



Arbitration CAS 2007/A/1392 Federación Panameña de Judo (FPJ) & Federación Venezolana de Judo (FVJ) v. International Judo Federation (IJF), award of 9 September 2008

Panel: Mr Efraim Barak (Israel), President; Prof. Massimo Coccia (Italy); Mr Bernard Hanotiau (Belgium)

Judo

Governance

Locus standi and “lack of legitimate interest”

Respect of the agenda of a congress and last minute issues

Recognition by an International Federation of a decision taken by a Continental Union and rules of public policy

Right to be heard and principle of legality

Right to be heard and absence of rule expressly providing for such principle

Recognition of a National Federation

1. The principle according to which the decisions of Sports Federations or Associations may be challenged by the members of those Associations or Federations, without restrictions as regards the *locus standi* or the standing right, is part of the transnational general principles applicable to the world of sport, the so-called *Lex sportiva*, irrespective of any national rule of law. The fact that the appealed decision is not directly affecting the situation of the Appellant Federation is not relevant. The submission that the challenged decisions contravene legal or statutory provisions is sufficient as regards the admissibility of the appeal.
2. According to the well-established CAS case law, the respect of the agenda is an important principle. When considering to take part in a congress and in order to seek information on the items to be addressed, a member of an association needs a clear view of the issues which are to be addressed, especially when these issues are of vital importance. However, it is equally admissible for the agenda of a congress to be formulated in general terms, in order to have the opportunity to deal with last minute items.
3. It is a general principle that one always shall have the possibility to disregard a decision or an action which is totally null and void. In that respect, one has to distinguish between decisions or actions that are legal according to the law and the statutes, the ones that are illegal, that is to say contrary to the law applicable to the Federation or to the statutes of this Federation and, finally, the decisions which are totally invalid, because they infringe the most basic fundamental principles, which are internationally recognized and admitted. These internationally recognized principles are part of the concept of international public policy. A decision infringing the public policy is not only open to annulment, after having been challenged in legal proceedings, but has to be considered as totally null and void, that is to say inexistent even if not judicially

cancelled. Therefore, a decision taken by a Continental Union is not binding for the International Federation if it appears that this decision was contrary to the concept of public policy. A CAS panel is also bound by the principles of public policy, irrespective of the material law applicable to the case, in application of the relevant provisions of Swiss arbitration law, that is to say of the *Lex arbitri*. The arbitrators have to take into account the legitimate interest of the States to guarantee the application of the very fundamental rules of international public policy. In that respect, arbitrators may directly apply the mandatory laws or rules of public policy which deserve to be applied, without having to proceed via provisions such as Article 7 of the Rome Convention or Art. 19 of the Swiss PIL, which are addressed to Courts.

4. The right to be heard is not respected in case of a decision taken by a Continental Union suspending the President of a national Federation for five years, without any possibility to appeal or to have the sanction debated in front of the Continental Union's congress, on the sole basis of several letters written by this President, expressing criticism against the way the Continental Union is managed. Moreover, the principle of legality, that is to say the fundamental principle according to which no sanction shall be taken in the absence of a rule providing for such a sanction, is also being infringed if such decision has been taken without a provision in the Statutes of the Continental Union providing for the possibility to take it. Those two principles are clearly part of international public policy and have to be qualified as transnational principles of international public order.
5. It is a general principle of sports law, constantly recognized by CAS jurisprudence, that the right to be heard has to be respected, even if there is no applicable rule expressly providing for such principle. Furthermore and according to the Swiss Supreme Court, the respect of the right to be heard has also to be considered as being part of international public policy, at least under the conception adopted under the *Lex arbitri*, that is to say Swiss law. According to the Swiss Supreme Court, the procedural public order is violated if the right to be heard is not respected.
6. A general assembly's preference for the recognition of the National Federation by the National Olympic Committee where the International Federation's statutes clearly give the same weight to the recognition by the National Olympic Committee as to the recognition by the highest sporting organization of the country, is to be considered as a deviation from the statutes.

The Federación Panameña de Judo (FPJ) is an entity which is recognised by the Instituto Panameño de Deportes ("INDE") and by the Panamerican Judo Union (PJU) to represent the Judo of Panama at an international level.

The Federación Venezolana de Judo (“FVJ”) is a national sporting federation that is responsible for the organisation of Judo in the territory of Venezuela. It is a member of the PJU and of the International Judo Federation.

The International Judo Federation (IJF), a company limited by guarantee and incorporated in Ireland, is an international sporting federation created in 1951. It is recognised by the International Olympic Committee as being responsible for the organisation and representation of Judo. It has 195 national Judo Federations affiliated as members, through one of the five Continental Judo Unions, amongst which is the PJU.

The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions of the parties, the exhibits produced and the hearing held on 16 September 2008, in Lausanne, Switzerland.

The Federación Puertorriqueña de Judo (“the Puerto Rican Federation”), whose status and nature of incorporation was not clearly explained or proved to the panel, is however a national Federation member of the IJF and member of the PJU. It is undisputed that Mr Jorge Armada was the validly elected President of the Puerto Rican Federation during the years 2006 and 2007.

After the Juegos Centroamericanos y del Caribe, organized in the summer of 2006 in Colombia, various communications were sent by Mr Jorge Armada to members of other national judo federations of Central and South America. In these communications, Mr Jorge Armada criticized the activity of the PJU as regards the referees. Such communications were sent on 17 August 2006 and 9 November 2006.

On 10 November 2006, Mr Jorge Armada sent, on behalf of the Puerto Rican Federation, a letter to the General Secretary of the PJU, requesting information from the PJU in connection with the incomes and expenses of the said Union, suggesting amendments to the statutes of the PJU to be submitted to the congress of the PJU to be held on 28 November in the city of Maracaibo, Venezuela, and addressing other matters regarding the suspension of three referees.

On 27 November 2006, Mr Jorge Armada sent an e-mail to all the other Presidents of the National Federations members of the PJU. In this e-mail, Mr Jorge Armada suggested to organize an extraordinary congress of the PJU, in order to challenge Mr Jaime Casanova as President of the PJU. Also in this e-mail, Mr Jorge Armada alleged that he was denied the entrance to Venezuela, so that he would not be able to take part to the PJU congress scheduled on 28 November 2006 in Maracaibo.

On 28 November 2006, the President of the FVJ sent a letter to the President of the PJU, in which he declared that no visa was needed for a Puerto Rican citizen to enter Venezuela and that Venezuela never prohibited the entrance of a Puerto Rican citizen or of a United States citizen, Mr. Jorge Armada having the United States citizenship. Various other letters were exchanged between the President of the PJU, Mr Jorge Armada and the Sports Minister of Venezuela regarding the allegation that Mr Jorge Armada was impeded to enter Venezuela. The PJU relied on the information provided by the Venezuelan authorities, while Mr Jorge Armada confirmed that he was denied the access to the host country of the 2006 PJU congress.

On 10 and 11 February 2007, the PJU Executive Committee held a meeting in the Cayman Islands, during which it took a decision, which states, in relevant parts, as follows:

“Suspend, with the effect of suspension of all activities related to organized Judo at the international level, the President of the Judo Federation of Porto Rico, Mr Jorge Armada, for a period of five years, in view of his inappropriate behaviour and his lack of respect within documents which he issued, in an insulting form, using disqualifying terms against the members of the UPJ (...). He also expressed in such communications unfounded accusations which have not been demonstrated so far against the Judo Federation of Venezuela and the UPJ, stating within an e-mail of 27/11/2006 sent to the Federative Presidents of the Pan-American Judo Union that “he had been denied the entry in Venezuela”... in order to take part to the UPJ ordinary congress which was held on 28 November 2006 in the city of Maracaibo, State of Zulia, Venezuela”.

This decision was notified to the Judo Federation of Puerto Rico and to the IJF, on 23 March 2007.

On 31 March 2007, the Puerto Rican Judo Federation expressed its disagreement with this decision but informed that it had appointed its vice-president as its representative within the PJU, in order to avoid any sanction against the Puerto Rican athletes.

On 2 April 2007, Mr Jorge Armada appealed against the decision of the Executive Committee of the PJU. In his appeal, Mr Jorge Armada referred to various provisions of the PJU statutes, providing for the right to be heard of any member to be sanctioned. On 3 April 2007, the President of the National Olympic Committee of Puerto Rico requested the President of the PJU to reconsider the sanction made against Mr Jorge Armada.

On 21 April 2007, the PJU refused to consider the appeals made by Mr Jorge Armada and by the National Olympic Committee of Puerto Rico.

On 17 July 2007, the President of the IJF, who was at that time Mr Yong Sung Park, sent a letter in which he informed that the suspension of Mr Jorge Armada *“is ratified by the International Judo Federation (...)”*.

In September 2007, the IJF held a congress in Rio de Janeiro, in Brazil. At the outset of this congress, Mr Jorge Armada was asked by the IJF General Secretary to leave the congress room, as he was suspended by the Executive Committee of his Continental Union.

Later during the IJF congress, some representatives of members of the PJU took the floor to address the question of the suspension of Mr Jorge Armada. This issue was debated by the congress and, after many delegates intervened, the President of the IJF proposed the congress to decide the following:

“Considering the fact that any individual affiliated to the IJF has the right to appeal for a sanction taken against him, and after examination of the appeal file presented by Mr Georges Armada, President of the Porto Rico Judo Federation, it is evident that Mr Armada’s five year suspension by the EC of the Pan-American Union is based on political raisons (sic) rather than on a prejudice to the spirit of Judo or the smooth running of this sport. Consequently, the IJF President proposes that this sanction be repealed immediately”.

According to the minutes of the congress, this proposition was approved by the absolute majority of the congress.

On 1st October 2007, the President of the FVJ sent an e-mail to the President of the IJF, complaining about several violations of the IJF statutes during the congress held on 10 September 2007 in Rio, amongst which the decision to repeal Mr Jorge Armada's sanction.

As a preliminary remark concerning the facts related to the membership and the representation of the FPJ within the IJF, the Panel underlines that the situation of the administration and organization of Judo in Panama is very confusing. In spite of the efforts of the Panel during the hearing and of the evidence produced by the parties, amongst which the witness statements and the witnesses heard during the hearing, the Panel has still not been able to get a clear picture of the situation. The declarations of the witnesses have been often contradictory and impossible to reconcile. Furthermore, the witnesses are all more or less related to one of the interested parties to the case, so that their testimonies should be considered taking into account that they have not appeared as neutral.

That being said, the following facts have been reconstructed by the Panel. A Judo Federation exists in Panama since many years. This Federation has been a member of the IJF. None of the parties provided the Panel with any documents evidencing the creation of the Federation and its existence. Nor has the Panel seen any statutes of the FPJ, minutes of any statutory general assembly or executive committee.

At one moment in time, which the Panel has not been able to identify more precisely than being during the nineties, there has been in Panama a struggle between two different groups of persons who both wanted to run and organize the sport of Judo at a national level. The first group was represented by Mr Ernesto Arce. The second group was represented by Mr Miguel Vanegas, President of the FPJ.

According to Mr Miguel Vanegas, he has been elected as President of the FPJ, to replace Mr Arce. According to the witness Rosa Santamaria Bush, the Secretary of the club as well as of the Federation run by Mr Ernesto Arce, Mr Arce's Federation was created in the nineties, in order to gather several people who were not satisfied of the way judo was promoted and organized within Panama. For the reasons set out previously, the Panel has not been able to determine exactly where the truth lies. In the Panel's opinion this point is not relevant to decide the merits of the case.

The confusion of the situation of the sport's governing bodies in Panama is not limited to judo. It appears that the National Olympic Committee of Panama was suspended by the International Olympic Committee, between 1st July 2007 and 10 April 2008.

Furthermore, as regards judo, the IJF disaffiliated the FPJ, by a decision made during the IJF ordinary congress held in Munich, Germany, in 2001. In a letter dated 5 July 2006, the President of the IJF informed the President of the Panama Olympic Committee of this decision and added that he sincerely hoped *"that in the near future, the Panamerican Judo Union will submit a request to the IJF Executive Committee, that the Executive Committee and the Ordinary Congress reconsider the above decision in order to allow the athletes, coaches and referees to take part in international judo events throughout the world"*.

On 23 February 2006, an extraordinary general meeting of the judo organizations of Panama was set up, gathering amongst others more than 20 judo sports organizations recognized by INDE. During this general meeting, it was decided to elect a provisional commission, composed of Luis Avila, Ramon Alvarado, Boris Sanjur, Miguel Vanegas and Basilio Martinez.

In a decision dated 5 May 2006, INDE, which is the competent State authority to supervise and approve the electoral procedures and sports organizations according to the sport legislation of Panama, recognized this provisional commission as the body organizing and representing the sport of judo at a national level, *"until the conclusion of the electoral process for the period 2006-2010 convoked by the Board of Directors of the National Sports Institute"*.

The newly nominated provisional commission carried out an electoral process. During this process, the provisional commission invited the judo clubs of Panama to confirm whether they were willing to remain affiliated to the judo league recognized by INDE or not. Mr. Ernesto Arce, as responsible of the judo club *"Ernesto Arce Club"* received a correspondence dated 23 May 2006 relating to this object. There is no evidence that this letter was ever answered by Mr Ernesto Arce or by anyone on his behalf or on behalf of his club.

On 17 July 2006, INDE sent to the PJU a correspondence regarding the electoral process carried out in Panama concerning the appointment of the bodies of the National Judo Federation. This correspondence contained a list of the clubs having expressed their interest to take part into the election process. According to this document, the club of Mr Ernesto Arce refused to be affiliated.

On 14 September 2006, the delegates of the provincial leagues of judo held a meeting in order to elect the new executive committee of the FPJ, for the period 2006-2010. The newly elected executive committee was composed, amongst others, of Mr Miguel Vanegas as President. In a decision dated 14 September 2006, INDE officially recognized this newly elected executive committee of the FPJ.

On 3 October 2006, INDE informed the PJU that the executive committee of the FPJ had been elected on 14 September 2006. The same day, INDE issued a document certifying that the FPJ was a sport organization duly constituted and recognized according to the sport legislation of Panama and that the executive committee of the FPJ for the period 2006-2010 was the one elected on 14 September 2006.

On 7 October 2006, Mr Miguel Vanegas, in his capacity at that moment as President of the Olympic Committee of Panama, informed the President of the IJF that he had been elected as President of the FPJ.

On 24 October 2006, the President of the PJU informed the President of the Pan-American Sports Organization that the affiliation request of the FPJ would be addressed at the PJU congress to be held on 20 November 2006, in Maracaibo, in Venezuela. In this correspondence, the President of the PJU referred to the FPJ Executive Committee elected on 14 September 2006 and chaired by Mr Miguel Vanegas.

After the above mentioned ordinary congress, the President of the PJU wrote to the President of the Pan-American Sports Organization to inform them of the decision made by the General Assembly to accept the affiliation of the FPJ, chaired by Mr Miguel Vanegas. It was added that, due to its affiliation to the Continental Union, the FPJ was automatically affiliated to the IFJ, at that time presided by Mr Yong Sung Park. Copy of this letter was sent to Mr Yong Sung Park.

On 7 December 2006, Mr Mario Vazquez Raña, as member of the Executive Board of the International Olympic Committee and President of the Association of National Olympic Committees, sent a letter to the President of the IJF, asking information about the names and composition of the Executive Board of the *“National Federation of Panama recognized by the organisation you preside”*.

On 28 December 2006, the President of the IJF answered to the letter of Mr Mario Vasquez Raña, as follows:

“In regard to your request for the names and composition of the Executive Board of the National Federation of Panama recognized by International Judo Federation, please find the attached official letter which IJF received from the Panamerican Judo Union.

According to the IJF Statutes - Article 3 Affiliation, please be noted that it has been the traditional policy of the IJF Executive Committee not to supersede its authority in granting recommendation to National Federations beyond the scope of the IJF Statutes and the authority granted to each of its five Continental Unions. The IJF recognizes the leadership and organization of the National Judo Federation recognized by its Continental Union unless there comes a time in the future when the Continental Union informs us differently”.

On 13 May 2007, the Panama Olympic Committee, through Mr Roger Moscote as President, sent a letter to Mr Ernesto Arce, which reads, in part, as follows:

“On behalf of the Board of Directors of the Panama Olympic Committee, we reiterate, yet again, having recognized the new Board of Directors of the Panama Judo Federation, elected for the 2006-2010 period on the 18th of September 2006 and composed of the following members:

- President: Ernesto Arce*
 - Vice-President: Cesar Chu*
 - Secretary: Rosa de Santa Maria*
- (...)”.*

Except of this single letter, which even in itself was not supported by any evidentiary document, no other evidence was submitted in regard of this recognition.

Between 14 and 16 June 2007, the Spanish Judo Federation organized a meeting in Madrid, during which the present situation and the future of the IJF were discussed, as well as the candidacy of Mr Marius Vizer to the IJF Presidency. The Presidents of the Continental Unions of Europe, Africa and Asia attended to this meeting, with various other personalities from the world of judo. Mr Ernesto Arce also attended this meeting and was presented, according to a report in a newspaper article, as one representative of *“eleven countries from the Panamerican Judo Union”*.

On 27 June 2007, the FPJ sent a letter to the PJU complaining about the attitude of the Spanish Judo Federation in accepting the attendance of Mr Ernesto Arce as one of the representatives of eleven countries members of the PJU. On the same day, the PJU issued a press release expressing that it did not consider Mr Ernesto Arce as a representative of his country.

On 1st July 2007, the Executive Board of the International Olympic Committee decided to withdraw all the rights, prerogatives and functions of the Panama National Olympic Committee granted by the Olympic Charter, *“following a detailed report presented by Mario Vasquez Raña on the serious situation affecting the Panama National Olympic Committee”*.

At the outset of the IJF ordinary congress held on 10 September 2007 in Rio de Janeiro, the IJF General Secretary asked a delegate of Panama to leave the congress room, *“since, as decided by the credential committee, the Panama Federation is not habilitated to participate to the congress”*.

After the report of the President of the PJU, some representatives of national federations members of the PJU took the floor to speak about problems regarding the PJU, amongst which the question of the Judo Federation of Panama. A request was presented, concerning *“the acknowledgment of Mr Arce as sole President of the Panama Judo Federation which le (sic) only Federation recognized by the Panama Olympic Committee”*.

After discussions and interventions by many delegates, Mr Marius Vizer, President of the IJF, made the following proposition:

“Considering the fact that judo is first and foremost an Olympic Sport that is part of the program of the Olympic Games, from now on, the IJF and its congress will recognize only the National Federations that are recognized by their Olympic Committee when there is one in the country. If the country has no National Olympic Committee, recognition of the country must be done through the Sports Minister and supported by a duly-signed document. Consequently, he proposes that the Panama Federation which is recognized by the Olympic Committee and by ODEPA be allowed to participate to the congress”.

According to the minutes of the congress, this proposition was approved by the majority of the members present or represented at the congress.

On 30 September 2007, Mr Miguel Vanegas, acting as President of the FPJ, sent a letter, by e-mail, to the President of the IJF, requesting the annulment of the recognition of Mr Ernesto Arce as representative of the FPJ, during the IJF congress held on 10 September 2007 in Rio de Janeiro.

On 1 October 2007, the FPJ and the FVJ (“the Co-Appellants”) filed a Statement of appeal with the Court of Arbitration for Sport (CAS) directed against the IJF. They challenged the decisions passed on the 2007 IJF ordinary congress and submitted the following request for relief:

1. *Consider null and void, respectively annulled, the decisions passed by the Congress of the International Judo Federation held on 10 September 2007, amongst other those relating to*
 - *The membership of the Federación Panameña de Judo, chaired by Mr Miguel Vanegas*
 - *The representation at the IJF congress of the Federación Panameña de Judo by Mr Ernesto Arce, respectively by its current President, Mr Miguel Vanegas*

- *The representation at the IJF congress of the National Federation of Puerto Rico by Mr Jorge Armada.*
- 2. *Order the International Judo Federation to reconvene its congress as soon as possible in accordance with its statutes, in order to pass valid decisions regarding item No. 1 above and to readdress all other decisions taken during such congress with the appropriate delegate of the National Federations.*
- 3. *Confirm that the Federación Panameña de Judo, chaired by Mr Vanegas, is the only Federation of Judo in Panama and is a member of the International Judo Federation.*
- 4. *Disallow Mr Jorge Armada to represent at the IJF congress the National Federation of Puerto Rico as long as he is suspended.*
- 5. *Order the International Judo Federation to bear all the costs, if any, of this arbitration and to reimburse the Federación Panameña de Judo and the Federación Venezolana de Judo the minimum Court office fee of CHF 500,-.*
- 6. *Order the International Judo Federation to contribute to the legal and other costs incurred by the Federación Panameña de Judo and the Federación Venezolana de Judo in connection with this arbitration.*

In the Statement of appeal, the Co-Appellants requested for the stay of the deadline for filling the appeal brief, respectively for an extension of this deadline. The Co-Appellants based this application on Art. 27 of the IJF statutes, according to which the parties should try to settle amicably any legal dispute arising from or in connection to the statutes and explained that no answer had been received from the IJF to the e-mail of Mr Vanegas dated 30 September 2007, so that there was no confirmation that an amicable settlement was excluded. On 2 October 2007, the co-appellants also requested an extension of the deadline to lodge the appeal brief, relying on the fact that this extension was needed to prepare the translation of several documents written in Spanish. On 4 October 2007, the Deputy President of the CAS Appeals Arbitration Division accepted to extend the time-limit for filling the appeal brief, in accordance with Art. R 32 para. 2 of the Code of Sports Related Arbitration, until 22 October 2007. On 11 October 2007, the Respondent agreed to the stay of the proceedings. Accordingly, the Deputy President of the CAS Appeals Arbitration Division issued an order for the stay of the proceedings. On 23 November 2007, the Respondent informed the CAS Court Office that no amicable settlement had been reached. The Respondent however did not request for a direct order to resume the proceedings. On 4 April 2008, the Co-Appellants requested the Deputy President of the CAS Appeals Arbitration Division to issue an order to resume the proceedings and filed an Appeal brief, at the end of which the request for relief submitted in the Statement of appeal was confirmed.

The Co-Appellants' submissions are, in essence, the followings:

- It would have been contrary to Art. 8.5 and to the By-Laws of Art. 8.7 of the IJF Statutes to address the issue of the representation of the Judo Federation of Puerto Rico and the issue of the representation and affiliation of the FPJ during the IJF congress held on 10 September 2007 in Rio de Janeiro. The Co-Appellants submitted that the IJF Statutes provide that "*the congress may consider only those items which are included in the agenda*", so that the two above mentioned issues, which were not part of the agenda, should not have been discussed during the congress. The Co-Appellants furthermore submitted that these two issues were not to be considered as urgent matters which may be discussed at the congress even if not included on the agenda.

- As regards the decision to overturn the five years suspension passed against Mr Jorge Armada, the Co-Appellants argued that the IJF congress had no jurisdiction to intervene in a disciplinary case pending before a Continental Union. The Co-Appellants also submitted that the decision of the ordinary congress is contrary to Art. 22.6 of the IJF Statutes, which provides that *“All actions, with the exception of expulsion, taken by a Continental Union with regards to one of its member federations shall entail the recognition of this action by the IJF”*. Furthermore, the Co-Appellants relied on a letter of the IJF’s President dated 17 July 2007, ratifying the suspension of Mr Jorge Armada. Finally, the Co-Appellants contended that the IJF Credentials Committee came to the correct conclusion, before the congress, that Mr Jorge Armada was not entitled to take part in the congress and that no dispute arose at the meeting of the Credentials Committee concerning this issue, so that it was for the Continental Union to decide upon any possible dispute relating to the eligibility of a delegate to the congress.
- The Co-Appellants submitted that, according to Art. 2.1 and 3 of the IJF Statutes, the FPJ had automatically become a member of the IJF, once validly affiliated to the PJU, which has been confirmed by a letter of the IJF President dated 28 December 2006. In consequence, the FPJ chaired by Mr Miguel Vanegas was to be considered as the only national federation representing Panama and the Federation chaired by Mr Ernesto Arce was only in a position to claim for recognition according to Art. 3.3 of the IJF statutes.
- For the Co-Appellants, it does not result from Art. 3.2 of the IJF Statutes that the recognition by a National Olympic Committee shall prevail on the recognition of any other official authority. In consequence, the decision passed by the ordinary congress should be construed as an amendment of the statutes, which would not have been validly operated.
- Finally, the Co-Appellants contended that there was no evidence that the National Olympic Committee of Panama recognized the Judo Federation chaired by Mr Ernesto Arce, and that one could seriously question the credibility and legitimacy of this National Olympic Committee at the time it allegedly recognized Ernesto Arce as President of the National Judo Federation.

On 23 May 2008, the IJF filed a Statement of defence, requesting the Court of Arbitration for Sport to reject the petitions presented by the Panama Judo Federation, represented by Mr Miguel R. Vanegas and by the Venezuela Judo Federation, to consider valid all the decisions taken by the Rio congress held in Rio on 10 September 2007, to order the Appellants to bear all the costs of the present arbitration and to order the Appellants to bear all the legal and other costs incurred by the IJF in connection with this arbitration.

The submissions made by the IJF in respect with the dismissal of the appeal can be summarized as follows:

- The IJF argued that the Co-Appellants have no legitimate interests in seeking the annulment of the decisions disputed in the course of the present proceedings. Consequently, the appeal should be rejected.

- Relying on Article 3.2 of its statutes, IJF also contended that the National Federation chaired by Mr Ernesto Arce is the only one which could be considered as a member of the IJF, because it is the one recognized by the National Olympic Committee. Consequently, the decision of the ordinary congress to recognize the Federation chaired by Mr Ernesto Arce would respect the Statutes, especially Article 3.2 of these Statutes, which addresses the question relating to the situation where two or more Federations within a country claim representation at the IJF. The ordinary congress would have been able to pass a decision on this question, even if not on the agenda, according to Article 8.4 of the IJF Statutes, which provides that the congress shall make all decisions on proposals submitted by members Federations or Continental Unions and deliberate on all other relevant questions.
- The IJF argued that it was the appeal body to rule on the suspension of Mr Jorge Armada. This suspension decision would be totally invalid in consideration of the rights provided for by the PJU Statutes. As the IJF Statutes provide that a National Federation expelled from its Continental Union shall have a right of appeal to the IJF, it is submitted by the Respondent that this right to appeal should be extended to the President of a National Federation suspended by a Continental Union. Furthermore, relying on Article 8.4 of its statutes, the IJF submitted that the issue of Mr Armada's suspension was duly addressed by the congress, even if not on the agenda, being a "relevant question" according to Article 8.4 of the IJF statutes.
- Finally, the IJF contended that even if the decisions concerning Mr Jorge Armada and the FPJ were to be considered as null and void, there were no grounds to rule that all the other decisions passed on the 2007 congress are also to be considered as null and void.

On 11 September 2008, the CAS Court Office issued, on behalf of the Panel, an order of procedure, which confirmed amongst others that CAS had jurisdiction to rule on this matter, and that the applicable law would be determined in accordance with Article R58 of the Code of Sports related arbitration. The parties signed and returned such order of procedure to the CAS Court Office.

On 16 September 2008, a hearing was held at the CAS headquarters in Lausanne.

At the beginning of the hearing, the Panel raised the attention of the parties to the point of the law applicable to the question of the legitimate interest and standing to appeal of the Co-Appellants. Both parties were given the opportunity to briefly address this point, in their opening statements. They both agreed, as suggested by the Panel, that this question was of procedural nature and shall in consequence be tried according to Swiss law.

In his opening statement, the Counsel for the Co-Appellants modified the prayers for relief of the appeal, as follows:

- In the first sentence of the prayer for relief Nr 1, the words "*amongst other those*" are withdrawn.
- The prayer for relief Nr 2 is withdrawn.
- All other prayers for relief are confirmed.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Article R47 of the Code of Sports-related Arbitration (the Code), which reads as follows:
“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 regulations of the said sports-related body”.
2. The Statutes of IJF provide for the jurisdiction of CAS, which results from Article 27 of these Statutes, which reads as follows:
“The parties should try to settle any legal dispute arising from or in connection to the Statutes, By-Laws or any other Rules made by the IJF. If the parties cannot settle such dispute amicably, it shall be settled by the exclusive jurisdiction of the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the IJF Statutes and Rules. All decisions made by the Court of Arbitration for Sports are final and binding upon the parties”.
3. Furthermore, the Parties explicitly acknowledged the jurisdiction of CAS by signing and returning the Order of procedure.

Admissibility of the Appeal

4. The Appeal was filed within the deadline provided by Article R49 of the Code, that is within 21 days after notification of the disputed decision. The Appellants complied with all of the other requirements of Article R48 of the Code so that the Appeal has been timely lodged.
5. As exposed here above, the Co-Appellants’ standing to file an appeal with the CAS against the decisions passed during the 2007 IJF ordinary congress is disputed by the Respondent.
6. The Panel considers that this issue is related to the question of the admissibility of the Appeal and is thus to be qualified as a question of procedural nature. Consequently, this question shall be decided according to the law of the seat of the arbitration, which is Swiss law. At the hearing, both parties expressly accepted the application of Swiss law to this question and no party submitted that the Appellants’ standing to appeal should be decided in the light of any other legal system.
7. The Panel observes that, according to Article 75 of the Swiss Civil Code, any member of an association is authorized to judicially challenge, within one month from the receipt of such decision, a decision taken by an organ of the association which contravenes the legal or statutory provisions and which has not been approved by the challenging party. The Panel is of the view that, by analogy, also in a CAS appeal arbitration procedure, the Co-Appellants, as members of the IJF, are to be granted the standing to appeal against the decisions passed during the IJF

congress. It is not relevant that, for instance, the decision concerning the representative of the Puerto Rican Federation is not directly affecting the situation of the Co-Appellants. The submission that the challenged decisions contravene legal or statutory provisions is sufficient as regards the admissibility of the appeal.

8. The Panel furthermore considers that the principle according to which the decisions of Sports Federations or Associations may be challenged by the members of those Associations or Federations, without restrictions as regards the *locus standi* or the standing right, is part of the transnational general principles applicable to the world of sport, the so-called *Lex sportiva*. Accordingly, the Co-Appellants are to be considered as having a sufficient interest to bring the present appeal, irrespective of any national rule of law.
9. Finally, the Panel is of the opinion that the drafting of Article 27 of the IJF Statutes also supports the above mentioned opinion. According to this provision, any legal dispute “*arising from or in connection to the statutes, by-laws, or any other rules made by the IJF*” shall be settled by the exclusive jurisdiction of the CAS. This provision provides for an appeal to the CAS, without any restriction as regards the interest in bringing such an appeal. This provision has to be interpreted *contra stipulatorem*, which is to say against the IJF, in accordance with a widely recognized interpretative principle (see for instance CAS 2003/O/466, para. 6.4). As a consequence, the Panel rejects the interpretation of the IJF that the Appeal should not be admitted due to the lack of interest of the Co-Appellants to have the challenged decisions annulled.
9. It follows that the Appeal is admissible.

Main Issues

10. The main issues to be resolved by the Panel are:
 - A. *As regards the participation of Jorge Armada to the 2007 IJF Ordinary Congress*
 - a) Could the Congress validly address the issue of the suspension of Jorge Armada by the PJU?
 - b) Was the IJF and its organs, amongst which the congress, bound by the decision passed by the PJU to suspend Mr. Jorge Armada?
 - c) Is the decision passed by the IFJ Congress to admit the participation of Mr. Jorge Armada infringing any statutory or legal provision?
 - B. *As regards the participation of the FPJ to the 2007 IJF Ordinary Congress*
 - a) Was the FPJ affiliated to the IFJ before the 2007 Ordinary Congress?
 - b) Is the decision regarding the FPJ, passed during the Congress, in line with the statutory provisions?
 - c) Is the federation chaired by Miguel Vanegas the only Judo Federation in Panama?

A. *As regards the participation of Jorge Armada to the 2007 IJF Ordinary Congress*

- a) Could the Congress validly address the issue of the suspension of Jorge Armada by the PJU?
11. It is the position of the Co-Appellants that it should not have been allowed to discuss at the 2007 congress the question of the suspension of Mr Jorge Armada, which was not part of the agenda of this congress.
12. Article 8.5 of the IJF Statutes provides that *“the Congress may consider only those items which are included in the agenda”*. Article 8.7 of the Statutes contains a list of the items that shall be included in the agenda. The By-laws to Article 8.7 provides, amongst others, that *“no business shall be transacted nor resolutions accepted for discussion at Congress other than as specified on the agenda relating thereto except as provided in Article 8 of the Statutes”* and that *“matters which the EC consider urgent and which have arisen too late for inclusion in the agenda may be brought before a Congress”*.
13. It is the constant jurisprudence of the CAS, which the Panel approves, that the respect of the agenda is an important principle. When considering to take part in a congress and in order to seek information on the items to be addressed, a member of an association needs a clear view of the issues which are to be addressed, especially when these issues are of vital importance (see CAS 97/168). The CAS jurisprudence however also considered that it was admissible for the agenda of a congress to be formulated in general terms, in order to have the opportunity to deal with last minute items (see TAS 2007/A/1424, para. 67).
14. The importance of the foreseeability of the items addressed during a congress, protected by the rule of the statutes providing that the congress may consider only those items which are included in the agenda, has to be counterbalanced with the principle prohibiting the excess of formalism. In the present case, the Panel finds that the item addressed by the IJF congress was the one of the participation of Mr Jorge Armada to the congress, despite Mr Jorge Armada being subject to a suspension by the PJU. Formally, this issue is connected to the process of the verification of credentials and proxies, according to Article 8.13 of the IJF statutes, which reads as follows:
“The verification of credentials and proxies will be carried out by a Committee composed of the Vice-Presidents, the General Secretary and the General Treasurer prior to the commencement of the Congress. In the case of any dispute, the General Secretary shall submit the matter to the congress”.
15. In view of the above mentioned provision, it is perfectly admissible for the congress to consider any dispute arising out of credentials and proxies, that is to say to address the issue of whether an individual is allowed to take part to the congress as a representative of a national federation or not.
16. It results from the minutes of the congress that a dispute has arisen with regard to the powers of Mr Jorge Armada to represent its national federation and to take part into the congress. According to page 2 of these minutes, the General Secretary asked Mr Jorge Armada to leave the room of the congress, at the outset of this congress. Subsequently, some members

questioned this decision, so that one can clearly consider that a dispute has arisen in the sense of Article 8.13 of the IJF Statutes.

17. There is no doubt that, according to Article 8.13 of the Statutes, the congress was the competent body to address the above mentioned issue. It is however correct, as pleaded by the Co-Appellants, that it was for the General Secretary to submit this dispute to the congress. In the Panel's view, it would nevertheless be an excess of formalism to consider that the dispute was not validly submitted to the congress because the issue of the participation of Mr Jorge Armada was raised by members during the congress and not by the General Secretary at the beginning of the congress. Moreover, it could have been possibly considered as a violation of the Statutes not to submit the dispute concerning Mr Jorge Armada to the congress. The intervention of members in order to have the question discussed by the congress can consequently be considered as a remedy against this violation of the statutes, which was constituted by the absence of submission of the Armada matter to the congress. The Panel is consequently of the opinion that it was justified that the congress addressed and passed a decision on the issue of the suspension of Mr. Jorge Armada by the PJU.
17. To summarize, it is the Panel opinion that the congress was able to validly address the item related to the participation of Mr Jorge Armada to the congress, as President of the Puerto Rican Judo Federation.
- b) Was the IJF and its organs, amongst which the congress, bound by the decision passed by the PJU to suspend Mr Jorge Armada?
18. The Co-Appellants submit that the IJF congress had no jurisdiction to pass a decision concerning the suspension pronounced by the PJU against Mr Jorge Armada.
19. It is correct that the IJF statutes do not provide for an appeal against a decision of a Continental Union. It does not appear that the IJF or any of its organs would be the competent body in front of which a decision of a Continental Union could be challenged. However, as exposed here above, the issue addressed by the ordinary congress was not the annulment of the decision passed by the PJU but the recognition and, in a certain way, the enforcement of this decision within the IJF. Even if it can be submitted that a decision passed by the PJU is binding on the PJU and its members, it remains to be seen whether the IJF itself was bound to recognize this decision which is a *res inter alios acta*, and can have effects within the system of the PJU only.
20. The question of the recognition of the decisions or actions taken by a Continental Union is subject to Article 22.6 of the IJF Statutes, on which the Co-Appellants rely to contend that the PJU decision was binding on the IJF. According to this provision, all actions, with the exception of expulsion, taken by a Continental Union with regard to one of its member federations shall entail the recognition of this action by the IJF.
21. Firstly, the Panel considers that the sanction taken against Mr Jorge Armada does not fall within the scope of application of this provision. This provision has to be interpreted as dealing with

actions taken against members of Continental Unions, that is to say National Federations, and not actions *ad personam* taken against a particular individual which himself is not a member of PJU, such as the suspension pronounced against Mr Jorge Armada.

22. Secondly, and that is of core importance in the Panel's view, it is a general principle that one always shall have the possibility to disregard a decision or an action which is totally null and void. In that respect, one has to distinguish between decisions or actions that are legal according to the law and the statutes, the ones that are illegal, that is to say contrary to the law applicable to the Federation or to the statutes of this Federation and, finally, the decisions which are totally invalid, because they infringe the most basic fundamental principles, which are internationally recognized and admitted. These internationally recognized principles are part of the concept of international public policy. A decision infringing the public policy is not only open to annulment, after having been challenged in legal proceedings, but has to be considered as totally null and void, that is to say inexistent even if not judicially cancelled.
23. The Panel, therefore, considers that the IJF was not bound by the decision of the PJU if it appears that this decision was contrary to the concept of public policy. Furthermore, the Panel is also bound by the principles of public policy, irrespective of the material law applicable to the case, in application of the relevant provisions of Swiss arbitration law, that is to say of the *Lex arbitri*. As regards the core principles pertaining to international public policy, even the most liberal Swiss authors consider that the arbitrators have to take into account the legitimate interest of the States to guarantee the application of these very fundamental rules of international public policy. In that respect, relevant Swiss authors have considered that "*as guarantor of the respect of the international public policy, arbitrators may directly apply the mandatory laws or rules of public policy which deserve to be applied, without having to proceed via provisions such as Article 7 of the Rome Convention or PILS (Swiss Private International Law Statutes), Article 19, which are addressed to Courts*" (see POUDRET/BESSON, *Comparative Law of International Arbitration*, second edition, London 2007, Nr 707, page 610). In the present case, the Panel clearly considers that it shall not protect a decision which could be contrary to international public policy, by ruling that this decision shall be respected and enforced within a body that has not participated in the making of this decision.
24. Article 8.8 of the By-laws of the IJF statutes provides that "*In the event of dispute in regard to the eligibility of a National Federation President, delegate to the Congress or proxy, the Continental Union shall make the final decision*". One could also rely on this provision to submit that the sanction made against Mr Jorge Armada had to be enforced by the IJF. However, the considerations elaborated here over in connection with Article 22.6 apply, *mutatis mutandis*, to this provision. If totally invalid due to the fact that it infringes the core principle of international public policy, a decision made by a Continental Union as regards the personal eligibility of a National Federation President is not binding on the IJF.
25. Finally, the Co-Appellants also relied on the letter of 17 July 2007, by the former President of IJF, to Mr Mario Vázquez Raña, member of the IOC and by the time guardian of the interests of the National Olympic Committee of Panama. In this letter, the President of the IJF declared that "*In accordance with the statutes of the International Judo Federation and the powers invested in me as its*

President I hereby inform you that the suspension of Mr Armada is ratified by the International Judo Federation and he has been temporarily suspended from all IJF activities pending the next meeting of its executive committee”.

26. In the Panel’s view, although its wording indicates so, this letter is not a decision binding on the IJF. According to the IJF statutes, the governing bodies of the IJF are the congress and the executive committee (Article 7 of the IJF Statutes). According to Article 11 of these Statutes, the President directs the IJF and represents it before third parties. The President has no power to make decisions on behalf of the IJF. There is in the present case no evidence that the President would have been delegated such a power, by the congress or by the executive committee. The letter sent by the President, assuming to ratify the suspension, is therefore not to be held as a decision binding on the IJF. Furthermore, in the case of a decision infringing the principles of international public policy, as exposed here above, the congress would have to be considered as having the power to repeal a decision of the President, which in the present case has to be qualified as a personal opinion rather than a decision binding on the IJF.
27. In summary, the IJF congress was competent to address the consequences of Mr Jorge Armada’s suspension on the capacity of the latter to act as a representative of the Puerto Rico Judo Federation during the 2007 IJF ordinary congress.
- c) Is the decision passed by the IFJ Congress to admit the participation of Mr Jorge Armada infringing any statutory or legal provision?
28. It has now to be examined whether the sanction passed against Mr Jorge Armada is to be considered as totally invalid and whether it was justified for the IJF congress to simply disregard this decision.
29. The Panel finds it strange, to say the least, that the President of a national federation should be suspended for five years on the basis of the content of several letters written by this President, expressing criticism against the way PJU is managed, against the refereeing commission and requesting for detailed information before the congress of PJU. It should be clearly stressed that the Panel does not refer to the merits of the criticism, whether justified or not, nor to the nature of the required information, whether reasonably requested or not. Even if some of these correspondences were drafted, to the opinion of some or all of the members of the Executive Committee of the PJU in a non-diplomatic way, the Panel finds it totally disproportionate that such an attitude could lead to such an extreme sanction.
30. Analyzed from a legal point of view, the decision taken by the PJU is, in the Panel’s opinion, contrary to the principles of the right to be heard and of legality (*nulla poena sine lege*). Those two principles are clearly part of international public policy and have to be qualified as transnational principles of international public order.
31. It is a general principle of sports law, constantly recognized by the CAS jurisprudence, that the right to be heard has to be respected, even if there is no applicable rule expressly providing for such principle (see LOQUIN E., L’utilisation des principes généraux du droit et le développement

d'une *Lex sportiva*, in The proceedings before the Court of Arbitration for Sport, Lausanne 2006, page 102, referring to the CAS award TAS 2000/A/390 (*"Le respect des droits de la défense dans toute procédure ouverte à l'encontre d'une personne susceptible d'aboutir à un acte faisant grief constitue un principe de droit fondamental, qui doit être assuré même en l'absence d'une réglementation le prévoyant"*). As another CAS panel put it: *"It is undisputable that the [right to be heard and the right to a fair proceeding] are fundamental and that the CAS has always endeavoured to protect them"* (CAS 2004/A/777). Furthermore, the respect of the right to be heard has also to be considered as being part of international public policy, at least under the conception adopted under the *Lex arbitri*, that is to say Swiss law. According to the Swiss Supreme Court, the procedural public order is violated *"lorsque des principes fondamentaux et généralement reconnus ont été violés, ce qui conduit à une contradiction insupportable avec le sentiment de la justice, de telle sorte que la décision apparaît incompatible avec les valeurs reconnues dans un état de droit"* (see decision of the Swiss Supreme Court 132 III 389, page 392, cons. 2.2.1).

32. In the present case, it has been found that Mr Jorge Armada has not been given the opportunity to present his defence in front of the PJU executive committee, which decided to suspend him in a meeting held on 10 and 11 February 2007. Moreover, when requesting a reconsideration of the sanction pronounced against him and relying on the PJU statutory provisions providing for the right to be heard of the *"accused member"*, Mr Jorge Armada was referred to a letter sent to him on 30 December 2006 requesting *"to certify the authenticity of 14 insulting communications sent by himself at the time in his capacity as President of the Puerto Rican Judo Union (...)"*. In the Panel's view, there is no doubt that a communication requesting to *"certify"* the accomplishment of certain acts, without referring to any possible sanction, cannot be considered as a proper measure to guarantee the right to be heard of an accused member. The Panel has therefore no hesitation in deciding that the circumstances in which Mr Jorge Armada has been sanctioned by the PJU; (a) have no legal grounds in the regulations of the PJU itself and, (b) even if there were such grounds – which were not presented nor proven – still the circumstances in which the extreme sanction was imposed in this case constitutes a characterized breach of the fundamental principle of procedural fairness, amongst which the respect of the right to be heard, and should thus be considered to be void and of no effect.
33. In consequence, the Panel is of the view that the decision of the IJF congress to disregard the sanction taken against Mr Jorge Armada is not infringing any legal or statutory provision.
34. Even if the findings reached so far are sufficient to rule on the part of the appeal concerning Mr Jorge Armada, the Panel wants to add that the sanction taken by the PJU is also infringing the principle of legality, that is to say the fundamental principle according to which no sanction shall be taken in the absence of a rule providing for such a sanction (see LOQUIN E., *op. cit.*, p. 103, and CAS award 99/A/230). In the present case, the Panel would have had extreme difficulties to find in the PJU statutes a provision which provides the jurisdiction of the Executive Committee to suspend the President of a Federation, for five years, without any possibility to appeal or to have the sanction debated in front of the PJU congress.
35. Finally, the Panel wants to stress that one has to keep in mind that, as pointed out by the Co-Appellants, the decision made by the IJF congress can in no way be considered as an appeal against the sanction taken by the PJU, against Mr Jorge Armada. Consequently, neither the

decision of the IJF congress, nor the present award, shall have the effect of reverting the decisions passed by the PJU, which is not a party to the present proceedings. The Panel however would like to believe that the PJU will react to this award and have the sanction taken by Mr Jorge Armada reconsidered, within proceedings respecting the fundamental principle of procedural fairness.

B. As regards the participation of FPJ to the 2007 IJF Ordinary Congress

- a) Was the FPJ affiliated to the IFJ before the 2007 Ordinary Congress?
36. Before addressing the question of the statute of the FPJ within the IJF, the Panel once again would like to point out that it has found that the situation of the National Judo Federation in Panama was at the time relevant to the facts of this case, and apparently still is, very confusing. It seems that two groups of people are claiming to be the representatives of the judo in Panama. However, these people do not rely on a precise set of national rules but rely on different declarations or letters of various bodies, of administrative nature or not, such as ODEPA or the National Olympic Committee, whose statutes and situation are also very unclear. The Panel has for instance found very surprising that Mr. Miguel Vanegas, apparently in his capacity of President of the National Olympic Committee of Panama, has written to the President of the IJF that he had been elected as President of the FPJ. More generally, the Panel has not been presented clear evidence of the national legal situation and status of incorporation – if at all – of the bodies claiming to govern judo in Panama. In these circumstances, the task of the Panel is not an easy one.
 37. In the Panel's view, it first has to be examined what was the situation of the FPJ, as regards the membership to the IJF, before the 2007 congress. In that respect, it is clear that the FPJ has been disaffiliated from the IJF in 2001. Based on these findings, the Panel considers that a new affiliation process has been carried on, as of September 2006, by a body chaired by Mr Miguel Vanegas, designated as President of the FPJ. It results from a letter dated 24 October 2006 sent by the President of the PJU to Mr Mario Vasquez Raña, in his capacity of President of the Panamerican Sports Organization, that PJU had at the time received an affiliation request by the FPJ chaired by Mr Miguel Vanegas and that this affiliation request would be addressed at the ordinary congress of the PJU to be held on 28 November 2006 in Maracaibo, Venezuela.
 38. It also results from a letter of the President of the PJU to the President of the Panamerican Sports Organization that it was decided unanimously during the 2006 PJU ordinary congress to affiliate the FPJ chaired by Mr Miguel Vanegas.
 39. As a consequence of its affiliation to the Panamerican Continental Union, the FPJ chaired by Mr Miguel Vanegas has become an official member of the IJF, according to Article 3.3 and 3.4 of the IJF statutes, which read as follows:
 40. A National Federation becomes a provisional member of the IJF as soon as it is provisionally affiliated to its Continental Union.

41. A National Federation shall become an official member of the International Judo Federation at the next Congress of its Union, which ratifies its membership.
42. The Panel is of the opinion that these two provisions are to be considered as granting an automatic IJF affiliation to a National Federation affiliated to a Continental Union. In that respect, the system of the IJF statutes is clearly federative. The national federations are affiliated through the Continental Unions and there is no possibility for a national federation to directly apply for an affiliation to the IJF. The Panel considers that such an interpretation is confirmed by the absence, in the IJF statutes, of any competence of the IJF bodies to decide upon the affiliation of a national federation. For instance, Article 8.7 of the IJF statutes, dealing with the agenda of the congress, mentions as “*administrative matters*” the election of new members to vacant positions on the EC, but not the process of the admission or affiliation of new members. This interpretation is also confirmed by the fact that, after the approval of the affiliation of the FPJ to the PJU, no other formal or administrative step was taken in order to affiliate the FPJ to the IJF. The Panel is of the view that the FPJ was affiliated to the International Federation as soon as it was affiliated to the Continental Union, that is to say as of 28 November 2006. This interpretation is in line with the history of the IJF, which was created after the European Judo Union and on the initiative of the members of this Continental Union.
43. In summary, the FPJ chaired by Mr Miguel Vanegas was a valid member of the IJF at the opening of the 2007 ordinary congress and Mr Miguel Vanegas was able to represent this Federation at the congress.
- b) Is the decision regarding the FPJ, passed during the congress, in line with the statutory provisions?
44. Based on the above mentioned findings, the Panel must address the question of the qualification of the decision passed by the 2007 FIJ congress, regarding the Judo Federation(s) in Panama. From a legal point of view, the Panel is of the opinion that this decision has a double nature.
45. Firstly, this decision is related to the construction of Article 3.2 of the IJF Statutes, which deals with the situation when two or more federations within a country claim representation within the IJF. Secondly, as a consequence of the first part of the decision to only recognize the National Federations which are recognized by the National Olympic Committee, the congress decided that the body chaired by Mr Ernesto Arce shall be preferred to the one chaired by Mr Miguel Vanegas, as regards the membership to the IJF. These two separate points are to be addressed distinctly, as follows.
46. The decision to recognize only the National Federations that are recognized by the Olympic Committee when there is one in the country is to be compared to Article 3.2 of the IJF Statutes, which read as follows:

“If two or more Federations within a country claim representation, it will be given to the Federation which is recognized by its National Olympic Committee, or by the highest sporting organization of that country. Failing

this preference, it will be given to the Federation which is recognized by the Continental Union as the valid National Judo Organization”.

47. In the Panel’s view, a literal interpretation of this provision cannot lead to consider that the Federations recognized by the National Olympic Committee shall prevail over Federations recognized by the highest sporting organization of their countries. The IJF statutes clearly give the same weight to the recognition by the National Olympic Committee as to the recognition by the highest sporting organization of the country. In consequence, the congress’s preference for the recognition by the National Olympic Committee is to be considered as a deviation from the Statutes. The wording of the minutes of the 2007 IJF congress also indicate that the President was of the opinion that the option to give preference to the recognition by the National Olympic Committee was at least a change of practice, if not an *“on spot”* attempt to amend the statutes, as the resolution proposed to the congress contained the expression *“(…), from now on, the IJF and its congress will recognize (...)”*. However, this new principle is clearly contrary to what is expressed in Article 3.2, first sentence, of the IJF statutes. In consequence, the decision to give preference to the recognition by the National Olympic Committee is in conflict with the statutes of the IJF and shall be annulled.
48. Logically, the decision to recognize the Federation chaired by Mr Ernesto Arce shall also be annulled, on the mere argument that it is only a consequence of a first decision which is invalid. Without the decision to make the recognition by the National Olympic Committee a prevailing condition for the affiliation to the IJF, there is no valid cause to the decision to replace the Federation chaired by Mr Miguel Vanegas by the one chaired by Mr Ernesto Arce.
49. There is however more to say on this point. The Panel wishes to point out that the IJF was not placed in a situation where two federations claimed representation, that is to say the situation foreseen in Article 3.2 of the IJF Statutes. There is absolutely no evidence that the Federation chaired by Mr Ernesto Arce ever requested to be affiliated to the IJF. In consequence, it is not justified to submit that there was a situation where *“two or more federations within a country claim representation”*, which is the one addressed by Article 3.2. In that respect, a Federation claiming for representation and requesting its affiliation to the IJF has to undertake an affiliation process and cannot just show up to an annual congress, claiming that it is a member of the IJF because it is certified by its National Olympic Committee. Moreover, as considered here above, the Federation chaired by Mr Miguel Vanegas had validly been affiliated to the IJF. In order to have another Federation of Panama affiliated to the IJF, it would first be needed to have the Federation held by Mr Miguel Vanegas excluded from the International Federation, according to the process provided by Article 22 of the IJF Statutes. In the present proceedings, it has not been submitted, let alone proven, that a valid expulsion process had been carried out against the FPJ.
50. In summary, the Panel considers that the decisions passed by the IJF congress concerning the FPJ have to be annulled, as contrary to the provisions of the IJF statutes. In consequence, the FPJ, chaired by Mr Miguel Vanegas, has to be recognized as a member of the IJF, representing Panama.

- c) Is the Federation chaired by Mr Miguel Vanegas the only Judo Federation in Panama?
51. The Co-Appellants also requested that the Panel shall pronounce that *“The Federación Panameña de Judo, chaired by Mr Miguel Vanegas, is the only Federation of Judo in Panama (...)”*.
52. Considering the findings reached so far, it is clear for the Panel that it has received evidence that at least two different bodies or groups of people were claiming recognition as the National Judo Federation of Panama. In consequence, the Panel cannot pronounce a declaratory order confirming that the FPJ is the only Federation of judo in Panama.
53. Anyway, the Panel considers not to have jurisdiction to pronounce such an order. Even if pronounced, this order would not be binding on persons or legal bodies which were not parties to these arbitration proceedings, such as the Federation chaired by Mr Ernesto Arce, the National Olympic Committee of Panama, and so forth.
54. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made, the Panel finds that the decisions passed by the IFJ 2007 Ordinary Congress as regards the FPJ have to be annulled. In consequence, the Appeal will be partially upheld.

The Court of Arbitration for Sport rules:

1. The Appeal filed on 1st October 2007 by the Federación Panameña de Judo and by the Federación Venezolana de Judo is partially upheld.
 2. All decisions passed by the 2007 Ordinary Congress of the International Federation of Judo held on 10 September in Rio de Janeiro, Brasil, in relation to the Federación Panameña de Judo are set aside and the Federación Panameña de Judo chaired by Mr Vanegas is declared to be currently the only member of the International Judo Federation representing the judo of Panama.
 3. All other motions or prayers for relief are dismissed.
- (...).