CAS 2024/A/10387 Swimming Federation of the Republic of Kazakhstan v. Asia Swimming Federation / Asia Aquatics

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Mario Vigna, Attorney-at-law in Rome, Italy

Arbitrators: Mr Olivier Carrard, Attorney-at-law in Geneva, Switzerland

Prof Thomas Clay, Professor in Paris, France

in the arbitration between

Swimming Federation of the Republic of Kazakhstan, Kazakhstan

Represented by Mr Shahram Dini, Attorney-at-law at Dini & Lardi Avocats, Geneva, Switzerland

Appellant

and

Asia Swimming Federation / Asia Aquatics, Kuwait

Represented by Mr Emanuel Cortada and Mr Basil Kupferschmied, Attorneys-at-law at Bär & Karrer AG, Zurich, Switzerland

Respondent

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I. PARTIES

1. The Swimming Federation of the Republic of Kazakhstan (the "Appellant") is the national swimming federation of Kazakhstan. It has its seat in Almaty, Kazakhstan, and is a member of both Asia Swimming Federation/Asia Aquatics and World Aquatics ("WA").

2. Asia Swimming Federation/Asia Aquatics ("AA" or the "Respondent") is the governing body of aquatic sports in Asia which WA recognises. It has its seat in Oman. It notably has the authority to recognise national bodies governing aquatics in any country within the geographical territory of the Asian continent. It has 45 members corresponding to the 45 national swimming federations in Asia, including the Appellant. It is governed by: (i) the General Congress, (ii) the Bureau, (iii) the Executive and (iv) various committees.

II. INTRODUCTION

3. This is one of the two cases brought by the Appellant against AA in connection with the events at the 15th Extraordinary Congress of the AA held on 12 February 2024 in Doha, Qatar (the "Doha Extraordinary Congress") and at the subsequent 16th Ordinary General Congress of the AA held on 26 April 2024 in Bangkok, Thailand ("Elective General Congress").

4. The present case (CAS 2024/A/10387 Swimming Federation of the Republic of Kazakhstan v. Asia Swimming Federation (AASF) / Asia Aquatics) concerns a challenge by the Appellant against the decisions of the AA at the Doha Extraordinary Congress (the "Appealed Decision") by which AA's 2018 Constitution (the "Old Constitution") was amended and ratified (the "New Constitution") and the existing Bureau and Executive of AA continued to remain in power until the Elective General Congress.

5. The second case (CAS 2024/A/10593 Swimming Federation of the Republic of Kazakhstan v. Asia Swimming Federation (AASF) / Asia Aquatics) concerns a challenge by the Appellant against the subsequent decisions of the AA at the Elective General Congress by which a new AA Bureau and Executive were appointed and some items were approved in alleged violation of the Old Constitution.

6. There is a significant overlap in the factual and legal framework underpinning both these cases. The Panel, the legal representatives and the Parties are common to both proceedings. In line with CAS practice, each procedure is resolved through a separate Award addressing the specific legal and factual matters relevant to that case (see *infra* paras. 82 to 86). Nevertheless, also given that a joint hearing was held for both disputes, during which the Parties presented their arguments concerning both matters, the Panel will, where appropriate and necessary, reference arguments and jurisprudence applicable to both disputes.

III. FACTUAL BACKGROUND

7. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidence adduced during these proceedings. Additional facts and allegations found in the Parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to those submissions and evidence it deems necessary to explain its reasoning.

8. On 9 October 2016, the AA's General Congress (the "Congress") elected the members of the AA Bureau (the "Bureau") for a four-year term.

9. There have been no elections until the events that resulted in the present proceedings. For completeness, the next elections took place at the Elective General Congress (which will be discussed in CAS 2024/A/10593).

10. On 9 March 2023, the AA's Executive Committee (the "Executive") held a meeting in which the AA's Secretary General (the "Secretary General") informed the members of the Executive that the election would be held later that year, with the exact date and location to be confirmed. Furthermore, the Secretary General was to finalise the date and location of the Congress and election and prepare the necessary summons, agenda, and documents in accordance with the Old Constitution.

11. On 15 August 2023, the Secretary General convened a General Congress for 3 December 2023 in New Clark, Philippines.

12. Extensive correspondence took place between the Secretary General and the AA's President (the "President") where the latter contested, *inter alia*, the procedure followed by the Secretary General to convene the General Congress in New Clark, Philippines.

13. On 28 August 2023, the President sent a letter to WA to review amendments made to the Old Constitution.

14. On 28 October 2023, the President proposed to the members of the Executive, *inter alia*, to organise the General Congress in Doha, Qatar, during the World Championships in February 2024 instead of holding it at New Clark, Philippines – and requested their approval via mail vote.

15. On 1 November 2023, the President confirmed to AA's member associations (the "Members") that "*[t]he Place of [AA] General Congress will be in Doha – Qatar at the 21st World Aquatics Championships February 2024 during the period of the Swimming Event*".

16. On 13 November 2023, the WA informed the President that the WA's Executive Committee and WA's Bureau had approved the amendments made to the Old Constitution.

17. On the same day, the Secretary General sent a letter to WA stating that the amendments made to the Old Constitution were not approved within the AA framework, as is customary.

18. On the same day, the WA responded by stating, *inter alia*, that this was done at the request of the President, and as is customary, the WA's legal team conducted its review and made amendments to the Old Constitution to ensure compliance with the WA's Constitution.

19. On 14 November 2023, the President informed the members of the Executive that WA had "*approved the […] draft [AA] constitution to be on [sic] line with [WA] Constitution*" and requested them to "*send back [their] approval […] as a first step*".

20. On 16 November 2023, following the approval of the Executive, the President informed the members of the Executive that the New Constitution would be submitted to the next Congress in Doha in February 2024 "*for the final approval by the General Assembly members*".

21. On 23 November 2023, the President proposed to the members of the Executive "*to call for [AA] Extraordinary Congress*" on 12 February 2024 in Doha, Qatar and submitted an agenda including "*Votes on proposal for adopting and amending the [AA] Constitution and Ethics Code*". The President further indicated that "*[a]fter the approval of the [AA] Constitution by the [AA] General Assembly members on 12 February 2024, [AA] will call for General Congress based on the new constitution to elect the [AA] Bureau and other position*".

22. On 24 November 2023, the President informed the members of the Executive that they had approved the agenda, date and venue of an Extraordinary Congress scheduled in Doha.

23. On 3 December 2023 (with a letter dated 27 November 2023), following the Executive's approval, the President convened the Doha Extraordinary Congress on 12 February 2024 in Doha with the following agenda item: "*Votes on proposal for adopting and amending the [AA] Constitution, Code of Ethics*". The invitation enclosed the draft of the New Constitution.

24. On 12 February 2024, the Doha Extraordinary Congress took place in Doha, Qatar. The Doha Extraordinary Congress was chaired by the President. The WA President was also present and actively participating in the aforementioned Congress, including making some of the proposals which were eventually discussed and voted upon by the Members.

25. According to the minutes of the Doha Extraordinary Congress (the "Minutes"), the veracity of which is disputed by the Appellant, the Congress approved a proposal regarding "*the continuation of the current Bureau/Executive until the next election*". Such a proposal was put forward by Mr Nanavati (vice-president of AA) after the Appellant's representative brought to the Members' attention that the President, Executive and Bureau were operating without being in power. According to the minutes, "*the vote was for the approval of the extension of the executive offices/bureau members*

based on the new approved constitution until next elective General Congress". There were 26 votes in favour, three votes against and two abstentions. The minutes record the result of the vote as follows:

"*DECISION: The Congress approved the new Constitution, which included an extension of the President, Bureau/Executive members until the next elective General Congress, based on the new approved constitution*."

26. The Congress then voted on "*the proposal for adopting the amendments of the [AA] Constitution*". The New Constitution was adopted with 27 votes in favour, one vote against and eight abstentions. The Minutes record the result of the vote as follows:

"*DECISION: The Congress approved and adopted amendments of the [AA] Constitution with effect of today, 12 February 2024*."

27. The Appellant's representative voted against both proposals.

28. The President then proposed the following, based on the New Constitution:

- Appointment of Mr Farid Fatahian as Executive Director for AA.
- Appointment of Mr Mohamad Mostafa Abdulghafour a lawyer for AA to run its legal affairs.
- Replacement of the Secretary General with Mr Al Jabir as Asian representative to WA until 2025.
- Reactivation of the bank account in Kuwait and opening of a small office in Budapest, the future headquarters of WA.
- Secretary General should transfer all remaining money to AA's bank account and send the financial details to AA's secretariat.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 4 March 2024, the Appellant, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code"), filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision.

30. Together with its Statement of Appeal, the Appellant filed a request for provisional measures pursuant to Article R37 of the CAS Code concerning the decisions taken during the Doha Extraordinary Congress.

31. On 6 March 2024, the CAS Court Office initiated an appeals arbitration procedure and invited the Respondent to comment, *inter alia*, on the Appellant's Request for Provisional Measures within 10 days from receipt of the CAS Court Office letter by courier.

32. On 18 March 2024, the Respondent filed its Answer to the Appellant's Request for Provisional Measures.

33. On the same date, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division (the "Division President"), or her Deputy, would issue an Order on the Request for Provisional Measures in due course, in accordance with Article R37 of the CAS Code.

34. On 19 March 2024, subsequently, the Deputy Division President issued an Order on the Application for Provisional Measures with the following operative part:

"*1. The application for provisional measures filed by Swimming Federation of the Republic of Kazakhstan on 4 March 2024 in the matter CAS 2024/A/10387 Swimming Federation of the Republic of Kazakhstan v. Asia Swimming Federation (AASR) / Asia Aquatics is dismissed.*

2. The costs of the present Order shall be determined in the final award or any other final disposition of this arbitration."

35. On 15 April 2024, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.

36. On 23 April 2024, the CAS Court Office informed the Parties that the Panel appointed to adjudicate the matter would consist of Mr Mario Vigna as President, Mr Olivier Carrard, nominated by the Appellant, and Prof Thomas Clay, nominated by the Respondent.

37. On 30 April 2024, the Respondent filed a request to close the proceedings in CAS 2024/A/10387 due to lack of object and remove the proceedings from the CAS Roll.

38. On 7 May 2024, in response to the Respondent's abovementioned request to close the proceedings in CAS 2024/A/10387 due to lack of object, the Appellant informed the CAS Court Office that it maintained its appeal and also requested the President of the Panel to extend the scope of this appeal to file additional submissions in relation to the events that occurred at the Elective General Congress.

39. On 13 May 2024, on behalf of the Panel, the CAS Court Office informed the Parties that: (i) the Respondent's request to close the present proceedings CAS 2024/A/10387 and remove the proceedings from the CAS Roll was denied; and (ii) the Appellant's request for extending the scope of these proceedings to the events that occurred at the Elective General Congress was denied.

40. On 22 May 2024, the CAS Court Office, on behalf of the Panel, informed the Parties that the Appellant's request to consolidate the procedure CAS 2024/A/10593 with the present proceedings was denied.

41. On 12 June 2024, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.

42. On 17 September 2024, the CAS Court Office provided the Parties with an Order of Procedure, which was duly signed and returned by both Parties on 23 September 2024.

43. On 9 October 2024, a few hours before the first day of the hearing, the Appellant sent a letter to the CAS Court Office enclosing a list of relevant legal doctrine and case law on which the Appellant based its legal arguments. In a separate communication, the Respondent objected to such production and its timing.

44. On 9 October 2024 and 10 October 2024, a hearing was held via video conference. The following persons were in attendance at the hearing:

- The Panel, which was assisted by Ms Delphine Deschenaux-Rochat (CAS Counsel).
- On behalf of the Appellant:
  (a) Mr Andrey Kryukov, president of the Appellant and former Vice-President of the AA;
  (b) Mr Shahram Dini, legal counsel
  (c) Mr Mathias Karsegard, legal counsel; and
  (d) Ms Zhuldyz Baimagambet, interpreter.
- On behalf of the Respondent:
  (a) Mr Emanuel Cortada, legal counsel; and
  (b) Mr Basil Kupferschmied, legal counsel.

45. The Panel heard oral evidence from the following individuals, who were subjected to examination and cross-examination as well as to questions from the Panel:

- Ms Lailani M. Velasco, former president of Philippines Swimming Inc. and Bureau member (witness called by the Appellant - in attendance only on day 1);
- Mr Azat Muradov, Bureau member (witness called by the Appellant - in attendance only on day 1);
- Mr Sergey Drozdov, secretary general of the Appellant and current AA bureau member (witness called by the Appellant - in attendance only on day 1);
- Mr Andrey Kryukov, as a representative of the Appellant (in attendance both on days 1 and 2);
- Mr Alisher Ganiev, secretary general of the Uzbekistan Swimming Federation (witness called by the Appellant - in attendance only on day 2);

- Mr Dmitriy Balandin, member of the Athletes Committee of WA and chair of the athletes committee of AA (witness called by the Appellant - in attendance only on day 2);

- Mr Farid Fatahian, current Executive Director of AA (witness called by the Respondent - in attendance only on day 2); and

- Prof Dr Vito Roberto of the University of St. Gallen and Director of the Institute for Legal Studies and Legal Practice (expert called by the Respondent - in attendance only on day 2).

46. At the beginning of the hearing, the Panel addressed the Respondent's objection to the admissibility of the legal doctrine and case laws produced by the Appellant (see *supra* para. 43). The Panel deemed the aforementioned filing admissible and, in order to ensure compliance with the adversarial principle, allowed the Respondent to also produce a similar filing by no later than 11 October 2024.

47. Furthermore, on the first day of the hearing, after the opening statements, both counsels were allowed to conduct the examination and cross-examination of some of the witnesses for the Appellant. The representative of the Appellant was given the chance to comment on the facts that led to the present proceedings. On the second day of the hearing, both counsels were allowed to conduct the examination and cross-examination of the remaining witnesses called by the Appellant as well as of the witness and the expert witness for the Respondent. The Parties also presented their closing statements.

48. After their closing pleadings and before the end of the hearing, all Parties confirmed their satisfaction with the manner in which the Panel had conducted the hearing and raised no procedural objections.

49. On 11 October 2024, the Respondent filed its list of legal doctrine and case laws pursuant to the invitation by the Panel during the hearing.

V. SUBMISSIONS OF THE PARTIES

50. The following summary of the Parties' respective positions is illustrative and does not necessarily comprise every argument advanced by the Parties. However, the Panel has carefully considered all of the submissions put forward by the Parties, even if there is no explicit reference to those submissions in the following discussion.

A. The Appellant

51. The Appellant, in its Statement of Appeal and Appeal Brief, requested the following reliefs:

- "*On the admissibility of the appeal:*

  1. *Declare the present appeal admissible.*

- *On the request for provisional measures:*

  2. *Suspend the execution of the alleged [AA] Extraordinary Congress' decisions taken on February 12, 2024, during the present appeal proceedings before the Court of Arbitration for Sport.*

  3. *Prohibit the holding of the [AA] General Election Congress scheduled for April 26, 2024, in Bangkok.*

  4. *Prohibit any decision to be taken in application of the alleged new [AA] Constitution adopted by the alleged [AA] Extraordinary Congress on February 12, 2024, until the appeal has been decided.*

  5. *Order to [AA] to publish on its website, within three days, a press release reproducing the operative part of the decision on provisional measures in the present case.*

- *On the merits:*

  Mainly

  6. *Declare null and void the calling dated November 27, 2023, to the alleged [AA] Extraordinary Congress hold on February 12, 2024.*

  7. *Declare null and void the holding of the alleged [AA] Extraordinary Congress hold on February 12, 2024.*

  8. *Declare null and void the decisions taken on February 12, 2024 by the alleged [AA] Extraordinary Congress.*

  Alternatively

  9. *Annul the decisions taken on February 12, 2024 by the alleged [AA] Extraordinary Congress.*

- *In any events:*

  10. *Order [AA] to bear the entire costs of these arbitration proceedings.*

  11. *Order [AA] to bear the [sic] all expenses, including legal costs, incurred by the Swimming Federation of the Republic of Kazakhstan in the present arbitration proceedings*." (emphasis omitted)

52. The Appellant's submissions, in essence, may be summarized as follows:

Appellant has standing to appeal and legal interest in challenging the Appealed Decision:

- Since the CAS Code, the Old Constitution and the WA Constitution do not contain any clause on the standing to appeal against a decision taken by one of the AA's bodies, Swiss law applies. The principles in Swiss law in this regard are:

  (i) Article 75 of the Swiss Civil Code ("CC"), which expressly reserves standing to appeal to members of the association. As a result, non-members do not have standing to appeal. Similarly, the aim of protecting members pursued by Article 75 of the CC should not allow the association's board or other bodies to bring the action instituted by this legal provision. Furthermore, the plaintiff must still be a member at the time the judgment is handed down.

  (ii) Standing to bring an action is granted only to those who did not agree with the contested decision (and who did not subsequently approve it either).

  (iii) Finally, the plaintiff must have an interest in the action. This interest must be "legitimate" pursuant to Article 59.2(a) of the Swiss Civil Procedure Code ("CPC"). Given the purpose of Article 75 of the CC, it must be "broadly understood" and does not presuppose that the plaintiff is individually affected by the impugned decision.

- In the present case, the Appealed Decision led to: (i) the extension of the Bureau / Executive's mandate until the next election; and (ii) the adoption of the New Constitution that extended the powers of the President, who immediately adopted new decisions based on these powers.

- In view of the above arguments and the Appellant's interest in seeing the nullity of the decisions as a member of an association whose functioning and rights depend on the rules and governance of AA, the Appellant is entitled to appeal. The Appellant also did not agree with the contested decisions.

Decisions taken at the Doha Extraordinary Congress are null and void:

- There is a possibility of bringing an action for a declaration that a decision of the association is null and void under Article 88 of the CPC, which is subject to conditions that differ from those laid down in Article 75 of the CC.

- A decision that does not exist cannot be annulled. Although a "decision" that is null and void cannot be challenged under Article 75 of the CC, it can be the subject of an action for a declaration of nullity.

- An action seeking a declaration that an association's decision is null and void falls under Article 88 of the CPC and may be brought by any person, whether or not a member, who can demonstrate a legitimate interest. Moreover, the plaintiff is not

required to first exhaust domestic remedies. Invalidity must be established by the court of its own motion.

The events at the Doha Extraordinary Congress are null and void:

- As per various jurisprudence (CAS 1997/O/168; SFT 71 I 383), the following principles would emerge:

  (i) A decision is null and void when, due to a formal or substantive defect, it cannot be regarded as a decision of the general assembly.

  (ii) The following would constitute invalid "decisions" because they are vitiated by a formal defect: (a) a "decision" taken at an informal meeting of members; (b) a "decision" taken by a general assembly convened by a person or body not competent to do so; (c) a "decision" taken by the general assembly when certain members were intentionally not convened; (d) a "decision" taken by a general assembly when the statutory attendance quorum was not met; and (e) a "decision" taken when certain members were prevented by manoeuvres from taking part in the general assembly or were not admitted to it.

  (iii) A decision is null and void and not merely voidable when the general meeting has been convened by a person who was not entitled to do so under the law or the articles of such association.

  (iv) New elections are null and void if they are held when the term of office of the officials has not expired.

- The Bureau, Executive and President were not in power and therefore could not convene shareholders' meetings under Swiss law. This is confirmed by the jurisprudence of the Swiss Federal Tribunal ("SFT") which has held that:

  (i) The rules applicable to the convening of meetings of legal entities under the CO (company limited by shares) apply by analogy to the association (SFT 5A_142/2019, consid. 5.2).

  (ii) The board of directors of a company limited by shares loses its powers as soon as its term of office expires and directors not duly re-elected cannot validly convene shareholders' meetings. This case law expressly precludes the tacit continuation or renewal of a board of directors' term of office (SFT 148 III 69, consid. 3.3).

  (iii) The view that directors, whose term of office has expired can validly convene meetings based on their *de facto* director status, a position taken by many legal practitioners, was rejected. The court also confirmed that shareholder resolutions passed at meetings convened by directors whose term of office had expired are null and void (SFT 4A_387/2023 of 2 May 2024).

- In view of the well-established and unequivocal case law of the SFT cited above, the absence of new elections at the end of the term of office of the members of the Bureau, Executive and President did not result in the tacit renewal of their term of office. Moreover, the Old Constitution does not provide for a tacit renewal of the term of office of the members of the Bureau or the Executive.

- When transposed by analogy to associations, these case laws indicate that as soon as the term of office of the president, the bureau or the executive committee of the association has expired, these bodies no longer have any powers and are therefore no longer able to convene meetings. If these bodies nevertheless convene meetings, all decisions taken at these meetings are null and void.

- Events at the Doha Extraordinary Congress (and the meeting itself) are null and void, or at the very least voidable as they were taken in flagrant violation of numerous provisions of the Old Constitution.

- Based on Article C20.11 of the Old Constitution, the term for the Bureau and the Executive is four years. Since the last election took place on 9 October 2016, their term expired on 9 October 2020. The Bureau and the Executive therefore had no legitimate authority to act.

- Furthermore, the course of the events demonstrates that the Bureau and President were perfectly aware of this major problem and attempted to remedy this through the vote proposed by Mr Nanavati through Article C23.1.3 of the New Constitution. As a result, and per Article C19.1.2 of the Old Constitution, only one-third of the Members would have been entitled to request the convening of an Extraordinary Congress.

- As the Bureau and Executive were no longer validly in office, neither the Bureau nor the Executive were empowered to:

  (i) Decide whether to convene a meeting;

  (ii) Decide the date, place and agenda of the Doha Extraordinary Congress;

  (iii) To approve the modification of the Old Constitution and to submit it to the Doha Extraordinary Congress; and

  (iv) Approve the amendment of the Old Constitution or present it to the Doha Extraordinary Congress for adoption and amendment.

- As the President was no longer validly in office, he was not empowered to preside over the Doha Extraordinary Congress.

- As per Article C22.6 of the Old Constitution, only the Executive has the power "*to submit proposals to the Congress*". Yet, since they were no longer validly in office, they were not empowered to send such proposals. Furthermore, and in any case, the President does not have the power to make such decisions alone. However, the

President announced a whole series of important decisions that he had taken alone, and to which it is only mentioned that Congress had not objected.

Failure to comply with notification procedure and improper calling of the Doha Extraordinary Congress:

- The notice for the Doha Extraordinary Congress was not sent by the Secretary General, as required by Article C19.1.2 of the Old Constitution, but by the President.

- The Secretary General, who plays a crucial role in overseeing the AA's administrative processes, had been excluded from the process without explanation, as evidenced by the exchanges between him and the President between 20 August 2023 and 6 November 2023.

- The Secretary General's exclusion directly contradicts the requirement of Article C19.2.1 of the Old Constitution, which mandates that the notice of delegate appointments must be lodged with the Secretary General before the Congress commences. Further, the Aquatics Integrity Unit ("AQIU")'s decision to sanction him, coupled with his outright removal from AA's bodies, constitutes a serious breach of the Old Constitution.

Invalidity of items not on the agenda:

- According to Article C19.9 of the Old Constitution: "*no subject shall be discussed at the Extraordinary Congress other than the matters stated in the requisition*".

- The alleged notice of meeting dated 27 November 2023, specified that the only item on the agenda was: "*(1) Votes on proposal to adopt and amend the [AA] Constitution and Code of Ethics*".

- This means that only the adoption of the New Constitution could be theoretically put to the vote during the Doha Extraordinary Congress. All other items such as approval of the continuation of the Bureau and Executive until the next elections could not be submitted to vote.

- Therefore, these decisions taken at the Doha Extraordinary Congress are null and void.

- Further, items mentioned by the President at the end of the Doha Extraordinary Congress, which, incidentally, were not put to vote, but tacitly approved by the Congress – would also be null and void.

Exclusion of relevant stakeholders from the constitutional amendment process:

- The only provision in the Old Constitution concerning the procedure for amending the Old Constitution was Article C19.14 of the Old Constitution.

- The entire Old Constitution amendment process was made by the President, at the end of a constitutional amendment process led by himself in collaboration with WA

which is not only contrary to the Old Constitution but also required the participation of both the Bureau and the Members. The President had no authority to make decisions on behalf of the Bureau or the Executive.

- These entities are integral parts of the governance and decision-making processes of AA, and their exclusion in this process undermines the democratic principles upon which AA is founded.

- Furthermore, the Secretary General was deliberately kept in the dark about the amendment, and the imposition of the amendment by the WA's President (accompanied by threats of suspension) and subsequent appeal on the continent for approval deviates significantly from standard procedure.

Facts confirming the deliberate nature of multiple violations of the Old Constitution:

- The imposition of the amendment by the WA's President during the Doha Extraordinary Congress, followed by pressure on the present Members for approval, deviates significantly from standard procedure.

- Furthermore, to carry out their project, the President and the WA's President had the meeting vote on an item that was not on the agenda, to legitimize the activities of the Bureau and the President, whose legitimacy had been expressly called into question by Members who had intervened during the debate.

- The New Constitution aims to enable the President to obtain supposedly democratised decisions from the Doha Extraordinary Congress, justifying in particular:

  (i) The substantial increase of his own powers and prerogatives, under the guise of constitutional legitimacy.

  (ii) The elimination of the function of Secretary General and replacement of it with the function of the Executive Director through the replacement of Articles C22.1 and C23.4 of the Old Constitution by Articles C22.1 and C24.4 of the New Constitution.

  (iii) Indeed, this constitutional amendment of an Executive Director (which was a completely new function) enabled to *de facto* replacement of the Secretary General without the need for a decision to dismiss the Secretary General, which could have been the subject of an appeal procedure.

  (iv) Furthermore, the new position of Executive Director is subject to the authority of the President, who alone has the power to appoint and dismiss the Executive Director, whose prerogatives were furthermore all subject to the President's control, in respect of which he has no independence whatsoever.

- These elements demonstrate that the Doha Extraordinary Congress was deliberately convened in violation of the Old Constitution rules.

B. The Respondent

53. The Respondent, in its Answer to the Appellant's Appeal Brief, requested the following reliefs:

"*1. To dismiss Appellant's prayers nr. 2 – 8 in the proceedings CAS 2024/A/10387 Swimming Federation of the Republic of Kazakhstan v. [AA];*

2. In any event, to reject the Appeal of Appellant in the proceedings CAS 2024/A/10387 Swimming Federation of the Republic of Kazakhstan v. [AA];

3. In any event, to order Appellant to pay all costs of the arbitration, including the costs of CAS and to pay a contribution to the legal costs and expenses of [AA]".

54. The Respondent's submissions, in essence, may be summarized as follows:

The Appellant has no legal interest in appealing against the Appealed Decision:

- The Appellant has failed to substantiate its legal interest in having the decision to extend the term of the Bureau and Executive until the Elective General Congress annulled. In fact, the Appellant clearly has no such interest.

- The Appellant does not provide any explanation at all as to who should or who would have managed the day-to-day business of AA until the Elective General Congress should the (unfounded) request be granted (*quod non*). This was also rightly pointed out by the CAS in its Order on Provisional Measures of 19 April 2024 rendered in the present proceedings. Accordingly, in such a case, this would still have been done by the same Bureau and Executive as before.

- This underscores that the Appellant has no legal interest worthy of protection whatsoever and is instead pursuing other goals with its Appeal, i.e. to "create" bad rumours about all associations that do not support Mr Sheikh Talal in his fight against the International Olympic Committee.

The Appellant's prayers for declaring events at the Doha Extraordinary Congress as null and void are procedurally inadmissible:

- The Appellant cannot request the CAS to declare *null and void* the calling and holding of the Doha Extraordinary Congress, since they are merely matters of fact, and, as confirmed by CAS jurisprudence and the SFT, facts cannot be the subject of declaratory reliefs (CAS 2011/A/2612, para. 52; CAS 2009/A/1870, para. 55; SFT 79 II 253, consid. 4). Therefore, for procedural reasons alone, these declaratory reliefs (prayers nos. 6 and 7) are inadmissible.

- A request for a declaratory judgment requires a special legal interest, i.e. a sufficient interest for a declaration (CAS 2020/A/7590, para. 105 and CAS 2013/A/3272, para. 69). The Appellant failed to demonstrate any special interest that would justify such declaratory judgements.

- The declaration sought is *de facto* subject to other reliefs, such as the request to annul or to set aside the Appealed Decision. The CAS has rightly held in previous cases that there is no interest in a declaratory judgment where an appellant has already requested the annulment of a decision and has failed to show any further legal interest in the declarations sought.

- The Appellant has requested the annulment of the Appealed Decision, yet it has not substantiated at all why the declaratory reliefs would be necessary in addition to its request for the annulment of the Appealed Decision.

The Appellant's actions constitute an abuse of right under Swiss law and qualify as "venire contra factum proprium":

- The Appellant's president, Mr Kryukov, was for all the years and up until the Elective General Congress, one of the vice presidents of AA and a member of the Executive – who also was fully involved in and participated in the relevant AA meetings and events, without any objection.

- At no time did Mr Kryukov claim that either himself or any of the colleagues of the Executive had not been validly elected. In all these years, no one had challenged the legitimacy of the Bureau and the Executive, neither the Appellant nor Mr Kryukov.

- The Appellant cannot allege that the vote on the extension of the term is "invalid because such an item could not be submitted to vote" since the Appellant's request was the sole reason for that vote in the first place. The Appellant's behaviour is an exemplary case of the "*venire contra factum proprium*".

- Even after the Doha Extraordinary Congress was called, there was no challenge to the authority of the Executive to call for such Doha Extraordinary Congress, not even by the Appellant.

- After the Doha Extraordinary Congress, the AA successfully held the 11th Asian Age Group Championships – in which the Appellant also participated and was the second most successful participating Member.

- The Elective General Congress also unanimously approved the Minutes – which included the participation of the Appellant.

- The Appellant's requests are therefore not only moot and inadmissible, but its conduct qualifies as "*venire contra factum proprium*" and the Appeal is nothing more than a good example of "guerrilla" or malicious arbitration. This abuse of a right clearly deserves no legal protection, as captured under Article 2 of the CC.

The former Bureau and Executive were validly in power until the Elective General Congress:

- The evidence shows that from 9 October 2016 until the Doha Extraordinary Congress, all the AA bodies have undisputedly:

(i) continued managing the day-to-day affairs of AA;

(ii) regularly held meetings and made decisions;

(iii) successfully organised several international events, competitions and championships in the past few years;

(iv) always represented AA and negotiated with numerous parties, including WA, Members, local organising committees, sponsors, business partners etc.

- During all these years, the president of Appellant was also a member of the Executive (*nota bene* since 2006) and has never claimed that the Bureau or Executive lacked authority.

- From 9 October 2016 until the Doha Extraordinary Congress, no Member had ever challenged the authority of the Bureau, the Executive or the President. It is thus indisputable that AA was and is a fully functional continental organisation and that its bodies always had full authority and were validly in office until the Doha Extraordinary Congress.

- In any event, the Congress approved the term of office of the AA's bodies:

(i) According to the Old Constitution, the Executive is the competent body to convene the Doha Extraordinary Congress and to propose amendments to the Old Constitution. Even under Swiss law, the Executive would be the competent body to convene such a Congress (Article 64.2 of the CC). The President is competent to preside over the Congress as per the Old Constitution and Swiss law.

(ii) According to the Swiss law jurisprudence (SFT 71 I 383, consid. 2a; SFT 78 III 33, consid. 11; SFT 5A_205/2013, consid. 4), even if a person without such competence has convened (or presided over) a general assembly, the competent body (e.g. the executive or the assembly) may subsequently approve this act, either tacitly or explicitly. In such a case, any possible formal defect is cured by the (tacit or explicit) later approval of the competent body.

(iii) Under Swiss law, i.e. Article 38 of the Swiss Code of Obligations ("CO"), the principle of subsequent approval is well-established and applied in various fields of civil law, including association law (SFT 127 III 332, consid. 2; SFT 9C_495/2015, consid. 5; SFT 4D_15/2020, consid. 3.2). Resultantly, the Congress – as the highest authority within AA – is competent to subsequently approve any action of an incompetent body. The various events including lack of objections point to such approval, which clearly cures any possible formal defect that may have arisen prior to the Doha Extraordinary Congress.

(iv) In any case, it was the Appellant and the counterproposal by Mr Nanavati which resulted in the Congress voting on the extension of the (ongoing) term of the Bureau and Executive until the Elective General Congress in Bangkok. The Congress thus explicitly approved the authority and actions of the Bureau, the Executive and the President.

- The Congress – as the highest authority within AA – is competent to subsequently approve any action of an incompetent body. The various events, including the absence of objections, point to such approval, which clearly remedies any possible formal defect that may have arisen prior to the Doha Extraordinary Congress. In this regard, the Appellant's argument, which relies on findings of the SFT (particularly in SFT 4A_387/2023), regarding the application of rules governing companies by analogy to associations, has no merit. In particular:

  (i) Associations and companies limited by shares are fundamentally distinct legal entities:

    (a) SFT 4A_387/2023 concerns a company limited by shares (situated in Switzerland) and does not apply to an association like AA (with headquarters in the State of Kuwait). These two legal forms of entities, from a legal perspective, are entirely different in structure, governed by different sets of rules, and focus on different objectives.

    (b) Furthermore, under Swiss law, a company limited by shares is a rather rigid structure that must adhere to many (and often mandatory) rules. The company limited by shares is almost exclusively governed by over 140 statutory provisions (Article 620 of the CO *et seq.*), whereas an association, on the other hand, possesses "association autonomy", as recognised by constant CAS jurisprudence (CAS 2017/O/5264, 5265 & 5266, at para. 193). Associations are therefore primarily governed by their own set of rules and regulations, as democratically established by their members.

    (c) A company limited by shares and an association are therefore two entirely different legal entities. Consequently, there is no legal ground to apply SFT 4A_387/2023 directly to associations, nor is there any legitimate reason to apply SFT 4A_387/2023 by analogy to the present case.

  (ii) The subject-matter of the proceedings in the present dispute is distinct from those in SFT 4A_387/2023:

    (a) The procedure of SFT 4A_387/2023 concerned a defect in the organisation of the company as per Article 731(b) of the CO and not an action for annulment of the decisions taken at a general meeting.

    (b) As different legal questions were central to SFT 4A_387/2023, the latter is also clearly not applicable to the case at hand.

(iii) Rules for convening a general meeting of a company limited shares do not apply to associations:

(a) It is evident that a company limited by shares must adhere to a lot of mandatory provisions that govern the convening and holding of a general meeting, while an association, in line with its "association autonomy", can decide how and when, and who can convene a general assembly. The rules applicable to the convening of a general meeting of a corporation (e.g. Article 700 of the CC) therefore do not all "apply by analogy to the association", as alleged by the Appellant.

(b) In another decision of the SFT cited by Appellant (SFT 5A_142/2019, consid. 5.2), the SFT merely stated that Article 699.4 of the CO, which concerns the request of the shareholders to convene a general meeting (and thus a completely different situation than in the present case), can apply by analogy to associations. However, nowhere did the SFT state that this analogy shall apply to all the rules governing the convening of a general meeting of shareholders, nor that this analogy shall apply to other provisions, such as the term limit of the board of directors.

(c) It must be noted that even SFT 4A_387/2023 did not state that its considerations apply to associations. On the contrary, the SFT had to decide whether, apart from the term of office of the board directors, the term of office of other bodies, such as the external auditors, expire if the general meeting is not held as foreseen in the statutory provisions. Indeed, SFT 4A_387/2023 explicitly stated that its considerations and conclusions regarding the expiration of the term of office of the board of directors cannot be extended by analogy to the external auditors.

(d) This entirely contradicts the Appellant's attempt to apply SFT 4A_387/2023 by analogy to the case at hand. If SFT 4A_387/2023 and its conclusions regarding the expiry of the term of office are not applicable to all bodies of a company limited by shares, then they are not applicable to a completely different type of legal entity, such as an association.

(iv) Rules of the term limit of board of directors in a company limited by shares do not apply to associations:

(a) Finally, unlike SFT 4A_387/2023, in the present dispute, all the Members agreed to extend the mandate of the Bureau members, as was done by multiple associations in the recent past during the COVID pandemic. Therefore, there is no basis to apply by analogy an SFT decision that concerns not only a different legal entity, but

also a totally different situation, where a term of office has expired, and no decision has been taken to extend it.

(b) Further, even if all the rules applicable to the convening of a general meeting of shareholders were to apply to associations, the SFT 4A_387/2023 cannot be extended by analogy to associations because the term of office of the board of directors is restrictively regulated and limited by statutory provisions (Article 710 of the CO). On the other hand, the few statutory provisions that govern the associations do not provide for a term limit of the bodies of the association (which, *nota bene*, would contradict the association autonomy of such legal entity), nor do they specify how long a term of office should last.

(c) There is simply no legitimate reason to apply the conclusions of SFT 4A_387/2023, which only affects the term limit of the board of directors of a company limited by shares as per Article 620 *et seq.* of the CO, by analogy to the present case.

(v) The factual background in SFT 4A_387/2023 is entirely different from the facts of the present case, rendering it inapplicable:

(a) Unlike in the case underlying SFT 4A_387/2023, the Members not only tacitly but explicitly approved the term of office of the former Executive and the Bureau at the Doha Extraordinary Congress.

(b) In SFT 4A_387/2023, the appealing party had explicitly objected to the convening of the general meeting and stated that the board of directors lacked authority. Such objection was made immediately after the appellant had received the notice to the general meeting, and the appellant expressly stated that it does not accept the validity of the convening and that it would consider all decisions taken at such general meeting as illegitimate and invalid. For this reason, the SFT considered that the appealing party had not violated Article 2.2 of the CC. In the present case however, the Appellant never objected to the convening of the Doha Extraordinary Congress, nor to the convening of the 14th General Congress of 7 November 2020, nor any meeting) and never claimed that the former Executive lacked authority. On the contrary, the Appellant, for years and years, participated in the meetings duly conducted by the former Executive and Bureau, and in the events and competitions duly organised by these same bodies, and did so without any objection.

(c) Moreover, the SFT explicitly dealt with the question of whether the appellant had violated Article 2.2 of the CC and indicated that, even if the term of office expired, there are cases where an appeal is not admissible (if the Appellant's conduct qualifies as *venire contra factum proprium*).

- No Member – and neither the Appellant – ever objected against the fact that AA's bodies continued to perform their duties as of 10 October 2020, including: (i) organising events and championships; (ii) convening the Doha Extraordinary Congress; and (iii) proposing amendments to the Old Constitution. Therefore, the Members, i.e. the Congress as the competent body, tacitly approved the authority and the actions of the Bureau, the Executive and the President, including the organisation and the convening of the Doha Extraordinary Congress.

- The decision relating to the extension of the term of the Bureau and Executive was also re-confirmed at the Elective General Congress. By holding new elections, the Congress recognised that the Bureau, the Executive and the President had been validly in office up to that point.

- In any case, the terms of the Bureau and Executive, extended at the Doha Extraordinary Congress and against which the Appellant directs its Appeal, have in the meantime expired. Accordingly, the request of the Appellant to annul the extension of the term of the Executive and the Bureau until 26 April 2024 is moot and shall be dismissed.

The convening of the Doha Extraordinary Congress was in full compliance with the Old Constitution and Swiss law:

- The procedure to convene the Doha Extraordinary Congress (i.e. the setting up of date, place and agenda; two months' notice) fully complied with Articles C19.1.2 and C39.3 of the Old Constitution. Accordingly, the Doha Extraordinary Congress was evidently convened in full compliance with the Old Constitution and, thus, Swiss law (Article 64.3 of the CC).

- In relation to the Appellant's assertion that the notification procedure of the Doha Extraordinary Congress was not complied with because it was sent by the President and not the Secretary General:

  (i) It is irrelevant if the notification is sent by the President or the Secretary General. And in any case, the Secretary General is clearly subordinated to the President.

  (ii) This is also perfectly in line with Swiss law (Article 64.2 of the CC), according to which the President, following the Executive's approval, is entitled to send the notice to the Doha Extraordinary Congress.

- The Bureau further conducted the Doha Extraordinary Congress as per Article C27.2 of the Old Constitution. In addition, the President, in accordance with Articles C19.7 and C17.5 of the Old Constitution, duly presided over the Doha Extraordinary Congress and conducted the meeting in accordance with the Old Constitution.

- In this respect, the Appellant's allegations that the President did not preside over the Doha Extraordinary Congress (but allegedly the WA President did) must be firmly rejected – which can be confirmed by reading the relevant Minutes.

The President was competent to take decisions and make appointments made during the Doha Extraordinary Congress:

- At the outset, the Appellant, in its prayer for relief, did not seek the annulment of the decisions taken by the President during the Doha Extraordinary Congress. The Appellant therefore did not appeal against these decisions, implying that they are therefore final and binding. In any case, the Appellant also blatantly failed to substantiate why those decisions would be procedurally or materially flawed.

- Under the applicable rules of the New Constitution (which was approved by the Members), the President was clearly competent: (i) to appoint the Executive Director of AA, with or without the approval of the Congress, (ii) to appoint a lawyer to assist in the legal affairs of AA; and (iii) to choose, with the approval of the Bureau, the future headquarters of AA.

- These decisions were duly also approved by the Members at the Elective General Congress. Therefore, the decisions taken by the President are perfectly in line with the New Constitution and Swiss law.

- Hence, the decisions and the proposal of the President, all approved by Congress, and which were not objected to thereafter, are final and binding.

The Old Constitution was required to be amended, and this was done in compliance with the Old Constitution and WA Constitution:

- The WA Constitution was amended and came into force on 1 January 2023. According to Articles 11.1 and 11.4 (j) and (k) of the WA Constitution, all continental organisations (and their national member federations) were obliged to amend their constitution to comply with the WA Constitution – hence there was an imminent need to amend the Old Constitution. Against this background, it was not only appropriate for AA but necessary to call for the Doha Extraordinary Congress to amend the Old Constitution.

- The requirements to make amendments set out in the Old Constitution were:

  (i) First, according to Article C39.3 of the Old Constitution, any changes in the Old Constitution must be priorly approved by the Executive and by WA and all amendments must be subsequently presented at a General Congress or an Extraordinary Congress for adoption and endorsement.

  (ii) Second, all amendments to the Old Constitution shall be circulated to the Members at least one month before the date of the General Congress or Extraordinary Congress, as per Articles C19.1.2 and C39.2 of the Old Constitution.

  (iii) Third, pursuant to Article C27.5 of the Old Constitution, a simple majority of the Members present at the General Congress or Extraordinary Congress is required to amend the Old Constitution. In addition, the necessary quorum

to hold an Extraordinary Congress is nine Members, according to Article C19.9 of the Old Constitution.

- The AA clearly complied with the above-mentioned applicable procedure set out in the Old Constitution in the following manner:

  (i) In line with Article C39.3 of the Old Constitution and Article 11.1 of the WA Constitution – the President requested WA to review the draft of the Old Constitution to ensure its compliance with the WA Constitution and the WA's Rules.

  (ii) Pursuant to their approval, the President informed and then asked the Executive to approve the New Constitution as per Articles C39.3 and C28.1 of the Old Constitution.

  (iii) The President sent a letter to the Executive proposing the date, place and agenda of the Doha Extraordinary Congress, which was required under Articles C28.1 and C19.1.2 of the Old Constitution – which was duly approved.

  (iv) Following the approval of the Executive, the President sent to all Members the invitation to attend the Doha Extraordinary Congress, informed them about the respective agenda and sent the draft of the approved New Constitution. The Doha Extraordinary Congress was undisputedly validly convened, more than two months in advance.

- All Members had more than two months to study the New Constitution, to review all the proposed amendments, to discuss them internally or among other Members and to make any further proposals. Subsequently, however, no Member (nor the Appellant) sent any comments or questions regarding the New Constitution.

- In relation to the Appellant's assertion that the Bureau was allegedly excluded from such an amendment process – according to Article C39.3 of the Old Constitution, the Executive and not the Bureau, is competent to approve amendments to the Old Constitution. Its assertion is thus clearly in vain. Additionally, no body of AA, neither the Executive nor the Members, had been excluded from the amendment process. On the contrary, during the amendment process, the President duly followed the Executive's decisions.

- Therefore, the New Constitution was duly in force in line with the provisions contained in the Old Constitution and AA complied with the above-mentioned applicable procedure set out in the Old Constitution.

VI. JURISDICTION

55. Article R47 of the CAS Code reads as follows:

> "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*".

56. Article C40.1 of the Old Constitution states that:

> "*Disputes between [AA] and any of its recognised affiliated Members Federation/ Association or members of the recognised Member Federation / Association, individual members of the recognised Member Federation / Association or between Members Federation/Association of [AA] that are not resolved by a [AA] Executive decision may be referred for arbitration by either of the involved parties to the Court of Arbitration for Sports (CAS), Lausanne within twenty-one (21) days of the decision of different [AA] bodies. The appealing party must have a direct interest in the appeal and the decision. Any decision made by the Arbitration Court shall be final and binding on the parties concerned*."

57. Furthermore, Article C17.1 of the Old Constitution states that: "*The Congress is the highest authority in [AA] and shall meet every two years. The Congress' decision is final.*"

58. It follows that the Appealed Decision is final (internally), and therefore an appeal can only be filed before the CAS.

59. The Parties did not dispute the jurisdiction of the CAS and have also confirmed it by signing the Order of Procedure.

60. Therefore, the CAS has jurisdiction to decide the present dispute.

VII. ADMISSIBILITY

61. Article R49 of the CAS Code reads 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document*".

62. The Statement of Appeal filed on 4 March 2024, within the 21-day period prescribed under Article C40.1 of the Old Constitution (see *supra* para. 56).

63. The Appeal Brief was filed on 15 April 2024, in line with the extension granted by the CAS Court Office.

64. Therefore, the Appeal complied with the requirements of Articles R47 and R48 of the CAS Code.

65. It follows that the Appellant's appeal is admissible.

VIII. APPLICABLE LAW

66. Article R58 of the CAS Code reads as follows:

> "*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*".

67. Under Article R58 of the CAS Code, the Panel must primarily apply the "applicable regulations", which in the present case are undoubtedly the applicable rules and regulations of the AA, and particularly the Old Constitution.

68. The Panel recalls that according to Article R58 of the CAS Code, the Parties' choice of law is relevant only "subsidiarily" (see CAS 2015/A/3896, para. 72; CAS 2020/A/7605, para. 169).

69. In their respective submissions, the Parties have indicated that Swiss law should be "subsidiarily" applied.

70. The Panel notes that the Old Constitution is silent in relation to which law shall be applied in case of disputes. Nonetheless, it must be noted that Articles C5 and C45.1 of the Old Constitution require the Old Constitution to comply with the WA Constitution. As a result, reference shall be made to Article 31.3 of the WA Constitution – which in turn provides for "subsidiary" application of Swiss law.

71. According to Article C5 of the Old Constitution:

> "*[AA] Constitution must be approved by the [AA] Congress and should be at all time in line with [WA] Constitution, in case of any conflict between [AA] Constitution and [WA] Constitution, [WA]Constitution shall prevail*."

72. Per Article C45.1 of the Old Constitution:

> "*[AA] Constitution will be in compliance with the [WA] Constitution and Rules. However, in case of any conflict the [WA] Rules will prevail.*"

73. Pursuant to Article 31.3 of the WA Constitution:

"*The CAS shall resolve any dispute in accordance with the Code of Sports-related Arbitration (the "CAS Code"), this Constitution, the applicable World Aquatics Rules and subsidiarily Swiss law*."

74. Therefore, the Panel concludes that the "applicable regulations" are the applicable rules and regulations of the AA, in particular, the Old Constitution, and Swiss law shall apply "subsidiarily".

IX. MERITS

A. Preliminary remarks

75. As a preliminary matter, the Panel reiterates that the scope of this Appeal, as confirmed by the Parties during the hearing, is confined to the Appealed Decision and excludes any issues arising from the decisions taken at the Elective General Congress.

76. Also, the Panel wishes to clarify its reasoning for rejecting the following procedural requests of the Respondent and Appellant, respectively.

i. Request of the Respondent for closure of this dispute

77. The Panel notes that the Respondent requested the termination of the present appeal proceedings on the basis of a lack of subject matter and sought to have these proceedings deleted from the CAS Roll. However, the Appellant objected to this request and expressed its desire to proceed with this dispute. Subsequently, the CAS Court Office, on behalf of the Panel, informed the Parties that such a request was rejected, and the reasons would be provided in this Award (see *supra* paras. 37 to 39).

78. The Panel further observes that the events at the Elective General Congress – which were as follows: (i) approval of the Minutes; (ii) election of members to the new Bureau and Executive Committee of AA; (iii) election of members for Bureau of WA; and (iv) election of members for the Ethics, Disciplinary and Audit & Compliance Committees of AA – do not inherently rectify all actions and events that transpired before and during the Doha Extraordinary Congress.

79. In fact, the approval of the Minutes demonstrates the Members' acknowledgment of the events recorded during the Doha Extraordinary Congress. However, it does not retroactively legitimise preceding events or actions not specifically addressed in the meeting. Similarly, the election of members to various AA or WA's bodies does not validate the mandate of the previous Bureau and Executive to convene and hold the Doha Extraordinary Congress.

80. The Panel wishes to clarify that the only instance where such approval of the Minutes would cure all the disputed events under Swiss law (which was not the case here) and result in the closure of this proceeding is if it constituted a unanimously adopted resolution that expressly ratified all past actions and events, in particular the: (i)

continued mandate of the Bureau and the Executive from 10 October 2020; (ii) validity of all amendments made to the Old Constitution; (iii) competence of the Bureau and the Executive to convene and hold the Doha Extraordinary Congress; and (iv) validity of all items passed during the Doha Extraordinary Congress whether or not they were part of the agenda.

81. Therefore, the Panel considered it appropriate to not close these proceedings and to evaluate instead the outcome of this dispute only after receiving all facts, submissions and evidence from the Parties. The Respondent's request was thus rejected by the Panel.

ii. Request of the Appellant for consolidation of these proceedings

82. The Panel observes that the Appellant requested the consolidation of the appeal proceedings CAS 2024/A/10387 and CAS 2024/A/10593.

83. According to Article R52.5 of the CAS Code:

"*Where a party files a statement of appeal in connection with a decision which is the subject of a pending appeal before CAS, the President of the Panel, or if she/he has not yet been appointed, the President of the Division, may decide, after inviting submissions from the parties, to consolidate the two procedures*."

84. Pursuant to Article R52.5 of the CAS Code, the consolidation of appeal proceedings is permissible only when the appeals are directed against the same decision(s), a principle confirmed by CAS jurisprudence (see CAS 2021/A/7878, para. 35; CAS 2019/A/6557 & 6663, para. 55).

85. The two appeals of the Appellant, however, are directed against different decisions of different general assemblies of the AA, i.e. the decisions at the Doha Extraordinary Congress on 12 February 2024 held in Doha and the Elective General Congress on 26 April 2024 held in Bangkok.

86. Therefore, since the requirements for consolidation under Article R52.5 of the CAS Code were not met due to the appeals being directed against different decisions, such a request was rejected by the Panel.

B. Does the Appellant have a legal interest in bringing this dispute before the CAS?

87. The Panel recalls the relevant submissions of the Parties concerning the existence (or not) of the Appellant's legal interest and its standing to appeal in bringing this dispute before the CAS.

88. The concept of "standing to sue" refers to the entitlement of a party to avail itself of a claim. In general, it suffices for the standing to sue that a party invokes a right of its own. However, additional requirements apply for "standing to appeal". In particular, the appealing party must be affected by the decision it appeals and must show that it is directly aggrieved by the decision it is appealing, i.e. that it has something at stake (see CAS 2015/A/3959, para. 143). Conversely, where a party does not have a cause of action or legal interest to act against such a decision that it would have no standing to

appeal based on the well-known general procedural principle that if there is no legal interest there is no standing (see CAS 2014/A/3744 & 3766, para. 175).

89. Given that the "aggrievement requirement" is an essential element to determine the legal interest and the standing of a party to appeal a sports body's decision before the CAS, in analysing whether the Appellant has standing to appeal, the Panel must determine whether the Appellant has shown that it has sufficient legal interest in the matter being appealed.

90. In the present proceedings, the Panel observes that the applicable rules and regulations of the AA and WA are silent on the issue of standing to appeal. Therefore, to determine the legal interest in standing to appeal a decision of a federation, this *lacuna* must be filled by Swiss law and reference to Article 75 of the CC, which reads:

"*Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such regulation in court within one month of learning thereof*".

91. CAS jurisprudence consistently affirms that, under Article 75 of the CC, the right to contest a resolution of an association is an inherent and mandatory membership right and that such a provision applies to resolutions made not only by the highest decision-making organ but also by a lower internal body, provided that all internal procedures and remedies have been exhausted and provided that the resolution is final (cf. CAS 2008/A/1700 & CAS 2008/A/1710 para. 56, which also references SFT 118 II 12; SFT 132 III 503). Similarly, in CAS 2013/A/3140, it was held as follows:

"*The party having standing to sue in matters covered by Article 75 CC is not only a member of the association which issued the decision; according to the Swiss case law (and legal doctrine), a legal person member of an association affiliated to the one issuing a decision (indirect member) has standing to sue when it is submitted to the regulations of the association that has issued the contested decision* […]"

92. The Panel therefore holds that being a member of an association and consequently being affected by decisions of the association would in itself constitute "*sufficient legal interest*" required under Article 75 of the CC.

93. The Panel finds that the Appellant possesses a legitimate legal interest in ascertaining whether the convening and the decisions of the Doha Extraordinary Congress were in compliance with the provisions of the Old Constitution. Indeed, if that decision were held to be invalid, this would mean that the Doha Extraordinary Congress unlawfully decided on the approval of the New Constitution and the extension of the term of the Bureau and Executive; which, in turn, could have an impact on the issue of whether the persons in power were entitled to hold the Elective General Congress, consequently putting the validity of that second decision into question.

94. In light of the above considerations, the Panel concludes that the Appellant has a legal interest to act and, therefore, possesses standing to appeal against the Appealed Decision.

C. Are any of the Appellant's prayers to be dismissed due to procedural irregularities?

95. The Panel recalls that the Appellant, in its prayers, *inter alia*, sought the following reliefs:

- Mainly:

  (i) To declare null and void the calling dated 27 November 2023, to the Doha Extraordinary Congress held on 12 February 2024.

  (ii) To declare null and void the holding of the Doha Extraordinary Congress held on 12 February 2024.

  (iii) To declare null and void the decisions taken on 12 February 2024 by the Doha Extraordinary Congress.

- Alternatively:

  (iv) To annul the decisions taken on 12 February 2024 by the Doha Extraordinary Congress.

Hence, the Appellant's primary request is for a declaration that the convening of the Doha Extraordinary Congress, its proceedings, and its decisions are null and void. The alternative request sought by the Appellant is to annul the decisions made at the Doha Extraordinary Congress.

96. The Panel stresses the difference between declaring a decision as "null and void" and deeming it "annullable" under Swiss law. In particular:

- On one hand, an action for a declaration that a decision of an association is "null and void" can be brought under Article 88 of the CPC, which provides: "*By filing an action for a declaratory judgment, the plaintiff demands that the court establish that a right or legal relationship exists or does not exist*". Specifically, such an action may be brought by any person – whether or not a member of such association – who can demonstrate a legitimate interest (SFT 115 II 468, consid. 3b). Moreover, the plaintiff is not required to exhaust domestic remedies first and may seek a declaration of nullity at any time (SFT 137 III 460, consid. 3.3.2). In addition, it must be noted that such kind of invalidity must be established *ex officio* by the court (see SFT 129 III 641, consid. 3.4 "[…] *Nichtigkeit von Vereins- und entsprechend auch von Stiftungsratsbeschlüssen ist von Amtes wegen festzustellen* […]" which translates to "*The nullity of resolutions by association bodies and, correspondingly, by boards of foundations must be determined ex officio*"). Furthermore, establishing nullity requires a high threshold of proof demonstrating that the decisions were fundamentally flawed.

- On the other hand, a decision can be "annulled" under Article 75 of the CC (see *supra* para. 90), provided that the challenge is initiated within one month by a

member of an association who disagree with the decision (SFT 5A_205/2013, consid. 4).

97. That said, the Panel recognises that, as per well-established CAS jurisprudence, declaratory relief (i) can only be granted if the requesting party demonstrates a special legal interest in obtaining such a declaration (see CAS 2021/A/8225, paras. 84-86; CAS 2020/A/7590 & 2020/A/7591; CAS 2013/A/3272, paras. 68-70; CAS 2011/A/2612, para. 52; CAS 2011/O/2574, para. 48) and (ii) cannot be sought to resolve abstract legal questions or to determine purely factual matters.

98. The Panel is convinced that, in the present case, the Appellant holds the aforementioned special legal interest in seeking the nullity of the calling, holding and decisions taken at the Doha Extraordinary Congress. In this regard, the Panel notes that the intent behind filing this Appeal and arguments raised in the present proceedings address the alleged invalidity of the Bureau and Executive's term of office – which subsequently would render all their post-expiry actions null and void under Swiss law. In doing so, the Appellant is not seeking to resolve "abstract legal questions" or "determine factual circumstances". In fact, a declaratory relief would be necessary to resolve the legal uncertainty put forward by the Appellant, particularly the setting aside of the Old Constitution and issuance of the New Constitution, voted in a congress convened, conducted and managed by bodies allegedly not in office at the time. As such, there is a clear need to resolve the uncertainty to protect not only the Appellant's rights, who has a vested interest in the legality of the decisions passed during the Doha Extraordinary Congress, but also those of the other Members and the Respondent itself, which must operate under conditions of legal certainty and the legitimacy of its governing bodies and statutory documents, such as the Constitution (see *supra* para. 93).

99. In conclusion, the Panel holds that the Appellant has legal interest to seek the nullity of the calling, holding and decisions taken at the Doha Extraordinary Congress.

100. Therefore, the Panel shall assess the arguments raised by the Parties relating to the calling, holding and decisions taken at the Doha Extraordinary Congress and determine if they are valid and, if not, whether they should be declared as null and void or, in the alternative, annullable.

D. Were the Bureau and the Executive validly in office post-2020 and competent to act as they did?

101. The pivotal issue in this appeal is whether the Bureau and the Executive, whose four-year term formally expired on 9 October 2020, retained their authority to act and convene the Doha Extraordinary Congress, particularly in light of Articles C20.11 and C22.2 of the Old Constitution.

102. In this respect, the Panel notes that – according to the aforementioned articles of the Old Constitution – the Executive and Bureau's term of office is to last four years from the date of the Congress.

103. It is undisputed that the last elections were held on 9 October 2016 and that no elections took place in 2020 until the Elective General Congress.

104. As a result, assuming that the mandate of the Executive and Bureau expired on 9 October 2020, the Panel must determine whether this invalidates the authority of the individuals in these positions, even if they undoubtedly continued to operate beyond the expiry of the mandates for which they were originally elected, namely during the period from 10 October 2020 until 26 April 2024, i.e. the date when the next elections took place at the Elective General Congress in Bangkok.

105. The Panel notes that from 10 October 2020 until the Doha Extraordinary Congress, the affairs of AA were undisputedly conducted by the Bureau and the Executive. In fact, even though their term of office had formally expired, these bodies managed the day-to-day business of AA, regularly held meetings and successfully organised several events, competitions and championships.

106. The Panel deems it necessary to emphasise that no Member raised any objection to the continued operation of the AA's bodies beyond the expiry of their term, a period exceeding three years.

107. In order to ascertain an answer and understand why these bodies remained in office beyond the natural expiration of their mandate, the Panel observes that it appears the Members indeed expressed their position on the matter well in advance of the said expiration of the mandate.

108. Specifically, the Panel notes that during the meeting of the Executive held on 9 March 2023 (at which Mr Kryukov was present in his capacity as AA's Vice President, see *supra* para. 10), the Secretary General reminded the Executive members of the decision taken during the 13th General Congress held in Indonesia in 2018, namely "*to postpone the General Congress and Election during or after the Asian Games in Hangzhou*". The Panel observes that the Asian Games in Hangzhou were held from 23 September 2023 to 8 October 2023, which seems to provide a reasonable explanation as to why the elections were ultimately conducted in 2024. Indeed, although the Panel has not been provided with the minutes of the aforementioned 2018 Congress, there is no evidence to suggest that any Member, including the Appellant, raised objections to the decision to postpone the elections in 2018 as reminded by the Secretary General in 2023. Accordingly, the Panel finds with a sufficient degree of certainty that the Members (including the Appellant) were aware of the explicit decision taken in 2018 to delay the elections and, through their subsequent silence and continued participation, accepted and acknowledged that the existing Bureau and Executive were validly in office and authorised to administer the day-to-day affairs of AA until the elections were held.

109. Furthermore, the Panel notes that the Appellant's President (who acted within the Respondent both in the capacity of an individual and a Member representative) was part of the Executive during this period and was undoubtedly aware of the events surrounding this dispute: (i) he did not contest the authority or actions of the Bureau or the Executive; and (ii) he himself requested to hold a vote on the Bureau and Executive's term, which was then put to vote on the proposal of Mr Nanavati and subsequently

approved by the Congress, according to the Minutes. Such a circumstance suggests an acknowledgement of their legitimacy. While the Panel is not convinced that Mr Kryukov himself requested to hold such a vote, the Appellant's own silence on the term of the Bureau and the Executive is inconsistent with its desire to now invalidate such term and constitutes *venire contra factum proprium* (see *infra* paras. 168 to 181).

110. In addition, the Panel notes the total absence of any objection for about three years after the expiry of the term of office of the Bureau and the Executive by the Members or the Appellant itself.

111. As to the tacit approval of the extension of the term of the Bureau and the Executive, the Panel recalls that in the written submissions for CAS 2024/A/10593 , the Appellant referenced jurisprudence (SFT 5A_142/2019, consid. 5.2; SFT 148 III 69, consid. 3.3) of the SFT, and in particular, its judgment SFT 4A_387/2023 of 2 May 2024. In this regard, the Panel notes that this decision was issued after the Appellant's submission of the Appeal Brief in the present proceedings and shortly before the filing of the Statement of Appeal in CAS 2024/A/10593 .

112. However, as previously noted, the joint considerations of the two proceedings in a single hearing ensured that such jurisprudential references are appropriately taken into account in the decision-making process. Accordingly, the Panel considers it pertinent to set out its reasoning in respect of these arguments as well.

113. The Panel observes that SFT 4A_387/2023 relates specifically to companies limited by shares, which are distinct from associations in terms of purpose and legal principles. This distinction is further highlighted by the fact that companies are regulated by the CO, which prescribes detailed governance provisions, while associations, governed by the CC, enjoy greater flexibility in structuring their internal organisation and governing bodies, including the rules for convening general meetings.

114. Moreover, the Panel notes that:

- Prof Dr Vito Roberto, in his expert testimony, stated, *inter alia*, that the structure of companies and associations under Swiss law is different as companies are profit-orientated with "*one share, one vote*", whereas associations are people-orientated and attempt to achieve idealistic goals, with "*one member, one vote*". These differences are also highlighted by the fact that companies are more regulated, whereas associations have more autonomy to function and organise themselves according to the wishes of their members. It is, therefore, necessary for the latter to fill gaps that might arise which are not provided for in legal provisions (such as the principle of good faith and prohibition of abuse of rights). Prof Dr Vito Roberto thus opined that provisions and decisions referenced to companies cannot, by default, be applied to associations.

- The SFT authorities, and in particular SFT 4A_387/2023, which relates to a company limited by shares, cannot be automatically transposed to an association. In particular, the Panel notes that the governance of associations is more flexible and, as in the present case, the continued powers of the Bureau and the Executive were

solidly confirmed by the conduct of the Members after the conclusion of the first four-year term that began in 2016. Indeed, the will of the Members, who convened in subsequent Congresses (including the General Congress in 2018), was clearly expressed in confirming the continuation in office of the AA's bodies. This reinforces the argument that it would be incorrect to apply, in the present case, the same legal consequences adopted in corporate matters.

- In SFT 4A_387/2023, the appealing party had expressly objected to the general meeting and challenged the board of directors' authority. By contrast, neither the Appellant nor any other Member objected to the convening of the several meetings held after the expiry of the Bureau and Executive's mandates or questioned their relevant authority. On the contrary, for years, the Appellant actively participated in meetings, events, and competitions organised by the Bureau and Executive without raising any objections.

- The practice of postponing elective assemblies and extending the mandates of internal bodies was, among other things, common among associations during the COVID-19 pandemic.

115. In light of the above, the Panel concludes that the principles established in SFT 4A_387/2023 are not applicable in this instance due to the distinct legal frameworks and factual circumstances. Specifically, the Panel notes that, while such an analogical application is not excluded *per se*, it cannot be applied automatically and, given the abovementioned distinct legal framework and factual circumstances, it does not apply to these present proceedings.

116. Having established that the Members have approved the extension of the term of the Bureau and Executive as well as that the rules and decisions concerning companies cannot be transposed to associations in the present proceedings, the Panel will have to determine whether such approval by the Members could cure the formal defect in the term of the Bureau and the Executive.

117. In this regard, the Panel notes that, under Swiss association law, the general meeting of members is the supreme decision-making authority of an association (see, URS SCHERRER/RAFAEL BRÄGGER, Basler Commentary, Civil Code I, 7th edition, Article 64 CC, paras. 16 and 17). Such a principle is explicitly captured by Article 64 of the CC, which reads: "*The general meeting of members is the supreme governing body of the association […]*".

118. Additionally, Article C19 of the Old Constitution recognises the Congress (which comprises the Members) as AA's highest authority being competent "*to decide upon any matters arising within [AA]*".

119. In light of the foregoing considerations in fact and in law, the Panel is comfortably satisfied that the Members agreed to extend the mandate of the Bureau and the Executive, both as expressly decided at the 2018 General Assembly, as referenced in the minutes of the Executive of 9 March 2023 and through their conduct in the subsequent years.

120. Even Mr Kryukov, during the hearing, stated that the Members were the only entities at the Doha Extraordinary Congress with the authority to manage and make decisions concerning AA's affairs. It is, therefore, appropriate for this Panel to respect the clear will of the Members, as expressed both explicitly and implicitly.

121. Therefore, the Panel is satisfied that the approval by the Members remedied the formal defect in the terms of the Bureau and the Executive. In particular, under the principle of subsequent approval, the Members had the authority to retrospectively validate decisions or actions during their general meeting, which was competent to implicitly or explicitly ratify any actions of the Bureau or Executive, even in the presence of procedural irregularities.

122. In any event, if the Panel were to hold that the Bureau and Executive were not in power and not empowered to make decisions, including convening the Doha Extraordinary Congress, the Respondent has not provided any explanation as to who would have managed AA's affairs, what would be the consequence to past events/actions which were convened by the Bureau and/or the Executive *vis-a-vis* all competitions, meetings, events, contracts entered into with third parties, etc. from 10 October 2020 until the Elective General Congress.

123. In light of the above, the Panel is satisfied that the Bureau and the Executive (including its President) were validly in office beyond the expiration of their term and had the authority to convene the Doha Extraordinary Congress, as approved by the Members.

E. Was the Doha Extraordinary Congress duly convened and held?

124. Having determined that the Bureau and Executive (including the President) were validly in office beyond the expiration of their term, the Panel must now determine whether the Doha Extraordinary Congress was duly convened and held in accordance with the procedures established in the Old Constitution.

i. Convening of the Doha Extraordinary Congress as per the Old Constitution

125. According to Article C19.1.2 of the Old Constitution:

> "*An Extraordinary Congress shall be convened by a decision of the Bureau or the Executive at any time or the Bureau shall convene an Extraordinary Congress if one-third (1/3) of the recognised Member Federation/Association make such a request in writing, the request shall specify the items for the agenda. An Extraordinary Congress shall be held within three (3) months of receipt of such request. The Executive will decide the date, place and the agenda of the Extraordinary Congress. The Secretary General shall send notification to all recognised Member Federation/Association including the place, date and the agenda at least one (1) month before the date of the Extraordinary Congress. The agenda of The Extraordinary Congress shall not be altered.*"

126. A bare perusal of Article C19.1.2 of the Old Constitution would, *inter alia*, indicate that an Extraordinary Congress can be convened in one of two ways (also required under

Article C19.9 of the Old Constitution), i.e. (i) by a decision of the Bureau or the Executive at any time; or (ii) by the Bureau if one-third of the recognised Members make such a request in writing, and such request shall specify the items for the agenda, with such meeting being held within three months of receipt of such request.

127. As per the evidence on record, the Doha Extraordinary Congress was convened via a decision of the Executive (see *supra* paras. 19 to 24).

128. Article C19.1.2 of the Old Constitution further provides that the Executive shall determine the date, place, and agenda of the Extraordinary Congress. Thereafter, the Secretary General is required to send a notification to all recognised Members, specifying the place, date, and agenda, at least one month before the date of the Extraordinary Congress. In this regard, based on the evidence on record, it is evident that the President sent a letter to the Executive on 23 November 2023, proposing the date, place, and agenda of the Doha Extraordinary Congress and seeking its approval, which was duly given by the Executive on the following day. Subsequently, on 3 December 2023, the President issued the notification convening the Doha Extraordinary Congress to all Members (see *supra* paras. 21 to 23).

129. The Panel observes that the one-month notice requirement to Members was duly satisfied. That notwithstanding, the notification was issued by the President rather than the Secretary General, as stipulated in Article C19.1.2 of the Old Constitution. In this regard, while acknowledging that the provision stipulates it is the responsibility of the Secretary General to issue the notification convening the Congress, the Panel concurs with the Respondent's reasoning that it is immaterial whether the notification was issued by the President or the Secretary General. As the highest authority within AA, the President is vested with the right to communicate such decisions, while the Secretary General acts under the President's authority.

130. In any event, the Panel believes that the objective intent of Article C19.1.2 of the Old Constitution is that the Executive (or in other cases, the Bureau or one-third of Members) approves of the requirements of the notification to call for such a meeting and that the Members be given the one-month notice period. The source of the notification to the Members is not the intent of the said provision. This is also perfectly in line with Article 64.2 of the CC, which reads: "*The general meeting is called by the committee*" – which only requires approval of the committee, in this case, the Executive. Such an interpretation of the rule is also consistent with jurisprudence, such as in CAS 2016/A/4903 para. 90 (*see also*, CAS 2010/A/2071, para. 20):

"*The interpretation of the statutes and rules of a sport association has to be rather objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located*".

131. In any case, even admitting that the notification of the Doha Extraordinary Congress constitutes a procedural irregularity, the Panel notes that the objective purpose of Article C19.1.2 of the Old Constitution was to ensure that Members receive timely notice of the Congress and its agenda. The President's issuance of the relevant notification did not infringe on this purpose since all Members were informed on time and had sufficient time to prepare. As a result, considering that, under Swiss association law, minor procedural irregularities do not invalidate decisions where the substantive requirements have been satisfied, the Panel finds that the Executive's approval of the Congress and the subsequent notification meet the substantive requirements of Article C19.1.2 of the Old Constitution (SFT 71 I 383, consid. 2a).

132. In light of the above considerations, the Panel concludes that the Doha Extraordinary Congress was duly convened. Resultantly, the calling and holding of the Doha Extraordinary Congress were neither null and void nor annullable.

ii. Extension of the Bureau and Executive's term until the Elective General Congress

133. In relation to the extension of the term of the Bureau and Executive during the Doha Extraordinary Congress, the Panel observes that this item was not stipulated in the agenda circulated to the Members.

134. Articles C19.1.2 and C19.9 of the Old Constitution require that the agenda of the Extraordinary Congress not be altered. While the Panel agrees with the Appellant that this item was passed in violation of the aforementioned Articles of the Old Constitution, it notes that the Members nevertheless explicitly voted on this item (see *supra* paras. 25 and 125).

135. To this end, the Panel acknowledges the wide degree of autonomy of associations to regulate and determine their own affairs per Article 63 of the CC. This principle is best captured in the SFT decision BGE 97 II 108, consid. 3:

"*Die Vereinsautonomie hat zur Folge, dass der Verein ein bedeutendes Mass an Selbständigkeit und Unabhängigkeit besitzt. Das Recht, seine Angelegenheiten selbst zu verwalten, wird als für den Bestand des Vereins wesentlich betrachtet (RGR-Komm. zum BGB, 11. Aufl., Anm. 6 zu § 25). Die Autonomie bedingt daher auch, dass die freie Willensbildung grundsätzlich gewährleistet sein muss. Es hätte keinen Sinn, dem Verein die Freiheit der innern Gestaltung (EGGER, N. 3 zu Art. 63 ZGB) zuzugestehen, gleichzeitig aber grundlegende Beschränkungen der freien Willensbildung zuzulassen. Das ganze Vereinsrechtist auf die Gewährleistung grundsätzlich selbständiger Willensbildung angelegt: so die Bestimmungen über die Vereinsversammlung als oberstes Organ des Vereins (Art. 64 ZGB), das Stimmrecht der Mitglieder und den Entscheid der Mehrheit (Majoritätsherrschaft, Art. 67 Abs. 1 und 2 ZGB), die Regelung der Beschlussfassung (Art. 66-68 ZGB). Daraus ist zu schliessen, dass der Verein seiner Selbständigkeit nicht soll beraubt werden können (HEINI, Schweizerisches Privatrecht, Bd. II, S. 522)* […]" [which translates to "*The autonomy of the association has the consequence that the association has a significant degree of autonomy and independence. The right to manage one's own affairs is considered essential for the*

existence of the association (RGR-Komm. zum BGB, 11th ed., note 6 to § 25). Autonomy therefore also requires that the free formation of the will must be guaranteed in principle. It would make no sense to grant the association the freedom of internal design (EGGER, N. 3 to Art. 63 of the Civil Code) while at the same time allowing fundamental restrictions on the free formation of will. The entire law of associations is designed to guarantee the fundamentally independent formation of wills: for example, the provisions on the general assembly of the association as the supreme body of the association (Art. 64 ZGB), the voting rights of the members and the decision of the majority (majority rule, Art. 67 paras. 1 and 2 ZGB), the regulation of the passing of resolutions (Art. 66-68 ZGB). It can be concluded from this that the association should not be deprived of its independence (HEINI, Schweizerisches Privatrecht, vol. II, p. 522)"].

136. The Panel also underlines that various CAS awards have reiterated the wide degree of autonomy of associations to regulate and determine their own affairs (e.g. CAS 2017/O/5264, 5265 & 5266 in which the panel held that: "*Recognized by the Swiss federal Constitution and anchored in the Swiss law of private associations is the principle of autonomy, which provides an association with a very wide degree of self-sufficiency and independence. The right to regulate and to determine its own affairs is considered essential for an association and is at the heart of the principle of autonomy. One of the expressions of private autonomy of associations is the competence to issue rules relating to their own governance, their membership and their own competitions. However, this autonomy is not absolute*"; CAS 2014/A/3828, in which it was held as follows: "*[…] The right of a Swiss association to regulate and determine its own affairs is considered essential for the association […]*").

137. The Panel therefore concludes that due consideration shall be given to the will of the Members of an association, and therefore, the extension of the term of the Bureau and the Executive is valid under applicable Swiss law.

138. Furthermore, the Panel observes that the Members simply accepted the *status quo* for an additional period, and by so doing, only recognised and legitimised the mandate of the Bureau and the Executive which they already accepted for the entire period post the expiry of their term. Even if such a vote was not held, the Bureau and the Executive would have continued their mandate and would have been anyway responsible for holding the Doha Extraordinary Congress. In effect, such a vote by the Members only reaffirmed their earlier decision to allow these bodies to continue performing their obligations until the elections were duly conducted at the Elective General Congress.

139. Resultantly, the decisions taken at the Doha Extraordinary Congress in relation to the extension of the term of the Bureau and Executive were neither null and void nor annullable.

iii. Items mentioned by the President at the end of the Doha Extraordinary Congress

140. Towards the end of the Doha Extraordinary Congress, it is undisputed that the President made the following announcements, which were based on the provisions in the New Constitution and not objected to by the Members:

- Mr Fahd Fatahian was appointed as Executive Director for AA and was in charge of all communications for the office.

- Mr Mohamad Mostafa Abdulghafour was appointed as a lawyer for AA to run all its legal affairs.

- Due to the suspension of the Secretary General for eighteen months by the AQIU, Mr Al Jabir was nominated as Asian representative to WA until 2025.

- The bank account in Kuwait (the headquarters of the AA) would be reactivated and a small continental office would be opened in Budapest, the future headquarters of WA.

- The Secretary General should immediately transfer all the remaining money to the AA's bank account and send the financial details (expenditures) to the AA Secretariat.

141. While the Panel upholds the validity of the New Constitution in the subsequent paras. of the Award (see *infra* paras. 148 to 167), at this stage, the question before the Panel is whether these announcements could have been made based on the New Constitution, to which reference to the Old Constitution shall be made.

142. As per Article C19.15 of the Old Constitution:

"*Any alteration of or addition to the Constitution agreed upon by the General Congress shall become effective immediately unless otherwise determined at the time of such approval*".

143. Additionally, Article C39.4 of the Old Constitution stipulates that:

"*The amendments of the [AA] Constitution will be valid and enforced immediately after the General Congress/Extraordinary Congress meeting is over unless decided by the Congress of the effective date*".

144. The Panel was not provided with any evidence suggesting alterations or additions to the New Constitution agreed upon during the Doha Extraordinary Congress. The New Constitution was accepted *as is* by the Congress, which is uncontested by the Parties.

145. Therefore, the Panel believes that the amendments made to the Old Constitution – which resulted in the New Constitution – were effective immediately. Furthermore, the Panel notes that Article C46 of the New Constitution (which states that: "*[t]his constitution shall take effect from 12 February 2024*") also provides for such an interpretation.

146. Now, given that the New Constitution was in force when the President made the announcements (see *supra* para. 140), the Panel notes that: (i) Article C23.4 of the New Constitution empowers the President to appoint the Executive Director; and (ii) while there is no provision explicitly permitting or prohibiting the other announcements made by the President, Articles C17.6 and C19.1.1 of the New Constitution provide the Members with the right to "*decide upon any matters arising within [AA]*" (see also *supra* para. 118).

147. Hence, the Panel holds that the President was entitled to rely on the New Constitution, which undoubtedly provided him and/or the Members with the powers to make the decisions highlighted in para. 140 above. As a result, the items mentioned by the President at the end of the Doha Extraordinary Congress were neither null and void nor annullable.

F. Was the amendment process of the Old Constitution in compliance with the provisions of the Old Constitution?

148. Having concluded that the Doha Extraordinary Congress was validly convened and held in accordance with the Old Constitution and Swiss law, the Panel now proceeds to examine whether their specific procedural requirements for amending the Old Constitution existed and, if so, whether they were fulfilled.

i. Power of the Executive to take steps to amend the Old Constitution

149. Preliminarily, the Panel acknowledges the pressing need to amend the Old Constitution. Pursuant to Articles 11.1 and 11.4(j) and (k) of the WA Constitution, as amended on 1 January 2023, all continental organisations (and their national member federations) were required to amend their constitutions accordingly. Similarly, AA's own Articles C5 and C45.1 of the Old Constitution stipulate that the Old Constitution must be approved by the Congress and must remain aligned at all times with the WA Constitution.

150. Under Article C22.4 of the Old Constitution, the Executive has the powers to "*discuss and make decisions on all the matters in accordance to [AA] Constitution, [AA] Bureau and the Congress decision*". Furthermore, pursuant to Article C19 of the Old Constitution, the Executive may decide to consider proposals relating to any [AA] Rules ([AA] Rules are defined as "*the Constitution, General Rules, Code of Ethics, By-Laws and any other rules and regulations adopted by [AA] Congress and [AA] Bureau*") as well as other proposals.

151. It follows that the Executive was empowered to take necessary steps to make amendments to the Old Constitution. This is also reinforced by Article C39.3 of the Old Constitution (see *infra* para. 152). Therefore, the Panel rejects the Appellant's contention that amendments to the Old Constitution required the participation of the Bureau.

ii. Process relating to amendments of the Old Constitution

152. Article C39.3 of the Old Constitution states that:

"*Any changes in the [AA] Constitution and By-Laws must be approved and by [AA] Executive meeting and must be approved by [WA]. Consequently, all amendments must be presented to the General Congress or Extraordinary Congress for adoption and endorsement*".

153. It must be specified that Article C39.3 of the Old Constitution also allows for such amendments to be proposed in an Extraordinary Congress for adoption and endorsement. However, the Panel observes that Article C39.3 of the Old Constitution does not stipulate if the approval of the Executive should follow or precede the WA approval.

154. In the present case, it is undisputed that the President initiated the request for WA's approval to amend the Old Constitution. Subsequently, the draft of the New Constitution was provided to the Executive for approval (see *supra* paras. 19 and 20).

155. To determine if the requirements of Article C39.3 of the Old Constitution were met, the Panel shall focus only on whether both the WA and the Executive approved of these amendments.

156. The Panel notes that the WA approval was duly received on 13 November 2023 and that it was in any event required under Article 11.1 of the WA Constitution. Subsequently, on 14 November 2023, the President requested the Executive for its approval of the draft of the New Constitution, which was within his authority to seek under Article C28.1 of the Old Constitution. Finally, the Executive approved the New Constitution on 16 November 2023 (see *supra* paras. 16, 19 and 20).

157. In short, the evidence on file confirms that the required procedural steps were duly followed since the Executive approved the draft amendments before the Congress, WA conducted its review and confirmed compliance with the WA Constitution and Members received the draft amendments well in advance of the Congress without raising objections before the vote.

158. Therefore, the Panel is satisfied that the requirements of Article C39.3 of the Old Constitution were met, i.e. the WA and the Executive validly authorised the amendments to the Old Constitution.

iii. Approval requirements from Members to amend the New Constitution

159. Article C39.2 of the Old Constitution requires that: "*All amendments received shall be circulated to the Member Federation(s)/ Association(s) at least thirty (30) days before the Congress*". Since the draft of the New Constitution was circulated to all Members on 3 December 2023 (a fact not disputed by the Parties), the requirements of this provision were duly met. Additionally, it is pertinent to note that, while Article C23.4.10 of the Old Constitution assigns to the Secretary General the responsibility "*to issue the*

implementation of regulations, directives, policies, procedures, circular letters, manuals and similar documents as part of her/his range of duties and powers subject to AASF Constitution", no reference to such a role is included within Article C39, which specifically governs the amendment of the Constitution. Hence, there is no express obligation requiring the direct involvement of the Secretary General in the circulation of such amendments. In this regard, the Panel rejects: (i) the Appellant's allegation regarding the exclusion of the Secretary General from the constitutional amendment process; and (ii) the Appellant's argument that the Old Constitution – beside Article C19.14 of the Old Constitution – "*does not provide for any other procedure for amending the* [Old] *Constitution*".

160. Further, according to Article C19.14 of the Old Constitution:

"*Motions, applications and proposals for alteration of or addition to the [AA] Constitution and Rules shall be considered only if submitted by an affiliated and recognised Member Federation/Association or by the Bureau. All motions, applications, and proposals to be considered by the General Congress must reach the Secretary General at least three (3) calendar months prior to the Congress and must appear on the agenda given to the recognised Member Federation/Association in accordance with [AA] Constitution*".

161. However, based on the evidence on record, the Panel observes that, despite all Members and the Bureau having more than two months to study, review, discuss and make further proposals, no Member, including the Appellant, sent any comments or questions regarding the New Constitution. Resultantly, the Panel rejects the Appellant's allegation with respect to exclusion of the Members from the constitutional amendment process.

162. Therefore, the Panel deems that the Members were afforded the opportunity to contribute and participate in the constitutional amendment process, at the end of which they chose to accept the New Constitution as presented.

163. Now, Article C27.5 of the Old Constitution states that:

"*A simple majority of the members present shall be required for an amendment to the [AA] Constitution and by-laws*".

164. As indicated in the Minutes, the amendments were adopted by a significant majority. Specifically, 27 out of 36 Members approved the amendments, thereby satisfying the majority requirement under this provision and showing that there was substantial support for the amendments from the Members. In this regard, the Panel notes that, as per the evidence on record, there was no pressure exerted on the Members (as alleged by the Appellant) to approve the various decisions taken at the Doha Extraordinary Congress.

165. Lastly, on a conclusive and separate note, the Panel stresses that the purported aim and consequences of these amendments – which according to the Appellant, were deliberately done to justify the actions of the President and under the supposed pretext of obtaining democratic decisions – are not within the Panel's scope of review.

166. In light of the above, the Panel is unanimously satisfied that all the requirements to amend the Old Constitution were duly met and it follows that the New Constitution is both legal and binding.

167. It follows that the entire process relating to the amendments to the Old Constitution were valid and were neither null and void nor annullable.

G. To what extent are the actions of the Appellant's representative significant in relation to this dispute?

168. Given that the Panel has decided on all the substantive issues in this dispute, the Panel sees fit to now determine how much weight (if any) should be accorded to the various submissions by the Appellant in light of its inconsistent behaviour (as alleged by the Respondent) during the series of events giving rise to this dispute.

169. Before delving into these events, the Panel wishes to clarify the distinction between the actions of the Appellant's representative (namely, Mr Kryukov) when acting in an individual capacity versus when representing the Appellant.

170. Under Articles C14.1 and C14.2 of the Old Constitution, each Member shall have a maximum of two representatives at a General Congress or an Extraordinary Congress, but with only one vote.

171. Further, as per Article C20.9 of the Old Constitution, no two members can be from the same country in the Bureau – which in turn applies to the Executive, whose members are elected from the Bureau according to Article C22 of the Old Constitution.

172. Therefore, while Mr Kryukov was part of the Bureau and Executive in an individual capacity, his actions at Congresses and other events (such as those relating to championships) were undertaken in the capacity of the Appellant's representative.

173. Based on the evidence on record, the Panel notes that Mr Kryukov served as a representative of the Appellant from 9 October 2016 until the Doha Extraordinary Congress. Accordingly, during the following events, which occurred after the expiration of the term of AA's bodies, Mr Kryukov acted in his capacity as a representative of the Appellant and at no point raised objections to or disputed the authority of the members of the Bureau or Executive to perform their functions:

- The 14th General Congress held in Muscat.

- The Secretary General's communication on 4 June 2023 (sent to all Members) regarding the approval of the name change from "Asia Swimming Federation" to "Asia Aquatics".

- An invitation by the Secretary General, received by the Appellant on 2 August 2023 (sent to all Members), to attend the General Congress in the Philippines on 3 December 2023, which was subsequently cancelled.

- Competitions, including: (i) 10th Asian Open Water Swimming Championships held from 22 September 2022 to 24 September 2022 in Uzbekistan; (ii) Asia Water Polo Championships held from 7 November 2022 to 14 November 2022 in Thailand; (iii) Asia Water Polo Championships held from 22 March 2023 to 27 March 2023 in Singapore; and (iv) 11th Asian Age Group Championships held from 26 February 2024 to 9 March 2024 in the Philippines.

174. In an individual capacity, it is an undisputed fact that Mr Kryukov was part of the Bureau as a Vice President and also part of the Executive. He participated, *inter alia*, in the meetings of the Executive on 12 February 2022 and 9 March 2023, both of which took place post-expiry of the term of the Bureau and Executive. Nevertheless, Mr Kryukov did not raise any objection and actively participated in the capacity of an Executive member.

175. The Panel therefore notes that even with knowledge (gained through various events) of the expiry of the term of the Bureau and Executive, both as the Appellant's representative and in an individual capacity, Mr Kryukov did not raise any objection to the authority of the Bureau or the Executive. Indeed, the Appellant's silence during this period and its active participation in AA activities constitute a tacit acceptance of the legitimacy of the Bureau and Executive to continue operating.

176. Such actions and omissions demonstrate that the present appeal is in violation of the principle of *venire contra factum proprium*, a doctrine providing that where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party (see CAS 2015/A/4195, para. 42; CAS 2015/A/4327, para. 128; CAS 2008/O/1455, para. 16). Reference is also made to CAS 2008/A/1699, in which it was held as follows:

"*It is a general principle of law acknowledged by CAS jurisprudence that an appellant has standing to sue if she/he has an interest worthy of protection (CAS 2002/O/372, para. 73). However, this interest ceases to be legally protected if the appellant has changed its course of action to the detriment of the respondent. Indeed, according to the doctrine of "venire contra factum proprium", where the conduct of one party has led to the legitimate expectations on the part of a second party, the first party is estopped from changing its course of action to the detriment of the second party (CAS 2006/A/1189, para. 8.4; CAS 2006/A/1086, para. 8.21; CAS 98/200, para. 91)*".

177. Specifically, the Panel underscores that the Appellant cannot contradict its prior conduct by challenging a continuation of operations it had endorsed.

178. Such a prohibition is also encapsulated by the doctrine of *estoppel* – which applies when one person makes a statement or admission that induces another to act in reliance upon it, resulting in reasonable and detrimental reliance by the latter (see CAS 2011/A/2473, para. 33; CAS 2018/A/5552, para. 81). Due to the lack of objections raised by any Member or individual (including by Mr Kryukov) concerning the expired term of the Bureau and Executive, the latter continued to carry out their duties in good faith.

179. It is evident that the Appellant was silent on the Bureau and Executive's mandate for more than three years, and in fact, its own president was actively involved in the affairs of AA. However, the Appellant failed to advance any argument or provide an explanation for its change in position regarding the Bureau and Executive's mandate. Such inconsistent and contradictory conduct also constitutes an "abuse of right" under Article 2 of the CC (*see also*, PETER LEHMANN/HEINRICH HONSELL, Basler Commentary, Civil Code I, 7th edition, Article 2 CC, para. 43).

180. Therefore, the Panel holds that the Appellant is bound by its own acts and, having legitimised the mandate of the Bureau and Executive for more than three years post-expiry, it cannot later assert that these AA's bodies were not competent to represent AA following the expiry of their term.

181. In light of the above, the Panel concludes that the Appellant's request for a declaration that the Bureau and Executive were not in power and requesting the nullification of all their subsequent decisions constitutes a clear case of *venire contra factum proprium* and must be dismissed accordingly.

X. CONCLUSIONS

182. In view of all the above, after taking into consideration all evidence adduced and all arguments advanced by the Parties, the Panel concludes that:

- The consolidation of CAS 2024/A/10593 with these proceedings is not possible.
- The Appellant has a legal interest in bringing this dispute before CAS.
- The Appellant has legal interest in seeking the nullity of the calling, holding and decisions taken at the Doha Extraordinary Congress, or alternatively, its annullability.
- The Bureau, the Executive and the President were validly in office post-2020 and competent to act as they did.
- The Doha Extraordinary Congress was duly convened and held in compliance with the Old Constitution and/or Swiss law, and resultantly, there are no grounds for its nullity or annullability.
- The amendments to the Old Constitution complied with the relevant provisions of the Old Constitution, resulting in the New Constitution being valid and binding. Resultantly, there are no grounds for their nullity or annullability.
- The Appellant's actions are *ipso facto* against the prohibition of *venire contra factum proprium*, implying that the Appellant is bound by its own acts.

183. Consequently, the Appeal of the Appellant is rejected.

184. The above conclusions render it unnecessary for the Panel to consider the other requests submitted by the Parties to the Panel. Accordingly, all further or different motions or requests submitted by the Parties are rejected.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 4 March 2024 by the Swimming Federation of the Republic of Kazakhstan against the decisions rendered at the Doha Extraordinary Congress on 12 February 2024 is dismissed in its entirety.

2. (…).

3. (…).

4. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 17 March 2025

THE COURT OF ARBITRATION FOR SPORT

Mario Vigna
President of the Panel

Olivier Carrard
Arbitrator

Thomas Clay
Arbitrator