



Arbitration CAS 2019/A/6181 Fédération Royale Belge de Gymnastique (FRBG) v. Fédération Internationale de Gymnastique (FIG) & Japan Gymnastics Association (JGA), award of 24 September 2019 (operative part of 25 April 2019)

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Pierre Muller (Switzerland); Mr Philippe Sands QC (United Kingdom)

Gymnastics

Validity of a FIG decision regarding the bidding process for the organization of an event

CAS jurisdiction

Standing to sue in general

Standing to sue regarding a bidding process

Determination of the deadline to submit an application

Interpretation of the term “mid-December” in the bid contract

1. A dispute concerning a decision adopted by a FIG body which is not of “*sports nature*” but refers to the bidding process for the organization of an event is appealable before the CAS according to Article 43.2 of the FIG Statutes. Moreover, CAS jurisdiction stems from the Bid Contract entered into between the parties.
2. Standing to sue (or to appeal) is attributed to a party which can validly invoke the rights which it puts forward, on the basis that it has a legally protectable and tangible interest at stake in litigation. This corresponds to the Swiss legal notions of “*légitimation active*” or “*qualité pour agir*”. Parties which have a direct, personal and actual interest are considered to have legal standing to appeal to the CAS. Such an interest can exist not only when a party is the addressee of a measure, but also when it is a directly affected third party i.e. a party who have a tangible interest of a financial or sporting nature at stake. There is a category of third party applicants who, in principle, do not have standing, namely those deemed “*indirectly affected*” by a measure. As regards the differentiation of directly affected parties from indirectly affected parties, the CAS jurisprudence displays a “*common thread*”. The correct approach when dealing with standing is to deem mere competitors of the addressee of the measure/decision taken by the association indirectly affected –and thus exclude them from standing – when the measure does not have tangible and immediate direct consequences for them beyond its generic influence on the competitive relationship as such.
3. A bidding process, however competitive in nature, might be different from the conduct of a plain sporting competition, where the exclusion of a competitor might be irrelevant to the other participants in the event. In a bidding process, procedural fairness and equality of treatment are of the essence, since, *inter alia*, the adjudication might depend also on a comparison between the different bids. Therefore, a decision as to the admission of other bidders appears to have tangible and immediate direct

consequences for all of them. In this case, the parties have a legal interest in ensuring that the bid application standards, the FIG Statutes and the Bid Contract are all applied uniformly so as to create a level playing field for all FIG members in the sport. The requirement of a level playing field is a *lex sportiva* principle to be respected by all sports governing bodies and protected by the CAS.

4. If a contract does not offer the specific definition of a term or expression that it contains but provides that *“this Contract shall be governed by and interpreted exclusively in accordance with the Laws of Switzerland”*, it should be turned first to Swiss law for the determination of the meaning of the expression. Pursuant to Article 7 Swiss Civil Code (SCC), all the general provisions of the Swiss Code of Obligations (SCO) (*e.g.*, Articles 68 to 113 SCO) are applicable to all the legal matters, regardless of whether they concern contracts, decisions or expressions of intent. Consequently, having regard to Articles 76 and 77 SCO relating to time limits, the expression *“mid-December”*, properly to be interpreted as corresponding to the wording *“middle of the month”*, should mean the 15th day of the month of December. The above conclusion is confirmed by a reference to a natural and ordinary meaning of the expression, understood in good faith in the context in which it occurs, and if the intention of the draftsman (*i.e.*, the ruling body) is considered. In ordinary English parlance, the term *“mid-December”* might normally be interpreted as referring to a period of time comprised between 11-20 December (*i.e.*, a period of time centred around 15 December), rather than a single date. Early December might refer to 1-10 December, while late December concerns 21-31 December. Therefore, even if application of Swiss law was to be disregarded, the application of ordinary English parlance would not appear to allow the interpretation of *“mid-December”* to support the conclusion that by filing a bid on 21 December 2018, the candidate federation filed it by *“mid-December”*.

I. PARTIES

1. The Fédération Royale Belge de Gymnastique (the “FRBG” or the “Appellant”) is the national federation for gymnastics in Belgium and is recognized as such by the Fédération Internationale de Gymnastique.
2. The Fédération Internationale de Gymnastique (the “FIG” or the “First Respondent”) is the international governing body of competitive gymnastics. The FIG is an association established and organized in accordance with the Swiss Civil Code and is based in Lausanne, Switzerland. One of the objects of the FIG is to organize its official events, which include the World Championships in the different disciplines.
3. The Japan Gymnastics Association (the “JGA” or the “Second Respondent”) is the national federation for gymnastics in Japan and is recognized as such by the FIG. It is based in Tokyo, Japan.

II. FACTUAL BACKGROUND

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

A. The Bidding Process

5. On 28 March 2018, the JGA requested the FIG to provide information about the bid applications for the 2023 Men's and Women's Artistic Gymnastics World Championships (the "2023 ART World Championships"). Later the same day, the JGA received from the FIG a blank copy of the Event Candidate Official Bid Contract (the "Bid Contract") for the organization of the 2023 ART World Championships.
6. The Bid Contract received by the JGA stipulated in the section "*Instructions – Applicant File*" the following:
 1. *Questionnaire*
 - a) *The following form shall be completed by the Applicant National Federation and City officials.*
 - b) *The presentation of replies should be as simple and accurate as possible (the FIG is interested in the facts, not the presentation).*
 - c) *The FIG reserves the right to refuse any file which does not comply with the presentation requirements.*
 - d) *The Application File must be submitted as soon as possible but by no later than mid December 2018.*
7. On 29 March 2018, the JGA asked the FIG to confirm whether its understanding that "*the application files have to be submitted to the FIG Office by the middle to December 2018*" was correct. The FIG replied "*This is correct*" later that day.
8. On 22 June 2018, the FIG announced in an official communication to the FIG authorities, the affiliated and associated federations, and the continental unions that the 2023 ART World Championships would be allocated during the next Council meeting, to be held in St-Petersburg, Russia, in May 2019. In this official communication, the FIG stated the following: "*we kindly ask you to please send your possible candidature files as soon as possible, but not later than 30th November 2018 (date of receipt in Lausanne). Please note that no late candidatures will be accepted*".
9. In response to the FIG's communication of 22 June 2018, the FRBG expressed on 3 September

2018 its interest in bidding for the organization of the 2023 ART World Championships.

10. On 4 September 2018, the FIG sent the Bid Contract to the FRBG, which, in the same way as the copy sent to the JGA on 29 March 2018, also stated that *“the Application File must be submitted as soon as possible but by no later than mid-December 2018”*.
11. On 5 October 2018, the FRBG sent an email to Ms Céline Cachemaille, Sports Event Manager of the FIG, seeking information about the deadline to submit its application. On that same date, Ms Cachemaille replied as follows: *“for 2023, the Application File must be submitted by no later than mid-December 2018 and a decision will be taken by FIG Council in May 2019”*.
12. On 15 November 2018, the FRBG requested an extension of the deadline to submit its bid until the end of January 2019 due to political issues related to local elections in Belgium.
13. On 27 November 2018, Mr André F. Gueisbuhler, Secretary General of the FIG, sent the following correspondence to the FRBG with respect to its extension request:

I very much regret, but I cannot help you in this matter.

Several member federations have shown interest to organise the 2023 Artistic Gymnastics World Championships and have received the bid forms.

Please accept that we have to treat all of them equally.

Therefore, only bids duly filled in received on or before 15th December 2018, including the necessary payment of the requested deposit of CHF 50'000.- will be considered.

Should FIG not receive any bid at this deadline, FIG might consider fixing another deadline until which bids can be presented and will be dealt with by the Council.

14. On 14 December 2018, the FRBG submitted its application.
15. On 17 December 2018, the FIG acknowledged receipt of the FRBG's application to host the 2023 ART World Championships.
16. On that same day, 17 December 2018, the FRBG asked the FIG if other federations had submitted applications and whether the FRBG would have an opportunity to present its bid at the FIG Council.
17. On 18 December 2018, Ms Cachemaille confirmed that the FRBG was the only candidate to have submitted an application for the 2023 ART World Championships and that it would have the opportunity to present its bid on the second day of the FIG Council meeting in St. Petersburg on 4 May 2019.
18. On 21 December 2018, the JGA submitted its application to host the 2023 ART World Championships.

19. On 22 December 2018, the FIG acknowledged receipt of the JGA's application.

B. Proceedings before the FIG Executive Committee

20. On 17 January 2019, the FIG sent the following letter to the FRBG and the JGA:

Dear BEL and JPN Federations,

There are some points to bring to your attention regarding the bid process for the 2023 ART World Championships. The points are as follows:

- *The bid contract stated the deadline for submission was mid-December 2018. This term of "mid-December" is open to interpretation because its true definition is neither at the beginning nor at the end of the month.*
- *The FIG issued an Official Communication to all federations on 22 June 2018 entitled "2019 Council-Technical Regulations and FIG Events". This document contained contradictory information regarding the deadline date for submission of the bids for the 2023 ART World Championships by stating a deadline of 30 November 2018.*

We must acknowledge that we did receive two bids for the competition as follows:

- *BEL on 14 December 2018*
- *JPN on 21 December 2018*

By our observations, BEL determined mid-December as being by 15 December 2018, while JPN determined mid-December to be in the middle two weeks of the month. An argument could be made that both federations are late based on the Official Communication dated 22 June 2018, but we consider the contract terms to take precedence.

We want to acknowledge an email was sent by our Sports Event Manager, Céline CACHEMAILLE, on 18 December 2018 responding to Ilse ARYS of the BEL Federation's question on how many bids has the FIG received. Our response to Ilse, "You are the only candidate who has presented a bid". Celine delivered this information at the request of our former Secretary General, Mr Andre GUEISBUHLER. On 18 December 2018, there was indeed only one candidature received for 2023 at the FIG office.

After careful deliberation within the FIG office and consideration of past incidents with differences in interpretation, FIG will accept both bids and provide the opportunity for the two federations to present their bids (max. 15 min) at the Council 2019 in St. Petersburg (RUS) on the second day, 4th May. We have informed the FIG President, Mr Morinari WATANABE. The FIG office will provide more precise dates for future bids and try to avoid any contradictory information.

We wish the very best to both candidate cities for their presentations and in the final selection this May.

Please feel free to contact us should you have any questions or comments. Best wishes for a productive and successful 2019!

Kind regards,

Nicolas BUOMPANE

Steve BUTCHER

FIG Secretary General

FIG Sports Director

21. On 21 January 2019, the FRBG requested the FIG to correct its decision and confirm that: (i) the FRBG's bid was the only procedurally correct bid; and, as such, (ii) the FRBG was the only candidate eligible to host the 2023 ART World Championships.
22. On 4 February 2019, the FIG informed the FRBG that the Presidential Commission considered the FRBG's letter, but determined that *"the final decision regarding which federation(s) can make a presentation for their bid"* would be taken by the FIG's Executive Committee ("EC") during a meeting in Lausanne to be held on 19 and 20 February 2019.
23. On 5 February 2019, the FIG informed the JGA that the *"FRBG has challenged the decision to allow two federations to bid for the 2023 ART World Championships"* and that *"the Presidential Commission has agreed that the final decision regarding which federation(s) can make a presentation for their bid would go to the Executive Committee (EC) at their 19-20 February 2019 meeting in Lausanne (SUI)"*.
24. On 8 February 2019, the FRBG replied to the FIG's correspondence of 4 February 2019, whereby it questioned the EC's jurisdiction and requested to be heard during the EC meeting before a final decision was taken.
25. On 10 February 2019, the JGA sent a letter to the FIG, explaining that it had followed the FIG's instructions in submitting its application and, therefore, that the JGA's candidacy for the 2023 ART World Championships should be permitted.
26. On 12 February 2019, the FIG invited the FRBG and the JGA to submit a written report to the EC on the issue of the applicable deadline by no later than 17 February 2019.
27. On 15 February 2019, the JGA submitted its written report to the FIG and reiterated its position that it should be allowed to present its bid to the 2019 FIG Council, alleging it had followed the FIG's instructions in relation to the submission of its application. Notably, the JGA asserted the following:

(...)

1. *On March 28, 2018, we requested FIG to send us the bid contract application files.*
2. *On March 28, 2018, we received the files from Ms. Céline CACHEMAILLE. The deadline of "mid-December" was clearly mentioned in the bid contract.*

3. *On March 29, 2018, we asked Ms. Céline CACHEMAILLE for confirmation if we should submit the application files to FIG Office by the mid-December 2018 and if the Championships will be allocated by the 2019 FIG Council. Ms. Céline CACHEMAILLE wrote back to us on the same day, "This is correct". Which means that we received the confirmation from Ms. Céline CACHEMAILLE that the deadline for submission is mid-December 2018.*

4. *On December 21, 2018, we submitted our file to FIG. (...)*

We have the perception that "beginning of the month" means "the first week of the month", "end of the month" means "the last week of the month", and "middle of the month" means the weeks except for the first and the last weeks of the month. Therefore, our interpretation of the term "mid-December" is December 10th to 23rd. We successfully submitted our files within the deadline on December 21, 2018 based on this interpretation. (...)

The fact that FIG used a word "mid-December" which is not clear led to confusion among Japan and Belgium. In this sense, it is not reasonable to differentiate treatments of two federations on the grounds of discrepancy in the interpretation of "mid-December". The host country has to be determined in a way to serve the best interests of gymnasts and participants. (...)

The FIG staff provided us unclear instructions as "mid-December", and they are to blame for the failure. We cannot accept that they shift the responsibility to Japan Gymnastics Association which has been dedicating to organize the event. (...).

28. On 16 February 2019, the FRBG filed its written report to the EC, setting out its position on the matter, namely:

(...) As stated in the e-mail of 27 November 2018 sent by the acting FIG Secretary General, bids were only taken into consideration if they were received on or before 15 December 2018. 15 December 2018 is the only legally and semantically correct interpretation of "mid-December" 2018. No further interpretation of this concept is required or should be considered in this case.

Reference is also made in the letter of 17 January 2019 to the fact that both federations would be late following the due date of the bid, as stated in the Official Communication dated 22 June 2018. However, we agree with the conclusion in the letter that the contract terms, which indicate "mid-December" 2018 as the official due date for the bid of the 2023 ART World Championships, take precedence.

If the bid of the Japanese federation were to be taken into account, the principles of equal competition and equal treatment would be harmed in two ways.

On the one hand it should be noted that the Japanese federation did not respect the deadline of 15 December 2018 which was imposed and followed by the Royal Belgian Gymnastics Federation. This deadline was set out and communicated in the e-mail of 27 November 2018 to the Royal Belgian Gymnastics Federation as being a hard deadline. This approach should be applied to all interested federations, not only the Royal Belgian Gymnastics Federation.

On the other hand the possibility should be taken into account that the Japanese federation had knowledge of the official Belgian bid and was in a position to structure and alter its bid taking into consideration that there were

other official bids for the 2023 ART World Championships. If the Japanese federation indeed had knowledge of the Belgian bid, they had a clear and undeniable advantage over the Belgian bid. Even without knowledge of the Belgian bid, the Japanese federation has received an advantage over the Belgian bid, the latter not getting any extension beyond the deadline of 15 December 2018. (...).

29. On 19 and 20 February 2019, the EC held a meeting. The relevant points from the minutes of the meeting read as follows (emphasis in the original):

After President Watanabe, Rosy and Tammy left the room, Nicolas introduced the sensitive topic of the allocation of the 2023 ART WC. He was sorry to have to admit that the Office created a big mess. Unfortunately, it will not be possible to make a good decision, because either BEL or JPN will be disappointed. The lawyer confirmed that some information like “mid-December” could be subject to interpretation. We are not going to repeat this kind of mistakes in the future. Nevertheless, both federations already informed us that they might decide to go to court.

Nicolas summarized the various steps of the case file. According to the lawyer, the official communication would prevail, should we not have confirmed a different deadline in the bid document. The EC is therefore requested to vote on the 2 following questions:

Do you consider that the term “mid-December 2018” is open to interpretation, and that the bids sent by BEL and JPN should both be submitted to the Council in May 2019? Or do you not consider that the term “mid-December 2018” is open to interpretation, and that only the bid submitted by BEL should be submitted to the Council in May 2019?

Decision: The total number of votes was 19. 12 votes were in favor to present both bids, and 7 votes were of the opinion that BEL’s bid only should be presented at the Council.

30. On 20 February 2019, the FRBG and the JGA were informed that the EC had adopted a final decision allowing both of them to present their bids for the 2023 ART World Championships to the 2019 FIG Council (the “Appealed Decision”), which reads as follows:

Today the FIG Executive Committee deliberated regarding the bid predicament for the 2023 ART World Championships. A final majority vote was recorded to allow both federations, BEL and JPN, to present their bids to the FIG Council in St. Petersburg (RUS) in May of this year. It is important to mention that all EC members received the letters and essential emails exchanged with FIG and both federations, as well as the hearing reports submitted by 17 February. The EC members effectively discussed the issues based on the information distributed prior to arrival and presentations during the meeting.

31. On 1 March 2019, the FRBG filed a complaint with the Compliance Section of the Gymnastics Ethics Foundation (“GEF”) in which it “formally denounce[d] the FIG Executive Committee decision due to (i) the unequal treatment the RBGF has received in the bidding process, (ii) the fact that rules are being interpreted which are unequivocal and therefore do in no way need to be interpreted, and (iii) the fact that FIG violates its own rules and statutes in allowing late bid applications to be admitted”. At the same time, the FRBG expressly indicated that nothing in that complaint should be interpreted as an acknowledgment that the GEF constitutes or could be considered as an internal “legal remedy”

within the meaning of Article R47 of the Code of Sports-related Arbitration (the “Code”).

32. On 4 March 2019, the GEF acknowledged receipt of the FRBG’s complaint and confirmed it would keep the FRBG informed of any action the GEF would, or wouldn’t, undertake in the matter.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

33. On 1 March 2019, the FRBG filed its statement of appeal with the Court of Arbitration for Sport (the “CAS”) against the FIG with respect to the Appealed Decision in accordance with Article R47 *et seq.* of the Code. In its statement of appeal, the FRBG nominated Mr Pierre Muller as arbitrator. Included therewith was a request for an expedited procedure in accordance with Article R52 of the Code.
34. On 7 March 2019, the CAS Court Office noted that the appeal was not directed at the JGA, which was however designated as an interested party. The CAS Court Office informed the JGA that if it intended to participate as a party in the present arbitration, it should file an application to this effect, in accordance with Article R41.3 of the Code.
35. On 15 March 2019, the JGA filed a request for intervention. On agreement of the Parties, the JGA was thereafter permitted to intervene as a co-Respondent in this case.
36. On 19 March 2019, the CAS Court Office invited the Parties to submit an agreed procedural calendar and informed them that in the absence of an agreement, no expedited procedure could be implemented.
37. On 21 March 2019, the Parties filed with the CAS Court Office an agreed-upon procedural calendar and directions according to which Mr Pierre Muller and Mr Philippe Sands would act as co-arbitrators, and the President of the CAS Appeals Arbitration Division would appoint the chairman of the Panel.
38. On 22 March 2019, the CAS Court Office duly noted the agreed procedural calendar, acknowledging that the Parties waived an oral hearing and requested an award to be rendered on the sole basis of the Parties’ written submissions. Therefore, the Parties decided not to hold a hearing in accordance with Article R57 of the Code.
39. On 22 March 2019, the FRBG filed its appeal brief in accordance with Article R51 of the Code.
40. On 25 March 2019, the CAS Court Office accepted the Parties’ procedural agreement, except for the date of the issuance of the award, which could only be confirmed once the Panel was constituted.
41. On 9 April 2019, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of the Panel as follows:

President: Prof. Luigi Fumagalli, Attorney-at-Law in Milan, Italy

Arbitrators: Mr Pierre Muller, former Judge in Lausanne, Switzerland

Mr Philippe Sands QC, Barrister in London, United Kingdom.

42. On that same date, the Parties were advised that Me Marianne Saroli, attorney-at-law in Montreal, Canada was appointed *ad hoc* clerk in this procedure.
43. On 11 April 2019, the FIG and the JGA filed their respective answers in accordance with Article R55 of the Code.
44. On 17 April 2019, the FRBG filed a reply in accordance with the agreed upon procedural calendar.
45. On 22 April 2019, the FIG and the JGA filed their respective rejoinders in accordance with the procedural calendar agreed upon by the Parties.
46. On 25 April 2019, the operative part of this award was issued.

IV. PARTIES SUBMISSIONS

A. The Position of the Appellant

47. In its statement of appeal and appeal brief, the Appellant sought the following relief:
 - (i) *Setting aside the Decision under Appeal.*
 - (ii) *Ruling that the Japanese Gymnastics Association's bid to host the 2023 ART World Championships was belated and cannot be considered by the FIG Council.*
 - (iii) *Awarding any other remedy the CAS deems appropriate.*
 - (iv) *Ordering the Fédération Internationale de Gymnastique and/or the Japanese Gymnastics Association to pay the arbitration costs of the present proceedings, if any.*
 - (v) *Ordering the Fédération Internationale de Gymnastique and/or the Japanese Gymnastics Association to pay a contribution to the Fédération Royale Belge de Gymnastique's legal fees and expenses associated with these proceedings.*
48. In essence, the Appellant's position is that the JGA's application of 21 December 2018 did not comply with the FIG's formal requirements for the submission of a bid to host the 2023 ART World Championships. According to the Appellant, on the basis of: (i) the express terms of the Bid Contract; (ii) the FIG's conduct; (iii) the JGA's own bid documents; and (iv) Swiss law principles and common sense, the only possible meaning of "mid-December 2018", as the deadline

for the filing of bids, is “15 December 2018”. In addition, by taking the Decision under Appeal, the FIG committed a breach of the principle of equal treatment. Therefore, the Appellant submits that its bid to organize the 2023 ART World Championships is the only procedurally correct bid and that it should thus be the only eligible candidate to host this FIG event.

49. The Appellant’s submissions in that regard may be summarized as follows:

a) The applicable deadline

- The FIG initially set out a 30 November 2018 deadline to all the member federations to submit their applications for the 2023 ART World Championships.
- Article 1.d) of the Bid Contract, however, stipulates that “*the Application File must be submitted as soon as possible but by no later than mid-December*”.
- Mr Gueisbuhler, on behalf of the FIG, refused to grant the FRBG an extension of its deadline and expressly stated that the time limit was 15 December 2018.
- The JGA’s completed Bid Contract states on its first page that the submittal date for 2023 ART World Championships is 15 December 2018. The same information appears on the last page of the JGA’s bid contract.
- The FRBG’s interpretation is consistent with Swiss law. Article 76(2) of the Swiss Code of Obligations (the “SCO”) explains that “*a time limit expressed as the middle of the month means the fifteenth day of that month*”. Moreover, Article 77(1)(3) of the SCO stipulates that “*the term ‘half-month’ has the same meaning as a time limit of fifteen days*”. Furthermore, legal scholars are unanimous that “*the middle of the month*” equals to the fifteenth day of said month.
- The JGA is wrong to assert that “*the beginning of December*” means “*the first week of December*”, “*the end of December*” means “*the last week of December*” and “*the middle of December*” means “*every day in between*”. This interpretation is contrary to Swiss law and practice. Since the JGA submitted its application on 21 December 2018, its bid was late.
- Article 11.12.1 of the FIG Statutes provides that “*any late candidature for the elections and/or organization of a FIG event (...) shall not be admitted*”.
- With respect to applications deadlines, it appears that prior to 2012, it was possible, in certain circumstances, to file late candidatures. However, in 2012, the FIG adopted a new approach in this regard. During the 79th General Assembly on 25, 26 and 27 October 2012 in Cancun, the FIG made the following comments with respect to late applications:

A thorough study of the FIG Statutes had made it evident to him that this document did not provide any possibility of submitting late applications. Like the IOC the FIG is an association governed by Swiss law. Swiss law is extremely liberal, requiring only that statutes be established by the general assembly. Mr Denis Oswald’s legal opinion corroborated this fact.

Mr Gossin explained that since it had always been possible in the past to proceed in that way, late applications would still be accepted this year. However this would no longer be possible in the future. If the delegates deem this rule unsuitable, the Statutes would have to be modified accordingly.

- Thereafter, at the 80th General Assembly held on 29 and 30 October 2014 in Tashkent, the Assembly decided to modify the Statutes regarding late candidatures. Section 11.12.1 of the FIG's 80th General Assembly minutes provides as follows:

11.12.1 – Agenda of the Congress

According to Mr Gossin's remark concerning last minute additions.

ROU: Up to now a late candidature application could be accepted with a 2/3 majority at the opening session of the Congress. Perhaps the requirements for a candidature and for a proposal should be specified separately.

Norbert Bueche replied that an identical text will be added under the candidature item.

Decision: The assembly tacitly approved the proposal along with the suggested addition.

b) Equal treatment

- Under the Swiss law of association, the principle of equal treatment is always applicable as a general principle, and, therefore, the members of an association should all be treated equally.
- According to the FIG, this principle shall be applied with respect to the bidding process for the organisation of FIG events.
- On 15 November 2018, the FRBG requested an extension of the mid-December deadline to submit its application due to political reasons in Belgium. However, on 27 November 2018, the FIG replied that an extension was not possible, because "*several member federations have shown interest to organize the 2023 Artistic Gymnastics World Championships*" and "*we have to treat them equally*".
- When the FIG later accepted that the expression "*mid-December*" permitted the JGA to file an application after 15 December 2018, it violated the fundamental principle of equal treatment.
- The FIG cannot refuse to extend a deadline to the FRBG, based on the principle of equal treatment between the member federations, and then ignore the same principle a month later when it came to the Japanese bid. Hence, not only it is possible that the JGA had knowledge of the Belgian bid and thus could amend its own bid accordingly, but the JGA benefitted from the extension and was able to work on its bid for six more days, whereas the FRBG was informed that the 15 December 2018 was a hard deadline.

- The FRBG further notes that the FIG's letter of 4 February 2019 (*i.e.*, in which the Appellant was informed "*the final decision regarding which federation(s) can make a presentation for their bid*") would be taken by the EC at its 19-20 February 2019 meeting in Lausanne) specified that "*the FIG President [would] not attend the section of the EC Meeting where this matter is discussed to avoid any potential conflict of interest*", the FIG President, Mr Morinari Watanabe, being Japanese.

c) On reply to FIG and JGA answers

- Contrary to the JGA's assertion, the deadline of "*mid-December*" was not misunderstood by the JGA or open to interpretation as deadlines refer to a specific moment and not to a range of time. It is inappropriate for the FIG, as a sports-governing body, to endorse the JGA's factual position.
- As opposed to the FIG's contention, Article 76 of the SCO not only applies to contractual obligations, but also to any other legal acts.
- In any event, the Bid Contract is an actual contract under which bidding federations choose to be bound by, and therefore they are required to comply with, the deadlines outlined in it.
- The FIG is also bound by the principle of *non venire contra factum proprium*, which provides that when the conduct of one party has led to legitimate expectations on the part of the second party, the first party is barred from changing its course of actions to the detriment of the second party. However, the FIG disregarded such principle.
- While Swiss association law allows a federation to enact a rule that departs from the fundamental principle of Article 76 of the SCO, the FIG failed to do so. Hence, Article 76 of the SCO is applicable and "*mid-December*" means 15 December 2018. Moreover, Article 18 of the Bid Contract provides that "*this Contract shall be governed by and interpreted exclusively in accordance with the Laws of Switzerland*".
- The FIG claims that it was competent to flexibly determine or extend the application deadline as it "*deemed appropriate*" and it deviated from Article 13.1.1 of the FIG Statutes when expressly laying down the "*mid-December*" date in the Bid Contract. According to the FRBG, the FIG exercised its discretion by superseding the five-month limit and setting out a "*mid-December*" deadline in the Bid Contract. Therefore, there was no further discretion to be exercised by the FIG afterwards. Claiming the contrary would contradict the approach taken by the FIG when it rejected the FRBG's extension request.
- Nevertheless, Article 13.1.1 of the FIG Statutes did not play any role in the FIG's decision to admit the JGA's application, as it appears from the minutes of the EC's meeting of 19 and 20 February 2019. In this respect, the FRBG highlights that the only relevant question raised during this meeting concerned whether the term "*mid-December*" was open to

interpretation or not. The FIG made further references to Article 13.1.1 in its answer as an *ex post facto* attempt to justify its decision to accept the JGA's bid.

- Moreover, Article 13.1.1 of the FIG Statutes became irrelevant from the moment a specific deadline was expressly specified in the Bid Contract. In this context, FIG is incorrect to assert that "*no protest or appeal was filed against the decision of the FIG to set the application date different from the standard in Article 13.1.1*". If the FRBG had been aware that the FIG intended to provide different deadlines for different member federations, or to accept applications after the expressly specified deadline, it would most certainly have objected like it did when it received the FIG's letter of 17 January 2019.
- The FIG ignored the sequence of events and misrepresented the facts when it stated that the JGA was the only one to double-check the application date. Such statement is wrong as it was rather the FRBG, not the JGA, that double-checked the deadline after receiving the Bid Contract, which contained a deadline that was inconsistent with the one provided in the official communication of 22 June 2018.
- Finally, and with respect to the standing to sue, the FRBG admits that it did not lose its right to present its bid to the Council. However, the FRBG has a right to present its bid only against candidates that are subject to the same procedural rules. Indeed, the FRBG went from being the only candidate holding the right to present its bid to competing against a federation that enjoyed six more days to prepare its bid and whose nationality is the same as the FIG's President.
- Unless there is evidence that the FRBG would violate the FIG Statutes, the FIG should award the organisation of the 2023 ART World Championships to the FRBG. In this respect, Article 34.5 of the FIG Statutes provides as follows: "*[t]he organisation of events is entrusted, at an appropriate time, to Federations which fully guarantee that the Statutes and Regulations of the FIG will be observed together with the terms of the contract which they are obliged to enter into with the FIG. The preparation and conduct of the competitive programme is under the control of the FIG*".
- The FRBG has a right to be the only federation allowed to present its bid to the Council, which is, notably, the only remedy the FRBG is requesting in this arbitration.

B. The Position of the First Respondent

50. In its answer, the First Respondent sought the following relief:

- (1) *The Appeal shall be dismissed to the extent it is admissible.*
- (2) *The costs of this arbitration shall be borne by the Appellant.*
- (3) *The Appellant shall pay a fair contribution to the FIG's legal costs and expenses related to these proceedings.*

51. The First Respondent, in other words, requests the CAS to dismiss the appeal. According to the First Respondent, in fact, the EC exercised its power and discretion in a legally correct, responsible and fair manner when it concluded to admit both the Appellant and the Second Respondent to the presentation of their bids to the Council. In addition, according to the First Respondent: (a) there is no “right” to be awarded a FIG event, even if the Appellant would be the only bidder; (b) the FIG is competent to organize the bidding process for hosting the 2023 ART World Championships and to specify the time limits for the submission of the applications; (c) the relevant time limit of “*mid-December 2018*” has been met by both applicants; (d) the FIG has the responsibility and the competence to decide on the admission of candidates for the organization of the 2023 ART World Championships, and (e) the FIG has not disadvantaged the Appellant, since its bid was accepted and would be presented to the Council on 4 May 2019 for decision.
52. The First Respondent’s submissions in that regard may be summarized as follows:
 - a) The FRBG’s legal interest
 - The FIG recognizes that a rejected bidder would be entitled to appeal against an exclusion from the bidding process, but it contests that an accepted bidder has a right to appeal under Article R47 of the Code, since the admission of both candidates to the presentation of the bids does not prejudice the Council’s award of the 2023 ART World Championships.
 - In accordance with Article 13.4(h) of the FIG Statutes, the FIG’s Council is competent to decide the federation to be awarded the organisation of the 2023 ART World Championships.
 - Article 13.1.1 of the FIG Statutes provides the framework of the application process and namely refers to Article 11.16.3, according to which all proposals must be put to vote regardless of the number of applicants. In this context, the Council must vote even if there is only one single candidate. The sole applicant’s bid must receive a simple majority of the votes cast to be elected as the host for the 2023 ART World Championships.
 - If no candidate can convince a simple majority of the Council members, the application process must be reopened, and all member federations have another chance to submit a new bid. Therefore, an applicant has no right to organise a FIG event, even if it represents the sole candidate.
 - The FRBG was not disadvantaged by the admission of the JGA’s bid. Consequently, the FRBG has no legitimate legal interest in the case.
 - b) The applicable deadline
 - There was no strict time limit of 15 December 2018 for the submission of the bids. When the FRBG requested to postpone the application date, the then Secretary General Mr

Gueisbuhler sent a written response in which he referred to the date of 15 December 2018. However, this date was never communicated to the JGA or any other member federation. As a result, this cannot be held against the Appealed Decision and the JGA.

- Article 13.1.1 of the FIG Statutes stipulates a time limit for the submission of the applications, which corresponds to five months prior to the Council meeting. The five months' notice shall permit the Council enough time to study the applications prior to the meeting whereby the decision will be taken. In this context and since the Council meeting was planned from 3 until 5 May 2019, the statutory time limit would have expired at the beginning of December 2018.
- The FIG made the template bidding documents available (*i.e.*, the Bid Contract) in Spring 2018 to the member federations. Upon request, the FIG sent the Bid Contract to the interested federations, which stated that the applications had to be filed by "*mid-December 2018*". On 28 March 2018, the JGA requested and received the Bid Contract whereas the FRBG requested it on 3 September 2018 and received it the following day.
- Pursuant to Article 13.1.1 of the FIG Statutes, the FIG informed the member federations on 22 June 2018 that the candidatures should be submitted no later than 30 November 2018.
- The FRBG and the JGA relied on the information from the Bid Contract and not the official communication of 22 June 2018. Only the JGA double-checked the application date with the FIG.
- The FRBG was aware of the time-limit of "*mid-December 2018*" since it asked for a postponement of the application date until "*mid-January 2019*" because of domestic reasons. In response to this enquiry, Mr Gueisbuhler replied that the applications should be submitted by 15 December 2018 and consequently, the FRBG understood that "*mid-December 2018*" meant the exact date of 15 December 2018. On the other hand, the JGA understood "*mid-December 2018*" in good faith as a period of time in the middle of December 2018.
- Both the FRBG and the JGA submitted their applications on time according to their own understandings of the deadline.
- When interpreting a legal provision, the Swiss Federal Tribunal's consistent jurisprudence established that Swiss law does not protect excessive formalism.
- The FIG underlines that the date of submission was already moved from the beginning of December to the middle of the month and that the five months' notice had no other purpose but to make sure that the Council had enough time to study the applications.

- Therefore, “*mid-December*” means the middle part of December, which is a certain time period and not a single date. In this context, 21 December can certainly be counted to the period of “*mid-December*” as it was also understood in good faith by the EC.
- In addition, the 15 December 2018 was a Saturday and cannot serve as a submission date according to procedural law. There is no time limit to determine the applicable deadline when it expires on a weekend or a public holiday.
- Contrary to the FRBG’s assertion, Article 76 of the SCO only concerns the time of performance of a contractual obligation. Hence, Article 76 of the SCO has no relevance in the present context as it serves a completely different purpose.

c) The FIG’s competence to determine the application deadline

- There is no law requiring an association or a federation to draft its internal rules pursuant to the Swiss Civil Code (the “SCC”) or the SCO. In fact, Articles 60 to 79 of the SCC, which define the scope and meaning of the regulatory power of associations and federations, grant them a wide discretion in this respect.
- While the FIG deviated from Article 13.1.1 of the FIG Statutes when it determined the application deadline, such decision was not challenged by the FRBG or any other member federation. Hence, all member federations recognised that Article 13.1.1 was not subject to a strict application as the FIG still had a certain margin of discretion. Moreover, all member federations accepted that the FIG had power to set a specific deadline to submit their application and to change it in the course of the bidding process if deemed necessary. They did not consider a precise date to be crucial for the validity of the bid.
- As a result, the application deadline was not a mandatory rule, but rather an organisational one, subject to changes when deemed necessary by the FIG.
- It is the EC’s statutory competence to decide whether it could accept the application of the JGA under the circumstances and submit it to the Council for vote and this decision does not constitute a discrimination of the Appellant.

c) On rejoinder to FRBG’s reply

- FIG is not defending one federation over another or endorsing the JGA’s position. Rather, it is defending the Appealed Decision, which admitted the presentation of the two bids before the Council. Indeed, the FIG never denied the problem of contradicting communications about the application date and always acted in full transparency.
- Contrary to what the FRBG insinuates, the Appealed Decision has nothing to do with the FIG President’s nationality.

- The date of 15 December 2018 was never communicated to the FIG member federations or to the JGA, since the only reference to 15 December 2018 was in Mr Gueisbuhler's email of 27 November 2018 to the FRBG.
- The FRBG failed to demonstrate it understood "*mid-December*" as the exact date of 15 December 2018 prior to the receipt of Mr Gueisbuhler's email on 27 November 2018.
- In its email of 5 October 2018, the FRBG did not refer to the "discrepancy" between FIG's official communication of 22 June 2018 and the Bid Contract.
- Contrary to the FRBG's assertion, the correspondence between the FIG and the JGA dated of 29 March 2018 demonstrates that it is the JGA who double-checked the deadline after having received the Bid Contract.
- The strict application of the FIG Statutes would have led to the conclusion that both bids were submitted too late, namely after the statutory deadline of 5 months prior to the beginning of the Council meeting of 3-5 May 2019. The same goes with respect to the official communication of 22 June 2018 referring to an application date of 30 November 2018.
- Contrary to the FRBG's allegations, the blank template form of the Bid Contract is not a contract, but a questionnaire qualified as a tender invitation, which becomes an offer once it is completed, then a contract only upon review, acceptance and countersignature by the FIG. Without the FIG's acceptance, only the legal provisions about tenders and offers apply (in particular Article 3 of the SCO) but not those relating to the performance of contracts. Hence, the FIG has discretion to accept a late application.
- Based on the plain wording of Article 13.1.1 of the FIG Statutes, the EC could have excluded both bids, but it applied its discretion to accept them for the following reasons:
 - A strict application of the 5 months statutory deadline could have led to a delay in the bidding process;
 - "*Mid-December*" means a certain period and is not a synonym for 15 December;
 - 21 December can be understood in good faith as being the middle period of December;
 - Provided an alternative if a candidate were to be excluded from the bidding process, notably on the basis of political or financial reasons;
 - Offered the Council a real choice as it was not prejudiced by a prior decision of the EC.
- The FRBG does not suffer a disadvantage from the JGA's invitation to present its bid to the Council as the Appealed Decision was only a preliminary decision, a sole applicant's

bid is always subject to vote and the awarding of the 2023 ART World Championships is based on the concept of a competition among candidates to ensure the best possible quality of the event. If being the only candidate may be profitable, it is not an enforceable right.

- While the FRBG claims that it was deprived because the JGA had six more days to prepare its application, the FIG announced the opening of the bidding process in the beginning of 2018. The JGA expressed its interest on 28 March 2018 whereas the FRBG requested the Bid Contract in the beginning of September 2018. Hence, the FRBG had plenty of time to prepare its application and besides, it failed to substantiate how those six additional days would have been beneficial to its candidacy.

C. The Position of the Second Respondent

53. In its answer, the Second Respondent sought the following relief:

- a. *declaration that the Decision Under Appeal shall not be set aside; and*
- b. *orders that:*
 - i. *the FRBG to pay the arbitration costs of the Present Arbitration; and*
 - ii. *the FRBG to pay the JGA's legal fees and expenses in relation to the Present Arbitration.*

54. In support of its requests the Second Respondent submits, in essence, that: (i) the meaning of “mid-December” is open to interpretation and, as a result, “15 December” is not the only possible meaning of “mid-December”, and (ii) even if the Panel finds that “mid-December 2018” does mean “15 December 2018”, the JGA’s bid should not be discarded, because this would constitute a breach of the principle of equal treatment.

55. More specifically, the Second Respondent’s submissions may be summarized as follows:

- a) The FRBG’s legal interest
 - The FRBG has no positive right to challenge the Appealed Decision.
 - Accepting the JGA’s application does not affect the FRBG’s opportunity to present its bid and have it considered on its merits, and the FRBG would still have a chance of winning the right to host the 2023 ART World Championships.
 - On the other hand, rejecting the JGA’s application would cause it serious detriment as it would lose the chance to present its bid. In addition, all the time devoted by the JGA to, and the cost incurred in good faith for, the preparation of its bid, reasonably relying on the FIG’s acceptance, will have been wasted.

- Pursuant to Article 11.16.3 of the FIG Statutes, “*all proposals contained in the agenda must be put to the vote (...)*”, meaning any bids must be put to a vote at the 2019 FIG Council. Even if the FRBG was the only bidder, it would not be automatically awarded the 2023 ART World Championships, as it would still be within the FIG’s power to reopen the bid process.
- b) The applicable deadline
- Contrary to the Appellant’s assertion, it is not clear that the meaning of “*mid-December 2018*” corresponds to 15 December 2018. The term “*mid-December*” is not precise enough for all federations to universally understand “*15 December*” to be the only possible date that may reasonably be interpreted as “*mid-December*”. That term, in fact, can also mean “*around the center of December*”.
 - The term “*mid-December*” should be interpreted in a manner consistent with common usage. Various member federations, acting reasonably, may come to different conclusions as to the meaning of “*mid-December*”. For instance, the Japanese equivalent to “*middle*” (“*nakaba*”) means in Kojien Dictionary, 7th Ed “*the central section of a place or in time*”. Hence, a common meaning of the term “*mid-December*” in Japan would be “*around the center of December*”, not “*15 December*”.
 - Since member federations are located all over the world, the FIG should strive to use terms that are clear and whose meanings are commonly understood. Where doubt over the meaning of a term exists, it should be interpreted in a way consistent with its plain English meaning and common sense. Thus, the plain English meaning of “*mid-December*” cannot only mean “*15 December*”.
 - In accordance with the Concise Oxford Dictionary of Current English, 8th Ed, “*mid*” refers to “*the middle of*”, which means “*the point at or around the centre of a period of time, activity, etc.*”. Therefore, a specific point in time is not the only possible meaning of term “*middle*”. Both words can describe a precise point or a range. For instance, “*mid-afternoon*”; “*mid-month*”; “*mid-year*”; or “*mid-19th century*” all refer to a range in time, not to a precise point.
 - In the Collins Cobuild Advanced Dictionary, the term “*the middle of (...) period of time*” means “*the part that comes after the first part and before the last part*”. Consequently, the 15th day of a month is not the only meaning commonly assigned to the “*middle of a month*”.
 - If the FIG had intended to apply the narrow definition of “*mid-(month)*” under Swiss law, it should have explicitly stated in the Bid Contract template that the deadline was “*15 December*”, but it did not.
 - On 29 March 2018, the JGA asked the FIG to confirm the deadline for filing the application by sending an email that stated: “*May we understand that the application files have to be submitted to the FIG Office by the middle to (...) December 2018 and the Championships will be allocated by the 2019 FIG Council?*”. On the same day, the FIG replied: “*This is correct*”.

- The FIG did not provide the JGA with a specific date to submit its application. Therefore, the JGA reasonably believed that the JGA had to submit its application by the “*middle of December*”. By accepting the JGA’s application, the FIG confirmed that the JGA’s understanding was correct.
- The date of 15 December on the JGA’s completed Bid Contract is just a coincidence as it was the date the JGA’s administrative staff inserted as a tentative date by which the JGA internally aimed to fill out the Bid Contract.

c) Equal treatment

- Different deadlines were communicated to the FRBG and to the JGA. The FRBG was instructed to submit its application on or before 15 December, but the JGA was not. However, both federations complied with the deadlines provided by the FIG, *i.e.* on or before 15 December for the FRBG and “*mid-December*” for the JGA.
- The FIG was fully aware that the JGA was also preparing its application when it instructed the FRBG about the 15 December deadline. Nevertheless, the JGA was not informed of a specific date to submit its bid.
- The JGA filed its application reasonably relying on the instructions it had received from the FIG. If the FIG had instructed the JGA to submit its application on or before 15 December, then the JGA would have done so.
- Insisting that the JGA should comply with the deadline that was exclusively communicated to the FRBG would be unfair and result in unequal treatment.

d) On rejoinder to FRBG’s reply

- The EC also interpreted the meaning of “*mid-December*” in the same way as the JGA did. The EC, as recorded in the minutes from its meeting of 19 and 20 February 2019, confirmed by 12 votes to 7 that the term “*mid-December*” is open to interpretation. Since the EC is comprised of individuals from many countries, this supports the JGA’s position that the term “*mid-December*” used by an international organization is not commonly understood to be inherently limited to a precise date.
- Moreover, the EC concluded that both bids from the FRBG and the JGA should be submitted to the FIG Council in May 2019, demonstrating that 21 December falls within the meaning of the “*mid-December*”.
- Limiting the meaning of “*mid-December*” to the 15th was probably not the FIG’s intention since it did not indicate “*15 December*” as the deadline in the Bid Contract.
- As opposed to the FRBG’s assertions, the JGA did contact the FIG regarding the deadline immediately after it received the Bid Contract template on 28 March 2018.

- The JGA received no further communications from the FIG in relation to the deadline for the submission of the applications after the FIG confirmed the time limit as the “*middle to (...) December*” on 29 March 2018.
- In addition, there was no document, material, communication or other evidence about the deadline which was available to the JGA at the time which indicated that “*mid-December*” exclusively meant 15 December. The sole exception to this is one email between the FIG and the FRBG on 27 November 2018, which referred to 15 December as the deadline. However, this email was not shared with the JGA nor was the information contained in the email communicated to the JGA in any other way.
- The JGA had adequate time to complete its application after receiving the Bid Contract on 28 March 2018. The extension of some days provided it no benefit.

V. JURISDICTION

56. Article R47 of the Code provides 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 statutes or regulations of the said sports-related body.

57. Pursuant to Article 43.2 of the FIG Statutes, “*in so far as they come under the civil law*” and are not “*of sports nature*”, decisions adopted by the FIG bodies can be exclusively disputed to the CAS. Article 43.2 provides as follows:

Art. 43.2 Code of Discipline and legal procedures

In accordance with art. 13.4 of the Statutes, the Council establishes a Code of Discipline notably describing the disciplinary procedure, the questions of regulation and the disciplinary rules applicable within the framework of the FIG. The Disciplinary Commission is the only authority generally qualified to impose disciplinary measures, except however for cases provide for in art. 11.12.3, 13.4 and 43.3 a) of the Statutes, special provisions provided for by the FIG regulations for the competitions and, concerning appeals, the competence of the FIG appeal Tribunal.

The Disciplinary Commission is the FIG investigation authority as regards disciplinary action. In so far as they come under the civil law, decisions of the FIG bodies (of proprietary nature) can be exclusively disputed to the Court of Arbitration for Sport “CAS” in Lausanne (Switzerland). The legal ordinary procedures are excluded. The decisions which are of sports nature cannot be disputed. Complaints to the Court of Arbitration for Sport can be addressed only when the internal FIG appeal procedures were exhausted. An appeal to the Court of Arbitration for Sport does not have a suspension effect, except if this Authority orders it. The provisions of the sports’ code of arbitration of the CAS apply to this authority. Special provisions apply for doping cases.

58. In this case, the dispute concerns a decision adopted by a FIG body (the EC) and is not of

“sports nature” but refers to the bidding process for the organization of an event. In this regard, Article 43.2 of the FIG Statutes expressly provides for an appeal to CAS.

59. Moreover, the Parties referred in their written submissions to the Bid Contract, which stipulates at Article 18 (“*Governing Law And Arbitration*”) provides where relevant as follows:

All disputes arising out of or in connection with the present agreement, including disputes on its conclusion, binding effect, amendment and termination shall be resolved, to the exclusion of the ordinary courts by an Arbitral Tribunal constituted in accordance with the Statutes and Regulation of the Court of Arbitration of Sport in Lausanne, Switzerland. The parties hereby undertake to comply with the said Statutes and Regulation, and to enforce in good faith the award to be rendered.

60. In addition, no Party objected to the CAS jurisdiction in its written submissions or otherwise, also with respect to the exhaustion of the internal remedies.
61. Accordingly, the Panel confirms that CAS has jurisdiction to hear this matter.

VI. ADMISSIBILITY

62. Article R49 of the 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. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

63. Pursuant to Article 20 of the FIG Statutes, the time limit to appeal shall be 21 days “*after the receipt of the decision of the Appeal Tribunal*”.
64. The Appealed Decision was rendered and notified to the Parties on 20 February 2019. The statement of appeal was filed on 1 March 2019, and complied with the formal requirements set by Article R48 of the Code.
65. It follows, therefore, that the appeal is admissible.

VII. APPLICABLE LAW

66. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

67. In their written submissions, the Parties extensively relied on and referred to the 2017 FIG Statutes in force at the time the Appealed Decision was rendered, as well as to the Bid Contract. Subsidiarily, the Parties referred to the applicability of Swiss law, namely because the FIG is domiciled in Switzerland and is organized in accordance with the SCC. Moreover, Article 18 of the Bid Contract provides where relevant that:

This Contract shall be governed by and interpreted exclusively in accordance with the Laws of Switzerland.

68. The Panel finds no reason to dispute the applicability of law chosen by the Parties in this respect. As a result, the Panel shall apply in this case the FIG rules and regulations, and subsidiarily Swiss law.

VIII. MERITS

69. The object of the dispute is the Appealed Decision, which allowed both the FRBG and the JGA to present their bids for the 2023 ART World Championships to the FIG Council in May 2019. The FRBG, in fact, wants the Appealed Decision to be set aside and the Panel to rule that the JGA's bid to host the 2023 ART World Championships was belated and cannot be considered by the FIG Council. On the other hand, the FIG requests the present appeal to be dismissed, while the JGA seeks the confirmation of its bid.
70. In light of the Parties' submissions, there are several issues that the Panel must examine: Does the FRBG, as an accepted bidder for the 2023 ART World Championships, have standing to bring this claim before the CAS? What was the deadline to submit an application? Was the application filed by the JGA on 21 December 2018 timely? If it was not, what is the consequence to be drawn from such finding?
71. The Panel addresses those issues separately and in sequence.

A. Does the FRBG have standing to sue?

72. The Respondents deny the existence of a "positive right" which the Appellant might invoke to challenge the Appealed Decision. The FRBG, as an accepted bidder for the 2023 ART World Championships, would not have standing to appeal to the CAS, because the admission of the applications filed by both candidates (*i.e.*, FRBG and JGA) does not prejudice the FRBG's rights to present a bid, or the Council's ultimate awarding of the 2023 ART World Championships. In other words, and according to the FIG, only a rejected bidder would be entitled to appeal against a decision excluding it from the bidding process. Hence, because the FRBG is an accepted bidder and is able to present its bid to the Council, it has no legal standing to bring this claim. In addition, even if the bid of the Second Respondent was discarded, the Appellant's bid would still be put to a vote, and therefore the Appellant's bid would not be automatically accepted.
73. On the other hand, the FRBG asserts that, even if it has not lost its right to present its bid to

the Council, it has a legal right to present its bid only against compliant candidates (*i.e.*, those candidates that complied with the same procedural rules and filed timely bids): it should not have to compete against unqualified bidders and has an unequivocal right to protect its legal interest in this regard. Thus, according to the Appellant, its legal position was affected by the admission of the bid filed by the JGA.

74. The Tribunal underlines that standing to sue (or to appeal) is attributed to a party which can validly invoke the rights which it puts forward, on the basis that it has a legally protectable and tangible interest at stake in litigation. This corresponds to the Swiss legal notions of “*légitimation active*” or “*qualité pour agir*”, as confirmed by the case-law of the Swiss Federal Tribunal (decision of the Swiss Federal Tribunal of 3 April 2002, in the case 4P.282/2001, §4b).
75. According to the CAS jurisprudence, parties which have a direct, personal and actual interest are considered to have legal standing to appeal to the CAS. Such an interest can exist not only when a party is the addressee of a measure, but also when it is a directly affected third party. The case-law provides that “*this is consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake, may bring a claim, even if they are not addressees of the measure being challenged*” (CAS 2016/A/4924 & 4943, §85).
76. There is a category of third party applicants who, in principle, do not have standing, namely those deemed “indirectly affected” by a measure. As regards the differentiation of directly affected parties from indirectly affected parties, the CAS jurisprudence displays a “*common thread*”, as restated in numerous CAS awards: “*Where the third party is affected because he is a competitor of the addressee of the measure/decision taken by the association, – unless otherwise provided by the association’s rules and regulations – the third party does not have a right of appeal. Effects that ensue only from competition are only indirect consequences of the association’s decision/measure. If, however, the association disposes in its measure/decision not only of the rights of the addressee, but also of those of the third party, the latter is directly affected with the consequence that the third party then also has a right of appeal*” (among many other cases: CAS 2008/A/1583 & 1584, §31; CAS 2016/A/4924 & 4923, §86). The correct approach when dealing with standing is to deem mere competitors indirectly affected –and thus exclude them from standing – when the measure does not have tangible and immediate direct consequences for them beyond its generic influence on the competitive relationship as such (CAS 2016/A/4924 & 4923).
77. In that respect, the Panel underlines that a bidding process, however competitive in nature, might be different for the conduct of a plain sporting competition, where the exclusion of a competitor might be irrelevant to the other participants in the event. In a bidding process, procedural fairness and equality of treatment are of the essence, since, *inter alia*, the adjudication might depend also on a comparison between the different bids. Therefore, a decision as to the admission of other bidders appears to have tangible and immediate direct consequences for all of them.
78. In this case, the Parties have a legal interest in ensuring that the bid application standards, the FIG Statutes and the Bid Contract are all applied uniformly so as to create a level playing field

for all FIG members (and competitors) in the sport. The Panel is mindful that there is an interest in the law that everyone competes under the same rules. Sport federations must comply with certain basic principles of procedural fairness towards its members while an international federation is required to exercise its normative discretion by adopting regulations in appropriate compliance with the formal procedures displayed in its own statutes. An international federation cannot simply disregard rules which bind it contractually to its member federations.

79. This said, the Panel notes that the existence of competing bids is normal in a sports environment, and underlines that the admission of a bid is only half the battle; the bidder must also secure a majority vote from the Council. Nevertheless, the Panel believes that the requirement of a level playing field is a *lex sportiva* principle to be respected by all sports governing bodies and protected by the CAS.
80. In view of the above, the Panel concludes that the Appellant has standing to bring this appeal as filed, insofar as it aims at protecting its right to ensure that the bidding process is conducted by applying the same rules to all bidders.

B. What was the deadline to submit an application?

81. The relevant rules concerning the submission of bids are generally set out in Articles 11.12.1 and 13.1.1 of the FIG Statutes, which provide so far as material as follows (emphasis added):

Art. 11.12.1 Compilation of agenda

The agenda of the Congress is prepared by the Executive Committee. It must be approved by an absolute majority of the delegates present. Any addition such as the presentation of a specific report or paper for which no vote is required shall be submitted to the Secretary General before the beginning of the Congress. It shall be added to the Agenda subject to the approval by the 2/3 majority. Any late candidature for the elections and/or organisation of an FIG event as well as any new proposed modification to the Statutes shall not be admitted (see art. 11.16.1 of the Statutes). This article applies also to the Council.

Art. 13.1.1 Proposals

The FIG affiliated Federations have the right to submit proposals and bids for the organisation of events (Council, World Championships and World Gymnaestrada / World Gym for Life Challenge) five (5) months before the opening of the Council meeting. These proposals will be dealt with in accordance with the provisions of art. 11.16.1, 11.16.2 and 11.16.3 of the current Statutes. [...].

82. The Panel recognizes that Articles 11.12.1 and 13.1.1 of the FIG Statutes are, generally speaking, clear on their face. Late candidatures for the organization for a FIG event shall not be admitted, and proposals for such event shall be filed 5 months before the Council meeting¹. However, the application of these Articles in the present circumstances, for a variety of reasons set out

¹ *In casu*, the Council meeting was planned for 3 until 5 May 2019

below, is unclear.

83. The Panel highlights the followings facts:

- On 28 March 2018, the JGA requested the FIG to provide it with the Bid Contract. The Bid Contract indicated that *“the Application File must be submitted as soon as possible but by no later than mid-December 2018”*.
- On 29 March 2018, the JGA asked the FIG to confirm that the application had to be submitted by the *“middle of December”*. According to the FIG, this was *“correct”*.
- On 22 June 2018, the FIG sent an official communication to its member federations, announcing that the 2023 ART World Championships would be allocated during the Council in May 2019 and that applications had to be filed *“as soon as possible, but not later than 30th November 2018”* while *“no late candidatures will be accepted”*.
- On 3 September 2018, the FRBG requested the FIG to send it the Bid Contract, and in response, the FIG stated: *“the Application File must be submitted as soon as possible but by no later than mid-December 2018”*.
- On 5 October 2018, the FRBG sent an email to the FIG, seeking confirmation about the deadline to submit its application. The FIG replied on that same date as follows: *“for 2023, the Application File must be submitted by no later than mid-December 2018 and a decision will be taken by FIG Council in May 2019”*.
- On 15 November 2018, the FRBG requested an extension of the deadline to submit its application until the end of January 2019.
- On 27 November 2018, Mr Gueisbuhler, Secretary General of the FIG, replied that *“only bids duly filled in received on or before 15th December 2018 (...) will be considered. (...) Should FIG not receive any bid at this deadline, FIG might consider fixing another deadline until which bids can be presented and will be dealt with by the Council”*.
- On 14 December 2018, the FRBG submitted its application.
- On 18 December 2018, the FIG confirmed that the FRBG was the only candidate to have submitted a bid for the 2023 ART World Championships.
- On 21 December 2018, the JGA submitted its application.

84. In consideration of the foregoing timeline, the Panel understands that the FIG provided its member federations with three different deadlines to submit their applications, namely:

- i. 5 months before the Council meeting, in accordance with Article 13.1.1 of the FIG Statutes;

- ii. no later than 30 November 2018, pursuant to the official communication of 22 June 2018; and
 - iii. by mid-December, according to the Bid Contract sent by the FIG to the JGA on 28 March 2018 and to the FRBG on 4 September 2018.
85. At the outset, the Panel considers that the deadline of 30 November 2018 set out in the official communication of 22 June 2018 seems, *prima facie*, consistent with the time limit laid out in Article 13.1.1. of the FIG Statutes, *i.e.* 5 months before the Council meeting of 3-5 May 2019. But the Panel's position in this respect is not dispositive of the dispute as identified by the Parties, which concerns the interpretation of "*mid-December*".
86. In this regard, the Panel recognizes the apparent inconsistency between the information provided to the FRBG and the JGA. It is undisputed that the blank Bid Contract sent to both federations by the FIG was framed on a substantially identical template. Hence, it is fair to presume that the FRBG and the JGA were generally aware that the Bid Contract needed to be filed "*no later than mid-December 2018*" on the basis of the FIG's explicit communication to both bidders.
87. In this framework, the Panel does not give decisive weight to the reference to the "*15 December 2018*" deadline contained in Mr Gueisbuhler's written response to the FRBG's postponement request, as this was part of an exchange of correspondence between the FRBG and the FIG only. Since the JGA was not involved in this exchange, the Panel considers that such date was of potential relevance only for the federation to whom it was addressed, *i.e.* the FRBG.
88. Therefore, on an objective assessment of the facts of this case, the Panel finds that the applicable deadline for any such bid was "*mid-December 2018*".

C. Was the JGA's application timely filed?

89. The above conclusion, however, does not dispose of the question of whether a bid submitted on 21 December 2018 was timely filed. *i.e.* of whether it was filed on or before "*mid-December*".
90. As a starting point to answer that question, the Panel observes that the Bid Contract did not contain any specific definition of the term "*mid-December*". It is noted, however, that Article 18 of the Bid Contract stipulated that "*this Contract shall be governed by and interpreted exclusively in accordance with the Laws of Switzerland*". Consequently, the Panel turns first to Swiss law for the determination of the meaning of the expression "*mid-December*".
91. In this respect, the FRBG contends that Articles 76 and 77 of the SCO provide the answer to the meaning of "*mid-December*". The FIG, however, rebuts that Article 76 cannot be applied to the present case, since it only concerns the time of performance of a contractual obligation. This issue was not addressed by the JGA.
92. Articles 76 and 77 of the SCO read as follows:

Article 76

¹ *A time limit expressed as the beginning or end of a month means the first or last day of the month respectively.*

² *A time limit expressed as the middle of the month means the fifteenth day of that month.*

Article 77

¹ *Where an obligation must be discharged or some other transaction accomplished within a certain time limit subsequent to conclusion of the contract, the time limit is defined as follows:*

1. *where the time limit is expressed as a number of days, performance falls due on the last thereof, not including the date on which the contract was concluded, and where the number stipulated is eight or fifteen days, this means not one or two weeks but a full eight or fifteen days;*
2. *where the time limit is expressed as a number of weeks, performance falls due in the last week of the period on the same day of the week as the one on which the contract was concluded;*
3. *where the time limit is expressed as a number of months or as a period comprising several months (a year, half-year or quarter), performance falls due in the last month of the period on the same day of the month as the one on which the contract was concluded or, where the last month of the period contains no such day, on the last day of that month. The term 'half-month' has the same meaning as a time limit of fifteen days; if the time limit is expressed as a period of one or more months plus one half-month, the fifteen days are counted last.*

² *Time limits are calculated in the same manner when stipulated as running from a date other than the date on which the contract was concluded.*

³ *Where an obligation must be discharged before a specified time limit, performance must occur before that time expires.*

93. In order to understand the scope of application of those provisions, the Panel remarks that Article 7 of the SCC provides that *"the general provisions of the Code of Obligations concerning the formation, performance and termination of contracts also apply to other civil law matters"*. The meaning of Article 7 is that all the general provisions of the SCO (e.g., Articles 68 to 113 of the SCO) are applicable to all the legal matters, regardless of whether they concern contracts, decisions or expressions of intent. Consequently, pursuant to Article 7 of the SCC, Articles 76 and 77 of the SCO apply to the associations governed by Articles 60 *et seq.* of the SCC.
94. The Panel, as a result, remarks that Articles 76 and 77 of the SCO are of great relevance for the purposes of the matter at hand. Having regard to these articles, the expression *"mid-December"*, properly to be interpreted as corresponding to the wording *"middle of the month"*, should mean the 15th day of the month of December.
95. The above conclusion is confirmed by a reference to a *"natural and ordinary meaning"* of the expression, understood in good faith in the context in which it occurs, and if the intention of

the draftsman (*i.e.*, the ruling body) is considered.

96. In ordinary English parlance, the term “*mid-December*” might normally be interpreted as referring to a period of time, rather than a single date. Early December might refer to 1-10 December, while the middle of December might include 11-20 December (*i.e.*, a period of time centred around 15 December) and late December concerns 21-31 December. Therefore, on this basis too, 21 December would not be understood as “*mid-December*”.
97. In addition, the Panel notes the FIG’s correspondence of 18 December 2018, which confirmed that the FRBG was the only candidate to have submitted a bid for the 2023 ART World Championships. From this correspondence, the Panel has no doubt that 15 December was the relevant deadline in the mind of the FIG.
98. Furthermore, the Panel observes that the JGA’s completed Bid Contract mentioned “*submittal date: December 15, 2018*” on its first page and “*date: 15 December, 2018*” on its last page, even though the JGA submitted its bid only on 21 December 2018. Consequently, the Panel is of the opinion that also the JGA generally understood that 15 December was the submission date, otherwise identifying such a date would be highly coincidental.
99. In summary, even if the Panel were to disregard the application of Swiss law to the present case, the application of ordinary English parlance, as also understood by the FIG and the JGA, would not appear to allow the interpretation of “*mid-December*” to support the conclusion that by filing a bid on 21 December 2018, the JGA filed it by “*mid-December 2018*”.
100. Contrary to this conclusion, it is not possible to invoke the application of the “equality of treatment” principle. Such principle, indeed, has been invoked, even though for opposite purposes, by the Appellant and the Second Respondent, and this very circumstance shows how such principle is not determinative of any solution. In any case, the Panel does not hold that the JGA had to comply with a deadline of 15 December 2018 communicated only to the Appellant. Well to the contrary, the Panel finds that both bidders had to comply with a deadline expiring on “*mid-December*”. The Appellant complied with such deadline. The First Respondent did not. Holding otherwise would not be justified by any “equality of treatment” principle; well to the contrary, it would violate it.
101. For all of these reasons, the Panel concludes the JGA’s application filed on 21 December 2018 was late.

D. What is the consequence of such finding?

102. The next question to be addressed by the Panel concerns the identification of the consequences deriving from the late filing of the JGA’s bid.
103. As an initial matter, and as noted above, the Panel points out that the FIG Statutes are quite clear about late candidatures. Notably, their Article 11.12.1 provides that “*Any late candidature for the elections and/or organisation of a FIG event as well as any new proposed modification to the Statutes shall*

not be admitted”.

104. Moreover, Article 11.12.1 features in most communications and documents issued by the FIG. Indeed, the FIG’s bidding instructions relating to time limits may have caused confusion and uncertainty among the two federations, but there is no doubt that the language used in its official communication of 22 June 2018 implied the express rejection of late candidatures.
105. The same can be said with respect to some of the communications addressed to the FRBG, namely:
- the correspondence of 27 November 2018, in which Mr Gueisbuhler wrote that *“only bids duly filled in received on or before 15th December 2018 (...) will be considered”*;
 - the correspondence of 5 October 2018, which stated that *“for 2023, the Application File must be submitted by no later than mid-December 2018 and a decision will be taken by FIG Council in May 2019”*.
106. The content of Article 11.12.1 was also set out in the Bid Contract sent to the JGA on 28 March 2018 and to the FRBG on 4 September 2018, which made clear that *“the Application File must be submitted as soon as possible but by no later than mid-December 2018”*.
107. Therefore, the Panel holds that the application filed by the JGA on 21 December 2018 could properly be discarded as being late.

IX. CONCLUSION

108. In light of the foregoing, the Panel finds that the appeal filed by the FRBG should be upheld, that the Appealed Decision should be set aside and that the bid presented by the JGA for the 2023 ART World Championships has to be disregarded.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Fédération Royale Belge de Gymnastique on 1 March 2019 against the Fédération Internationale de Gymnastique and the Japan Gymnastics Association with respect to the decision rendered by the Executive Committee of the Fédération Internationale de Gymnastique on 20 February 2019 is upheld.
2. The decision issued by the Executive Committee of the Fédération Internationale de Gymnastique on 20 February 2019 is set aside.
3. The bid to host the 2023 Fédération Internationale de Gymnastique Artistic Gymnastics World Championships submitted by the Japanese Gymnastics Association on 21 December 2019 was filed late and shall be disregarded by the Fédération Internationale de Gymnastique.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.