**Arbitration CAS 2018/A/5545 Adel Fahim El Sayed Sallem v. Yasser Abdel Karim Ali, award of 23 August 2019**

Panel: Mr Jalal El Ahdab (Lebanon), Sole Arbitrator

*Bodybuilding*
*Governance*
*Burden of proof of prior communication of a decision*
*Appeal against a motivated decision*
*Standard of proof for deciding upon circumstantial evidence*
*Date of notification of a decision*
*Waiver of jurisdictional objection*
*Standing to be sued*
*Application of the standard of proof of "comfortable satisfaction" to disciplinary matters*

1. **Prior communication of a decision should not be presumed. The burden of proof of a prior communication lies on the party that alleges the awareness of the decision.**

2. **The complete, motivated decision, including the reasons thereof, needs to be received by a party appealing it.**

3. **CAS panels may rule on circumstantial evidence but must have acquired firm conviction as to the facts established and must not have serious doubts as to such matter.**

4. **Notification of a decision is established when one has the opportunity to obtain knowledge of its contents. When one has had the opportunity to become aware of a decision before its actual notification, the event triggering the limitation period for appeal remains the formal notification.**

5. **A party that did not challenge a deciding body's jurisdiction is deemed to have waived its right to any jurisdictional objection and accepted said body's jurisdiction. This will also prevent a CAS panel from reviewing said body's jurisdiction at appeal level.**

6. **As a general rule of procedural law, the doctrine of *locus standi* provides that a party named as respondent in arbitration must have standing to be sued, which is conditioned by the personal obligation of such party over the disputed right.**

7. **The standard of proof for disciplinary matters regarding a federation/sports-related body that took a disciplinary measure against one of their members is comfortable satisfaction.**

## I. THE PARTIES

1. Mr Adel Fahim El Sayed Sallem (the "Appellant"), an Egyptian citizen, was the President of the Egyptian Bodybuilding Federation (the "EBF") and was a candidate to the elections of the President of the EBF which took place on 23 November 2017.

2. Mr Yasser Abdel Karim Ali (the "Respondent"), an Egyptian citizen, is a member of the EBF and was a candidate to the elections of the President of the EBF which took place on 23 November 2017.

3. The Appellant and the Respondent are hereinafter collectively referred to as the "Parties".

## II. BACKGROUND OF THE DISPUTE

4. Below is a summary of the main relevant facts to which the Parties both agreed, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. 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.

5. On 18 September 2017, the Appellant submitted his candidacy file for the position of the chairman of the Board of the EBF.

6. On 11 October 2017, the Respondent filed an arbitration case against the Appellant before the Egyptian Sporting Settlement & Arbitration Centre (the "Arbitration Centre") on the basis that several criminal judgments were issued against the Appellant, who thus did not meet the requirement of good reputation, seeking the rejection of the Appellant's candidacy.

7. The Respondent requested that the matter be settled by the Arbitration Centre in an urgent session. However, the Arbitration Centre did not accept such request and ruled on the case following the exchange of submissions and a pleading session.

8. The Appellant was the President of the EBF from 1994 until 2017. After his mandate ended, he submitted his candidacy to the elections for the President position that were to be held on 23 November 2017 (the "Elections"). The EBF examined and approved the Appellant's candidacy.

9. On 23 November 2017, the elections took place and the Appellant was elected. His mandate was renewed as the EBF chairman.

10. On 26 November 2017, the Arbitration Centre upheld the Respondent's challenge and declared the annulment of the EBF's decision concerning the acceptance of the Appellant's candidacy file and decided that his name should not be inserted in the list of candidates. The Arbitration Centre's panel also annulled the consequences and effects of the Federation's decision (the "Decision").

11. On 5 December 2017, the Appellant filed an appeal against the Decision with the Cairo Court of Appeal.

12. On 4 April 2018, the Cairo Court of Appeal held that the claim was admissible in its form but rejected it substantively.

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

13. On 24 January 2018, the Appellant filed a statement of appeal (the "Statement of Appeal") against the Respondent before the Court of Arbitration for Sport (the "CAS") lodging an appeal against the Decision. In the Statement of Appeal, the Appellant indicated the Arbitration Centre, the Egyptian Olympic Committee and the EBF as "affected parties" and requested that the dispute be submitted to a sole arbitrator. Together with his Statement of Appeal, the Appellant requested the granting of a provisional measure suspending the enforcement of any decision *"affecting or ceasing Appellant to properly carry out the duties conferred to him in his capacity of President of the* [EBF]*"*.

14. On 29 January 2018, the CAS informed the Appellant that the Code of Sports-related Arbitration (the "Code") does not recognise the status "interested/affected party" and therefore invited the Appellant to confirm, on or before 5 February 2018, that the only parties to the proceedings are Mr Adel Fahim El Sayed Sallem as the Appellant and Mr Yasser Abdel Karim Ali as the Respondent. The CAS further informed the Appellant that the proceedings will be formally initiated after receipt of the Appellant's clarification on the matter and reminded the Appellant that this deadline does not suspend the deadline for the submission of the appeal brief.

15. On 5 February 2018, the CAS acknowledged receipt of the Statement of Appeal and enclosed it to the attention of Respondent and informed the Parties that the arbitration was assigned to the Appeals Arbitration Division, therefore subjecting the proceedings to articles R47 *et seq.* of the Code. Moreover, the CAS invited the Respondent to state his position on the Appellant's request to submit the dispute to a sole arbitrator and on the Appellant's request for provisional measures.

16. On 12 February 2018, the Respondent informed the CAS that he agreed that the proceedings be conducted in English. However, the Respondent objected that the case be submitted to a sole arbitrator and thus requested the appointment of a three-member Panel. Respondent appointed Mr Ismail Selim, Attorney-at-law in Cairo, Egypt.

17. On 13 February 2018, the CAS informed the Parties that the issue of the constitution of the Panel will be decided by the President of the CAS Appeals Arbitration Division or her Deputy. However, the CAS invited Respondent to indicate, on or before 15 February 2018, whether he intended to pay his share of the advance on costs.

18. On the same day, the Appellant confirmed that the proceedings be conducted in English; however, he requested that the exhibits be filed in their original language for cost efficiency

purposes. Moreover, the Appellant informed the CAS that he wished to reduce his compensation claim from CHF 500,000 to CHF 100,000, which would be later confirmed in his appeal brief.

19. On 15 February 2018, the Respondent informed the CAS that he did not intend to pay his share of the advance on costs. The Respondent also insisted that the case be heard by a three-member panel.

20. On 16 February 2018, the CAS acknowledged the Appellant's letter of 13 and of the Respondent's letter of 15 February 2018 and stated the following:

- Concerning the language of the proceedings, the CAS noted the Appellant's request and invited Respondent to indicate, on or before 19 February 2018, whether he agreed to the Appellant's suggestion.

- Concerning the constitution of the panel, the CAS noted the Respondent's position and invited the Appellant to confirm, on or before 19 February 2018, whether he maintains his position that a sole arbitrator be appointed.

21. On 17 February 2018, the Respondent provided, as required by the CAS in its letter of 5 February, his position on the Appellant's request for provisional measures.

22. On 19 February 2018, the Respondent informed the CAS that it objected to the Appellant's request that the exhibits be produced only in their original language and indicated that English translations should be provided. However, the Respondent indicated that he would accept the submission of some exhibits only in their original language provided that they would not affect the panel's understanding of the exhibits produced.

23. On 19 February 2018, the Appellant confirmed his request to appoint a sole arbitrator.

24. On 20 February 2018, the CAS informed the Appellant that, in light of the Respondent's answer on the matter, for case exhibits submitted in Arabic, the Panel may order that translations be filed.

25. On 23 February 2018, the Deputy President of the Appeals Arbitration Division issued the Order on the Request for a Stay, dismissing the Appellant's request.

26. On 27 February 2018, the CAS informed the Parties that the President of Appeals Arbitration Division decided to submit the case to a sole arbitrator and that the name of the sole arbitrator would be communicated to the Parties in due course.

27. On 6 March 2018, the CAS referred to its letter of 5 February 2018 and informed the Parties that the CAS Court Office had still not received the Appellant's appeal brief and thus invited the Appellant to provide an update on the appeal brief on or before 9 March 2018.

28. On 8 March 2018, the Appellant informed the CAS as follows: *"five (5) copies of the Appeal brief shall be delivered by courier to the CAS, within next week. On a side note, please be advised that concerning the exhibits, we have duly referred to them in the Appeal Brief; however we are currently in the process of obtaining a certified translation of the necessary documents and evidences. Therefore, the list of exhibits as specified in the Appeal Brief shall be completely filed the soonest to this email: Procedures@tas-cas.org"*.

29. On 9 March 2018, the Appellant filed the appeal brief (the "Appeal Brief") by email and informed the CAS that the exhibits in Arabic were under translation and would soon be submitted.

30. On 23 March 2018, the Respondent informed the CAS that he had received only the Appeal Brief, but not the exhibits mentioned therein. The Respondent thus requested that the deadline for the submission of his answer be suspended and fixed after the payment of the advance on costs.

31. On 27 March 2018, the CAS acknowledged receipt of the Respondent's letter of 23 March 2018 and informed the Parties of the following:

    - Concerning the time limit for the submission of the answer, the CAS indicated that the prior time limit was set aside and a new time limit would be fixed once the Appellant had fully paid the advance of costs.

    - Concerning the exhibits of the Appeal Brief, the CAS indicated that it still had not received the Appellant's exhibit of the Appeal Brief.

32. On 3 April 2018, the Appellant filed the final list of exhibits. The Appellant informed the CAS that the list included some minor variations and indicated that two additional exhibits were added to the list: the meeting minutes of the EBF voting committee and the meeting minutes of the EBF ordinary general assembly.

33. On 19 April 2018, the CAS acknowledged receipt of the Appellant's payment of the entirety of the advance on costs for the procedure and informed the Parties of the following:

    - Concerning the exhibits of the Appeal Brief, the CAS acknowledged receipt of the Appellant's email of 3 April 2018 as well as the Appellant's exhibits filed by courier and stated that the documents were enclosed by courier to Respondent's attention.

    - Concerning the answer, the CAS invited the Respondent to file it within twenty (20) days upon receipt of the CAS' letter of 19 April 2018.

    - Concerning the appointment of the Sole Arbitrator, the CAS informed the Parties that Mr Jalal El Ahdab, Attorney-at-law in Paris, France, was appointed as sole arbitrator to decide the case (the "Sole Arbitrator"). The CAS thus transmitted to the Parties the "Notice of Formation of a Panel" and the Sole Arbitrator's signed "Acceptance and Statement of Independence" and informed them that the case file was being transferred to the Sole Arbitrator the same day.

34. On 13 May 2018, the Respondent filed his answer (the "Answer").

35. On 17 May 2018, the CAS acknowledged receipt of the Answer and informed the Parties that they shall not be authorized to supplement or amend their respective requests or to produce additional exhibits unless otherwise agreed upon between the Parties or ordered by the Sole Arbitrator.

36. On 20 May 2018, the Appellant informed the CAS that only Annex 2 was enclosed with the Answer whereas the latter indicated that it enclosed two annexes. Moreover, the Appellant requested that a hearing be held.

37. On 22 May 2018, the CAS acknowledged the Appellant's email of 20 May 2018 and invited the Respondent to confirm, by 25 May 2018, if any annex were missing.

38. On 27 May 2018, the Appellant requested the Sole Arbitrator to accept the submission of two additional exhibits which were enclosed with the letter of 27 May 2018: a letter issued by the Egyptian Judo, Aikido and Sumo Federation attesting to the Appellant's good conduct and the Appellant's criminal record. Moreover, the Appellant contested the Respondent's claim that the *"checks lawsuits contain the Appellant's ID number"*.

39. On 29 May 2018, the CAS acknowledged receipt of the Appellant's emails of 20 and 27 May 2018 and indicated the following:

    - Concerning the hearing, the CAS indicated that Respondent did not file his position on the issue and informed the Parties that the Sole Arbitrator decided to hold a hearing.

    - Concerning the additional exhibits filed by the Appellant on 27 May 2018, the CAS invited Respondent to comment on this matter by 5 June 2018.

    - Concerning Respondent's exhibits of the Answer, the CAS referred to its letter of 22 May 2018 and reminded Respondent that it was invited to confirm if any exhibit were missing.

40. On 4 June 2018, the Respondent responded to the following issues:

    - Concerning the additional exhibits filed by the Appellant, the Respondent argued that these exhibits should be rejected by the Sole Arbitrator given that they were not produced within the time limits, similarly to the Appeal Brief and its annexes, which the Respondent claimed were filed two days after the deadline had elapsed.

    - Concerning the exhibits of its Answer, the Respondent indicated that Annex 1, which refers to a copy of the Judo General Assembly's decision against the Appellant, was already produced but nevertheless was attached again to his email.

41. On 7 June 2018, the CAS Court Office noted that the Respondent objects to the admissibility of the documents filed by the Appellant on 27 May 2018 and, in light of this information, the Sole Arbitrator would decide the matter.

42. On 21 June 2018, the Appellant informed the CAS that it did not receive the copy of the Judo General Assembly's decision, neither by email nor by courier.

43. On 22 June 2018, the CAS enclosed again to the Appellant's attention, the Respondent's email of 4 June 2018 along with the attachment.

44. On 28 June 2018, the CAS invited the Appellant to file its comments on Respondent's objections to the admissibility of the appeal by 4 July 2018.

45. On 3 July 2018, the Appellant filed his comments on the admissibility of the Appeal Brief.

46. On 3 September 2018, the CAS Court Office sent the Parties, on behalf of the Sole Arbitrator, the Order of the Procedure.

47. On 10 September 2018, the CAS acknowledged receipt of a copy of the Appellant's signed Order of Procedure.

48. On 11 September 2018, the CAS acknowledged receipt of a copy of the Respondent's signed Order of Procedure.

49. The hearing was held on 24 September 2018 in Lausanne, Switzerland. The following were in attendance: on the Appellant's side, Mr Mohamed El Rafie and Mr Karim Ghorab as Counsels to the Appellant; Mr Nasr El Din Azzam as Counsel to the Respondent; Mr Jalal El Ahdab as Sole Arbitrator and Daniele Boccucci as the Counsel to the CAS Court Office.

50. At the end of the hearing, the Parties pleaded their respective cases, exchanged new documents to be officially filed, and stated that they were satisfied with the manner in which the hearing had been conducted and that their right to be heard had been respected.

51. On 25 September 2018, and as decided at the end of the hearing, the CAS requested the Parties to officially file, within five (5) days upon the receipt of the CAS letter, the documents which were presented at the hearing: 2 ID documents, 2 certificates and one court decision from the Appellant, and one police report sent to the Arbitration Centre from the Respondent.

52. On 27 September 2018, the Appellant sent the photocopy of the Appellant's passport, the photocopy of the Appellant's national ID, the translation of the two Certificates of the cases no. 6240/2000 and 7290/2000 from Arabic to English and the translation of the Court's judgment of the case no. 207/1999 from Arabic to English.

53. On 30 September 2018, the Appellant sent the translation of the Appellant's passport and ID.

54. On 2 October 2018, the CAS Court Office noted that the Respondent failed to provide the English translation of the police report sent to the Arbitration Centre.

55. On 5 December 2018, the Appellant filed further unsolicited submissions and documents.

56. On 6 December 2018, the CAS Court Office invited the Respondent to comment on the admissibility of such documents by 12 December 2018. The Respondent failed to provide such comments.

57. On 17 December 2018, the CAS Court Office advised the Parties that the Sole Arbitrator had decided to declare the Appellant's submissions and documents of 5 December 2018 inadmissible. The Sole Arbitrator states herein that such decision was taken considering the absence of any exceptional circumstance pursuant to Article R56 of the Code and in the absence of any agreement between the Parties.

58. On 10 January 2019, the Appellant filed another unsolicited submission containing new documents.

59. On 15 January 2019, the CAS Court Office invited the Respondent to comment on the admissibility of such documents by 20 January 2019.

60. On 20 January 2019, the Respondent objected to the admissibility of the unsolicited submissions and documents filed by the Appellant on 10 January 2019.

61. On 23 January 2019, the CAS Court Office advised the Parties that the Sole Arbitrator had decided to declare the Appellant's submissions and documents of 10 January 2019 inadmissible. The Sole Arbitrator states herein that such decision was taken considering the absence of any exceptional circumstance pursuant to Article R56 of the Code and in the absence of any agreement between the Parties.

## IV. THE PARTIES' SUBMISSIONS AND PRAYERS FOR RELIEF

62. The following outline of the Parties' positions is for illustrative purposes only and does not necessarily encompass every contention put forward by each of them. Nevertheless, the Sole Arbitrator has carefully considered all written and oral submissions made by the Parties, even if there is no specific reference to those submissions in the following summaries.

### A. The Appellant's submissions and relief sought

63. The Appellant's submissions concern the Decision whereby the Appellant's candidacy to the EBF elections was rejected for lack of good conduct and reputation and relies on procedural grounds and substantive grounds.

64. Preliminarily, the Appellant states that the Parties' agreement to arbitrate stems from article 51(4) of the Egyptian Olympic Committee decree no. 242/2017 conferring jurisdiction to the CAS for the review of decisions from the Dispute Resolution Committee. Appellant further argues that he has abided by the time limit to file an appeal as provided by Article R49 of the Code, given that he was not notified of the Decision and the time limit had therefore not started to run.

65. Concerning the applicable law, the Appellant argues that the Code is applicable for procedural matters whereas Egyptian law should be applicable to the merits, in accordance with Article R58 of the Code.

66. On procedural grounds, the Appellant argues that there existed no arbitration agreement between the Parties to refer the dispute to the Arbitration Centre, as there was no contract in place stipulating such an agreement. Appellant further argues that the EBF bylaws (the "Bylaws") refer to the Arbitration Centre as a second-degree authority which only has jurisdiction for disputes arising out of the practice of the sport, which the Appellant argues is not the case for election disputes.

67. The Appellant argues that the Respondent initiated proceedings before the Arbitration Centre based on irrelevant grounds in the Egyptian Sports Law n°71 of 2017 (the "Sports Law") and that the Arbitration Centre wrongfully upheld its jurisdiction.

68. The Appellant therefore argues that the Decision has been rendered without a valid arbitration agreement and should therefore be deemed null and void.

69. In addition, the Appellant argues that the Respondent has applied prematurely to the Arbitration Centre, which is defined in the Bylaws as an appellate body ruling on challenges of the "Disputes Resolution Committee". By referring the matter directly to the Arbitration Centre, the Respondent has disregarded the pre-arbitral procedures established in the Bylaws, and such failure should cause the arbitrator to lack jurisdiction to rule.

70. Concerning the scope of the arbitration procedures as set out in the Bylaws, the Appellant argues that either said scope encompasses election disputes and the condition precedent that the dispute should first be referred to the "Disputes Resolution Committee" has not been met or the scope does not encompass election disputes and there is no arbitration agreement.

71. Second of all, the Appellant contests the substantive findings and ruling of the Decision. On these grounds, the Appellant argues that the Decision, and the recourse of the Respondent before the Arbitration Centre, fails to recognize that the Decision should have been rendered against the EBF rather than against the Appellant, who is not responsible for the acceptance of his candidacy and for the vote. The Appellant therefore argues that the Decision has been rendered against the wrong person.

72. The Appellant further argues that the Decision has been rendered in violation of the principles of *res judicata* and presumption of innocence inscribed in Article 96 of the Egyptian Constitution of 2014. Indeed, the Appellant submits that the Arbitration Centre has relied on a conviction for misdemeanor currently under review by the Cassation Court and on proceedings in which the Appellant has been acquitted. Concerning the remaining judgments relied upon in the Decision, the Appellant argues that they have been rendered against another person with a similar name.

73. The Appellant contests the substance of the Decision, the rationale of which it considers flawed. The Appellant considers that the argument of the Arbitration Centre whereby the position of

board member requires good behavior and proper conduct in relation to interactions with youths is misplaced as the position of chairman to which he was elected is purely managerial. The Appellant also argues that the reasoning in the Decision was essentially grounded on the judgments produced by the Respondent, without taking into account the arguments presented by the Appellant in the proceedings.

74. Finally, the Appellant submits that the Respondent has not acted in good faith in the underlying dispute, as his challenge was essentially self-interested and he had never cast doubt on the Appellant's conduct and reputation before.

75. The Appellant has submitted the following requests for relief (quoting the Appeal Brief):

> *"a. The annulment of the Award rendered by the Panel of the Egyptian Sport Settlement and Arbitration Centre in case no. 18/2017 dated November 26th, 2017.*
>
> *b. An indemnification with regard to all losses incurred by Appellant since the initiation of arbitration case no. 18/2017 before the Egyptian Center for Sport Settlement and Arbitration, until the issuance of the final award of the present case. Which includes, inter alia, tarnish of personal and professional reputation and moral damages.*
>
> *Accordingly, our suggested quantification is an aggregate amount of CHF 100'000 (One Hundred thousand Swiss francs).*
>
> *c. The Appellant shall have the right to submit further evidences and documents during the arbitration process of this Appeal.*
>
> *d. The Respondent to bear all administrative fees for this arbitration process, as fixed in the CAS arbitration Code, as well as the arbitrators and counsels' fees".*

## B. The Respondent's submissions and relief sought

76. The Respondent first argues that the appeal filed by the Appellant before CAS should be declared inadmissible, as the time limits stipulated by the Code have not been respected: the Respondent argues that the Appellant had been notified immediately of the Decision, dated 26 November 2017, and only filed his Statement of Appeal on 24 January 2018, in violation of Article R49 of the Code.

77. In addition, the Respondent argues that the Appeal Brief should be declared inadmissible as it has not been filed within the time limit provided by Article R51 of the Code. The Respondent further submits that the Appellant has failed to provide the exhibits referred to within the time limit and in support of his Appeal Brief.

78. The Respondent further argues, on the admissibility, that the Appellant failed to pay the advance on costs. Consequently, the Appellant's action should be deemed withdrawn, pursuant to Article R64.2 of the Code.

79. In reply to the arguments raised by the Appellant as to the jurisdiction of the Arbitration Centre, the Respondent submits that:

- The judgments relied upon in the Decision do concern the Appellant, as is evidenced by the fact the judgments show the Appellant's ID number.

- The argument that the proceedings before the Arbitration Centre have been premature and the conditions precedent have not been met by the Respondent has no basis. Indeed, the Respondent argues that the Sports Law allows recourse to the Arbitration Centre for sports disputes and that no internal or preliminary recourse was open. Notably, the Respondent argues that the Arbitration Centre is a second-degree authority only for the players and not for internal federative recourse.

- The Arbitration Centre correctly upheld its jurisdiction, as Article 58 of the Bylaws provides for its direct jurisdiction to settle disputes after the acceptance of the General Assembly. By contrast, Article 59 of the Bylaws provides that the Dispute Resolution Committee has jurisdiction to settle the disputes, as a first-degree authority, for disputes arising from the practice of the game. According to the Respondent, the Dispute Resolution Committee does not have jurisdiction to rule on election disputes. Furthermore, Article 23 of the Sports Law provides for the general jurisdiction of the Arbitration Centre.

80. Finally, the Respondent notes that the Appellant had never contested the Arbitration Centre's jurisdiction in prior proceedings, thereby admitting to its valid jurisdiction.

81. The Respondent has submitted the following requests for relief:

*"**Preliminary request:***

*1) To request the full file of the case from the Egyptian Settlement and Arbitration Sport Center.*

***Final Requests:***

*2) Accept this response against the appeal brief issued by the Appellant.*

*3) To adopt an award declaring that this appeal is inadmissible.*

*4) Adopt an award rejecting the Appeal presented.*

*5) Condemn the Appellant to the payment of the whole CAS administration costs and Panel fees.*

*6) Fix a sum to be paid by the Appellant to the Respondent in order to cover its defence fees and costs in the amount of CHF 5,000".*

## V. JURISDICTION

82. The Appellant relies on article 51(4) of the Egyptian Olympic Committee (EOC) decree no. 242/2017 as conferring jurisdiction to the CAS. The provision provides that *"in the event of ejecting the Egyptian Sport Settlement and Arbitration Centre decision, the only mean to challenge the Dispute Resolution Committee decision is to recourse before the CAS"*.

83. The jurisdiction of the CAS is not challenged by any of the Parties.

84. More specifically, the Sole Arbitrator takes note of the fact that the jurisdiction of the CAS is not contested by the Respondent in its submissions.

85. Based on Article 51(4) of the regulations of the EOC and in view of the Parties' position, the Sole Arbitrator considers that the CAS has jurisdiction to rule upon the present case.

## VI. ADMISSIBILITY OF THE APPEAL

86. The Appellant claims that the Appeal was filed on time as the Decision was never the subject of an official notification. As such, the Appellant contends that no time limit for appeal could lapse *vis-à-vis* the Appellant.

87. The Appellant holds that the time limit never commenced as the Appellant was never notified of the Decision nor was the full Award received by the Appellant.

88. The Appellant refutes the Respondent's claim that the fact that the Decision was announced in the presence of both Parties during the session should be deemed enough for notification. Appellant contends that this argument does not fit with the spirit of arbitration or the arbitration laws of Egypt, the original copy of an award should be provided for the interested parties to be able to file any appeal or challenge.

89. The Respondent has relied on Article R49 of the Code of the CAS which provides: *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against"*.

90. The Respondent has argued that the Statement of Appeal was not filed on time, *i.e.*, 21 days from the receipt of the decision appealed against, and thus should be inadmissible.

91. The Respondent argued that the Decision was duly and actually notified to the Appellant. The Decision was announced in the presence of all the Parties during the session on 26 November 2017 which should be deemed enough for official notification. According to the Respondent, the Appellant filed his Statement of Appeal on 24 January 2018 after the 21-day time limit had elapsed, if one takes into account that the period had started running from that date.

92. The Respondent has argued in addition that the Appellant commented on the Decision through media outlets and issued a press release, meaning that he was aware of and had been notified of the Decision.

93. The Respondent has contended that the Appellant has filed appeal proceedings in front of the Cairo Court of Appeal on 5 December 2017, which would prove that he was indeed notified of the Decision before this date. Therefore, the appeal submitted to CAS on 24 January 2018 should be declared inadmissible.

94. Pursuant to Article R49 of the Code, there is no doubt that an appeal before the CAS Court should be filed within 21 days upon the receipt of the appealed decision in the absence of a time limit set in the statutes or regulations of the sports-related body that has rendered the decision. No such regulation was evidenced for the present case and thus Article R49 should apply in this respect.

95. In order to establish whether the time limit stipulated in the above-mentioned article had indeed elapsed before the present appeal was filed, the Sole Arbitrator must first determine the starting point, *i.e.*, *dies a quo,* of the time limit for appeal.

96. According to Article R49 of the Code, the time limit starts running upon the receipt of the appealed decision, which is the Decision of 26 November 2017.

97. The Appellant has stated that he was never officially notified of the Decision. According to CAS case law, prior communication of the Decision should not be presumed and the burden of proof lies on the party that alleges the awareness of the Decision (see, *e.g.,* CAS 2007/A/1413, para. 60; CAS 2007/A/1444 & CAS 2008/A/1465, para. 86). Therefore, the Respondent bears the burden of proof to establish that the Appellant had indeed received the Decision.

98. While CAS case law states that the time limit set at Article R49 of the Code starts running when a party has received the decision, however the means (CAS 2016/A/4814), it also requires that the complete, motivated decision, including the reasons of said decision, be received by the party appealing it (see, *e.g.,* CAS 2002/A/403, para. 85).

99. To that purpose, the Respondent argues that the Decision was announced in the presence of all the Parties during the session on 26 November 2017. This, however, cannot be deemed sufficient proof that the Appellant has been properly notified of the fully motivated decision of the Arbitration Centre.

100. In addition, the Respondent contends that the Appellant has submitted with its Answer the decision of the Cairo Court of Appeal dated 4 April 2018, which has rejected the request for annulment of the Decision as filed by the Appellant on 5 December 2017, arguing that this is further proof that the Appellant has indeed received the full text of the Decision. Again, the Sole Arbitrator does not believe that this constitutes sufficient proof that the Appellant had indeed received the entire text of the motivated Decision, as the Egyptian arbitration law (Law n°27 of 1994) does not specify that the award to be annulled be produced. In any case, the decision of the Cairo Court of Appeal does not contain the necessary information to establish

whether the full, motivated Decision was notified to the Appellant during the course of the annulment proceedings or before.

101. The Sole Arbitrator recognizes that, according to CAS case law, it may rule on circumstantial evidence, but must have acquired firm conviction as to the facts established and must not have serious doubts as to that matter (see, *e.g.,* CAS 2008/A/1470). In the present case, the Sole Arbitrator does not believe that this standard of proof has been met by the Respondent.

102. This is why the starting point of the time limit should be characterized according to the formal requirements established by CAS. According to established CAS case law, notification is established when a person has the opportunity to obtain knowledge on the content of the decision (CAS 2006/A/1153, para. 40; CAS 2004/A/574, para. 60). The Respondent did not submit any evidence or convincing materials to prove any type of official communication, be it by fax, electronic mail or official notification of the Decision, together with its grounds, that could constitute a proper notification, as well as the point in time triggering the start of the limitation period to file an appeal, as per stringent CAS standards. Thus, it is the Sole Arbitrator's view that the sole decision of the Court of Appeal of Cairo confirming the Decision does not provide sufficient grounds to meet the formal threshold to constitute a valid, formal and efficient notification of the Decision to the Appellant.

103. Therefore, absent proof that the Appellant has received the full, motivated Decision, the starting point of the limitation period cannot be characterized based on the Appellant's knowledge of the ruling of the Arbitration Centre, but when he formally received it. According to CAS jurisprudence, when the person has had the opportunity to become aware of the decision before its actual notification, the event that triggers the limitation period for appeal remains the formal notification (see CAS 2007/A/1413, para. 26). Therefore, the press release that was allegedly published by the Appellant concerning the Decision, in which, in any case, is not evidenced by the Respondent, only proves the knowledge of the Appellant, but does not prove that the Appellant had indeed received proper notification of the motivated Decision.

104. Upon the evidence submitted to the Sole Arbitrator, the latter does not possess enough information to establish the starting point of the limitation period to submit an appeal before the CAS. Thus, even if this approach may be deemed too formal, form should be seen in general as a protective rule, and this is why the Sole Arbitrator adopts it in the present case. Hence, he rules that it is not established that the appeal submitted by the Appellant on 24 January 2018 is time-barred. It should, therefore, be declared admissible.

## VII. ADMISSIBILITY OF THE APPEAL BRIEF AND OF THE RELEVANT EXHIBITS

105. The Appellant has refuted the Respondent's arguments on the admissibility of the Appeal Brief through his additional submissions filed on 3 July 2018.

106. The Appellant has stated that, pursuant to Article R51 of the Code, the Appeal Brief should be filed within ten (10) days following the expiry of the time limit for the appeal. As the Appellant

was never notified of the Decision, he has contended that the 10-day period had never actually commenced. Thus, he was not liable to submit the Appeal Brief within a time limit.

107. Based on the same argument that the time limit was never activated against the Appellant for his submission of the Appeal Brief, the Appellant contends that the exhibits filed later than the Appeal Brief were not time-barred. However, the Appellant has reminded the Sole Arbitrator that he had informed the CAS Court Office of the reason for the later submission of the exhibits in his email to the CAS Court Office dated 8 March 2018 and that neither the CAS Court Office nor the Respondent has objected to this communication. In addition, the Appellant contends that in an email addressed to the Parties on 27 March 2018, the CAS Court Office informed them that it had still not received Appellant's exhibits, but did not mention any legal consequences or penalties in this respect.

108. The Respondent has contested the admissibility of the Appeal Brief filed on 9 March 2018 as it was filed after the 10-day period foreseen by Article R51 of the Code.

109. The Respondent contests the admissibility of the Exhibits that were not filed with the Appeal Brief pursuant to Article R51 of the Code, but instead filed on 3 April 2018. The Respondent requests that the Panel disregards these exhibits.

110. The Respondent objects to the admissibility of the documents filed by the Appellant on 27 May 2018.

111. The Sole Arbitrator notes that Article R51 of the Code provides the following:

> *"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which he intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit".*

112. Pursuant to the logic followed on the admissibility of the Statement of Appeal (*see supra*, n°94 *et seq.*), the Sole Arbitrator decides that the Appeal Brief and the relevant exhibits are admissible in the absence of an established starting date of the limitation period for appeal.

## VIII. ADMISSIBILITY OF THE LAST EXHIBITS FILED BY THE APPELLANT ON 10 JANUARY 2019

113. After having reviewed the Appellant's email dated 10 January 2019, and the document and translations attached, as well as Respondent's reply letter of 20 January, the Sole Arbitrator hereby confirms, as notified by the CAS to the Parties by letter dated 23 January 2019, that he deemed the last exhibits filed inadmissible.

114. The document is a certificate dated 9 January 2019 (referring to minutes n039) and issued by the President of the Criminal Department of Al-Nozha Public Prosecution showing, *inter alia*, that the status of report in the matter of the administrative complaint filed by the petitioner Yasser Abdel Karim Ali against Adel Fahim El Sayed Sallem was *"administratively reserved on 2/1/2019"*.

115. While the Appellant has not explained whatsoever how the document filed could support any of the points, facts, arguments or reliefs he made, the Sole Arbitrator finds it does not relate and cannot be encompassed within the Parties' scope of debate and, as per article R56 of the Code, no exceptional circumstances are raised that would justify introducing new exhibits at this stage of the proceedings.

116. Additionally, the Sole Arbitrator notes that Respondent's answer did not seem to address the question at stake, but rather touched upon another subject that is probably not relevant here.

## IX. APPLICABLE LAW

117. The Appellant has contended that the governing laws of this arbitral proceeding shall be the Code.

118. The Appellant has further contended that Egyptian law should be applicable to the merits of the present case pursuant to Article R58 of the Code.

119. The Respondent had not taken any position on the applicable law to the procedure or to the merits of the present case.

120. Article R58 of the Code states:

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

121. The Sole Arbitrator notes that the regulations applicable to the dispute should be the Bylaws. However, as the Bylaws, being more a factual rather than a legal element, have not been produced by any of the Parties, the Sole Arbitrator cannot adequately refer to them in ruling on the dispute.

122. The Sole Arbitration further notes that the Parties have not determined their choice as to the applicable rules of law. In this situation, it is within the authority of the Sole Arbitrator to decide on that issue. The Sole Arbitrator notes that the Decision is rendered by the Arbitration Centre and concerns EBF, both of which are domiciled in Egypt. It is therefore within the Parties' legitimate expectations that legal standards, principles and rules should be construed according

to the legal environment in which the Parties are based and where the challenged decisions have been issued. Thus, the applicable law on the merits shall be Egyptian law.

123. Not having found any legal grounds that could justify the application of other rules of law as being more appropriate to the case at hand, the Sole Arbitrator has concluded that the applicable law to the merits shall primarily be Egyptian law. This does not mean that the Sports Club Guidelines issued by the Board of Directors of the EOC as referred to could not also be applied by the Sole Arbitrator, if they could supplement Egyptian law or guide the Sole Arbitrator in the way he is to apply basic principles in the present case.

## X. MERITS OF THE CASE

124. In light of the Parties' submissions, the Panel identified that three issues are submitted by the Parties and shall be resolved by the Panel:

A. Is the Decision issued by a competent authority?

B. Is the Decision issued against the wrong person?

C. Is Respondent entitled to obtain the Arbitration Case from the Arbitration Centre?

D. Should the Decision of the Arbitration Centre be annulled based on the merits?

E. Should the Appellant be compensated for his harm?

### A. Is the Decision issued by a competent authority?

125. The Appellant argues that the Decision is null and void as the Arbitration Centre lacks jurisdiction. The Appellant claims that the Arbitration Centre should serve as a second-degree jurisdiction to receive appeals to the decisions issued by the *"federation's Dispute Resolution Committee"* according to Article 58 of the Bylaws (neither this provision, nor the Bylaws were produced as an Exhibit, but only referred to in the Parties' submission). Thus, the Appellant considers the Respondent has filed a premature recourse to the Arbitration Centre.

126. The Appellant contends that there was no arbitration agreement between the Parties designating the Arbitration Centre.

127. In addition, the Appellant contends that the proceedings before the Arbitration Centre did not fall within the material scope covered in Article 58 of the Bylaws. While the Bylaws are not produced by either Party as an exhibit, the Appellant quotes the Article as *"Arbitration shall arise out of the practice of sport"*. Hence, the arbitration case involving the nomination for Presidency of the Federation does not fall within the scope of this article.

128. Article 66 of the Sports Law relied upon by the Respondent to file an action before the Arbitration Centre was not a clause attributing jurisdiction, but instead is functional provision

describing the means by which the Sports Arbitration Centre shall have the right to rule when it is the competent jurisdiction.

129. The Appellant contends that Article 58 of the Bylaws foresees multi-tiered dispute resolution whereby the Parties do not have to resort to litigation or arbitration. The Arbitrator summoned in this case should have declined competence. A Swiss Supreme Court decision has been produced by the Appellant in support of his claim.

130. The Respondent contends that the Arbitration Centre is competent and the Award rendered is valid.

131. The Respondent claims that the Appellant did not contest the jurisdiction of the Arbitration Centre during the hearing and had thus accepted its jurisdiction.

132. On the question regarding whether the Arbitration Centre was meant to serve as a second-degree jurisdiction, the Respondent notes that the Arbitration Centre is mentioned as a second-degree authority in Article 58 only in relation to the players. No internal recourse could have been made within the federation.

133. The argument for premature recourse was not made during the proceedings before the Arbitration Centre.

134. The Respondent argues that according to Article 23 of the Sports Law 71/2017, the right to resort to Sport Settlement and Arbitration Centre for the annulment of any decision which may contradict the Sports Law is confirmed. The Respondent argues that according to Article 66 of Sports Law, any sports dispute may be presented before the Arbitration Centre.

135. Concerning Article 58 of the Bylaws raised by the Appellant as limiting the material scope of the disputes that could be filed before the Arbitration Centre, the Respondent argues that that provision of the Bylaws only concerns disputes regarding the practice of sports and does not apply to the case at hand.

136. The Sole Arbitrator notes that the Appellant has not contested the argument made by the Respondent that no jurisdictional objections were raised before the Arbitration Centre. In addition, no such question was dealt with in the Decision.

137. In any case, the Sole Arbitrator considers the discussion regarding the Arbitration Centre's jurisdiction or lack thereof to be irrelevant to the solution for the present case.

138. Pursuant to relevant CAS case law, *"[a] party that failed to raise a challenge before the FIFA Dispute Resolution Chamber (DRC) with respect to its jurisdiction is deemed to have waived any jurisdictional objection further to established CAS and Swiss Federal Court case law. Indeed, the lack of any plea of lack of jurisdiction before the DRC would likely have been sufficient to confer jurisdiction on the DRC absent a specific agreement altogether"* (see, *e.g.*, CAS 2015/A/4280; see also CAS 2011/A/2375 and SFC 4A_386/2010, 3 January 2011, at 5.2).

139. Thus, the absence of any jurisdictional challenges within the previous procedural frame of the Arbitration Centre and prior to the introduction of the present CAS proceedings is sufficient to conclude that the Appellant waived his right to a jurisdictional objection (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, Third Edition, para 644). Indeed, it is generally admitted that failure to raise a jurisdictional objection before the previous instance constitutes acceptance of the jurisdiction of that instance. Thus, the Sole Arbitrator cannot review the jurisdiction of the Arbitration Centre, as the Appellant who raises the jurisdictional objection failed to do so before the Arbitration Centre.

**B. Is the Decision issued against the wrong person?**

140. The Appellant has contended that he was not the correct Party against whom to file an arbitration case on the basis of the decision of the EBF. The Appellant cannot be held responsible for the decision to approve his nomination for the elections taken by the EBF and its acceptance by the EOC. The Appellant is the wrong opposing party in the arbitration before the Arbitration Centre; the Appellant could only have constituted a related party and should not have been the direct opponent in the Decision. According to the Appellant, the Decision has been rendered against the wrong person and thus should be null and void.

141. The Respondent has not addressed this question specifically. He has, however, argued that the jurisdictional objections were not raised before the Arbitration Centre and thus should be disregarded by the Sole Arbitrator.

142. As a general rule of procedural law, the doctrine of *locus standi* provides that a party named as respondent in arbitration must have standing to be sued, which is conditioned by the personal obligation of the person over the "disputed right" at stake (see, *e.g.*, CAS 2006/A/1206).

143. In the present matter, the Appellant contends that *"he is not responsible for the decision taken by the* [EBF] *and its execution by the EOC"* and therefore the Decision is rendered against the wrong person by the Arbitration Centre.

144. However, standing to be sued must not be examined only with regard to the appellate body and the decision it rendered. Pursuant to established CAS case law, the Sole Arbitrator should reason so as to answer whether the Appellant is sufficiently affected by that appealed decision (see, *e.g.*, CAS 2017/A/5227, para. 35).

145. In the present case, the Decision is rendered upon an appeal filed against a decision taken by the EBF that concerns the approval of the nomination of the Appellant as one of the candidates to the Elections. The Sole Arbitrator deems that the Appellant is directly affected by the decision to be nominated, or not to be nominated, as a candidate to Elections. While it was foreseeable that the EBF and/or EOC could have been party to the arbitration before the Arbitration Centre, this does not eliminate the possibility of another directly affected party to be named as the opposing party, *i.e.*, "the candidate", the Appellant.

146. As a result, the Sole Arbitrator considers that the Appellant's ground to contest the Decision with respect to his standing to be sued must be dismissed.

### C. Is the Respondent entitled to obtain the arbitration case from the Arbitration Centre?

147. While the Respondent has included within his preliminary prayers for relief a request that *"the full file case from the Arbitration Centre"* be provided to him, the Appellant has not commented on, rebutted or agreed on that particular claim.

148. The Sole Arbitrator is faced with a claim that the Respondent has neither legally nor factually substantiated. The Respondent has not even explained his aims in seeking this relief. In addition, no argument was made, repeated or substantiated when the Respondent had the opportunity to do as the hearing. The Sole Arbitrator, therefore, understands that an order to produce the file is no longer necessary.

149. In addition, while the Sole Arbitrator recognizes that Article R57 of the Code permits it to *"request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal"*, the Sole Arbitrator believes that the relief requested, which relates to specific performance, remains an exceptional remedy that has not been justified by the Respondent.

150. As such, the Sole Arbitrator must dismiss this claim.

### D. Should the Decision of the Arbitration Centre be annulled based on the merits?

151. The Appellant has argued that the Decision violated the presumption of innocence, a constitutional principle, as it relied on a judgement still in review by the Egyptian Court of Cassation, Award on Misdemeanor no. 16505 of the year 2013. The Appellant claims, in addition, that misdemeanour judgment no. 13526 of the year 2013 relied upon by the Arbitration Centre is a decision by which the Appellant had been acquitted. The decision of the Egyptian Ministry of Youth and Sport is produced by the Appellant in Exhibit A8.

152. The Appellant has further contended that the Decision violates the principle of *res judicata* as the Arbitration Centre relied upon decisions (misdemeanour judgment no. 207 of the year 1999, misdemeanour judgment no. 6239 of the year 2000, misdemeanour judgment no. 6240 of the year 2000 and misdemeanour judgement no. 7290 of the year 2000) that were rendered against somebody else with a similar name.

153. The Appellant has also put forward that the Decision lacks rational grounds. He argues that the position of Board Member, as a managerial position, does not include contact with sports players which would require being a good role model for the young sports players of the federation.

154. The Appellant has finally stressed that the Appellant did not face any complaints or lawsuits related to his conduct or reputation before. To the contrary, *"he has reached successful positions and appreciation from many people"*. The Respondent lacks good faith in his action because he has known and worked with the Appellant for over fifteen years and had only filed an arbitration case against the Appellant twelve days before the elections. The Appellant has thus argued that the Respondent has pursued this action not because the failure to meet the good conduct and

reputation criteria would cause him any harm or prejudice, but because the Respondent wished to benefit from the absence of a strong nominee such as the Appellant.

155. The Respondent has argued that the decisions relied upon by the Arbitration Centre were accompanied by official letters sent directly from the relevant Egyptian Authorities.

156. The Respondent has contended that the judgements that were referenced during the hearing carried the Appellant's ID number which is unique to each citizen.

157. The Respondent has more fundamentally explained that the Decision was not groundless as the Appellant was involved in several criminal cases and does not meet the requirement of good reputation. The Respondent adds that even if he were acquitted from an affair, his mere involvement means that the Appellant does not fulfil the condition of having a good reputation.

158. The Respondent argues that the Appellant, before coming to the EBF, was dismissed from the General Assembly of the Judo Association in 1994. According to the Respondent, the Ministry of Youth has not authorized the EBF to officially travel to any championships because the players were required to take a doping test. The Appellant did not address the issue, and the players of the Club only participated in private tournaments.

159. Pursuant to Article R57 of the Code, *"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*. Thus the Sole Arbitrator has *de novo* jurisdiction on the present case.

160. As the present case involves a disciplinary matter, it is a well-established CAS principle that the standard of proof for disciplinary matters regarding the federation or a sports-related body that took a disciplinary measure against one of their members is "comfortable satisfaction" (see, *e.g.*, CAS 2016/A/4716 para. 1; CAS 2010/A/2172, para. 53; CAS 2009/A/1920, para. 85). This standard is considered to be higher than "on the balance of probabilities" and lower than "beyond reasonable doubt".

161. Pursuant to Article 28 of the Bylaws: *"Candidates shall have good conduct and reputation in accordance with the Law"* in order to be nominated as a candidate for the elections. As it is the Respondent who alleges the lack of good conduct and reputation of the Appellant, the burden of proof falls on the Respondent to establish his claim.

162. The concept of *"good conduct and reputation"* is not defined at law and the Bylaws do not appear, as per the Parties' submissions, to provide for a definition of the concept. This gives the Sole Arbitrator a margin of appreciation that necessitates considering all the relevant factual elements as well as the legal standpoint of the applicable Egyptian law.

163. Indeed, a criminal record could be indicative of a lack of good conduct and reputation. The Arbitration Centre reasoned its decision on six criminal affairs which are as follows: misdemeanour judgment no. 207 of the year 1999, misdemeanour judgment no. 6239 of the year 2000, misdemeanour judgment no. 6240 of the year 2000, misdemeanour judgment no. 7290 of the year 2000, misdemeanour judgment no. 16505 of the year 2013 and misdemeanour

no. 13526 of the year 2013. The Arbitration Centre concluded its remarks adding that *"it is not necessary for purposes of pointing out the lack of good reputation, to rely on the issuance of definitive judgements. Since the good reputation condition is a distinct condition apart from the condition of the non-issuance of definitive judgement for a crime, misdemeanour or imprisonment"*. The Decision also stressed that, even if such affairs are terminated by prescription or settlement, they should suffice to prevent the Appellant from holding a position in public affairs. The Decision does not extend its reasoning for further analysis of the facts submitted. If the absence of criminal judgements does not suffice to establish good reputation, the Centre does not reason further to establish what elements could indicate the fulfilment of the principle of good conduct and reputation.

164. The Respondent argues that there exist criminal judgments against the Appellant and thus he would not have the good reputation required by the Bylaws. However, the Respondent does not produce the decisions on which the Arbitration Centre relied upon in order to evidence such claims. The Respondent argues that the decisions relied upon by the Arbitration Centre were accompanied by official letters sent directly from the Egyptian Authorities, which again were not evidenced by the Appellant.

165. The Appellant rebuts the allegations of bounced checks upon which the reasoning of the Decision is partially based on (misdemeanour judgment no. 207 of the year 1999, misdemeanour judgment no. 6239 of the year 2000, misdemeanour judgment no. 6240 of the year 2000 and misdemeanour judgment no. 7290 of the year 2000) arguing that these decisions were rendered against somebody else. According to the Appellant, these decisions were produced by the Appellant, and the family name of the person mentioned in the judgements is *"Abdo"*. Although the Sole Arbitrator has not found an ID number that appears on these decisions, the fact that the name that appears on these four decisions is not identical to the Appellant's full name, evidenced by his identity papers submitted to the Panel, creates sufficient doubt for the Sole Arbitrator to shift the burden of proof again onto the Respondent.

166. At this stage, the Respondent has had to prove that these decisions specifically target the Appellant. However, the Respondent has failed to provide any further evidence to support his argument, despite the additional time that he was granted by the Sole Arbitrator for further submission.

167. The Appellant has argued that the misdemeanour judgment no. 16505 of the year 2013 is not a final and binding judgment as it is still under review by the Court of Cassation of Egypt; however, he does not produce the evidence to support his argument. He has further claimed that he was acquitted from the misdemeanour judgment no. 13526 of the year 2013 and provides, in Exhibit A8, certificates issued by the Ministry of Sports Affairs that seem to have revoked the decision of his cessation of sports activities in 2013.

168. Based on the above, and since that the burden of proof is on the party alleging that the other is ill-suited or not entitled to be a candidate, which remains a serious accusation, it falls on the Respondent to prove that these decisions do indeed implicate the Appellant and are binding such that they constitute a clear and final criminal record. The Sole Arbitrator, however, considers there to be sufficient doubts surrounding these criminal decisions – and their finality – which prevent him from drawing any useful, conclusive and final determination. Here, even

if the probative standard is not necessarily amounting to one "beyond any reasonable doubt", the Sole Arbitrator must at least have "comfortable satisfaction" (see, *e.g.*, CAS 2016/A/4501) in that respect, which is not the case here.

169. The Respondent has failed to prove that the Appellant is unfit, beyond claiming the *purported* existence of a criminal record. Yet, this is not the end of the query, as the Appellant may still be found to not meet the statutory requirements to participate in elections based on other parameters, regardless of the absence of a criminal record.

170. Indeed, pursuant to general principles of law, including the applicable substantive (Egyptian) law, the Sole Arbitrator must verify, based on actual and proven facts, that, beyond any official criminal record, the accused person is not trustworthy and is incompetent to fulfil an official position that require its holder to have good morals and possess integrity, honesty, honour and good manners. Therefore, the Sole Arbitrator shall take into account all the factual elements in order to establish whether the Appellant fulfils the condition of good conduct and reputation.

171. Here, besides non-final court judgments from which the Sole Arbitrator cannot draw any final conclusion, the Respondent has alleged that the Appellant was dismissed from the Judo Association in 1994 due to an insult to Egypt, to sports and to the federation. However, the Respondent does not submit any evidence establishing the facts invoked.

172. The Respondent has further contended that the Ministry of Youth and Sports has not authorized the EBF to officially participate in any world championship because of missed doping tests. Once again, even setting aside the fact that the argument is not entirely clear as to how exactly it may, in fact, impact the Appellant's reputation, the Respondent does not substantiate this allegation.

173. On the other hand, the Appellant has attempted to evidence his reputation through statements made by different individuals and that fact that he held a position of chairman within the relevant sport associations since 1994. It does not seem plausible that the allegations directed by the Respondent towards the Appellant have recently came to his knowledge since the Respondent has worked with the Appellant for a certain amount of time, such that what is being reproached to the Appellant cannot be deemed new circumstances on which to rely upon. This is why the Sole Arbitrator concludes that, even if the Respondent's allegations were substantiated by evidence, they could not constitute new grounds for the Appellant to be taken off the list of candidates.

174. Based on the above, the Sole Arbitrator decides that the Respondent did not meet the burden of proof, to his comfortable satisfaction, to prove the lack of good conduct and reputation of the Appellant. Therefore, the Decision does not conform to the Bylaws and must be annulled.

### E. Should the Appellant be compensated for his harm?

175. The Appellant seeks compensation for the harm he incurred since the initiation of the dispute before the Arbitration Centre until the issuance of the present award. This harm is constituted

of, *inter alia*, the tarnishing of his personal and professional reputation and moral harm. The Appellant requests compensation in an amount of CHF 100,000.

176. The Sole Arbitrator notes that the Appellant's request for compensation is not supported by any documentary evidence in its quantum or in the harm allegedly suffered. It does not seem, in the present instance, that the harm alleged by the Appellant is justified, as the Respondent has not engaged in any illegal or illegitimate action specifically aimed at hurting the Appellant's reputation, but has simply exercised his right to challenge the Appellant's candidacy and has acted and initiated judicial actions to the extent of what the law allows him to do.

177. As a result, the Sole Arbitrator dismisses the Appellant's request for compensation.

## ON THESE GROUNDS

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

1. The appeal filed by Mr Adel Fahim El Sayed Sallem on 24 January 2018 against the decision of the Egyptian Sporting Settlement & Arbitration Centre of 26 November 2017 is admissible.

2. The appeal filed by Mr Adel Fahim El Sayed Sallem on 24 January 2018 against the decision of the Egyptian Sporting Settlement & Arbitration Centre of 26 November 2017 is partially upheld.

3. The jurisdiction of the Egyptian Sporting Settlement & Arbitration Centre to render its decision of 26 November 2017 is upheld.

4. The decision of the Egyptian Sporting Settlement & Arbitration Centre of 26 November 2017 is set aside.

5. The claim for damages filed by Mr Adel Fahim El Sayem Sallem is dismissed.

6. (…).

7. (…).

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