



**Arbitration CAS 2012/A/2913 Mu-yen Chu & Chinese Taipei Olympic Committee (CTOC)
v. International Olympic Committee (IOC), award of 15 March 2013**

Panel: Prof. Luigi Fumagalli (Italy), President; The Hon. Michael Beloff QC (United Kingdom); Mr Hans Nater (Switzerland)

Taekwondo

Disciplinary sanction against a candidate for the election to the IOC Athletes' Commission

Violation of the prohibition to promote a candidature

Proportionality of the sanction

Scope of review of the CAS

1. **By campaigning in a restricted area where no form of promotion of candidature is allowed, a candidate violates the applicable rules of conduct related to campaigns for election to a sport's association athletes' commission. In this respect, any activity aimed at promoting a candidature coupled with the indication to the athletes that they would be given a complimentary item if they voted, constitutes a violation of the applicable rules of conduct.**
2. **To be proportionate a measure must not exceed what is reasonably required in the search of the justifiable aim. A candidate interfering with the election process for the athletes' commission of a sport's association by gaining an advantage on the candidates who had respected the rules violates the rules. The withdrawal of the candidature is the most appropriate measure to sanction the candidate for the infringements committed, as it appears to be a measure necessary to achieve the purpose sought and does not go beyond what is required.**
3. **While not excluding, or limiting, its power to review the facts and the law involved in the dispute heard pursuant to Article R57 of the Code, a CAS panel can decide, in specific and appropriate circumstances, not to exercise the power it indisputably enjoys, but to defer to the discretion exercised by the internal body of an association.**

I BACKGROUND

A. The Parties

1. Mr Mu-yen Chu (hereinafter also referred to as "Mr Chu" or the "First Appellant") is a Chinese Taipei Olympic medallist in the sport of Taekwondo, who won, the first male Chinese Taipei athlete to do so, an Olympic gold medal in Athens 2004, and also a bronze medal in Beijing

2008. Mr Chu is a member of the Chinese Taipei Olympic Committee.

2. The Chinese Taipei Olympic Committee (hereinafter also referred to as the “CTOC” or the “Second Appellant”) is the National Olympic Committee in Chinese Taipei.
3. The International Olympic Committee (hereinafter also referred to as the “IOC” or the “Respondent”) is an association under Swiss law, with headquarters in Lausanne, Switzerland. The IOC is the supreme authority of the Olympic Movement, with the primary responsibility to supervise the organization of the Summer and Winter Olympic Games.
4. Mr Chu and the CTOC are hereinafter jointly referred to as the “Appellants”.

B. *The Dispute between the Parties*

5. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which 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.
6. On 19 May 2011, the IOC sent to all National Olympic Committees a letter concerning the Games of the XXX Olympiad, to take place in London in 2012 (hereinafter also referred to as the “London OG”). Such letter contained, *inter alia*, some information regarding the election of the IOC Athletes’ Commission, which would be held during the London OG, in accordance with paragraph 1 of the Bye-law to Rule 21 of the Olympic Charter, and more specifically regarding the procedure for the presentation of the athletes’ candidatures.
7. On 1 September 2011, the CTOC submitted to the IOC the nomination of Mr Chu as a candidate for the election to the IOC Athletes’ Commission. Attached to the Candidature Proposal Form transmitted by the CTOC was also a copy of the Rules of Conduct Applicable to Campaigns for Election to the IOC Athletes’ Commission (hereinafter also referred as the “Rules of Conduct”) signed by Mr Chu and the CTOC.
8. On 8 December 2011, the IOC Executive Board approved the list of candidates proposed by the National Olympic Committees for the election to the IOC Athletes’ Commission. Mr Chu was included in such list.
9. In a letter of 24 February 2012, the IOC sent to all candidates some information regarding the election process, including the campaign rules. Additional details, with respect to the promotional activities, were contained in a letter dated 19 June 2012 and in an email message of 17 July 2012. Such email, in particular, attached a map outlining the areas of the Olympic Village in which the promotion of the candidature was permitted or was not permitted.
10. On 15 July 2012, Mr Chu arrived in London. On 16 July 2012, he entered the Olympic Village

and on 17 July 2012 started his campaign for election.

11. On 19 July 2012, Mr Chu was approached by Ms Stephanie Genoud-Cabessa of the IOC Sports Department, who reminded him that the Rules of Conduct did not allow candidates to distribute name cards to any of the athletes.

12. On 25 July 2012, Ms Genoud-Cabessa received an email from Ms Fiona de Jong, Director of Sport of the Australian Olympic Committee, as follows:

“A number of our athletes have advised that the Chinese Taipei IOC Athletes Commission nominee has been handing out lollipops in the residential area asking athletes to vote for him in the IOC Athletes Commission. I understood the rules were clear that no promotion and no gifts could be handed out by candidates promoting their candidature.

I would be grateful if you could clarify if this is permitted within the rules as we understood it was not and have advised our candidate accordingly”.

13. On 26 July 2012, Ms Genoud-Cabessa forwarded the email of Ms de Jong to Ms Anita DeFrantz, Chairperson of the IOC Athletes’ Commission Election Committee (hereinafter referred to as the “Election Committee”), advising her of the following:

“A few days ago, I told Mu-Yen Chu that he could not display the election manual. Later the same day, he was displaying a tablet. I reminded him of the rules and that next time I will contact the election committee if he continues. He was really upset as he said that he cannot communicate with athletes who speak other languages than him. ...”.

14. On 26 July 2012, Ms DeFrantz sent by email to Mr Chu and to the Chef de Mission of the CTOC the following letter:

“Dear Mu-Yen, dear Mr Lin,

Stephanie spoke with you a couple of days ago and reminded you that the Rules of Conduct do not allow you to distribute or display anything related to your candidature for the IOC Athletes’ Commission Election.

Unfortunately, despite these alerts, we have heard that you may have continued to violate the rules by handing out lollipops to promote your candidature.

This e-mail is to remind you once again, that any continuation of this activity will become a violation of the Rules of Conduct and that the Election Committee will take action. ...”.

15. On 9 August 2012, the IOC received an e-mail from the Chef de Mission of the National Olympic Committee of Zimbabwe regarding the election to the IOC Athletes’ Commission as follows:

“I have learnt that the announcement of the results has been postponed to tomorrow.

At this stage the candidate from our NOC is not aware of the reasons for the cancellation. However we do hope that it is not too late to bring to your attention concerns that we have regarding the candidates from Japan and Chinese Taipei. Both of these candidates have been campaigning openly in restricted areas, either by word of mouth or using an iPad in the case of the candidate from Chinese Taipei.

Regrettably our candidate did ask yesterday where she could register her complaint, but she was advised that it would be difficult unless she had evidence. She is not able to produce evidence as she did not have a camera on her each time these violations of the regulations were observed. However we still believe that although there is no evidence it is important for us to register our concerns”.

16. In the early hours of 10 August 2012, the IOC received another e-mail from Ms Kirsty Coventry, which reads as follows:

“... I ... confirm seeing the Chinese Taipei candidate campaigning just outside the Main Dining Hall using an iPad. This was also on a number of different days but I cannot give you an exact date. I saw him with an iPad but I never saw what was written on it. I was informed by a few other athletes that the message on the iPad was ‘Vote”.

17. On 10 August 2012, a meeting was convened before the Election Committee. Mr Chu was invited to attend. During the meeting Mr Chu, accompanied by the Secretary General of CTOC, was requested to explain the methods of his campaign for the election to the Athletes’ Commission.

18. On 11 August 2012, Mr Chu and the CTOC received a letter of the IOC Director General, informing them that:

“the IOC Executive Board, during its meeting on 11 August 2012, accepted the recommendation by the IOC Athletes’ Commission Election Committee, pursuant to 6 c) of Annex 2 of the Regulations relating to the IOC Athletes’ Commission, namely, the “Rules of Conduct applicable to campaigns for election to the IOC Athletes’ Commission”, to withdraw Mr Mu-Yen CHU as a candidate for the IOC Athletes’ Commission”.

19. The text of the decision adopted by the IOC Executive Board (hereinafter also referred to as the “Decision”) reads as follows, in the portions pertinent to Mr Chu’s position:

- “1. Mr Mu-Yen Chu and ... (hereinafter the “Candidates”) were candidates for election during the Games of the XXX Olympiad in London to the IOC Athletes’ Commission.*
- 2. The athletes were accused of breaching the “Rules of Conduct Applicable to Campaigns for Election to the IOC Athletes’ Commission” (hereinafter the “Rules of Conduct”).*
- 3. These accusations were studied in detail by the IOC Athletes’ Commission Election Committee (hereinafter the “Committee”).*
- 4. The Committee heard the Candidates, in the presence of their respective NOC representatives, as well as other witnesses, including representatives of other NOCs and IOC staff responsible for following up with regard to the election procedure. [...]*
- 5. The Committee took note that the Athlete, Mr Mu-Yen Chu, first breached the Rules of Conduct by distributing gifts, contrary to such Rules of Conduct. The Committee sanctioned this breach by giving him a confidential written warning on 26 July 2012.*
- 6. The Committee subsequently noted that, despite this warning, the Athlete, Mr Mu-Yen Chu, further breached the Rules of Conduct by subsequently campaigning in an area, and by using methods of campaigning, that were prohibited by such Rules of Conduct. [...]*

9. *The Committee, after deliberating, considered that the accusations of breach of the Rules of Conduct by the Athletes were proven. The Committee noted that, while some of the breaches were not of a serious nature, other breaches were of a serious nature. Also, the Committee noted that breaches of the Rules of Conduct were committed after the Athletes had already been warned for committing earlier breaches.*
10. *The Committee stressed the fact that all the candidates to the IOC Athletes' Commission: (i) signed a copy of such Rules of Conduct stating that they had "read and approved" them; and (ii) that the Rules of Conduct were explained in detail to all the candidates to the IOC Athletes' Commission during a meeting dedicated to that effect.*
11. *The Committee considered as a matter of principle that, in order to be a candidate for the IOC Athletes' Commission, it is necessary to respect the applicable rules and, therefore, decided to recommend to the IOC Executive Board to withdraw the Athletes as candidates for election during the Games of the XXX Olympiad in London to the IOC Athletes' Commission.*
12. *The IOC Executive Board discussed these cases in great detail with representatives of the Committee and decided to approve the recommendation made by the Committee to withdraw the Athletes as candidates for the IOC Athletes' Commission.*

CONSIDERING the above, and pursuant to the Olympic Charter, the Regulations Relating to the IOC Athletes' Commission, including Its Annex entitled "Rules of Conduct Applicable to Campaigns for Election to the IOC Athletes' Commission".

THE EXECUTIVE BOARD OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. *To withdraw Mr Mu-Yen Chu (Chinese Taipei) and ... as candidates for election during the Games of the XXX Olympiad in London to the IOC Athletes' Commission; and*
 - II. *This Decision shall enter into force immediately".*
20. On 11 August 2012, the President of the CTOC wrote two letters, one to the IOC Director General, the other to Ms DeFrantz, requesting, *inter alia*, an indication of the reasons of the Decision adopted by the IOC Executive Board and of the recommendation made by the Election Committee, and a reversal of such decision and recommendation.
 21. On 12 August 2012, the IOC Director General answered to the President of the CTOC that the IOC Executive Board had resolved to maintain the Decision.
 22. In a letter of 13 August 2012, the President of the CTOC implored the IOC President to "*check into this matter*", and more specifically into "*several facts that the [Election] Committee may have overlooked in its recommendation*" to the IOC Executive Board.
 23. On 23 August 2012, Mr Chu sent a letter to Ms DeFrantz "*to lodge an appeal*" against the revocation of the candidature decided by the IOC.
 24. In an e-mail of 30 August 2012, the IOC Director of Legal Affairs advised Mr Chu and the CTOC of the following:

“This is in response to your two letters, both dated 23 August 2012, which were addressed to Ms Anita de Frantz ...

Please note that this Decision of the IOC Executive Board is not appealable to the IOC.

If you wish to appeal the Decision of the IOC Executive Board to the Court of Arbitration for Sport (CAS), I bring your attention to R49 of the Code of Sports-related Arbitration and Mediation Rules, which states, in part, that:

“... the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against ...”.

II THE ARBITRAL PROCEEDINGS

A. The CAS Proceedings

25. On 3 September 2012, Mr Chu and the CTOC filed by e-mail a statement of appeal with the Court of Arbitration for Sport (hereinafter also referred to as the “CAS”), pursuant to Article R48 of the Code of Sports-related Arbitration (hereinafter also referred to as the “Code”), to challenge the Decision.
26. On 4 September 2012, the CAS Secretary General advised the Appellants that Article R31 of the Code did not mention e-mails as a communication method with the CAS, and drew the Appellants’ attention to the conditions and requirements to file a statement of appeal with the CAS.
27. On 5 September 2012, the Appellants’ statement of appeal was received by CAS by telefax. The CAS Court Office acknowledged receipt in a letter of the same date.
28. In a letter dated 10 September 2012, the Hon. Michael J. Beloff QC was nominated as arbitrator by the Appellants.
29. On 17 September 2012, the Appellants submitted some evidentiary requests, asking the President of the CAS Appeals Arbitration Division or the Panel to
 - “a) Order the Respondent to disclose to the Appellants its Reasoned Decision, if any, along with any evidence which purports to support the allegations;*
 - b) Allow the Appellants to submit their Witness Statements only after the Respondent has complied with Order a) above and subject to the issuance of such Order against the Respondent”.*
30. In a letter of 20 September 2012, the IOC nominated Dr Hans Nater as arbitrator. In addition, the Respondent objected to the Appellants’ evidentiary requests, indicating that the challenged Decision “consists in a complete written decision” and that “the Appellants have been fully informed of all facts and allegations concerned, inasmuch as they have been heard by the IOC Athletes’ Commission Election Committee on 10 August 2012”.
31. On 21 September 2012, the Appellants insisted on their evidentiary requests.

32. In a letter of 24 September 2012, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had considered the Appellants' evidentiary requests together with the Respondent's reply and had decided to invite the Appellants to file their appeal brief, while reserving for the Panel any final decision as to the evidentiary measures requested by the Appellants.
33. On 25 September 2012, the Appellants filed their appeal brief in accordance with Article R51 of the Code, together with 23 exhibits, including witness statements signed by Mr Chu, by Ms Jacqueline Shen (Deputy Secretary General of the Second Respondent), by Mr Kevin Chen (Secretary General of the Second Respondent), and by Mr David Owen (a journalist).
34. On 12 October 2012, the Appellants submitted a petition pursuant to Article R34 of the Code to challenge the appointment of Dr Hans Nater as an arbitrator.
35. In a letter of 24 October 2012, the Respondent opposed the challenge and confirmed its appointment of Dr Nater.
36. On 31 October 2012, the Respondent filed an answer to the appeal, with 22 Exhibits, seeking its dismissal. Attached to the answer, the Respondent also lodged witness statements signed by Ms Busi Chindove (Chef de Mission at the London OG of the National Olympic Committee of Zimbabwe), by Ms Kirsty Coventry (an athlete entered by the National Olympic Committee of Zimbabwe to stand for election to the Athletes' Commission at the London OG), by Mr Christophe de Kepper (IOC Director General), by Ms Stephanie Genoud-Cabessa (project assistant in the IOC Sports Department), by Ms Donatella Minelli (head of the International Relations Department of the Italian National Olympic Committee), and by Mr Antonio Rossi (an athlete entered by the Italian National Olympic Committee to stand for election to the Athletes' Commission at the London OG).
37. On 9 November 2012, the Board of the International Council of Arbitration for Sport issued a decision dismissing the Appellants' challenge of Dr Nater. On 19 November 2012, an original copy of such decision was transmitted to the parties by the CAS Court Office.
38. On 16 November 2012, the Appellants expressed their preference for a hearing to be held in this case and requested from the Panel the following evidentiary measures:
 - a. *Order the Respondent to disclose to the Appellants its Reasoned Decision, if any exists, along with any evidence which purports to support the allegation. ...*
 - b. *Order the Respondent to disclose the Minutes of the Election Committee Meeting and its recommendation, along with the Minutes of the Executive Committee's Meeting;*
 - c. *... deem all documents submitted by the Respondent, in any language other than English, inadmissible;*
 - d. *... encourage the Respondent to call Mrs DeFrantz ... to give evidence before the Panel".*
39. In a letter dated 22 November 2012, the Respondent requested that the Appellants' evidentiary requests be dismissed. In a letter of 23 November 2012, the Appellants repeated their requests.

40. By communication dated 29 November 2012, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; the Hon. Michael J. Beloff QC and Dr Hans Nater, arbitrators.
41. In a letter of 7 December 2012, the Panel addressed the Appellants' evidentiary requests as follows:
1. *The Panel notes the IOC's response to the Appellant's request for a copy of the "Reasoned Decision". Given that response and the material contained in and supplied with the Answer, the Panel does not consider it necessary to issue an order in this respect. The parties are, however, reminded that it is their duty to substantiate their claims before the Panel in order to satisfy their burden of proof under the applicable law. The Panel will evaluate whether the appealed decision is justified or not on the basis of the evidence on the record.*
 2. *The Appellants are invited to indicate within seven days of receipt of this letter which documents in the file they wish the IOC to translate.*
 3. *The Appellants are invited to particularise within seven days of receipt of this letter, the subjects on which they wish to question Ms de Frantz and why such subjects are relevant to the case and material to its outcome. Upon receipt of the Appellants' response, the IOC will be granted the opportunity to state its position. The Panel for the present reserves its position on whether it would be assisted by evidence from a member of the Election Committee and/or Executive Board. In the interim, the IOC is invited to contact Ms de Frantz in order to secure her provisional availability for the hearing.*
 4. *The IOC is requested to send the CAS Court Office five copies of the complete case file for this matter, including extracts of the minutes of the meeting of the IOC Election Committee and of the IOC Executive Board in which the subject matter of the appealed decision was discussed, within seven days of receipt of this letter.*
 5. *The parties are requested to indicate within seven days of this letter which witnesses called by the other side they wish to cross-examine at the hearing".*
42. In a letter dated 19 December 2012, the Appellants addressed the procedural directions issued by the Panel on 7 December 2012. In particular, the Appellants requested that Ms Chindove, Ms Genoud-Cabessa, Ms Coventry and Mr de Kepper be made available for cross-examination at the hearing and underlined the importance of examining Ms DeFrantz as a witness on the following points:
- i. *"a full and detailed explanation of the Rules of Conduct and their exact applicability to the First Appellant's situation" and "of what is 'permissible' and what is not, during an election campaign";*
 - ii. *"the reasons why the contents" of the "comprehensive oral report" offered by Ms DeFrantz to the IOC Executive Board "are not known to the Respondents and ... to the Panel" and "why the Respondent's case is not ill-founded";*
 - iii. *the warning given to Mr Chu by letter of 26 July 2012 "regarding his behaviour and his alleged distribution of lollipops";*
 - iv. *the letter sent to Ms DeFrantz by CTOC on 11 August 2012, "regarding the allegations and*

the sanction imposed on Mr Chu”, which had remained unanswered.

43. On 21 December 2012, the IOC, following the Panel’s directions of 7 December 2012, lodged with the CAS Court Office the “*case file*” (including the “*documents provided to the Executive Board members at the meeting of 11 August 2012 as a basis of discussion*”, and the “*relevant extracts of the minutes of the meetings of the Executive Board of 11 and 12 August 2012*”), together with a “*note*” summarizing the procedural chronology of the proceedings. At the same time, the Respondent indicated that it wished to cross-examine Ms Shen, Mr Chen and Mr Owen.
44. In a letter dated 27 December 2012, the IOC stated its objection to the Appellants’ request that Ms DeFrantz be heard as a witness.
45. On 7 January 2013, the Appellants *inter alia* noted that Ms Burns, a witness to be called by the Respondent, had not submitted a witness statement, confirmed that they were contesting all witness statements provided by the Respondent, and made comments on the documents lodged by the IOC on 21 December 2012.
46. In a letter dated 8 January 2013, the CAS Court Office, writing on behalf of the Panel, informed the parties of the following:

“having considered the recent correspondence in this matter, the Panel does not find it necessary to order the IOC to present Ms DeFrantz as a witness. The Panel considers that it is for the parties to decide whom they wish to call and that the Panel remains free to draw any appropriate inferences from their choice and will be available to hear from the parties with regard to such inferences, including the Appellants’ position on the IOC’s decision not to call Ms DeFrantz, at the hearing”.
47. In the same letter a tentative agenda for the hearing was suggested. In a letter of 9 January 2013, the Panel informed the parties that the examination of Ms Burns would follow the rules applicable to all other witnesses.
48. On 10 January 2013, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the “*Order of Procedure*”), which was accepted and countersigned by the parties.
49. On 10 January 2013, the Appellants requested that the IOC be invited to provide a witness statement signed by Ms Burns.
50. On the same 10 January 2013, the Appellants’ letter was forwarded by the CAS Court Office to the IOC, with the indication that “*the Panel considers that the submission of a witness statement by Ms Burns ... would assist in the efficient running of the hearing*”.
51. On 16 January 2013, the IOC filed with the CAS Court Office a witness statement signed by Ms Burns.
52. In a letter of 16 January 2013, the Appellants lodged with the Panel a request for further disclosure by the Respondent of “*important information*”. In particular, the Appellants requested that the Panel order the IOC to disclose a copy of a “*Memorandum*” drafted by its Juridical

Committee, allegedly discussing the Appellants' case and objecting to the application of any sanction on Mr Chu.

53. On 17 January 2013, following a request for clarification by the Panel, the Appellants specified that their counsel had received the day before a communication from a "*Senior Member of the IOC*" with the confidential information that "*a Report (referred to as a "Memorandum") had been prepared by the IOC Juridical Committee on the 11th August 2012*" and was "*highly critical of the IOC Election Committee's position*".
54. On 18 January 2013, the IOC answered that request by advising that "*neither the IOC Juridical Commission nor any other organ of the IOC has prepared any report or memorandum regarding Mr Chu or the subject matter of these proceedings*".
55. A hearing was held on 21 January 2013 on the basis of the notice given to the parties in the letter of the CAS Court Office dated 7 December 2012. The Panel was assisted at the hearing by Ms Louise Reilly, Counsel to the CAS, and by Mr Sandro Nücken, trainee at the CAS. The following persons attended the hearing:
 - i. for the Appellants: Mr Chu in person, Ms Shen, Deputy Secretary General of the CTOC, and Mr Chen, Secretary General of the CTOC, assisted by Dr Gregory Ioannidis and Mr Philip Gibbs, counsel, by Ms Leanne Coulton, Ms Harriotte Underwood and Mr Selvyn Hawkins, assistants, and by Ms Olive Huang, interpreter;
 - ii. for the Respondent: Mr Christophe Dubi, IOC Sports Director, Mr André Sabah, Legal Counsel, IOC Department of Legal Affairs, assisted by Dr François Carrard, Mr Ross Wenzel and Ms Sophie Roud, counsel.
56. At the hearing, the parties made submissions in support of their respective cases. Mr Chu, Ms Shen, Mr Chen and Mr Owen were heard as witnesses called by the Appellants, while Ms Chindove, Ms Genoud-Cabessa, Ms Burns, Ms Coventry and Mr de Kepper were heard as witnesses called by the Respondent. At the outset of the hearing, the Appellants declared that they did not wish to cross-examine Mr Rossi or Ms Minelli, witnesses indicated by the IOC, on grounds of the irrelevance of their declarations.
57. All witnesses confirmed the content of their respective witness statements. The depositions and declarations can be briefly summarized as follows:
 - i. Mr Chu explained his campaigning activity and underlined *inter alia* that
 - he never accompanied anybody to the voting station,
 - he simply informed the other athletes that they would receive an umbrella, courtesy of the IOC, if they voted,
 - the distribution of business cards is the normal way in Asia by which a person introduces him/herself,

- the cards he distributed bore the indication of his name and of his sporting achievements and profession, without any reference to his candidature, and were the normal cards he still currently uses,
 - he stopped distributing name cards after being warned by Ms Ms Genoud-Cabessa on 19 July 2012,
 - the iPad he used contained only material coming from the election manual prepared by the IOC,
 - he never distributed lollipops to anybody as immediately confirmed to Mr Genoud-Cabessa upon receipt of the letter of 26 July 2012;
- ii. Ms Shen testified about the campaigning activities of Mr Chu. She confirmed that she never saw him, or anybody, distributing lollipops, and that Mr Chu had told her that the material in the iPad he was using only came from the IOC. Ms Shen also mentioned that she cautioned Mr Chu not to hand out name cards; however, she did not “actively” ask him to stop;
- iii. Mr Chen testified that during the hearing of Mr Chu before the Election Committee on 10 August 2012, members of that Committee had accepted that Mr Chu did not campaign in the prohibited area;
- iv. Mr Owen reported on his coverage, as a journalist, of the events concerning the withdrawal of Mr Chu’s candidature. More specifically, he testified about the information he had received from a “*reliable senior IOC member*” that the Election Committee had originally decided not to take any measure against Mr Chu, finding that the evidence against him was insufficient, and that it was only after a second stage of deliberation, in a meeting not attended by all members, had the Election Committee decided to withdraw the candidature of Mr Chu;
- v. Ms Genoud-Cabessa explained her role in the organization of the election to the Athletes’ Commission. As regarded Mr Chu, on the basis of her encounters with him in the Olympic Village, she described his campaigning method as “pushy”. She had met him in the restricted area but only before the map defining it had been circulated: but after that, she had never seen Mr Chu campaigning in that restricted area. She mentioned her difficulties in conversing with Mr Chu, as his English was very poor: when Mr Chu met her to protest with respect to the alleged distribution of lollipops, she had the impression he did not fully understand what she was saying.
- vi. Ms Burns declared that she attended a meeting on 9 August 2012 with Ms Chindove and a second meeting on 10 August 2012 with Ms Chindove and Ms Coventry, when the campaigning of Mr Chu was discussed. She confirmed that the results of the election to the Athletes’ Commission were verified by the Election Committee the night of 8 August 2012, immediately after the end of the voting operations, but remained confidential until their public announcement on 11 August 2012; such announcement was originally scheduled for 9 August 2012 at 14:00, but was postponed by decision taken on the morning of that day;
- vii. Ms Coventry testified that she was approached three times, twice in the restricted area and once outside it, by Mr Chu, who was asking for her vote, unaware that she was also

a candidate, and that she saw him using an iPad. On 7 August 2012, she requested from someone, probably a volunteer, at the voting station, information on the procedure for filing complaint against Mr Chu, but was told that she had to have proof or evidence in support of a complaint. Finally, she confirmed that she attended a meeting with the Election Committee on 10 August 2012 after (and not before) she had sent an email to the IOC;

- viii. Ms Chindove (heard by telephone) stated that she also met Mr Chu two or three times campaigning in the restricted area with an iPad, and gave her account of the meetings she had with the Election Committee on 9 and 10 August 2012;
 - ix. Mr de Kepper described his role in the preparation of the meeting of the IOC Executive Board which adopted the Decision upon recommendation of the Election Committee. Mr de Kepper also stated that he had no recollection that any memorandum or other document had been prepared by the IOC Juridical Committee with respect to the case of Mr Chu.
58. In this latter respect, Counsel for the Respondent, Mr Carrard, himself a member of the IOC Juridical Committee, stated that the Juridical Committee never met in August 2012 and at its first meeting post London 2012 in mid-September 2012 he simply gave the Juridical Committee a short report on the case and informed them it was continuing.
59. During the hearing, the Appellants provided the Panel with a bundle of CAS precedents. The Respondent objected to such late filing. The Panel, however, decided to accept the bundle produced by the Appellants, noting that it contained only copies of published decisions rendered by other CAS panels. At the conclusion of the hearing, Mr Chu made a personal statement, and the parties confirmed that their right to be heard and to be treated equally in the arbitration proceedings had been respected and that they had been given a fair opportunity to fully present their cases. The Appellants' counsel did note that some interruptions, by the IOC counsel, had made their oral presentation more difficult; the Panel was, however, satisfied that the Appellants' case had been presented as well as it could have been.
60. As instructed at the hearing and following a letter of the CAS Court Office dated 22 January 2013, the parties filed on 4 February 2013 their respective statements of costs. By letter dated 8 February 2013, the Appellants stated that they had no further submissions to produce regarding the Respondent's statement of costs. The Respondent did not comment on the Appellants' statement.

B. The Position of the Parties

61. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, however, has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a) The Position of the Appellants

62. The Appellants' prayers for relief, indicated in their appeal brief, is the following:

- *Stay and Annul the Respondent's Decision;*
- *Order the Respondent to release the results of the election;*
- *Order the Respondent to re-instate First Appellant as an election candidate and amend the election results accordingly.*

Accordingly the Appellants Request that the Appeal be Allowed.

The Appellants Request that the Respondent pays all the costs and expenses arising out of this Arbitration".

63. In their written submissions, in other words, the Appellants criticize the Decision, defined to be "*unreasonable and totally unjustified*", which they ask the Panel to set aside.

64. In support of their request, the Appellants submitted that the Respondent, in adopting the Decision, "*committed violations of both ... procedural and ... substantive elements*", more specifically, that the Respondent failed "*to follow procedural and substantive requirements of the disciplinary process and furthermore reached an erroneous result*". It is in fact the Appellants' contention that "*the Respondent failed to properly and effectively communicate the precise nature of the accusations*" brought against Mr Chu, and that "*no evidence was ever produced to substantiate*" the allegations against Mr Chu: the IOC did not discharge the burden of proof it had in that respect. In addition, the Appellants alleged that "*the Decision is contrary to the facts, has been arrived at without any proper regard for appropriate procedural safeguards, and constitutes an abuse of power*": therefore, the actions of the Respondent were contrary to "*general law*", and were "*unconstitutional*" and "*ultra vires*"; at the same time, the IOC failed to observe its own rules: "*the Respondent failed to study and apply the regulatory framework in a transparent and equitable manner*", while the Appellants "*operated*" within the framework of, and according to, the IOC rules and "*followed the instructions and the interpretation of the rules, in a literal and purposive way*".

65. At the hearing the Appellants emphasised, in addition, that the IOC had not presented direct evidence of the violations imputed to Mr Chu, and had not satisfied the burden of proof, according to the relevant standard; it had to show that Mr Chu had actually violated the applicable rules. More specifically, the Appellants emphasized that

- there was no evidence of the alleged distribution of lollipops,
- Mr Chu did not invite other athletes to vote for him on the occasions he informed them that an umbrella would be offered by the IOC to those who voted,
- Mr Chu did not campaign in the restricted area,
- the IOC letter of 26 July 2012 did not contain any indication of evidence supporting the charge therein made,
- as a result of such letter only violations committed after 26 July 2012 could be taken into account; there was, however, no evidence of any infringement after that date,

- the complaints brought against Mr Chu by Ms Chindove and Ms Coventry were made very late, notably only after the election results were known,
 - at the hearing of 10 August 2012, the Election Committee had accepted the explanations given by Mr Chu,
 - the IOC rules on campaigning were not clear, and the IOC itself did not know how to apply them,
 - the principle of equality of treatment was violated, as other athletes, responsible for serious violations, in particular an Australian candidate, were not sanctioned.
66. The Appellants criticized also the severity of the sanction imposed on Mr Chu and submitted that the IOC *“misdirected itself in terms of applying the disproportionate sanction in question”*.
67. In summary, the Appellants submitted that the Respondent:
- “(i) Erroneously interpreted and applied the current regulatory framework;*
 - (ii) Failed to seek clarification and examine the Appellants’ submissions regarding the applicability of the rules in question;*
 - (iii) Erroneously and pedantically applied sanctions in an arbitrary and prejudicial way;*
 - (iv) Erroneously applied sanctions having failed to consider the appropriate evidence;*
 - (v) Failed to observe the rules on natural justice and due process by not producing its Reasoned Decision, in an expedited and efficient manner”*.
- b) The Position of the Respondent
68. In its answer, the IOC requested the CAS to issue an award:
- I. Ruling that CAS dismisses the Appeal;*
 - II. Ordering the Appellants, to pay all the costs of the arbitration as well as a contribution to the legal fees and other expenses of the Respondent”*.
69. In support of its request to have the appeal dismissed, the Respondent first explained the general context and meaning of the process that led to the Decision, and next set out the reasons why the Decision did not violate any applicable regulation and was fully justified by the violations committed by the First Appellant.
70. The IOC initially underlined that *“this case is not about a “sanction” in the ordinary sense of the word. The fundamental issue at stake is the IOC’s autonomy and the right to organize and structure itself freely ... in such a situation, the interests of the association outweigh those of an individual athlete”*. In that context, the IOC explained the importance of ensuring that all candidates standing for election to the Athletes’ Commission *“comply strictly with the rules of conduct and other applicable regulations so that no candidate may fabricate any advantage over his or her competitors by breaking in any way the rules for a fair campaign”*. As a result, *“the nature and purpose of the measures taken against candidates ... is to ensure that*

the Election constitutes a fair political process without excessive campaigning". By the same token, *"the Election Committee is not a disciplinary body"*. Therefore, its procedures are informal, and it is not customary for candidates to be assisted by legal counsel with respect to an internal process of the IOC.

71. With respect to the violations committed by the First Respondent, the IOC noted that *"taken individually, some of the incidents reported may not be considered as serious. However, their accumulation and repetition provided the First Appellant with a substantial advantage over those candidates who complied strictly with the Rules of Conduct. The First Appellant had been warned on several occasions formally or informally. The First Appellant failed to take heed of these warnings and persisted with his excessive, aggressive style of campaigning, which was contrary to the Rules of Conduct and spirit of fair-play expected from him"*.
72. More specifically, it was the Respondent's submission that:
- i. the First Appellant violated the prohibition to distribute and/or display, inside or outside the Olympic Village, any *"document, poster, sign, banner or gift"*: such violation was committed by handing out unapproved name cards on 19 July 2012, by displaying the Election Manual to athletes on 23 July 2012 and by using his iPad to display extracts of the Election Manual, and/or of the IOC website, or as a form of promotional mechanism to encourage athletes to vote for him;
 - ii. the First Appellant violated the prohibition to use any *"form of material ... or financial inducement to vote"*: Mr Chu distributed lollipops in the residential area of the Olympic Village, asking athletes to vote for him; Mr Chu also enticed the athletes to vote for him by informing them that they would be given a complimentary umbrella, courtesy of the Election Committee, if they voted, while himself accompanying the athletes to the voting station;
 - iii. the First Appellant violated the *"specific instructions"* the candidates had received by email on 17 July 2012 (§ 9 above) with respect to the areas where all forms of campaigning were prohibited: throughout the entire voting period, Mr Chu openly promoted his candidature in the restricted areas by either using the election manual itself or his iPad or by gesturing to voters and drawing their attention to his name badge.
73. As to the consequence of such violations, the Respondent submitted that the measure taken (the withdrawal of the candidature) was *"necessary"* in order to ensure *"fairness"* and *"equality of chance"* amongst candidates which had been disrupted, was the only sanction apt to achieve such result, and was consistent with previous cases. In addition, in the Respondent's contention, the organs of the IOC that came to such conclusion exercised the discretion they enjoyed under Swiss law: as a result, their discretion should be respected and the Decision should stand.

III LEGAL ANALYSIS

A. Jurisdiction

74. CAS has jurisdiction to decide the present dispute between the parties and is not challenged.

75. In particular, the Appellants refer, for the purposes of Article R47 of the Code, to Rule 61 of the Olympic Charter, whose para. 2 provides that “*any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration*”, and to the email sent by the IOC on 30 August 2012 (§ 24 above). The Respondent, while submitting that the present dispute is not covered by any arbitration clause, expressly declared that it “*accepts arbitration and does not oppose CAS jurisdiction*”. The jurisdiction of CAS was further confirmed by the parties’ signing the Order of Procedure.

B. *Appeal Proceedings*

76. As these proceedings involve an appeal against a decision regarding an international level athlete brought on the basis of rules providing for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case of international nature, within the meaning and for the purposes of the Code.

C. *Admissibility of the Appeal*

77. The admissibility of the appeal is not challenged by the Respondent. No further internal recourse against the Decision is available to the Appellant within the structure of the IOC. Accordingly, the appeal is admissible.

D. *Scope of the Panel’s Review*

78. According to Article R57 of the Code,

“the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance...”

E. *Applicable Law*

79. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

80. Pursuant to Article R58 of the Code, the Panel is required to 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”.

81. As a result of the foregoing, Panel considers the IOC rules and regulations to be the applicable regulations for the purposes of Article R58 of the Code, and that Swiss law applies subsidiarily.

82. The provisions set in the IOC rules and regulations which are relevant in this arbitration include

the following:

i. in the Olympic Charter:

Bye-law to Rule 21

“1. The IOC Athletes’ Commission:

An IOC Athletes’ Commission shall be constituted, the majority of whose members shall be athletes elected by athletes participating in the Olympic Games. The election shall be held on the occasion of the Games of the Olympiad and the Olympic Winter Games in accordance with regulations adopted by the IOC Executive Board, in consultation with the Athletes’ Commission, and communicated to the IFs and NOCs not later than one year prior to the Olympic Games at which such election is to be held.

All regulations and procedures of the IOC Athletes’ Commission shall be adopted by the IOC Executive Board after consulting of the IOC Athletes’ Commission”.

ii. in the Regulations Relating to the IOC Athletes’ Commission:

Article 3.4.2 “Presentation and submission of candidatures”, second paragraph

“To be admissible, the candidature proposal must include the following documents . . .:

- b. *The “Rules of Conduct Applicable to Campaigns for Election to the IOC Athletes’ Commission” (Annex II) (“Rules of Conduct”) duly signed by the candidate . . . and the President of the NOC”*

Article 3.4.4 “Election campaign”

“The election campaign shall be conducted in accordance with the Rules of Conduct”

Article 3.4.5 “Election Committee”

“The Election Committee is responsible for the election, from the opening of the Olympic Village to the public announcement of the results. . . .

The role of the Election Committee includes:

- a. *Supervising the election procedure, including the counting of ballot papers, and certifying the results; and*
- b. *Ensuring compliance with the “Rules of Conduct” once the Olympic Village opens, dealing with and issuing sanctions for all infringements and, if necessary, proposing measures and sanctions to the IOC Executive Board”*

iii. in the Rules of Conduct Applicable to Campaigns for Election to the IOC Athletes’ Commission (the “Rules of Conduct”), which are Annex II to the Regulations Relating to the IOC Athletes’ Commission:

Article 1 “General Principles”

“The goal of the present Rules of Conduct is to ensure that each candidate has an equal opportunity to be elected.

They must be complied with strictly by the candidate and by the NOC putting forward his or her candidature.

The NOC is responsible for the candidate’s conduct.

Candidates may promote their candidature, with dignity and moderation, in compliance with the present Rules of Conduct, the Olympic Charter and the IOC Code of Ethics.

IOC members and IOC Athletes' Commission members, except if he/she is the president of the candidate's NOC, may under no circumstances endorse a candidate".

Article 3 *"Promotion of the Candidature during the Olympic Games"*

"From the opening date of the Olympic Village, the Election Committee ensures compliance with the present Rules of Conduct.

From the opening of the Olympic Village until the end of the election, candidates may promote their candidatures. However, no form of promotion may be undertaken in or around the voting offices (exact rules will be established based on the final layout of the Olympic Village for each edition of the Games, and communicated to all candidates).

Candidates must respect the athletes at all times, and act with respect regarding all other candidates.

Candidates are responsible for producing, at their own expense, a document in black and white (one sheet printed on one side, A4 format) presenting their candidature. This document is submitted for IOC approval no later than two months before the opening of the Olympic Village. A decision will be made within 15 days after arrival of the document.

The IOC will send the candidates detailed instructions for submitting a video in which they can present their candidature. Candidates must strictly adhere to all instructions and submit their video, at their own expense, for IOC approval no later than two months prior to the opening of the Olympic Village. A decision will be made within 15 days of the IOC receiving the candidate's video.

No other document, poster, sign, banner or gift may be distributed and/or displayed inside or outside the Olympic Village, including the NOC residential areas.

No form of material (such as t-shirt, caps, pictures, etc.) or financial inducement to vote for a candidate or take part in the vote is permitted.

No press conferences will be held on the candidatures".

Article 6 *"Sanctions"*

"In the event of any infraction of the present Rules of Conduct, the following sanctions will be applied, depending on the severity and type of infraction; sanctions can be cumulative:

- a. A confidential warning*
- b. A public reprimand made at the chefs de mission meeting and displayed at the voting centres*
- c. Withdrawal of the candidature*
- d. Withdrawal of the candidate's right to stand for election at future Olympic Games*
- e. Withdrawal of the right of the NOC to submit a candidate at forthcoming editions of the Olympic Games.*

Cumulative infractions must be taken into consideration for the determination of the sanction.

In the event of a repeat infraction, or two different but consecutive infractions, the second sanction will automatically be more severe.

The Election Committee has the authority to impose sanctions a and b; the IOC Executive Board has the authority to impose sanctions c, d and e, upon the proposal of the Election Committee”.

Article 7 “Procedure”

“The candidate or NOC concerned by an infraction has the right to be heard, in writing or orally at his/her discretion, by the Election Committee or by any person the Committee designates to such effect.

If the right to be heard is exercised by means of a written document, this must be submitted within the deadline set by the Election Committee. If the right to be heard is exercised orally, the candidate or NOC may be accompanied by one person of his/her choice; a brief record of such hearing is produced, and a copy given to the candidate or NOC concerned.

The Chef de Mission of the NOC of the candidate concerned must be informed in all cases. He or she may be heard if the Committee deems it necessary.

Any sanction shall be the subject of a written and grounded decision. Decisions imposing sanctions b to e of article 6 are made public.

For any measure or sanction, the candidate concerned is informed before it is made public. The Chef de Mission of the candidate’s NOC is also informed. This information may be communicated orally or by electronic mail. If the information is communicated orally, a brief record is established and a copy given to the candidate or NOC concerned”.

F. *The Dispute*

83. The object of these proceedings is the Decision, adopted by the IOC Executive Board on 11 August 2012, upon recommendation of the Election Committee, to withdraw Mr Chu as a candidate for the election to the IOC Athletes’ Commission taking place at the London OG. The Appellants challenge the Decision, by contending that no sanction should be imposed on Mr Chu, or in the alternative that the sanction applied was excessive, and therefore that Mr Chu had to be reinstated as a candidate. The Respondent, on the other hand, seeks the confirmation of the Decision, which it contends is fully justified by the violations of the applicable rules committed by the First Appellant.
84. As a result of the above, there are two main questions that the Panel has to examine:
- i. whether Mr Chu is responsible for any violation of the rules governing the campaigning activity for the election to the IOC Athletes’ Commission taking place at the London OG; and
 - ii. in the event any violation is found, whether the Decision to withdraw the candidature of Mr Chu is appropriate.
85. The Panel notes, that the Appellants raised a third issue, relating to alleged violations of procedural rules committed by the IOC, with respect to the hearing of Mr Chu by the Election Committee, on the grounds, *inter alia*, that he had not received any indication of the nature and purpose of the meeting which he had been invited to attend, that he was not given the opportunity to consult counsel, and that he did not receive a “Reasoned Decision”.

86. The Panel, however, does not find it necessary to consider whether such procedural violations occurred and/or whether the First Appellant's right to be heard before the Election Committee was violated.
87. According to Article R57 of the Code, this Panel has full power to review the facts and the law, and its scope of review is basically unrestricted. The Panel consequently hears the case *de novo* and is not limited to the consideration of the submissions before the Election Committee: rather it can consider all new arguments produced by either party, including the Appellants, in this arbitration. Therefore even if a violation of the principle of due process, or of the right to be heard, occurred in the proceedings in respect of which the appeal is brought, it is cured, at least to the extent such violation did not irreparably impair the First Appellant's rights, by a full appeal to the CAS (CAS 94/129; CAS 98/211; CAS 2000/A/274; CAS 2000/A/281; CAS 2000/A/317; CAS 2002/A/378). In fact, the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the hearing before the tribunal of first instance "*fade to the periphery*" (CAS 98/211, citing Swiss doctrine and case law).
88. In short, this Panel has the power to adjudicate, through the vehicle of arbitration proceedings where the respect of the parties' right to be heard is fully guaranteed, the merits of the dispute, i.e. whether violations of the Rules of Conduct were committed, and if they were, the appropriate sanction, irrespective of any procedural question relating to the issuance of the Decision.
- a) Is Mr Chu responsible for any violation of the rules governing the campaigning activity for the election to the IOC Athletes' Commission taking place at the London OG?
89. By the Decision, the First Appellant was found guilty of a number of violations of the Rules of Conduct, i.e. of the rules governing the campaign for election to the IOC Athletes' Commission. More specifically, the Decision indicates Mr Chu to be responsible of "*distributing gifts*", of "*campaigning in an area ... prohibited*" and of "*using methods of campaigning ... prohibited*". The Respondent, then, submitted in this arbitration that the First Appellant violated the Rules of Conduct by:
- handing out unapproved name cards,
 - displaying the Election Manual to athletes,
 - using his iPad to display extracts of the Election Manual, and/or of the IOC website, or as a form of promotional banner to encourage athletes to vote for him,
 - distributing lollipops in the residential area of the Olympic Village,
 - enticing the athletes to vote for him, by informing them that they would be given a complimentary umbrella if they voted, while accompanying the athletes to the voting station,
 - promoting his candidature in the restricted areas by either using his iPad or gesturing to voters and drawing their attention to his name badge.

90. The Appellants dispute such allegations and contend that the IOC has not satisfied the burden it had to substantiate the allegations against Mr Chu.
91. With respect to the burden of proof, the Panel finds that the general rules apply in order to determine which party should bear the consequences of the failure to prove its allegations. In such respect the Panel notes that pursuant to Article 8 of the Swiss Civil Code:
- “Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu’elle allègue pour en déduire son droit”*
[“Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right”].
92. This principle applies also in CAS proceedings (see for instance CAS 96/159 & 96/166). As a result, in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its “burden of proof”, i.e. must meet the onus to substantiate its allegations and affirmatively prove the facts on which it relies with respect to that issue. In that respect, it is to be noted, as made clear in the CAS jurisprudence (CAS 96/159 & 96/166), *“selon la jurisprudence fédérale suisse, dans le cas où une preuve directe ne peut pas être rapportée, le juge ne viole pas l’art. 8 CC ... en fondant sa conviction sur des indices ou sur un haut degré de vraisemblance (ATF 104 II 68 = JdT 1979 I 738, à la p. 545). En outre, des faits dont on doit présumer qu’ils se sont déroulés dans le cours naturel des choses peuvent être mis à la base d’un jugement, même s’ils ne sont pas établis par une preuve, à moins que la partie adverse n’allègue ou ne preuve des circonstances de nature à mettre leur exactitude en doute (ATF 100 II 352, à la p. 356)”* [“according to the Swiss federal case law, in the event direct evidence cannot be offered, a judge does not violate Article 8 of the Civil Code ... if he bases his decision on inferences or on a high degree of likelihood In addition, events whose existence must be presumed according to the normal course of things can be relied on as a basis for judgment, even if these events are not confirmed by evidence, at any rate if the opposing party does not allege or establish circumstances sufficient to put their existence in doubt”].
93. As a result, the Panel concludes that the IOC bears the burden of providing evidence of the facts on which its Decision to find violations of its rules of conduct and to impose sanctions in respect thereof was based: more specifically, the Respondent has the obligation to establish the existence of the violations imputed to Mr Chu.
94. It is against this background that the violations alleged against to Mr Chu must be examined.
95. As to the facts, the Panel notes that on the one hand it is not disputed (indeed is admitted on the basis of Mr Chu’s declarations at the hearing) that Mr Chu:
- distributed name cards;
 - displayed the Election Manual to athletes;
 - used his iPad to display extracts of the Election Manual, and/or of the IOC website;
 - informed the athletes that they would be given a complimentary umbrella if they voted.
96. It is on the other hand in issue whether Mr Chu:
- took such action in order to promote his candidature;

- distributed lollipops;
 - promoted his candidature in the restricted area;
 - undertook any campaigning activity in a way inconsistent with the Rules of Conduct after receiving the letter of 26 July 2012 (§ 14 above).
97. As to the first disputed point (mentioned at § 96), it is the Panel's opinion that all the actions taken by Mr Chu (distribution of name cards, display of the Election Manual, use of the iPad, indication that an umbrella would be offered to voters) were intended to promote his candidature (whether legally or not, it considers below: see point § 100). Indeed, the only purpose for Mr Chu, no longer a competitor, to be at the Olympic Village during the London OG was to approach athletes and promote his candidature. Even though inspired by the best possible motives, i.e. to campaign for democracy and participation, any action taken by a candidate inevitably becomes a promotion of his/her position, as any voter would be likely to remember the person that had distributed name cards, displayed the Election Manual, used an iPad or informed him or her that an umbrella would be offered; not least because his image was on display on official material including in the vicinity of election booths. Indeed Mr Chu with admirable candour acknowledged that he hoped his actions would cause electors to vote for him.
98. As to the second disputed point (§ 96 above), the Panel does not find sufficient evidence to confirm that Mr Chu distributed lollipops. The indication of such action was contained only in an email of 25 July 2012, sent to the IOC by Ms Fiona de Jong of the Australian Olympic Committee (§ 12 above), who had not herself seen Mr Chu distributing lollipops, but solely referred to information provided by other athletes. Such statement, itself second hand hearsay, was not confirmed at the hearing by any deposition or oral evidence. The Panel does not consider probative Ms Burns' statement that other athletes were prepared to confirm violations but, as a matter of principle, would not indict fellow athletes.
99. As to the third disputed point (mentioned at § 96), the Panel notes that the presence of Mr Chu in the restricted area (*i.e.*, in the area around the voting offices, as better described in a map sent to all candidates on 17 July 2012: § 9 above) was confirmed at the hearing by Ms Coventry and Ms Chindove. Even though Ms Coventry is *de facto* interested in the outcome of this arbitration (as a candidate to the Athletes' Commission who would be elected following the withdrawal of Mr Chu), the Panel considers that it should accept her testimony and of Ms Chindove, since:
- i. the inculpatory statements were made in emails to the IOC, at a time when (there being no evidence to the contrary) neither Ms Coventry nor Ms Chindove
 - were aware of any other accusation brought against Mr Chu with respect to his method of campaigning, and
 - knew the results of the election to the Athletes' Commission;
 - ii. they were confirmed at the hearing under oath and cross-examination;
 - iii. they have not been contradicted by any evidence adduced or argument advanced by the Appellants sufficient to put their accuracy in doubt;

- iv. Ms Genoud-Cabessa also saw Mr Chu campaigning near the voting offices, even though this was before the map defining the extent of the restricted area had been circulated.
100. On such basis, the Panel is satisfied that Mr Chu campaigned in an area where no form of promotion was allowed. More specifically, on the basis of the declarations of Mr Coventry and of Ms Chindove, and with reference to the fourth disputed point (§ 96 above), the Panel finds that such infringement was also committed after 26 July 2012. The Panel accordingly concludes that by campaigning in the restricted area, Mr Chu violated Article 3, second paragraph of the Rules of Conduct.
101. The Panel finds too that the distribution of name cards, the display of the Election Manual to the athletes and the use of an iPad to display extracts of the Election Manual, and/or of the IOC website, by Mr Chu in order to promote his candidature, constitutes a violation of Article 3, sixth paragraph of the Rules of Conduct (providing that “*no ... document, poster, sign, banner or gift may be distributed and/or displayed inside or outside the Olympic Village, including the NOC residential areas*” and making no reference to the need to prove intent); and that in any event those actions, coupled with the indication to the athletes that they would be given a complimentary umbrella if they voted, which indication was, in the Panel’s view, clearly given to promote his candidature, served Mr Chu’s interest, by enticing athletes to take part in the vote, were contrary to Article 3, seventh paragraph of the Rules of Conduct, prohibiting any form of “*material ... inducement to vote for a candidate or take part in the vote*”. Overall, all such actions were at odds with the obligation to campaign “*with dignity and moderation*” (Article 1, fourth paragraph of the Rules of Conduct). No rule or article requires proof of causative effect by such unlawful campaigning.
102. The Panel’s finding that Mr Chu violated the prohibition to campaign in the restricted area also after 26 July 2012 makes it unnecessary to consider whether the letter sent by the IOC to Mr Chu on 26 July 2012 had the effect of rendering irrelevant any infringement committed prior to that date, if not repeated. As clearly indicated in the same letter, in fact, any further violation of the Rules of Conduct (not restricted to offer of sweets) would trigger the intervention of the Election Committee and the adoption of measures against Mr Chu. This, unfortunately, is precisely what happened.
103. The allegation that other athletes may not have been sanctioned for violation of the Rules of Conduct does not assist the Appellants. It would show at most that other athletes should have been sanctioned and not that Mr Chu should not have been. The Panel adds that the evidence of other breaches was insubstantial. The photograph of the Australian candidate in the vicinity of a model kangaroo proved nothing in the absence of evidence that he deliberately posed together with it. The Panel noted that Mr Chu himself appeared in the photograph; the implications of this coincidence were not explored.
104. Further, it cannot be sensibly concluded, as the Appellants’ counsel tentatively sought to argue, that the Rules of Conduct were obscure. On the contrary, their meaning was clear; no contentious issues of interpretation could be identified by the Panel. Nor could it fairly be said that the Rules could not be fully understood by the candidates, given the information provided to them and the cooperative attitude shown by the IOC representatives in their application. As a candidate Mr Chu had to claim knowledge of English (or French); if his claim was somewhat

exaggerated, he must take the consequences.

105. As a result, the Panel does not consider it appropriate to draw an adverse inference from the IOC's failure to call Ms de Franz as a witness: the points that the Appellants raised with respect to her examination (§ 42 above), in fact, were either dealt with by other witnesses, are conceded or are not relevant.
 106. In light of the foregoing, the Panel concludes that Mr Chu was responsible for the violation of the rules governing the campaigning activity for the election to the IOC Athletes' Commission which took place at the London OG. The Decision in its first aspect, i.e. on liability, is therefore correct in finding a breach.
- b) Is the Decision to withdraw the candidature of Mr Chu proper?
107. The IOC Executive Board, after holding that Mr Chu had violated the Rules of Conduct, decided to withdraw Mr Chu as a candidate for the election to the IOC Athletes' Commission. The Appellants contest this second aspect of the Decision, i.e. on sanction, of the Decision. They submitted such withdrawal to be excessive and disproportionate.
 108. The Panel does not agree with the Appellants' submissions: in the Appellants' opinion, the Decision to withdraw the candidature of Mr Chu was proportionate to the infringements he committed, taking in mind (i) the seriousness of the violations, (ii) their repeated nature, (iii) the lack of heed paid not only to the repeated reminders in the documentation sent to or signed by candidates prior to the London OG referring to the Rules of Conduct, (iv) the lack of heed paid to the advice and warnings he received when in the Olympic Village, (v) the purpose sought by the infringed rules, and (vi) the range of the "sanctions" that could be imposed on him, "*depending on the severity and type of infraction*", under Article 6 of the Rules of Conduct.
 109. The Panel recognizes that the principle of proportionality requires that there must be a reasonable balance between the kind of the misconduct imputed to a subject and the consequence drawn by the body competent to evaluate such misconduct. More precisely, the principle of proportionality requires that (i) the measure taken by the competent body is capable of achieving the envisaged goal, that (ii) the measure taken by the competent body is necessary to reach the envisaged goal, and that (iii) the constraints which the affected person will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal. In other words, to be proportionate a measure must not exceed what is reasonably required in the search of the justifiable aim (CAS 2005/C/976 & 986, §§ 139-140, citing CAS precedents, legal doctrine and Swiss jurisprudence).
 110. In that respect, the Panel notes that a violation of the Rules of Conduct, in accordance with their Article 6, can be sanctioned with:
 - a confidential warning,
 - a public reprimand,

- the withdrawal of the candidature,
 - the withdrawal of the candidate's right to stand for election at future Olympic Games, and/or
 - the withdrawal of the right of the NOC in question to submit a candidate at forthcoming editions of the Olympic Games.
111. In such scale, the withdrawal of the candidature is the most appropriate measure to sanction Mr Chu for the infringements committed at the London OG, as it appears to be a measure necessary to achieve the purpose sought and does not go beyond what required.
112. By Mr Chu's violations he interfered with the election process for the Athletes' Commission, by gaining an advantage on the candidates who had respected the rules. The withdrawal of the candidature, in that context (and in particular in the light of the features set out at § 108 above), seems the only measure suitable to cure the effects of the violations committed by Mr Chu, juxtaposing the interest of Mr Chu on the one hand and the overall interest pursued by the IOC on the other: a minor sanction (a reprimand) would not be sufficient; a harsher one, impacting on subsequent elections, be excessive.
113. In any case, this CAS Panel, even though it has full power of review of the disputed facts and law in the exercise of its jurisdiction, accepts the *dictum* in the award of 21 May 2010, CAS 2009/A/1870, at § 125), under which "*the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see TAS 2004/A/547, §§ 66, 124; CAS 2004/A/690, § 86; CAS 2005/A/830, § 10.26; CAS 2005/C/976 & 986, § 143; 2006/A/1175, § 90; CAS 2007/A/1217, § 12.4)*". While not excluding, or limiting, its power to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the Code), a CAS panel can decide, in specific and appropriate circumstances, not to exercise the power it indisputably enjoys, and will defer to the discretion exercised by the internal body of an association.
114. This Panel submits that such self-restraint is especially warranted in the situation at hand, where the freedom of an association to organize itself, setting the procedures for the election of its bodies and monitoring the observance of the rules adopted for that purpose, is at stake. The rules established by an association under Swiss law with respect to its organization pursue an interest of the association, which prevails over the individual interest of a member (HEINI/PORTMANN, *Das Schweizerische Vereinsrecht*, 3rd ed., Basel, 2005, 155).
115. As a result, this Panel takes note of the discretion exercised by the IOC in imposing the measure it did on Mr Chu and finds that the sanction imposed on Mr Chu was proper and not disproportionate. Accordingly, it should stand.

G. Conclusion

116. In light of the foregoing, the Panel holds that the appeal brought by Mr Chu and the CTOC against the Decision is to be dismissed, and the Decision is confirmed.

117. The Panel would add that, in its view, Mr Chu was guilty of excessive zeal rather than of a desire to cheat. His actions were overt, not covert. His breach of election rules should not be equated to dishonesty. His reputation and integrity as a sportsman remains untarnished.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Mu-yen Chu and the Chinese Taipei Olympic Committee against the decision taken by the Executive Board of the International Olympic Committee (IOC) on 11 August 2012 is dismissed.
2. The decision taken by the Executive Board of the International Olympic Committee (IOC) on 11 August 2012 is confirmed.
3. (...).
4. All other prayers for relief are dismissed.