



**Arbitration CAS 2015/A/4279 David Martin Nakhid v. Fédération Internationale de Football Association (FIFA), award of 18 January 2016 (operative part of 14 December 2015)**

Panel: Mr Jacques Radoux (Luxembourg), President; Mrs Svenja Geissmar (Germany); Mr Bernhard Welten (Switzerland)

*Football*

*Elections to the presidency of the international federation*

*Interpretation of Article 13 para. 2 of the Electoral Regulations for the FIFA Presidency*

*Priority of Electoral Regulations for the FIFA Presidency over FIFA Statutes*

*Invalidity of letters of support presented by one member association for more than one candidate*

1. Article 13 para. 2 of the Electoral Regulations for the FIFA Presidency does not set out the obligation that the five letters of support from member associations for a candidate to the office of President, in order to be valid, must be notified directly by these member associations to the FIFA general secretariat. Any obligation resulting from Article 13 para. 2 of the Electoral Regulations for the FIFA Presidency – if at all – concerns the “candidature” for the office of FIFA President; the scope of application of Article 13 para. 2 is therefore strictly limited to the notification of the candidature.
2. The FIFA Statutes, to the extent that they address questions regarding the election of the FIFA President, have to be considered as *lex generalis* in relation to the rules set out in the Electoral Regulations for the FIFA Presidency, which constitute the *lex specialis* governing the election for the office of President of the FIFA.
3. According to Article 13, para. 1, c), last sentence of the Electoral Regulations for the FIFA Presidency, in case a member association presents declarations of support for more than one candidate, the respective letters of support have to be declared void. This results from the use of the term “shall” which does not leave any margin for assessment regarding the treatment of the respective letters. The Ad-hoc Electoral Committee is not obliged to inform the candidates benefitting from the support of the same member association about the duplication of the said support.

## **I. PARTIES**

1. Mr. David Martin Nakhid (hereinafter also the “Appellant”) is a national of Trinidad & Tobago and a former professional international football player. He applied as a candidate for the FIFA presidential election on 26 February 2016.
2. The Fédération Internationale de Football Association (hereinafter the “Respondent” or “FIFA”), is the international governing body of football, headquartered in Zurich, Switzerland.

## **II. FACTUAL BACKGROUND**

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced at the CAS hearing on 11 December 2015. 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 the submissions and evidence it considers necessary to explain its reasoning.
4. The Appellant is a former football player of Trinidad & Tobago who played at both professional and international levels. After retirement from playing professional football, he established the “David Nakhid International Football Academy”. Having acquired his football coach license from UEFA in the year of 2011, he coached several clubs in Lebanon between 2011 and 2015.
5. On 24 September 2015, the Trinidad & Tobago Football Association sent a letter to FIFA declaring its public support for Mr. Nakhid’s candidacy for the FIFA President’s office. This letter has been received by FIFA on 1 October 2015.
6. On 2 October 2015, the Ad-hoc Electoral Committee of the FIFA (hereinafter the “AHEC”) sent a letter to the Appellant, in which it:
  - requested from Mr. Nakhid to officially state his intention to run for the FIFA presidential election in a written letter, to be submitted to the AHEC by 12 October 2015;
  - informed Mr. Nakhid of the prerequisites to be eligible for admission as a candidate for the office of FIFA President, in particular the prerequisite of having been proposed as a candidate;
  - drew Mr. Nakhid’s attention to the applicable provisions, in particular Article 24 para. 1 of the FIFA Statutes and Article 13 of the Electoral Regulations for the FIFA Presidency.
7. On 3 October 2015, the FIFA general secretariat received a letter of support for Mr. Nakhid from the Antigua Barbuda Football Association, dated 23 September 2015. The FIFA general secretariat was also provided with a letter of support for Mr. Nakhid from the Guyana Football Federation, dated 28 September 2015.

8. On 9 October 2015, the Appellant's campaign manager, Mrs. Josanne Leonard, submitted Mr. Nakhid's candidacy letter for the office of FIFA President. Attached to this letter, the Appellant provided declarations from two clubs confirming that he had played an active role in organized football as required by Article 24, para. 1 of the FIFA Statutes and Article 13, para. 1 of the Electoral Regulations for the FIFA Presidency.
9. On 22 October 2015, the Appellant's campaign manager, by email, requested from the chairman of the AHEC the confirmation that the AHEC had received 5 nominations by FIFA member associations in support of Mr. Nakhid's candidacy, namely from the Trinidad & Tobago Football Association, the Guyana Football Federation, the Antigua/Barbuda Football Association, the U.S.V.I. Soccer Association Inc. and the St. Lucia Football Association.
10. On 23 October 2015, the AHEC, in reply to the aforementioned request, acknowledged receipt of the letters of support for the Appellant from the Trinidad & Tobago Football Association, the Guyana Football Federation and the Antigua/Barbuda Football Association. The AHEC declared that it had not received letters of support for the Appellant from the U.S.V.I. Soccer Association Inc. and the St. Lucia Football Association. Furthermore, the AHEC informed the Appellant that no identification details concerning his person seemed to have been submitted to date.
11. The same day, the Appellant's campaign manager provided, by e-mail, the AHEC with the letters of support for Mr. Nakhid by the U.S.V.I. Soccer Association Inc., dated 13 October 2015, and the St. Lucia Football Association, dated 12 October 2015. On 24 October 2015, the letter from the U.S.V.I. Soccer Association Inc. was also directly provided to the AHEC by this Association.
12. On 26 October 2015, the deadline for the submission of candidatures for the election of the FIFA President expired.
13. On 28 October 2015, the AHEC decided that the Appellant was not admitted as a candidate for the election for the office of FIFA President as he did not meet the requirements stipulated in Article 24, para. 1 of the FIFA Statutes and Article 13, para. 1, c) of the Electoral Regulations for the FIFA Presidency, which, amongst others, require that a candidate shall present declarations of support from at least five member associations. Indeed, as the U.S.V.I. Soccer Association Inc. had not only submitted a letter of support for the Appellant, but had also submitted a letter of support for another candidate, Mr. Jérôme Champagne, both letters of support had to be declared invalid according to Article 13, para. 1, c) of the Electoral Regulations for the FIFA Presidency. This left the Appellant with only four valid declarations of support. The same day, the AHEC informed the Appellant of its decision.
14. On 30 October 2015, the Appellant, through his legal representative, contested the decision of the AHEC. He furthermore informed the AHEC of his intention to challenge the decision before the Court of Arbitration for Sport (hereinafter the "CAS"), due to its violation of the Electoral Regulations for the FIFA Presidency and its related principles of fair, equitable and

transparent process of the election, and requested a copy of both the U.S.V.I. Soccer Association Inc. support letters.

15. On 2 November 2015, the AHEC provided the Appellant with the requested documents and reiterated that the FIFA Statutes and the Electoral Regulations for the FIFA Presidency had been complied with by the AHEC.
16. On 4 November 2015, the Appellant, through his legal representative, requested from the AHEC a copy of its correspondence with Mr. Jérôme Champagne in relation to the U.S.V.I. Soccer Association Inc. letters, and a copy of the receipt e-mails of the two U.S.V.I. letters in question by FIFA.
17. On 6 November 2015, in reply to this request, the AHEC provided the Appellant with the e-mails by which the two letters of support issued by the U.S.V.I. Soccer Association Inc. had been received by the AHEC. One of these had been sent by the Association itself on 24 October 2015 and one had been sent by Mr. Jérôme Champagne on 20 October 2015. Furthermore, the AHEC informed the Appellant that it had not maintained any other correspondence with Mr. Jérôme Champagne with regard to the letter of support issued by the U.S.V.I. Soccer Association Inc.
18. As the decision rendered by the AHEC on 28 October 2015 may, according to Article 8, para. 2 of the Electoral Regulations for the FIFA Presidency, be appealed against directly with the CAS, no other proceeding than the one described above has been presented by the Appellant.

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

19. On 13 November 2015, the Appellant filed his statement of appeal pursuant to Article R47 of the Code of Sports-related Arbitration (hereinafter the “CAS Code”). In accordance with Article R52 of the CAS Code, the Appellant requested that the matter be expedited. Furthermore, the Appellant informed the CAS Court Office that, in accordance with Article R51 of the CAS Code, his statement of appeal served as an appeal brief and that, according to Article R50 of the CAS Code, the President of the Appeals Arbitration Division should appoint a sole arbitrator.
20. On 16 November 2015, the Respondent replied that it did not object to the Appellant’s request that the matter be expedited in accordance with Article R52 of the CAS Code. Furthermore, considering the importance of the case, the Respondent did not agree with the appointment of a sole arbitrator as requested by the Appellant and requested that a three-member Panel be appointed. Finally, in accordance with Article R55 of the CAS Code, the Respondent requested that the time limit for the filing of its answer be fixed after the payment by the Appellant of the whole amount of the advance of costs foreseen in Article R64, para. 2 of the CAS Code.
21. On 17 November 2015, the CAS Court Office informed the Parties that, in accordance with Article R50 of the CAS Code, the President of the CAS Appeals Arbitration Division, in view

of the nature and the importance of the case, had decided to submit the present matter to a three-member Panel. In view of such decision, the Parties were each granted a deadline to nominate an arbitrator.

22. On 18 November 2015, the Appellant nominated Mrs. Svenja Geissmar as an arbitrator.
23. On 23 November 2015, the Respondent informed the CAS Court Office of its decision to nominate Mr. Bernhard Welten as an arbitrator.
24. By letter of the same day, the CAS Court Office acknowledged receipt of the payment by the Appellant of the total amount of the advance of costs for the proceedings and informed the Respondent that it was granted a deadline of 10 days from receipt of the said letter to file its answer. The Parties were furthermore informed that Mr. Welten, who had accepted his nomination, had disclosed that he had been formerly appointed as arbitrator by FIFA. Given the expedited nature of the case, the Parties were invited to inform the CAS Court Office within two days of any wish to challenge Mr. Welten's nomination.
25. On 24 November 2015, the Appellant informed the CAS Court Office that he had no grounds to challenge the nomination of Mr. Welten as arbitrator in the present matter.
26. On 30 November 2015, the Parties were informed that the Panel appointed to decide this arbitration was as follows:

President: Mr. Jacques Radoux, Legal Secretary at the European Court of Justice, Luxembourg

Arbitrator: Mrs. Svenja Geissmar, General Counsel of Arsenal FC in London, United Kingdom

Mr. Bernhard Welten, Attorney-at-law in Bern, Switzerland.

27. Furthermore, the Parties were requested to inform the CAS Court Office by 2 December 2015 whether they wished a hearing to be held in the present matter, the Panel being available for such a hearing on 11 December 2015, and whether they would object to Mrs. Svenja Geissmar attending the hearing only by phone.
28. On 1 December 2015, the Appellant requested an extension of the deadline set for providing his position on a hearing for at least 48 hours after the notification of the Respondent's answer, in order to assess the necessity of such hearing. On the same date, the Parties were informed by letter of the CAS Court Office that such a short extension of the deadline would be granted.
29. On 2 December 2015, the Respondent informed the CAS Court Office that it did not consider a hearing to be necessary in the present matter but that, if such hearing was to be held, it would be available on 11 December 2015. The Respondent agreed moreover to Mrs. Svenja Geissmar attending the hearing only by phone.

30. On 3 December 2015, the Appellant confirmed his availability for a hearing on 11 December 2015 and agreed to Mrs. Svenja Geissmar's attendance by phone.
31. On the same date, the CAS Court Office informed the Parties that a hearing, if any, would be held at the CAS headquarters on 11 December at 9.30 am CET. Also, in order to fix the hearing as soon as possible, the Respondent was invited to file its answer by email directly to the Appellant and the latter was granted a deadline until 4 December 2015 to state whether he requested such hearing in the present matter.
32. On 3 December 2015, the Respondent filed its answer.
33. On 4 December 2015, the Appellant informed the CAS Court Office that he requested a hearing and that said hearing could take place on the date proposed by the Panel.
34. On the same day, the CAS Court Office sent the Order of Procedure to the parties, which was signed by the Appellant on 7 December 2015. The Respondent signed the Order on 8 December 2015 and informed the CAS Court Office, that same day, that Mr. Oliver Jaberg and Mrs. Romana Weber would be attending the hearing on its behalf.
35. On 9 December 2015, the CAS Court Office reminded the Appellant that he had not submitted the names of the persons who would be attending the hearing on his behalf and invited him to do so by 10 December 2015 at noon. The Appellant did not provide any answer to this demand.
36. The hearing took place on 11 December 2015 at the CAS headquarters in Lausanne, Switzerland. Mrs. Svenja Geissmar attended the hearing by video. The Panel was assisted by Mr. William Sternheimer, Managing Counsel & Head of Arbitration at CAS, and joined by the following:  
  
Mr. David Martin Nakhid,  
  
Mr. Jalal El-Mir, legal counsel for the Appellant,  
  
Mr. Oliver Jaberg, FIFA Head of Corporate Legal,  
  
Mrs. Romana Weber, FIFA legal counsel at Corporate Legal.
37. At the beginning of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel and at the conclusion of the hearing the Parties confirmed that their right to be heard had been fully and fairly respected. At the hearing, the Panel informed the Parties that the operative part of the award would be issued as soon as possible and at the latest by 14 December 2015, and before the communication of the full award.
38. On 14 December 2015, the CAS Court Office notified the operative part of the present award to the Parties.

#### IV. SUBMISSIONS OF THE PARTIES

39. The following is a brief summary of the Parties' submissions and does not purport to include every contention put forth by the Parties. However, the Panel has considered in its deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in the following overview of their positions or in the subsequent discussion on the law.

##### a) Appellant

40. The Appellant's submissions, in essence, may be summarized as follows.
41. First, the Appellant claims that the AHEC, by considering that the U.S.V.I. Soccer Association Inc. has submitted two support letters for two candidates for the FIFA presidential election, and thus cancelling both of these letters, without validation of each of the two said letters, violated Articles 13, para. 2 of the Electoral Regulations for the FIFA Presidency and Article 24, para. 1 of the FIFA Statutes.
42. In support of this first claim, the Appellant argues that the rule of cancellation of the support letters submitted by any FIFA Member to more than one candidate, in accordance to Article 13, para. 1, c) of the Electoral Regulations for the FIFA Presidency, supposes the validity of such letters with regards to the rules of a procedural and substantive nature. As is apparent from the text of Article 13, para. 2 of the Electoral Regulations for the FIFA Presidency, the validity of any FIFA member's support letter is conditioned by the following four characteristics: (i) a written support letter; (ii) letter issued by the FIFA member and addressed to FIFA general secretariat, (iii) letter submitted before the expiry of deadline for the submission of candidature for the office of FIFA President; (iv) the letter has to be personally and directly submitted by the FIFA member to the FIFA general secretary - the term "*must*" excluding any other option or possibility to submit the support letter. According to the Appellant, the fact that the last condition, linked to the personal submission of the announcement of support by a FIFA member, is a condition *sine qua non* of the validity of any support letter and a substantial condition without which the support letter cannot be validated, is confirmed by its reiteration in Article 24, para. 1 of FIFA Statutes which is the most prominent text of the FIFA regulations.
43. In the current case, as it appears from the evidence submitted by the Appellant, the letter from the U.S.V.I. Soccer Association Inc. in support of Mr. Nakhid has been submitted directly to the AHEC. By contrast, the letter of support from that member association of Mr. Champagne has been submitted by Mr. Champagne himself on 20 October 2015 and not directly by the FIFA member, as the AHEC confirmed in reply to a request from the Appellant.
44. Therefore the Appellant argues that, as the letter of the U.S.V.I. Soccer Association Inc. in support of Mr. Champagne was not submitted within the conditions of the provisions set out by Article 13, para. 2 of the Electoral Regulations for the FIFA Presidency and Article 24, para. 1 of the FIFA Statutes, it cannot be considered a valid letter of support by a FIFA member. Consequently, the U.S.V.I. Soccer Association Inc.'s letter in support of Mr. Champagne being

invalid, the letter from that same association in support of Mr. Nakhid's candidature, directly submitted by the U.S.V.I. Soccer Association Inc. to the AHEC is the only valid support letter issued by this FIFA member.

45. It follows, submits the Appellant, that five valid letters of support to the Appellant's candidature were submitted to the AHEC and that his candidature fulfilled all the conditions stipulated in the Electoral Regulations for the FIFA Presidency.
46. The Appellant therefore submits that the decision rendered by the AHEC on 28 October 2015 should be annulled.
47. Second, the Appellant claims that the AHEC violated the principles of integrity and transparency as well as its obligation to ensure a correct supervision of the process of the FIFA President's election and that, therefore, the decision rendered by the AHEC on 28 October 2015 should be annulled.
48. In support of this claim, the Appellant argues that the election of the FIFA President, the most prominent and valuable position in FIFA, is expected to be conducted with the highest standards of ethics, democracy, transparency and integrity, especially after the turmoil of events and scandals shaking the FIFA and the football world. These events should have increased the level of intolerance of any false and fraudulent acts, or omission of duties of care and responsibility, during the exercise of responsibilities by the FIFA bodies during the process of election of the FIFA President. Also, the said principles are explicitly mentioned in the FIFA Statutes, the Code of Ethics and more specifically the Electoral Regulations for the FIFA Presidency. Therefore they are binding on the AHEC and its members, in charge of ensuring a transparent and democratic presidential election.
49. The Appellant considers that it follows from the facts of the present matter that the behaviour and acts of the AHEC were in flagrant violation of all of the above obligations at several stages. According to the Appellant, such violation by the AHEC of the principle of transparency and integrity in the course of managing and supervising the process of electing the FIFA President is clearly reflected in its letter dated 23 October 2015 requesting from Mr. Nakhid's campaign manager the submission of the U.S.V.I. Soccer Association Inc.'s support letter, despite having received – three days prior – an e-mail from Mr. Champagne, as candidate for the office of FIFA President, with a letter of support from the same member association i.e. the U.S.V.I. Soccer Association Inc. By doing so, the AHEC has not only violated its integrity and transparency obligation but also committed a clear manipulation of the election process, by placing the Appellant into a disqualification situation, for an act that he was not personally responsible for.
50. In order to respect the obligations set out in Article 8, c) of the Electoral Regulations for the FIFA Presidency, the AHEC, without interfering in the course of the election, should have advised both of the candidates having benefited from the support of the U.S.V.I. Soccer Association Inc. of the duplication of the latter's support letter. Furthermore, the AHEC, in a sincere and straightforward expected act, should also have investigated, or required so from



competent authorities, the duplicate issuing of support letters by the U.S.V.I. Soccer Association Inc.

51. The Appellant considers that the incompetent behaviour and the distrustful conduct of the AHEC towards himself is confirmed by a press article, in journal Politico dated 7 November 2015, reporting a statement made by the AHEC's spokesman, Mr. Andreas Bantel. According to the Appellant, it follows from the article that Mr. Bantel stated:

*"One candidate, David Nakhid, a former Trinidadian soccer international, was eliminated because he couldn't apparently count to five. FIFA rules demand that each candidate be nominated by five national federations. The Ad Hoc Electoral Committee ruled that Nakhid only had four valid nominations. Nakhid said the Virgin Islands had made the mistake of nominating both him and another candidate. He announced that he would appeal. He has no chance".*

52. In the same article, Mr. Bantel is said to have been stating that all the other candidates had taken the precaution of securing more than five nominations.
53. The Appellant argues that these observations of the AHEC's spokesman show the unethical and light manner by which the AHEC has been conducting the election process, breaching the Electoral Regulations for the FIFA Presidency. Moreover, the information given by the AHEC's official spokesman in relation to the present appeal constitutes, according to the Appellant, a clear violation of the obligation of confidentiality laid down in Article 16 of the Code of Ethics, as the said appeal had not been submitted to the CAS yet.
54. Considering that he has suffered severe damages due to the wrongful decision rendered by the AHEC on 28 October 2015, most of all the interruption of his election campaign, the Appellant claims compensation. These damages are partially related to the expenses already incurred from the beginning of the electoral campaign until the date of the rendering of the wrongful decision rendered by the AHEC. To these damages have to be added, first, the consequential damages that appear with each day during which the Appellant cannot continue his campaign and, second, moral damages. The Appellant therefore requests compensation of USD 1,000,000 (one million USD), equivalent to 100 % of the expenses incurred by him from the beginning of his campaign period until the day of the submission of the present appeal, and a repair for moral damages of USD 1,000,000 (one million USD).
55. In view of the above, the Appellant submitted the following motions for relief:

- "1. The acceptance of the present appeal based on the jurisdiction of CAS to state in the present case.*
- 2. The acceptance of the present statement of appeal due to its submittal with the time limits set in CAS Code.*
- 3. The application of FIFA regulations and the Swiss laws as a subsidiary.*
- 4. The appointment by the President of the Division defined in the CAS Code, of a sole arbitrator to submit the present appeal to.*

5. *The expedite of the time limits set in the CAS Code in the process of relief of [Decision rendered by the Ad Hoc Electoral Committee of FIFA on 28 October 2015].*
6. *The relief and annulment by the current appeal and its merits and causes stated within of the [Decision rendered by the Ad Hoc Electoral Committee of FIFA on 28 October 2015] due to its violation of Electoral Regulations (Art 13.2) and FIFA Statutes (Art. 24.1), ordering the reinstatement of Mr. Nakhid in the election for FIFA president's office and considering his candidacy requiring all conditions required by FIFA Electoral Regulations.*
7. *The relief and annulment by the current appeal and its merits and causes stated within of the [Decision rendered by the Ad Hoc Electoral Committee of FIFA on 28 October 2015] due to its violation of transparency and integrity principles (FIFA Code of Ethics and Electoral Regulations).*
8. *To compel the Respondent to compensate the Appellant of all damages incurred by the challenged Decision for an amount of 2,000,000\$ (two million USD).*
9. *To compel the Respondent to pay all the procedure costs as per CAS Code stipulations”.*

**b) Respondent**

56. The Respondent, regarding the Appellant's first claim, submits that Article 13, para. 1, c) of the Electoral Regulations for the FIFA Presidency, in particular its last sentence, is very clear and precise in its wording and does therefore not leave room for any interpretation. The rule set out by this provision has been established for the exact purpose of preventing discussions on the validity of letters of support as well as on the question of which candidate would benefit from the support of such member association in case a member association submits more than one letter of support. Furthermore, through this clear provision, legal certainty, predictability of decisions as well as equal treatment of all candidates is ensured.
57. The Respondent argues that the U.S.V.I. Soccer Association Inc. was aware of the rule and the sanction set out in Article 13, para. 1, c) of the Electoral Regulations for the FIFA Presidency as this association, in its letters of support for Mr. Nakhid and Mr. Champagne, referred to Article 14, para. 2 of the same Electoral Regulations for the FIFA Presidency which, in the booklet issued by the FIFA, can be found on the opposite page of Article 13, para. 1.
58. According to the Respondent, due to the precise wording of Article 13, para. 1, c) of the Electoral Regulations for the FIFA Presidency, the AHEC did not have any margin of discretion and had to declare both letters of support submitted by the U.S.V.I. Soccer Association Inc. invalid. Thus, due to the clear and precise legal basis for the AHEC's decision, the appeal should be dismissed.
59. The Respondent further submits that Article 13, para. 2, of the Electoral Regulations for the FIFA Presidency stipulates that members “*must*” notify the FIFA general secretariat of candidatures for the office of FIFA President. This wording does however not support the conclusion of the Appellant that only “*personal submissions*” could be admitted and that there was

a “charge of the FIFA Member to notify directly the FIFA general secretary of its support to any candidate”. Indeed, the term “must” used in Article 24, para. 1 of the FIFA Statutes and in Article 13, para. 2 of the Electoral Regulations for the FIFA Presidency indicates that “candidatures” can only be notified to the FIFA general secretariat by members and not by any other entities or persons. If it would have been FIFA’s intent to exclude that letters of support from members could be submitted by other parties, such prerequisite would have had to be expressly included in the FIFA Statutes or regulations, *quod non*. Besides, the practice of the AHEC to accept letters of support from member associations to be submitted by the candidates themselves is well-established.

60. The Respondent adds that the letter from the U.S.V.I. Soccer Association Inc. in support of Mr. Champagne was addressed to “Mr. Markus Kattner, Acting Secretary-General, FIFA, FIFA Strasse 20, CH 8044 Zurich — Switzerland” and was signed by Mr. Hillaren Frederick, President, as well as Mr. Keithroy Cornelius, General Secretary, of that association. Accordingly, it was the FIFA member that notified the FIFA general secretariat as provided for by Article 13, para. 2 of the Electoral Regulations for the FIFA Presidency. Thus, the letter of support from the U.S.V.I. Soccer Association Inc. for Mr. Champagne cannot be considered as *per se* invalid, contrary to the Appellant’s submissions. It only became invalid based on and in accordance with the clear provision of Article 13, para. 1, c) of the Electoral Regulations for the FIFA Presidency, because the U.S.V.I. Soccer Association Inc. submitted letters of support for more than one person.
61. The Respondent further refutes the Appellant’s argument that the AHEC requested from the Appellant or his campaign manager the “submission of U.S.V.I. and St-Lucia Football Association support letters, to be addressed directly to FIFA general secretary”. According to the Respondent, the AHEC merely informed the Appellant that it had not received letters of support for him from the St. Lucia Football Association and the U.S.V.I. Soccer Association, Inc. It did not, however, request the Appellant to submit letters or have them submitted, let alone indicate that letters should be submitted directly to the FIFA general secretariat.
62. Finally, the Respondent notes that, should the Appellant’s argument that letters of support have to be notified by members directly to the FIFA general secretariat be considered valid and therefore apply, *quod non*, the letter of support for the Appellant from the St. Lucia Football Association would also have to be considered invalid, as FIFA did not receive this letter directly from the St. Lucia Football Association, but from the Appellant’s campaign manager. This letter would therefore be invalid and leave the Appellant with still just four valid letters of support if one was to follow the Appellant’s arguments.
63. Regarding the Appellant’s second claim, the Respondent observes that the AHEC did not request the Appellant or his campaign manager to submit a letter of support from the U.S.V.I. Soccer Association Inc. but informed, upon correspondence submitted by the Appellant’s campaign manager and in reply thereto, the Appellant that it had not received any letter of support for the Appellant from the U.S.V.I. Soccer Association Inc. This response from the AHEC to the Appellant’s campaign manager was only made because the said campaign manager had asked the AHEC to confirm receipt of such letter.

64. By doing so, the AHEC, according to the Respondent, was very transparent and specific in its actions by explicitly stating that it had *“not received letters of support for Mr David Nakhid from St. Lucia Football Association and USVI Soccer Federation Inc.”*. The AHEC did not exclude that letters from these members may have been received for other persons. Also, it follows from the AHEC’s letter to the Appellant’s campaign manager, that the AHEC did make use of its discretionary powers where possible by providing the Appellant with the information that only three letters of support for him had been received, even though such information did not, by virtue of the applicable Statutes and Regulations, have to be provided.
65. Indeed, while Article 8, para. 1, c) of the Electoral Regulations for the FIFA Presidency empowers the AHEC to issue *“instructions for the application of the FIFA Electoral Regulations as necessary before and during the entire electoral process”*, it does not require the AHEC to inform potential candidates that they might not be fulfilling the requirements as stipulated in the FIFA Statutes and regulations. Accordingly, the AHEC not only did not inform the Appellant of the fact that the U.S.V.I. Soccer Association Inc. had submitted a letter of support for two persons, but it did not inform Mr. Champagne thereof either. The AHEC therefore has to be considered as having acted in an ethical and fair manner, treating both the Appellant and Mr. Champagne – as well as all other candidates – equally.
66. Concerning the press article brought forward by the Appellant, the Respondent contests that Mr. Bantel has stated that the Appellant could not count to five, as the press article does not provide sufficient proof for such statement. Furthermore, the Respondent also contests the Appellant’s allegation that Mr. Bantel would apparently have said that the Appellant’s appeal did not have a chance.
67. The Respondent concludes that the AHEC has at all times acted in a transparent, fair and correct manner and has in particular also complied with the obligation of integrity. The Appellant’s allegations in this context being unfounded, they have to be rejected.
68. With regards to the Appellant’s request for compensation, the Respondent submits that as the Appellant’s claims are unfounded, potential damages are not to be compensated by FIFA. In any event, as the Appellant’s claim for compensation and in particular the alleged damages are in no way substantiated, let alone proven, the request for compensation cannot be granted.
69. In view of the above, the Respondent requests in its motion for relief that the Panel issue an award:

- “1. *Dismissing all of the Appellant’s requests in their entirety.*
2. *Confirming the [decision rendered by the AHEC on 28 October 2015].*
3. *Condemning the Appellant to pay all the costs of the present arbitration.*
4. *Condemning the Appellant to pay FIFA a compensation for the costs incurred by FIFA before the [CAS], to be determined by the [CAS]”.*

## V. JURISDICTION

70. Article R47 of the CAS Code stipulates that *“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”*.
71. Article 8, para. 2 of the Electoral Regulations for the FIFA Presidency provides:
- “The decisions of the [AHEC] may be appealed against directly with the [CAS]”*.
72. The Parties do not dispute the jurisdiction of the CAS in the present case, as confirmed at the hearing of 11 December 2015 and in the signed Order of Procedure.
73. In the light of the above, it follows that, in accordance with Article R47 of the CAS Code, the CAS has jurisdiction to hear the present dispute.

## VI. ADMISSIBILITY

74. Article R49 of the CAS Code provides 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. [...]”*
75. Article 67, para. 1 of the FIFA Statutes stipulates that *“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”*.
76. The AHEC’s decision rendered on 28 October 2015 was communicated to the Appellant by email on the same date.
77. The Appellant filed his statement of appeal, serving as appeal brief, on 13 November 2015.
78. It follows, therefore, that the appeal is admissible.

## VII. APPLICABLE LAW

79. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS *“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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”*.

80. Article 2, para. 1 of the Electoral Regulations for the FIFA Presidency stipulates that *“These regulations shall apply to all persons who are candidates for the office of FIFA President, as from the moment that those persons are proposed by FIFA members in accordance with art. 24 par. 1 of the FIFA Statutes”*. Furthermore, Article 2, para. 5 of the Electoral Regulations for the FIFA Presidency provides that *“As from that moment that these regulations apply to a particular candidate for the office of FIFA President [...], he shall also be subject to the FIFA Statutes as well as all other FIFA regulations if not otherwise bound or covered prior to that time”*.
81. As the Appellant is a candidate for the office of FIFA President, he is subject to the FIFA regulations. Said regulations are thus applicable to the present dispute.
82. In addition, according to Article 66, para. 2 of the FIFA Statutes, in proceedings before the CAS, *“the CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”*. Therefore, Swiss law is, subsidiarily, applicable to the present dispute.
83. Accordingly, the Panel will decide the dispute pursuant to the regulations of FIFA and, additionally, Swiss law.
84. The relevant FIFA regulations applicable to the present matter are exposed below:

#### *FIFA Statutes*

85. Article 24, para. 1 of the FIFA Statutes provides:

*“Only the Members may propose candidatures for the office of FIFA President. A candidature for the office of FIFA President shall only be valid if supported by a total of at least five Members. Members must notify the FIFA general secretariat, in writing, of a candidature for the FIFA presidency at least four months before the start of the Congress, together with the declarations of support of at least five Members. A candidate for the office of FIFA President shall have played an active role in association football (e.g. as a Player or an Official within FIFA, a Confederation or an Association, etc.) for two of the last five years before being proposed as a candidate”*.

#### *FIFA Code of Ethics*

86. Article 13 of the FIFA Code of Ethics provides that:

- “1. Persons bound by this Code are expected to be aware of the importance of their duties and concomitant obligations and responsibilities.*
- 2. Persons bound by this Code are obliged to respect all applicable laws and regulations as well as FIFA’s regulatory framework to the extent applicable to them.*
- 3. Persons bound by this Code shall show commitment to an ethical attitude. They shall behave in a dignified manner and act with complete credibility and integrity.*

[...]”.

87. Article 16, para. 1 of the FIFA Code of Ethics states:

*“Depending on their function, information of a confidential nature divulged to persons bound by this Code while performing their duties shall be treated as confidential or secret by them as an expression of loyalty, if the information is given with the understanding or communication of confidentiality and is consistent with the FIFA principles”.*

*Electoral Regulations for the FIFA Presidency*

88. Article 1, para. 1 and 2 of the Electoral Regulations for the FIFA Presidency read as follows:

- “1. Elections for the office of FIFA President are governed by the provisions of the FIFA Statutes, the Standing Orders of the Congress and the present Electoral Regulations, as well as all other applicable regulations.*
- 2. Notwithstanding, the FIFA Code of Ethics alongside fundamental principles such as those of democracy, separation of powers, transparency and openness, shall be respected”.*

89. Article 8, para. 1 of the Electoral Regulations for the FIFA Presidency provides:

*“In addition to its role of supervising the electoral process, the [AHEC]’s duties shall also include, in particular:*

- a) Supervising the administrative process relating to the elections for the office of FIFA President and monitoring compliance with the present regulations as well as with any other guidelines as required in the performance of its duties.*
- b) Ensuring the correct application of the FIFA Statutes, regulations and provisions, as well as the contents of the present regulations, in matters relating to the electoral process.*
- c) Issuing instructions for the application of the FIFA Electoral Regulations as necessary before and during the entire electoral process.*
- d) Admitting and declaring candidatures. In this regard, the [AHEC] shall assess whether a candidate for the office of FIFA President meets the profile specifications provided for by art. 13 of the present regulations and art. 24 par. 1 of the FIFA Statutes.*
- e) Instructing the investigatory chamber of the Ethics Committee to carry out the integrity check, which is to be done within ten days.*

*The integrity check carried out by the investigatory chamber of the Ethics Committee shall be sent to the [AHEC].*

- f) Any other tasks that may be required in the course of its duties or by the FIFA regulations”.*

90. Article 13 of the Electoral Regulations for the FIFA Presidency, entitled “Eligibility”, states that:

*“1. Candidates for the office of President must meet the following requirements:*

- a) The candidate shall have played an active role in association football (as a board member, committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical or administrative matters in FIFA, a Confederation, Association, League or Club or as a player) for two of the last five years before being proposed as a candidate (cf. art. 24 par. 1 of the FIFA Statutes).*
  - b) The candidate shall have been proposed by a member association in accordance with art. 24 par. 1 of the FIFA Statutes.*
  - c) The candidate shall present declarations of support from at least five member associations (cf. art. 24 par. 1 of the FIFA Statutes). Being proposed as a candidate by a member association shall be understood as a declaration of support. Each member may only present a declaration of support for one person. If a member association presents declarations of support for more than one person, all its declarations shall become invalid.*
- 2. Members must notify the FIFA general secretariat, in writing, of a candidature for the office of FIFA President within the deadline stipulated in the FIFA Statutes”.*

91. Article 14 of the Electoral Regulations for the FIFA Presidency concerns the submission of candidatures and provides that:

- “1. Candidatures for the office of FIFA President shall be proposed by member associations by the deadline specified in art. 24 par. 1 of the FIFA Statutes, by a written proposal submission signed by the interested party and submitted to the FIFA general secretariat, including the candidate’s identification details and declarations of support from at least five member associations.*
- 2. The FIFA general secretariat shall forward all candidatures without any undue delay to the [AHEC] for examination and for passing a decision on admission of the candidate”.*

## VIII. MERITS

### A. On the first claim

92. The first claim of the Appellant, related to the violation of Article 13 para. 2 of the Electoral Regulations for the FIFA Presidency and Article 24, para. 1 of the FIFA Statutes, is based on the premise, *inter alia*, that the first of these provisions sets out the obligation that a letter of support from a member association for a candidate to the office of President, in order to be valid, must be notified directly by this member association to the FIFA general secretariat.

93. The Panel does not agree with the Appellant’s interpretation of this provision.



94. Indeed, the Panel considers that it follows from the clear wording of Article 13, para. 2 of the Electoral Regulations for the FIFA Presidency, that the obligation - if any - to notify directly concerns the "*candidature*" for the office of FIFA President. The said provision does not, in any aspect, contain a reference to the five letters of support that have to be submitted for a candidature to be admissible. Therefore, the scope of application of Article 13, para. 2 of the Electoral Regulations for the FIFA Presidency is strictly limited to the notification of the candidature.
95. This interpretation, firstly, is confirmed by the wording of Article 13, para. 1, b) of the Electoral Regulations for the FIFA Presidency according to which the "*candidate shall have been proposed by a member association*". It is, secondly, in line with the text of let. c) of the same provision which provides that "*the candidate shall present declarations of support from at least five member associations*" and states that being "*proposed as a candidate by a member association shall be understood as a declaration of support*".
96. The Panel further considers that, contrary to the allegation of the Appellant, this interpretation is not contradicted by Article 24, para. 1 of the FIFA Statutes which states that members must notify the FIFA general secretariat, in writing, of a candidature for the FIFA presidency at least four months before the start of the Congress, "*together with the declarations of support of at least five members*". Indeed, this provision being part of the FIFA Statutes, it has to be considered as *lex generalis* in relation to the rules set out in the Electoral Regulations for the FIFA Presidency, in particular Article 13, para. 1, c), which constitute the *lex specialis* governing the election for the office of President of the FIFA.
97. Regarding the argument brought forward by the Respondent that the practice of the AHEC to allow letters of support from member associations to be submitted by the candidates themselves is well-established, the Panel holds that such argument is not effective given that a practice, even well-established, can still be contrary to the regulations that govern it.
98. Finally, the Panel notes that in order to ensure the proper application of all relevant provisions and guarantee the full respect of the principals of transparency and legal certainty, to respect its own standards of best governance and to avoid misinterpretations or misreadings such as the one that led to the present dispute, the Respondent should proceed to a harmonisation of the wording of its Statutes and regulations.
99. Given these findings, and given the clear wording of Article 13, para. 1, c), last sentence, which provides that if "*a member association presents declarations of support for more than one person, all its declarations shall become invalid*", the Panel considers that the AHEC had to declare void both letters of support submitted by the U.S.V.I. Soccer Association Inc. Indeed, the use of the term "shall" did not leave any margin for assessment [latitude] to the AHEC regarding the treatment of these letters. Accordingly, the decision rendered by the AHEC on 28 October 2015, is consistent with Article 13, para. 1, c) of the Electoral Regulations for the FIFA Presidency.
100. In the light of the forgoing, the Panel considers that the arguments brought forward by the Appellant in support of his first claim lack any merits.

101. Thus, the first claim has to be rejected.

**B. On the second claim**

102. The two main arguments on which the Appellant's second claim is based are, in substance, first, that, by its letter of 23 October 2015, the AHEC placed him into a disqualification situation by requesting him to submit a letter of support of which the AHEC knew to be invalid and, second, that the AHEC should have informed both of the candidates having submitted a letter of support from the U.S.V.I. Soccer Association Inc. of the duplication of the said letter.
103. Regarding the first argument of the Appellant, the Panel notes that, as the Respondent has rightly recalled and as is apparent from the e-mail dated 22 October 2015 sent by the Appellant's campaign manager to the President of the AHEC, the AHEC, in its letter dated 23 October 2015, only replied to the campaign manager's demand by giving, *inter alia*, the information which out of the five mandatory support letters had not yet been received by the AHEC.
104. The Panel considers that it is therefore erroneous to argue, as does the Appellant, that by its letter from 23 October 2015 the AHEC manipulated the election process.
105. The Panel furthermore notes that, in its letter dated 23 October 2015, the AHEC, without having been requested by the Appellant's campaign manager to do so, informed the latter that no identification details – such as a copy of Mr. Nakhid's passport – had been submitted up to that date. By doing so, the AHEC prevented the Appellant from being declared inadmissible to the election for failing to fulfil the obligations set out in Article 14, para. 1 of the Electoral Regulations for the FIFA Presidency.
106. If, as the Appellant asserts, the AHEC's intention would have been to manoeuvre him into a situation of disqualification, it could have done so by not providing the information regarding the missing identification details. Given these circumstances, the Panel does not agree with the Appellant's assertion that the AHEC placed him into a situation of disqualification or acted in an unethical manner.
107. Concerning the second argument of the Appellant, the Panel observes that if the FIFA Statutes, the Code of Ethics and the Electoral Regulations for the FIFA Presidency, as the Appellant alleges, were to be interpreted as containing an obligation on the AHEC to inform the candidates benefitting from the support of the same member association about the duplication of the said support, and if the violation of such obligation were to be sanctioned by the annulment of the decision taken by the AHEC pursuant to Article 13, para. 1, c), (last sentence) of the Electoral Regulations for the FIFA Presidency, the latter provision would be deprived of its effectiveness.
108. Given that legal provisions should be interpreted in a way as to safeguard their effectiveness, the Panel does not agree with the interpretation suggested by the Appellant.

109. In any event, the Panel notes that given the fact that the candidatures as well as letters of support can be submitted until a certain deadline it cannot be excluded that two letters of support from the same member association are received by the AHEC at the very end of the said deadline. In such a circumstance, it is *de facto* impossible for the AHEC to inform the candidates in due time (before the end of this deadline) of a possible duplication of support by a member association. Thus, if the provisions at hand were to be read as suggested by the Appellant, the AHEC would have an obligation which it cannot effectively respect. Therefore, this interpretation has to be rejected. The Panel considers that it is the duty of the candidates to check that all the conditions, as stated in Article 13 of the Electoral Regulations for the FIFA Presidency, are met.
110. In that regard, the Panel finds that the AHEC's duties, as set out in Article 8, para. 1 of the Electoral Regulations for the FIFA Presidency, in particular under let. c) of this provision, although granting the AHEC a certain latitude concerning the issuing of instructions for the application of the said Regulations cannot, even in the light of the dispositions of the Code of Ethics or the principles of transparency and integrity, be read as requiring the AHEC to issue all kinds of specific instructions to the address of each individual candidate rather than setting out general guidelines designed to assure the good application of the provisions of the Electoral Regulations for the FIFA Presidency.
111. Indeed, if the AHEC was to be considered as having such an obligation, this would entail a switch of the responsibility for assuring that a candidate fulfils all the criteria and respects all the deadlines from the candidate to the AHEC, leaving the latter solely responsible for the infringements attributable to the said candidates and creating potentially numerous new disputes concerning the determination of the responsibilities respectively incurred by the AHEC and/or the candidate.
112. In addition, the Panel notes that if the provisions at hand were to be understood as attributing to the AHEC such an obligation/responsibility, the sanctions set out by the Electoral Regulations for the FIFA Presidency would be redundant.
113. In that regard, and in view of the Respondent's argument that the AHEC did make use of its discretionary powers where possible by providing the Appellant's campaign manager with the information that only three letters of support for the Appellant had been received, the Panel stresses that this discretionary power has to be implemented with great caution and in line with the rules stipulated in the FIFA Statutes, the Code of Ethics and the Electoral Regulations for the FIFA Presidency as well as the general principals of law such as the principle of legal certainty and the principle of equality before the law.
114. Finally, regarding the Appellant's third argument, based on the alleged violation of the principle of confidentiality by the AHEC's spokesman, first, the Panel recalls that it follows from Articles 2, 13 (para. 1, 2, and 3) and 16 (para. 1) of the Code of Ethics as well as Article 1 of the Electoral Regulations for the FIFA Presidency, that the members of the AHEC as well as all persons performing duties on behalf of the AHEC or the FIFA shall treat the confidential information

they are given while carrying out these duties as confidential or secret and that these persons should behave in a dignified manner and act with complete credibility and integrity.

115. Accordingly, the Panel holds that the AHEC spokesman is bound, *inter alia*, by a duty of confidentiality and the principle of integrity as set out in the Code of Ethics.
116. Notwithstanding the above, the Panel, finds that the press article submitted by the Appellant does not provide sufficient proof that all the information contained in this article, including words attributed to a certain individual, can be credited to the said spokesman. Indeed, it is apparent from the article that the only elements of the article that its author directly linked to the AHEC's spokesman are the fact that the latter said that the Appellant's appeal would have no chance and that all other candidates had taken the precaution of securing the support from more than just five FIFA members.
117. The Panel further considers that if a statement concerning the chances of an appeal or the disclosure of the confidential information that a candidate is preparing such an appeal could, if established, be considered to be a violation of the duties of confidentiality and the obligation of integrity, these infringements could not, in any event, lead to the annulment of the decision rendered by the AHEC on 28 October 2015. Indeed, not only was this decision taken prior to the alleged statements of the AHEC's spokesman but also the said spokesman did not have any influence on the outcome of the decision.
118. Thus, the third argument of the Appellant is, in the present matter, ineffective and has to be dismissed.
119. As a result, the second claim of the Appellant has to be rejected.

### **C. On the request for compensation**

120. All the claims of the Appellant having been rejected and the decision rendered by the AHEC on the 28 October 2015 being upheld, the Appellant cannot validly argue that he incurred damages due to the fact that the decision was wrongful.
121. Accordingly, the Panel holds that the request for compensation of damages incurred also has to be dismissed.
122. In the light of all the above findings, the Panel considers that the appeal filed on 13 November 2015 by the Appellant against the decision rendered by the AHEC on 28 October 2015 must be dismissed as a whole.

## **ON THESE GROUNDS**

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

1. The appeal filed on 13 November 2015 by Mr. David Martin Nakhid against the decision rendered by the Ad Hoc Electoral Committee of FIFA on 28 October 2015 is dismissed.
2. The decision rendered by the Ad Hoc Electoral Committee of FIFA on 28 October 2015 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.