



**Arbitration CAS 2017/A/5393 Taekwondo Federation of the Republic of Moldova (TFM) v. National Olympic and Sports Committee (NOSC) of the Republic of Moldova, award of 3 October 2018**

Panel: Prof. Martin Schimke (Germany), President; Mr Michele Bernasconi (Switzerland); The Hon. Michael Beloff QC (United Kingdom)

*Taekwondo*

*Suspension of a national federation by the National Olympic Committee*

*Legal basis for disciplinary sanctions*

*CAS' power of review and de novo ruling*

*Absence of duty to issue a reasoned decision*

*Authority of an NOC and right to take action against a member federation*

1. Before one party can be found guilty of a disciplinary offence, the relevant disciplinary code must proscribe the misconduct with which it is charged. It is equally axiomatic that the provision with which it is charged to be in breach will be strictly construed in accordance with the *contra proferentem* rule. It is not sufficient to identify a duty; it is necessary to stipulate that breach of such duty will attract disciplinary sanctions. However, disciplinary provisions are not vulnerable to the aforementioned rules simply because they are broadly drawn. Generality and ambiguity are different concepts. It is also well established that the elements provided for disciplinary sanctions by sports federations do not require such strict definition as is required by criminal law.
2. While cognisant of its power to review the facts and the law *de novo*, under the specific circumstances of a decision taken by a general assembly to suspend a member because of certain violations, a CAS panel's attention shall be fixed on whether indeed such violations existed and justified, under the applicable rules, a suspension of the member concerned. However, as a matter of principle, the review of such a decision cannot rely on new infringements raised for the first time in the appeal arbitration proceedings before CAS, as distinct from new evidence relating to the infringements relied on in said decision (subject always to art. R57.3 of the CAS Code).
3. Consequent upon the nature of a voting process during which a detailed initiative for suspension was provided in writing to all stakeholders prior to the relevant meeting, the possible consequences of the vote were presented, the applicable rules and regulations were respected, including the accused party's right to be heard, there is no duty for a general assembly to issue a reasoned decision as the reasons for it are implied in the motion and the material provided to the delegates as referred in the relevant decision.
4. National Olympic Committees are given a right to govern Olympic sport in their countries. This right – although not unfettered – comprises at its core a duty to ensure

fair play, respecting the Olympic principle and, equal treatment of athletes, etc. National Olympic Committees are in the best position to determine how to preserve and protect these values. Unless the measures avowedly taken to that end are malicious, unreasonable or arbitrary, a CAS panel should not disrupt an NOC's ability to exercise its authority in that sphere. In this respect, when a National Olympic Committee deals with a series of allegations against a national federation which the national federation wilfully fails to answer, it is appropriate for the National Olympic Committee to take action against such a member, in particular when the allegations unquestionably cast a negative light on the sport and deeply affect the athletes' trust in the sport and the federation.

## **I. PARTIES**

1. The Taekwondo Federation of the Republic of Moldova (the "Appellant" or the "TFM") is a sports federation governing the Olympic sport of taekwondo in the Republic of Moldova, with its registered headquarters in Chisinau, Moldova.
2. The National Olympic and Sports Committee of the Republic of Moldova (the "Respondent" or the "NOSC") is the National Olympic Committee of the Republic of Moldova, with its registered headquarters in Chisinau, Moldova. The NOSC is recognised by the International Olympic Committee (the "IOC") under the Olympic Charter.

## **II. FACTUAL BACKGROUND**

3. Below is a summary of the main relevant facts, as established on the basis of the parties' written and oral submissions and the evidence examined in the course of the present appeal arbitration proceedings and at the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 9 March 2017, the NOSC Executive Committee (the "NOSC EC") rendered a decision to suspend the NOSC membership of the TFM for an indefinite period of time on the basis that, in essence, the latter had committed gross violations of the Olympic Charter and the NOSC Statute (the "Suspension Decision"). According to the TFM, the NOSC EC did not however provide the TFM with any information about what constituted these alleged violations, nor did it specify how they should be remedied.
5. Concurrently with its Suspension Decision, the NOSC EC referred the matter to the NOSC Legal and Conciliation Commission (the "NOSC LCC").
6. On 20 March 2017, the NOSC Secretary General invited the TFM for a meeting with the NOSC to be held on 22 March 2017.

7. On 21 March 2017, the President of the TFM requested the NOSC to postpone the meeting until no earlier than 10 April 2017.
8. On 24 March 2017, the President of the TFM requested the NOSC to cancel the Suspension Decision.
9. On 30 March 2017, the TFM filed an appeal with the Court of Arbitration for Sport (“CAS”), challenging the Suspension Decision. This case was referenced by CAS as CAS 2017/A/5057.
10. On 12 April 2017, a meeting of the NOSC LCC took place, where it was decided to adjourn for a period of two weeks in order to “*prepare a draft transaction of reconciliation*”.
11. On 18 April 2017, the TFM received a draft reconciliation agreement (titled “Peace Agreement”), that was not to its satisfaction.
12. On 16 May 2017, an external legal counsel for the TFM contacted the NOSC via email and listed the TFM’s desired terms and conditions for inclusion in the Peace Agreement.
13. On 17 May 2017, the NOSC replied welcoming the negotiation of the Peace Agreement between the parties.
14. On 18 May 2017, the NOSC invited the TFM to attend the NOSC EC meeting to be held on 25 May 2017 to discuss the suspension.
15. On 25 May 2017, a meeting of the NOSC EC took place attended by TFM, because no amicable solution was reached the matter therefore proceeded before CAS in CAS 2017/A/5057.
16. On 9 October 2017, CAS issued the operative part (the grounds were ultimately communicated to the parties on 26 February 2018) in CAS 2017/A/5057, dismissing the appeal and confirming the Suspension Decision as provisional in nature. In the accompanying letter, the Panel explained that:

*“[T]he suspension imposed on the Appellant is a provisional suspension, which can be either confirmed or lifted by the NOSC General Assembly to be held on 19 October 2017”.*

17. On 17 October 2017, the NOSC sent the TFM a document titled “*Informative Note on the Suspension of the [TFM] from the Component of the [NOSC]*” (the “Informative Note”), which document set out the various alleged violations committed by the TFM. The Informative Note was also published on the website of the NOSC in full and as follows:

*“[NOSC] proposes the suspension of the [TFM] for the violation of **Articles 9.3 (a), (c), (d), (g), and (l)** of the [NOSC Statute], according to the powers of [NOSC] pursuant to: **Art. 4.15** (encouraging and supporting the promotion of ethics and good governance in sports); **Art. 4.19** (opposition of any form of discrimination which affects the Olympic and Sports Movement of the Republic of Moldova); **Art. 4.29***

“[NOSC] defends the interests of the sportsmen, trainers, referees, other specialists, veterans of physical cultures and sports at national and international level”) and **Art. 4.32** (insurance of respecting the Olympic Charter of the Republic of Moldova).

### **JUSTIFICATIONS**

Pursuant to Article 7.11.1 of the Statute, the [TFM] shall be suspended by the [NOSC GA] for serious violations of the Olympic Chart, [IOC] Ethics Code, [NOSC Statute], regulations, directives and [NOSC] decisions.

The [TFM] violated the following articles:

**Art. 9.3 a) – [TFM] is bound to respect the Statute, Regulations, Ethical Code and Decisions of [NOSC] bodies, as well as the provisions of the Olympic Chart and [IOC] Codes – obligations which were not respected.**

The [TFM] committed a serious violation of article 9.3 (a) by its refusal to allow the sportsmen of the Republican Boarding High School with Sports Profile and the Sports Center for Training the National Teams [the “RBLSP & SCPNT”] to participate in the National Taekwondo Championship. The Federation did not respect in this process the fundamental principle of the Olympics.

**Art. 9.3 (c) – The [TFM] must contribute to the consolidation and increasing the prestige of [NOSC] and of the Olympic Movement – obligation which was not respected by the Federation.**

The [TFM] committed a serious violation of Article 9.3 (c) because it impeded inexplicably and erroneously the Olympic hopes in Taekwondo to participate in the important international events, where the sportsmen could have obtained valuable points for the Olympic qualification in Rio 2016. By such actions the Federation did not contribute to the consolidation and increase of prestige of the Olympic Movement from the Republic of Moldova.

Only 6 sportsmen from the Republic of Moldova are included in the world ranking WTF, which confirms their position of leaders, both at the national and international level. These are: Aaron Cook, Dimitrov Stepan, Rotaru Andrei, Dimitrov Vadim, Ciuchitu Ana and Uskov Serghei. Four of them, which can contribute to the increase of our country’s prestige in the world – Dimitrov Stepan, Rotaru Andrei, Dimitrov Vadim and Ciuchitu Ana – did not receive from the [TFM] the permission to participate in international contests, despite the fact that these events were necessary for the accumulation of the qualification points for the Olympic Games from Rio 2016 and Tokyo 2020.

These serious failures of the [TFM] forced Rotaru Andrei – double silver medallist in the European Championships WTF under 21 and bronze medallist at the World Universiad 2011, to leave the country and to participate for Romania.

Thus, instead of contributing to consolidating and increasing the [NOSC] and the Olympic Movement prestige, the actions of the [TFM] compromised the development of the Olympic movement in the country, as it is demonstrated by the loss of the sportsman Rotaru Andrei.

**Art. 9.3 d) – The [TFM] is bound not to take measures which, by their nature, may harm the purposes, interests or professional reputation of [NOSC] – obligation which was not respected by the Federation.**

[NOSC] is bound to encourage and support the promotion of ethics and good governance in sports; to encourage and support the organization, development and coordination of the Olympics, sports and sports competitions; to defend the interests of sportsmen, trainers, referees, of other professionals, veterans of physical culture and sport at the national and international level; to ensure that each of its members respect the Olympic Chart. The actions of the [TFM] failed at all levels related to maintaining the objectives, interests and professional reputation of [NOSC]. More exactly, the Federation impeded erroneously the Moldovan sportsmen and the trainer Vladislav Mazur to represent the Republic of Moldova in international competitions.

The National Taekwondo Federation continued to violate art. 9.3 d) by sending a letter on July 3, 2017 to the [IOC] president, Thomas Bach. This letter informs about the conflict with [NOSC] and requests that the [IOC] invalidates the [NOSC] Statute and excludes [NOSC] from the International Olympic Movement. By this action the Federation harmed the objectives, interests and professional reputation of [NOC].

**Art. 9.3 g) – The [TFM] is bound to collaborate in preparing the activities organized by [NOSC], contributing to the fulfilment of the statutory objectives, fulfilment of the decision of the General Assembly, of the Executive Committee, of special commissions of [NOSC] – obligation which was not respected by the Federation.**

One of the main missions of [NOSC] is to participate in the Olympic Games. [NOSC] must ensure that each sports federation maximizes Moldova's potential to train the sportsmen who will represent [NOSC] in the Olympic Games. The actions of the [TFM] directly violate the obligation to promote the interests of [NOSC] and of the Republic of Moldova: the Federation's actions have limited the opportunity of the top sportsmen, who practice taekwondo, to gain points in order to qualify for Rio 2016 and Tokyo 2020.

**Art. 9.3 I) – The [TFM] is bound to perform other duties entrusted to it by the General Assembly, the Executive Committee, President, First Deputy-President, Deputy presidents or other competent bodies of [NOSC].**

The [TFM] has been repeatedly warned by [NOSC] and [NOSC] representatives to cease the activities which impede the participation of the Moldovan sportsmen and trainers in national and international Taekwondo competitions. Nevertheless, despite the warnings and claims of the sportsmen, the [TFM] continued to violate the rights of the sportsmen and trainers and to harm the interests of the Moldovan sport.

**The [TFM] violated the Statute of the [WTF].**

The [TFM] refused the extension of the validity of WTF licenses for the sportsmen Stepan Dimitrov and Vadim Dimitrov, thus, the sportsmen did not have the GMS license during the period January – March 31, 2017. By refusing to file a request to obtain the sportsmen's licenses, the [TFM] violated **Art. 6.4.2 on the Non-discrimination of the [WTF]**.

*The General Assembly is to examine the case of serious violation of the Olympic Chart, of the [IOC] Ethical Code, of the [NOSC] Statute, of [NOSC] regulations, of [NOSC] directives and decisions by the [TFM] to determine the appropriate sanction pursuant to articles 7.10 and 7.11.*

*Pursuant to **Articles 7.10.7 and 7.11.1** the [TFM] will be offered the opportunity to be heard in order to defend itself during the General Assembly”.*

18. On 19 October 2017, the NOSC General Assembly (the “NOSC GA”) took place, at which the NOSC GA voted in favour of approving the recommendation of the NOSC EC to suspend the TFM until the next ordinary General Assembly (the “Appealed Decision”).
19. On 25 October 2017, the NOSC President Mr Nicolae Juravschi (the “NOSC President”) formally notified the Appealed Decision to the TFM by letter in the following terms:

*“On October 19, 2017 the [NOSC] organized the [NOSC GA] according to the [NOSC Statute] and Regulation on the organization and development of the General Assembly.*

*The [NOSC GA] had quorum, pursuant to article 3.1. of the Regulation: from 99 [NOSC] members with the right to vote, there were present 83, thus fulfilling the 2/3 requirement.*

*Pursuant to article 3.17 of the Regulation, the question on the suspension of the [TFM] was included in the agenda at item 6: “On the suspension of the [TFM]”. The procedural document, describing how the sixth question will be discussed at the [NOSC GA], was sent to the Federations by e-mail on October 16, 2017, and on October 17 – by countersign letter and official letter submitted to the headquarters of the Federation. The procedural document described the consecutiveness of the hearing process of question 6 from the agenda to ensure that the Federation was granted the right to defend itself under Article 3.18 of the Regulation.*

*Both parties provided justifiable information before the [NOSC GA] began. After both parties submitted their statements in accordance with the Procedural Document, a clear question was addressed to the members of the [NOSC GA]:*

*“Taking into account all the submitted evidence, do you approve the recommendation of the [NOSC EC] to suspend the [TFM] until the next Ordinary General Assembly?”*

*YES or NO”.*

*The voting procedure was open pursuant to article 3.11 of the Regulation.*

*The voting results were calculated by the Validation and Counting Commission, as follows:*

	<b>Number of members</b>	<b>Valid votes</b>
<b>YES</b>	75	128
<b>NO</b>	0	0
<b>Abstentions</b>	7	17

*Consequently, the suspension was validated at the General Assembly because more than 50% + 1 of the valid votes were in favor of approving the [NOSC EC's] recommendation to suspend the [TFM] until the next Ordinary General Assembly. The [NOSC GA's] decision is mandatory for all members, whether they have participated or not, abstained, voted against this question or did not vote, in accordance with article 3.16 of the Regulation.*

*As a result, the [TFM] is considered a suspended member and is deprived during the period of suspension of all membership rights, which are specified in the Statute and Regulation. This means that [NOSC] will not recognize the Federation as a national federation that represents Taekwondo during the suspension period, because the Federation's "powers to exercise which are conferred by the statute, regulations and [NOSC] decisions" and "benefit from [NOSC] support and other rights in accordance with the provisions of the present Statute and legislation of the Republic of Moldova" are cancelled.*

*[NOSC] will contact the World Taekwondo Federation, will inform the Federation's management about the results and the consequences of this [NOSC GA] and will request to become the entity responsible for ensuring the participation of Federation athletes and officials in various competitions during the suspension period.*

*Pursuant to article 23.2 of the Statute, the Federation can appeal the decision of the [NOSC GA] at the Court of Sports Arbitration from Lausanne, Switzerland within twenty-one (21) days from the date this decision is received.*

*[NOSC EC], upon Federation's request, will provide the minutes, the video material from the sixth question of the [NOSC GA] and other documents and files".*

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

20. On 9 November 2017, the Appellant filed a Statement of Appeal, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (2017 edition) (the "CAS Code") with the Court of Arbitration for Sport ("CAS"). The Appellant nominated Mr Michele Bernasconi, Attorney-at-Law in Zurich, Switzerland, as arbitrator. The Appellant also requested that the proceedings be suspended unless and until the Respondent produced the minutes and video material of the General Assembly that took place on 19 October 2017 and the grounds of the arbitral award issued in CAS 2017/A/5057 were served to the parties.
21. On 16 November 2017, the Respondent informed the CAS Court Office that it did not object to the Appellant's request to suspend the proceedings. The Respondent then nominated The Hon. Michael Beloff M.A. QC, Barrister in London, United Kingdom, as arbitrator. The Respondent also proposed the nomination of Prof. Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as President of the Panel, as this would allow for the same Panel to preside over CAS 2017/A/5393 that is presiding over CAS 2017/A/5057.
22. On 22 November 2017, the Appellant consented to the nomination of Prof. Martin Schimke as President of the Panel.

23. On 14 December 2017, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted by:
  - Prof. Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as President;
  - Mr Michele Bernasconi, Attorney-at-Law in Zurich, Switzerland; and
  - The Hon. Michael Beloff M.A. QC, Barrister in London, United Kingdom, as arbitrators
24. On 14 December 2017, the Respondent informed the CAS Court Office that it had provided the Appellant with most of the minutes and video material of the General Assembly and that the full minutes and transcript would be provided the following week.
25. On 26 February 2018, the grounds of the arbitral award issued in CAS 2017/A/5057 were served to the parties. In light thereof, the CAS Court Office informed the parties that the proceedings were no longer suspended.
26. On 6 March 2018, the parties were informed that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.
27. On 16 March 2018, the Appellant filed its Appeal Brief, pursuant to Article R51 of the CAS Code, submitting the following requests for relief:
  - I. *This appeal against the decision issued on 19 October 2017 by the NOSC General Assembly to suspend the Taekwondo Federation of the Republic of Moldova as a member of the National Olympic and Sports Committee of the Republic of Moldova is upheld.*
  - II. *The decision issued on 19 October 2017 by the NOSC General Assembly to suspend the Taekwondo Federation of the Republic of Moldova as a member of the National Olympic and Sports Committee of the Republic of Moldova is annulled.*
  - III. *The National Olympic and Sports Committee of the Republic of Moldova shall bear all the arbitration costs, if any, and shall be ordered to reimburse the Taekwondo Federation of the Republic of Moldova all advances of costs paid to the CAS, including the minimum CAS Court Office fee of CHF 1,000.*
  - IV. *The National Olympic and Sports Committee of the Republic of Moldova shall be ordered to pay the Taekwondo Federation of the Republic of Moldova a contribution towards the legal and/or other costs incurred in the framework of these proceedings in an amount to be determined at the discretion of the Panel”.*
28. On 20 April 2018, the Respondent filed its Answer, pursuant to Article R55 of the CAS Code, requesting the Panel to decide as follows:

- “(1) Find the NOSC had a sufficient legal basis to suspend TFM;*
- (2) Find the NOSC did not abuse its discretion when suspending TFM until the next Ordinary General Assembly;*
- (3) Find, if necessary, it is satisfied the evidence against TFM is sufficient to impose a sanction under Article 7.11.1;*
- (4) Find the NOSC is entitled to a sizeable contribution towards its legal fees and other expenses incurred in connection with this appeal;*
- (5) Find that TFM should bear all arbitration costs in connection with this appeal;*
- (6) Order any other relief for the NOSC that this Panel deems to be just and equitable”.*
29. On 5 June 2018, both parties returned duly signed copies of the Order of Procedure to the CAS Court Office.
30. On 6 June 2018, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed that they had no objection to the constitution and composition of the Panel.
31. In addition to the Panel, Mr Brent Nowicki, Managing Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:
- a) For the Appellant:
    - 1) Mr Igor Iuzefovici, TFM President;
    - 2) Mrs Olga Vinnitskaya, Former TFM Assistant President;
    - 3) Mr Jorge Ibarrola, Counsel;
    - 4) Mr Yvan Henzer, Counsel;
    - 5) Mr Sebastien Permain, Counsel;
    - 6) Mr Yuri Obozny, Independent Translator
  - b) For the Respondent:
    - 1) Mrs Cristina Vasilianov, NOSC Secretary General;
    - 2) Mr Paul J. Greene, Counsel;
    - 3) Mr Matthew D. Kaiser, Counsel;
    - 4) Mrs Irina Aga, Independent Translator
32. The Panel heard evidence from the following persons, in order of appearance:
- 1) Mrs Olga Vinnitskaya, Former TFM Assistant President, witness called by the Appellant;
  - 2) Mr Igor Iuzefovici, TFM President, witness called by the Appellant;

- 3) Mr Dragoi Vitalii, President of Taekwondo Federation of Gagauzia and member of the Bureau of the TFM, witness called by the Appellant;
  - 4) Mr Mircea Betian, Chief Trainer of the National Taekwondo Team of Moldova and former Personal Trainer of the Dimitrov Brothers, witness called by the Appellant;
  - 5) Mr Valentin Konev, Vice President and member of the Bureau of the TFM, witness called by the Appellant;
  - 6) Mr Dmitrii Bordeniuc, Secretary General, member of the Bureau and Chairman of the Licensing Commission of the TFM, witness called by the Appellant;
  - 7) Mr Stepan Dimitrov, Taekwondo Athlete, witness called by the Respondent;
  - 8) Mr Vadim Dimitrov, Taekwondo Athlete, witness called by the Respondent;
  - 9) Mr Vladislav Mazur, Former National Taekwondo Coach of Moldova, witness called by the Respondent;
  - 10) Mr Ion Robu, Director of RBLSP, witness called by the Respondent;
  - 11) Mr Artiom Gheneralov, Former member and Secretary General of the TFM Bureau, witness called by the Respondent;
  - 12) Mrs Ludmila Iudina, Member of the TFM, witness called by the Respondent;
  - 13) Mr Andrei Rotaru, Taekwondo Athlete, witness called by the Respondent (by video-conference);
  - 14) Mrs Ana Ciuchitu, Taekwondo Athlete, witness called by the Respondent (by video-conference);
  - 15) Mrs Cristina Vasilianov, NOSC Secretary General, witness called by the Respondent (in person).
33. Although the Respondent had initially indicated that they would call as witnesses Mr Nicolae Juravschi, President of the NOSC, Mrs Lucia Juravschi, NOSC employee, and Mr Veaceslav Tricolici, Coach, in the event it did not tender them at the hearing.
34. At the conclusion of the hearing, both parties expressly stated their satisfaction with the procedure adopted by the Panel and confirmed that their right to be heard had been fully respected.
35. The Panel has scrupulously taken into account in its discussion and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. The Appellant**

38. The submissions of the TFM in respect of the specific accusations made by the NOSC will be set out below in the sections of the award dealing with these specific issues. Without prejudice to that, the general submissions of the TFM, in essence, may be summarised as follows:

- No violation of the NOSC Statute or the Olympic Charter occurred. It follows that the NOSC, whose jurisdiction is limited to Olympic related matters, was not justified in suspending the TFM.
- In any event, the Appealed Decision was not sufficiently motivated and lacked a clear legal basis. In the present case, contrary to CAS jurisprudence and established principles of law that disciplinary sanctions must have a sufficient legal basis and that the power to impose a disciplinary sanction is not unfettered, the NOSC cannot demonstrate the existence of a relevant disciplinary rule describing and prohibiting the alleged misconduct committed by the TFM.
- In so far as reliance is placed on Article 9.3 NOSC Statute, that provision does no more than state generalised statements of wrongful conduct and punishable acts, without any mention of applicable sanctions, so breaching the principle *nulla poena sine lege certa*. In any event, given the inherent ambiguity of the NOSC Statute and inconsistencies between its different versions, Article 9.3 NOSC Statute shall be interpreted against the NOSC pursuant to the *contra proferentem* rule as breaching the principle *nulla poena sine lege clara*.
- Swiss jurisprudence, derived from the principle of the “right to be heard”, as stipulated by article 29 of the Swiss Constitution and article 6 of the European Convention of Human Rights (“ECHR”), guarantees the right to obtain a reasoned decision, sufficiently detailed for the addressee to be in a position to understand such decision and so be able to challenge it; and to allow any appeal court to fully exercise its scope of review. Therefore, the body that rendered the decision must in writing highlight i) all factual and legal elements that justify the application of the regulations; and ii) the reasons which led to the imposition of the measure. The motivation shall be set out with as much precision and as accurate as possible going further than mere mention of the applicable regulations (as in the Appealed Decision). This is required to enable the parties to determine the likelihood of success of an eventual appeal. Moreover, the motivation is indispensable to enable any appellate body to control the legality of the decision. Moreover, the NOSC’s obligation to provide the reasons for a decision is expressly provided for in article 10.2.19 NOSC Statute.
- By not providing detailed and specific grounds for the suspension of the TFM, the NOSC violated the TFM’s basic right and guarantee to a fair trial as well as breaching its own statute. As previously stated, the justification for the outcome of a decision is to be considered as part of the TFM’s right to be heard and failure to do so may result in the annulment of the sanction in its entirety. Because of the NOSC’s said failure, the Appealed Decision must be annulled.

## **B. The Respondent**

39. The submissions of the NOSC in respect of its specific accusations will be set out below in the sections of the award dealing with these specific issues. Without prejudice to that, the general submissions of the NOSC, in essence, may be summarised as follows:

- CAS jurisprudence acknowledges that associations like the NOSC have extensive discretion to self-regulate and CAS Panels should only interfere with the decision of such an autonomous body as the NOSC if there has been an abuse of discretion. In respect of a general assembly's vote on a resolution, especially one of a National Olympic Committee, CAS Panels have established that “[t]he Panel’s function is to review the propriety, in the broadest sense, of the decision of the decision maker; it is not to become the decision maker itself”.
- The three conditions for an association to sanction a member set out in CAS jurisprudence are that i) the violator must be subject to the rules and regulations of that association; ii) there must be a sufficiently clear statutory basis for a penalty in the statutes or bylaws of the association; and iii) the sanctioning procedure must guarantee the right to be heard. The NOSC GA satisfied these conditions.
- As to the TFM’s argument that the NOSC violated the principle of *nulla poena sine lege*, the NOSC submits that CAS has previously upheld suspensions based on comparable statutory language giving authority to suspend. The validity of the suspension imposed upon the TFM is well supported by prior CAS decisions. The NOSC has not violated the principle of *nulla poena sine lege* because the TFM committed violations of principles that are clearly spelled out in article 9 NOSC Statute and, the NOSC GA had the explicit authority, pursuant to article 7 of that statute to suspend the TFM as a member who violated it. The NOSC Statute not only explicitly states NOSC members must fulfil their obligations, but it also explains the content of those obligations (namely to help contribute to the strengthening of the NOSC and Olympic Movement in Moldova (9.3(a)); not to carry out any action that would affect these goals, interests and professional reputation of the NOSC (9.3(c)); to cooperate with the NOSC to prepare for various activities (9.3(g)); and to carry out other duties or requests from the NOSC President and other NOSC bodies (9.3(l)).
- The NOSC did not abuse its discretion by suspending the TFM until the next ordinary General Assembly. Panels which are in principle reluctant to intervene and revise a sanction imposed by a sports disciplinary body because CAS considers governing bodies like the NOSC to be experts in determining the appropriate sanction for its members have held that such abuse of discretion occurs only when the sanction is “*evidently and grossly disproportionate to the offense*”.
- In this instance the NOSC sanctioned a member federation for actions and behaviour that were detrimental to the Olympic Movement in the Republic of Moldova. In particular, i) the TFM’s refusal to register Moldovan athletes for competitions on numerous occasions over a considerable period of time; ii) the TFM’s attempt to do “*an end run*” around the NOSC and make the NOSC look bad by approaching the IOC; and iii) the TFM’s continued attempts to smear the reputation of a long respected coach by claiming that the coach acted improperly (even to the extent of accusing him of theft of money) without foundation. Viewed in this light, the NOSC’s suspension of the TFM ensures that the rights of Moldovan taekwondo athletes and coaches are protected and

allows the sport and the Olympic Movement in Moldova to function properly. Thus, the suspension is both effective to achieve the purpose sought and limited in scope given that the TFM is only suspended until the next Ordinary General Assembly. For all these reasons the NOSC did not abuse its discretion when it suspended the TFM.

- TFM's argument that the Appealed Decision did not provide "*detailed and specific grounds for the suspension of the Appellant*" and that it has not been provided with "*all factual and legal elements that justify the application of the NOSC Statutes, nor the reasons which led to the imposition of the Challenged Decision (...)*", must be dismissed. First, since CAS appeals are heard *de novo* pursuant to Article R57 CAS Code, which gives this Panel "*full power to review the facts and the law*", any potential procedural flaws that the TFM claims to have occurred will be cured before the CAS. Second, the TFM was offered the full panoply of rights to which it was entitled before the NOSC General Assembly, during the NOSC General Assembly and after the NOSC General Assembly when a reasoned decision was provided. In the reasoned decision provided on 25 October 2017, the NOSC referenced the Procedural Order and that TFM had received it (which TFM does not dispute). The Procedural Order itself not only described how the NOSC Executive Board's recommendation to suspend the TFM would be handled at the NOSC General Assembly but also explained that the justifications for TFM's suspension were published on 29 September 2017 on the NOSC website: the Informative Note was even included as "Exhibit 3" to the Procedural Order. Consequently, the TFM was fully aware of the reasoning behind the NOSC's Executive Board's decision to suspend it. Moreover, the TFM cites no cases to support its contention that "*all factual and legal elements that justify the application of the regulations; and (...) the reasons which led to the imposition of the measure (...) to suspend [TFM]*" must be provided in a reasoned decision. In fact, Swiss law provides no foundation for such claim. On the contrary, under Swiss law, the sanctioning authority only has to mention "*at least briefly the considerations (...) which the authority was guided [sic] and on which [its] decision is based*" to provide a proper reasoned decision. The NOSC reasoned decision is undoubtedly compliant with this standard.

## V. JURISDICTION

40. The jurisdiction of CAS, which is not disputed, derives from Article 23.2 and 23.3 of the translation into English of the NOSC Statute (2014 edition).
41. Article 23.2 and 23.3 NOSC Statute determine respectively as follows:

*"In case of unresolved litigations on issues related to national Olympic and non-Olympic sports activity, the competent authorities are: the General Assembly or the Executive Board, the Ethics Commission, the specialized Court Arbitrage and Mediation for Sports of the Republic of Moldova, Court of Arbitration for Sport of Lausanne – Switzerland. The decisions of NOSC Commissions, including those of the NOSC Ethics Commission may be contested within 7 days from the day they were pronounced by the NOSC Executive Board, whose decision is final and irrevocable.*

*In the case of unresolved disputes at national or international level, the responsible authority will be the Court of Arbitration for Sport in Lausanne – Switzerland, the deadline for appealing CAS is 21 days from the receipt of the decision to be contested”.*

42. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties.
43. It follows that CAS has jurisdiction to decide on the present dispute.

## **VI. ADMISSIBILITY**

44. Pursuant to Article 23.3 NOSC Statute, the deadline to file an appeal with CAS is 21 days following receipt of the decision appealed against.
45. Since (i) the Appealed Decision was rendered on 19 October 2017 and communicated to the Appellant on 25 October 2017; and (ii) the appeal was lodged on 9 November 2017, the appeal was filed within the 21-day deadline. The appeal complies with all other requirements of Article R47 and R48 of the CAS Code, including the payment of the CAS Court Office fees. The Respondent does not dispute admissibility.
46. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

47. The Appellant submits that, in accordance with Article R58 of the CAS Code, the NOSC Statute and regulations shall apply to the merits of this dispute and Moldovan law shall apply subsidiarily.
48. The Respondent submits that, in accordance with Article R58 of the CAS Code, the NOSC Statute and the NOSC General Assembly Regulations (the “NOSC GA Regulations”) apply to the merits of this dispute and that Moldovan law applies subsidiarily along with Swiss law.
49. Article R58 of the CAS Code provides the following:

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

50. The Panel is satisfied to accept that the present dispute shall be primarily governed by the various regulations of the NOSC, in particular the NOSC Statute and the NOSC GA Regulations.

51. In view of the fact that the Panel has not been provided with any regulatory provision determining the law to be applied in the matter at hand, the Panel finds, in application of Article R58 of the CAS Code that since the Appealed Decision was rendered by the NOSC General Assembly, Moldovan law shall be subsidiarily applicable in case of any *lacuna* in the various regulations of the NOSC and as an aid to interpretation thereof.

### VIII. MERITS

52. The main issues to be resolved by the Panel are:
- A. What, if any, was the legal basis for the NOSC to suspend the TFM's membership ("Legal Basis")?
  - B. What matters can the Panel consider in its review of the Appealed Decision ("Scope of Proceedings")?
  - C. What, if any, deference should be shown by the Panel to the Appealed Decision ("Deference")?
  - D. Did the TFM violate the NOSC Statute and/or the Olympic Charter and/or the rules of the WTF to such an extent that a one year period of suspension of the TFM's membership was justified ("Justification")?

#### A. Legal basis

53. The NOSC GA rendered the Appealed Decision on the basis of Article 7.11.1 NOSC Statute:
- "Severe violations of the Olympic Charter, the IOC Code of Ethics and/or this Statute, codes, regulations, directives and decisions of NOSC and its bodies may result in suspension of NOSC membership for a determined or undetermined period of time, as decided by the General Assembly after having given an opportunity to the member concerned to be heard in his/her defense".*
54. It is not in dispute between the parties that the TFM's right to be heard was fully respected during the NOSC GA. Prior to and during the NOSC GA, the TFM was, in the Panel's view, granted full opportunity to defend itself against the allegations made.
55. The Panel further notes that in the Appealed Decision, the NOSC GA voted in favour of the NOSC EC's recommendation to *"suspend the [TFM] until the next Ordinary General Assembly"*. The charges against the TFM were set out in the Informative Note distributed on 17 October 2017, *i.e.* two days before the NOSC GA was held. It is not disputed that the TFM provided the NOSC members with a written defence against the allegations made prior to the NOSC GA.
56. Pursuant to Article 10.2.5 NOSC Statute, the NOSC GA *"shall be convened once a year"*. The suspension imposed on the TFM *"until the next Ordinary General Assembly"* is therefore of limited duration and cannot be extended without a new decision by the NOSC GA. Accordingly, since

the NOSC GA during which the Appealed Decision was rendered took place on 19 October 2017, the suspension imposed on the TFM terminates on the date of the next NOSC GA in 2018, at the latest on 31 December 2018.

57. Although the NOSC occasionally made reference to “*continuous violations*” during the present proceedings, the Panel understands such references to be to the commission of multiple violations, as it does not appear to be in dispute between the parties that the violations the TFM is accused of having committed are all in the past (*e.g.* the athletes that were allegedly prevented from competing are currently no longer so prevented). Consequently, should the NOSC GA for some reason wish to extend the suspension imposed on the TFM beyond the next Ordinary NOSC GA, it would have to base such decision on new violations, *i.e.* violations that are not part of present proceedings.
58. The Panel cannot accept the argument raised by the TFM during the hearing that the NOSC was not competent to suspend it because the violations concerned did not have any connection with the Olympic Games. As member of the NOSC, the TFM accepted the obligations imposed on it by the NOSC (in this respect Article 7.3 NOSC Statute determines that “*NOSC membership means unconditional acceptance, according to the law, of this Statute, any amendments to it, and the decisions of the NOSC General Meeting Executive Board*”). Whether the individual violations allegedly committed by the TFM can be regarded as being related to the Olympic Games is irrelevant insofar Article 7.11.1 NOSC Statute provides that its members can be sanctioned for “*severe violations of the Olympic Charter, the IOC Code of Ethics and/or this Statute, codes, regulations, directives and decisions of NOSC and its bodies*”. In any case, the wording of this Article does not expressly require that the violations relied on display any connection with the Olympic Games.
59. Since the suspension of the TFM is based on Article 7.11.1 NOSC Statute, the Panel is put to the task of examining whether the TFM indeed committed any such proscribed violations. Although a severe violation of the Olympic Charter would usually, if not always, be Olympic Games related, this would not necessarily be the case for a severe violation of the NOSC’s Statute, codes, regulations, directives and decisions. The Panel will address this question in more detail when it comes to consider later the individual violations the TFM is accused of having committed, but for now it suffices for it to conclude that it is not barred *ratione materiae* from considering these violations merely because they may arguably not be related to the Olympic Games.
60. The Panel cannot accept either TFM’s argument that the prerequisites of *nulla poena sine lege certa* and *nulla poena sine lege clara* were not complied with.
61. As one CAS panel succinctly put it:

*“It is well established that a sports governing body (SGB) such as the WKF may impose disciplinary sanctions upon its members if they violate the applicable rules and regulations. The power “to impose such sanctions is based upon the freedom of associations to regulate their own affairs” (advisory opinion CAS 2005/C/976 & 986 para 25).*

*It is, however axiomatic that before a person can be found guilty of a disciplinary offence, the relevant disciplinary code must proscribe the misconduct with which he is charged. Nulla poena sine lege. It is equally axiomatic that the relevant provision with which he is charged to be in breach first in accordance with the contra proferentem rule will be strictly construed. Nulla poena sine lege clara (CAS 2007/O/1381 para 61; CAS 2005/C/976 & 986 para 126). It is not sufficient to identify a duty; it is necessary as well to stipulate that breach of such duty will attract disciplinary sanctions.*

*The Panel accepts that disciplinary provisions are not vulnerable to the application of that rule merely because they are broadly drawn. Generality and ambiguity are different concepts. The panel has little doubt that the WKF sought, incumbently with other sports governing bodies, to draft a disciplinary provision of a reach capable of embracing the multifarious forms of behaviour considered unacceptable in the sport in question. The issue however for the Panel is not whether the WKF had such intention but whether, if it did, it achieved it” (CAS 2014/A/3516, para. 103-105 of the abstract published on the CAS website).*

62. The Panel fully subscribes to this view and finds that Article 7.11.1 NOSC Statute makes it sufficiently clear to NOSC members that a severe infringement to abide by the NOSC Statute can be sanctioned by a suspension of membership.
63. The Panel notes that it is well established in many national laws and confirmed by the jurisprudence of national court and of CAS that the elements provided for disciplinary sanctions by sports federations do not require such strict definition as is required by criminal law given their different purposes and consequences. Such case law rather recognizes as valid general elements (e.g. “conduct harmful to the club” or “gross unsportsmanlike behaviour”), to constitute the basis for disciplinary sanctions (cf. CAS 2014/A/3832 & 3833, para. 87 of the abstract published on the CAS website, with further reference to CAS 2007/A/1437, para. 8.1.8).

## **B. Scope of proceedings**

64. In the Panel’s view, it is entitled and required to look only at the charges based on which the NOSC GA decided to suspend the TFM. The NOSC EC set out the charges filed against the TFM by means of the Informative Note issued on 17 October 2017 and recommended the NOSC GA to suspend the TFM. The charges set out in this Informative Note therefore in principle determine the scope of the present proceedings.
65. The Panel notes that the NOSC invoked additional violations in its Answer to those set out in the Informative Note. For instance, according to the Informative Note, Article 9.3(a) NOSC Statute was violated only because the TFM refused athletes from the RBLSP & SCPNT to participate in the National Taekwondo Championship. However, in the Answer, the NOSC argues that Article 9.3(a) NOSC Statute was also violated because the TFM “refused to register numerous athletes in international competitions”.
66. While cognisant of its power to review the facts and the law *de novo* under Article R57 CAS Code, the Panel finds that under the specific circumstances of a decision taken by a general assembly to suspend a member because of certain alleged violations, the attention of a panel shall be fixed on whether indeed such violations existed and justified, under the applicable rules,

a suspension of the member concerned. However, as a matter of principle, the review of such a decision of a general assembly cannot rely on new infringements raised for the first time in appeal arbitration proceedings before CAS (as distinct from new evidence, subject always to Article R57.3 CAS Code relating to the infringements relied on in an Appealed Decision). The Panel will therefore in principle limit its examination of the present proceedings to the charges set out in the Informative Note.

### C. Deference

67. The Panel notes that the decision-making process of a general assembly has some features which distinguish it from ordinary disciplinary proceedings before an internal disciplinary committee of a sports governing body, as described below:
- i) proceedings before a disciplinary committee ordinarily take place before a small number of judges, whereas a general assembly is comprised of representatives of all members with a right to vote;
  - ii) a general assembly typically decides matters by a resolution following a voting process, which voting process takes place on the basis of a motion that is put to the membership;
  - iii) the representatives of the members are not required to substantiate why they vote one way or another.
68. There is no evidence suggesting that the TFM was not aware of the decision-making process as set out in the NOSC Statute and the NOSC GA Regulations and the presumption must be that it was.
69. A decision-making process by means of voting by multiple persons has consequences for the extent of the provision of reasoning underlying the decision, since the specific reasoning underlying each vote is not known and therefore cannot easily, if at all, be assimilated into a single view.
70. It is not in dispute that i) the TFM's right to be heard was respected; ii) the allegations and possible consequences of the vote were presented to the TFM, as well as to the entire membership of the NOSC, prior to the NOSC GA; iii) the voting process took place in accordance with the NOSC Statute and the NOSC GA Regulations; iv) the initiative for suspension was justified and provided in written form by the NOSC EC prior to the NOSC GA (in accordance with Article 10.2.19 NOSC Statute and Article 3.18 NOSC GA Regulations). In that context, the Panel finds that, consequent upon the nature of the voting process, there was no duty for the NOSC GA to issue a reasoned decision, as the reasons are implied in the motion and the material provided to the delegates as are referred to in the Appealed Decision.
71. The TFM did not argue that the voting process as conducted during the NOSC GA would be in violation of Moldovan law, the law subsidiarily applicable in the matter at hand. In fact, it appears from the submissions of the NOSC that the process implemented was in accordance

with Moldovan law of associations. The Panel finds the information provided to the membership prior to the NOSC GA and the motion put to vote were both clear and notes that no objection was raised by the TFM in this respect. The Panel therefore cannot accept such argument as was raised by the TFM on the basis of an alleged absence of adequate reasoning underlying the Appealed Decision.

72. A further distinctive feature of the decision-making process of a general assembly is that it comprises of representatives of all members with a right to vote and therefore constitutes the supreme governing body within an association. Indeed, according to Article 10.2.1 NOSC Statute, “[t]he General Assembly is the supreme management body of the [NOSC]. It consists of all categories of members stipulated in the present Statute”. A general assembly should therefore generally be considered to be best-positioned to decide on internal matters of which it is seized, in particular as regards the admission, suspension and exclusion of members. This is all the more significant in the case at hand given that the NOSC GA decided to suspend the TFM as a member by a large majority of 75 out of 82 votes.
73. Under Swiss Law and in many other jurisdictions, in lack of any statutory provision determining otherwise, state courts are only allowed to review sanctions imposed on members of associations on a restrictive basis, *i.e.* whether the measure/sanction is found in the statutes or bylaws of the relevant federation or club, whether the procedures prescribed in such bylaws are complied with, and whether the measure is regarded as grossly unfair or arbitrary.
74. The same applies *mutatis mutandis* in cases where the review is to be made not by a state court but by a genuine arbitral tribunal (here the CAS), unless additional powers are conferred on the arbitral tribunal by the rules of the association concerned, by an arbitration clause or by the rules of arbitration. In this case, while Article R57 CAS Code states that “the Panel has full power to review the facts and the law”, because of the principle of autonomy of associations, clubs and federations, CAS has repeatedly held, as noted above, that the reviewability of the measures imposed by associations, clubs and federations is limited, see for example the following statements made in CAS 2011/A/2645, para. 44 of the abstract published on the CAS website:

*“In addition, the Panel finds the Decision to be well reasoned, and based on a careful examination of the evidence in front of it. Therefore, 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, [...] (§ 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; CAS 2006/A/1175, [...], § 90; CAS 2007/A/1217, [...], § 12.4)”. Far from excluding, or limiting, the power of a CAS panel to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the Code), such indication only means that a CAS panel “would not easily ‘tinker’ with a well-reasoned sanction, ie to substitute a sanction of 17 or 19 months’ suspension for one of 18” (award of 10 November 2011, CAS 2011/A/2518, [...], § 10.7, with reference to CAS 2010/A/2283, [...], § 14.36). Therefore, a panel “would naturally (...) pay respect to a fully reasoned and well-evidenced decision (...) in pursuit of a legitimate and explicit policy” (ibid.)”.*

75. In any case, the TFM has not sought to establish that the standard of review which would be applied under Moldovan law would be less restrictive than under Swiss law. The Panel, therefore, is satisfied that it must exercise a certain restraint in reviewing the democratic decision of the NOSC GA.
76. The Panel further observes that the consequences of the TFM's suspension are set out in Article 7.11.4, read in conjunction with Article 9.2 and Article 7.11.5 NOSC Statute:

Article 7.11.4 NOSC Statute:

*“The suspended member shall [sic] deprived of all membership rights during the suspension period. Other affiliated members may not maintain any contacts, in particular of Olympic or sports nature, with the suspended member”.*

Article 9.2 NOSC Statute:

*“NOSC members have the following rights:*

- a) To be elected in the management, administration or control bodies of NOSC, according to this Statute;*
- b) To carry out the competences provided for by the Statute, regulations and decisions of NOSC, as well as the right to vote in the NOSC bodies they belong to;*
- c) To submit to the Executive Board proposals related to the competences offered by the membership to NOSC General Assembly;*
- d) To formulate proposals regarding amendments and/or addenda to the NOSC Statute;*
- e) To participate in the activities organised by NOSC;*
- f) To express freely and in good faith his/her opinions in the NOSC;*
- g) To participate in the meetings of NOSC General Assembly and to make relevant proposal regarding its agenda, within prescribed terms;*
- h) To benefit of NOSC support and other rights according to this Statute and legislation of the Republic of Moldova”.*

Article 7.11.5 NOSC Statute:

*“Suspension leads to the cancelling of the right to participate in the competitions systems of NOSC during the suspension period, deprivation of the suspended member and his/her representatives of the right to attend and vote in the meetings of the General Assembly, meetings of the Executive Board and other working commissions of NOSC that he/she is part of; cancellation of the right to elect and be elected in NOSC Committees during the period of punishment by suspension”.*

77. In absence of any other applicable rule, the consequences of the suspension imposed on the TFM are those, and only those set out in the NOSC Statute. Such consequences apply to the participation of TFM members in the “*competition systems of NOSC*” and in the governance relation between the TFM and the NOSC.
78. The suspension does not, however, interfere with the TFM’s right to manage its internal affairs or its finances, nor to maintain relations with the WTF, at least as long as the WTF does not sever such relations under its own regulatory regime. Most importantly, the suspension does not prevent TFM members from participating or registering athletes in Non-Olympic events (unless, of course, the international federation organising such event itself precludes the TFM from doing so because of its suspension from the NOSC). Accordingly, on the basis of the information submitted to the Panel and in the absence of other applicable rules, the suspension of the TFM imposed by the NOSC has the somewhat limited effects set out in the above-mentioned rules of the NOSC Statute, without other - possibly far-reaching - effects discussed at the hearing.
79. Consequently, the Panel will take into due consideration the effects of the suspension, when evaluating the proper degree of deference to be applied when reviewing the Appealed Decision.

#### **D. Justification**

80. To justify the suspension of the TFM, the NOSC GA relied on a multitude of complaints: i) the unfair exclusion of Moldovan taekwondo athletes (the Dimitrov Brothers, Mr Andrei Rotaru and Mrs Ana Ciuchitu); ii) the unfair exclusion of nine TFM national team members (including the Dimitrov Brothers and Mr Andrei Rotaru) from participating in the Balkan Games to be held in September 2016; iii) the unfair exclusion of Mr Mazur from representing the TFM at international events; iv) the unfair exclusion of the RBLSP & SCPNT from the national taekwondo championship 2016; v) the TFM’s failure to renew the licenses of the Dimitrov Brothers in December 2016; and vi) the TFM’s letter dated 3 July 2017 to the IOC President in which it requested the NOSC to be excluded from the International Olympic Movement (collectively, the “Allegations”).
81. According to the NOSC, such conduct resulted in violations of Article 9.3(a), (c), (d), (g) and (l) NOSC Statute, which provide as follows:

*“NOSC members have the following obligations:*

*a) To comply with the Statute, regulations, Code of Ethics and decisions of NOSC bodies, as well as with the Olympic Charter, IOC Codes and the World Anti-Doping Code, to fight against doping in sports.*

*(...)*

*c) To contribute to the strengthening and increase in the prestige of NOSC and Olympic Movement;*

d) *Not to carry out actions that, due to their character, may affect the interests and professional reputation of NOSC;*

(...)

g) *To cooperate for the preparation of the activities organized by NOSC, contributing to the fulfilment of the statutory objectives, enforcement of the decisions of the General Assembly, Executive Board and specialized commissions.*

(...)

l) *To carry out other duties assigned by the General Assembly, Executive Board, President, Deputy President or other competent NOSC bodies”.*

82. Notwithstanding the broad formulation of the duties set out in Article 9.3 NOSC Statute, the Panel finds that this does not prevent the NOSC from sanctioning the TFM for failing to comply with them. The task for the Panel, applying the limited standard of review articulated above, is to decide whether the NOSC GA could reasonably and lawfully conclude that the TFM’s behaviour constituted a severe infringement of those duties, so justifying the NOSC GA’s suspension of the TFM’s membership on the basis of Article 7.11.1 NOSC Statute. For this purpose, the Panel finds that the alleged infringements committed by the TFM need to be considered not only individually but cumulatively, but notes also that it is entitled to form its own view *de novo* of the facts said to sustain the individual allegations.
83. The suspension of the TFM was based on a multitude of complaints against this sports federation. The Panel, therefore, begins its assessment by considering whether the NOSC GA could reasonably have come to the conclusion, on the basis of the evidence before it, that the TFM committed “*severe violations of the Olympic Charter, the IOC Code of Ethics and/or this Statute, codes, regulations, directives and decisions of NOSC and its bodies*”.
84. As a threshold matter, the Panel highlights again that the TFM does not contend that its right to be heard was violated, or that the process followed prior to and during the NOSC GA was otherwise inappropriate (*vide supra* para. 70). The Panel finds that it appears from the transcript of the NOSC GA that the TFM was fully aware of the Allegations and evidence against it and was presented full opportunity to plead its case. There are no allegations that the evidence relied upon by the NOSC EC to corroborate its recommendation to the NOSC GA to suspend the TFM was distorted in any way.
85. On that footing the Panel now proceeds to consider the individual allegations.

**a. Exclusion of Moldovan Athletes – The Dimitrov Brothers**

*i) The evidence on record*

86. According to Mr Betian, Chief Trainer of the National Taekwondo Team of Moldova and former Personal Trainer of the Dimitrov Brothers, although the Dimitrov Brothers used to train with him since childhood for at least 12 years, following the WTF World Championship in Russia in May 2015, they started training with Mr Mazur. Mr Betian testified that he believed that the Dimitrov Brothers made this decision for themselves because they thought that he was not good enough to train them for the World Championships. Mr Koney, Vice President and member of the Bureau of the TFM, and Mr Mazur confirmed that after May 2015 the Dimitrov Brothers started missing training sessions with Mr Betian and started training with Mr Mazur.

87. On 21 June 2015, the TFM Bureau convened. The minutes of this meeting reflect the following:

*“5. IT WAS EXAMINED*

*The Case of Dimitrov Stepan and Dimitrov Vadim*

*Regarding the training of the sportsmen Dimitrov Stepan and Dimitrov Vadim under the coaching of Betian Mircea*

*IT WAS DECIDED*

*Voted: “for” – 6, “against” – 0, “abstained” – 0 unanimous”.*

88. It is in dispute between the parties whether this constituted a decision that the Dimitrov Brothers could no longer train with Mr Mazur and were obliged to train with Mr Betian, or that only a discussion had taken place (see below). For ease of reference, this will however be referred to as the “First TFM Bureau Decision”.

89. Mr Iuzefovici, President of the TFM, declared during his examination before the Panel that the decision to order the Dimitrov Brothers to train with Mr Betian was due to their poor sporting results. He also testified that the Dimitrov Brothers attended the meeting where the First TFM Bureau Decision was taken.

90. Mr Mazur and Mr Gheneralov testified that the First TFM Bureau Decision was in their view not a decision, but that merely a discussion had taken place between the members of the TFM Bureau.

91. Both Dimitrov Brothers testified that Mr Iuzefovici told them that they were advised to go back to the previous coach (Mr Betian). Mr Stepan Dimitrov testified that the First TFM Bureau Decision was only an “*informative note*”, that Mr Mazur had been supporting them for a long time and that since there was no contract to prevent them from so doing, they were allowed to continue training with Mr Mazur. Mr Vadim Dimitrov testified that Mr Mazur supported them in their decision to train with him.

92. On 14 July 2015, the TFM Bureau reconvened. On the agenda was a “[d]iscussion and adoption of decision on participation of sportsmen Vadim and Stepan Dimitrovs in international rating tournaments”.

93. The minutes of this TFM Bureau meeting reflect the following:

*“Mr Valentin [Konev] presented the information to the members of Bureau on the fact that according to application of coach Mihail Betian the sportsmen Vadim and Stepan Dimitrovs do not attend his compulsory training sessions that is inconsistent with the decision of Bureau of June 21<sup>st</sup>, 2015. Taking into account that sportsmen Dimitrovs did not demonstrate high performance at the last competitions (World Championship 2015, European Games 2015, etc.) and did not attend compulsory training sessions. Federation is entitled to make decision that their physical condition does not allow them to participate at international rating competitions because of low level of preparedness and high degree of injury risk of these tournaments. The measure of exclusion from competitions is temporary and will be abolished as soon as physical abilities of sportsmen will stabilize”.*

94. The following decision (the “Second TFM Bureau Decision”) was adopted unanimously (four votes for):

*“To suspend the sportsmen Vadim and Stepan Dimitrovs from participation at international competitions in connection with insufficient sport performance and weak sport results. The given decision will be abolished as soon as the sportsmen will resume regular training process”.*

95. It does not appear from the record that the Dimitrov Brothers were ever informed of the Second TFM Bureau Decision, albeit according to Mr Iuzefovici, they were invited to, but did not attend the meeting.

96. Moreover, from 14 to 16 August 2015, a WTF Taekwondo Grand Prix Series Competition was held in Moscow, Russia (the “Moscow Competition”).

97. It is not in dispute between the parties that Mr Stepan Dimitrov was invited by the organisers of the event to participate in the Moscow Competition.

98. On 29 July 2015, Mr Stepan Dimitrov sent a letter to the NOSC, with the following content:

*“I, the undersigned Dimitrov Stepan, member of the national team Taekwondo WTF, was invited to the 2015 WTF Grand Prix Series I G-4, to be held in Moscow, Russia, during 14-16 August. On 27.07.15 I was informed that I had been withdrawn from the above-mentioned competition. On 28.07.15 I sent a letter to the Taekwondo Federation of the Republic of Moldova, to I.S. Iuzefovici, to find out the reason for withdrawing me from the Grand Prix, but I did not receive any response. I am contacting the Olympic Committee of the RM to kindly ask for their support on this matter.*

*I have managed to increase my rating with my own forces and I am currently in TOP-32 best sportsmen in the Olympic category under 58 kg, which gives me the opportunity to participate in WTF World Grand*

*Prix. I am a potential athlete that can represent the Republic of Moldova at the Rio 2016 Olympic Games, but if I do not participate in such prestigious rating competitions, I will not have such an opportunity.*

*There is little time until the competition, and the withdrawn athletes are replaced quickly, therefore I kindly ask to review my letter as soon as possible.*

*Thank you for your attention!”.*

99. On 4 August 2015, the First Deputy President of NOSC sent a letter to Mr Iuzefovici, which stated:

*“The [NOSC] informs you hereby that athlete Dimitrov Stepan has sent us a request, asking us to help him get included in the international competitions, which are rating competitions for the participation in the Olympic Games in Rio de Janeiro.*

*Motivating that the [TFM] rejected his request, NOSC is asking for a concrete explanation on this issue, as according to Article 4.29 of its Statute, NOSC has the obligation to defend the interests of athletes, coaches, Federations, sports clubs etc.*

*Wishing you successes in your work, we hope for a positive settlement of this issue as soon as possible”.*

100. The letter allegedly sent by Mr Stepan Dimitrov to the TFM, and the NOSC’s letter dated 4 August 2015 remained unanswered by the TFM and Mr Stepan Dimitrov did not participate in the Moscow Competition.
101. From 18 to 20 September 2015, a WTF Taekwondo Grand Prix Series Competition was held in Samsun, Turkey (the “Samsun Competition”).
102. It is not in dispute that the Dimitrov Brothers were invited to participate in the Samsun Competition.
103. On 4 September 2015, Mr Stepan Dimitrov sent a letter to the NOSC, with the following content:

*“I, the undersigned Dimitrov Stepan, member of the national team Taekwondo WTF (European Champion at Senior Championships 2014 and multiple medallist at international competitions), was invited to 2015 WTF World Grand Prix Series 2 G-4, to be held in Turkey, Samsun town, during 18-20 September. On 3 September 2015 I contacted the Federation to find out if I was registered for 2015 WTF World Grand Prix Series 2 G-4. The response was that the Federation would not register me, but they couldn’t inform me why. Last month I was also invited to WTF World Grand Prix Series 1 G-4, held in Russia, Moscow city, but I was withdrawn by the [TFM] without any grounds. Now I am preparing for this competition under the management of the head coach in the selected team of the Republic of Moldova. If I do not participate in the international rating competitions I will not be able to obtain the participation quota for the Rio 2016 Olympic Games. I kindly ask the Ministry of Youth and Sports to help me with this issue”.*

104. Also on 4 September 2015, Mr Vadim Dimitrov sent a letter to the NOSC, which stated:

*“I, the undersigned Dimitrov Vadim, member of the national team Taekwondo WTF, holder of the 5<sup>th</sup> place at the European Senior Championships 2014 and multiple medallist at international competitions, was invited to the 2015 WTF World Grand Prix Series 2 G-4, to be held in Turkey, Samsun town, during 18-20 September. On 3 September 2015 I contacted the Federation to find out if I was registered for this competition. The response was that the Federation would not register me, but they couldn’t inform me why. This competition is important in order to get points for the Olympics. I kindly ask the Ministry of Youth and Sports to help me with this issue”.*

105. On this occasion, the NOSC did not approach the TFM about this matter, but the requests allegedly made by the Dimitrov Brothers remained unanswered by the TFM and they did not participate in the Samsun Competition.

106. Finally, on 19 November 2015, the Dimitrov Brothers sent a letter to the TFM President, which stated:

*“The undersigned Dimitrov Vadim and Dimitrov Stepan request hereby a response to our previous petitions of 29 May 2015 and the request to include us in the national team of WTF Taekwondo of the Republic of Moldova and communicate the following information:*

- What is the reason for not including us in the national team of WTF Taekwondo of the Republic of Moldova for participation in the international competitions?*
- What was the procedure and the criteria applied to set up the national team of taekwondo players?*
- Have there any sanctions been applied [sic] against us by the [TFM]?*

*In addition, please send to the above-mentioned address the relevant acts, regulations and other documents!”.*

107. The letter allegedly sent by the Dimitrov Brothers on 29 May 2015 and the letter dated 19 November 2015 remained unanswered by the TFM.

108. On 15 December 2015, the Ministry of Youth and Sports informed the Dimitrov Brothers as follows:

*“Regarding the petition recorded under number D-27/15 of 24.11.2015, the Ministry of Youth and Sports informs you on the following.*

*In accordance with Article 16 of Law No 330 of 25.03.1999 on Physical Culture and Sports, athletes are included in the national teams of the Republic of Moldova on a competitive basis, depending on the level of sports achievements.*

*Thus, your sports achievements during 2014-2015 will secure a place for you in the national team of the Republic of Moldova.*

*At the same time, the Ministry of Youth and Sports has warned the specialized federation on the ungrounded measures that resulted in the failure to participate in the rating competitions for the Olympic Games”.*

*ii. The positions of the parties*

109. According to the NOSC, the Dimitrov Brothers were unfairly excluded from the Moscow and Samsun Competitions and were more generally unfairly excluded from participation in international competitions for an undetermined period of time.
110. The NOSC argues that the TFM, by preventing Mr Stepan Dimitrov to participate in the Moscow Competition, and by preventing the Dimitrov Brothers to participate in the Samsun Competition, violated the rights of the Dimitrov Brothers under Moldovan law and took away their chance to potentially participate in the 2016 Rio Olympic Games.
111. The NOSC submits that the Second TFM Bureau Decision was unjust because only four out of the seven members were present. Mr Mazur, Mr Gheneralov and Mr Pavel Livitsky were missing and were never, in violation of the TFM Statutes, informed about the meeting.
112. Moreover, the NOSC argues that the minutes of the meeting do not cite any specific provision in the TFM Statutes that was violated by the Dimitrov Brothers such as would justify the suspension. Most troublesome for the NOSC is that the term “*physical abilities*” is subjective and undefined, which further supports their contention that the Second TFM Bureau Decision to exclude the Dimitrov Brothers from competitions was improper.
113. The TFM argues that the Dimitrov Brothers were validly excluded because of their unsatisfactory physical preparation and underwhelming sporting performances, as well as their non-compliance with the first TFM Bureau Decision. The decision not to register the Dimitrov Brothers for the 2015 Grand Prix Series was not based only on sporting criteria, but it was predominantly a precautionary measure deemed necessary by the TFM Bureau, as participation in taekwondo bouts with such poor level of physical and technical preparation would put those athletes’ safety and health at risk.
114. The TFM further adds that, regardless of the exclusion from certain international competitions, even if the Dimitrov Brothers had participated in all these events and finished first, they would still not have qualified for the Olympic Games due to their low position on the Olympic ranking list. Their failure to qualify for the Olympic Games was therefore not caused by that exclusion.
115. The TFM concludes that the NOSC’s allegation that the TFM breached articles 9.3(c) and (g) NOSC Statute by denying the Dimitrov Brothers the right to obtain crucial points for qualification to the 2016 Rio Olympic Games is groundless.

**b. Exclusion of Moldovan Athletes – Mr Andrei Rotaru**

*i) The evidence on record*

116. On 8 December 2016, following an inquiry of the TFM, Mr Gheorghe Grigorescu, General Secretary of the Taekwondo Federation of Romania (the “TFR”), informed Mr Apostol of the TFM that it had “*in its records the sportsman Rotaru Andrei, Romanian citizen, with the elected residence in Bucharest*” and that “*he signed a firm commitment for a period of four years with our federation, duly registered, in order to represent Romania in the Olympic cycle 2016-2020*”.

117. On 13 December 2016, the TFM Bureau issued the following decision (the “TFM Bureau Rotaru Decision”):

*“- The exclusion of the sportsman Andrei Rotaru from the list of the Federation*

- To submit a request to the Ministry of Youth and Sports on his exclusion from the National Group with trainings at Sports Center of Training of the National Groups (SCPNT)*
- To submit a request at [European Taekwondo Union – “ETU”] and WTF for the suspension of the sportsman license”.*

118. The Minutes of the TFM Bureau meeting of 13 December 2016 refer to the following reasoning underlying the TFM Bureau Rotaru Decision:

*“In the address of the [TFM] came the information that the sportsman Andrei Rotaru, member of the [SCPNT], during the period of November 17, 2016 participated in the 14<sup>th</sup> International tournament G-1 “Israel Open” of Ramla city, representing Romania. This fact was confirmed by the minutes of the competition (attached).*

[Such minutes were not presented to the Panel].

*Upon the request of the [TFM], the Romanian Federation confirmed the fact that the sportsman Andrei Rotaru, Romanian citizen, with the elected residence in Bucharest, is registered in its records. Following the agreement of the parties, he signed a firm commitment for a period of 4 years with the Romanian Federation, duly registered, to represent Romania in the Olympic cycle 2016 – 2020 (it is attached)”.*

(Such agreement was not presented to the Panel).

119. Mr Iuzefovici, President of the TFM, Mrs Vinnitskaya, Former TFM Assistant President, and Mr Bordeniuc, TFM Secretary General, member of the Bureau and Chairman of the Licensing Commission of the TFM, all testified during the hearing that Mr Rotaru was indeed excluded from the national team due to the fact that he competed for the TFR.

120. Mr Rotaru himself testified that he had trained hard to prepare for the European Championship in 2016, but then was informed that he was not selected. Mr Rotaru testified that he wrote letters to the NOSC and the Ministry of Youth and Sports to receive support, but that he did

not receive any answer to these questions and that he therefore felt that he had no other choice but to leave the TFM. Such letters were not presented to the Panel. Mr Rotaru confirmed that he participated in the National Championship of the TFM in October 2016 and that he was registered for the “Israel Open” in November 2016 by the TFR.

121. On 23 February 2017, Mr Rotaru sent a letter to the President of the TFM. The Ministry of Youth and Sports and the NOSC were copied thereto. The letter states, so far as material, as follows:

*“On the basis of the decision, taken unilaterally by President Igor, as I was informed verbally by Secretary General of the Federation, Apostol Gheorghe, during our discussion of April 2016, my membership in the national team ended in the same manner as I was accepted in the national team in 2011 – when I was verbally invited into the national team. I would like to underline that throughout the whole period of 2011-2015 and even previously I had trained intensively and consistently in order to exceed my own limits and achieve my personal objectives.*

*Thus, I obtained a series of remarkable achievements at international, European and world competitions, which brought the fame of Moldova, as a whole, and of Taekwondo Federation, in particular. However, in the year when you decided to exclude me groundlessly from the team I was the first-ranking champion of Moldova, and you replaced me by Ursu Nichita, who ranked the third at the Moldovan championship. I did not understand then and I still do not understand why you took this decision and on the basis of which criteria you formed the national team that year.*

*(...)*

*Given my position of young adult, and the need to continue my Master education and establish a family, as well as to continue my career in sports, in particular Taekwondo WTF, I decided to pursue my goals in Romania. Besides, the lack of a contract with [the TFM], which would secure a minimum financial stability, and the administrative decisions that marginalized my coach and my colleagues from the same generation, in spite of the promising stages of our careers, reinforced my decision to move to Romania. Today I am a citizen of Romania, enjoying all the rights deriving from this status.*

*When leaving Moldova, I informed the coordinating coach, who was aware of that situation and was helping me with the preparations for withdrawing from the relationship with the [TFM], about my intention to practice taekwondo in Romania. He took note of this information and confirmed that he would communicate my decision to the Federation. Having regards of this situation, I kindly ask the [TFM] to stop harassing me in its attempt to defame me and submit complaints in order to prevent my access on the international arena, as their actions are neither morally correct, nor lawful. I understand that unless this situation ends, I will have to use all my international rights, including the right to inform the Court of Arbitration for Sport in Lausanne and the International Olympic Committee on this fact”.*

*ii) The position of the parties*

122. According to the NOSC, Mr Rotaru experienced difficulties with the TFM and therefore decided to leave Moldova and compete for Romania. In order to punish Mr Rotaru, the TFM decided to submit a request to the ETU and the WTF for the suspension of Mr Rotaru's license.
123. The NOSC further maintains that the TFM failed to explain why it left Mr Rotaru off the national taekwondo team in violation of Article 16(7) of Moldovan Law No. 330, which expressly explains the criteria for selection for the national team. Because Mr Rotaru was the first-ranking champion of Moldova and was not selected by the TFM for the national team, the TFM violated national law by not selecting him.
124. The TFM argues that Mr Rotaru was a member of the Moldovan national taekwondo team up until the World Championship in Russia in May 2015. After the 14<sup>th</sup> G-1 International Tournament in Israel in November 2016, the TFM became aware that Mr Rotaru had in fact represented Romania during the tournament. After receiving confirmation from the TFR, the TFM placed the issue on the agenda of the TFM Bureau's next meeting. At its meeting on 13 December 2016, the TFM Bureau decided to exclude Mr Rotaru from the TFM's list of sportspeople, to submit a request to the Ministry of Youth and Sports for his exclusion from the national group's training and to submit a request to the ETU and the WTF to suspend his license.
125. The TFM submits that the NOSC's allegation that it breached Article 9.3(c) NOSC Statute by driving Mr Rotaru to represent Romania is without foundation.

***c. Exclusion of Moldovan Athletes – Mrs Ana Ciuchitu***

*i) The evidence on record*

126. At the NOSC GA, Mrs Ciuchitu declared that Mr Konev, Vice President and member of the Bureau of the TFM, informed her father that she could not participate in the 2016 World Junior Championship because she was excluded from the national team, but that she herself had never received any written information that she was no longer a member of the national team.
127. At the hearing, Mr Iuzefovici, President of the TFM, and Mr Konev, Vice President and member of the Bureau of the TFM, testified that Mrs Ciuchitu was never excluded from the national team and that she was never denied registration.
128. Mr Mazur, Former National Taekwondo Coach of Moldova, testified that he was the coach of Mrs Ciuchitu in 2016 and 2017, but that he was not sure whether she was ever excluded from the national team by the TFM, as any "negotiations" were done by her father.
129. Mrs Ciuchitu testified that her parents were informed by the TFM that she could not be registered for the European Under-21 Championship because of visa problems. She also stated that the TFM indicated that she was not part of the national team and that she did not participate in the Moldovan national championship. Mrs Ciuchitu also stated that the TFM informed her

that no athletes had registered in her weight category and that this was the reason that the TFM did not want to spend money on her participation as there was no reason to compete. Mrs Ciuchitu indicated that she believed the TFM lied to her as to the reason why she was not permitted to participate. Although she initially denied having been registered for competitions by the TFM after September 2016, following questions posed by the TFM, Mrs Ciuchitu finally confirmed to have participated in at least two competitions after September 2016 (the Hamburg Open and the Moldovan Open in 2017).

130. Mrs Vasilianov, NOSC Secretary General, testified that she believed that Mrs Ciuchitu did not know exactly how the registration system worked. Documentary evidence has been presented by the NOSC to establish that it was not the TFM, but Mrs Vasilianov who applied to organizations of international tournaments to register Moldovan taekwondo athletes after the TFM was suspended. Mrs Vasilianov also testified that she was not sure whether Mrs Ciuchitu was excluded from the TFM or not.

*ii) The position of the parties*

131. The NOSC maintains that the TFM prevented Mrs Ciuchitu from competing at the European Under-21 championships, as a result of which she lost the opportunity to participate in many future championships. While training for the 2016 World Junior Championships, Mrs Ciuchitu was initially informed by the TFM that she could not participate because the TFM was not sending any delegation due to visa problems. This however, turned out to be untrue, since the TFM did send two junior boys to represent Moldova. When Mrs Ciuchitu contacted the TFM for an explanation, she was told that she was excluded from the national team but never why.

132. The TFM submits that Mrs Ciuchitu lives and trains in Italy, but has Moldovan citizenship. As a junior, she was eligible to represent both countries in international tournaments. Although she represented Italy in most G-1 Tournaments, she represented Moldova in all major international competitions in which, pursuant to the WTF Statutes, athletes were only permitted to represent a country in which they were a citizen. Mrs Ciuchitu represented Moldova at the 2016 European Championships and the 2017 World Championships. Her participation in each event was organised and financed by the TFM and the Ministry of Youth and Sport. The NOSC's allegation that the TFM breached Articles 9.3(c) and (g) NOSC Statute by denying Mrs Ciuchitu the right to participate in international tournaments is without foundation.

***d. Exclusion of nine TFM National Team Members from participating in the Balkan Games***

*i) The evidence on record*

133. The 18<sup>th</sup> edition of the Balkan Taekwondo Championships (the "Balkan Games") was hosted in Dupnitsa, Bulgaria, on 24 and 25 September 2016.
134. On 14 September 2016, following an alleged refusal of the TFM to register the athletes Mr Andrei Rotaru, Mr Vladislav Arventii, Mr Mihail Botan, Mrs Tatiana Timbalari, Mr Cristi

Cilibiu, Mr Dorin Palici, Mr Ghenadii Stolbov and the Dimitrov Brothers (the “Balkan Athletes”) for the Balkan Games, the Balkan Athletes sent a joint letter (signed by all 9 athletes) to Mr Juravschi, NOSC President, which stated:

*“We, the undersigned members of the national team of [TFM], inform you that we contacted the [TFM] on 13.09.2016 to get registered for the 2016 Balkan Games. The specialized Federation refused us groundless.*

*We, members of the [SCPNT] kindly ask for your support of our participation in 2016 Balkan Games”.*

135. At the hearing, Mrs Vinnitskaya, Former TFM Assistant President, and Mr Bordeniuc, Secretary General, member of the Bureau and Chairman of the Licensing Commission of the TFM, testified that they did not remember having received a request from the Balkan Athletes to compete in the Balkan Games. They also testified that the TFM was in any event not responsible because the registration for the Balkan Games did not go through the system, but that the athletes should have registered themselves with the competition directly.

136. On the other hand, Mr Stepan Dimitrov testified that the Balkan Athletes indeed sent a collective letter to the TFM and that it was necessary for the TFM to register them in order to compete. Following a question from the Panel, Mr Vadim Dimitrov confirmed that all Balkan Athletes were trained by Mr Mazur at the relevant moment in time.

*ii) The position of the parties*

137. The NOSC argues that, on 13 September 2015, the Balkan Athletes allegedly informed the TFM of their intention to compete in the Balkan Games and that they wanted to be registered, but that the TFM refused to do so without providing any explanation. As a result, on 14 September 2015, the Balkan Athletes sent a letter to Mr Juravschi, NOSC President, seeking the NOSC’s support and assistance to register. Because of the TFM’s inexplicable refusal to register the Balkan Athletes, they could not compete in the Balkan Games.

138. The TFM denies having received a joint request from the Balkan Athletes to be registered for the Balkan Games on 13 September 2015. The Balkan Athletes, however, sent a letter to the NOSC, one day after contact was allegedly made. Even if the TFM had been contacted by the Balkan Athletes on 13 September 2015, there would have been insufficient time – both administratively and logistically – to organise sending the Balkan Athletes to the Balkan Games. The NOSC’s allegation that the TFM breached Article 9.3(c) NOSC Statute by preventing athletes from attending the Balkan Games is without foundation.

**e. Suspension of Mr Mazur’s license**

*i) The evidence on record*

139. On 21 June 2015, on the basis of a report prepared by Mr Mazur, the then head coach of the TFM, the Bureau of the TFM unanimously voted (6 – 0) that the “*activity for the above-mentioned period is unsatisfactory due to the fact that there are no sporting results for the current year*”.

140. On 8 February 2016, the TFM Bureau decided to remove Mr Mazur as head coach of the TFM and replaced him by Mr Betian.
141. On 4 March 2016, Mr Iuzefovici, the TFM President, requested the WTF to suspend Mr Mazur's license:

*“On behalf of the [TFM] which I chair I would like to address to you with a formal request to abrogate the WTF Global Official License for one of the members of our federation. I mean Vladislav Mazur (...). This request is caused by h [sic] the fact that Mr Mazur being a Head Coach in 2012-2016 has been exceeding the authority and has been using it for his personal gain for many times. His activity has been closely inspected and we have identified that because of him the funding of athletes and coaches hadn't been distributed fairly and properly. Such unsporting behavior led to the of [sic] unfavorable atmosphere among the coaches of the Federation.*

*According the results of the General Meeting that has been held on 08.02.2016, Vladislav Mazur was removed as Head Coach. However, even after this decision he continued to perform his opposition and subversive activities harming the image of the Federation.*

*As the President of the Federation I am forced to resort to more desperate measures and ask you to abrogate his license”.*

142. On 9 April 2016, the Director of the WTF Global Membership System decided to suspend/revoke Mr Mazur's license (the “WTF Decision”):

*“The purpose of this letter is to advise you of our decision to suspend/ revoke your WTF Global Official License effective immediately. The reason for this suspension/ revocation is a formal request by the [TFM] to abrogate your WTF license due to abuse of authority for personal gain, reports of uneven or unfair distribution of funds to athletes and coaches, and engaging in activities that damage the image of the [TFM].*

*We issued this suspension/revocation pursuant to the Guidelines and Interpretations for WTF Global Licenses for Athletes and Officials.*

*If you wish to appeal the decision of the [WTF], you may do so in accordance with Article 4.3 of the WTF Bylaws on Dispute Resolution & Disciplinary Action Bylaws. Note that you have 20 days from the receipt of this letter to file your appeal”.*

143. The NOSC maintains that the TFM forwarded the WTF Decision to Mr Mazur only on 28 April 2016.
144. Whereas the TFM maintains that Mr Mazur did not file an appeal against the WTF Decision, Mr Mazur stated the following in his witness statement for which, however, the NOSC did not provide the Panel with any corroborating documentary evidence:

*“I appealed against [the WTF Decision], to what I received a reply that I must bring the documents from the competent legal authorities. In October 2016, on the accusations against me by the Federation, I received a reply from the National Anticorruption Center that all accusations are not justified I am not guilty of anything. Along with the confirmative document I sent the request to GMS to restore my license. So far no response has been received and the license has not been restored”.*

145. On 11 April 2016, Mr Betian, the person that replaced Mr Mazur as head coach of the TFM, informed the TFM that Mr Mazur had illegally received an amount of MDL 20,000, claiming that he had coached Mr Stepan Dimitrov to a second place at the 2015 European Championship in Russia.
146. On 28 April 2016, the TFM Federal Bureau expelled the Republican Sports Club of Taekwondo WTF “United” – led by Mr Mazur – as member from the TFM for violations committed by Mr Mazur.
147. On 21 June 2016, Mr Juravschi, NOSC President, sent a letter to Dr. Chungwon Choue, WTF President, and Mr Hoss Rafaty, WTF Secretary General, informing them, *inter alia*, as follows:

*“The [NOSC] is pleased to provide this letter of recommend for Mr Vladislav Mazur. (...) Experienced, skilful and knowledgeable, Mr Mazur has been awarded numerous national sport distinctions, including the title of the Best Coach (NOSC distinction) on 6 occasions, as well as numerous other awards and diplomas. The [NOSC] deeply supports Mr Mazur”.*

148. On 5 July 2016, Mr Konev, Vice-President of the TFM, filed a petition with the National Anti-Corruption Center of the Republic of Moldova for alleged illegal actions of Mr Mazur, without providing the petition itself in evidence.
149. On 4 October 2016, the National Anti-Corruption Center of the Republic of Moldova rendered a decision (the “Nation Anti-Corruption Center Decision”) on the basis of the TFM’s petition, determining as follows:

*“On July 5, 2016, Mr Valentin [Konev], Vice-President of [the TFM], filed a petition with the Center, on the alleged illegal actions of the former head coach of the above Federation, Mr Vladislav Mazur and former General Secretary of the same Federation, Mr Artiom Gheneralov, manifested by the submission of inaccurate information to the Ministry of Youth and Sports, following which Mr Vladislav Mazur received a pecuniary reward in the amount of MDL 63.000 (sixty-three thousand), for good results in sports obtained by Mr Aaron Kuk, a British citizen.*

*The petitioner also claimed that de facto the coach of sportsman Mr Aaron Kuk is his brother Mr Luck Kuk, citizen with permanent residence in the UK.*

*[TFM] and the Ministry of Youth and Sports, the Federation submitted to the Ministry the list of the national lot for Taekwondo 2015 of specialized sportsmen, containing information on the identity of the sportsman and his coach. According to it, the coach of the sportsman Mr Aaron Kuk is Vladislav Mazur.*

*(...)*

*Having been questioned, Mr Vladislav Mazur reported that as the head coach of the [TFM], he obviously trained the sportsman Mr Aaron Kuk, member of the national team, in the training camps for international competitions and so he has legally received the money award from the specialty Ministry.*

*In the course of the examination of the facts claimed in the petition, it was not possible to question the citizens Aaron and Luk Kuk because they are permanent residents of UK and no evidence to show that Luk Kuk is the coach of Aaron Kuk were submitted. Nor have any financial claims been made by them against Mr Vladislav Mazur as well.*

*Thus, following the examination, it was established that the claims made in the petition are not proved by any conclusive and pertinent evidence and are purely declarative”.*

150. When asked by the NOSC why he kept repeating that Mr Mazur stole money, Mr Iuzefovici, TFM President, testified that he did not consider the National Anti-Corruption Center Decision to be an acquittal, but rather an explanation that no conclusive decision could be taken because there had been no interrogation of Mr Betian or of the coach of Mr Aaron Cook.
151. Mr Betian repeated his allegation that Mr Mazur took money to which he was not entitled, because Mr Aaron Cook was coached in fact by someone else. Mr Betian testified also that in March 2016 though he was the only coach of Mr Stepan Dimitrov when he finished second at the European Championship in 2015, it was Mr Mazur who was paid for such coaching.
152. Mr Konev, Vice President and member of the Bureau of the TFM, agreed that he had filed the claim against Mr Mazur. Following a question from the NOSC, Mr Konev confirmed that he declared before the NOSC GA that Mr Mazur took money from parents, the TFM and the ministry of sport. Neither the TFM nor Mr Konev, however, submitted any evidence in the present proceedings before CAS to corroborate such allegations.
153. Mr Mazur testified that he never stole money from anyone and that, following the National Anti-Corruption Center Decision he reached out to the WTF. He also averred that he trained Mr Cook at the 2015 European Championships and that he legitimately received the relevant funds as he was the head coach of the national team properly the TFM. Mr Mazur confirmed that it was the idea of the organisation of the Belgian Open to provide him with an accreditation of another coach.

*ii) The position of the parties*

154. The NOSC maintains that, on 8 February 2016, the TFM removed Mr Mazur as head coach of the national team *“without any basis for doing so on allegations that were patently untrue: namely, the false claim that Mr Mazur was using his position to steal money from athletes and coaches”*. Mr Mazur’s suspension by the WTF on the basis of the TFM’s false claims was wrongful, as was his termination as head coach of the national team by the TFM. The TFM did nothing to correct these false claims about Mr Mazur even after the National Anti-Corruption Center Decision. Mr Betian’s allegation that Mr Mazur took money to which Mr Betian was entitled to is undercut

by the TFM's own minutes, which establish that Mr Mazur was the head coach of the national team during the relevant time period, in particular the Olympic cycle 2012-2016. In sum, the NOSC submits that Mr Mazur was entitled to receive money from the Ministry of Youth and Sports for the athletes he worked with in 2015 and has never violated any regulation.

155. The NOSC also submits that the TFM's allegation that Mr Mazur wrongly impersonated another person at the 2017 Belgian Open is again completely false: Mr Mazur has not been charged with any wrongdoing by the ETU. In fact, Mr Mazur recently renewed and received a valid coaching license for 2018 from the ETU. Mr Raileanu, international referee at the 2017 Belgian Open, upon whom the TFM relies, did not make a sworn statement and was not designated as witness; in consequence his claims must be wholly disregarded. In any event, it was the event organizer that suggested that Mr Mazur register as another coach who had a valid license. It was also the event organiser that chose to register Mr Betian and gave Mr Betian's accreditation to Mr Mazur. As such, no wrongdoing occurred.
156. The TFM invokes two arguments in justifying the removal of Mr Mazur as head coach of the TFM: i) his failure to produce adequate sporting results as head coach; and ii) his conduct by deceitfully acquiring a financial benefit that was not properly due to him. The TFM further relies in justifying its actions on the fact that the WTF decided to revoke Mr Mazur's license. Finally, the TFM submits that, instead of appealing the WTF Decision, Mr Mazur is currently allegedly being investigated by the WTF for having committed an act of forgery by using the Global Official License of Mr Betian at the 2017 Belgian Open, while his own license was suspended. The NOSC's allegation that the TFM breached Article 9.3(d) NOSC Statute by impeding Mr Mazur's ability to represent Moldova at international tournaments is therefore without foundation.

***f. Exclusion of RBLSP & SCPNT***

*i) The evidence on record*

157. On 14 and 15 October 2016, the 2016 National Taekwondo Championships of the Republic of Moldova (the "National Championships") took place.
158. The RBLSP & SCPNT are government institutions that select and train athletes in various sports disciplines in order to try and develop future Olympians.
159. On 3 October 2016, the RBLSP asked Mr Bordeniuc, Secretary General, member of the Bureau and Chairman of the Licensing Commission of the TFM, to allow the 21 lyceum students to participate in the National Championships without a license.
160. On 6 October 2016, the SCPNT requested the TFM to register 11 athletes (including the Dimitrov Brothers, Mr Rotaru and Mrs Ciuchitu) for the National Championships.
161. On 11 October 2016, Mr Gherghe Apostol, TFM Secretary General, informed the RBLSP as follows:

*“Esteemed Director, we inform you that RBLSP is not member of [the TFM] and Mrs Iudina Liudmila does not have the license of coach, that is why the RBLSP athletes cannot participate in the 2016 [National Championships] on behalf of RBLSP seconded by Mrs. Iudina Liudmila, but we will allow RBLSP athletes to participate in the 2016 [National Championships] on behalf of any member (sports club, sports school...) of [the TFM], seconded by a licensed coach, provided that the athlete is licensed as well”.*

162. Also on 11 October 2016, the TFM General Secretary sent an identical letter to the SCPNT, mentioning however Mr Mazur as coach instead of Mrs Iudina.
163. On 12 October 2016, the RBLSP again requested to TFM to allow 20 lyceum students to participate in the National Championships and asked for an invoice for the annual membership fee, confirming that the amount would be paid within 7 business days.
164. Mrs Iudina, Mr Tricolici and Mr Mazur issued a joint witness statement, indicating that 3 days before the National Championships they were informed that athletes would not be able to participate under the RBLSP & SCPNT. In order to not lose a place in the national team, athletes decided to perform under the auspices of the club DRIVE, which is a fully recognised member of the TFM. After the successful weigh-in on 13 October 2016, in the morning of 14 October 2016 only 6 athletes were accepted to participate in the event. The remaining athletes were not allowed to participate in the National Championships based on unknown reasons. Consequently, no athlete from the RBLSP was able to compete in the National Championships.
165. On 19 October 2016, the RBLSP issued a letter to the Ministry of Youth and Sports, informing it as follows:

*“[W]e would like to inform you, hoping at the same time for your support for the settlement of the issues emerged on 14-15 October 2016 during the [National Championships], where the students of the sports lyceum (taekwondo section – 21 people) were not accepted, though their access had not been restricted in previous years. Moreover, we were informed about the Federation’s decision just before the competition, on 11 October 2016 (annexed).*

***Mister Minister**, the Sports Lyceum is a public institution, established with the noble purpose of providing support, including to sports federations. The costs of training an athlete amounts to thousands MDL per year, and the attitude of the Taekwondo Federation towards the athletes of our institution is incorrect and unacceptable.*

*The Taekwondo Federation should have informed the school management about the invoked requirements at least 2 weeks before the event, so that it managed to comply with them and participate in the competitions.*

*(...)*

*In the context of the above-mentioned, we kindly ask for the lyceum athletes to be included in the list of national teams on the basis of their achievements during the year and to take measures against the specialised federation”.*

166. On 22 December 2016, the RBLSP sent a letter to Mr Juravschi, NOSC President, informing him, *inter alia*, as follows:

*“The management of the [RBLSP] is respectfully asking for your intervention in the difficult situation between RBLSP and the [TFM]. (...) The [Taekwondo Championships] took place on 14-15 October 2016, where the 21 lyceum students were not admitted by the specialised federation, on grounds that the students and teachers-coaches did not have a license. Note that during the previous years the lyceum students participated in the Moldovan Championships without paying any additional taxed, and during 2017 the RBLSP was not informed that our institution was not member of the Federation and that in order for lyceum students to participate in the Moldovan Championships each athlete and teacher-coach had to pay the annual membership fee of the Federation. The RBLSP received the letter with the above-mentioned information a couple of days before the competition, on 11 October 2016 (the copy is annexed). On 12 October 2016 the lyceum replied by a letter, requesting to accept its students to the competition, guaranteeing that it will pay the annual membership fee of [the WTF] within 7 days on the basis of the invoice (the copy is annexed). Note that most RBLSP students are children from underprivileged families, single-parent families or orphans. One day before the competition, RBLSP representatives had a meeting with the Minister of Youth and Sports Mr Zubcu V., who had a discussion with the specialised federation and underlined that the Moldovan Championships was funded with public money and that all athletes, who wish to participate in the Championships, should be accepted, and that the financial issues could have been settled after the competition. Unfortunately, neither the request of the Ministry of Youth and Sports, nor our request were taken into account, and the lyceum students did not have the opportunity to participate in the Moldovan Championships and hence will not be included in the national team. (...) In the context of the above-mentioned, we kindly ask for your support in settling this conflict by including the lyceum students in the list of national teams on the basis of their achievements during 2016 and by taking measures against the specialised federation”.*

167. On 2 February 2017, the RBLSP, with reference to the conflict between the RBLSP and the TFM, requested the Ministry of Youth and Sports to include the above-mentioned 21 students in the lists of the national team according to the age and on the basis of the results obtained at the international competitions.
168. On 25 September 2017, the RBLSP submitted a request to be admitted as member of the TFM.
169. On 2 October 2017, the TFM invited the RBLSP to a meeting of the TFM Bureau to discuss the application, but the RBLSP did not respond or attend the proposed meeting.
170. Mr Iuzefovici, TFM President, testified that before excluding the RBLSP & SCPNT, a recommendation was issued by the WTF that, in order better to organise the sport, every national athlete had to be licensed in order to participate in the National Championships. Such recommendation is not on file. Mr Iuzefovici also stated that only six athletes from the RBLSP & SCPNT could participate in the National Championships, because these were the only licensed athletes. The RBLSP & SCPNT never tried to register the other students/athletes. Mr Iuzefovici indicated that the RBLSP & SCPNT were not informed directly about the change in policy, but that nonetheless the coaches were well aware of it.
171. Mr Konev, Vice President and member of the Bureau of the TFM, testified that the invitation of Mr Aaron Cook to participate in the National Championships was an exception calculated

to make taekwondo more popular in the Republic of Moldova, because he is such a well-known athlete.

172. Mr Robu, Director of RBLSP, testified that the athletes of the RBLSP could not participate in the National Championships because the RBLSP was not a member of the TFM. He also indicated that the TFM never responded to his letter dated 12 October 2016. Mr Robu also declared that he did not recall having received the letter from the TFM dated 2 October 2017 inviting the RBLSP for a meeting.

173. Mrs Iudina, Member of the TFM and coach of the RBLSP, testified that she had a coaching license at the relevant moment in time, but that the TFM refused to extend it.

*ii) The position of the parties*

174. The NOSC submits that, as stated in the regulations of the RBLSP, it is mandatory that students from the RBLSP participate in the National Championship. Moreover, it is a requirement that athletes compete in the National Championship in order to be eligible for the national team.

175. The NOSC further maintains that the RBLSP's letter dated 12 October 2016 regarding the payment of the TFM's membership fee remained unanswered by the TFM.

176. The NOSC maintains that no athlete from the RBLSP was able to compete in the National Championships, while at the same time, Mr Aaron Cook, was allowed to compete for "Team Cook", although it was not a TFM member. This is an illustration of the TFM's arbitrary and selective interpretation of its rules to benefit those it favoured.

177. The TFM submits that neither the RBLSP nor the SCPNT were affiliated with the TFM at the relevant moment in time. Pursuant to Article 19.3 of Moldovan Law No. 330 on Physical Education and Sports, "[f]or participating in official, local or national sports competitions a performance athlete must necessarily be a member of a national association, club or federation".

178. The TFM submits that the RBLSP only requested to be admitted as member on 25 September 2017, *i.e.* well after the National Championships and that the RBLSP did not respond to the TFM's invitation of 2 October 2017.

179. The TFM concludes that the NOSC's allegation that the TFM breached Article 9.3(a) NOSC Statute by denying illegitimately the participation of student athletes in the 2016 National Championships is factually incorrect. The RBLSP & SCPNT were denied participation for valid reasons.

**g. *Renewal of Dimitrov Brothers' licenses***

*i) The evidence on record*

180. On 28 November 2016, the WTF informed its members of a transition of licensing systems and set a deadline of 24 December 2016 to renew athletes' licenses if they wanted to compete in events between January and March 2017.
181. It is not in dispute between the parties that national federations are in charge of issuing licenses.
182. On 28 November 2016, the TFM informed all its members (22 recipients) of the impending deadline by email. The Dimitrov Brothers and Mr Mazur were not copied in this email.
183. Mr Bordeniuc, Secretary General, member of the Bureau and Chairman of the Licensing Commission of the TFM, stated in his witness statement that “[t]here was a practice in the [TFM] to send such letters and communications to the mail of Federation Members and they in their turn used to inform the sportsmen. The Federation does not inform each sportsman in particular. The liability for the late presentation of documents for the renewal of licenses rests personally with the sportsmen. This practice existed for many years and the sportsmen knew they should think of renewing the licenses themselves and in due time”.
184. Mrs Vinnitscaia confirmed this practice and that the Dimitrov Brothers were not provided with the email dated 28 November 2016 directly, but that their official coach at that time, Mr Betian, was copied in. Mrs Vinnitscaia denied that she was aware that the Dimitrov Brothers were not actually training with Mr Betian at the relevant point in time. She also indicated that Mr Mazur was not copied in on the email as he was not a member of the TFM.
185. Mr Konev, Vice President and member of the Bureau of the TFM, stated in his witness statement that “[a]s the sportsmen Dimitrovs did not attend the individual and grouped trainings with the Federation’s trainers, they might have missed the information about the renewal of licenses”, but testified that he had called the Dimitrov Brothers at the beginning of December 2016 to inform them about the need to renew their licenses and also met with them in person. Mr Konev indicated that he did not consider it necessary to mention these facts in his witness statement or to mention them during the NOSC GA (neither of which he did).
186. Mr Stepan Dimitrov testified that he only learned about the impending deadline on 23 December 2016, *i.e.* the day before expiration of the deadline, when searching on an Ukrainian website, possibly with a link to the website of the WTF, which is based in Korea.
187. On Friday 23 December 2016, the Dimitrov Brothers went to the TFM offices at 15.00 hour, *i.e.* one hour before close of business due to Christmas Eve the next day, to have their licenses renewed.
188. According to the Dimitrov Brothers, the TFM refused to renew their licenses, without providing any justification for the refusal.

189. Mr Konev, Vice President and member of the Bureau of the TFM, stated in his witness statement that the Dimitrov Brothers “*did not have the necessary documents with them (copy of passport for travelling abroad, copy of Kukkiwon certificate)*” and that “[t]he delayed renewal of licenses is not caused by any willful misconduct of the Federation’s officials, but by the lack of discipline of the said sportsmen”.

190. On 27 December 2016, the Dimitrov Brothers sent a letter to Mr Juravschi, NOSC President, informing him, *inter alia*, as follows:

*“Based on the Decision of [the TFM], our GAL license was not extended for 2017, which means that we will miss the competitions during the first three months of the year. We do not know if the license will be extended further.*

*We kindly ask the [NOSC] and you, as its president, to help us with this issue”.*

191. On 5 January 2017, the Dimitrov Brothers sent a letter to the Ministry of Youth and Sports, the NOSC, and the TFM, informing them as follows:

*“On 23.12.2016 we contacted [the TFM], asking to extend our Global Athlete License (GAL), without which we cannot participate in international competitions. It had to be extended until 24.12.2016 for us to be able to perform during the first three months of 2017. Our request was rejected. Besides, we did not get any response to our letter to the Federation, asking for explanations. We would also like to underline that the license of our coach Vladislav Mazur was withdrawn one year ago on the basis of unclear grounds.*

*Given the above mentioned, as well as the previous events occurred at [the TFM], we kindly ask the Ministry of Youth and Sports to initiate a meeting with stakeholders ([NOSC], [TFM], us and our coach Vladislav Mazur) in order to take a decision regarding our further activity”.*

192. Mr Konev testified that it was not strictly necessary to have the licenses renewed in December 2016, as no competitions were scheduled for January and February 2017. He also confirmed to be aware of the fact that two Moldovan athletes in fact competed in the Turkish Open in February 2017, but that their expenses were paid from the budget of another organisation.

193. The Dimitrov Brothers testified that they were intending to participate in the European Championships and the Turkish Open that were scheduled to take place in February 2017 and that other athletes from Moldova participated in these events.

194. At the end of February 2017, the TFM renewed the licenses of the Dimitrov Brothers.

*ii) The position of the parties*

195. The NOSC submits that there was no way in which the Dimitrov Brothers could have known about the relevant deadline for renewal of their licenses, even though it was clearly the responsibility of the TFM to inform them. Having completed the renewal process many times before, the Dimitrov Brothers knew that there was no need to provide any additional documents to the TFM since their information was already in the TFM’s database. Moreover,

the email of the TFM dated 28 November 2016, does not refer to the need to bring any documents. The Dimitrov Brothers therefore believed that they would only need to pay the licensing fee.

196. The NOSC argues that the Dimitrov Brothers were not given an explanation as to why their request for renewal of their licenses was not accepted, even though they specifically asked the TFM for an explanation. In doing so, the TFM violated the WTF Global Membership System's bylaws, specifically Article 6.4.2, pursuant to which, *inter alia*, “[i]f an [national association] denies an application for GMS License, good cause must be presented to the GMS team in order to issue official responses to disputes from those applicants whose licenses have been denied”. Although licenses were finally issued at the end of February 2017, the TFM's actions in December 2016 violated Moldovan Law No. 330 inasmuch as the TFM took away the Dimitrov Brothers' right to compete internationally from January to March 2017.
197. The TFM maintains that the processing of the Dimitrov Brothers' licenses was not possible on 23 December 2016 due to their own oversight. Furthermore, the TFM submits that it was not in the TFM's competition plan to register any athletes for the international competitions that were set to take place between January and March 2017. As a result, the Dimitrov Brothers did not in fact miss any competitions available to them. The TFM submits that this is likely to be the reason why the Dimitrov Brothers were not very concerned about the non-renewal of their licences. The TFM concludes accordingly that the NOSC's allegation that the TFM breached Article 9.3(g) NOSC Statute by denying the Dimitrov Brothers the right to extend their licenses is without foundation.

***h. Request to IOC for Exclusion of NOSC***

*i) The evidence on record*

198. After submitting its Appeal Brief to CAS on 30 March 2017 in the proceedings referenced as CAS 2017/A/5057, the TFM asked both the NOSC (on 26 April 2017) and the IOC (on 15 May 2017) for the full English translation of the NOSC Statute, as approved by the IOC.
199. On 20 June 2017, Mr Jerome Poivey, IOC Head of Institutional Relations and Governance, informed the TFM that the “*appropriate body to contact regarding this matter was the NOSC*”.
200. After also asking the CAS panel in CAS 2017/A/5057 to order the NOSC to provide the full English translation of the NOSC Statute, Mr Iuzefovici, TFM President, on 22 June 2017 sent a letter to Mr Thomas Bach, IOC President, and Mr Jerome Poivey, stating, *inter alia*, as follows:

*“Recently the [TFM] and NOSC have encountered serious misunderstanding and disagreement in connection with the [TFM's] activity in the Republic of Moldova.*

*Among other documents and information supporting our position in the conflict with NOSC, [the TFM] has to refer to the current NOSC Statute. Based on the review of the Statute available on*

NOSC website, the [TFM] was unable to confirm whether this version is the current and effective version of NOSC Statute, which was agreed with IOC.

The comparison of the available version of the NOSC Statute in the Romanian and English languages revealed certain discrepancies between the Romanian and English versions and inconsistency of NOSC Statute with the Olympic Charter.

In view of the above the [TFM] would like to bring these discrepancies to the attention of IOC and requests IOC to invalidate NOSC Statute since it does not comply with the Olympic Charter and, thus, suspend membership of NOSC with IOC.

An official translation from Romanian into English of Clause 7.11.2 of the Statute states:

*“During the period between General Assemblies, the Executive Board may decide on its own to resume temporarily the decision on membership suspension with an immediate effect, including in the cases of withdrawal or termination of activity”.*

The NOSC Statute as of July 7, 2011[unreadable] provided by NOSC in its response to the appeal in CAS provides:

*“In the period between the meetings of the General Assembly, the Executive Committee may decide, at its sole discretion and provisionally, on suspension of a membership with immediate effect, including in the cases of withdrawal or cease of their activity”.*

According to the version of Clause 7.11.2 presented by NOSC in its response, the National Olympic Committee has the right independently from the NOSC General Assembly to make decisions on suspension from its membership, which does not appear from the version of the Statute in English, which is provided on the official website of NOSC.

(...)

*If the current version of the Statute of NOSC was not approved by IOC, such Statute shall be declared invalid” (emphasis in original).*

201. On 17 July 2017, the NOSC provided the TFM with a certified English translation of the NOSC Statute, as submitted to the IOC.

ii) *The position of the parties*

202. The NOSC submits that in his 30 June 2017 letter to the IOC, Mr Iuzefovici misrepresented what actually had occurred and claimed that “[o]n March 9, 2017 NOSC Executive Committee made a decision to suspend membership of [the TFM] in NOSC without any preliminary notice and explanation” (emphasis in original). The TFM, however, was given preliminary notice and an explanation by the NOSC: the TFM was told of the numerous allegations against it and provided a response at the 9 March 2017 Executive Board Meeting, before the Executive Board decided to suspend

the TFM provisionally. The TFM made this material misrepresentation to the IOC in June 2017 because it was seeking to embarrass the NOSC and to have it suspended by the IOC without any basis for such suspension.

203. The TFM admits that the wording and possible interpretation of some provisions of the NOSC Statute varies. The original Romanian version of the NOSC Statute is registered with relevant state bodies in the Republic of Moldova and the uncertified translated English version is published on the NOSC website. Article 23.6 NOSC Statute clarifies that “[i]n case of any discrepancies in interpretation of texts in different languages, the text written in the official language of the Republic of Moldova shall have priority; however, when the IOC is involved, the version in the English language shall prevail”.
204. The TFM concludes that the NOSC’s allegation that the TFM breached Article 9.3(d) NOSC Statute by communicating with the IOC is without foundation.

*i. Findings of the Panel in respect of the Allegations – individually and cumulatively*

205. The Panel first finds that no material inconsistencies could be found in the evidence presented before the NOSC GA and before this Panel.
206. The Panel secondly finds that no legal error was committed and that the conclusion reached on the basis of the ascertained facts was reasonable. Below the Panel will highlight a number of elements in justifying the conclusion that the Appealed Decision was reasonable.
207. As to the exclusion of the Dimitrov Brothers (lit. a), which is considered to be one of the crucial aspects of the NOSC’s case, the Panel has strong doubts about the binding nature of the First TFM Bureau Decision. The Minutes of the TFM Bureau meeting are not clearly to the effect that it was mandatory for the Dimitrov Brothers to train with Mr Betian and/or that it was, from that moment on, forbidden for them to train with Mr Mazur, and/or how often the Dimitrov Brothers were required to train with Mr Betian in order to comply with the First TFM Bureau Decision. The First TFM Bureau Decision which, for convenience the Panel repeats, records:

*“The Case of Dimitrov Stepan and Dimitrov Vadim*

*Regarding the training of the sportsmen Dimitrov Stepan and Dimitrov Vadim under the coaching of Betian Mircea*

*IT WAS DECIDED*

*Voted: “for” – 6, “against” – 0, “abstained” – 0 unanimous”.*

208. Given its phraseology, the Panel does not consider it unreasonable that Mr Stepan Dimitrov considered the First TFM Bureau Decision only as an “*informative note*” and an advice or expression of preference that the Dimitrov Brothers should train with Mr Betian and not a

prohibition on them continuing to train with Mr Mazur. This interpretation is more consistent with the testimony of Mr Mazur and Mr Ghenalov, who both stated that they did not consider the First TFM Bureau Decision to be a decision at all, but a record of a discussion that had taken place between the members of the TFM Bureau.

209. Be that as it may, the Dimitrov Brothers were finally suspended by means of the Second TFM Bureau Decision rendered on 14 July 2015, which was based on three pillars: i) failure to attend compulsory training sessions with Mr Betian; ii) unsatisfactory sporting performance; iii) unsatisfactory physical condition with consequent high degree of injury risk.
210. First, the Panel finds that the Dimitrov Brothers' failure to attend compulsory training sessions with Mr Betian cannot be invoked as a reason to suspend the Dimitrov Brothers, because, as set out above, there is no evidence on file suggesting that the Dimitrov Brothers were clearly informed about any obligation to train with Mr Betian or by corollary that they were prohibited from training with Mr Mazur.
211. Second, the Panel finds that unsatisfactory sporting performance cannot sensibly be invoked as a valid reason for a comprehensive suspension of athletes. It accepts, of course, that unsatisfactory sporting results of athletes may have consequences in terms of, for instance, registration for tournaments, instructions regarding training, etc. However, in the absence of any evidence suggesting that the Dimitrov Brothers intentionally underachieved, a lack of sporting results over such a short period of time (*i.e.* two months) cannot justify the imposition of disciplinary measures and certainly not a suspension of unknown duration.
212. Third, the Panel finds that an unsatisfactory physical condition may indeed constitute a valid reason to prevent athletes from participating in sport, and the Panel is also willing to accept that an unsatisfactory physical condition imposes particular risks in a combat sport like taekwondo. Whether this can also be regarded as a valid reason to suspend athletes for unknown duration is, however, an entirely different matter. The Panel finds that the TFM failed to establish that the physical condition of the Dimitrov Brothers was so unsatisfactory that it imposed a high injury risk. The Panel is impressed by NOSC's argument that there is a high element of subjectivity in determining that an athlete's physical condition is unsatisfactory, and accordingly an assertion to that effect should not too readily be accepted. In its view, a series of disappointing sporting results does not *per se* warrant the conclusion that the athletes concerned have a high injury risk. Furthermore had the TFM been able to prove that there was a high injury risk, *quod non*, this would still not have been sufficient reason to suspend them, but only to cease registering them for competitions.
213. Consequently, since none of the reasons invoked can legitimately support the conclusion reached in the Second TFM Bureau Decision, the Panel finds that the Dimitrov Brothers were indeed unfairly excluded by the TFM.
214. In addition to the above, the Panel finds that the actions of the TFM are particularly worthy of reproach because the Second TFM Bureau Decision was apparently never communicated to the Dimitrov Brothers.

215. The Panel finds that the letter of the NOSC dated 4 August 2015 is important in the sense that the NOSC informed the TFM that it had the obligation to defend the interests of athletes. Notwithstanding this warning, the TFM did not register Mr Stepan Dimitrov for the Moscow Competition and did not register the Dimitrov Brothers for the Samsun Competition without providing the NOSC or the Dimitrov Brothers with any reasons underlying such decision. The Panel finds that the TFM at this stage should at the very least have informed the Dimitrov Brothers that they were suspended from participating in international competitions pursuant to the Second TFM Bureau Decision.
216. Indeed, the Panel finds that the NOSC GA could reasonably conclude that the TFM's unfair exclusion of the Dimitrov Brothers from international competitions constituted a severe infringement of its duties pursuant to the NOSC Statute.
217. As to the additional Allegations (lit. b – h), the Panel finds that some have merit, while others seem somewhat far-fetched or lack adequate evidential foundation. But even with this reservation, the Panel finds that the majority of the remaining Allegations are also proven and therefore – taken collectively – support the conclusion that the measures taken against the TFM by the NOSC GA were warranted.
218. Turning to the additional Allegations (lit. b – h) the Panel notes by way of preface that the NOSC was faced with a volume of complaints lodged against the TFM. The Allegations, while made by different persons and in respect of different abuses, almost all have this in common, that they strike to the heart of Article 9.3 NOSC Statute and more so, to the heart of equal treatment of athletes and fair play within the Moldovan Olympic family. In this regard, on the assumption that they (or most of them) were well made out, the NOSC needed to take action to deal with a clear problem affecting the sport of taekwondo within its country, and, notably, it acted following numerous requests made by various athletes, the RBLSP, coaches, and the NOSC itself. Informal means having failed to resolve the problem, the Panel finds the NOSC GA was justified in taking active measures against the TFM.
219. National Olympic Committees such as the NOSC are given a right to govern Olympic sport in their countries. This right – although not unfettered – comprises at its core a duty to ensure fair play, respecting the Olympic principle and, equal treatment of athletes, etc. National Olympic Committees are in the best position to determine how to preserve and protect these values. Unless the measures avowedly taken to that end are malicious, unreasonable or arbitrary, a Panel should not disrupt an NOC's ability to exercise its authority in that sphere.
220. The Panel is readily persuaded that taekwondo is a flagship sport in Moldova. Such a volume of complaints against the TFM in a short period of time clearly demonstrated a problem which required action before the sport was irreversibly damaged.
221. In this respect, when a National Olympic Committee like the NOSC deals with a series of allegations against a national federation which the national federation wilfully fails to answer, the Panel deems it appropriate for the National Olympic Committee to take action against such a member, in particular when the allegations unquestionably cast a negative light on the sport and deeply affected the athletes' trust in the sport and the federation.

222. Against this background, the Panel makes some comments on each of the remaining Allegations individually, without entering into a detailed debate, both because it might exceed the Panel's restricted standard of review and because, given the Panels finding on the main allegation (lit. a) it would in any event be gratuitous.
223. With respect to Mr Rotaru (lit. b), the Panel finds that the problem was not so much the TFM's decision to deregister Mr Rotaru itself, but the fact that such decision was not properly communicated to Mr Rotaru. At least no evidence of such notification was provided to the Panel, as a consequence of which Mr Rotaru was inappropriately left in the dark about his status.
224. With respect to Mrs Ciuchitu (lit. c), again the lack of communication by the TFM to the athlete appears to have been the main problem. The Panel considered Mrs Ciuchitu's testimony credible when she testified that the TFM refused to register her for the 2016 World Junior Championships, but that no reasons for such decision were ever presented to her by the TFM. The Panel is, however, hesitant to conclude that the TFM acted inappropriately here, because no documentary evidence was presented by the NOSC or Mrs Ciuchitu that she ever applied to be registered and that she was excluded from the national team, which is denied by both Mr Iuzefovici as well as Mr Konev.
225. With respect to the alleged unjustified exclusion of the nine Balkan Athletes from participating in the Balkan Games (lit. d), the Panel finds it telling that the Balkan Athletes considered it necessary to address a complaint to the NOSC in respect of the TFM's failure to register them for those Games. The Panel finds that the TFM failed to establish that it was not possible for the TFM to register athletes for the Balkan Games, but that they had rather to register themselves. Although the Balkan Athletes maintain that they requested the TFM to register them for the Balkan Games by letter dated 13 September 2016, such letter was not presented as evidence. Albeit the letter sent to the NOSC on 14 September 2016 indicates that such earlier letter was indeed sent, the Panel agrees with the TFM that, even if it was, the Balkan Athletes did not provide the TFM with a reasonable timeframe to take care of the registration. However, again, this issue could have easily been resolved if the TFM communicated better with its affiliated members.
226. With respect to the suspension of Mr Mazur's license (lit. e), the Panel finds it worthy of serious criticism that Mr Iuzefovici, TFM President, requested the WTF to revoke Mr Mazur's license for *"exceeding the authority and has been using it for his personal gain for many times. His activity has been closely inspected and we have identified that because of him the funding of athletes and coaches hadn't been distributed fairly and properly. Such unsporting behavior led to the of [sic] unfavorable atmosphere among the coaches of the Federation"*, while at the same time failing to provide any supporting evidence. The Panel finds that little weight should be afforded to the WTF Decision, because the WTF Decision itself clarifies that *"[t]he reason for this suspension/ revocation is a formal request by the [TFM] to abrogate your WTF license due to abuse of authority for personal gain, reports of uneven or unfair distribution of funds to athletes and coaches, and engaging in activities that damage the image of the [TFM]"*, without making its own independent investigation into the matter. The National Anti-Corruption Center Decision is, on the Panels view, of greater weight because it conducted an independent investigation, but could not establish that any violation was committed by Mr Mazur. Moreover,

the Panel finds that the TFM has throughout failed to establish that Mr Mazur acted for personal gain in distributing funds awarded for results obtained by TFM athletes in international competitions.

227. With respect to the exclusion of the RBLSP & SCPNT from the 2016 National Championships (lit. f), the Panel also finds that the TFM did not act reasonably. Insufficient time was afforded to the RBLSP to deal with the TFM's change of policy pursuant to which only member clubs could participate in the National Championships and that all participants had to have a license issued by the TFM in order to compete. Telling in this context is the fact that the RBLSP turned to the Ministry for Youth and Sports and the NOSC to seek their intervention. The Panel does not consider it relevant that the RBLSP allegedly failed to appear following an invitation for a meeting on issued by the TFM on 2 October 2017, as this correspondence took place approximately one year after the 2016 National Championships. The Panel also finds that the TFM should be reproached for never answering the RBLSP's renewed request to register its members dated 12 October 2016, while confirming that the relevant membership fees would be paid within 7 business days.
228. With respect to the failure to renew the Dimitrov Brothers' licenses (lit. g), the Panel finds that no valid justification was put forward by the TFM as to why such renewal could not be granted. The passports and Kukkiwons of the Dimitrov Brothers must already have been at the disposal of the TFM as the Dimitrov Brothers had been previously licensed by the TFM. The Panel is furthermore not persuaded by Mr Konev's testimony that he called the Dimitrov Brothers to inform them about the need to renew their licenses or that he also met with them in person. In accordance with Article 6.4.2 WTF Global Membership System's bylaws, "[i]f an [national association] denies an application for GMS License, good cause must be presented to the GMS team in order to issue official responses to disputes from those applicants whose licenses have been denied", no reason was, however, presented to the Dimitrov Brothers at the relevant point in time. Telling in this respect is the initiative of the Dimitrov Brothers to seek the intervention of the NOSC and the Ministry of Youth and Sport.
229. Finally, with respect to the TFM's request to the IOC to "*suspend membership of NOSC with IOC*" (lit. h), the Panel finds that this cannot reasonably be considered a violation. The Panel well appreciates that the NOSC dislikes the making of such a request which was indeed an arguably extreme tactic, the Panel nonetheless finds that the TFM had a right to make it and place it on the IOC's agenda for the latter's consideration. The TFM's inquiry about the different translations of the NOSC Statute appears to have been legitimate.

***j. Conclusion in respect of violations committed by the TFM***

230. The Panel concludes that that the majority of the Allegations of sundry violations were well sustained on the evidence, in particular that the Dimitrov Brothers were unfairly excluded from international competitions. It was sensitive to the fact that within the world of Moldovan taekwondo, there were two main camps; the main board on the one hand, and the followers of Mr Mazur on the other. But it has discounted the possibility that, the volume and consistency of the complaints of those in the latter camp were the product of some conspiracy and, in so

doing, have taken full advantage of its assessment of the witnesses who gave evidence before them and whose testimony is to be preferred when different versions of events were advanced. It was also sensitive to the fact that there was to an extent a power struggle between the TFM and the NOSC, but rejected TFM's suggestion that the NOSC was for its own purposes seeking to acquire authority over Moldovan Taekwondo or that its evaluation of the various complaints made to it was materially affected by any such considerations.

231. The Panel is next required to determine whether such violations can be considered as violations of Article 9.3(a), (c), (d), (g) and (l) NOSC Statute.
232. The Panel in particular considers that the TFM not only adversely affected the interests of individual athletes, but also the interests of the NOSC and thereby acted adverse to its duty to contribute to the fulfilment of the NOSC's statutory objectives, in particular its duty to "*defend the interests of athletes (...) on national and international levels*" in accordance with Article 4.29 NOSC Statute. The TFM was aware that the NOSC did not take this duty lightly, as the First Deputy President of the NOSC already referred to this provision in his letter dated 4 August 2015. The TFM however opted not to answer the NOSC's letter and insisted on the exclusion of athletes from international competitions.
233. The Panel therefore finds that the TFM, at the very least, violated Article 9.3(c) ("*NOSC members have the following obligations (...) [t]o contribute to the strengthening and increase in the prestige of NOSC and Olympic Movement*"), (d) ("*[n]ot to carry out actions that, due to their character, may affect the interests and professional reputation of NOSC*"), and (g) NOSC Statute ("*[t]o cooperate for the preparation of the activities organized by NOSC, contributing to the fulfilment of the statutory objectives, enforcement of the decisions of the General Assembly, Executive Board and specialized commissions*").

**k. Proportionality of the suspension**

234. On 9 March 2017, the TFM was suspended by the NOSC EC for an indefinite period of time, until the matter was definitely resolved by the NOSC GA on 19 October 2017, when the TFM was suspended until the next ordinary NOSC GA. This means that, combining the provisional suspension and the one-year suspension imposed by the NOSC GA, the TFM is effectively suspended for a total period of approximately 19 months.
235. The Panel finds that the length of the suspension imposed on the TFM by the NOSC GA is not unreasonable and is proportionate, given i) the illegitimate exclusion of a number of athletes from international competitions; ii) the number of complaints made against the TFM as a whole spanning from mid-2015 until mid-2017, the majority of which were confirmed by this Panel; and iii) the fact that the consequences of the suspension solely affect the management of the TFM, but not directly its members (cf. the NOSC informed the ETU by letter dated 30 October 2017 that "*[t]he NOSC takes great pride in its Moldovan taekwondo program and will itself assume responsibilities as the designated interim body during the TFM's suspension to ensure that Moldovan taekwondo athletes, coaches and officials are able to participate in all WTF promoted and sanctioned championships*").

236. The mere fact that the Panel has some doubts as to whether certain individual Allegations would legitimately justify the imposition of a suspension – such as for instance the TFM’s request to the IOC to “*suspend membership of NOSC with IOC*” (lit. h) – this does not in its view necessarily warrant a reduction of the period of suspension, particularly considering that other, in the Panel’s view more severe, allegations are considered proven.
237. The Panel finds moreover that a shorter period of suspension would provide insufficient incentives to bring about a transformation in the way the TFM manages its affairs so to reach the standards that can be expected of a national sports governing body. The suspension imposed by means of the Appealed Decision will provide the TFM with a reasonable period of time to make the required transformation and is intended to serve as a warranty that the TFM will not fall foul of its membership obligations towards the NOSC again.
238. In any event, the Panel observes that the TFM, only in its rebuttal to the NOSC’s pleadings, claimed for the first time that the suspension imposed by the NOSC GA was disproportionate, but did not bring forward any specific arguments that should lead to a reduction of the period of suspension imposed.
239. Consequently, the Panel concludes that the above mentioned findings warrant the NOSC GA’s decision to suspend the TFM’s membership for a one-year period. The Appealed Decision is therefore confirmed and all other and further motions or prayers for relief are dismissed.

## ON THESE GROUNDS

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

1. The appeal filed by the Taekwondo Federation of the Republic of Moldova on 9 November 2017 against the decision issued on 19 October 2017 by the General Assembly of the National Olympic and Sports Committee of the Republic of Moldova is dismissed.
2. The decision issued on 19 October 2017 by the General Assembly of the National Olympic and Sports Committee of the Republic of Moldova is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.