, no International Federation has such right, no member federation of such International Federation has such right either. In other words, the Respondent as International Federation does not have any right to impose the Olympic Event Programme on the IOC and the Appellants, as member federations of the Respondent do not have any right either.

96. As stated before, the Appealed Decision did not touch upon any membership rights of the Appellants. Therefore, the Panel concludes that the Appellants, not being directly affected by the Appealed Decision, lack standing to appeal against the Respondent in relation to the Appealed Decision.

B. Respondent's Standing to be sued (alone)

97. The Appellants alleged in their submissions that it was the Respondent taking the Appealed Decision to change the Olympic Games Programme and, therefore, they did not bring up any reasoning as to the Respondent's standing to be sued.

98. The Respondent alleged that it has no standing to be sued alone. It pointed out to Swiss law accepting the standing to be sued if it is personally obliged by the "disputed rights" at stake. It is pointed out that the Second Appellant requested the cancellation of the decision including the "Extreme Slalom" in the Olympic Games Programme for Paris 2024 and excluding the two events "K1 200m men/women". As this decision was taken by the IOC Executive Committee based on Article 45 of the Olympic Charter, such request cannot be filed against the Respondent. As a consequence, the Respondent has no standing to be sued alone; the IOC was not mentioned as a Second Respondent.

99. MAVROMATI/REEB, previously mentioned, Article R48 N 68 state: *"According to Article 75 CC, the members of an association (and therefore not an anti-doping authority) have standing to appeal against a resolution of an association, whereas only the association itself (and therefore not a member of an association) has standing to be sued. The subject of the appeal should concern decisions rendered by the organs of the association (to the extent they are final) and rights related to the association. This means that a decision rendered by an independent tribunal cannot be the subject to the appeal (since it is not an association according to Article 75 CC), or in cases where an appeal is still possible at internal level, or where rights related to the association do not come into play".*

100. Article 45 para. 1 of the Olympic Charter states: *"The programme of the Olympic Games ('the programme') is the programme of all sports competitions established by the IOC for each edition of the Olympic Games in accordance with the present Rule and its Bye-law. The programme consists of two components, namely: The sports programme, which includes all sports for a specific edition of the Olympic Games, as determined by the Session from among the sports governed by the IFs recognized by the IOC ('the sports programme'). […]*

The programme is established following a review by the IOC of the programme of the previous corresponding edition of the Olympic Games. Only sports which comply with the Olympic Charter and the World Anti-Doping Code are eligible to be in the programme".

101. Based on the Bye-law to Rule 45 of the Olympic Charter, the IOC Executive Board proposes the sports programme which will be decided at the Session. The Session shall vote *en bloc*, for the complete Olympic Games Programme. Further, the IOC Executive Board has the possibility to propose the Session to amend the Olympic Games Programme based on an agreement between the relevant Organizing Committee of the Olympic Games, the relevant IF and the IOC.

102. The Olympic Charter clearly states that the Olympic Games Programme is decided by the IOC itself. No International Federation has any such right. As the Second Appellant is asking for the annulation of the change of the Olympic Games Programme for Paris 2024 regarding Canoeing such request has to be filed against the IOC, which took this decision, and not against the Respondent, which "merely" proposed such solution. Based on the above, the Panel is of the view that, even if – contrary to the Panel's decision – the decision taken by the ICF Board of Directors on 24 November 2020 would be a decision in the legal sense, the Respondent has no standing to be sued, as the decision regarding the Olympic Games Programme was, ultimately, made by the IOC which should have been sued as Second Respondent.

C. Admissibility of Declaratory Reliefs

103. The Appellants alleged that both requirements to be met for filing a declaratory relief were fulfilled. On the one hand, they submit that they have a legal interest in this declaratory relief and that such declaratory relief is necessary to resolve a legal uncertainty threatening the Appellants. This threat is the acceptance by the IOC to replace two Canoe Sprint Events by two Extreme Slalom Events for the Paris 2024 Olympic Games, as such change will lead to an important reduction of the funds received by the Appellants, given that the Canoe Sprint is mainly practiced in the states of the Appellants. The survival of Canoe Sprint in Hungary and Russia is depending on the number of events scheduled for this discipline in the Olympic Games. As the IOC is not bound by the Appealed Decision, the Appellants do not have any other option than to seek for a declaratory relief. The second requirement to be fulfilled is that the legal uncertainty must relate to the existence or non-existence of a claim or a defined legal relationship between the parties to the dispute. In other words, no declaratory relief may be sought, e.g. to solve abstract legal questions.

104. The Respondent, on the other hand, submits that the prayers for declaratory reliefs must be considered as inadmissible or be dismissed. First of all, the special legal interest was not alleged and proved by the Appellants and there is no legal uncertainty being inacceptable and to be solved by no other way than a declaratory relief. The Appellant's submissions that this special legal interest resides in the resolution of the issue of whether the Appealed Decision was taken in violation of the ICF rules or not does not exist.

105. The CAS jurisprudence holds that declaratory reliefs can only be granted if the requesting party establishes a special legal interest to obtain such declaration (see, *ex multis,* CAS 2009/A/1870; CAS 2011/O/2574; CAS 2011/A/2612 and CAS 2013 /A/3272). The Panel has no reason to deviate from this case law.

106. The Appellants did not really allege and certainly not prove any special legal interest in the declaration sought. Such special interest was expressly contested by the Respondent. The Panel is of the opinion that the Appellants do not have a *legal* interest to set aside the Appealed Decision, but their interest is to ensure that as many Canoe Sprint Events as possible will be in the Olympic Games Programme, which is not a legal but merely a factual interest. Therefore, the Appellants cannot pray for a declaratory relief; they would have needed to pray for performance, which they did not. This is of course related to the fact that they did not challenge the sole decision that may have had an impact, i.e. the IOC's decision to change the Olympic Game Programme.

107. Therefore, the Panel points out that beside the missing standing to sue of the Appellants and the lack of standing to be sued (alone) of the Respondent, the declaratory reliefs filed by the Appellants are as well inadmissible.

108. The Panel therefore decides that there the Appeals are inadmissible. First, and mainly, because the contested decision does not constitute a decision in the legal sense of the term. Second, and in any case, the Appellants have no standing to sue and the Respondent lacks the standing to be sued alone. Finally, prayers for relief of declaratory nature do not meet the requirements set by case law, which makes them inadmissible.

109. For all these reasons, the Panel dismisses the Appeals in their entirety.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeals filed by the Hungarian Canoe Federation and the Russian Canoe Federation against the International Canoe Federation in relation with the proposal to the IOC of 24 November 2020 are fully dismissed.

(…)

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