



Arbitration CAS 2018/A/5868 Pan-American Team Handball Federation (PATHF) v. International Handball Federation (IHF), award of 10 May 2019

Panel: Prof. Martin Schimke (Germany), Sole Arbitrator

Handball

Governance

Extent of the authority of res judicata

Review of a Division President's decision regarding CAS jurisdiction

Time limit to supplement or change requests for relief under Article R56 CAS Code

Consequences of revocation of delegated decision-making power

Reallocation by CAS of costs of previous instances

1. The authority of *res judicata* is, in principle, only attached to the operative part of the award. However, in order to properly understand the scope of the principle and the effect of the operative part of the award, one also needs to look into the reasoning leading to the findings. This does not only apply to arbitral awards, but also to an order by means of which proceedings are terminated in a final and binding way, be it entirely or partially.
2. Whereas a *prima facie* ruling of the Division President that CAS has jurisdiction is subject to review by the arbitral tribunal, a ruling by the Division President that CAS has clearly no jurisdiction is final and binding and terminates the arbitration procedure, be it entirely or partially. This is because an arbitral tribunal is not an appeal instance of the Division President.
3. The consequences of filing an Appeal Brief are clearly set out in Article R56 of the CAS Code of Sports-related Arbitration ("CAS Code"). This provision is to be interpreted in the sense that an appellant can, in principle, not supplement or change its requests for relief after the filing of the Appeal Brief. To find otherwise *i.e.* that the requests for relief can still be amended until the respondent filed its Answer or until the expiration of the time limit within which an appellant could have filed its Appeal Brief, would unjustifiably favour an appellant over a respondent, as the respondent should know against which requests for relief it should defend itself when the Appeal Brief is filed. On the basis of Article R56 CAS Code, there are two reasons to permit an alteration of the requests for relief after the filing of the Appeal Brief: i) permission from the other parties; and ii) exceptional circumstances.
4. In case a body of an association delegates its authority to render a decision to another body of the association and that delegation is later on declared null and void, any decision(s) rendered by the body originally having obtained delegated decision-making power is not automatically inexistent as a consequence of the fact that the delegation

was declared null and void. This is only the case after the decision(s) in question has/have been declared null and void by a court or when the decision(s) is/are formally revoked by the competent body. Consequently, an appeal filed in respect of the decision in question is not moot and a party may have an interest in having the decision annulled by CAS, and to have it declared null and void.

5. In principle, it is not for the CAS to reallocate the costs of the proceedings before the previous instances. However, this may be different when the relevant rules and regulations provide otherwise.

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 three separate but related issues, all stemming from a series of decisions rendered by the IHF Council on 14 January 2018.
4. First of all, they relate to the legality of the decision rendered by the IHF Council to divide the PATHF into two confederations, namely a “*North America and the Caribbean Handball Confederation*” and a “*South and Central America Handball Confederation*”, following a decision issued by the IHF Congress to delegate such decision-making authority to the IHF Council, while the latter decision has been declared null and void by the Court of Arbitration for Sport (“CAS”) in the proceedings CAS 2018/A/5745 PATHF v. IHF (*i.e.* the “Implementation Decision”).
5. Second, the proceedings relate to the decision rendered by the IHF Council to suspend the PATHF (*i.e.* the “Suspension Decision”).
6. Third, in case the PATHF’s appeal is successful, the PATHF seeks compensation from the IHF for the costs incurred related to the proceedings before the IHF Arbitration Commission and the IHF Arbitration Tribunal that had to be exhausted in order for the PATHF to commence the present appeal arbitration proceedings before CAS.

III. FACTUAL BACKGROUND

7. 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.
8. On 18 August 2017, an IHF Council meeting was held in Tbilisi, Georgia (the "Tbilisi Council Meeting"), during which the IHF President presented a motion to divide the PATHF into two confederations (the "Motion").
9. On 7 October 2017, a PATHF Extraordinary Assembly was held in Bogotá, Colombia, to discuss, *inter alia*, the Motion to split the PATHF.
10. On 11 October 2017, the PATHF informed the IHF of the PATHF Extraordinary Assembly held on 7 October 2017.
11. On 23 October 2017, 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.
12. 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.
13. 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.
14. On 9 November 2017, an IHF Council meeting took place in Antalya, Turkey (the "Antalya Council Meeting"), where it was decided that the PATHF's alleged violation of the IHF Statutes would be submitted to the IHF Arbitration Commission in order to obtain their recommendation for further treatment by the IHF Executive Committee and the IHF Council.

15. On 10 November 2017, the PATHF President apologised for the formal omission of an IHF invitation to attend the PATHF Extraordinary Assembly, indicating that it was an involuntary omission that in no way aimed at “injuring” IHF regulations and that it was simply an administrative error.
16. On 11 November 2017, the IHF Congress took place in Antalya, Turkey, where the IHF Congress 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”).
17. On 7 December 2017, the PATHF filed an appeal with the IHF Arbitration Commission, requesting that the Congress Decision be declared null and void.
18. On 14 January 2018, an IHF Council meeting was held 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 “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 7th, 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*”. 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 –total of 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).*

19. On 17 January 2018, the IHF President informed the PATHF of the 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*”.
20. On 18 January 2018, the IHF President informed the IHF Member Federations of the Council Decision.
21. On 25 January 2018, the IHF President informed the PATHF President as follows:

“Referring to our communication dated 17 January 2018 regarding the [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 [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 [Council Decision].*

[...]”.

22. 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.
23. On 13 February 2018, the PATHF was provided with the minutes of the Zagreb Council Meeting.
24. On 14 February 2018, the IHF Arbitration Commission issued its 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”¹.
25. On 6 March 2018, the PATHF filed an appeal with the IHF Arbitration Tribunal against the IHF Arbitration Commission’s decision issued on 14 February 2018.
26. On 14 March 2018, the PATHF filed a new appeal with the IHF Arbitration Commission, this time against the Council Decision, with, *inter alia*, the following requests for relief:
 - I. *The appeal against the decision issued on 14 January 2018 by the IHF Council in Zagreb, Croatia, implementing the challenged decision taken on 11 November 2017 at the XXXVI IHF Ordinary Congress, is upheld.*
 - II. *The decision issued on 14 January 2018 by IHF Council in Zagreb, Croatia, implementing the challenged decision taken on 11 November 2017 at the XXXVI IHF Ordinary Congress, is null, respectively annulled.*

[...].”
27. On 17 April 2018, the PATHF lodged an appeal with CAS on the basis of a denial of justice by the IHF in respect of the proceedings pending before the IHF Arbitration Tribunal regarding the Congress Decision. These proceedings were referenced by CAS as CAS 2018/A/5685 Pan-American Team Handball Federation (PATHF) v. International Handball Federation (IHF). The PATHF ultimately withdrew this appeal.
28. On 1 May 2018, the IHF Arbitration Tribunal rendered its decision regarding the Congress 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”.

¹ It appears to the Sole Arbitrator that the reference to 14 December 2017 is a typographic mistake, as it appears that the appeal was filed on 7 December 2017. This difference is in any event not material.

29. On 4 May 2018, the grounds of the decision of the IHF Arbitration Tribunal rendered on 1 May 2018 were communicated to the PATHF.

30. On 14 May 2018, the IHF Arbitration Commission rendered its decision on the appeal filed by the PATHF against the Council Decision, 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”.

31. On 15 May 2018, the PATHF filed an appeal with CAS against the decision issued by the IHF Arbitration Tribunal on 1 May 2018 related to the Congress Decision (CAS 2018/A/5745 PATHF v. IHF).

32. On 13 June 2018, the PATHF filed an appeal with the IHF Arbitration Tribunal against the IHF Arbitration Commission’s decision dismissing the PATHF’s appeal against the Council Decision, submitting, *inter alia*, the following requests for relief:

- I. *The appeal against the IHF Arbitration Commission’s decision issued on 14 May 2018 is upheld.*
- II. *The decision issued on 14 January 2018 by IHF Council in Zagreb, Croatia, implementing the Challenged Decision taken on 11 November 2017 at the XXXVI IHF Ordinary Congress, is null, respectively annulled.*

[...].”

33. On 13 August 2018, the IHF Arbitration Tribunal rendered its decision (the “Appealed Decision”) regarding the Council Decision, 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 13 June 2018 against the Decision of the Arbitration Commission of the International Handball Federation dated 14 May 2018 is dismissed”.

34. On 13 September 2018, CAS issued the operative part of its arbitral award in the proceedings referenced as CAS 2018/A/5745 PATHF v. IHF related to the Congress Decision. The operative part, *inter alia*, determines the following:

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.*

[...]”.

35. On 14 September 2018, the IHF issued a press release determining as follows:

“The [IHF], which is the governance body of handball, is maintaining its position to develop handball in the two continents of North America and the Caribbean Handball Confederation (NACHC) and South and Central America Handball Confederation (SCAHC). The project of a recognition of two separate Continental Confederations by the next IHF Congress remains absolutely in force and will be implemented forthwith in the best interest of handball worldwide.

According to Article 19.1.1 of the IHF Statutes, the IHF is the original owner of all the rights emanating from competitions (World Championships and Olympic Handball Tournaments including all relevant qualifications, etc.). Hence, the IHF is maintaining its position to organise future qualification championships in NACHC and SCAHC.

The Pan-American Team Handball Federation (PATHF) was suspended by the IHF Council in its meeting in Zagreb, Croatia on 14 January 2018 according to Article 11.2.3.2 of the IHF Statutes. Consequently, the IHF Council, in its meeting of 14 January 2018, decided on the two working groups for NACHC as well as SCAHC, which are currently not only managing the continental affairs but also drafting the statutes and regulations (which shall include the World Championship qualification championships) for both NACHC and SCAHC. The IHF intends to continue the progress achieved in the two continents until now with the help of the National Federations of both continents. The planned handball development programme for the two continents will be maintained. The decision of the Court of Arbitration for Sport (CAS) shall be on the agenda of the next IHF Council meeting taking place in Doha, Qatar on 18 October 2018”.

36. On 26 October 2018, the grounds of the arbitral award in the proceedings referenced as CAS 2018/A/5745 PATHF v. IHF related to the Congress Decision were communicated to the parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

37. On 17 August 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. The PATHF requested that the present appeal proceedings be consolidated together with the proceedings referenced as CAS 2018/A/5745 PATHF v. IHF; that expedited proceedings be implemented: or, alternatively, that the present appeal proceedings be stayed. The PATHF’s submission also contained a request for the IHF to produce evidence.
38. On 21 August 2018, following an enquiry from the CAS Court Office in this regard, the PATHF agreed that the present appeal proceedings would be referred to the same Panel as in CAS 2018/A/5745 PATHF v. IHF.
39. On 23 August 2018, following an enquiry from the CAS Court Office in this regard, the IHF indicated that it did not object to the present appeal proceedings being referred to the same

Panel as in CAS 2018/A/5745 PATHF v. IHF, whereas it objected to an expedited procedure being implemented. The IHF further indicated that it shared the PATHF's view that *"the outcome in the matter CAS 2018/A/5745 will necessarily determine the outcome in the present appeal"* and that it did therefore not object to the present appeal proceedings being suspended, pending the issuance of the final award in CAS 2018/A/5745 PATHF v. IHF.

40. Also on 23 August 2018, the CAS Court Office informed the parties that, due to the IHF's objection, no expedited procedure would be implemented. Furthermore, following the IHF's agreement, the present appeal proceedings were suspended.
41. On 26 September 2018, the PATHF filed a "supplementary Appeal Brief" and an application for provisional measures.
42. On 1 October 2018, following an invitation in this regard from the CAS Court Office, the IHF objected to the admissibility of the "supplementary Appeal Brief" as well as to the amended prayers for relief. The IHF further indicated that *"as the decision of the IHF Congress, which was the basis of the Appealed Decision, was declared null and void, it follows that the IHF Council decision is inexistent as well"*.
43. On 3 October 2018, the CAS Court Office informed the parties that, in light of the IHF's objection, the admissibility of the PATHF's "supplementary Appeal Brief" would be decided by the Panel, once constituted.
44. On 5 October 2018, the PATHF commented on the admissibility of its "supplementary Appeal Brief" and requested the Panel to issue a partial award on its prayer for reliefs no. II, III and IV (see below para. 68). The PATHF further requested that the present case be referred to a sole arbitrator in case the IHF would not pay its share of the advance of costs.
45. On 12 October 2018, the IHF indicated that it was in principle not prepared to pay its share of the advance of costs.
46. On 16 October 2018, the PATHF filed further comments in respect of certain procedural issues.
47. On 22 October 2018, the IHF filed its comments on the PATHF's application for provisional measures, objecting thereto. The IHF also indicated that it would not pay its share of the advance of costs.
48. On 26 October 2018, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided to submit the present matter to a sole arbitrator.
49. On 14 November 2018, the President of the CAS Appeals Arbitration Division issued an Order on Provisional Measures, with the following operative part:
 - "1. *The Court of Arbitration for Sport has no jurisdiction to deal with the appeal against the decision rendered by the Council of the International Handball Federation (IHF) on 14 January 2018 suspending the Pan-American Team Handball Federation (PATHF).*

2. *The application for provisional measures filed by the Pan-American Team Handball Federation (PATHF) on 25 September 2018 in the matter CAS 2018/A/5868 Pan-American Team Handball Federation (PATHF) v. International Handball Federation (IHF) is granted in respect of the decision rendered by the Council of the International Handball Federation (IHF) on 14 January 2018 to divide the Pan-American continent.*
 3. *The decision issued on 14 January 2018 by the Council of the International Handball Federation (IHF) in Zagreb, Croatia, implementing the decision taken on 11 November 2017 at the XXXVI IHF Ordinary Congress to divide the Pan-American continent, is provisionally stayed pending a final award on the merits.*
 4. *The International Handball Federation is ordered to refrain from taking any measure tending to implement the division of the Pan-American continent pending a final award on the merits.*
 5. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*
50. On 19 November 2018, an original copy of the Order on Provisional Measures was notified to the parties.
 51. On 5 December 2018, following the payment of the advance of costs, the PATHF requested the CAS Court Office to grant a deadline to the IHF to file its Answer.
 52. On 11 December 2018, the CAS Court Office informed the parties that further instructions regarding the admissibility of the “supplementary Appeal Brief” as well as the time limit to file the Answer and to comment on the PATHF’s evidentiary requests would be communicated to the parties in due course. Furthermore, pursuant to Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the parties were informed that the arbitral tribunal appointed to decide the present matter was constituted as follows:
 - Prof Dr Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as Sole Arbitrator.
 53. On 27 December 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.
 54. On 3 January 2019, the PATHF reiterated its request for a time limit to be imposed on the IHF to file its Answer.
 55. On 10 January 2019, the CAS Court Office informed the parties that the Sole Arbitrator had determined that a decision on the admissibility of the PATHF’s supplementary Appeal Brief was not necessary at that point of the proceedings and that this issue would be decided concurrently with the final award. The parties were also informed that the suspension of the proceedings was lifted. A time limit was imposed on the IHF to file its Answer and it was invited to comment on the PATHF’s request for production of evidence.
 56. On 4 February 2019, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing.

57. On 7 February 2019, the IHF filed its Answer, pursuant to Article R55 CAS Code. The IHF, *inter alia*, requested the Sole Arbitrator to reconsider his decision to hold a hearing.
58. On 19 February 2019, the PATHF indicated that it firmly insisted on a hearing being held.
59. On 21 February 2019, the CAS Court Office informed the parties that the Sole Arbitrator had decided to maintain his decision to hold a hearing.
60. On 22 February 2019, the CAS Court Office informed the parties that the hearing was scheduled for 6 March 2019, with the agreement of everyone involved.
61. On 1 and 4 March 2019 respectively, the IHF and the PATHF returned duly signed copies of the Order of Procedure to the CAS Court Office.
62. On 6 March 2019, 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 arbitral tribunal.
63. In addition to the Sole Arbitrator, 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 Yvan Henzer, Counsel;
 - 2) Ms Monia Karmass, Counsel
 - b) For the IHF:
 - 1) Ms Amal Khalifa, IHF General Director;
 - 2) Mr Nicolas Zbinden, Counsel.
64. No witnesses or experts were heard. The parties were afforded full opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.
65. At the start of the hearing, following an inquiry from the Sole Arbitrator, the PATHF confirmed that it withdrew its request for documents to be produced by the IHF.
66. Before the hearing was concluded, both parties expressly stated that they did not have any objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
67. The Sole Arbitrator confirms that he carefully heard and took into account 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.

V. REQUESTS FOR RELIEF

68. In its Statement of Appeal considered as its Appeal Brief, the PATHF submitted the following requests for relief:

- I. *This appeal is upheld.*
- II. *The Decision taken on 13 August 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 issued on 14 January 2018 by IHF Council in Zagreb, Croatia, implementing the Challenged Decision taken on 11 November 2017 at the XXXVI IHF Ordinary Congress, 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”.*

69. In its “supplementary Appeal Brief”, the PATHF submitted the following requests for relief:

- I. *This appeal is upheld.*
- II. *The Decision taken on 13 August 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 decisions issued on 14 January 2018 by IHF Council in Zagreb, Croatia, implementing the Challenged Decision taken on 11 November 2017 at the XXXVI IHF Ordinary Congress **and suspending the Pan-American Team Handball Federation, are** 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 **all advances of costs including the minimum CAS Court Office fee of CHF 1,000.***

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” (emphasis added by the Sole Arbitrator in order to identify the differences with the initial requests for relief).*

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

- “(1) inasmuch as it concerns the Implementation Decision, [the PATHF’s appeal] shall be considered without object, respectively, as the PATHF has no special legal interest to obtain any declaratory relief in this regard, is inadmissible;*
- (2) inasmuch as it relates to the Suspension Decision, [the PATHF’s appeal] shall be considered inadmissible, as the relevant prayer for relief was introduced in contravention of R56 of the CAS Code, or in the alternative (and in any event) does not fall within the jurisdiction of the CAS, as decided by the CAS in the Order on Provisional Measures, or in the further alternative shall be dismissed;*
- (3) inasmuch it relates to the reallocation of the costs of the previous (internal) instances, [the PATHF’s appeal] shall be dismissed.*

Moreover, in view of the fact that the PATHF has decided to pursue this appeal, although all meaningful matters (viz. the validity of the decisions of the IHF Council) are now moot or have been held not to be within the jurisdiction of the CAS, which has led the IHF to incur further unnecessary legal costs, the IHF requests in the strongest terms that the PATHF be ordered to bear the arbitration costs and to compensate the IHF for its legal expenses on an indemnity basis”.

VI. SUBMISSIONS OF THE PARTIES

A. The position of the Appellant

71. The PATHF’s Statement of Appeal (that it requested to be considered as its Appeal Brief), in essence, may be summarised as follows:

As to the Implementation Decision

- The IHF Arbitration Tribunal dismissed the procedural request filed by the PATHF to have the proceedings initiated against the Council Decision stayed until the validity of the Congress Decision was adjudicated by CAS. The IHF Arbitration Tribunal found that the Congress Decision ought to be considered as “final”, since the internal remedies of IHF had been exhausted. This position is without merit as the Congress Decision is

currently subject to an appeal before CAS². Since the Congress Decision is not final and binding and can still be annulled before CAS, the IHF Arbitration Tribunal should have acknowledged that the implementation by the IHF Council of the Congress Decision to divide the PATHF into two confederations was premature and would pre-empt the decision of CAS in a manner that would be prejudicial to the PATHF.

- The Council Decision was issued by the IHF Council based on a disputed delegation of the power purportedly granted to it by the IHF Congress. Insofar as such delegation of power was not definitive, the IHF Council did not have the authority to issue the Council Decision, which is thus illegal and must be annulled.

As to the Suspension Decision

- In the Council Decision, the IHF Council decided to suspend the PATHF for having failed to invite the IHF President to the PATHF Extraordinary Congress held on 7 October 2017. The validity of such suspension was simply not assessed by the IHF Arbitration Tribunal, which constitutes a clear denial of justice.
- With reference to Article 10.2, point 3.1 IHF Statutes (2017 edition), the PATHF maintains that cases can only be submitted to the IHF Arbitration Commission in situations of suspected malpractice. The mere unintentional omission to invite the IHF President to attend the PATHF Extraordinary Congress cannot amount to any malpractice, not even suspected malpractice. As a matter of fact, there was no malpractice whatsoever during the PATHF Extraordinary Congress held on 7 October 2017.
- Furthermore, the Council Decision was not taken validly since the PATHF representatives in the IHF Council, *i.e.* the Continental Vice-President and the Continental Representative, were neither invited to nor included in the IHF Council Meeting held in Zagreb on 14 January 2018. This is highly irregular, as no decision to suspend the PATHF had been made at that time.

72. The PATHF's "supplementary Appeal Brief", in essence, may be summarised as follows:

As to the Implementation Decision

- It follows undeniably from the arbitral award issued in CAS 2018/A/5745 PATHF v. IHF that the Council Decision dividing the PATHF into two confederations and amending the IHF Statutes accordingly was taken upon the delegation of such authority by the IHF Congress, which is the only authority empowered to amend the Statutes with a two-thirds majority. If such delegation was null and void, as acknowledged by CAS, then the Council Decision is also null and void and must be annulled, as regards

² It is to be noted that this submission was filed prior to the issuance of the arbitral award in the proceedings CAS 2018/A/5745 PATHF v. IHF.

both the division of the PATHF and the corresponding amendments of the IHF Statutes.

As to the Suspension Decision

- The IHF has never maintained that the PATHF had violated its normal democratic procedures, notably on the occasion of the PATHF Extraordinary Assembly held on 7 October 2018. In fact, there is no evidence that the PATHF has ever violated its normal democratic procedures.
- The only violation the PATHF is alleged to have committed is merely a “*direct violation of the Continental Confederation prescribed duties*”. It is neither a violation of the democratic principles, nor an infringement of any IHF fundamental law. The PATHF was perfectly allowed to call the PATHF Extraordinary Assembly and to take the decision which was adopted democratically. Its only failure was to have unwillingly omitted to invite the IHF President, who could and should certainly have attended the meeting, but without any authority to intervene in the discussions and in the decision making process.
- It follows that the IHF wrongfully applied Article 3.2 against the PATHF and the suspension imposed on the latter based on such rule is null, or should at least be annulled. Such suspension is all the more untenable given that the very reason for convening the PATHF Extraordinary Assembly was precisely to address the IHF President’s motion to divide the American Continent, the adoption of which by the IHF Congress was eventually ruled as being null and void.
- The PATHF reiterated its arguments that the Zagreb Council Meeting was not regularly called and composed, and that all decisions taken on that occasion, in particular the Implementation Decision and the Suspension Decision, were taken by a body which was composed irregularly. The decisions rendered on such occasion shall therefore be considered as null and void, and annulled.

B. The position of the Respondent

73. Subject to its argument that the PATHF’s “supplementary Appeal Brief” is inadmissible, which is dealt with in more detail in the relevant section below, the IHF’s Answer, in essence, may be summarised as follows:

As to the Implementation Decision

- As a consequence of the arbitral award issued in CAS 2018/A/5745 PATHF v. IHF, it follows that the Implementation Decision based on the delegation of powers, which was considered null and void, is necessarily and automatically inexistent. Therefore, and as claimed from the outset, these proceedings are simply without any object, inasmuch as they concern the Implementation Decision; they should therefore be terminated.

- The PATHF is nonetheless seeking a partial award confirming the obvious and automatic non-existence of the Implementation Decision. The IHF can only stress that such a request is not only wholly unnecessary in view of the legal reality, but also inadmissible given the established CAS case law according to which declaratory relief can only be sought if the requesting party establishes a special legal interest to obtain such a declaration. This requirement is manifestly not fulfilled where the issuing body expressly confirms the inexistence of the decision.

As to the Suspension Decision

- In her Order on Provisional Measures, the President of the CAS Appeals Arbitration Division decided that CAS has no jurisdiction to deal with the appeal against the Suspension Decision. It follows that this issue has already been decided and that this question is therefore no longer before the Sole Arbitrator.

As to the reimbursement of costs before the IHF Arbitration Commission and the IHF Arbitration Tribunal

- With reference to the arbitral award issued in CAS 2018/A/5745, the IHF submits that the principle is that *“it is not for the CAS to reallocate the costs of the proceedings before the previous instances”*.
- Insofar as the PATHF relies on Article 2.2.12 of the IHF Legal Provisions, the IHF submits that such provision pertains to each individual internal instance. For each instance an advance has to be made. If the appeal is successful, then the amount advanced for this instance is returned; if not, it is not refunded by the IHF. As the PATHF was not successful before the two previous instances, these amounts will not be refunded to the PATHF.

VII. JURISDICTION

74. The jurisdiction of CAS in general, 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.
75. However, the IHF objects to the jurisdiction of CAS in respect of the Suspension Decision. It argues that the President of the CAS Appeals Arbitration Division decided in her Order on Provisional Measures, on the basis of Article R37 CAS Code, that CAS had no jurisdiction to review the validity of the Suspension Decision and that this question is therefore no longer before the Sole Arbitrator.

76. The PATHF maintains in this regard that, given that the Zagreb Council Meeting was not called in accordance with the IHF Statutes, the Council Decision, including the Suspension Decision, was rendered by an invalidly-constituted body and is therefore null and void. Such nullity can be ruled upon by a tribunal at any time, irrespective of any deadlines to appeal it. CAS may therefore proclaim such nullity within the present proceedings.
77. Article R37 CAS Code determines, *inter alia*, the following:
- “Should an application for provisional measures be filed, the President of the relevant Division or the Panel shall invite the other party (or parties) to express a position within ten days or a shorter time limit if circumstances so require. The President of the relevant Division or the Panel shall issue an order on an expedited basis and shall first rule on the prima facie CAS jurisdiction. The Division President may terminate the arbitration procedure if she/he rules that the CAS clearly has no jurisdiction”.*
78. Accordingly, the President of the CAS Appeals Arbitration Division has the authority to terminate an arbitration procedure in a definite manner, *i.e.* to terminate an arbitration procedure without any possible review of such decision by the arbitral tribunal.
79. The Sole Arbitrator observes that the President of the CAS Appeals Arbitration Division, *inter alia*, ruled as follows in the operative part of the Order on Provisional Measures dated 14 November 2018:
- “1. The Court of Arbitration for Sport has no jurisdiction to deal with the appeal against the decision rendered by the Council of the International Handball Federation (IHF) on 14 January 2018 suspending the Pan-American Team Handball Federation (PATHF)”.*
80. This raises the question of whether the procedure was partially terminated in respect of the Suspension Decision in a definite manner, or whether this was only a *prima facie* decision that was subject to the review of the Sole Arbitrator.
81. The Sole Arbitrator notes that, on the one hand, the operative part of the Order on Provisional Measures does not specifically state that the arbitration procedure was terminated insofar as the Suspension Decision is concerned. At the outset of the reasoning in the Order on Provisional Measures it is mentioned that “[t]he extent of the jurisdictional analysis at this point is to assess whether, on a prima facie basis, the CAS can be satisfied that it has jurisdiction to hear the application. The final decision on jurisdiction will be made by the Sole Arbitrator in his award”, which in a favourable reading for the PATHF, could be interpreted as indicating that the decision of the Division President in this regard was subject to the review of the Sole Arbitrator, regardless of whether jurisdiction was accepted or denied.
82. However, on the other hand, the operative part of the Order on Provisional Measures does not indicate that such decision was only made on a *prima facie* basis, which is an indication that such ruling was intended to be definite. The reasoning of the Order on Provisional Measures further determines that “the CAS does not, even on a prima facie basis, have jurisdiction to hear this appeal insofar as it is directed against the IHF Council decision to suspend the PATHF”, which indicates that the

Division President considered that there was clearly no jurisdiction of CAS in respect of the Suspension Decision.

83. The Sole Arbitrator observes that the situation at hand is exceptional in that the proceedings may have been partially terminated by the Division President by her Order on Provisional Measures, *i.e.* terminated insofar as the Suspension Decision is concerned, but continuing insofar as the Implementation Decision is concerned. Ordinarily, in case CAS clearly has no jurisdiction, the proceedings as a whole are terminated by the Division President and the matter does not even reach the arbitral tribunal.
84. Having considered the matter in detail, the Sole Arbitrator finds that the arbitration procedure in respect of the Suspension Decision was terminated in a binding way by the Division President by means of her Order on Provisional Measures.
85. The authority of *res judicata* is, in principle, attached only to the operative part of the award. However, in order to properly understand the scope of the principle and the effect of the award's operative part, one needs also to look to the reasoning leading to the findings (NOTH/HAAS, Article R46 CAS Code, in: ARROYO (Ed.), *Arbitration in Switzerland – The Practitioner's Guide*, 2018, p. 1567). The Sole Arbitrator does not see why such reasoning would only apply to arbitral awards and not to an order by means of which proceedings are terminated in a final and binding way, be it entirely or partially.
86. In the matter at hand, the Sole Arbitrator considers the operative part of the Order on Provisional Measures to be sufficiently clear in ruling that CAS has no jurisdiction to adjudicate and decide on the Council Decision insofar as the Suspension Decision is concerned. The reasoning underlying the operative part does not lead to any other conclusion. In fact, the intention of the Division President becomes clear when she concludes that “*the CAS does not, even on a prima facie basis, have jurisdiction to bear this appeal insofar as it is directed against the IHF Council decision to suspend the PATHF*”.
87. Furthermore, a ruling from the Division President that CAS clearly has no jurisdiction is in principle not subject to the review of the arbitral tribunal, because an arbitral tribunal is not an appeal instance of the Division President. Whereas a *prima facie* ruling of the Division President that CAS has jurisdiction is subject to review by the arbitral tribunal, a ruling that CAS has clearly no jurisdiction is final and binding and terminates the arbitration procedure, be it entirely or partially. The Sole Arbitrator finds that it is against this background that the Division President's remark is to be understood that “[*t*]he extent of the jurisdictional analysis at this point is to assess whether, on a prima facie basis, the CAS can be satisfied that it has jurisdiction to bear the application. The final decision on jurisdiction will be made by the Sole Arbitrator in his award”.
88. The Sole Arbitrator therefore finds that he is prevented from reviewing the Division President's decision that CAS is not competent to adjudicate and decide on the Suspension Decision as this issue became final and binding by means of the Order on Provisional Measures.

89. In any event, this discussion is academic, because the Sole Arbitrator finds that Suspension Decision does not fall within the ambit of the present appeal arbitration procedure, as will be set out in more detail below.
90. Consequently, the Sole Arbitrator finds that he has no jurisdiction to adjudicate and decide on the Council Decision insofar as the Suspension Decision is concerned.

VIII. ADMISSIBILITY

91. 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”.

92. The IHF Statutes do not make reference to any specific time limit to file an appeal with CAS, nor has the Sole Arbitrator been informed by either of the parties that any regulation of the IHF would provide for such a deadline, as a consequence of which the default 21-day time limit set in Article R49 CAS Code applies.
93. Given that the Appealed Decision was notified to the PATHF on 13 August 2018 and that the PATHF lodged its appeal with CAS on 17 August 2018, the Sole Arbitrator 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.
94. It follows that the appeal is admissible.

IX. APPLICABLE LAW

95. 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.
96. The IHF did not make any submissions on the law to be applied in the present matter.
97. 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”.

98. 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. [...]”.

99. The Sole Arbitrator observes that the present arbitration is governed by chapter 12 of Switzerland’s Private International Law Act (“PILA”) as the PATHF is not domiciled in Switzerland.
100. The Sole Arbitrator 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*.
101. The Sole Arbitrator 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 ISSUES

A. The admissibility of the PATHF’s “supplementary Appeal Brief”

102. The PATHF submits that, since the Appealed Decision was served on the PATHF on 13 August 2018, the 21-day deadline to appeal such decision expired on 3 September 2018. Accordingly, the deadline to file the Appeal Brief expired on 13 September 2018.
103. The PATHF filed its combined Statement of Appeal/Appeal Brief on 17 August 2018, *i.e.* before the expiry of the 21-day deadline. On 23 August 2018, upon agreement of both parties, the CAS Court Office suspended the present proceedings until the notification of the arbitral award in CAS 2018/A/5745 PATHF v. IHF regarding the Congress Decision. According to the PATHF, at that time, there were 22 days remaining, from 23 August 2018 inclusive until 13 September 2018, until the expiry of the PATHF deadline to file its Appeal Brief.
104. The operative part of the arbitral award in CAS 2018/A/5745 PATHF v. IHF was served on the parties by email on 13 September 2018. Thus, the deadline to file the Appeal Brief did not expire until 5 October 2018, *i.e.* 22 days after 13 September 2018.
105. The PATHF submits that, in light of the above, the “supplementary Appeal Brief” (filed on 26 September 2018) was filed within the deadline, taking into account the suspension of the arbitral proceedings and should therefore be considered admissible.
106. The PATHF also maintains that, given the IHF’s refusal to agree to the consolidation of the present procedure with CAS 2018/A/5745 PATHF v. IHF and of the expedited proceedings, the PATHF did not waive in advance its right to complete its Appeal Brief within the time-limit provided by Article R51 CAS Code. To consider it otherwise would mean that the PATHF would have had only four days to lodge a complete appeal and the IHF would benefit from the 20-day deadline, plus the time of the suspension of the procedure. According to the PATHF,

this would give rise to manifest and unacceptable inequality of treatment of the parties. Article R56 CAS Code only applies for submissions possibly submitted after the timeframe within which they must be lodged with CAS, as provided for by Articles R51 and R55 CAS Code. CAS case law has also explicitly recognised that a party can always amend the relief sought in its Appeal Brief, to which the other party will in any event have a full opportunity to reply.

107. The IHF submits that, as a matter of principle, the submission of an additional Appeal Brief is prohibited under Article R56 CAS Code, save in exceptional circumstances. The IHF does not consider that any such exceptional circumstance exists here.
108. The IHF further maintains that, notwithstanding such objection, the PATHF's amendment of its prayers for relief to include the setting aside of the Suspension Decision is manifestly not allowed under Article R56 CAS Code.
109. The IHF also argues that, in any event, the decision of the IHF Council to suspend the PATHF was not part of the initial appeal before the IHF Arbitration Commission, which gave rise to the present appeal proceedings, and therefore cannot fall within the scope of the present appeal proceedings. The Suspension Decision was not challenged in due course and is final and binding as a result.
110. The Sole Arbitrator notes that the PATHF, in the letter accompanying its combined Statement of Appeal/Appeal Brief, informed the CAS Court Office as follows:

*“On behalf of the [PATHF], please find enclosed, in six copies, the Statement of Appeal filed by the Appellant which is to be **considered also as the Appeal Brief**[...]”* (emphasis in original).

111. It is therefore clear that this document was intended to serve as a combined Statement of Appeal and Appeal Brief, which is perfectly legitimate on the basis of Article R51 CAS Code: *“Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief”*.
112. The consequence of filing an Appeal Brief is however also clearly set out in Article R56 CAS Code:

“Appeal and answer complete – Conciliation

*Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely **after the submission of the appeal brief** and of the answer”* (emphasis added by the Sole Arbitrator).

113. The Sole Arbitrator finds that this provision is to be interpreted in the sense that an appellant can, in principle, not supplement or change its requests for relief after the filing of the Appeal Brief, not that the requests for relief can still be amended until the respondent filed its Answer or until the expiration of the time limit within which an appellant could have filed its Appeal Brief. This would unjustifiably favour an appellant over a respondent, as the respondent should know against which requests for relief it should defend itself when the Appeal Brief is filed.

114. On the basis of Article R56 CAS Code, there are two reasons to permit an alteration of the requests for relief after the filing of the Appeal Brief: i) permission from the other parties; and ii) exceptional circumstances.
115. It is clear that the IHF does not agree with the alteration of the PATHF's requests for relief. The sole remaining ground is therefore whether exceptional circumstances warrant an alteration in this case.
116. The Sole Arbitrator understands full well that the PATHF attempted to consolidate the present appeal procedure with the pending appeal in CAS 2018/A/5745 PATHF v. IHF, or to implement an expedited procedure, and that, in order to save time, it chose to file a combined Statement of Appeal/Appeal Brief. The Sole Arbitrator however finds that the PATHF was not obliged to do so and that it was the PATHF's own decision to act in this way. The PATHF could have indicated in its combined Statement of Appeal/Appeal Brief that it sought leave to file a supplementary Appeal Brief in case its procedural requests for a consolidation of the proceedings and the implementation of an expedited procedure would be dismissed, but it did not do so. Also after the communication of the arbitral award in CAS 2018/A/5745 PATHF v. IHF, the PATHF did not ask for an additional round of written submissions or to be allowed to amend its requests for relief. In the absence thereof, the Sole Arbitrator finds that the PATHF cannot withdraw its previous declaration that its Statement of Appeal was to be considered its Appeal Brief and that the IHF could rely on the requests for relief brought forward in the PATHF's combined Statement of Appeal/Appeal Brief.
117. The fact that the present proceedings were stayed pending the issuance of the arbitral award in CAS 2018/A/5745 PATHF v. IHF does not alter this finding.
118. Accordingly, the Sole Arbitrator finds that the PATHF failed to prove why it could legitimately not already have included the additional requests for relief in its original Statement of Appeal/Appeal Brief. In the absence of this, no exceptional circumstances are established.
119. Insofar as the PATHF argues that a decision can be declared null and void at any time, the Sole Arbitrator finds that this argument must be dismissed, for a party claiming that a certain decision should be declared null and void should at least comply with the procedural rules set out in the CAS Code. By only invoking the nullity of the Suspension Decision in its supplementary Appeal Brief, such request for relief was introduced manifestly late and in violation of Article R56 CAS Code.
120. The Sole Arbitrator finds that the PATHF did not challenge the Suspension Decision in the requests for relief contained in its Statement of Appeal/Appeal Brief. Request for relief no. III determines as follows:

“The decision issued on 14 January 2018 by IHF Council in Zagreb, Croatia, implementing the Challenged Decision taken on 11 November 2017 at the XXXVI IHF Ordinary Congress, is null, respectively annulled”.

121. The Sole Arbitrator has no doubt that the PATHF thereby only challenged the Implementation Decision and not the Suspension Decision. Indeed, although both decisions were issued on the same date by the IHF Council, they were separate decisions, as becomes clear from the content of para. 14 *supra*. Both issues were voted upon separately.
122. Consequently, notwithstanding the Sole Arbitrator's ruling that he is not competent to adjudicate and decide on the Council Decision insofar as the Suspension Decision is concerned, he also finds that the PATHF's supplementary Appeal Brief is inadmissible, with the consequence that the PATHF's amended requests for relief cannot be taken into account, *i.e.* the Suspension Decision does not fall within the ambit of the present appeal arbitration procedure.

XI. MERITS

A. The Main Issues

123. The main issues to be resolved by the Sole Arbitrator are:
- i. Should the Implementation Decision be annulled or declared null and void?
 - ii. Is the PATHF to be reimbursed by the IHF for the costs of the proceedings before the IHF Arbitration Commission and the IHF Arbitration Tribunal?

i. Should the Implementation Decision be annulled or declared null and void?

124. The Sole Arbitrator notes that it is not disputed by the IHF that, as a consequence of the fact that the Congress Decision was declared null and void by CAS, the Council Decision is inexistent, including insofar as the Implementation Decision is concerned.
125. The only issue to be addressed by the Sole Arbitrator in this respect is whether this makes the present appeal arbitration procedure moot, as argued by the IHF, or whether the Council Decision currently still stands and therefore must be annulled, respectively declared null and void, as argued by the PATHF.
126. As to the substance of the request, the Sole Arbitrator notes that it is not in dispute between the parties that the Implementation Decision is to be declared null and void. It was explicitly confirmed by counsel for the IHF during the hearing that the PATHF's request for relief no. III was accepted, but that such agreement did not include a decision on the costs related to such request for relief. Whereas the IHF maintained that the costs of adjudicating this request for relief should be borne by the PATHF, the PATHF argued that the costs should be for the IHF to bear.
127. The Sole Arbitrator finds that the Implementation Decision is not automatically inexistent as a consequence of the fact that the Congress Decision was declared null and void. This is only the

case after it has been declared null and void by any court or when the IHF formally revokes such decision, neither of which have occurred at present.

128. Indeed, although the IHF may have declared in the present proceedings before CAS that the Council Decision is inexistent, this is not the impression it gave to the general public, nor did it formally revoke the Implementation Decision. In fact, in its press release following the issuance of the arbitral award in CAS 2018/A/5745 PATHF v. IHF, the IHF, *inter alia*, indicated that “[t]he project of a recognition of two separate Continental Confederations by the next IHF Congress remains absolutely in force and will be implemented forthwith in the best interest of handball worldwide”. The Sole Arbitrator therefore finds that the PATHF had legitimate doubts that the Implementation Decision would be enforced by the IHF, regardless of the fact that the Congress Decision was declared null and void.
129. Consequently, the appeal of the PATHF in respect of the Implementation Decision is not moot and the PATHF has an interest in having CAS annul the Implementation Decision, and to have it declared null and void. The costs related to such request should therefore be for the IHF to bear, although the Sole Arbitrator takes into account that the IHF ultimately accepted the PATHF’s prayer for relief in this respect.
130. Insofar as is necessary, the Sole Arbitrator agrees with the PATHF that the Implementation Decision is to be declared null and void as a consequence of the fact that the Congress Decision authorising the IHF Council to issue the Implementation Decision was declared null and void. Indeed, absent the Congress Decision, the IHF Council was not authorised to issue the Implementation Decision.
131. Consequently, the Council Decision is declared null and void insofar as the Implementation Decision is concerned.
132. Given this conclusion, the Appealed Decision issued by the IHF Arbitration Tribunal on 13 August 2018 is annulled.

ii. Is the PATHF to be reimbursed by the IHF for the costs of the proceedings before the IHF Arbitration Commission and the IHF Arbitration Tribunal?

133. The Sole Arbitrator notes that the PATHF incurred the costs of the proceedings before the IHF Arbitration Commission and the IHF Arbitral Tribunal in the amounts of CHF 5,000 and CHF 10,000 respectively.
134. The Sole Arbitrator observes that Article 2.2.12 of the IHF Legal Provisions determines as follows:

“Arbitration Commission and Arbitration Tribunal

[...]

12. *Fees and procedural costs will not be refundable by the IHF on rejection or withdrawal of an appeal. Acceptance of an appeal will entitle the petitioner to a refund of the fee paid and the IHF will cover the procedural costs incurred, unless they are imposed on the party responsible*".
135. With reference to the arbitral award issued in CAS 2018/A/5745, and in accordance with the jurisprudence cited (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 Sole Arbitrator finds that, in principle, *"it is not for the CAS to reallocate the costs of the proceedings before the previous instances"*.
136. The Sole Arbitrator finds that this may be different when the relevant rules and regulations provide otherwise.
137. In this respect, and insofar as the PATHF relies on Article 2.2.12 of the IHF Legal Provisions, the Sole Arbitrator agrees with the IHF that this provision is only applicable to each individual instance and therefore does not provide a legal basis to recover such amounts in an appeal arbitration procedure before CAS.
138. Consequently, the PATHF is not to be reimbursed by the IHF for the costs of the proceedings before the IHF Arbitration Commission and the IHF Arbitration Tribunal.

B. Conclusion

139. Based on the foregoing, it is concluded that:
- i. The Sole Arbitrator has no jurisdiction to adjudicate on the Council Decision insofar as the Suspension Decision is concerned.
 - ii. The Council Decision is declared null and void insofar as the Implementation Decision is concerned.
 - iii. The Appealed Decision is annulled.
 - iv. The PATHF is not to be reimbursed by the IHF for the costs of the proceedings before the IHF Arbitration Commission and the IHF Arbitration Tribunal.
140. 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 17 August 2018 by the Pan-American Team Handball Federation against the decision issued on 13 August 2018 by the Arbitration Tribunal of the International Handball Federation is partially upheld.
 2. The decision issued on 13 August 2018 by the Arbitration Tribunal of the International Handball Federation is annulled.
 3. The decision of the Council of the International Handball Federation of 14 January 2018 “*to divide the continent of Pan-America into two*” is declared null and void.
- (...)
6. All other and further motions or prayers for relief are dismissed.