Arbitration CAS 2017/A/5475 Amr Mustafa Kamel El-Saeid v. the Egyptian Olympic Committee (EOC) & Ahmad Abdu Khalil Khalil Baghdady & Egyptian Shooting Club (ESC), award of 21 January 2019

Panel: Mr Jalal El Ahdab (France), President; Mr Mohamed Abdel Raouf (Egypt); Mr Michele Bernasconi (Switzerland)

Shooting
Governance (exclusion from the list of candidates to an election)
Appealable decision
Exhaustion of internal remedies
Time limit for filing the Statement of Appeal
Admissibility of a late submission
Good reputation
Right to be heard and reasoned decision
De novo jurisdiction and scope of review of CAS panels

1. **In order to determine whether or not there exists an "appealable decision", the following definitions and characteristics have been established, *inter alia*: (a) the form of the communication has no relevance; (b) in principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties; (c) a decision is a unilateral act, sent to one or more determined recipients and is intended to produce legal effects. A letter expressly stating that it executes an award rendered by an arbitration center by which an individual's candidacy to the election for the presidency of a club is excluded contains a ruling in that it actually produces a legal impact on the individual's rights and adversely affects the individual's legal situation by preventing him or her from running at the elections. This is irrespective of the fact that the said letter were to be deemed as the result of the sender's legal opinion on the decision rendered by the arbitration center.**

2. **In order for a party to file an appeal before the CAS, pursuant to Article R47 of the CAS Code, it has to exhaust the internal legal remedies available. However, in particular where the result of such internal review is obvious from the very outset, no such obligation exists, since in such case the duty to exhaust legal remedies would only serve as a barrier to delay access to justice. If *e.g.* the only local remedy available is before the same body which had already taken position on a specific matter, the outcome of an appeal before that body is self-evident. In those circumstances the exception to the requirement to exhaust the legal remedies applies.**

3. **The prevailing criterion to calculate the time limit for the submission of the statement of appeal is the official notification of the decision to be appealed, not the actual informal knowledge by an appellant of the decision. Receipt is defined as *"the point in***

***time of receipt of the decision as opposed to the actual knowledge of the content of the decision"*. The relevant date to be taken into account, notably to calculate the exact time-limit under which a CAS appeal may be filed, is thus that of official notification, rather than the date on which the concerned party became aware of the decision to be appealed.**

4. **Pursuant to Article R56 of the Code, the party filing a late submission should demonstrate the reasons justifying the said delay. The CAS panel will only control the admissibility of the late submissions if it considers that such submission is relevant. Otherwise, the panel controls whether there are exceptional circumstances in order to justify such late submission.**

5. **As the concept of "good reputation" is not defined either at law or under the applicable regulations of the body that took the contested decision, a CAS panel is obliged to review the issue taking into account all the relevant factual circumstances of the case, with a view that the rather high burden of proof lies with the party accusing the other not to enjoy a good reputation and denying it the right to run for an election. Producing a clean criminal record may, under certain circumstances, not be sufficient to establish good conduct and a good reputation. A tribunal must thus take into account multiple facts surrounding a person and his or her reputation and not solely decide on the basis of the existence, or absence, of criminal records against that person.**

6. **The fact that the exact legal grounds upon which a decision issued by an arbitral institution relies are not specifically mentioned in the decision is not sufficient to establish an effective due process breach as long as the individual subject to the decision has actually had a chance, during the proceedings, to address and argue all of the points contained in the decision. This is because arbitral awards are not, contrary to state judgements, subjected to strict and formal requirements compelling the institution rendering them to spell out the exact grounds upon which they are being rendered.**

7. **The fact that Article R57 of the Code attributes *de novo* jurisdiction to CAS panels does not, in the absence of any legal provision so providing, allow a CAS panel to cancel elections already held and from which an individual, despite being eligible to be elected, has been unrightfully excluded. Put differently, in the absence of any legal provisions, the fact that an individual would have been eligible to be elected at an election had he or she not been unrightfully excluded from it does not, *per se*, give the individual the right to cancel such election and, *a fortiori*, request a new one to be ordered by CAS. The scope of review of CAS panels seized of an appeal procedure is limited to the questions and requests treated in the decision appealed to. Accordingly, if in the first instance proceedings, the scope of review of the first instance body was limited, on the merits, *e.g.* to an individual's eligibility to run for the presidential elections of a club, the scope of the CAS' review does not extend beyond that, *e.g.* to the validity of the elections in question or the possible holding of new elections.**

I. THE PARTIES

1. Mr Amr Mustafa Kamel El-Saeid (the "Appellant"), an Egyptian citizen, is a member of the Egyptian Shooting Club (the "ESC") and was a candidate to the elections of the President of the ESC.

2. The Egyptian Olympic Committee (the "EOC" or the "Respondent 1") is a non-profit Olympic Sport Organisation established in 1910 in Egypt and recognised by the International Olympic Committee.

3. Mr Ahmad Abdu Khalil Khalil Baghdady (the "Respondent 2") is a member of the ESC and was a candidate to the elections of the ESC board of directors for the 2017-2021 cycle.

4. The Egyptian Shooting Club (the "ESC", the "Respondent 3" or the "Intervenor") is a social and sporting club established in 1939 in Egypt.

5. The First Respondent and the Second Respondent and the Third Respondent are hereinafter collectively referred to as the "Respondents".

6. The Appellant and the Respondents are hereinafter collectively referred to as the "Parties".

II. BACKGROUND OF THE DISPUTE

7. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence submitted by the latter and examined in the course of the proceedings. This background is not meant to be comprehensive and is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Factual background of the dispute

8. The Appellant was a member of the ESC board of directors from 1992 to 1996 and from 1996 to 2000; he was elected Vice-President of the ESC in 2014. Following the President of the ESC's resignation, the Appellant became, in mid-2016, the acting President of the ESC.

   Following the Appellant's submission of his candidacy to the ESC presidency elections for the 2017-2021 cycle (the "Elections"), on 9 October 2017, the ESC examined and approved the Appellant's candidacy.

   Following this result, Respondent 2 challenged the ESC's approval of the Appellant's candidacy before the Egyptian Sporting Settlement & Arbitration Centre (the "Arbitration Centre") in order to exclude the Appellant from the list of candidates to the Elections. Respondent 2 claimed that the Appellant did not meet the requirement of good reputation arguing that several criminal judgments were issued against him.

9. On 21 November 2017, the Arbitration Centre upheld Respondent 2's request and excluded the Appellant's candidacy to the Elections (the "First Decision").

10. On 23 November 2017, further to the First Decision by the Arbitration Centre, the EOC decided the following in a letter addressed to the Head of the Judicial Committee supervising the Elections:

> *"[W]e hope to execute the award issued in the lawsuit no. 32 of the judicial year no.1 of 2017, and exclude Mr./ Amr Mostafa Kamel Al-Saeed from the lists of nominees pertaining to the elections of the Egyptian Shooting Club Board, round 2017/2021"* (Translation as provided by the Appellant) (the "Second Decision").

11. The First Decision and the Second Decision are collectively referred to as the "Decisions".

B. Proceedings before the Court of Arbitration for Sport

12. On 14 December 2017, the Appellant filed a statement of appeal (the "Statement of Appeal") before the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47, R48 and R51 of the Code of Sports-related Arbitration ("Code") and thus requested an appeal procedure ("Appeal") before the CAS.

13. The Statement of Appeal contained, *inter alia*, the nomination of Mr Michele Bernasconi as an arbitrator.

14. The CAS Court Office formally initiated an appeals arbitration procedure under the reference CAS 2017/A/5475.

15. On 26 December 2017, Appellant requested the CAS Court Office a ten-day extension to file the Appeal Brief. In support of this request, the Appellant's counsel stated that he was unable to gather all the necessary documents from his client living in Egypt and translate them from Arabic into English.

16. On 27 December 2017, the CAS Court Office invited the Respondents to comment on the matter within three (3) days of receipt of the letter dated 27 December 2017 and declared that Respondents' silence would be considered as an acceptance of Appellant's request.

17. On 29 December 2017, the CAS Court Office informed the Appellant that it was unable to deliver the letter of 21 December 2017 to the Respondents given that the addresses provided by the Appellant in the Statement of Appeal are incorrect. The CAS Court Office thus invited the Appellant to provide the correct addresses.

18. On 31 December 2017, Respondent 1 stated that it had no objection to the Appellant's extension request and reserved its right to receive the Appeal Brief and its exhibits within a sufficient time in order to be able to comment in due time.

19. On 3 January 2018, the CAS Court Office declared that an extension was granted to the Appellant given that Respondent 2 failed to object within the prescribed deadline. The CAS Court Office declared that the deadline to submit the Appeal Brief will begin to start running on 3 January 2018, *i.e.* the date of the CAS' letter.

20. On 12 January 2018, the CAS Court Office informed the Appellant that it was unable to deliver the letter of 3 January 2018 to Respondent 2 and invited the Appellant to provide the correct addresses.

21. On 15 January 2018, the Appellant filed his Appeal Brief, together with the details of Respondent 2.

22. On 17 January 2018, the Appellant requested that the Panel be composed of a sole arbitrator. In support of this request, the Appellant referred to Article R40.1 of the Code. First, the Appellant stated that the arbitration agreement did not specify the number of arbitrators. Second, the case would not raise issues whose complexity would require a panel composed of three arbitrators.

23. On 18 January 2018, Respondent 1 informed the CAS Court Office that it wished to nominate Dr Mohamed Abdel Raouf as an arbitrator. On the same date, the CAS Court Office invited Respondent 2 to appoint an arbitrator by 20 January 2018, failing which Respondent 2 would be deemed to have accepted the appointment of Dr Mohamed Abdel Raouf as the Respondents' joint nomination.

24. On 9 February 2018[1], the Respondent 1 filed its statement of defence ("Statement of Defence") to the CAS Court Office.

25. On 13 February 2018, the CAS Court Office acknowledged receipt of the Respondent 1's Answer and noted that it did not receive any submission from Respondent 2. In reference to Article R56 of the Code, the CAS Court Office declared that since the Appeal Brief and Answer have been submitted, the Parties were no longer authorised to (1) supplement or modify their requests or arguments, (2) produce new exhibits or specify further evidence unless the Parties agree or the Panel decides otherwise based on exceptional circumstances.

26. On 14 February 2018, referring to the Respondent 1's Answer, Appellant stated the following:

    - The Appellant doubted that Respondent 1 filed its Answer within the time limit and thus requested from the CAS Court Office to obtain the documents proving the date of delivery of the CAS Court Office's letter of 17 January 2018 to Respondent 1. Appellant contended that the Answer should be inadmissible in the event it was not filed in due time.

[1] While the Answer is undated, this date mentioned in the letter from the CAS to the Parties dated 13 February 2018.

- The Appellant claimed that Respondent 1 did not produce several exhibits (Exhibits 7, 8, 9, 12, 13) on which it relied in its Answer to challenge the jurisdiction of the CAS. Therefore, Appellant requested the CAS Court Office to order Respondent 1 to produce said exhibits and suspend Appellant's deadline to comment on Respondent 1's challenge of the CAS' jurisdiction and grant it a new deadline once the exhibits have been produced.

27. On 18 February 2018, Respondent 1 expressed its wish that the Panel decide solely on written submissions and not hold a hearing.

28. On 19 February 2018, the CAS Court Office acknowledged receipt of Appellant's letter of 14 February 2018, invited Respondent 1 to produce exhibits 7, 8, 9 and 12 on 21 February 2018 at the latest and suspended the deadline granted to Appellant to comment on Respondent 1's objection to the CAS' jurisdiction. Moreover, the CAS Court Office sent to the Parties the DHL delivery documents as requested by Appellant. The documents sent consisted of two DHL reports as follows:

- In one report, it is mentioned that the shipment was delivered to the address in Cairo on 21 January 2018 at 11:06 am and signed by "Amal".

- In the other report, it is mentioned that the shipment was delivered to the address in Cairo on 20 January 2018 at 10:49 am and signed by "Ahmed Abdu Khalil".

29. On the same date, the Appellant requested that a hearing be held and stated in support of his request that the issues raised in the dispute justify such a hearing so that the Appellant, his representatives and witnesses may be heard.

30. On the same date, Respondent 1, on one hand, reiterated its contention that Egyptian law is the applicable law given that (1) the Parties are Egyptian, (2) the elections took place in Egypt and (3) the club is subject to the 2017 Egyptian sports law no. 71. On the other hand, Respondent 1 responded to Appellant's letter of 14 February and CAS Court Office's letter of 19 February 2018 as follows:

- Concerning the admissibility of the Answer, Respondent 1 argued that it only received the CAS' letter of 17 January 2018 and the Appeal Brief enclosed therewith on 21 January 2018. Respondent 1 produced the DHL delivery report in support of its contention and concluded that the deadline for the submission of the Answer started on 22 January 2018 and expired on 10 February 2018.
- Concerning the production of exhibits 7, 8, 9 and 12, Respondent 1 contended the following:
  - Exhibit 7 and 8 refer to exhibit 2: Article 68 and 67 of the sports law, which are referred to in the Answer respectively as exhibit 7 and 8, are contained in exhibit 2, which provides the entirety of the sports law including Article 68 and 67.

- Exhibit 9 was enclosed with the Answer. The document was also enclosed with the letter as document n°3.
- Exhibit 12 should refer to exhibit 3.

31. On 21 February 2018, the CAS Court Office declared that the Appellant's deadline to provide its comment on the issue of jurisdiction will begin to start running on the date of the letter (*i.e.* 21 February 2018) in light of Respondent 1's comments concerning the allegedly missing exhibits.

32. On 26 February 2018, Respondent 1 reiterated that it did not wish a hearing to be held.

33. On 1 March 2018, pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel appointed to hear the dispute between the Parties was constituted as follows: Dr Jalal El Ahdab, President, Mr Michele Bernasconi and Dr Mohamed Abdel Raouf, Arbitrators.

34. On 2 March 2018, Appellant provided its comments on the jurisdictional objection raised by Respondent 1 as follows:

- In response to Respondent 1's contention that the Arbitration Centre's regulation does not refer to CAS, Appellant referred to the EOC statutes (Article 51.4) and emphasized the provision which states that: *"The Court of Arbitration for Sport (CAS) is the sole entity at which the resolutions of the Committee may be contested in the event of rejecting the resolution of the Egyptian Sporting Settlement & Arbitration Centre"*.
- In response to Respondent 1's contention that the challenged decision of the EOC is a mere legal statement, Appellant stated on one hand that Respondent 1's contention is unsupported given that the document on which it relied to raise this argument was not produced despite the Appellant and CAS's requests. On the other hand, Appellant argued that the challenged decision is a proper decision insofar that it excluded the Appellant from the list of candidates for the ESC board election.

35. On 6 March 2018, Respondent 1 reiterated its objection to the CAS' jurisdiction and its preference that a hearing not be held. It also reiterated its position that the Egyptian law is the applicable law and invoked in support of its argument Article 3.1 of the Arbitration Centre principal statute[2].

36. On 9 March 2018, the ESC filed before the CAS Court Office a request for intervention in the proceedings.

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2 Article 3.1 of the Arbitration Centre principal statute states as follows: *"whenever the competency is tied to the center pursuant to a sports arbitration term or clause mentioned in a contract or mentioned pursuant to the statutes of an authority or regulation related to a sports activity, the arbitration tribunal shall apply the stipulations of the law of sports, the decision issued in its implementation and the main regulations of the authorities and entities governed by the provisions of this law and the law related to the subject matter"*.

37. On 12 March 2018, the CAS Court Office forwarded to the Parties the request for intervention and the Panel's instructions. Concerning the request for intervention, the CAS Court Office invited the Parties to provide their position by 19 March 2018. Concerning the Panel's instructions, the CAS Court Office invited Appellant to file submissions concerning the jurisdiction of the CAS, the admissibility of the statement of defence and the applicable law within ten (10) days upon receipt of the letter.

38. On 15 March 2018, Respondent 1 stated that it would later provide its comment on the request for intervention with its submissions concerning the CAS jurisdiction, the admissibility of the statement of defence and the applicable law. Moreover, Respondent 1 informed the CAS Court Office that it was not informed about the AFA's possible intervention nor received its intervention request. Therefore, it requested the CAS Court Office to provide it with the said documents.

39. On 19 March 2018, the Appellant commented on the ESC's request for intervention and expressed its doubts that ESC became aware of the appeal only on 28 February 2018. It contended that the EOC sent the letter to the ESC on 28 February 2018 for the sole purpose of demonstrating that the ten-day deadline for the request for intervention was fulfilled. In support of this contention, Appellant stated that it *"does not see why the Respondent EOC would have written to the ESC only on February 28, 2018 to obtain documents useful to the case whereas it filed its Answer on February 9, 2018"*.

40. On 21 March 2018, the CAS Court Office, in response to Respondent 1's letter of 15 March 2018, clarified that it wrongly referred to the AFA when it was actually referring to the ESC. Therefore, the CAS Court Office declared that AFA mentioned in its letter of 12 and 19 March 2018 should be read as referring to ESC.

41. On 22 March 2018, the Appellant filed its additional submissions ("Additional Submissions of the Appellant") with the CAS Court Office.

42. On 26 March 2018, the CAS Court Office invited the Respondents to file their additional submissions within ten (10) days upon receipt of the CAS Court Office's letter of 26 March 2018.

43. On 28 March 2018, Respondent 1 informed the CAS Court Office that it received on 26 March 2018 the CAS Court Office's letter dated the same day but did not receive Appellant's Additional Submissions and correspondence of 22 March 2018. Respondent 1 requested from the CAS Court Office to send these documents as soon as possible. On the same date, the CAS informed the Parties that the CAS Court Office's letter of 26 March 2018 enclosing Appellant's Additional Submissions have not yet been delivered according to the DHL report.

44. On 8 April 2018, Respondent 1 filed its additional submissions that it titled *"Supplementary Statement of Defence"*.

45. On 10 April 2018, Respondent 1 filed a supplement submission, titled *"Supplementary Statement of Defence No. 3"*, in addition to its submissions filed on 8 April 2018. The totality of these additional submissions by Respondent 1 shall be referred to as "Additional Submissions of Respondent 1".

46. On 12 April 2018, the Appellant requested that the documents filed by Respondent 1 be considered inadmissible except for a possible written submission on the issues of jurisdiction, admissibility and applicable law. Appellant invoked the following reasons:

- Appellant referred to the exhibits filed by Respondent 1 with its additional submissions and claims that Respondent 1 was not entitled to file these exhibits according to Article R44.1 of the Code. Appellant argued that the additional submissions requested by the Panel were limited to issues of jurisdiction and admissibility whereas the exhibits filed by Respondent 1 are related to the merits of the case. Appellant therefore requested that the documents be deemed inadmissible.
- Moreover, Appellant contended that Respondent 1 did not file an additional written submission on the issues of jurisdiction, admissibility and applicable law.

47. On 16 April 2018, Respondent 1 invoked Article R44.1 of the Code and argued that the Appellant's contention regarding the inadmissibility of the documents filed with the additional submissions was unfounded for the following reasons:

- Respondent 1 stated that the documents it sent with its additional submissions included its first Statement of Defence (filed on 9 February 2018) and the exhibit attached to it, which dealt with the issue of jurisdiction and applicable law and thus fall within the scope of the issues determined for the additional submissions. Respondent 1 added that it filed its Statement of Defence and exhibits in due time given that the deadline ended on 10 February 2018.
- Respondent 1 indicated that it resent its Statement of Defence and exhibits thereof in order to assert its position on the issue of jurisdiction and contended that such conduct complies with the *"principle of justice and right to comment in defence* [sic: right to be heard]*"*.
- Respondent 1 dismissed the Appellant's contention that its Statement of Defence is inadmissible on the basis that some exhibits were missing or *"ambiguous* [sic]*"*, arguing that such contention contradicts the CAS' acknowledgment that it has received the Statement of Defence and exhibits without stating that a document was missing or was *"vague* [sic]*"*.

48. On 17 April 2018, the CAS Court Office, on behalf of the Panel, informed the Parties, *inter alia*, of the following:

- Concerning the admissibility of the documents filed by Respondent 1 with its additional submissions on 8, 9 and 10 April 2018, the Appellant must state, by 23 April 2018,

which documents are not admissible. Following the Appellant's comments, Respondent 1 will be granted a deadline to reply.

- Concerning the ESC's request for intervention, the Panel decided to accept the request made by the ESC on 9 March 2018. The ESC is invited to clarify its position in the proceedings on or before 23 April 2018. Following the ESC's comments, the Parties will be granted a deadline to reply.

49. On 23 April 2018, the ESC clarified its position in the proceedings and stated that it wished to join the EOC in all its requests and defences against the Appellant especially regarding the lack of jurisdiction of the CAS. Furthermore, the ESC provided the reasons behind its request for intervention and indicated that such request was filed in order to preserve the will of the ESC's general assembly and ensure that election results are preserved given that the current board of directors was elected *"in accordance with correct and sound procedures and under full judicial supervision"*.

50. On the same date, the Appellant commented on the admissibility of the documents filed by Respondent 1 with its additional submissions and the ESC's request for intervention. Concerning the intervention, the Appellant took note of the intervention and reserved its right to amend its request within the deadline that would be granted to him. Concerning the admissibility, the Appellant reiterated that neither the Parties agreed nor the President of the Panel ordered a second round of submissions and concluded that the Parties were not authorized to supplement or amend their arguments or produce new exhibits on the merits of the case. The Appellant requested therefore that all documents and submissions filed by the Respondent 1 on 8, 9 and 10 April 2018 be declared inadmissible, as follows:

- The Supplementary Statement of Defence filed on 8 April 2018 shall be declared inadmissible for its level of English and more specifically, the fact that its conclusion relates to the merits of the case.
- The Statement of Defence dated 9 February 2018 but filed again by Respondent 1 via email on 9 April 2018 is inadmissible for its level of English as it is barely understandable.
- The Supplementary Statement of Defence n°3 filed on 10 April 2018 shall be declared inadmissible, as well as the exhibits (n°0016 and n°S) filed with it, as it concerns the merits of the case.
- Regarding the exhibits n°101 to 119 and n° A to W, the Appellant claimed that Respondent 1 did not explain why these documents should be admissible and why it did not produce them with the Answer.

51. On 24 April 2018, the Appellant confirmed that it would be available for a hearing on the Panel's proposed dates of 29 and 30 May 2018 and provided the list of witnesses who would also be available on such dates.

52. On the same date, Respondent 1 indicated that it is not available on 29 and 30 May 2018 as such dates coincide with the Ramadan period and requested that a date be fixed after 18 June 2018. Respondent 1 reiterated that, in any case, a hearing should not be held and "rejected" the Panel's decision to hold a hearing as a violation of Article R57 (para. 1 and 2) of the Code. Respondent 1 argued that the Panel is well-informed of the facts of the case through written exchanges, which means there is no need to hold a hearing session.

53. On another note, Respondent 1 blamed the CAS Court Office for "hiding" the latter's letter of 13 February 2018 in which it acknowledged receiving the Statement of Defence and contended that such action enabled the Appellant to contend that the Statement of Defence was filed belatedly. Furthermore, Respondent 1 expressed that it condemns the Appellant's behaviour as the former believes that the latter hid the letter from the CAS Court Office transferring the Statement of Brief. The Respondent 1 added that the acknowledgement of receipt of the CAS proves the timely arrival of the Statement of Brief.

54. On 26 April 2018, the Appellant contested the reasons provided by Respondent 1 to justify its unavailability on the dates – 29 and 30 May 2018 – that were proposed for a hearing as it claimed that these dates are not bank holidays. The Appellant further indicated that Respondent 1 would be attending the Football World Cup in Russia during the month of Ramadan starting 14 June 2018. The Appellant requested, therefore, that the hearing be held on 29 or 30 May 2018. In addition, the Appellant claimed that Respondent 2 uploaded on his Facebook page copies of the Appeal Brief and requested that the CAS remind the Respondents of Article R43 of the Code which provides the confidentiality of the proceedings. Lastly, the Appellant requested to be granted a deadline in order to comment on the ESC's letter of 23 April 2018 and amend its request for relief accordingly.

55. On 30 April 2018, the CAS Court Office reminded the Respondents that the CAS proceedings are confidential pursuant to Articles R43 and R59 of the Code. Lastly, the CAS Court Office invited the Parties to provide their comments, no later than 7 May 2018, on the ESC's position submitted on 23 April 2018.

56. On 3 May 2018, the EOC responded to the Appellant's letter of 26 April 2018. Concerning the dates of the hearing, the EOC indicated that it never alleged that the proposed dates (*i.e.* 29 and 30 May 2018) were bank holidays, but only stated that they coincide with the Ramadan period. Concerning the ESC's request for intervention, the EOC stated that it did not object to such request. Concerning the admissibility of the documents and submissions, Respondent 1 rejected the Appellant's requests that such documents are inadmissible on the basis that the level of English used therein renders them incomprehensible. Respondent 1 claimed that, if this were true, the Appellant would have been unable to respond to the submissions and arguments made therein, which was not the case.

57. On 7 May 2018, the Appellant filed its Additional Submissions regarding the ESC's request for intervention. The Appellant noted that it seems that the ESC joined the proceedings as a co-respondent with the EOC and concluded that such intervention amounts to a *de facto* decision issued by the ESC to exclude the Appellant's candidacy to the elections. In light of this, the

Appellant amended its request for relief by explicitly requesting the annulment of the *de facto* decision of the ESC.

58. On 14 May 2018, the Appellant informed the CAS Court Office that a hearing on 26 June 2018 was not suitable for him and reiterated its request that a hearing be held on 29 or 30 May 2018. Moreover, the Appellant indicated that Respondent 2 uploaded once again publications on his Facebook page, thereby disregarding the CAS' warning of 30 April 2018.

59. On 15 May 2018, Respondent 1 confirmed its availability for a hearing on 26 June 2018 and requested invitation letters from the CAS for the visa.

60. On 16 May 2018, Respondent 1 confirmed its availability for a hearing on 27 June 2018 or a later date in order to suit the Appellant and his witnesses. On 24 May 2018, Respondent 1 replied to the CAS' instructions.

61. On 24 May 2018, the CAS Court Office invited the Parties to inform the CAS, on or before 29 May 2018, of their availability for a hearing on 25 September 2018.

62. On 28 May 2018, Respondent 1 confirmed its availability for a hearing to be held on 25 September 2018.

63. On 31 May 2018, the Appellant indicated to the CAS Court Office that holding a hearing on 25 September 2018 would be too late given that new elections would not take place in 2018, but only in 2019. The Appellant thus insisted that a hearing take place between 1 and 15 July 2018.

64. On 3 June 2018[3], the EOC objected to the Appellant's statement and argued that the elections may be held in November or December if a hearing is held between July and October 2018. The EOC further stated that the visa application shall be submitted 60 days prior to the travel date and thus insisted that a hearing be held on 25 September 2018 or after such date.

65. On 5 June 2018, the EOC contradicted the Appellant's reasoning that a hearing held in September 2018 would be too late and invoked two series of argument in support of its position:

- First, the EOC contended that holding the hearing on 25 September 2018 does not affect the Appellant's right to be heard. The EOC declared that the committee may hold a meeting in December: indeed, although the general assembly meeting shall be held during the period of July - October 2018, *i.e.* within four months of the beginning of the financial year which started on 1 June 2018, the committee can also hold a general assembly regular meeting in December, *i.e.* 45 days following October. Moreover, the EOC stated that if an award is rendered in favor of the Appellant, a temporary committee will be constituted and will hold elections at the first general assembly regular meeting.

[3] Letter from the EOC to the CAS dated 3 June 2018.

- Second, the EOC indicated that its counsels would be unable to attend a hearing before 25 September 2018 given that the period of 1 July - 15 September 2018 is a judicial vacation. This is relevant given that one counsel is a current member of the parliament and the other the vice president of state attorneys. The EOC concluded that holding a hearing during the judicial vacation would be in violation of the "right of vacation".

66. On 11 June 2018, the CAS Court Office called, on behalf of the Panel, the Parties and their witnesses to appear at the hearing which will be held on 25 September 2018.

67. On 15 June 2018, the CAS Court Office, on behalf of the Panel, informed the Parties that the Panel confirmed the ESC's participation in the proceedings as Respondent 3. The CAS Court Office thus transmitted to Respondent 3 the case file to that date except for Respondent 1's Answer that would be notified after Respondent 3 filed its Answer. The CAS Court Office further indicated that Respondent 3 had the same right as Respondent 1 and Respondent 2 and was thus invited to submit its Answer in the form of seven (7) copies by courier within twenty (20) days upon receipt of the CAS' letter of 15 June 2018.

68. On 16 July 2018, the CAS Court Office reminded the Parties that Respondent 3 was granted a deadline of twenty (20) days from the receipt of the CAS file to submit its Answer. This deadline expired on 9 July 2018, whereas the CAS Court Office did not receive any Answer or communication from the Party. Therefore, the CAS Court Office informed the Parties that, unless ordered otherwise by the President of the Panel or based on exceptional circumstances, no further submissions, exhibits, evidence or amendments will be taken into account by the CAS.

69. On 30 July 2018, the CAS Court Office issued on behalf of the President of the Panel an order of procedure (the "Order of Procedure") which was accepted and signed by the Appellant on the same date. The Respondents did not return such Order within the prescribed deadline.

70. The hearing was conducted on 25 September 2018 at the CAS Headquarters in Lausanne, Switzerland.

71. From the Appellant's side, Mr. Amr Mustafa Kamel El-Saeid in his quality of Appellant, Mr. Jean Marc Reymond in his quality of the Appellant's counsel, Mr. Magdy El Metnawy also acting as lawyer and consultant for the Appellant, Mr. Medhat Shalaby in his quality of consultant for the Appellant, Seif Hafez in his quality of independent interpreter English-Arabic for the Appellant, Ahmed El Saeid in his quality of observer, Ihab A. Hashish in his quality of witness of the Appellant and Dr. Ashraf N. Moharram in his quality of witness of the Appellant, attended the hearing.

72. Dr. Salah Hassaballah, in his quality of witness called by the Appellant, and Dr. Ahmed Megahed, in his quality of witness also called by the Appellant, joined the hearing through video conference. They were assisted by a translator, present with the witnesses.

73. From the Respondent 1's side, Mr. Ahmad Hossam in his quality as counsel for and representing Respondent 1 and Mr. Mustafa Abdel Kayoum in his quality of interpreter English-Arabic joined the hearing through video-conference.

74. Constituting the Arbitral Panel, Dr. Jalal El Ahdab as President of the Panel, Dr. Mohamed Abdel Raouf and Mr. Michele A.R. Bernasconi, as co-arbitrators and members of the Panel, were present at the hearing. Lastly, Ms. Andrea Zimmermann, Counsel to the CAS, attended the hearing, assisting the Panel.

75. Although Respondents 2 and 3 did not attend the hearing, they have received the entirety of the exchange of letters and submissions filed between the Parties.

76. During the hearing, Respondent 1 made a request to suspend the proceedings until the Arbitration Centre, before which a parallel appeal were still ongoing concerning the same case, renders a decision. Respondent 1 also made a request for bifurcation so that the Arbitral Tribunal renders a preliminary decision on CAS jurisdiction, if any, before examining the merits of the case. After having considered this procedural request and withdrawn to deliberate thereon, the Panel decided that it was introduced belatedly, decided to continue to examine both jurisdictional issues and the merits on the same track and thus to reject Respondent 1's application, while providing further reasons in the Final Award. Respondent 1 also requested that the Witness Statements filed by the Appellant be inadmissible. For the same considerations pertaining to the efficient organization of the proceedings, the Panel decided to still hear the witnesses and to decide in a final manner on the admissibility of the witness statements in the Final Award. Both procedural applications were opposed by the Appellant.

77. After allowing all Parties to plead their case both on jurisdiction and the merits, the Panel also ultimately allowed the Appellant, Mr. El Saeid, to express his position in the interest of respecting his right to be heard.

78. At the end of the hearing, the Parties stated that they were satisfied with the manner in which the hearing had been conducted and that their right to be heard had been respected.

79. On 1 October 2018, the CAS Court Office sent a letter to the Parties explaining that it has taken note of the procedural requests of Respondent 1. However, pursuant to Articles R55 para. 5, R56 and R57 para. 3 of the Code, the Panel has decided not to admit the aforementioned requests, the reasons for which shall be provided in the final Award.

80. On 18 October 2018, the CAS Court Office informed the Parties of the receipt of a letter from the Appellant informing the CAS that the elections of the Board of Directors of the ESC will be held on 26 October 2018. The Appellant requested that the Award of the Panel be rendered as soon as possible.

81. On 19 October 2018, Respondent 1 argued that guiding the Tribunal to issue an Award promptly should be grounds for annulment of the Award. Further, the Respondent 1 claimed

that the aforementioned meeting is an ordinary annual General Assembly whose agenda does not include the elections of the Board of Directors.

82. On 26 October 2018, the CAS Court Office, on behalf of the Panel, informed the Parties that no decision shall be rendered on 26 October 2018.

83. On 26 November 2018, Respondent 1 provided the Panel with press articles in which the imprisonment of the Appellant on 25 November 2018 is reported. Allegedly, the Appellant is said to be imprisoned for 15 days following preliminary investigations led by North Giza Public Prosecution. The charges include damaging and forging public documents while the Appellant was serving as the President of the ESC. Respondent 1 stated that they will provide the Panel with a copy of the decision of the Egyptian Public Prosecution that accuses the Appellant of damaging public property.

84. On 29 November 2018, Appellant contended that these new exhibits were inadmissible and irrelevant. In addition, the Appellant has requested that the award be notified within the coming days.

85. On 2 December 2018, Respondent 1 provided the CAS Court Office with a letter coming from the Public Prosecutor's Office addressed to the President of the EOC dated 2 December 2018. The letter explained that Amr Mustafa Kamel El Saeid will be tried before the Cairo Court of Appeal for charges involving damage to public property. Based on this letter, Respondent 1 has claimed that the felony of forging the results of the General Assembly of the ESC and destruction of documents belonging to the club damage the Appellant's honor and integrity, as a result of which he could not be considered as enjoying good reputation. Respondent 1 has further reported that the Egyptian Public Prosecution decided to imprison the Appellant for 15 days, thus allegedly proving the seriousness of the accusations.

86. On 6 December 2018, Respondent 1 submitted to the CAS Court Office a press article dated 6 December 2018 in Arabic with its English translation. The article explains that the Appellant was released after paying a bail and that his trial was postponed to February 2019.

III. THE PARTIES' SUBMISSIONS AND PRAYERS FOR RELIEF

87. The following outline of the Parties' positions is illustrative only and does not necessarily encompass every contention put forward by each of them. Nevertheless, the Panel has carefully considered all written and oral submissions made by the Parties, even if there is no specific reference to those submissions in the following summaries.

A. The Appellant Submissions and Relief Sought

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

- The decision issued on 21 November 2017 by the Arbitration Centre, and its execution and implementation by the EOC, concerning the exclusion of the Appellant from the list of candidates for the elections of the Board of Directors of the ESC, was an arbitrary decision and violated his right to be heard.
- The Appellant claims that he does not have any criminal sentences issued or any ongoing investigations against him. The Appellant argues as well that he possesses the good reputation required by the The Guidelines of the Sports Clubs issued by the EOC on 8 June 2017 ("Guidelines").

89. The Appellant has submitted the following requests for relief::

1. Declaring that the Appeal is admissible;

2. Admitting the Appeal;

3. Annulling the decision taken by the Egyptian Sporting Settlement & Arbitration Center on the 21st November 2017 to exclude the candidacy of the Appellant Amr Mustafa Kamel El-Saeid to be a candidate to the presidency of the Egyptian Shooting Club;

4. Annulling the decision taken by the Egyptian Olympic Committee on the 23rd of November 2017 to enforce the decision to exclude the candidacy of the Appellant Amr Mustafa Kamel El-Saeid to be a candidate to the presidency of the Egyptian Shooting Club;

5. Annulling the de facto decision of the Egyptian Shooting Club to exclude the candidacy of the Appellant Amr Mustafa Kamel El-Saeid to the presidency of the Egyptian Shooting Club for the 2017/2021 cycle;

6. Annulling the Presidency elections of the Egyptian Shooting Club which took place on November 25, 2017;

7. Ordering the Egyptian Olympic Committee and the Egyptian Shooting Club to hold new elections for the Board of Directors and presidency of the Egyptian Shooting Club – Cycle 2017-2021, between September and November 2018, and authorise the Appellant Amr Mustafa Kamel El-Saeid to participate as a candidate in this election;

8. Ordering Ahmad Abdu Khalil Khalil Baghadady to pay in full, plus post-award interest at an annual rate of 5%:

a) the costs and expenses, including Amr Mustafa Kamel El-Saeid's legal expenses, pertaining to this appeal proceeding before the CAS; and:

b) the costs and expenses, including Amr Mustafa Kamel El-Saeid legal expenses, pertaining to the proceedings before the Egyptian Sporting Settlement & Arbitration Center;

9. Ordering the Egyptian Olympic Committee to pay in full, plus post-award interest at an annual rate of 5%:

a) the costs and expenses, including Amr Mustafa Kamel El-Saeid's legal expenses, pertaining to these appeal proceeding before the CAS; and

b) costs and expenses, including Amr Mustafa Kamel El-Saeid legal expenses, pertaining to the proceedings before the Egyptian Sporting Settlement & Arbitration Center;

10. Ordering the Egyptian Shooting Club to pay in full, plus post-award interest at an annual rate of 5%:

a) the costs and expenses, including Amr Mustafa Kamel El-Saeid's legal expenses, pertaining to these appeal proceeding before the CAS; and

11. b) costs and expenses, including Amr Mustafa Kamel El-Saeid legal expenses, pertaining to the proceedings before the Egyptian Sporting Settlement & Arbitration Center; Ordering any other relief that the Panel may deem appropriate to award in the present proceedings;

12. Rejecting any contrary prayer for relief which will be submitted by Abdu Khalil Khalil Baghdady, the Egyptian Olympic Committee or the Egyptian Shooting Club in the present proceedings.

B. The Respondent 1 Submissions and Relief Sought

90. As per the First Respondent's submissions, the relief it is seeking may be put, in essence, as follows:

- The CAS does not have jurisdiction to hear the case.
- The Statement of Appeal of the Appellant is inadmissible.
- The Appellant does not satisfy the requirement of good conduct and reputation provided by the Guidelines.
- The decisions rendered by the Arbitration Centre and the EOC did not violate the Appellant's right to be heard.

91. The First Respondent has submitted the following requests for relief, requesting the CAS to:

"Principally: the non-competence of the CAS to settle the dispute as there is no clause or arbitration clause granting her the jurisdiction.

Precautionary: to dismiss the present arbitration case for filling after the presumed time stated in article 49 of the CAS Code.

And for over precaution: to reject the case and obliged the claimant with all the costs, fees, and expenses of any kind or sort and we request that the arbitral tribunal to render its award without holding and hearing sessions and to rely on the submitted documents and statements of relief".

C. The Respondent 2's silence throughout the proceedings

92. The Respondent 2 has not filed any defence or submission or declaration with respect to its position, although he was given repeated opportunities to do so and despite the extended deadline by the CAS.

D. Respondent 3's submissions and Relief Sought

93. Respondent 3 has requested to join Respondent 1 in all its requests and defences in accordance with the provisions of the laws and regulations applicable in the Arab Republic of Egypt.

IV. JURISDICTION

A. The position of the Parties

a. The Appellant's position

94. The Decisions are identified by the Appellant as the decision issued by the Arbitration Centre on 21 November 2017, which excludes the Appellant's candidacy to the ESC presidency elections for the 2017-2021 cycle, First Decision, as well as the decision issued by the EOC on 23 November 2017, Second Decision, which enforces the First Decision, the Appellant has argued that based on Article 51.4 of the Statutes of the Egyptian Olympic Committee, the CAS is competent to judge the Appeal. Article 51.4 of the EOC Statutes entitles the Appellant to appeal decisions from the Egyptian Olympic Committee before the CAS. The article reads as follows: *"The Court of Arbitration for Sport (CAS) is the sole entity at which the resolutions of the Committee may be contested in the event of rejecting the resolution of the Egyptian Sporting Settlement & Arbitration Center"*.

95. The Appellant has made an additional remark that the Arbitration Centre must be considered as part of the EOC as the former has its seat at the EOC, its board of directors is chaired by the EOC's President and its bylaws and rules are drafted by the EOC.

96. In its Additional Submissions dated 22 March 2018, the Appellant has countered the arguments of Respondent 1. The latter claimed that the EOC's decision to execute the First Decision could not be considered to be an "appealable decision". The Appellant points out that the argument of the Respondent 1 is not supported, as the exhibit was never produced. The Appellant claimed that an "appealable decision" is based on *animus decidendi* and produces relevant CAS jurisprudence. An appealable decision is *"a communication directed to a party and based on an animus decidendi"*. The Second Decision fulfills this requirement given that it expressly states that it executes the award rendered by the Arbitration Center and excludes the Appellant from the ESC candidates list.

97. According to the Appellant, the appealable nature of the Second Decision is concretely established by the fact that the Appellant was indeed prevented from participating as a candidate in the elections of 25 November 2017.

98. The Appellant has further claimed in his Additional Submissions that there are no internal legal remedies available against the Decisions that he challenges. Therefore, it is deducted that the appeal of the Second Decision to enforce the First Decision to deny the candidate the possibility of being nominated may be submitted to the CAS.

b. Respondent 1's position

99. As a preliminary note, Respondent 1 has noted that the Parties have not expressly granted jurisdiction to the CAS through an arbitration agreement.

100. Respondent 1 has argued that there is no provision found in the regulations of the Arbitration Centre that permits appeal before the CAS. The Arbitration Centre is established according to Articles 66 and 68 of the 2017 Egyptian sports law n°71 and has an independent regulation decree n°88 of the same year. The law does not refer to CAS as an appellate body. The Respondent 1 contends that the CAS does not have jurisdiction over this arbitration based on Article 1 of the Code.

101. The Respondent 1 has further argued that, according to Article 51 of the EOC regulations, the CAS only has jurisdiction if the Arbitration Centre acts as an appellate body with respect to a decision taken by the EOC.

102. In the case at hand, the Arbitration Centre is the first jurisdiction to hear the case against the Appellant. However, all awards, orders and decisions of the Arbitration Centre are to be deemed final and binding according to Articles 77 and 81 of the Arbitration Centre statute decree n°88 of the year 2017. Decisions of the Arbitration Centre are subject to the provisions of civil and commercial law. According to Article 52(1) of the law n°24 of the year 1994 related to arbitration in civil and commercial matters, awards shall not be subject to any method of appeal. Therefore, awards rendered by the Arbitration Centre are not appealable according to Article 52(1) of the law n° 24 1994 related to arbitration in civil and commercial matters.

103. The Respondent 1 has also contended that the Appellant needed first to exhaust the available local legal remedies such as the EOC and the Egyptian Sporting Settlement and Arbitration Centre, in order to be able to commence proceedings before the CAS. In the present case, Respondent 1 considers the Appellant did not exhaust all internal remedies available before national courts as required by the Arbitration law n°24 1994 given that he did not:

- File for the annulment of the awards;
- Challenge the constitution of the arbitral tribunal;

- Claim compensation for damages incurred as a result of judicial proceedings brought against him.

104. Respondent 1 has further contended that the Second Decision is not an "appealable decision", as the EOC only expressed its legal opinion on the decision that was rendered by the Arbitration Centre. In its view, the Appellant relies on the legal opinion of the EOC that was provided in response to the Appellant's request for a "stay of execution" of the First Decision; thus, it does not constitute a decision.

B. The decision of the Panel

105. As a preliminary point and for the sake of completeness, the Panel hereby confirms what it had ruled during the hearing that is Respondent 1's application to hear its jurisdictional objection on a preliminary basis and for the Panel to suspend the arbitration pending the outcome of the parallel appeal filed before was belatedly introduced and should be rejected. The Panel noted and notes again that the request for bifurcation was made for the first time at the outset of the hearing, which should have been raised during the exchange of written submissions on jurisdiction so as to give the Appellant the opportunity to effectively respond to this procedural argument for equality considerations. By the same token, and also for efficiency considerations, the suspension application based on the parallel appeal proceedings before the Arbitration Centre was and is rejected as it was filed too late, *i.e.* at the hearing, while this would have required some dispositions to adapt the subject matter and the logistics of the hearing.

106. Moving to the jurisdictional objection itself, the Panel finds it difficult to deny that Article 51.4 of the Statutes of the Egyptian Olympic Committee (EOC) specifically and expressly refers to the jurisdiction of the CAS to hear appeals against decisions of the Arbitration Centre.

107. The relevant provision appears to be relatively clear and gives sufficiently grounds to allow the Panel to retain jurisdiction over the appeal here at stake. None of the arguments raised by Respondent 1 are susceptible to convince the Panel that the jurisdiction of CAS is not foreseen in the relevant Statutes of the EOC. Additionally, even if the relevant provision were to be considered ambiguous, it should be construed according to the principles *contra proferentem* and *in favorem validates*.

108. Regarding the appealable nature of the Second Decision, the Panel refers to previous CAS case law issued on the subject matter. The term "Decision", as it is here defined, must *"contain a ruling"* of some kind[4]. In addition, a decision is a unilateral act, sent to one or more determined recipients, that is intended to produce, or produces, legal effects[5], (in the French sense *"faire grief"* to the party seeking remedy against it). The case law has affirmed on various occasions that the form of communication of the appealed decision does not have an impact on its ability to be appealed. Thus, in the case at hand, the Second Decision, even if it were to be deemed as

4 MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, Kluwer Law International, 2015, Article R47 no. 13 *et seq.*; see also: CAS 2014/A/3744 & 3766.

5 CAS 2016/A/4817.

the result of the Committee's legal opinion, does contain a ruling in that it has actually produced legal impact on the Appellant's rights and has undeniably adversely affected his legal situation and in that it prevented him from running at the elections.

109. Regarding the question of exhaustion of legal remedies, the Panel notes that, in order for a Party to file an appeal before the CAS, pursuant to Article R47 of the Code, it has to exhaust the internal legal remedies available. However, CAS precedents[6] establish an exception to this rule. *"*[…] *In particular, where the result of such internal review is obvious from the very outset, no such obligation exists, since in such case the duty to exhaust legal remedies would only serve as a barrier to delay access to justice"*[7]. Accordingly, the condition to exhaust available legal remedies is subject to this exception when access to justice is put into question. In the present case, the only local remedy available is before the EOC as an appeal procedure is in principle not permitted neither before the state courts nor before the Arbitration Centre pursuant to Article 51.4 of the EOC Statutes. The position of the EOC on the potential nomination of the Appellant was clarified through its opinion, the Second Decision, hence the outcome of a possible appeal before the EOC is self-evident. The Panel deems that the requirement to exhaust the legal remedies is not a deterrent in the present case.

110. In the Panel's view, the CAS is indeed an appellate body that is qualified to hear the appeal filed by the Appellant regarding the opinion of the Arbitration Centre and the EOC on the matter at stake. Therefore, the Panel rules that it has jurisdiction to hear the case.

V. ADMISSIBILITY

A. Admissibility of the Statement of Appeal

a. The position of the parties

i. The Appellant's position

111. The Appellant has filed its Statement of Appeal on 14 December 2017 and claims to have abided by the time limit to file the appeal of 21 days pursuant to Article R49 of the Code. Thus, his appeal shall be considered as admissible.

112. The Appellant claims that he was never officially and validly notified of the Decisions. However, both decisions came to his knowledge on 23 November 2017 at 6 pm.

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6 CAS 2014/A/3576, award of 12 February 2015.
7 CAS 2016/A/4720, award of 19 May 2017, para. 52.

ii. Respondent 1's position

113. The Respondent 1 argues that the Statement of Appeal of the Appellant is inadmissible, as the Appeal was not filed in a timely manner upon the acknowledgement of the appealed decision as stipulated in Article R49 of the Code.

114. The time limit imposed by Article R49 of the Code is 21 days following receipt of the appealed decision, starting on the date of receipt. The Arbitration Centre's decision against which the appeal is filed was rendered on 21 November 2017. According to the Respondent 1, the Appellant learned of the decision on the day it was rendered therefore the 21-day time limit ended on 12 December 2017. The Appellant filed his statement of appeal on 14 December 2017 and thus disregarded the deadline.

b. The decision of the panel

115. The Panel has determined that the Appellant has indeed complied with the time limit for filing the Statement of Appeal as per the applicable rule that is Article R49 of the Code.

116. First, the Panel has considered both the First Decision, issued by the Arbitration Centre and the Second Decision issued by the EOC as constituting one single decision to be appealed. The two Decisions appear indeed intertwined such that the 21 November 2017 (First) Decision could hardly be construed without that of 23 November 2017 and *vice versa*. Also, the effective legal effects on Appellant start with the issuance of the (Second) Decision, which was addressed to the Head of the Judicial Committee supervising the Elections inviting the latter to enforce the First Decision. Finally, the evidence submitted does not satisfy the Panel that the Appellant had at any earlier time all the relevant information that a party needs to have in order to be in position to file an appeal, the mere attendance of a meeting not being sufficient. As a result, time computation shall start running from the date when the Appellant was in possession of the entirety of the Decisions rendered against him.

117. Second, even if the Tribunal were to only consider the First Decision of 21 November 2017 to constitute the Appealed Decision, the CAS case law would still be in favor of the Appellant on this issue. Indeed, the prevailing criterion to calculate the time limit for the submission of the statement of appeal is its official notification, not its actual informal knowledge by an appellant. The receipt is defined as *"the point in time of receipt of the decision as opposed to the actual knowledge of the content of the decision"*[8]. Under CAS case law, it is thus well-established that the relevant date to be taken into account, notably to calculate the exact time-limit under which a CAS appeal may be filed, is that of official notification, rather than the date on which the concerned party became aware of the decision to be appealed[9].

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8 MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, Kluwer Law International, 2015, p. 426 *et seq.*, in particular para. 95.

9 CAS 2007/A/1396 & 1402, Preliminary Award of 10 July 2008, para. 45-58.

118. Thus, even if one would assume that the Appellant had knowledge of the First Decision before any official notification, it is the date of official notification that triggers the time limit of 21 days, in particular in view of the lack of knowledge of Appellant of all the elements necessary to file an appeal. Since such official notification date was not proven, the time limit by which to file a Statement of Appeal can be deemed to have been left open. Hence, also under such circumstances, the Appellant would not be time-barred and his Statement of Appeal remains admissible.

B. Admissibility of the statement of defence

a. The position of the Parties

i. The Appellant's position

119. The Appellant argues that the Statement of Defence of the Respondent 1 should be inadmissible for the following reasons:

Respondent 1 filed its Statement of Defence on 9 February 2018 whereas the Appellant submitted its Appeal Brief on 15 January 2018. The English language used in the Statement of Defence is barely understandable.

- Exhibits 7, 8, 9, 12 and 13 were not produced.

- The Appellant also contends that the Statement of Defence addressed on 9 April 2018 is identical to the Statement of Defence filed on 9 February 2018.

ii. Respondent 1's position

120. Concerning the time limit argument of the Appellant, the Respondent 1 claimed that it only received the CAS' letter of 17 January 2018 and the Appeal Brief enclosed therein on 21 January 2018. Respondent 1 produced the DHL delivery report in support of its contention and concluded that the deadline for the submission of the Answer started on 22 January 2018 and expired on 10 February 2018.

121. Concerning the production of exhibits 7, 8, 9 and 12, Respondent 1 contended the following:

- Exhibit 7 and 8 refer to exhibit 2: Article 68 and 67 of the sports law which are referred to in the Answer respectively as exhibit 7 and 8 are contained in exhibit 2 which provides the entirety of the sports law, including Article 68 and 67.

- Exhibit 9 was enclosed with the Answer. The document was also enclosed with the letter as document n°3.

- Exhibit 12 should refer to exhibit 3.

b. The decision of the Panel

122. The applicable rule, Article R55 of the Code concerning the time limit to file an Answer, was complied with as to Respondent 1's submission.

123. Indeed, Respondent 1 has demonstrated its late receipt of the CAS letter dated 17 January 2018, which was received on 21 January 2018.

124. The time limit to submit the Statement of Defence was 10 February 2018, so its filing was prior to this deadline. Thus, Respondent 1's Statement of Defence shall be declared admissible.

C. Admissibility of the additional submissions filed by Respondent 1

a. The position of the Parties

i. The Appellant's position

125. The Appellant has made note of the fact that the Panel did not order a second round of submissions and only granted a deadline for the Parties to file an additional submission on jurisdiction, admissibility and the applicable law. Therefore, the Appellant submitted that the Respondent 1 was not authorized to produce new arguments on the merits of the case.

126. The Appellant has further raised the argument of the inadmissibility of the Additional Submission filed by Respondent 1 due to its bad level of English.

127. The Appellant has also contended that the Statement of Defence filed on 9 April 2018 is inadmissible because it appeared identical to the Statement of Defence filed on 9 February 2018.

128. The Appellant has also argued that the Supplementary Statement of Defence filed on 10 April 2018, as it relates to the merits of the case, is inadmissible.

129. The Appellant has at last raised the argument that the Respondent 1 did not motivate its Additional Submission to justify exceptional circumstances under Article R56 of the Code.

ii. Respondent 1's position

130. Respondent 1 has indicated that its Additional Submission should be admissible given that it had simply resent its Statement of Defence and exhibits thereof in order to assert its position on the issue of jurisdiction. Respondent 1 has claimed that its conduct is aligned with the *"principle of justice and right to comment in defence"*.

131. Respondent 1 has further argued that the Appellant's contention that the Statement of Defence of 9 February 2018 is inadmissible on the basis that some exhibits were missing or *"ambiguous"* contradicts the CAS' acknowledgment that it received the Statement of Defence and exhibits without stating that a document was missing or was *"vague"*.

b. The decision of the Panel

132. Pursuant to Article R56 of the Code, the Party filing a late submission should demonstrate the reasons justifying the said delay. The Panel will only control the admissibility of the late submissions if it considers that such submission is relevant[10]. Otherwise, the Panel controls whether there are exceptional circumstances in order to justify such late submission.

133. Through a letter dated 26 March 2018, the CAS had requested the Respondent 1 to submit its additional submissions on jurisdiction, admissibility and the applicable law.

134. The Additional Submissions of Respondent 1 did address the questions of admissibility, applicable law and the jurisdiction of the CAS.

135. Given that these additional submissions were specifically requested by the CAS Court Office, the Panel has decided that the Additional Submissions of Respondent 1 are admissible. Finally, whether the Additional Submissions of Respondent 1 contained also arguments and considerations concerning other issues of the case and, therefore, could be considered as inadmissible, is an issue that in view of the extensive oral submissions at the hearing and the outcome of the case, is moot: in fact, even if the underlying facts would be deemed admissible, the Panel will show below, [see *infra* section 170] that they do not question the conclusion the Panel will reach.

136. As for the argument pertaining to the poor level of English, the Panel is not convinced that this is a valid ground for declaring the Additional Submission inadmissible, especially that, in Panel's view, it did not constitute a bar to an acceptable understanding of Respondent 1's positions in the present proceedings.

D. Admissibility of the exhibits filed by Respondent 1 with its additional submissions

a. The position of the Parties

i. The Appellant's position

137. The Appellant considers that all the late submissions and exhibits filed by the Respondent 1 on 8, 9 and 10 April 2018 should be declared inadmissible by the Panel as the Respondent 1 did not properly justify its additional submission of exhibits with its Answer.

ii. Respondent 1's position

138. Respondent 1 has stated that the documents it sent with its Additional Submissions included its first Statement of Defence (filed on 9 February 2018) and the exhibits attached to it. According

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10 CAS 2012/A/2766, 29 August 2012, para. 8.6.

to Respondent 1, these submissions have considered the issues of jurisdiction and applicable law and thus fall within the scope of the issues determined for the additional submissions.

b. The decision of the Panel

139. Article R44.3 of the Code governs only exceptional additional submissions and is thus not applicable given the circumstances of the present case.

140. According to Article R56 of the Code, and applicable to the present appeals proceedings, the Parties are not authorized to produce new exhibits after the exchange of submissions except in the case of an agreement between the Parties on the question at stake or in the case of exceptional circumstances as evaluated by the Panel.

141. Respondent 1 has submitted exhibits concerning some facts pertaining to the merits of the case, in a point of time in which the filing of such documents had not been permitted by the Panel. Respondent 1 has provided letters from certain sports-related clubs or associations or from certain Egyptian government representatives that are supposed to reveal information pertaining to the incident in Namibia, which all touch upon the question of the Appellant's good/bad reputation, which is an issue going to the merits of the case. Thus, the Panel concludes that these exhibits are not to be admissible. In addition, based on the Parties' submissions, the Panel is satisfied that, even if the additional exhibits were accepted, they would not have had any actual impact on the outcome of the present case.

E. Admissibility of the witness statements

a. Position of the Parties

i. The Appellant's position

142. The Appellant has contended during the hearing that the witnesses should be heard as the proceedings were planned.

ii. Respondent 1's position

143. At the outset of the hearing however, Respondent 1 has raised, for the first time in the arbitration, that the Panel should not hear the witnesses and that their statements were inadmissible.

b. The decision of the Panel

144. The Panel has decided, after careful examination of the arguments raised by the Parties, the facts and the circumstances of the case, that the witness statements were admissible and that the hearing rightfully took place as originally planned, that is through the examination and cross-examination of the various witnesses, which testimonies contributed, to some extent, to

adjudicate the dispute and help the Panel better understand the matter. The Panel has also considered that it was too late for Respondent 1 to invoke the inadmissibility of the witness statements at that stage of these proceedings. Even if the probative value of the said statements and testimonies turned out to be limited, the Panel is of the view that declaring them inadmissible just before the start of the hearing, whereas most of the latter was meant to hear these witnesses, would have been simply contrary to basic principles of fairness and efficiency which should govern any arbitral proceeding. Finally, the Panel is satisfied that at the end of the hearing the Parties declared to be satisfied for the way the Panel conducted the hearing.

F. Admissibility of the exhibits filed by Respondent 1 on 27 November 2018, 4 December 2018 and 6 December 2018

a. Position of the Parties

i. Respondent 1's position

145. Respondent 1 sent the Panel various news clippings dated 25 November 2018 that mentioned that the Appellant, upon a decision of the North Giza Prosecution, was imprisoned for fifteen days and charged with forgery of public documents.

146. On 4 December 2018, Respondent 1 submitted another document which is a letter from the Public Prosecutor's Office issued on 2 December 2018 addressed to the President of the EOC. This letter mentions that the Appellant is charged with forgery and destruction of documents, meaning, damage to public goods and will be tried before the Cairo Court of Appeal. Respondent 1 contends that based on these additional submissions, the Appellant does not enjoy good reputation as these *"felonies prejudice to honor and integrity"*.

147. Respondent 1 has thus requested that these documents be admissible before the CAS.

148. On 6 December 2018, Respondent 1 submitted another news article that mentioned the release of the Appellant with a bail and that his trial for the same charges was postponed to February 2019.

ii. The Appellant's position

149. In response to these submissions by a letter addressed to the CAS Court Office, the Appellant has argued that the exhibits filed by Respondent 1 on 27 November 2018 were inadmissible and irrelevant, but did not comment on their substance.

150. The Appellant did not reply to the letters of Respondent 1 dated 4 December 2018 and 6 December 2018.

b. The decision of the Panel

151. Article R56 of the Code regulates the question of admissibility of submissions. It follows: *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".*

152. Therefore, unsolicited exchange of new evidence is subjected to the condition of observation of exceptional circumstances.

153. In the present case, the alleged incident of provisory detention became public only on 25 November 2018 and the documents from the Public Prosecutor's Office are dated 2 December 2018. Also, all the news clippings are posterior to the exchange of submissions between the Parties for this arbitration. Hence, it is rather obvious the submitted documents could not have been reported by Respondent 1 any earlier. Therefore, the condition of exceptional circumstances is fulfilled and the evidence submitted on 27 November, 4 December and 6 December 2018 is admissible. However, as explained below requirements (see *infra*, 183-185), the Panel is satisfied that these late documents do not question the final outcome of the present appeal proceedings.

VI. APPLICABLE LAW

a. The position of the Parties

i. The Appellant's position

154. The Appellant referred to Article R45 of the Code and argued that under this article, and in the absence of choice of law by the Parties, Swiss law is applicable to the arbitration and to the interpretation of the various rules and regulations of the ESC and EOC.

155. In its Additional Submissions, the Appellant argued that pursuant to Article R58 of the Code, the Panel should decide the applicable law in the absence of such agreement between the Parties. The Appellant argues that the applicable regulation should be Guidelines issued by the Board of Directors of the EOC on 8 June 2017 given that it applies to Egyptian sports clubs whose statutes are ratified pursuant to the Sports Law.

156. Secondarily, the principles of *"lex sportiva"* should apply. Under the Code, these principles are commonly applied by CAS tribunals, they are considered more appropriate to govern sports-related disputes. Thus, Egyptian law should not apply.

ii. Respondent 1's position

157. Respondent 1 referred to Article R58 of the Code and stated that the applicable law to the merits of the arbitration should be Egyptian law as the Decisions had been rendered by a federation or a sport-related body domiciled in Egypt. The Respondent has also argued that, given the nationality of the Parties, the applicable law to be applied to the merits, should be Egyptian law.

b. The decision of the Panel

158. The Panel has observed that, since the case is an appeal arbitration, the applicable law to be applied to the merits shall be determined pursuant to Article R58 of the Code.

159. Article R58 of the Code reads 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".*

160. As the Parties have not spelled out their choice as to the applicable rules of law, it is within the authority of the Panel to decide that issue. The Panel notes that the Decisions are rendered by the Arbitration Centre and the EOC, both of which are domiciled in Egypt. It is therefore within the Parties' legitimate expectations that legal standards, principles and rules, should be construed according to the legal environment in which the Parties are based and where the Decisions have been issued. Furthermore, the Appellant has not explained why Guidelines issued by the Board of Directors of the EOC it is relying on should be the only governing rules here and how they can be sufficient to decide on the entirety of the dispute.

161. Not having found any legal grounds that could justify the application of other rules of law as being more appropriate to the case at hand, the Panel has concluded that in line with CAS jurisprudence in applying Article R58 of the Code, the applicable law to the merits shall primarily be the applicable sport regulations, *i.e.* in particular the Guidelines and Statutes of the EOC. They shall be supplemented, where necessary, by Egyptian law.

VII. MERITS OF THE CASE

162. In light of the Parties' submissions, the Panel has identified three main issues that are submitted by the Parties and should be resolved by the Panel:

1. Do the Decisions violate the Guidelines? (**Section VII.A**)
2. Do the Decisions violate the Appellant's right to be heard and/or are arbitrary? (**Section VII.B**)

3. Consequently, should the elections be cancelled and should the Panel order new elections? (**Section VII.C**)

A. Do the Decisions violate the Guidelines?

a. The position of the Parties

i. The Appellant's position

163. The Appellant contends that the Decisions violate the Guidelines.

164. Firstly, the Appellant argues that there is no sentence issued against the Appellant as defined in Article XXVIII (3) of the Guidelines. The Appellant highlights the wording of this provision, which requires that a candidate may not have a definitive judiciary sentence issued against him for committing a crime, an offence that distorts honor or trust or a sentence declaring his bankruptcy. The Appellant contends that he fulfills such eligibility requirement given that his criminal record is clean, and the Ministry of Interior certified that there were no ongoing investigations against him. Moreover, concerning the judgment issued against his tourism company, the Appellant has argued that the judgment (i) involves a cut tree and a banner, which do not relate to his good reputation, (ii) is issued against the company and not the Appellant personally (iii) and, in any case, was overturned.

165. Secondly, the Appellant alleges that his application fulfilled the requirement of good reputation provided in Article XXVIII (5) of the Guidelines. In support of its contention, the Appellant refers to the Giza Security Directorate statement in which it is confirmed that the Appellant has a good reputation and, further, that the Head of Administration of the Execution Department confirmed that there was no sentence requiring the payment of a bail or a fine. The Appellant has further argued that, once he was elected in various sports clubs, he had a positive performance and was well appreciated by the sports community. The Appellant contends that the Decisions are only the result of the Appellant's refusal to submit to pressure exerted by the EOC to vote for specific candidates in the various elections in which the Appellant participated during his time as President of the ESC. The Appellant mentioned that the current members of the EOC would like to see the people who would eventually support them to take position in the Executive Boards of Sports Club as these members get to elect the members of the Egyptian Olympic Committee.

166. As a reply to documents submitted by Respondent 1 on 27 November 2018, the Appellant has contended that these documents are irrelevant to this arbitration. However, he did not respond to the documents filed on 4 and 6 December 2018 nor did he comment on their substance.

167. In short, the Appellant has claimed that he fulfils all the requirements to be a candidate to the ESC's presidency and, therefore, the Arbitration Centre wrongfully annulled the approval of the Appellant's candidacy.

ii. Respondent 1's position

168. Respondent 1 claims that the First Decision issued on 21 November 2017 is justified. On one hand, Respondent 1 has contended that filing a clean criminal record does not suffice to meet the requirement of good reputation. According to Respondent 1, a clean criminal record does not conclusively establish the absence of any criminal investigations issued against the Appellant that deteriorate his honour and trustworthiness. In the view of Respondent 1, this only serves as evidence that there is no final criminal judgement issued against the Appellant and not that there is no pending criminal prosecution against him. On the other hand, Respondent 1 has alleged that the Appellant does not have a good reputation.

169. Firstly, Respondent 1 contests the certificate issued by the Giza Security Directorate and produced by the Appellant on the basis that this authority is not competent to issue such a certificate. Further, the certificate contradicts the General Prosecution report as well as the Arbitration Centre's decision, both of which are the competent authorities in the matter.

170. Secondly, according to Respondent 1, the requirement of good reputation implies, under the Egyptian courts' and Arbitration Centre's case law, that the person's behaviour should not be subject to any suspension or mistrust and, further, that the person should not have engaged in any harmful or negative conduct. Respondent 1 further contends that Egyptian case law does not retain a fixed criterion for the interpretation of the good reputation requirement. However, the facts at stake are sufficient, according to Respondent 1, to show a poor reputation and an immoral conduct.

171. Thirdly, Respondent 1 contends that it is obvious that the Appellant does not enjoy a good reputation. In support of its allegation, Respondent 1 relies on a report issued by the General Prosecution of the Ministry of Justice, which indicates that several criminal judgements were issued against the Appellant. Respondent 1 further invokes, for the first time in its Additional Submissions, the following facts:

172. Respondent 1 has alleged, including during the hearing that the Appellant misbehaved during his sports career when he was the President of the Egyptian Gymnastic Association which caused him the withdrawal of his presidency functions: during a competition in Namibia in 2010, he refused to pay the accommodation fees to the hotel and was arrested by the police. Respondent 1 concludes that such bad behaviour and reputation justify the First Decision, which, according to Respondent 1, is correct in fact and at law. The facts have been extensively discussed at the hearing especially during the cross-examination of the witnesses and thus cannot be ignored.

173. Respondent 1 has contended that the Appellant is subject to an investigation led by the General Prosecutor for acts of destroying papers and documents of the ESC. In that respect, the Respondent submitted, on 27 November 2018, various news articles that mention that the Appellant is imprisoned for fifteen days following an order by the Public Prosecutor's Office as a provisional measure. Furthermore, on 4 December 2018, Respondent 1 submitted a letter issued by the Public Prosecutor's Office addressed to the President of the EOC that affirms

that the Appellant will be tried before the Cairo Court of Appeal for forgery and destruction of public documents. On 6 December 2018, Respondent submitted a news article that mentioned the release of the Appellant with a bail and the postponement of his trial on the same charges to February 2018 without commenting on the document. Respondent has claimed that these accusations of the Prosecutor of North Giza prove that the Appellant does not enjoy good reputation.

174. Respondent 1 has also argued that the judge's evaluation of evidence is a substantive matter and is subject to the judge's own conviction. Thus, Respondent 1 contends that the Witness Statements are unreliable because:

- Dr Salah Hasabalah worked with the Appellant from 2014 to 2017;
- Dr Ashraf Moharam is a friend of the Appellant;
- Ahmed Megahed does not testify that the Appellant has a good reputation, but merely states that Appellant was not convicted of any crime.

175. In any case, good reputation cannot, according to Respondent 1, be proven through witness statements: it must be proven through a judgment.

176. Finally, Respondent 1 contests the Appellant's allegation on the pressure exercised by the EOC and claims that such an allegation is false, particularly regarding the Egyptian Swimming Association elections, which were held under judicial supervision. Respondent 1 further states that had the EOC wished to punish the Appellant for refusing to yield to the pressure, it would have refused its candidacy from the very beginning.

b. The decision of the Panel

177. As the present case involves a disciplinary matter, it is a well-established CAS principle that the standard of proof for disciplinary matters on the federation or a sports-related body that took a disciplinary measure against one of its members is "comfortable satisfaction", which gives a certain degree of appreciation to the Panel. This seems to be a reasonable standard since the concept of "good reputation" is undefined at law and even under the Guidelines referred to by the Appellant. This lack of precise legal definition and criteria obliges the Panel to review the issue taking into account all the relevant factual circumstances of the case, with a view that the rather high burden of proof lies on the party accusing the other not to enjoy a good reputation and denying it the right to run for an election.

178. Respondent 1 has filed several exhibits with its Statement of Defence. Among them is Document 16, a certificate issued by the Ministry of Interior on 3 May 2015, which lists all the criminal matters allegedly involving the Appellant. According to this list, it appears that no final sentences were issued against the Appellant. The evidence submitted to the Panel shows that most of these charges were dropped or appealed, and they almost exclusively concern payment cheques that were apparently not capable of being processed or cashed for lack of funds.

Furthermore, the Appellant has produced a certificate from the Ministry of Interior on 22 October 2017 that there are no final judgements against him. In other words, it does not appear that Respondent 1 has been able to prove that a criminal record exists, against the Appellant, that would tend to show that, legally or formally speaking the Appellant must be considered as not enjoying a good reputation.

179. As the Egyptian Administrative Court states, producing a clean criminal record may, under certain circumstances, not be sufficient to establish good conduct and a good reputation. A tribunal must thus take into account multiple facts surrounding a person and his or her reputation and not solely decide on the basis of the existence, or not, of criminal records against that person. As the Higher administrative court in Egypt states, *"the law did not clearly specify a standard for good conduct and good reputation and it reminds that it is difficult to set a general standard in this regard". "For a person to be considered lacking this condition, his actions and behaviour must be clearly revealing having bad morals and being weak before lusts, by descending to this immoral level shows that a person is not trustworthy and incompetent to fulfil public positions that require its holder to have good morals and enjoys integrity, honesty, honour and good manners"*.

180. During the hearing held on 25 September 2018, Respondent 1 emphasized, including when cross-examining the witnesses testifying for the Appellant, on an incident of non-payment of a hotel bill in Namibia by an Egyptian Olympic Mission, on behalf of which the Appellant was acting as the chief of mission. It was argued that the Namibian police was involved and the event was reported widely and badly by Egyptian newspapers.

181. However, the Panel notes that, at that time, Appellant had already been elected as the Vice President of the ESC in 2014. Although Respondents were aware of the incident in Namibia, which dates back to 2010, the Appellant had been permitted to run for election afterwards and to be an official for sporting bodies for several years. Hence, if in the past the Appellant was both permitted to run for the elections and held positions in various sports clubs, neither the incident in Namibia, nor the "bounced cheques" can be deemed to be new information to Respondent 1 on the basis of which it can now contend that it can constitute, *per se* and alone, a new ground, to prevent the Appellant from running for the 2017 elections.

182. As in the case at hand, the burden of proof falls on Respondent 1 to establish the poor reputation and immoral conduct of the Appellant, the Panel considers that Respondent 1 has clearly not met this standard of proof since the evidence produced does not suffice to establish a bad reputation of the Appellant to the comfortable satisfaction of the Panel. For this, the Decisions do not stand the review and shall be set aside.

183. Evidence submitted later on by Respondent 1 including news articles and a letter from the Public Prosecutor's Office respectively on 27 November, 4 December and 6 December 2018 appear *prima facie* relevant to this arbitration contrary to the Appellant's contention, as they could have served to establish a criminal record, thus possibly, the bad reputation of the Appellant.

184. However, the first set of documents submitted on 27 November 2018 and 6 December 2018 are exclusively press articles that do not have a conclusive value so as to meet the high threshold

of burden of proof which is "to the comfortable satisfaction" of the Panel. The Panel does not dispose of enough elements as to the sources and veracity of these publications. Even if the articles were taken from official and reliable sources, they do not point to a final and conclusive judgement issued against the Appellant. They only report a provisional measure of detention which is solely a preliminary measure ordered by the Public Prosecutor's Office and release with a bail and the postponement of his trial. Therefore, declaring that the Appellant does not enjoy good reputation based on these documents would violate the principle of presumption of innocence.

185. The letter submitted on 4 December 2018, that the Appellant will be tried before the Cairo Court of Appeal, for certain accusations. Here again, the evidence submitted on 4 December 2018 does not contain a final and definitive judgement, as a result of a hearing. Although the facts at stake do not necessarily shed the best light on the reputation of the Appellant, they are not yet established and do not prove a criminal record or that a final judgment was rendered against him. The threshold to meet the burden of proof of comfortable satisfaction is higher than a mere balance of probabilities, as the consequence of an adverse appeal decision would be to prevent an individual from running for elections, which remains an essential right. Consequently, the Panel rules that the documents that were last filed by Respondent 1, do not meet the threshold to prove neither a criminal record nor that the Appellant does not enjoy a good reputation.

B. Do the Decisions violate the Appellant's right to be heard and are arbitrary?

a. The position of the Parties

i. The Appellant's position

186. The Appellant claims that the Decisions violate his right to be heard. In support of his allegation, the Appellant argues that the First Decision violates the Appellant's right to a reasoned decision given that the decision does not indicate the legal basis of its reasoning, *i.e.* the applicable rules and regulations and does not state the factual basis, *i.e.* whether the accusations directed against the Appellant, were proven and considered to be true by the Arbitration Centre. The Appellant further contends that the decision only relies on Respondent 2's allegation that *"tens of criminal judgments"* were issued against the Appellant. Thus, according to the Appellant, the First Decision violates the Appellant's right to be heard under Swiss law.

187. The Appellant has also contended that the First Decision is arbitrary because by disregarding the Appellant's clean criminal record that was filed before it, the Arbitration Centre disregarded material evidence and proceeded with an unsustainable deduction. The Appellant has invoked Swiss case law to state that a decision is arbitrary when the judge does not consider evidence that is likely to modify his decision or proceeds with an unsustainable deduction.

188. The Appellant concludes that the First Decision, and, consequently, the Second Decision are arbitrary.

ii. Respondent 1's position

189. Respondent 1 rebuts the Appellant's argument on the basis that the Arbitration Centre provided the Appellant the full opportunity to reply to all of Respondent 2's argument and submit a Statement of Defence.

b. The decision of the Panel

190. After full review of the arguments and the evidence submitted by the Parties, the Panel has decided that there was no apparent, characterized, or otherwise proven or effective, breach of due process through the proceedings followed before the Arbitration Centre. The Appellant has not denied he was provided with the opportunity to submit his defence, in writing and orally, through a counsel, with the right to be heard, and was notified and fully aware of the subject matter of the proceedings. Although there might have been some notification delays at the start of the proceeding, the Appellant has offered insufficient evidence, if any, to claim that due process was effectively infringed by the Arbitration Centre in Egypt. By the same token, the fact the exact legal grounds upon which the Decisions rely are not specifically mentioned therein, are not sufficient to establish an *effective* due process breach as long as the Appellant has *actually* had a chance to address and argue during the proceedings all of the points contained in the Decisions, which, like any arbitral awards are not, contrary to state judgements, subjected to strict and formal requirements compelling the institution rendering them to spell out the exact grounds upon which they are being rendered.

191. As a result, the Panel concludes that there was not enough evidence to establish any breach of due process by the Arbitration Centre in the proceedings leading up to the Decisions and therefore hereby dismisses the Appellant's claim to set aside the said Decisions on such ground. However, since the Panel has already concluded that Respondent 1 did not demonstrate to the Panel's comfortable satisfaction that Appellant did and does not fulfil the eligibility requirements (see *supra*, 177-185), the rejection of Appellant's argument of arbitrariness of the Appealed Decision remains without effect on the final outcome of the present appeal procedure before CAS.

C. Consequently, should the elections be cancelled and new elections ordered?

a. The position of the Parties

i. The Appellant's position

192. The Appellant argues that, following the annulment of the Decisions, the Panel should order the ESC to hold new elections for the Board of Directors and presidency of the Egyptian Shooting Club for the 2017-2021 cycle. Further, the Panel should authorize the Appellant to participate as a candidate in these elections.

193. In its Additional Submissions, the Appellant added in its Request for Relief, *"Annulling the presidency elections of the ESC which took place in 25 November 2017"*, that was not requested in its Appeal Brief.

ii. The Respondent 1's position

194. The Respondent 1 has not addressed the request to cancel the elections and order new elections to be held.

b. The decision of the Panel

195. Although the Panel has explicitly asked the Appellant during the hearing to develop on the legal basis for its request for cancellation of the elections that have been held and for new elections to be ordered, Appellant has not been able to motivate his request with convincing arguments and supporting evidence, respectively.

196. The fact that Article R57 of the Code attributes a *de novo* jurisdiction to the Panel does not allow the Panel to cancel elections that have been held, nor to order new elections to be held if no legal provisions of the applicable sporting rules provide so. Also, Appellant did not advance arguments under Egyptian law that would support his requests.

197. It is accepted that, based on the above considerations, the Appellant was eligible to be elected and that the adverse Decisions cannot be sustained. This does not give to Appellant *per se* the right to request new elections to be ordered by CAS. At least, no legal basis for such an order has been submitted. While the Panel of course understands that Appellant was eligible and, therefore, had the right to be among the candidates of the elections that have been held, the Panel has not been provided with sufficient factual and legal arguments to cancel such elections and, *a fortiori*, to order new elections.

198. Furthermore, a review of the Decisions does not bring the Panel to a different conclusion. The appealed Decisions have been produced by both Parties with their English translations. Having carefully analyzed them, the Panel has determined that the scope of review is limited to the issue, on the merits, as to whether the condition of good conduct and reputation as provided by the Guidelines and according to Egyptian law and, whether the Decisions as to whether the Appellant was rightfully excluded from the elections, were well- or ill-grounded. The validity of the Elections or the possible holding of new elections was not treated by the Arbitration Centre nor the Egyptian Olympic Committee in the Decisions. The scope of the Decisions is limited to the eligibility of the Appellant to run for the Presidential Elections of the Egyptian Shooting Club. The CAS case law confirms that the scope of review of the Panel seized for an appeal procedure is limited to the questions and requests treated in the decision appealed to. In an award rendered by the CAS it follows: *"Furthermore, the power of review of CAS is also determined by the relevant legal statutory basis and limited with regard to the appeal against and the review of the appealed decision, both objectively and subjectively. It means that if a motion was neither object of the proceedings before*

the previous authorities, nor in any way dealt with in the appealed decision, the panel does not have the power to decide on it and that motion must be rejected"[11].

199. Accordingly, the setting aside of the Decisions by the Panel does not *per se* lead to the cancellation of the Elections and the call for new ones. Therefore, the Panel concludes that it is not for this Panel to request that new elections shall be held and when. Thus, the relief sought to annul the elections and to order new elections shall be dismissed.

200. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has jurisdiction to rule on the appeal filed by Mr Amr Mustafa Kamel El-Saeid on 14 December 2017.

2. The appeal filed by Mr Amr Mustafa Kamel El-Saeid on 14 December 2017 is admissible and partially upheld.

3. The decision rendered by the Egyptian Center for Sports Settlement and Arbitration on 21 November 2017 and the related decision rendered by the Egyptian Olympic Committee on 23 November 2017 are set aside.

4. Mr El-Saeid's request to annul the Presidential elections of the Egyptian Shooting Club which took place on 25 November 2017 is rejected.

5. Mr El-Saeid's request to hold new elections for the Board of Directors and presidency of the Egypt Shooting Club for the cycle 2017-2021 is rejected.

(…)

8. All other motions or prayers for relief are dismissed.

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11 CAS 2015/A/4166, award of 29 April 2016.