



**Arbitration CAS 2018/A/5745 Pan-American Team Handball Federation (PATHF) v. International Handball Federation (IHF), award of 26 October 2018 (operative part of 13 September 2018)**

Panel: Prof. Martin Schimke (Germany), President; Mr Diego Ferrari (Argentina); Mr Pierre Muller (Switzerland)

*Handball*

*Governance*

*Discretion of a CAS panel to exclude evidence under Article R57.3 CAS Code*

*“Proper notice” in the meaning of Article 67(3) Swiss Civil Code*

*Consequences of defect convening notice/agenda*

*Prerequisites for voting on amended agenda item/motion*

*New motions under Article 12.3.9 IHF Statutes*

*Delegation by general assembly of its competences*

*Nullity of resolutions*

*No reallocation by CAS of costs of previous instances*

1. It is clear from the language of Article R57.3 CAS Code that while a CAS panel may exclude evidence presented by the parties which had been available to them or could reasonably have been discovered by them before the challenged decision was rendered, it is not bound to do so. The practice of CAS is restrictive, *i.e.* exclusion of evidence should be the exception rather than the rule, and should generally be applied only in exceptional circumstances of abusive or inappropriate conduct by the parties submitting new evidence. Provided the other party(ies) is/are granted the opportunity to address the new evidence, such an approach is in keeping with CAS’ *de novo* power of review under Article R57 CAS Code, and with the parties’ right to be heard.
2. Article 67(3) Swiss Civil Code (SCC), according to which *“Resolutions may be taken on matters for which proper notice has not been given only where this is expressly permitted by the articles of association”*, does not only comprise formal aspects but also material aspects. As a general rule, it is necessary that the items on which the general assembly is requested to rule are placed on the agenda and duly announced. Whether or not this requirement is fulfilled is decided in each case/situation, based on the specific circumstances: an item is duly placed on the agenda when, on the basis of the agenda and the statutes, the members know on which points it will be necessary to deliberate and, if necessary, to take a decision.
3. In case a convening notice does not include a full agenda, or where the description of a subject on the agenda is imprecise, unclear or misleading, there is a defect that could lead to the annulment of the underlying decisions. Whether or not the decision should be set aside depends, however, on the assessment of the concept of defect and the

gravity of the violation. It is therefore essential to determine whether or not the alleged defect could have an influence on the decision.

4. In case an initial motion – duly included as item on the general assembly agenda – is later on changed into a fundamentally different motion finally presented and voted on during the general assembly, proper notice of the amended motion *i.e.* of the content of the amended motion has to be officially communicated to the delegates asked to vote on the motion prior to the vote, allowing them to prepare themselves to deliberate and vote on the amended motion, and potentially discuss the motion within their respective National Federations.
5. While under Article 12.3.9 IHF Statutes it is possible to submit new motions even during the IHF Congress, such motions may not concern amendments to the IHF Statutes. A motion to delegate the IHF Congress’ authority to *“discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF Statutes changes”* to the IHF Council clearly concerns a potential amendment to the IHF Statutes.
6. Some of the competences of a general assembly can be delegated to other organs, while others cannot. In order to delegate competences, a statutory basis is required, without which the general assembly would ultimately have to decide on a modification of the statutes adopted by another body.
7. A resolution of the general assembly is null and void if it is afflicted with a severe deficiency. Put differently, nullity is given in cases where a resolution suffers from manifest defects, whether those be procedural or substantive. Whether a decision is challengeable or null and void must, in each case, be dealt with based on the specific circumstances of each individual case. If it cannot be determined with sufficient clarity whether a decision is challengeable or null and void, it is commonly acknowledged that it is challengeable for reasons of legal certainty.
8. It is not for the CAS to reallocate the costs of the proceedings before the previous instances.

## I. PARTIES

1. The Pan-American Team Handball Federation (the “Appellant” or the “PATHF”) is the continental confederation responsible for governing the sport of handball in Pan-America and is affiliated to the International Handball Federation. The PATHF has its registered office in Buenos Aires, Argentina.

2. The International Handball Federation (the “Respondent” or the “IHF”) is the international sports federation responsible for governing the sport of handball worldwide. The IHF has its registered office in Basel, Switzerland.

## II. INTRODUCTION

3. The present proceedings relate to the legality of a motion (the “Motion”) presented by the IHF President to divide the PATHF into two confederations, namely a “*North America and the Caribbean Handball Confederation*” and a “*South and Central America Handball Confederation*”, the alleged amendment of this Motion shortly before the IHF Congress, and the decision issued by the IHF Congress ensuing from this allegedly amended motion.

## III. FACTUAL BACKGROUND<sup>1</sup>

4. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present appeals 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 analysis.
5. On 9 June 2017, in preparation for the IHF Congress to be held in Antalya, Turkey, on 11 November 2017, the IHF President submitted his Motion to divide the PATHF into two confederations to the IHF Head Office.

### A. The Tbilisi Council Meeting

6. On 18 July 2017, the IHF invited the PATHF to the IHF Council Meeting to be held on 18 August 2017 in Tbilisi, Georgia (the “Tbilisi Council Meeting”). Whereas the PATHF maintains that the agenda included motions from the IHF Executive Committee, the Norwegian Handball Federation, and the Handball Federation of Montenegro, but notably no Motion from the IHF President in relation to splitting the PATHF, the IHF maintains that the agenda accessible through the Dropbox link indicated, under para. 4.3.2, that a “*Motion from IHF President*” was to be discussed. The Panel concludes that there were two different agendas distributed while only one of them contained a “*Motion from IHF President*”. Since the validity of the latter agenda was not disputed, the Panel is satisfied to accept that a “*Motion from the IHF President*” was duly announced.

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<sup>1</sup> The factual background is set up in chronological order. The events described therefore do not always coincide with the heading, the Panel nevertheless deemed it useful to add such headings for ease of reference as they roughly reflect the factual circumstances described thereunder.

7. On 12 August 2017, the IHF sent additional documents to the PATHF in relation to the Tbilisi Council Meeting, but according to the PATHF no reference was made to a Motion from the IHF President in relation to splitting the PATHF.
8. On 18 August 2017, during the Tbilisi Council Meeting, the Motion to divide the PATHF into two confederations was presented by the IHF President. As reflected in the Tbilisi Council Meeting Minutes, “[w]ith four abstentions the Council was in favour of the motion submitted by the IHF President. The motion shall be submitted to the XXXVI Ordinary IHF Congress to be held in Antalya, TUR on 11/12 November 2017”.
9. After the Tbilisi Council Meeting, the representatives of the PATHF on the IHF Council requested to discuss the Motion with the IHF President, but the PATHF President did not attend such meeting.
10. On 18 September 2017, the Tbilisi Council Meeting Minutes were sent to all IHF Member Federations and Confederations, setting out the following justification for the Motion:

- “ *An increase in the handball activity in all areas – resulting from financial advantages due to shorter distances and reduced travel costs; the remaining money will increase the handball activity in all areas.*
- *Especially the North American market is decisive for the development of handball worldwide and for the position of handball worldwide. North America is the key market for receiving status and income related to the Olympic Games. A development in North America will strengthen the position of handball in the IOC and at the Olympic Games and will guarantee that handball stays on the Olympic Programme and that Beach Handball can be added as a discipline.*
- *Organisational advantages such as shorter distances. Due to the shorter travel distances, more tournaments can be staged on a regular basis in all categories and even on club level resulting in increased handball activity on continental level. The IHF can hereby provide support in several matters and provide assistance in the kick-off phase.*
- *Providing the opportunity to focus on the Caribbean zone with tailor-made projects for Beach Handball. This would give these countries a realistic chance to take part in IHF events, as they would then belong to the North America and the Caribbean Handball Confederation, avoiding the traditionally strong Beach Handball nations from the south.*
- *Increase motivation from teams from North and South which usually don't qualify for IHF events to qualify for a major event as there is then a realistic pathway. While earning a qualification to IHF events and with the experience gained at international events, these teams will have the chance to close the gap to the dominant teams and also the currently dominant teams will benefit from stronger opponents.*
- *Smaller qualification tournaments, group stages similar to football or handball in Europe would be possible in a second step; finishing the qualification for IHF events earlier would be beneficial for the planning on a long-term basis and for setting up the IHF calendar of events.*

- *With realistic chances of success on competitive level, also the chances for raising funds from different sources (sponsors, NOC, governmental institutions) increase significantly.*
- *More professional administrative bodies could be established, and better service to the Member Federations is expected, since the respective body will take care of a smaller number of federations. This could contribute to enhancing the work quality (more focused and specialised).*
- *Through having more handball activity on continental level, more human resources such as coaches, referees, delegates, handball managers, etc. could be identified and promoted/educated accordingly.*
- *Giving the IHF the possibility to further develop the IHF Trophy tournament in order to include this tournament in the qualification pathway for Junior World Championships”.*

11. The Tbilisi Council Meeting Minutes further reflect that the following discussions took place in respect of the Motion:

*“President Moustafa emphasised the importance of having handball activities throughout the Pan-American continent, stressing that all handball stakeholders, including players, teams, coaches, referees, etc., should be active.*

*The Competitions Director explained that at the last qualification, only 7 men’s teams and 6 women’s teams from Pan-America participated in the junior qualification system, while minimum 25 men’s teams and minimum 22 women’s teams from Pan-America (total North and South) would participate in the junior qualification system with the change of the qualification pathway and the option of using the IHF Trophy as a qualification pathway.*

*As Europe’s Vice-President asked about the consequences for IHF World Championships, the Competitions Director explained that for senior events the IHF plans to keep the three compulsory places for the North America and the Caribbean Handball Confederation and the South and Central America Handball Confederation, considering that the winner of the North zone shall play against team no. 3 of the South zone in a play-off match for direct qualification to the WCh, adding that the level of quality shall remain the same. The qualification process for the Olympic Games shall be discussed later. As for youth and junior events, the Competitions Director presented the following amended distribution of compulsory and performance places: [...].*

*Europe’s Vice-President remarked that he is in favour of the above-mentioned motion, as it would help to strengthen handball in the economically important country of USA”.*

12. On 29 September 2017, the IHF sent the IHF Congress Agenda to, *inter alia*, the IHF Member Federations and Confederations. The agenda included the following point: “12.1 Motion from the IHF President”.

## B. The PATHF Extraordinary Assembly

13. On 7 October 2017, a PATHF Extraordinary Assembly was held in Bogotá, Colombia, to discuss, *inter alia*, the Motion to split the PATHF.
14. The IHF maintains that, on 11 October 2017, the IHF addressed the working documents for the IHF Congress to, *inter alia*, the IHF Member Federations and Confederations. The cover letter included a Dropbox link, which provided access to the IHF Congress Agenda and working documents. Amongst those was the IHF President's motion document, which explained the Motion in detail to the IHF Congress. However, the PATHF initially submitted that, prior to the IHF Congress, the IHF Head Office had submitted working documents to the Congress delegates, but no information was provided relating to the Motion to divide PATHF into two confederations, nor had this issue been listed in the IHF Congress Agenda. Based on the documents provided by the IHF (in particular exhibit R-5 and R-7), and as finally conceded by the PATHF during the hearing, the Panel is satisfied to accept that the IHF President's Motion was included in the IHF Congress Agenda distributed to the delegates on 29 September 2017 and that a working document regarding this Motion was distributed to the delegates on 11 October 2017 (accessible through the Dropbox link provided (in folder 12 "Treatment of election-related Statutes motions"). This working document explained that Article 10.2.2 of the IHF Statutes would be amended by splitting the PATHF into two confederations, and providing the following justification for this suggestion:

*"The IHF created tailored projects to support the Member Federations and develop handball in the emerging nations in order to achieve universality and ensure that handball is practised in all 207 Member Federations. During the realisation of the projects the huge distance between the countries in Pan-America was a big challenge and imposed a financial burden on the projects concerned in addition to huge technical level varieties in the continent. Over the past years, the IHF has studied the obstacles hindering the optimal realisation of the IHF projects in the Pan-American continent. Aiming to classify the Pan-American countries, close the gap between the different NFs and assign a group of the islands for beach handball, the IHF worked on the next proposal. In addition to the aforementioned, the establishment of subcontinents in Pan-America is not acceptable by the IHF, as the IHF is the body that bestows recognition. The IHF received a copy of the communication related to the establishment of the Central and Caribbean federation (a group of Pan-American countries agreed to establish a subcontinent), which is considered to be a violation of the IHF Statutes. On the one hand, to understand the motivation behind the establishment of branches in Pan-America, this may be a result of many reasons such as the long distances, levels of competition, financial obstacles and communication.*

*The motion is to divide the continent of PATHF into two as follows:*

- *North America and the Caribbean:*

*Full members: ANT, BAH, BAR, CAN, CAY, CUB, DMA, DOM, GRL, GRN, HAI, IVB, LCA, MEX, PUR, SKN, TRI, USA – total of 18 countries plus two regional members: GLP, MTQ*

- *South and Central America:*

*Full members: ARG, BIZ, BOL, BRA, CHI, COL, CRC, ECU, ESA, GUA, GUY, HON, NCA, PAN, PAR, PER, URU, VEN – total of 18 countries plus one regional member: GUF”.*

15. On 23 October 2017, after it was made aware of the fact that the PATHF Extraordinary Assembly was held, the IHF President wrote to the PATHF alleging that it had not followed the stipulations in Article 10.2.3.1 IHF Statutes, by not inviting the IHF President. The IHF President requested the PATHF to *“urgently provide us with complete information on the formal convocation procedures of the PATHF Extraordinary Congress in order to file the case with the IHF Arbitration Commission, aiming to receive necessary guidelines for further proceedings”*. The IHF President also requested *“supporting administrative and financial documents which prove the correct spending of the awarded sponsorship”* in the amount of USD 1,000,000 awarded by the IHF to the PATHF in 2014.
16. On 26 October 2017, the PATHF President replied to the IHF’s letter dated 23 October 2017, maintaining that the convocation procedure of the PATHF Extraordinary Assembly was correct and that *“we see no injury that may entail the intervention of the Arbitration Commission”*. Finally, the PATHF President indicated that the accounting for the sponsorship money was made during the PATHF Congress held in Buenos Aires on 30 July 2016, which financial statements were unanimously approved by the members present.
17. On 3 November 2017, the IHF President replied to the PATHF’s letter dated 26 October 2017, reiterating that the PATHF Extraordinary Assembly was not convened in compliance with Article 10.2.3.1 IHF Statutes, and that the PATHF auditing report which was confirmed by the PATHF Extraordinary Assembly was not on the agenda, as a consequence of which the corresponding decision is not valid either. The IHF President reiterated his request for supporting administrative and financial documents proving the correct spending of the awarded sponsorship.

**C. The Antalya Council Meeting**

18. On 9 November 2017, the IHF Council decided during the IHF Council Meeting in Antalya, Turkey, (the “Antalya Council Meeting”) that it would submit the PATHF’s alleged violation of the IHF Statutes to the IHF Arbitration Commission in order to obtain their recommendation for further treatment by the IHF Executive Committee and the IHF Council. In addition, the IHF Council agreed with the IHF President’s proposal to ask the IHF Congress to authorise the IHF Council to evaluate and take a decision on the Motion related to the Pan-American continent.
19. The Antalya Council Meeting Minutes reflect that the following discussions took place in respect of the amended motion:

*“President Moustafa referred to the motion related to the Pan-American continent (dividing the continent into two, namely North America and the Caribbean Handball Confederation and South and Central America*

*Handball Confederation) which was presented to the Council in its last meeting in Tbilisi, Georgia on 18 August 2017, stating that the Council was in favour of the motion with four abstentions. He briefly reiterated that the key intention of the motion is to develop handball throughout the Pan-American continent and preserve the position of handball at the Olympic Games.*

[...]

*Referring to the motion which shall be submitted to the 2017 Ordinary IHF Congress, President Moustafa proposed to ask the Congress to authorise the Council to evaluate and take a decision on the motion.*

*Europe's Vice-President expressed difficulties to speak about another Continental Confederation. He was in favour of President Moustafa's proposal as it gives the possibility to take a decision on the matter after clarification and careful evaluation of all related facts.*

[...]”.

20. On 10 November 2017, the PATHF President informed the IHF that *“it is my intention to apologize from PATHF for the formal omission of an IHF invitation to said Extraordinary Assembly. It was an involuntary omission, that in no way aimed at injuring IHF regulations; simply an administrative error”*.
21. Also on 10 November 2017, the IHF President addressed the IHF Congress delegates of the PATHF regarding the Motion.

#### **D. The IHF Congress**

22. On 11 November 2017, the IHF Congress took place in Antalya, Turkey.
23. On the occasion of the IHF Congress, the IHF Congress, by a purported two-thirds majority (the minutes reflect the following votes: Yes: 102; No: 26; Abstain: 24) that is disputed by the PATHF, decided to *“delegate its authority to the IHF Council to discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF Statutes changes”* (the “Congress Decision”).
24. After presenting the content and purpose of the amended motion, the IHF President proceeded immediately with the voting. No discussion took place on such amended motion prior to the vote. In particular, the PATHF President was only given the floor after the vote. He requested a vote by secret ballot, which was neither addressed by the IHF President, nor submitted for approval or disapproval by the Congress members.
25. The IHF Congress Minutes reflect that the following discussions took place in respect of the Motion:

*“Mr Brihault informed the Congress that one election-related Statutes motion had been submitted to the Congress and gave the floor to President Moustafa who addressed the Congress delegates, stating that the presentation of the motion related to the Pan-American continent would take a long time, therefore he will*



*explain the main concept of the motion. In addition, he referred to the meeting of the Pan-American Team Handball Federation in the evening prior to the Congress, during which he made a detailed presentation of the motion.*

*President Moustafa informed the Congress that the motion concerned had been presented to the IHF Council in its meeting in Tbilisi, Georgia on 18 August 2017, stating that the Council (with four abstentions) was in favour of the content of the motion and agreed to submit the motion to the Congress as per Article 13.3, point 11 of the IHF Statutes.*

[...]

*President Moustafa expressed his dissatisfaction with the development of handball in Pan-America due to a lack of activities. He outlined that at the beginning of his presidency in 2000 the IHF had 19 Member Federations from Pan-America whereas the IHF currently has 40 Member Federations from Pan-America thanks to the efforts of the IHF President; nevertheless only a small number of federations are actually active. He pointed out that the intention of the IHF is to develop handball in the continent and preserve the position of handball at the Olympic Games, taking into consideration that the development of handball in Pan-America resulting from the current system is not comparable with the development happening in the other continents in all fields. He stressed that the IHF is not against or in favour of any persons or entities.*

*President Moustafa informed the Congress that the IHF Council decided in its meeting in Antalya, Turkey on 9 November 2017 to ask the Congress to authorise the Council to discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent.*

*President Moustafa then asked the Congress delegates if they agree on authorising the IHF Council to discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF Statutes changes.*

*The delegates cast their votes by raising their voting cards. The election officer and tellers counted the following votes (counting of votes was repeated to guarantee the correct result of the voting):*

*Yes: 102*

*No: 26*

*Abstain: 24*

*President Moustafa thanked the Congress delegates for authorising the IHF Council to discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF Statutes changes.*

*President Moustafa gave the floor to Mr Mario Moccia, President of Pan-American Team Handball Federation, who stated that he abstained from voting when the motion concerned was presented to the IHF Council meeting in Tbilisi, Georgia on 18 August 2017. He also referred to the autonomy of the Continental Confederations according to Article 12.3, point 10 of the IHF Statutes, stressing that a continent's specific issue shall be decided by the continent concerned. Referring to the voting procedure, he remarked that the voting on changes to the IHF Statutes should be by secret ballot to ensure that delegates*

*can express themselves freely. He asked President Moustafa to reconsider the motion, adding that the Pan-American continent is united and wants to stay united.*

*President Moustafa explained about the IHF financial support granted to the Pan-American continent. For instance, the IHF assisted the PATHF in 2014 through a sponsorship to get USD 1,000,000 to spend on PATHF handball activities and help the PATHF countries to develop handball. President Moustafa stated that PATHF has not submitted to IHF the supporting administrative and financial documents to prove the correct spending of the awarded sponsorship, aiming to further develop handball throughout the continent. He added that despite the financial assistance granted to the Pan-American continent by the IHF, no significant development has occurred in Pan-America.*

*President Moustafa informed the Congress that all details related to the motion concerned, including the IHF future plan in Pan-America, will be sent to the IHF Member Federations to give them the possibility to have the full picture of the disadvantages of the current system and the benefits of the new system, which proves that the IHF is working in the best interest of handball”.*

#### **E. The Proceedings before the IHF Arbitration Commission (First Instance) regarding the Congress Decision**

26. On 7 December 2017, the PATHF filed an appeal with the IHF Arbitration Commission, requesting that it declare the Congress Decision null and void.
27. On 9 January 2018, the IHF President wrote to the IHF Member Federations and Continental Confederations to provide them with details related to the Motion concerned, including the IHF future plan in Pan-America.

#### **F. The Zagreb Council Meeting**

28. On 14 January 2018, the IHF Council met in Zagreb, Croatia (the “Zagreb Council Meeting”). Without providing any prior information to the PATHF, the IHF President requested that the IHF Managing Director read-out the recommendation received on the same day (i.e. 14 January 2018) from the IHF Arbitration Commission regarding the PATHF’s alleged violation of the IHF Statutes. The following decisions were taken by the IHF Council (the “Zagreb Council Decision”):

- Following a legal opinion issued by the Arbitration Commission, which reads, *inter alia*, as follows as reflected in the Zagreb Council Meeting Minutes: “On October 7<sup>th</sup>, 2017, Pan-American Team Handball Federation held the Extraordinary Congress in Bogota, subject of which were motions to be presented in the Congress regarding the previously presented modification of the Pan-American Team Handball Federation structure. The agenda was obviously to gain member federations votes to oppose the announced reorganisation, for the President of the IHF was not invited to the Extraordinary Congress to articulate the reorganisation. This move by the Pan-American Team Handball Federation constitutes a direct violation of the Continental Confederations prescribed duties. [...]. Therefore the recommendation of the Arbitration Commission is that the IHF Council should

*suspend the Pan-American Team Handball Federation*". And following a discussion, the IHF Council agreed (Votes in favour: 15; Votes against: 1; Abstentions: 0) to suspend the PATHF according to Article 10.2.3.2 IHF Statutes.

- Following a legal opinion issued by Dr François Carrard, concluding that "[a]ll Council members without any limitation shall be authorized to vote on the issue of the so-called "motion of the Pan-America" and that the Congress decision does not violate Swiss Law nor the IHF Statutes" and following a discussion, the IHF Council agreed (Votes in favour: 15; Votes against: 1; Abstentions: 0) "to divide the continent of Pan-America into two as follows:

○ ***North America and the Caribbean Handball Confederation ("North"):***

*Full members: ANT, BAH, BAR, CAN, CAY, CUB, DMA, DOM, GRL, GRN, HAI, IVB, JAM, LCA, MEX, PUR, SKN, TRI, USA – in total 19 countries plus two regional members: GLP, MTQ*

○ ***South and Central America Handball Confederation ("South"):***

*Full members: ARG, BIZ, BOL, BRA, CHI, COL, CRC, ECU, ESA, GUA, GUY, HON, NCA, PAN, PAR, PER, URU, VEN – total of 18 countries plus one regional member: GUF*

*Consequently and according to the authorisation of the Congress, the revised Article 10.2.2 of the IHF Statutes will be as follows:*

*The IHF shall recognise only the following six confederations which shall decide on their corporate denomination and inform the IHF thereupon:*

- a. African Handball Confederation*
- b. Asian Handball Confederation*
- c. European Handball Confederation*
- d. Oceania Handball Confederation*
- e. North America and the Caribbean Handball Confederation*
- f. South and Central America Handball Confederation" (emphasis in original).*

29. On 17 January 2018, the IHF President informed the PATHF of the Zagreb Council Decision and asked the PATHF to "stop with immediate effect spending any PATHF funds whatsoever and provide us with the current bank account statement" and reiterated his request to "send immediately to the IHF Head Office the relevant expenses documentations which prove the correct spending of the allocated IHF sponsorship to the amount of USD 1,000,000, aiming to further develop handball throughout the continent".

30. On 18 January 2018, the IHF President informed the IHF Member Federations of the Zagreb Council Decision.

31. On 25 January 2018, the IHF President informed the PATHF President as follows:

*“Referring to our communication dated 17 January 2018 regarding the [Zagreb Council Decision], we have been informed about your plans to organise meetings in Pan-America on 9/10 February 2018. In this context, I would like to draw your attention to the following:*

1. *You are not entitled to act as President of [PATHF] due to the fact that the whole organisation has been suspended according to the [Zagreb Council Decision].*
2. *You are not entitled to call for a meeting without coordination with the IHF according to Article 10.3, point n of the IHF Statutes.*
3. *You are not entitled to spend any PATHF funds as from the date of the IHF communication related to the [Zagreb Council Decision].*

[...].”

32. On 9 February 2018, the IHF President informed, *inter alia*, the IHF Member Federations and Confederations that the statutory amendments in relation to the division of the PATHF into two confederations would be effective and in force from 11 February 2018.

33. On 13 February 2018, the PATHF was provided with the minutes of the Zagreb Council Meeting.

**G. The Proceedings before the IHF Arbitration Commission (First Instance) regarding the Congress Decision (continued)**

34. On 14 February 2018, the IHF Arbitration Commission issued its decision (the “First Instance Decision”), following the appeal filed by the PATHF on 7 December 2017 against the Congress Decision, with the following operative part:

*“The appeal filed by [PATHF], represented by its president Mr Mario Moccia, on 14 December 2017 is rejected”<sup>2</sup>.*

35. On 15 February 2018, the PATHF President requested the IHF Managing Director to provide the following documentation mentioned in the Zagreb Council Meeting Minutes:

- “1. IHF’s request and questions submitted to Dr. François Carrard.

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<sup>2</sup> It appears to the Panel that the reference to 14 December 2017 is a typographic mistake, as it appears from exhibit A-19 that the appeal was filed on 7 December 2017. This difference is any event not material.

2. *Dr. François Carrard's complete legal opinion.*
3. *IHF's email to ASOIF on the motion concerning Pan-America.*
4. *Mr. Andrew Ryan's complete answer to IHF.*
5. *Full recordings of the [Zagreb Council Meeting].*

*Additionally, we have also received the [First Instance Decision]. On that matter, we also request the following documents, as they have not been made available to PATHF as Applicant:*

6. *Emails from election officer and tellers who counted the votes on the motion related to Pan-America during the IHF Congress.*
  7. *All recordings of the [Ordinary Congress].*
- [...].”

#### **H. The Proceedings before the IHF Arbitration Tribunal (Second Instance) regarding the Congress Decision**

36. On 6 March 2018, the PATHF filed an appeal with the IHF Arbitration Tribunal against the IHF Arbitration Commission's decision (the First Instance Decision) dismissing the PATHF's appeal against the Congress Decision.

#### **I. The Proceedings before the IHF Arbitration Commission (First Instance) regarding the Zagreb Council Decision**

37. On 14 March 2018, the PATHF filed a new appeal with the IHF Arbitration Commission, this time against the Zagreb Council Decision.
38. On 19 March 2018, the IHF Managing Director replied to the PATHF President's request dated 15 February 2018, indicating that such email may “*have been considered as spam due to the fact that the sending email address was not known to our system*” and suggesting to address such request to the IHF Arbitration Commission Chairman, via the IHF Head Office.
39. On 21 March 2018, the PATHF President addressed a similar request for documentation to the IHF Head Office, which forwarded the request to the IHF Arbitration Commission Chairman on 23 March 2018.
40. On 26 March 2018, the IHF Arbitration Commission Chairman informed the IHF Head Office as follows:

*“legal and factual basis of the IHF Arbitration Commission judgment is listed under point 5 of the Judgement. [sic]*

*Therefore, minutes and supporting documentation of the Council meeting in Zagreb are irrelevant to this case.*

*Further on, emails from election officers and tellers who counted the votes on the motion related to the Pan-Am should be delivered to the applicant, if he/she requested those documents within the appeal deadline and asked for the extension of the deadline.*

*Recordings of the [Ordinary Congress] were not listed among the evidence under point 5, so the applicant is precluded to ask for the evidence which should have been asked for in the initial appeal (submitted to the IHF Arbitration commission)”.*

41. On 31 March 2018, the PATHF President informed the IHF Managing Director that he considered that the “IHF Arbitration Tribunal” decision amounted to a breach of due process, in particular of PATHF’s right to be heard, and reiterated all the requests for evidentiary measures. Furthermore, the PATHF President stated that no final decision had been rendered within the 14-day deadline, as requested in the appeal dated 6 March 2018.
42. On 2 April 2018, the IHF Arbitration Tribunal Chairman informed the IHF Head Office, *inter alia*, that the PATHF was not entitled to a decision within 14 days as requested, but that it may expect a temporary – not final decision – of the IHF Arbitration Tribunal within 2 months following receipt of the appeal and that the proceeding would not be initiated until the deadline for amending the appeal would pass (i.e. 30 days from the passing of the First Instance Decision).
43. On 3 April 2018, the IHF Managing Director provided the PATHF with the email issued by the IHF Arbitration Tribunal Chairman on 2 April 2018, and also indicating that the reference to the “IHF Arbitration Tribunal” in the PATHF letter dated 31 March 2018 was incorrect and inviting the PATHF to send such letter again to the IHF Arbitration Commission.
44. On 17 April 2018, the PATHF lodged an appeal with the Court of Arbitration for Sport (“CAS”) on the basis of a denial of justice. These proceedings were referenced by CAS as CAS 2018/A/5685 Pan-American Team Handball Federation (PATHF) v. International Handball Federation (IHF).

**J. The Proceedings before the IHF Arbitration Tribunal (Second Instance) regarding the Congress Decision (continued)**

45. On 1 May 2018, the IHF Arbitration Tribunal rendered its decision (the “Appealed Decision”), with the following operative part:

*“The Appeal filed by the Pan-American Team Handball Federation (“PATHF”), represented by its President Mario Moccia, and which was filed on 6 March 2018 against the Decision of the Arbitration Commission of the International Handball Federation dated 14 February 2018 is dismissed”.*

46. On 4 May 2018, the grounds of the Appealed Decision were communicated to the PATHF.

**K. The Proceedings before the IHF Arbitration Commission (First Instance) regarding the Zagreb Council Decision (continued)**

47. On 14 May 2018, the IHF Arbitration Commission issued its decision on the appeal filed by the PATHF against the Zagreb Council Decision, following the appeal filed on 14 March 2018, with the following operative part:

*“The appeal filed by Pan-American Team Handball Federation (“PATHF”), represented by Libra Law SA, Attorneys-at-Law, Lausanne, Switzerland, on 14 March 2018 is rejected”.*

**IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

48. On 15 May 2018, the PATHF lodged an appeal with CAS against the Appealed Decision, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2017) (the “CAS Code”), naming the IHF as the sole respondent. The PATHF designated its Statement of Appeal as its Appeal Brief, pursuant to Article R51 CAS Code, and nominated Mr Diego Ferrari, Attorney-at-Law in Buenos Aires, Argentina, as arbitrator. Finally, the PATHF requested the IHF to be ordered to produce the following documentation:

- *the Minutes from the IHF Council Meeting on 18 August 2017.*
- *the full video recording of the IHF Council Meeting on 18 August 2017, or at least, the excerpt of the video recording relating specifically to the vote on the Motion to the Congress.*
- *the full audio recordings of the IHF Council Meeting on 18 August 2017, or at least, the excerpt of the audio recording relating specifically to the vote on the Motion to the Congress.*
- *the full transcript of the IHF Council Meeting on 18 August 2017, or at least, the excerpt of the transcript relating specifically to the vote on the Motion to the Congress.*
- *all relevant supporting documentation relating to the counting of the votes on the Challenged Decision, including the emails from the election officer(s) and tellers who counted the votes on the Motion at the Congress.*
- *Zagreb Minutes:*
  - *IHF’s request and questions submitted to Dr François Carrard.*
  - *Dr François Carrard’s complete legal opinion.*
  - *IHF’s email to ASOIF on the motion concerning Pan-America.*
  - *Mr Andrew Ryan’s, ASOIF’s Secretary General, complete answer to IHF.*
  - *Full recordings of the IHF Council Meeting held in Zagreb, Croatia, on 14 January 2018.*

- *IHF Arbitration Commission:*
    - o *Decision of the IHF Arbitration Commission dated 14 February 2018 regarding PATHF's appeal filed on 14 December 2018".*
49. On 29 May 2018, the parties were invited to inform the CAS Court Office whether they would agree to submit the present procedure to the same panel as the proceedings referenced as CAS 2018/A/5685 Pan-American Team Handball Federation (PATHF) v. International Handball Federation (IHF).
  50. On 1 June 2018, the CAS Court Office informed the parties that the PATHF had withdrawn its appeal in the proceedings referenced as CAS 2018/A/5685 Pan-American Team Handball Federation (PATHF) v. International Handball Federation (IHF) and that the submission of both cases to the same Panel had become moot.
  51. On 5 June 2018, the IHF nominated Mr Pierre Muller, former Judge in Lausanne, Switzerland, as arbitrator. Furthermore, following an invitation from the CAS Court Office in this respect, the IHF addressed the PATHF's production requests, requesting them to be dismissed or indicating that such documents were already on file.
  52. On 18 June 2018, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the parties were informed that the arbitral tribunal appointed to decide the present matter was constituted by:
    - Prof Dr Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as President;
    - Mr Diego Ferrari, Attorney-at-Law in Buenos Aires, Argentina; and
    - Mr Pierre Muller, former Judge in Lausanne, Switzerland, as arbitrators
  53. On 22 June 2018, the IHF filed its Answer, pursuant to Article R55 CAS Code.
  54. On 29 June and 2 July 2018 respectively, following an invitation from the CAS Court Office in this respect, the PATHF indicated its preference for a hearing to be held, whereas the IHF indicated that it did not consider a hearing necessary but deferred to the Panel's decision in this respect.
  55. On 17 July 2018, the CAS Court Office informed the parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.
  56. Also on 17 July 2018, the CAS Court Office informed the parties that the Panel had decided to hold a hearing.
  57. Also on 17 July 2018, the PATHF referred to a letter issued by the IHF on 10 July 2018 from which it inferred that the IHF acknowledged that the decision to divide the PATHF was taken by the IHF Council and not by the IHF Congress, and that in spite of the pending appeal before



CAS, the IHF continued its illegal dismantling strategy in bad faith, proving how urgent it is for CAS to rule on the merits of this case.

58. On 20 July 2018, the IHF objected to the production of the new document enclosed to the PATHF's letter dated 17 July 2018 and the development of new arguments. The IHF only accepted that the first paragraph of the PATHF's letter be entered into the file.
59. On 23 July 2018, the PATHF reiterated its requests for production of documents.
60. On 25 July 2018, the IHF reiterated its objection to the PATHF's production requests.
61. On 31 July 2018, both parties informed the CAS Court Office of the persons that would attend the hearing.
62. Also on 31 July 2018, the CAS Court Office informed the parties that the IHF's objection to the admissibility of the document enclosed to the PATHF's letter dated 17 July 2018 would be discussed at the hearing and in the final award, if necessary, and that the Panel had decided as follows on the PATHF's evidentiary requests:

*"The IHF Council meeting of 18 August 2017"*

- *Minutes: the Panel notes that the minutes have been filed by the Appellant as Exhibit A-8. Accordingly, the request for production is moot.*
- *Video/audio recordings: the Panel notes that the minutes indicate that the meeting was "recorded" (although it does not specify whether it is a video or audio recording) and that the minutes "only contain the most important spoken contributions". The Panel further considers that the video and audio recordings may provide further details as to what happened during the Council meeting and could therefore constitute relevant information. Finally, the Panel notes that the Respondent did not substantiate on which basis the recordings would have to be considered confidential.*

*In view of the above, the Appellant's request for the production of the video and audio recordings is granted. The Respondent is invited to provide, by 7 August 2018, the video and audio recordings of the IHF Council meeting of 18 August 2017.*

- *Transcript: the Panel notes that the Appellant did not provide any evidence as regards the existence of a transcript besides the minutes and the recordings. The Panel further considers that the recordings are more accurate than a transcript. Accordingly, the Appellant's request for the transcript of the IHF Council meeting of 18 August 2017 is denied.*
- *Supporting documentation relating to the counting of votes on the Appealed Decision, including the emails from the election officer(s) and tellers who counted the votes on the Motion at the Congress: the Panel first notes that this request for production has not been addressed by the Respondent. The Panel further notes that the first instance decision refers to the "e-mails from election officer and tellers who counted the votes" (Exhibit A-2, para. 5.8). The Appellant's late request to be provided with these documents in the proceedings leading to the Appealed Decision (Exhibit A-1, para.*

9.3.6) do not prevent the Appellant from requesting said documents in the present proceedings before CAS. The statement that the “e-mails from the election officer and tellers who counted the votes [...] should have been delivered to the Appellant, provided that the Appellant required to be provided with those documents” could be seen as confirming the relevance of the documents sought.

In view of the above and in view of the Respondent’s lack of objection, the Appellant’s request for the supporting documentation relating to the counting of votes on the Appealed Decision is granted. The Respondent is invited to provide, by **7 August 2018**, the supporting documentation relating to the counting of votes on the Appealed Decision.

The IHF Council Meeting of 14 January 2018

- Full recordings: the Panel notes that the discussions are reflected in the minutes filed by the Appellant as Exhibit A-23. The Panel further notes the Respondent’s comment that the Appealed Decision was rendered two months before this Council Meeting and that the Council Meeting did not have any impact on the Appealed Decision. In the absence of further explanation by the Appellant as to the relevance of these documents, the Appellant’s request for production of the full recordings of the IHF Council meeting of 14 January 2018 is denied.
- Questions to Dr. Carrard, legal opinion of Dr. Carrard and email correspondence between IHF and ASOIF: in the absence of further explanation by the Appellant as to the relevance of these documents, the Appellant’s request for production of the questions submitted to Dr. Carrard, legal opinion of Dr. Carrard and email correspondence between IHF and ASOIF is denied.

The decision of the IHF Arbitration Committee dated 14 February 2018

The Panel notes that the decision has been filed by the Appellant as Exhibit A-2. Accordingly, the request for production is moot” (emphasis in original).

63. On 7 August 2018, the IHF provided the audio recordings of the discussions regarding the Motion (viz. point 4.3.2 of the Agenda) during the Tbilisi Council meeting of 18 August 2017. As to the emails of the tellers, the IHF indicated that these were produced by the IHF as Exhibits R-14 to R-17 to its Answer and that it did not have any other supporting documentation relating to the counting of the votes.
64. On 9 and 16 August 2018 respectively, the IHF and the PATHF returned duly signed copies of the Order of Procedure to the CAS Court Office.
65. On 17 August 2018, following an enquiry from the CAS Court Office, the PATHF returned a tentative hearing schedule on which counsel for both parties agreed.
66. On 20 August 2018, the Polish Handball Federation informed the CAS Court Office that its President, Mr Andrzej Krasnicki, witness called by the PATHF, was unable to participate as a witness in the hearing.

67. On 24 August 2018, a final hearing schedule was circulated to the parties by the CAS Court Office.
68. On 26 August 2018, Mr Marcel Mancilla Bravo, President of the Chilean Handball Federation informed the CAS Court Office that he would not testify at the hearing.
69. On 28 August 2018, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed not to have any objection as to the constitution and composition of the Panel.
70. In addition to the Panel, Ms Delphine Deschenaux-Rochat, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:
  - a) For the PATHF:
    - 1) Mr Mario Moccia, PATHF President;
    - 2) Mr Jorge Ibarrola, Counsel;
    - 3) Mr Yvan Henzer, Counsel;
    - 4) Mr Sebastian Permain, Counsel;
    - 5) Mr Joffrey Sallin, Paralegal;
    - 6) Mr Santiago Lorenzatto, Interpreter.
  - b) For the IHF:
    - 1) Ms Amal Khalifa, IHF Managing Director;
    - 2) Dr François Carrard, Counsel;
    - 3) Mr Nicolas Zbinden, Counsel;
    - 4) Ms Yasemin Bay, Interpreter;
    - 5) Ms Pilar Gil Jimenez, Interpreter.
71. The Panel heard evidence of the following persons, in order of appearance:
  - 1) Mr Mario Moccia, PATHF President, witness called by the PATHF;
  - 2) Mr Stefan Albrechtson, Head Scrutineer at the IHF Congress, witness called by the PATHF and the IHF;
  - 3) Ms Ruth Saunders, Assistant Scrutineer at the IHF Congress, witness called by the PATHF and the IHF;
  - 4) Ms Leonor Mallozzi, Assistant Scrutineer at the IHF Congress, witness called by the PATHF and the IHF;

- 5) Mr Gassan Mamo Kapase, Assistant Scrutineer at the IHF Congress, witness called by the PATHF (by telephone);
  - 6) Mr Muhammad Shafiq, Assistant Scrutineer at the IHF Congress, witness called by the IHF;
  - 7) Mr Julio Noveri, PATHF First Vice-President, witness called by the PATHF;
  - 8) Mr Sergey Shishkarev, President of the Russian Handball Federation, witness called by the PATHF;
  - 9) Mr Francisco V. Blazquez Garcia, President of the Royal Spanish Handball Federation, witness called by the IHF;
  - 10) Mr Michael D. Cavanaugh, CEO of USA Team Handball, witness called by the IHF;
  - 11) Mr Ulrich Rubeli, President of the Swiss Handball Federation, witness called by the PATHF;
  - 12) Mr Mario Garcia de la Torre, President of the Mexican Handball Federation, witness called by the IHF;
  - 13) Mr Mustafa Torlak, representative of Torlak Turizm, the company which organised the IHF Congress, witness called by the IHF.
72. Although the PATHF initially also called Mr Jaime Delf, President of the Handball Federation of Nicaragua, and Mr Carlos Morales, President of the Handball Federation of Guatemala and PATHF Vice-President, to be heard, such witnesses were ultimately withdrawn. As to Mr Morales, the PATHF sought leave to produce a new document, which allegedly showed that he had been threatened by the IHF that all the support for his country would be withdrawn.
73. The IHF did not object to the production of this new document, as a consequence of which it was admitted to the case file. The IHF added that it reserved its right in respect of possible defamation charges.
74. Although the IHF initially also called Mr Blas Garcete, President of the Paraguay Handball Federation, and Mr Adrian Gerardo Leandro Marin, Vice-President of the Costa Rica Handball Federation, to be heard, such witness were ultimately withdrawn.
75. All witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. Both parties and the Panel had the opportunity to examine and cross-examine the witnesses.
76. Although the IHF by means of its letter dated 20 July 2018 initially objected to the production of the new document enclosed to the PATHF's letter dated 17 July 2018 and the development of new arguments, such objection was withdrawn during the hearing, as a consequence of which the PATHF's letter dated 17 July 2018 and enclosures were admitted to the case file.

77. During the hearing, the PATHF objected to the admissibility of exhibit R-1 (i.e. the letter dated 9 June 2017, by means of which the IHF President submitted his Motion to divide the PATHF into two confederations to the IHF Head Office in preparation for the IHF Congress to be held in Antalya, Turkey, on 11 November 2017) produced by the IHF and requested this document to be excluded from the file on the basis of Article R57.2 CAS Code because it was available to the IHF, but it was never submitted until the present proceedings before CAS.
78. The parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
79. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
80. The Panel confirms that it carefully heard and took 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.
81. On 13 September 2018, the Operative Part of the award was communicated to the parties.

## V. REQUESTS FOR RELIEF

82. In its Statement of Appeal considered as Appeal Brief, the PATHF submitted the following requests for relief:
  - I. *This appeal is upheld.*
  - II. *The Decision taken on 1 May 2018 by the IHF Arbitration Tribunal to dismiss the Pan-American Team Handball Federation's appeal of the IHF Arbitration Commission's decision is annulled.*
  - III. *The Decision taken on 11 November 2017 by the IHF Congress to delegate its authority to the IHF Council to discuss, evaluate and take a decision on the Motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF statutory amendments is null, respectively annulled.*
  - IV. *The International Handball Federation shall reimburse the CHF 5,000 paid by the Pan-American Team Handball Federation for the appeal to the IHF Arbitration Commission and the CHF 10,000 paid by the Pan-American Team Handball Federation for the appeal to the IHF Arbitration Tribunal.*
  - V. *The International Handball Federation shall bear all the arbitration costs and shall be ordered to reimburse the Pan-American Team Handball Federation the Court CAS Office fee [sic] of CHF 1,000 for this appeal.*

VI. *The International Handball Federation shall be ordered to pay the Pan-American Team Handball Federation a contribution towards the legal and other costs incurred in the framework of these proceedings”.*

83. In its Answer, the IHF submitted the following requests for relief:

I. *The Appeal filed by the PATHF is dismissed and the Congress Decision upheld.*

II. *The arbitration costs are borne by the PATHF.*

III. *The PATHF is ordered to contribute to the IHF’s legal and other costs”.*

## VI. SUBMISSIONS OF THE PARTIES

### A. The position of the Appellant

84. The PATHF’s Appeal Brief, in essence, may be summarised as follows:

#### *i. Violation of Article 67(3) of the Swiss Civil Code*

- In the Appealed Decision, the IHF Arbitration Tribunal does not address the PATHF’s submission in relation to the fact that the Motion was not presented to the IHF Member Federations prior to the IHF Congress and was arguably, on face value, deliberately omitted from all information circulated prior to the meeting. Not only do the IHF Statutes not allow voting on any item without proper notice, but such IHF Statutes actually require that any motion submitted by the IHF Council shall be submitted to the IHF Head Office five months before the IHF Congress, that such motion must be included in the Congress Agenda, which shall be published 6 weeks prior to the IHF Congress and that motions submitted past such 5-month deadline or during the IHF Congress shall require a 2/3 majority “to be heard”, namely to be submitted to the discussion and decision by the Congress delegates.
- At any rate, it is forbidden to submit any motion relating to the amendment of the IHF Statutes past the 5-month deadline and during the IHF Congress. Proper notice can be considered as ‘given’ when an item is put on the agenda in a way that members can reasonably ascertain what it represents. Members shall not be taken by surprise by a resolution which is only addressed or introduced for the first time during the IHF Congress and they ought to be prepared to discuss the resolution duly described in the agenda.
- According to applicable Swiss case law, an agenda which is not clear can affect the validity of the resolution which is voted on by the IHF Congress. Instead of expressing in clear terms that the IHF Congress would be requested to pass a resolution on the division of the PATHF and on the amendments of the IHF Statutes, the agenda simply

specifies, under item 12.1, “*Motion from the IHF President*”, which is so inherently elusive that the members cannot reasonably know what to expect from such a vague title.

- In any event, as the Motion, as described at the IHF Congress by the IHF President, supposed an amendment of the IHF Statutes, it had necessarily to be included as such in the Congress Agenda. The clarification at the IHF Congress is prohibited by Article 12.3.9 IHF Statutes. Moreover, the PATHF could not present its views to the IHF Congress in order to allow and facilitate a proper discussion on the matter.
- In light of the foregoing, the Appealed Decision has been taken in violation of the IHF Statutes and Swiss law. It shall thus be considered as null and void and annulled. Consequently, the Zagreb Council Decision is also null and void since it derives from a flawed resolution passed by the IHF Congress.

## ***ii. Violation of the Powers of the Congress***

- The delegation of powers by the IHF Congress to the IHF Council to amend the IHF Statutes is contrary to Swiss law. Being the supreme power of the association, the IHF Congress is exclusively competent to:
  - dissolve the association (Article 76 Swiss Civil Code – the “SCC”);
  - adopt and modify the IHF Statutes;
  - supervise the activities of the IHF governing bodies (Article 65(2) SCC);
  - appoint auditors;
  - pass resolutions on mergers (Article 18 of the Federal Act on Mergers) or transformation of the association (Article 64 SCC).
- These powers cannot be delegated. Even though not expressly provided for by law, the prohibition to delegate to the IHF Council the power to amend the Statutes derives from a simultaneous reading of Article 64(1) and 66(1) SCC. Pursuant to the combined application of these provisions, the power to pass a resolution, including the adoption and modification of the statutes, exclusively belongs to the association’s general assembly, with no possibility of delegation to the executive board. In what is undeniably a blatant violation of these basic principles, the Congress Decision delegated to the IHF Council the power to amend the IHF Statutes by allowing said body to divide the PATHF into two confederations.
- The amendment of Article 11.2 IHF Statutes was not voted on by the IHF Congress, and is therefore null and void, irrespective of the non-valid delegation accepted by the IHF Congress.
- Furthermore, the two new confederations are intended to replace the PATHF, which is allegedly “*suspended*”. In fact, the new structure which has been wrongfully implemented

in the IHF Statutes, corresponds to the expulsion of the PATHF. Indeed, the replacement of one confederation by two new confederations means that the former is expelled, while the latter operates in its place. This is clearly expressed by the disappearance of the PATHF from the IHF Statutes in their 2018 version. Yet, the expulsion of a member also falls within the scope of exclusive jurisdiction of the IHF Congress (Article 67 SCC). By way of consequence, the IHF Council had no power to expel *de facto* the PATHF.

- In light of the above, the Challenged Decision is null and void and shall be annulled.

**iii. *The Motion was not approved by a two-thirds majority of the Congress***

- The PATHF challenges the validity of the vote on the Motion that led to the Congress Decision and submits that a two-thirds majority was in fact not reached, despite the IHF President declaring the Motion as passed.
- Based on the IHF Congress Minutes, there were only 152 delegates present and entitled to vote upon the vote on the Appealed Decision and a two-thirds majority of 67.1% was reached (Yes: 102; No: 26; Abstain: 24).
- Yet, the IHF Congress scrutineers recorded a number of votes which is different from the IHF Congress Minutes (Yes: 102; No: 26; Abstain: 40). The scrutineers' notes clearly reflect that the Motion had "*FAILED*" due to the number of votes in favour only amounting to 60.7%.
- Importantly, the scrutineers' notes show that an additional 16 members abstained from voting on the Motion (i.e. 40 compared to 24), taking the total number of members present at the IHF Congress to 168, compared to 152 as reflected in the IHF Congress Minutes. According to the IHF Congress Attendance List, 168 members attended the IHF Congress, excluding Continental Confederations. The PATHF President spoke immediately after the Motion was put to vote, and a picture taken of the screen at the IHF Congress shows that out of the 2019 IHF Member Federations, at least 168 were present, as reflected by their national flags being highlighted on the screen.
- In light of the above, the Motion and the IHF Congress Decision must be declared as null and void and must be annulled.

**B. The position of the Respondent**

85. The IHF's Answer, in essence, may be summarised as follows:



**i. Lack of necessary description**

- Contrary to what the PATHF claims, the provisions of the IHF Statutes were properly respected in submitting the Motion to the IHF Congress. In short, the IHF President can submit a motion directly to the IHF Congress and shall submit such motion to the IHF Head Office five months before the IHF Congress. Provided that the motion is submitted on time, Article 12.3.9 IHF Statutes is obviously not applicable. In the present case, the Motion was submitted more than five months prior to the IHF Congress. Although the IHF President has an individual right to submit motions directly to the IHF Congress under Article 12.3.6 IHF Statutes, he also put the Motion on the agenda of the Tbilisi Council Meeting in order to have the approval of the IHF Council, where the matter was discussed and the IHF Council voted in favour of the Motion.
- As to whether the IHF Congress was given “*proper notice*” of the Motion, the agenda was published on 29 September 2017, i.e. more than six weeks before the IHF Congress, indicating at point 12.1 that a “*Motion from the IHF President*” would be considered. On 11 October 2017, the IHF sent working documents to the IHF Congress members, including an explanatory note for the Motion, which detailed the proposed amendment to the IHF Statutes and provided extensive explanations for the proposed amendment. The PATHF’s claim that there was “*not a single word to explain the content and objective of the so-called “Motion from the IHF President”*” is simply wrong. The minutes of the Tbilisi Council Meeting were also sent to the IHF Member Federations and Confederations on 18 September 2017.
- Finally, it is worthwhile noting that, even according to the jurisprudence of the Swiss Federal Tribunal (the “SFT”), seven to ten days is considered proper notice for the purposes of Article 67(3) SCC.
- Accordingly, the Motion was submitted to the IHF Congress in accordance with the IHF Statutes and Swiss law and PATHF’s argument is manifestly ill-founded.

**ii. Delegation violates Swiss law**

- As set out in the Appealed Decision, the Congress Decision “*does not violate Swiss laws, specifically the provisions from Article 60 to Article 79 of the Swiss Civil Code*”. The Appealed Decision also quotes the First Instance Decision, which also sets out that the Congress Decision did not violate Swiss law or the IHF Statutes.
- It must be recalled that the Congress Decision was made by the governing body of a Swiss association. According to the jurisprudence of the SFT, Swiss associations enjoy a very wide degree of self-sufficiency and independence. The right to regulate and determine its own affairs is considered essential for the association. According to legal doctrine, an association is granted “*a freedom that almost reaches arbitrariness*”.

- Moreover, neither Swiss law nor the IHF Statutes expressly exclude a delegation of power to amend the IHF Statutes to the IHF Council.
- According to legal doctrine, a delegation of the competence of the general assembly, viz. the Congress, to amend the Statutes is authorised under Swiss law.
- Finally, it must be emphasised that the decision to delegate the power to make a decision on the amendment was rendered by a two-thirds majority. A two-thirds majority is the requisite majority to amend the IHF Statutes. If a two-thirds majority can validly amend the IHF Statutes, the same majority is sufficient to validate a delegation of power to delegate this power to another body, especially in favour of the IHF Council, the highest executive body of the IHF.
- In view of the above, the IHF Congress did not breach either the IHF Statutes or Swiss law by delegating its power to decide on the Motion and therefore to amend the IHF Statutes to the IHF Council.

**iii. No requisite two-thirds majority**

- The IHF does not dispute (and has never disputed) that the vote on the Motion was subject to a two-thirds majority pursuant to Article 12.5.8 IHF Statutes. However, it is clear from the Congress Minutes that the requisite majority was obtained: Yes: 102; No: 26; Abstain: 24.
- It appears from the video recordings of the IHF Congress that certain delegates were not in the room at the time of the vote and that first the number of votes against were counted (red cards), followed by the number of votes in favour (green cards), and finally the number of abstentions (yellow cards). The votes counted match with the Congress Minutes. No one complained about the figures announced by the IHF President.
- The results of the voting process were also confirmed by four of the five scrutineers (all except the representative of the PATHF).
- As to the number of flags on the screen, they were activated whenever a delegate scanned his/her voting card upon entry in the main room. In reality, the only point where the screen matched the room was at the moment of the initial roll call. Torlak Turizm, the company which organised the IHF Congress, confirmed that *“the number of the NFs on the screen is different from the number of delegates in the room as some of them entered the room without showing their accreditation to the barcode”*, as a consequence of which the flags on the main screen at times did not reflect the delegates actually present in the room and proved unreliable. Torlak Turizm also confirmed that *“[t]he number of delegates who didn’t follow the procedures can be more than 16 delegates as many didn’t follow the instructions given by my staff”*.

- The note of one of the scrutineers presented by PATHF simply does not reflect the reality. The only assumption that the IHF can make is that the figure was taken from the count of delegates that appeared on the screen (indeed, the number of the flags illuminated on the screen, which probably reflected the number of member federations who signed in but were not necessarily present in the room, was reflected at the bottom of such screen). These notes are therefore based on a wrong premise.
- As to the attendance list, it simply reflects the member federations represented in general during the IHF Congress. It clearly does not reflect the delegates present at the time of the vote on the Motion.
- Ultimately, it is clear that 152 delegates voted on the Motion, which in the scrutineers' opinion consisted of all the delegates present in the room at the time of the vote on the Motion, and that 102 delegates voted in favour of the Motion. Therefore, the vote had the requisite majority of two-thirds and was valid.

## VII. JURISDICTION

86. The jurisdiction of CAS, which is not disputed, derives from Article 23 IHF Statutes (2018 edition), providing that “[a]ll disputes arising from these Regulations will be handled by the IHF legal bodies. After exhaustion of the internal IHF remedies, the final decision of IHF can be appealed to the Court of Arbitration for Sport (CAS) in Lausanne / Switzerland in accordance with the CAS Code that shall definitely resolve the dispute in accordance with IHF Regulations, additionally Swiss Law. The decision of CAS will be final according to Articles R46 and R59 of the CAS Code” and Article R47 CAS Code.
87. Given that both the IHF Arbitration Commission and the IHF Arbitration Tribunal have issued decisions in this matter, all internal legal remedies have been exhausted, as a consequence of which CAS is competent to rule on the appeal filed by the PATHF.
88. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties.
89. It follows that CAS has jurisdiction to decide on the present dispute.

## VIII. ADMISSIBILITY

90. Article R49 CAS Code determines as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*

91. The IHF Statutes do not make reference to any specific time limit to file an appeal with CAS, nor has the Panel been informed by either of the parties that any regulation of the IHF would

provide for such deadline, as a consequence of which the default 21-day time limit set in Article R49 CAS Code applies.

92. Given that the Appealed Decision was notified to the PATHF on 4 May 2018 and that the PATHF lodged its appeal with CAS on 15 May 2018, the Panel observes that the appeal was filed within the deadline of 21 days. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.
93. It follows that the appeal is admissible.

#### **IX. APPLICABLE LAW**

94. The PATHF submits that the IHF Statutes and regulations shall apply to the merits of this dispute and as the IHF's seat is in Basel, Switzerland, Swiss law shall apply subsidiarily.
95. The IHF submits that since the PATHF is not domiciled in Switzerland, the present arbitration is governed by Articles 176 *et seq.* of the Swiss Private International Law Act ("PILA"). Pursuant to Article 182(2) PILA, the CAS Code governs the procedural aspects of this arbitration. On the merits, the IHF Statutes and regulations are applicable. Since the IHF is a Swiss association, Swiss law applies subsidiarily.
96. Article R58 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".*

97. Article 23 IHF Statutes provides, *inter alia*, the following:

*"[...] After exhaustion of the internal IHF remedies, the final decision of IHF can be appealed to the Court of Arbitration for Sport (CAS) in Lausanne / Switzerland in accordance with the CAS Code that shall definitely resolve the dispute in accordance with IHF Regulations, additionally Swiss Law. [...]"*

98. The Panel observes that the present arbitration is indeed governed by the PILA as the PATHF is not domiciled in Switzerland.
99. The Panel observes that on 11 February 2018, the IHF Statutes (2018 edition), replaced the IHF Statutes (2016 edition). In accordance with the principle of *tempus regit actum*, the 2018 edition is therefore applicable as to the procedure, whereas the 2016 edition is applicable as to the substance, subject to the principle of *lex mitior*.

100. The Panel is satisfied that the IHF regulations and the IHF Statutes (edition 2016) are primarily applicable to the substance of the present dispute, and, subsidiarily, Swiss law, should the need arise to fill a possible gap in the various regulations of the IHF.

## **X. PRELIMINARY ISSUE**

101. As indicated above, during the hearing, the PATHF objected to the admissibility of exhibit R-1 (i.e. the letter dated 9 June 2017, by means of which the IHF President submitted his Motion to divide the PATHF into two confederations to the IHF Head Office in preparation for the IHF Congress to be held in Antalya, Turkey, on 11 November 2017) produced by the IHF and requested this document to be excluded from the file on the basis of Article R57.3 CAS Code because it was available to the IHF, but it was never submitted until the present proceedings before CAS.

102. Also during the hearing, the IHF requested the PATHF's objection to be dismissed. With reference to the working document regarding this Motion that was distributed by the IHF to the delegates on 11 October 2017 (exhibit R-7), the IHF submits that this working document refers to the date of 9 June 2017. The IHF submitted that the document dated 9 June 2017 was genuine and not fabricated. Since there is no bad faith from the side of the IHF, this document cannot be excluded from the file on the basis of Article R57.3 CAS Code.

103. Article R57.3 CAS Code determines as follows:

*“The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply”.*

104. The Panel observes that the practice of CAS with respect to the application of Article R57.3 CAS Code is restrictive:

*“It is clear from the language of this rule that while a CAS Panel may exclude such evidence, it is not bound to do so. Indeed the practice of the CAS with respect to the application of this rule is restrictive. In other words, exclusion of evidence should be the exception rather than the rule, and should generally be applied in “exceptional circumstances of abusive or inappropriate conduct by the parties submitting new evidence” (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, Alphen aan den Rijn 2015, p. 521-522)”.*

*The Sole Arbitrator does not find the presence of circumstances justifying the exclusion of new evidence, and finds that to the extent that the Respondent was granted the opportunity to address such evidence, which it was, such an approach is in keeping with the CAS's de novo power of review under R57 of the Code, and with the parties' right to be heard” (CAS 2016/A/4859, para. 64 of the abstract published on the CAS website).*

105. The Panel finds that the PATHF did not establish that exhibit R-1 as filed by the IHF together with its Answer was filed in an abusive or inappropriate way, but rather that the filing of this

document in the present appeal arbitration proceedings before CAS is in keeping with the *de novo* power of review of CAS as set out in Article R57 CAS Code.

106. In any event, as noted by the IHF, exhibit R-7 that was distributed by the IHF to the delegates in preparation for the IHF Congress set to take place on 11 November 2017 is titled "*Motion from IHF President regarding IHF Statutes (dated 9 June 2017)*", indeed indicates that such document is genuine.
107. The Panel therefore decides to dismiss the PATHF's request to exclude exhibit R-1 from the case file.

## **XI. MERITS**

### **A. The Main Issues**

108. The main issues to be resolved by the Panel are:
- i. Was there a proper notice in the sense of Article 67(3) SCC for the motion presented during the IHF Congress resulting in the IHF Congress Decision?
  - ii. Could the IHF Congress delegate its power to amend the IHF Statutes to the IHF Council?
  - iii. Is the IHF Congress Decision null and void or voidable?
  - iv. Shall the IHF reimburse the PATHF with costs incurred in relation to the appeals filed with the IHF Arbitration Commission and the IHF Arbitration Tribunal?
  - v. Final considerations on remaining issues.
- i. Was there a proper notice in the sense of Article 67(3) SCC for the motion presented during the IHF Congress resulting in the IHF Congress Decision?*
109. As set out above in the factual part of this award, and contrary to the PATHF's submissions in this respect, the Panel finds that the Motion complied with the relevant prerequisites to the extent that the IHF President submitted his Motion to divide the PATHF into two confederations to the IHF Head Office on 9 June 2017 (i.e. more than 5 months prior to the IHF Congress in accordance with Article 12.3.8.a) IHF Statutes), the Motion was included in the IHF Congress Agenda as distributed to the delegates on 29 September 2017 (i.e. more than 6 weeks prior to the IHF Congress in accordance with Article 12.1.6 IHF Statutes), and a working document explaining the content of the Motion was distributed to the delegates on 11 October 2017 (i.e. more than one month prior to the IHF Congress in accordance with Article 12.1.6 IHF Statutes).

110. The Panel therefore finds that the formal prerequisites, as set out in Article 12 IHF Statutes are complied with. However, a notice alone is not sufficient. Rather, pursuant to Article 67(3) SCC, “*proper notice*” must be given, which comprises not only formal aspects but also material aspects. Article 67(3) SCC determines as follows:
- “Resolutions may be taken on matters for which proper notice has not been given only where this is expressly permitted by the articles of association”.*
111. According to the Swiss Federal Tribunal, it is necessary, as a general rule, that the items on which the general assembly must rule are placed on the agenda and duly announced (*“gehörig angekündigt”*). Whether or not this is the case is decided in each case/situation, based on the specific circumstances: an item is duly placed on the agenda when it is indicated in such a way that members are not surprised and can prepare themselves to debate it (ATF 126 III 5 at 2a; 114 II 193 at 5b).
112. It is sufficient that, on the basis of the agenda and the statutes, the members know on which points it will be necessary to deliberate and, if necessary, to take a decision (ATF 126 III 5 at 2a; 114 II 193 at 5b). However, it cannot be considered that the agenda includes all objects which may be involved in the formulation that is adopted or which the formulation does not exclude (ATF 114 II 193, at 5b; 5A\_760/2011 at 3.2.3.2). In case of exclusion (Article 72 SCC), for example, the identity of the person concerned by the decision of exclusion must at least be indicated (ATF 114 II 193 at 5b).
113. A convening notice that does not include a full agenda has a defect that could lead to the annulment of the decision (ATF 136 III 174). The same conclusion must be drawn when the description of a subject on the agenda is imprecise, unclear or misleading. Whether or not the decision should be set aside depends, however, on the assessment of the concept of defect and the gravity of the violation. It is therefore essential to determine whether or not the alleged defect could have an influence on the decision (ATF 132 III 503; ATF 114 II 193; 5A\_760/2011 at 3.2.3.2).
114. Against this background, the Panel will assess whether “*proper notice*” was given to the IHF Congress in the specific circumstances of the matter at hand.
115. The Panel observes that the only reference to the Motion in the IHF Congress Agenda is “*Motion from the IHF President*”, without indicating what the content of the Motion was. The Panel finds that this is in principle not sufficient for the members to know on which issue it would have to deliberate on and, if necessary, to decide. This does not necessarily mean that the IHF Congress Decision is to be invalidated, as this would depend on the assessment of the concept of defect and the gravity of the violation.
116. The Panel however finds that also the working document as distributed to the members on 11 October 2017 did not enable the members to know on which issue they would have to deliberate on and decide. Although the working document (paraphrased in para. 14 above) does explain the IHF President’s Motion to split the PATHF into two confederations in some detail, it does

however not at all reflect the motion that was finally presented and voted on during the IHF Congress (i.e. to delegate the IHF Congress' authority to the IHF Council to *"discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent"*). The Panel considers this to be a fundamentally different motion. Indeed, the Motion as announced in the IHF Congress Agenda on 29 September 2017 and as explained in the working document distributed on 11 October 2017 was finally not voted on during the IHF Congress (i.e. the IHF Congress did not decide on whether or not to split the PATHF).

117. There is also no evidence on the file suggesting that the decision to change the content of the motion during the Antalya Council Meeting was in any way officially communicated to the IHF Congress delegates prior to the IHF Congress, so that they could have prepared themselves to deliberate and vote on the amended motion, let alone that the delegates could have discussed the motion within their respective National Federations. Rather, the amended motion was first presented to the IHF Congress delegates during the IHF Congress itself and took them by surprise. Indeed, Mr Noveri, Mr Shishkarev and Mr Rubeli testified that they were not prepared to vote on the amended motion. Accordingly, the IHF Congress delegates were basically given no chance to consider the content of the motion or the far-stretching implications that would arise from accepting the amended motion.
118. Article 12.3.9 IHF Statutes determines the following:

*"Motions submitted past the deadline or while the Congress is in progress require a two-thirds majority vote of the Congress to be heard. Excluded from this provision shall be Statutes amendments and applications to hold IHF events"*.
119. As such, although it is possible to submit new motions even during the IHF Congress, such motions may not concern amendments to the IHF Statutes, whereas the motion to delegate the IHF Congress' authority to *"discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF Statutes changes"* to the IHF Council clearly concerned a potential amendment to the IHF Statutes.
120. Furthermore, the Panel considers it inexcusable that no room for discussion on the motion was provided during the IHF Congress, but that the motion was put to the vote immediately after the amended motion was announced by the IHF President.
121. The Panel finds that the situation was further aggravated because several witnesses testified that they asked for the floor during the IHF President's introduction of the motion prior to the vote, but that they were not given the floor.
122. Mr Moccia testified that he stood up and raised his hand, but that he was ignored. He stated that other delegates also tried to push the button, but that the system was blocked. No room was given to speak until after the vote.
123. Mr Noveri testified that he requested the floor by standing up and pressing the microphone button at least three times after the IHF President's introduction, but that he was not allowed



to say anything. He further stated that two or three other delegates of PATHF requested to say something (including Mr Hector Fernandes).

124. Mr Shishkarev testified that he tried to speak after the IHF President's presentation and before the vote. He stated that he pushed his button, but that there was no reaction from the IHF President. Mr Shishkarev explained that many delegates wanted to take the floor and that he understood that they also pushed the button, raised their hands and stood up.
125. Mr Rubeli testified that he tried to take the floor 5 or 6 times, but that he never received it. He testified that he wanted to warn the IHF President that it is in general not possible to delegate something to the Council in this way, without subsequent approval by the Congress. When asked by counsel for the IHF why he abstained from voting rather than voting against, Mr Rubeli clarified that he considered there to be a difference between content and goal. He stated that he did not agree with the procedure, but that he had no opinion about the vote itself.
126. Mr Albrechtson testified that no delegates requested the right to speak.
127. Mr Blazquez Garcia testified that he remembered Mr Moccia asking for the floor, but that he did not remember whether Mr Moccia stood up before or after the vote. He stated that he could not remember whether anyone was granted the floor after the IHF President but before the vote.
128. Mr Garcia de la Torre testified that his recollection was that Mr Moccia was granted the floor prior to the vote.
129. The Panel finds that the video of the IHF Congress and the IHF Congress Minutes clearly show that nobody was granted the floor between the IHF President's introduction of the motion and the vote. The recollection of Mr Blazquez Garcia and Mr De la Torre is therefore factually incorrect. The video and the minutes however do not show whether anyone asked for the floor during the IHF President's introduction and before the vote.
130. Overseeing the witness evidence provided in this respect, the Panel is satisfied to accept that several delegates asked for the floor, but were not permitted to speak or discuss the motion. The only person testifying that no delegates requested the right to speak is Mr Albrechtson. Although the Panel found Mr Albrechtson's testimony in general credible, the Panel finds that his testimony in this respect is of little value as Mr Albrechtson may well have been occupied with the preparation of counting the votes and may therefore very well have missed that certain delegates asked for the floor, particularly also in light of the fact that Mr Noveri and Mr Shishkarev requested the floor by means of pressing the microphone button, as this could reasonably not have been witnessed by Mr Albrechtson.
131. With the benefit of hindsight, the Panel finds that these interventions, if voiced prior to the vote, could have influenced the position of some IHF Congress delegates and could potentially have resulted in a different outcome in the vote. For example, as outlined in paragraph 125 above, Mr Rubeli testified that he wished to make procedural remarks relating to the vote.

Whilst the Panel is obviously not able to verify whether or not Mr Rubeli would indeed have made such procedural remarks had he been granted the floor, it is possible that such remarks could have influenced the position of some IHF Congress delegates and resulted in a different outcome in the vote.

132. Considering all the above, the Panel finds that no proper notice was given to the IHF Congress for the amended motion to delegate its authority to the IHF Council to “*discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF Statutes changes*”. Although this in itself is already an important omission, the Panel considers the situation particularly serious given that IHF Congress Decision could result in amendments to the IHF Statutes, i.e. it was a vote of major importance, which is also shown by the fact that a two-thirds majority was required for approval. Also, as another aggravating factor, the Panel finds that IHF Congress delegates were not informed in a fair manner about the amended motion that was put to the vote, because several delegates asked for the floor, but were not afforded an opportunity to say something prior to the vote.
133. Consequently, the Panel has no doubt in concluding that no proper notice was given for the motion that was ultimately presented during the IHF Congress resulting in the IHF Congress Decision.

**ii. *Could the IHF Congress delegate its power to amend the IHF Statutes to the IHF Council?***

134. Neither the Panel nor the parties were able to find any relevant jurisprudence on this specific issue, as a consequence of which the parties resorted to the legal doctrine set out below.
135. It is undisputed among legal scholars that the general meeting is the association’s supreme organ. It is accepted that some of its competences can be delegated to other organs, while others cannot (“*unübertragbaren Prärogativen*” or untransferable prerogatives).
136. According to HEINI/SCHERRER:

*“Ausschliesslich – und damit unentziehbar – steht dem obersten Organ die Satzungshebeheit zu. Mithin ist für Erlass und Änderung der Statuten ausschliesslich das oberste Organ (Versammlung der Mitglieder, Delegiertenversammlung) zuständig”* (HEINI/SCHERRER, Basler Kommentar, Zivilgestezbuch I, 5<sup>th</sup> edition, para. 17 ad Art. 64 CC; para. 5 ad Art. 65 SCC).

Free translation:

*“The general assembly has exclusive – and thus irrevocable – sovereignty over the statutes. Thus, for the adoption and amendment of the statutes, the supreme body (meeting of the members, meeting of delegates) is exclusively competent”.*

137. NIGGLI suggests that:

*“Ausschliessliche Kompetenzen der Versammlung sind unentziehbar und nicht übertragbar auf andere Organe; dies sind ua die Satzungs-kompetenz (Erlass/ Änderung der Statuten)”* (NIGGLI M.A., Personen- und Familienrecht – Partnerschaftsgesetz, Handkommentar zum Schweizer Privatrecht, 2<sup>nd</sup> edition; para. 9 ad Art. 65 SCC).

Free translation:

*“Exclusive powers of the Assembly are irrevocable and not transferable to other organs: these are, among others, the competence over the Statutes (adoption/ amendment of statutes)”*.

138. RIEMER maintains the following in this respect:

*“Als weitere unentziehbare Kompetenzen der Vereinsversammlung (auch wenn sich dies nicht ausdrücklich aus dem Gesetz ergibt) sind anzusehen das Aufsichtsrecht und das allfällige Recht auf Déchargeerteilung (gemäss Picenoni 217/218, 225/226 haben die Vereinsorgane bei Vorliegen der entsprechenden Voraussetzungen ihrerseits einen Anspruch auf Entlastung, der aber nicht zwingen dist, S. 224/225) sowie grundsätzlich die Gründungs-, Statutenrevisions- und die Aufhebungskompetenz”* (RIEMER H.M., Berner Kommentar, para. 24 ad Art. 65 SCC).

Free translation:

*“Other irrevocable powers of the General Assembly (even if this does not expressly result from the law) are to be considered (cf. also N 15 before Art. 64-69): the right to supervise and the right of discharge (according to Picenoni 217/218, 225/226 the organs of the Association have a claim to discharge if the corresponding conditions are met, but this is not mandatory, p. 224/225) and in principle the powers of foundation, revisions of the Statutes and dissolution”*.

*“Immerhin schliesst auch eine grundsätzliche Bejahung der Unentziehbarkeit dieser Kompetenzen m.E. nicht aus, dass entsprechende Entscheidungen in begrenztem Umfang statutarisch auch auf den Vorstand (oder ein anderes Vereinsorgan) – der ja auch diesbezüglich unter Aufsicht der Vereinsversammlung bleibt – delegiert werden können [...]”* (RIEMER H.M., Berner Kommentar, para. 15 Vorbemerkungen zu Art. 64-69 SCC).

Free translation:

*“After all, a fundamental affirmation of the irrevocability of these competences does not exclude, in my opinion, that corresponding decisions can be delegated to a limited extent by statute to the board (or another organ of the association) - which also remains under the supervision of the association meeting in this respect [...]”*.

139. PERRIN/CHAPPUIS submit the following:

*“L’autonomie de l’association en matière de définition des compétences des différents organes comporte cependant certaines limites qui sont inhérentes à la nature de ce sujet de droit qui ne peut aliéner sa liberté au-delà d’une certaine limite sans perdre sa personnalité. Ainsi l’assemblée générale – organe suprême de l’association – garde nécessairement la haute main, c’est-à-dire le pouvoir de décider, en matière d’adoption et de modification statutaire”* (PERRIN/CHAPPUIS, Droit de l’association, 2008, p. 55).

Free translation:

*“The autonomy of the association in defining the competences of the various bodies does, however, have certain limits which are inherent in the nature of this legal subject, who cannot alienate his freedom beyond a certain limit without losing his personality. Thus the general assembly – the supreme organ of the association – necessarily retains the upper hand, i.e. the power to decide, in matters of adoption and amendment of the articles of association”.*

140. JEANNERET/HARI take a somewhat more liberal approach:

*“L’assemblée générale dispose de compétences primaires en matière d’admission et d’exclusion des membres, de désignation de la direction et de compétences pour modifier les statuts. La loi n’interdit pas une délégation de l’une ou l’autre de ces compétences. L’assemblée générale a plus généralement le pouvoir de déléguer certaines compétences qui ne lui sont pas attribuées exclusivement de par la loi ou les statuts. Pour être admissible, le principe de délégation de compétence doit figurer dans les statuts. Une délégation de compétences peut aussi être autorisée en tant que de besoin par décision de l’assemblée générale, par exemple en faveur de la direction”* (JEANNERET/HARI, Commentaire Romand du Code Civil I, para. 6-7 ad Art. 65 SCC).

*“Il paraît impossible déléguer de manière définitive et absolue à un autre organe ou une catégorie spécifique de membres la compétence de modifier les statuts sans simultanément réserver la possibilité d’en appeler à l’assemblée générale des membres. En d’autres termes, il doit être possible de mettre en cause une modification des statuts en faisant porter ce point à l’ordre du jour d’une assemblée générale de valablement délibérer sur une modification statutaire par hypothèse adoptée par un autre organe”* (JEANNERET/HARI, Commentaire Romand du Code Civil I, para. 10 ad Art. 65 SCC).

Free translation:

*“The general assembly has primary competence in respect of admission and exclusion of members, designation of the committee and modification of the statutes. The law does not forbid a delegation of one or another of these competences. More generally, the general assembly has the power to delegate certain competences which are not exclusively attributed to it by law or by the statutes. To be admissible, the principle of delegation must be included in the statutes. A delegation of competences can also be authorised where necessary by decision of the general assembly, e.g. in favour of the board”.*

*“It seems impossible to definitely and absolutely delegate to another body or a specific category of members the competences to amend the statutes without simultaneously leaving the possibility to appeal to the general assembly of the members. In other words, it must be possible to challenge a modification of the statutes by requesting to add such point to the agenda of a general assembly. No statutory provision shall prevent the general assembly from validly deliberating on the modification of the statutes assumingly adopted by another body”.*

141. Whereas the IHF only referred to the first part of JEANNERET/HARI (quoted in Respondent’s Answer at para. 32.3), the PATHF rightfully drew the attention of the Panel to the second part (para. 10) of the same legal authority and to all the other authorities set out above, which are much more restrictive.

142. In general, Swiss legal doctrine therefore appears quite restrictive in determining when a general assembly is permitted to delegate its power to amend statutes to another body. The Panel does not deem it necessary to express any opinion on what standard is to be applied exactly, because it appears that even the scholars whose interpretations of the law appear to be the least restrictive in this respect (JEANNERET/HARI) are of the view that in order to do so, a statutory basis is required, without which the general assembly would ultimately have to decide on a modification of the statutes adopted by another body. Even RIEMER, which the IHF referred to (i.a.) during the hearing, requires a statutory basis (see above RIEMER, Berner Kommentar, para. 15 Vorbemerkungen zu Art. 64-69 SCC (“*statutarisch*”).
143. However, even if such interpretations were applied to the matter at hand, the Panel finds that the prerequisites for the IHF Congress Decision to delegate its authority to the IHF Council to “*discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF statutory amendments*” are clearly not complied with: there is neither a provision in the IHF Statutes providing for such delegation, nor is a reservation made to possibly appeal the IHF Council decision to amend the IHF Statutes to the IHF Congress.
144. The Panel finds that it does not make a difference that there was no wholesale delegation of powers from the IHF Congress to the IHF Council, but only a delegation to amend the IHF Statutes on the potential splitting of the PATHF. Indeed, a wholesale delegation would obviously go too far, as admitted by the IHF during the hearing, but the Panel finds that also a specific delegation of powers to amend the IHF Statutes clearly goes too far, insofar as no warranties are put in place to preserve the IHF Congress’ prerogative to intervene in case it would not agree with the IHF Council decision on the amendment of the IHF Statutes.
145. Consequently, the Panel finds that in the circumstances of the present case, the IHF Congress was clearly not entitled to delegate its authority to the IHF Council to “*discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF statutory amendments*”.

**iii. Is the IHF Congress Decision null and void or voidable?**

146. According to legal doctrine, a resolution of the General Assembly is null and void, if it is afflicted with a severe deficiency: “*Nullity is given in cases where a resolution has manifest defects, whether those be procedural or substantive*” (HEINI/PORTMANN, Das Schweizerische Vereinsrecht, 2005, par. 274).
147. The question of whether a decision is challengeable or null and void must, in each case, be dealt with based on the specific circumstances of each individual case. If it cannot be determined with sufficient clarity whether a decision is challengeable or null and void, it is commonly acknowledged that it is challengeable for reasons of legal certainty (HEINI/PORTMANN/SEEMANN, Grundriss des Vereinsrechts, 2009, No. 230; HEINI/SCHERRER, Basler Kommentar – Zivilgesetzbuch I, 2010, Art. 75 ZGB par. 35 and 40;

RIEMER H.M., Berner Kommentar, 1990, Art. 75 par. 92; RIEMER H.M., Anfechtungs- und Nichtigkeitsklage, 1998, No. 251 ff.).

148. The Panel finds that the irregularities that occurred in the process leading up to the IHF Congress Decision are of such a severity that the threshold of null and void is reached. This is particularly so for three reasons. First, because there was no legal basis in the IHF Statutes for the IHF Congress to delegate its authority to amend the IHF Statutes to the IHF Council and because the IHF Congress was not provided with an opportunity to review or ratify the IHF Council's decision in this respect afterwards. Second, the motion presented by the IHF President at the IHF Congress was completely new for the IHF Congress delegates. No prior official information in respect of this new motion to delegate powers to the IHF Council was provided; no proper notice was given in the IHF Congress Agenda, nor in the working documents distributed later. Third, the IHF Congress delegates were not put in a position to discuss the amended motion before it was put to the vote, while the outcome of the vote may well have been different in case these delegates had been granted the floor.
149. Consequently, in light of these severe deficiencies in the process leading to the IHF Congress Decision, the Panel finds that the only appropriate decision in this respect is to declare the IHF Congress Decision null and void.
150. Given this conclusion, the Appealed Decision issued by the IHF Arbitration Tribunal on 1 May 2018 is annulled.

***iv. Shall the IHF reimburse the PATHF with costs incurred in relation to the appeals filed with the IHF Arbitration Commission and the IHF Arbitration Tribunal?***

151. Notwithstanding the conclusion that the IHF Congress Decision is null and void, the Panel is of the view that the PATHF's appeal cannot be entirely upheld. This is so because the Panel finds that the PATHF's fourth request for relief is to be dismissed. This request for relief determines as follows:

*“The International Handball Federation shall reimburse the CHF 5,000 paid by the Pan-American Team Handball Federation for the appeal to the IHF Arbitration Commission and the CHF 10,000 paid by the Pan-American Team Handball Federation for the appeal to the IHF Arbitration Tribunal”.*

152. According to consistent CAS jurisprudence, *“it is not for the CAS to reallocate the costs of the proceedings before the previous instances”* (CAS 2013/A/3054, para. 89 of the abstract published on the CAS website; CAS 2016/A/4387, para. 181-182 of the abstract published on the CAS website). The PATHF has developed no argumentation to the contrary, nor has invoked any legal or statutory basis in order to demonstrate that this solution should not apply in the present case. Therefore, the appeal shall be dismissed in this respect.

**v. *Final considerations on remaining issues***

153. Given the above conclusion, the Panel considers a debate on whether there was a two-thirds majority of the IHF Congress in favour of the amended motion to be moot. The Panel will therefore refrain from expressing any comments on this issue.
154. The Panel notes that it is not required to deliberate on whether or not the division of the PATHF is an issue to be decided by the National Federations comprising PATHF according to Article 7.1.5 of the IHF Statutes or whether the IHF Congress might be competent to take such decision under a different provision of the IHF Statutes. The Panel is also not concerned with whether or not it is a wise, justifiable or feasible initiative to split the PATHF into two confederations, as this is something that should be left to the self-governing powers of associations such as the IHF. It is also not for this Panel to decide whether the IHF Council would be better positioned to take such decision than the IHF Congress if sufficient warranties were put in place. The sole issue to be decided by this Panel is to decide on the legality of the IHF Congress Decision, and the Panel finds that no other conclusion is possible than holding that such decision is null and void.

**B. Conclusion**

155. Based on the foregoing, the Panel holds that:
- i. No proper notice was given for the motion that was ultimately presented during the IHF Congress resulting in the IHF Congress Decision.
  - ii. The IHF Congress was clearly not entitled to delegate its authority to the IHF Council to “*discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF statutory amendments*”.
  - iii. The IHF Congress Decision is declared null and void.
  - iv. The Appealed Decision is annulled.
  - v. The IHF is not held to reimburse the PATHF with the costs incurred in relation to the appeals filed with the IHF Arbitration Committee and the IHF Arbitration Tribunal.
156. 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 on 15 May 2018 by the Pan-American Team Handball Federation against the decision issued on 1 May 2018 by the Arbitration Tribunal of the International Handball Federation is partially upheld.
  2. The decision issued on 1 May 2018 by the Arbitration Tribunal of the International Handball Federation is annulled.
  3. The decision of the Congress of the International Handball Federation of 11 November 2017 to delegate its authority to the Council of the International Handball Federation to discuss, evaluate and take a decision on the motion regarding the IHF Statutes related to the Pan-American continent and consequently on the relevant IHF Statutes changes is declared null and void.
- (...)
6. All other and further motions or prayers for relief are dismissed.