



**Arbitration CAS 2017/O/5025 International Federation of American Football (IFAF), USA Football, Football Canada, Japanese American Football Association (JAFA), Panamanian Federation of American Football & Richard MacLean v. Tommy Wiking, award of 1 March 2018 (partial operative part of 22 September 2017)**

Panel: Mrs Dominique Brown-Berset (Switzerland), President; Mr Andrew de Lotbinière McDougall (France); Mrs Jennifer Kirby (United Kingdom)

*American football*

*Governance*

*Admissibility of evidence produced after the exchange of written submissions*

*Juridical acts producing legal effects*

*Methods of interpretation of a statement*

1. Pursuant to art. R44.1 para. 2 of the CAS Code, together with their written submissions, the parties shall produce all written evidence upon which they intend to rely. After the exchange of the written submissions, the parties shall not be authorised to produce further written evidence, except by mutual agreement, or if the panel so permits, on the basis of exceptional circumstances.
2. As per art. 1100-1 para. 1 of the French Civil Code, one's statement consisting of an unequivocal declaration (of resignation) falls within the ambit of the juridical acts intended to produce legal effects.
3. In order to assess the meaning, scope and legal effect of one statement, it is necessary not only to take into account its wording but also the context within which it was made, how it was *bona fide* understood by its addressees and the sequence of events before and after its issuance.

## **I. THE PARTIES**

### **A. The Claimants**

1. The International Federation of American Football (IFAF) is an association constituted and organised under French law with its registered office in La Courneuve, France. Pursuant to Article 2 of its applicable statutes ("Statutes"), IFAF consists "*of the national federations that are affiliated to it and recognized by it as controlling American football in their respective countries*". Accordingly, IFAF is the international federation governing American football.

2. USA Football, Football Canada, Japanese American Football Association (JAFA) and Panamanian Federation of American Football are the national governing bodies for amateur American football in their respective countries. They are affiliated to IFAF.
3. Mr Richard MacLean contends that he was elected President of IFAF at the Congress held on 17 September 2016 in New York City, U.S.A.

## **B. The Respondent**

4. Mr Tommy Wiking claims that he did not resign as President of IFAF and was re-elected President of IFAF at the Congress held on 17 September 2016 in Paris, France (*ibid.*).

## **II. RELEVANT FACTUAL BACKGROUND**

5. Below is a summary of the relevant facts based on the evidence adduced by the Parties in support of their factual allegations in written and oral submissions and pleadings. Where relevant, reference to additional facts and allegations relied upon by the Parties will be made in connection with the legal analysis that follows.
6. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it will only refer in the present Award to the evidence, allegations and submissions that it deems necessary to explain its decisions.

### **A. Events surrounding Mr Wiking's alleged resignation**

7. Between 2000 and 2014, Mr Wiking was the President of the Swedish American Football Federation ("SAFF").
8. In 2006, he was elected as IFAF President, and re-elected in this capacity for two further 4-year terms, in 2008 and 2012. His last term was therefore to end in 2016.
9. During Mr Wiking's third term in office, IFAF decided to grant the organisation of the 2015 IFAF World Championship to SAFF, which commissioned a company called Amfium AB "*to make the necessary arrangements*" to this effect. It is undisputed that Mr Wiking was at the time Chairman of Amfium AB ("Amfium").
10. Following developments that are addressed in more detail below, this project was eventually abandoned in December 2014, and the 2015 IFAF World Championship took place in Canton, Ohio, USA.
11. To explain this decision, the Claimants essentially rely on an article published in the American Football International ("AFI") Review on 19 December 2014 and titled "*2015 IFAF World*

*Championships Cancelled in Sweden*”, available on <<http://www.americanfootballinternational.com/2015-ifaf-world-championships-cancelled-in-sweden/>>. According to this article:

- Mr Wiking had taken a leave of absence from IFAF and SAFF until January 2015 due to health issues. It was not clear whether this leave may or may not have *“[b]een brought on by his arrest by Swedish authorities in late August on suspicion of embezzlement. He was held in custody for two weeks and then released while the Swedish crown prosecutor puts together a case against him. That process could take anywhere from a few months to up to a year if it materializes [at] all. According to sources, the case is totally unrelated to the world championships and based on a misunderstanding”*;
  - The hotel bookings had been cancelled due to non-payment;
  - The main stadium to host the 2015 IFAF World Championship *“could not confirm it was booked”*;
  - According to Mr Martin Söderberg, the spokesperson for SAFF, the host federation for the 2015 IFAF World Championship, *“the money is not there for them to organize a tournament of this magnitude”*;
  - SAFF had *“invested SEK 2.7 million (\$350,000) with a company called Amfium over the course of the past three years and/or we paid invoices presented to us by that company. We do not know how much money is left in the company”*;
  - Mr Wiking could not comment on the case because the investigation was ongoing. *“He does say however, that the money SAFF has invested into Amfium has been well invested”*;
  - SAFF claimed that it had *“been trying to get some kind of paperwork from Amfium, or at least a written confirmation that plans and arrangements were underway, for the past year”*. SAFF was *“still awaiting a copy of the 2013 financial year from Amfium”*;
  - The story was further muddled by the fact that Amfium, which was originally owned by SAFF, was sold *“to a couple of unknown investors, arranged by Wiking”* and *“according to Söderberg, at this time no one on the current board knows who the buyers were”*.
12. The Claimants contend that, unbeknownst to the other members of the Executive Board, Mr Wiking had also been involved in various agreements or negotiations closely linked to the interests of SAFF or IFAF during the course of 2014. The Claimants refer in this regard to a contract dated 29 September 2014 pursuant to which Amfium had been sold for SEK 1 to Mr John Joseph Reed, a US citizen. Whilst Mr Wiking was not himself a party to this contract, the agreement expressly provided that the change of Amfium’s ownership had to be reported to him. The Claimants also produced an exchange of correspondence (the last letter having been sent on 7 December 2014) between Mr Wiking and several persons, amongst whom representatives of the Chinese Rugby Football Association, with whom the possibility for China to host the 2015 IFAF World Championship was being explored.

13. The Respondent hardly addresses the events surrounding the cancellation of the 2015 IFAF World Championship in Sweden in his statement of defence, contending that they are irrelevant for the issues at stake in the arbitration. He explains, however, that the agreement with the host stadium for the 2015 IFAF World Championship in Sweden did not fall through because of non-payment but was actually cancelled by SAFF itself.
14. Mr Wiking confirms that he had discussions with representatives of China to organise the 2015 IFAF World Championship and that both SAFF and IFAF had been informed of these contacts as from September 2014. Mr Wiking insists that Amfium had been created in 2003 as a wholly owned subsidiary of SAFF and was subsequently sold to a company called Vital Business Lab Limited, in late 2011.
15. Mr Wiking denies having ever held any interest in either Amfium or of Vital Business Lab Limited. He further contends that he never held any position in either of these two companies. He had indeed been Chairman of Amfium, but claims that this was an automatic consequence of his SAFF presidency. Finally, Mr Wiking maintains that he has never been prosecuted, let alone convicted of anything.
16. On 18 December 2014, IFAF announced on its website that Mr Wiking would be on leave of absence until end of January 2015 and that during that time Senior Vice-President Mac Kaneuji would act as head of the federation and Vice-President Roope Noronen would be the point of contact for IFAF. The AFI Review article addressed in paragraph 11 above was published the next day, on 19 December 2014.
17. In his submissions, Mr Wiking explains that he had to take a break from his role as IFAF President “*upon urgent advice of his doctor*”, which he further confirmed when he was heard on 31 August 2017.
18. On 29 December 2014, the IFAF Executive Board announced on the IFAF website that it had decided to propose moving the IFAF 2015 World Championship to Canton, Ohio, USA.
19. On 30 January 2015, an IFAF Executive Board meeting was held in Dallas, Texas, USA, to discuss the issues related to the cancellation of the 2015 IFAF World Championship in Sweden and the events surrounding such cancellation. Mr Wiking did not attend the meeting.
20. Late on the same 30 January 2015, Mr Kaneuji sent the following email to Mr Wiking:

*“Dear Tommy,*

*I write following the Executive Board meeting held on January 30th 2015 in Dallas where the issues relating to the cancellation of the 2015 World Championships were discussed.*

*The Board continue[s] to have deep concerns relating to the events which led to the cancellation of the Championships and issues which have subsequently arisen.*

*At this time, based upon the information which we currently have, the Board does not have confidence that the resumption of your leadership of IFAF is in the best interests of the Federation and the sport as a whole.*

*We formally request that your leave of absence is extended by two weeks effective from 00.01 on February 1st 2015 during which time we would like you to provide a full and detailed description of all actions undertaken in your capacity as IFAF President relating to the Championships, both in regard to the Swedish partners and wider organizations.*

*We have prepared a statement for the IFAF membership detailing the above which we will release on January 31st.*

*We are keen to ensure that the actions of the IFAF Board are based upon all relevant information and ensure that the IFAF Board can act in the best interests of the IFAF membership”.*

21. On 31 January 2015, Mr Kaneuji sent another email to Mr Wiking, which reads as follows:

*“Dear Tommy,*

*I write in follow up to the email which was sent last night and your subsequent conversation with Mr Park.*

*Thank you for your understanding of the issues which IFAF face[s] in light of the cancellation of the 2015 World Championships in Sweden and the acceptance that there needs to be a clear plan for managing the governance of IFAF between now and the Congress scheduled for this summer.*

*We can confirm that we agree that the first step is to extend your leave of absence from the role of President. During this time you will not act in any capacity for or on behalf of IFAF.*

*Based on our understanding of your discussion with Mr Park we accept that you will be seeking to leave your role as President and that we must manage this sensitively and effectively.*

*Having discussed this, we are in agreement that we should like a confirmation of your intention to resign your Presidency by February 7th 2015 so we can work with you to establish a clear timetable for succession.*

*Whilst we recognize that the current issues present a challenge, we would like to ensure that our members are fully aware of the positive legacy which you leave for IFAF following your time in office. We would like to discuss how we can do this with you in the coming week.*

*We would respectfully request that you acknowledge this email and confirm and agree with the content detailed within. If you are in disagreement with any of the above, please inform us in writing at the earliest opportunity so that we can address this”.*

22. On 3 February 2015, Mr Wiking sent the following email to the members of the IFAF Executive Board, titled “*IFAF Presidency and Leave of Absence*”:

*“Dear Exbo,*

*As per the discussion with Mr. Park I can confirm that I will remain on leave of absence due to health reasons until April 30th (I am on sick leave in Sweden as ordered by medical doctor so it's true). I will not act for or on behalf of IFAF during this period. At April 30th I will communicate to the members something along the lines:*

*“I've been on a IFAF leave of absence since mid-December for health reasons and now have decided that it is best for me to resign – due to my health issues – so IFAF leadership can move forward on the important business ahead. I look forward to continuing my legacy of contributing to IFAF's progress and future when the time and my health is right”.*

*I will as you can see per above resign at April 30th.*

*I would although make one recommendation for the Exbo. I think it's important that the network and contacts I have built over the years in Sportaccord, ARISF and IOC (IOC members and at the IOC Sport department) is transferred and not lost when I leave. I would therefore recommend that I attend the SportAccord meeting in late April with Scott and Roope to assist with the introductions and transition of my relationships with SportAccord leadership, ARISF and IOC leaders to Scott and Roope. I will explain to these leaders that I will resign on April 30th and Scott and Roope will be there to see/hear it. The Sportaccord convention is held in Sochi, Russia. I recommend this since I care for IFAF and that the transition should be as smooth and positive as possible. I have due to various reasons (late cancellations by others etc.) attended the two last Sportaccord conventions (Belek Turkey last year and St Petersburg Russia the year before) alone and during those two years many things have changed. For instance is the whole Sportaccord board new since two years. IFAF was allowed to attend our first ARISF congress last year.*

*This is also the main reasoning behind resigning at April 30th.*

*Regarding recognizing my work over the years and hopefully positive input on IFAF I leave it up to you to decide what is the appropriate action. If you feel that we shall discuss it I can of course discuss with Mr. Kaneuji or whom you decide to appoint in this matter. If you have other questions in regard to how the transition can be done in the best manner I will of course help as much as I can.*

*One point is although of importance. I have now declared my intentions to you. It shouldn't be unclear to you what will happen April 30th. But I would like to be the one who informs the member federations. I don't want the members to find out via some website or social media. The part that I'm on leave of absence can of course be communicated. But not that I'm resigning April 30th. Confidentiality is important for both parties and I trust that you all will honor this agreement.*

*If something is unclear or you have other questions please feel free to contact me”.*

23. The approach proposed by Mr Wiking was discussed and accepted by the Executive Board the following day, 4 February 2015, in the following terms according to the minutes of the meeting:

*“3. Situation with Mr. Wiking*

*After an email exchange with Mr. Wiking, the Proposal is to:*

- Accept Mr. Wiking’s resignation effective from April 30th, 2015*
- Accept continuation of Mr. Wiking’s leave of absence until April 30th, 2015*
- Accept that Mr. Wiking will not act for or on behalf of IFAF while on leave of absence*
- Accept that Mr. Wiking attends Sport Accord together with two IFAF representatives*

*Executive Board members voted all for approval of the proposal. Mr. Noronen will send a notification to Mr. Wiking of this decision.*

*Details regarding the transition will be discussed on a later date”.*

24. By email dated 6 February 2015, Mr Noronen confirmed the Executive Board’s acceptance of his resignation effective from 30 April 2015 to Mr Wiking and of his attendance to the forthcoming Sport Accord Convention together with two IFAF representatives.
25. Mr Wiking did not react to this email but attended the Sport Accord Convention held on 19-24 April 2015. Two members of the IFAF Executive Board, Mr Noronen and Mr Scott Hallenbeck, accompanied him.
26. Mr Wiking alleges that, while attending the Convention, he was approached by Mr Marius Vizer (the then Sport Accord President and a member of the Tokyo 2020 IOC Coordination commission) and HH Sheikh Al-Sabah (*inter alia* IOC member, President of the Association of all National Olympic Committees, President of the Asian Olympic Committee). According to Mr Wiking, both men advised him not to resign from his position as IFAF President as this would be detrimental to the interests of IFAF and jeopardize IFAF’s chances of obtaining full IOC recognition. Mr Wiking further claims that he was also told that his resignation would make it more difficult for American football to be included in the Olympic Programme for 2020.
27. Mr Wiking asserts that following these discussions he mentioned to Mr Noronen that he had second thoughts about resigning. He further claims that he tried to inform Mr Scott Hallenbeck about his doubts and that the latter had not returned his calls.
28. On 30 April 2015, Mr Wiking forwarded a statement printed on IFAF letterhead paper reading as follows:



*“You know that the plan was for me to resign as IFAF President by April 30. As of today, due to recent meetings and strong recommendations from top IOC officials, I am although not resigning and instead continuing as President of IFAF”.*

29. On 1 May 2015 Mr Wiking issued a statement to undisclosed addresses, which reads as follows:

*“Due to the above very clear message from the top IOC-members I’m staying until my term ends in 2016 and I would dedicate all my time in regard to secure our IOC recognition approval, our participation in the next World Beach games, Asian games, Pan-American Games and the Tokyo 2020 Olympic Games.*

*If someone wants to bring the IFAF presidency up on the agenda at the congress this summer it would be a congress decision. Something everyone can and would have to accept since the congress is the supreme authority. Even the key IOC people will have to accept such decision. But it is clear that I leaving now due to the demand on the majority of the Executive Board will not be seen by top IOC people as the correct way to handle issues within an International Sports Federation and it will not help IFAF.*

*Due to my health issues I will continue to stay on medical absence until end of May as prescribed by my doctor. I hope that you all agree that IFAF are for more important than my personal issues. We do not only have our IOC objectives but also the World Championship this summer. This is not the time for internal politics, it’s time to work”.*

30. Mr Noronen reacted as follows on the IFAF Executive Board’s behalf:

*“We read with interest your statement today which outlined your plans to continue in the role of IFAF President.*

*First and foremost it is of concern that the letter contains supposed endorsements from senior figures in international sport. With this matter being at present an internal issue, it is regrettable that other people may be drawn in as a point of reference either to a particular party or a process. That does nothing for our sport and its standing.*

*Secondly, with regard to the issue of your resignation, the process and conditions were clearly laid out in your email dated 3. helmikuuta 2015 (see below).*

*The email makes multiple references to your resignation and this was accepted by the Executive Board.*

*That you wish to change a prior agreement is understandable given the emotions which come when leaving a post. However, the decision has been made and accepted.*

*A failure to honour this would see an erosion of trust which means that there could in effect, be no effective working relationship between yourself and the Board even if your request to be reappointed were to be considered.*



*We will be releasing the statement which states that the Executive Board have accepted your resignation and complied with the requested attendance at events”.*

31. Thereafter, IFAF released the following press statement:

*“Earlier this year, the Executive Board of IFAF accepted the resignation of IFAF President Tommy Wiking, effective April 30, 2015. This timeframe was agreed to allow for a transitioning process which included the Sport Accord Meeting in Sochi.*

*Over the course of this time, Mr. Wiking has been on extended Leave of Absence.*

*We would like to take that opportunity to thank him for his dedication to IFAF and to wish him luck for the future.*

*Senior Vice President Mac Kanenji will continue to lead the Federation until the IFAF Congress in July when elections will take place for the role. With the scheduled elections set for 2016, the elected person will stand for one year in office”.*

32. In reaction to this publication, Mr Wiking wrote the following email to the member associations on 1 May 2015:

*“Today there was a statement posted on the ifaf.org website regarding my position as IFAF President. Unfortunately that statement is not correct. I have not resigned and I have no intention to resign. This is a coup d’état attempt from a minority within IFAF. If anyone wants to challenge I being the president of IFAF it can be done at the upcoming IFAF congress”.*

33. On 13 May 2015, Mr Noronen addressed the following email to all member associations on behalf of the IFAF Executive Board:

*“As you may have seen on IFAF related social media channels and elsewhere, there have been conflicting reports on the status of Mr. Tommy Wiking, former President of IFAF. The fact we are at this juncture is both disappointing and regrettable, particularly for all of the hard working, often volunteer, people who love the sport of American Football and simply want to see the game grow and improve globally. IFAF, under Mr. Wiking’s former presidency, saw the Senior World Championship (SWC) scheduled in his home country be cancelled. It wasn’t until the late fall of 2014 that the serious financial implications were disclosed by Mr. Wiking and only after repeated questions by the IFAF Presidium members. Then in early December 2014, the IFAF Presidium learned of allegations against Mr. Wiking via an article in the Gothenburg Post (Göteborg Posten) and only at that time did Mr. Wiking disclose that he had been in jail in August in association with these allegations and is now under investigation. Please be assured that those allegations and the on-going investigation are a matter of public record and for Mr. Wiking to deal with directly. The outcome of those are not IFAF’s concern any longer.*

*In December, the IFAF Presidium held an emergency IFAF Executive Board conference call to alert the members of these serious breaches of trust, transparency and leadership by Mr. Wiking that left IFAF's signature event – the Senior World Championship (SWC) – cancelled and in need of a new home.*

*First, the Executive Board unanimously agreed that Mr. Wiking must go on a leave of absence and he agreed.*

*Second, the Executive Board requested that USA Football review opportunities to host the 2015 SWC under these circumstances.*

*Finally, the Executive Board requested that Mr. Wiking disclose all the reasons for these serious issues which undermined his leadership and that left the members of the IFAF Executive Board calling for his immediate resignation. Mr. Wiking did not agree to resign at this time and would not disclose any further details about why the SWC was cancelled or why he did not disclose any of these financial issues to the IFAF leadership until he was forced to. In short, he withheld critical information about the financial state of IFAF's SWC, knowing fully that the odds of it being hosted in Stockholm, Sweden, were nearly impossible as we later learned when it was discovered that Mr. Wiking was privately working with other countries to try to find a new host for the SWC.*

*In January, the IFAF Executive Board called another meeting where we agreed that the IFAF SWC would be moved to the USA with the scheduling and final details to be confirmed at the next Board meeting in Dallas. This move put financial pressure on the USA to host the event as well as the original IFAF member countries expecting to participate or proceeding with qualification round games to win the right to participate. At this time, multiple IFAF member countries and participants in the SWC decided to cancel their travel to IFAF's signature event due to increased travel and/or participation costs. Among the member nations that cancelled plans to participate in the 2015 IFAF SWC were the reigning European champions and runners up as well as Morocco, which is notably regrettable as it would have been the SWC's first-ever competitor from Africa.*

*At the IFAF Executive Board meeting in Dallas, the Board was astonished to learn that a representative from China had travelled to the United States to present a bid for the SWC. No-one present had been aware that other nations had been approached and the Executive Board were left feeling acutely embarrassed on behalf of those who attended, especially as the discussions had seemingly been going on since the summer of 2014.*

*Despite the emergence of a new bid, the Executive Board committed to its agreement to stage the event in the US as it was felt that there was an imperative to minimise the risk to a rearranged event and there was not sufficient time to undertake a full feasibility study for an alternative venue in a nation where no federation was in existence to provide insight.*

*With this background, it should be no surprise that the IFAF Executive Board, with unanimous support, strongly encouraged Mr Wiking to resign (as noted in the email from Mr. Mac Kaneuji to Mr. Wiking, below). It was only at that time did Mr. Wiking offer his resignation as noted in his email to the Executive Board on February 3 (below). This was accepted.*

*As an example of the IFAF Executive Board's respect, we honored Mr. Wiking's request and took him at his word, to attend the SportAccord meeting near the end of April to help transition from his former leadership to the current, interim leadership.*

*Mr. Wiking wrote to the Executive Board on April 30 to change his position and state that he had not resigned. In this letter his only rationale was given as being supported by individuals outside of IFAF. Interestingly, while at the SportAccord meeting the leadership of SportAccord and the IOC stressed the importance of integrity. Further, the IOC Sports Department stated that the IFAF IOC recognition process is going smoothly and that the work IFAF is doing relative to coaching education and the health and safety of our athletes is of high quality.*

*All members of IFAF should be aware of the steps that IFAF leadership is taking to rebuild the trust, credibility and honor of IFAF and our great game. The IFAF Executive Board remains steadfast in its unanimous understanding that Mr. Wiking has resigned Mr. Wiking's breach of trust is irreparable.*

*The IFAF leadership has taken steps to re-focus on the great future the organization and its members have going forward. Since the Executive Board meeting and the appointment of a new Managing Director, there has been an internal review of IFAF's governance put in place, recommendations from which are currently being formalized and translated into a new strategy in time for consideration at the Congress. The draft Bid Guidelines for IFAF events which recently circulated are one of the emerging elements of this. We look forward to hosting our IFAF members in Canton, Ohio, at the July 16/17 Congress meetings to work together toward a new and exciting future that will be centered on growing and improving the quality of football globally.*

*With respect to the IFAF social media outlets, IFAF has taken rightful control of all outlets except its Facebook site. This site is being used for Mr Wiking's communications and we have no knowledge as to who has access.*

*Please be alerted to the fact that the Facebook site for IFAF is no longer recognized by the IFAF nor does it fall under the auspices of IFAF.*

*We invite all followers/friends of that site to transfer to Facebook.com/IFAFOfficial.*

*We welcome you to our new site and remind you that these important sites remain under the proper control of IFAF:*

*Facebook.com/IFAFGameCenter*

*@IFAFGameCenter*

*@IFAFOfficial (was @IFAFin Insider)*

*In summary, the IFAF Executive Board is united in its opinion that Mr. Wiking tendered his resignation and had this accepted, a matter now being dealt with legally.*

*At this time IFAF continues to be led by IFAF Senior Vice President Mr. Mac Kaneuji*”.

34. On 16 May 2015, Mr Andrew Fuller, IFAF Managing Director, emailed the member federations to pass on the agenda for the 2015 annual Congress to be held on 17 July 2015 at the Marriott Courtyard Hotel Ballroom in Canton, Ohio, USA. Item 15 of the agenda provided as follows:

*“15. Election of the IFAF President (in accordance with Article 9) for the remainder of the current term until 2016”.*

35. Other items on the agenda included votes on motions submitted by the Indian, Irish and German member federations:

- In its motion, the Indian federation invited members, “[*due*] to the current situation in IFAF Executive Board”, to extend their support to each member of the Executive Board in a vote of trust and, depending of the outcome of the ballot, to elect new members “*for the remaining term 2015 to 2016*”.
- In order to “*ensure it[s] survival into the future*”, the Irish federation proposed a) that “*All persons in elected positions are to vacate their positions*”, b) to elect an Emergency Committee of 6 persons, who needed to be distinct from the members of the most recently elected IFAF Presidium and who would choose their chairman “*from outside American football*” and c) to task this Emergency Committee “*with undertaking a comprehensive review of the IFAF Statutes*”.
- The German federation proposed to submit to the vote of the IFAF members, a) “*IFAF Good Governance Policy in American Football*”, b) “*IFAF Code of Ethics*”, and c) “*IFAF Conflict of Interest / Confidentiality Policy and Guidelines*”. It also proposed the election of IFAF’s first Ethics Panel.

## **B. Canton, OH, USA – July 2015**

36. On 17 July 2015, before the IFAF Congress was officially opened. Mr Wiking was prevented from accessing the podium reserved to the members of the IFAF Executive Board. This triggered a strong reaction by some delegates, who protested verbally before leaving the room, followed by Mr Wiking.

### ***i. The meeting chaired by Mr Kaneuji***

37. Following the departure of the delegates who left the room with Mr Wiking, the IFAF Congress proceeded in accordance with the 16 June 2015 agenda with the delegates of 19 IFAF members who remained. According to item 15 of the minutes issued thereafter, the Executive Board “*informed the Congress that IFAF accepted the resignation of the former IFAF President Mr. Tommy WIKING*”. Upon the nomination of the representative of the federation of Great Britain, Mr Noronen was elected by a unanimous vote as interim IFAF President until the 2016 IFAF

Congress elections.

38. According to the Claimants, the national federations of the following countries were duly represented at the Congress because they had paid their annual fee in advance of the Congress (Article 4.F of the applicable Statutes): Australia, Argentina, Bahamas, Brazil, Canada, Chile, Denmark, Finland, Great Britain, Israel, Japan, Korea, Mexico, New Zealand, Norway, Panama, Serbia, Sweden and USA.

***ii. The meeting chaired by Mr Wiking***

39. According to Mr Wiking, delegates of 22 IFAF member federations left the room where the IFAF Congress was originally to be held and proceeded to hold a parallel meeting in the lobby of the Marriott Courtyard Hotel.
40. Mr Wiking opened and chaired the meeting. According to the minutes of the meeting, the attendees voted by way of secret ballots on the motion put forward by the representative of the Indian member federation to extend their trust in Mr Wiking as President and to Mr Kaneuji as Senior Vice-President. The attendees casted 22 votes in favour of Mr Wiking (22 yes and 0 no) and 20 (2 no) in favour of Mr Kaneuji. They did not renew their confidence in both Vice-President Roope Noronen and Treasurer Scott Hallenbeck (0 yes and 22 no in both votes). Mr Robert Huber was voted Vice-President and Mr Marco Cobar Treasurer.
41. In view of these results, the Indian federation withdrew the remainder of its motion and the Irish member federation withdrew its own motion. The motion submitted by the German member federation was adopted unanimously.
42. According to Mr Wiking, the national federations of the following countries were duly represented at the meeting he led: Bulgaria, Belgium, El Salvador, France, Germany, Greece, Guatemala, Honduras, India, Ireland, Italy, Kuwait, Netherlands, Nicaragua, Qatar, Philippines, Romania, Spain, Switzerland, Thailand, Turkey and Ukraine.

***iii. The Parties' divergent views as to the authority of certain of the representatives of the federations that attended the meeting led by Mr Wiking***

43. There is a dispute as to the validity of the authority of some of the representatives of the federations present at this meeting, the Claimants alleging, *inter alia*, that some of these federations did not comply with the requirements of the applicable Statutes or were not validly registered as IFAF members.
44. On 22 July 2015, Mr Andrew Fuller, IFAF Managing Director and in charge of verifying that the national federations attending the Congress had complied with Article 4.F of the Statutes, sent to Mr Noronen a draft email apparently intended for all national federations:

*“Over the past 48 hours I have received requests to provide clarity on a series of issues relating to the events of last week. As such I write to inform you of key information that we believe should be communicated to you as member representatives of IFAF.*

*First, in organising the Congress attendance I received representation from 35 nations which were due to attend.*

*Secondly, it is important that we clarify Mr. Roope Noronen was elected IFAF President by a unanimous vote at the IFAF Congress and will remain at the helm until the 2016 IFAF Congress, which will elect a President for a four-year term.*

*The Congress elected Ms. Minette Rogner, President of the Swedish American Football Federation (SAFF) as IFAF Secretary and she will also serve on the IFAF Executive Board.*

*The official IFAF Congress Minutes were shared with IFAF member federations by President Roope Noronen.*

*The date and venue for the 2016 IFAF Congress has not been confirmed.*

*I have previously highlighted that IFAF does not control the @IFAFOfficial Twitter account. Prior to Congress I also highlighted that I had concerns about other web domain names being positioned as representing the organisation, something which it appears has now happened.*

*Email dated July 2<sup>nd</sup>:*

*Please also note that the official IFAF domain is [www.IFAF.org](http://www.IFAF.org).*

*No other domain involving the 4 simple initials “IFAF” is endorsed by IFAF at present nor is it used for official IFAF business.*

*Meeting at the 18<sup>th</sup> annual IFAF Congress were representatives of 19 federations: Australia, Argentina, Bahamas, Brazil, Canada, Chile, Denmark, Finland, Great Britain, Israel, Japan, Korea, Mexico, New Zealand, Norway, Panama, Serbia, Sweden and the United States.*

*Additional IFAF federations had indicated they would be present at Congress and some of that number chose to leave the room that was the venue for the Congress before Congress was officially opened. In keeping with promoting transparency within IFAF, which was discussed during the IFAF Congress, events happened as follows:*

*A seat at the head table, reserved for the Executive Board and heads of IFAF Continental Federations, was not reserved for Mr. Tommy Wiking. The Executive Board earlier this year accepted Mr. Wiking’s resignation.*

*Before the Congress was officially opened, some federations communicated their opinion that Mr. Wiking should be seated at the top table.*

*Once the reason for a seat not being available was explained, a group of members walked out of the meeting room and did not remain in the Congress.*

*The following member federations indicated they would attend the IFAF Congress but did not do so, either because they walked out of the meeting room, or did not make it to the meeting: Belgium, El Salvador, France, Germany, Guatemala, Honduras, India, Ireland, Italy, Kuwait, Netherlands, Nicaragua, Philippines, Qatar, Switzerland and Turkey.*

*Those member federations who walked out of the meeting room are believed to have held an independent meeting, and during that time, the results of that meeting were conveyed through the @IFAFofficial twitter account or via other means.*

*The IFAF Executive Board welcomes any question you may have, which should be directed to IFAF President Roope Noronen”.*

45. Mr Andrew Fuller’s statement was released by IFAF the next day, on 23 July 2015.
46. On 30 July 2015, AFI Review published a statement by the Spanish Federation regarding the events of 17 July 2015 listing the 22 federation representatives who attended and voted on the motions presented at the meeting chaired by Mr Wiking, with the following comments:

*“This list raises a few questions. AFI has been contacted by representatives from Ukraine and Romania stating their country sent no delegates to Canton. Romania, specifically, has stated no one from the Romania attended and that Andrei Mirescu is unknown to the Romania league leadership.*

*It is also important to know that Romania has no organized governing federation body. A country may only enter IFAF once it has a federation. The Romanian championship is organized through a ‘gentleman’s agreement’ and the IFAF.org site in fact states;*

*“American football is relatively new in Romania and in the absence of a national federation is governed by club team the Bucharest Warriors”.*

*Thus, even if a delegate from a country like Romania was present, that person wouldn’t have had right to cast a vote among members federations in IFAF Congress.*

*The same can be applied to Greece, where there is no known league or federation.*

*Another puzzling name on the list is that of Tommy Wiking himself as the representative for Sweden. When he declined to stand for reelection to the Swedish federation in February, his place was taken by Minette Rogner. Thus, he is no longer president, nor a member of the Swedish federation and in fact is not eligible to vote. Indeed, from what is understood of the IFAF statutes, the president of IFAF must be a member of his or her own country’s federation which, again, he is not. This raises further questions.*



*Despite these blatant discrepancies, it is rumored that the two sides are currently in negotiations and a compromise might be in the works”.*

47. On 31 July 2015, local media in Alliance, Ohio (USA), reported that an international freshman student of the University of Mount Union *“happened to be at the right place at the right time this July when he was asked to be the representative for his home country Ukraine for the International Federation of American Football (IFAF)”*. Though he had *“no prior knowledge or personal experience with football, the president of the organization emailed him personally, asking him to be the representative of his country. The president of the Federation emailed Mount Union and asked if there were any students from Ukraine. So I got an email from him and that’s how I became a delegate” [he] said”*.

48. The report concluded that:

*“During this event, [the student] sat through the organization’s annual meeting at the Pro Football Hall of Fame in Canton, Ohio. He watched in awe as they discussed and voted on new positions, such as a new president and saw how the organization operates as a whole. During [this] experience, he expressed his opinion on various questions and topics and helped with the scheduling of a new meeting in Paris that will happen next year. After the meeting, [he] met influential people from around the world, something that would never have happened if not for this opportunity”.*

**iv. The applications filed with the French authorities to register the changes adopted in Canton, OH, USA**

49. On the same 31 July 2015, the minutes of the meeting chaired by Mr Wiking were sent to the *Préfecture de la Seine-Saint-Denis* (hereinafter the “Préfecture”). The application requested, among other things, the registration of Mr Tommy Wiking as IFAF President and of Mr Robert Huber as Vice-President.
50. On 15 August 2015, a similar application was filed with the Préfecture on behalf of IFAF, requesting, *inter alia*, the registration of Mr Noronen as IFAF President and of Mr Makoto Kaneuji as Vice-President. The minutes of the IFAF Congress chaired by Mr Noronen were also attached to the application.
51. On 13 January 2016, Mr Wiking and his Board called for an Extraordinary Congress to be held on 19 March 2016 in Paris, France.
52. On 15 January 2015, the attorney representing the group led by Mr Wiking wrote to the Préfecture to challenge the validity of the minutes filed on 15 August 2015 and of the alleged resignation of Mr Wiking as IFAF President. He asserted that the decisions *“acknowledged by the second set of minutes dated 17 July 2015 are manifestly invalid and cannot be taken into consideration”* (free translation of the French original).
53. On 19 January 2016, IFAF released the following statement by Mr Noronen:

*“The last few months have proven to be challenging for many individuals and for our sport and its reputation. Since the Executive Board accepted the resignation of Mr Wiking in early 2015 and the subsequent claims made regarding a change of position by Mr Wiking, the uncertainty over the leadership of the International Federation of American (IFAF) has placed a strain on our members and has damaged the perception of our sport in the eyes of many – damage that will take time to repair as we seek to rebuild trust and confidence.*

*I can confirm that in our organization’s legal seat in Paris, the Minutes of the Congress held in Canton, Ohio, which were circulated to members after the Congress and which saw Minette Rogner elected as Secretary and I as President alongside a continuation of the mandate for Mac Kaneuji as Senior Vice-President and Scott Hallenbeck as Treasurer, have been submitted to the Prefecture as the authoritative documentation.*

*We do not recognize the authenticity of any other meeting held in Canton, be it in the hotel lobby or elsewhere, claiming to be a legitimate Congress. As a consequence of this, we do not recognize the Extraordinary Meeting of IFAF called for Paris in March. Member nations are advised not to attend. (...) [D]espite claims from Mr Wiking and his group that Mr Kaneuji is the Senior Vice-President on their Presidium, Mr Kaneuji does not recognize their authenticity and he does not take part in any of their meetings. (...)*

*In the coming days I shall write to all nations to set out the timetable and framework for the Congress in 2016”.*

54. On 15 February 2016, Mr Noronen wrote the IOC regarding the “uncertainty in the leadership of the International Federation of American Football”, stating:

*“I can confirm that in our organization’s legal seat in Paris, the Minutes of the Congress which saw me elected as President and Minette Rogner elected as Secretary, stand as the authoritative documentation. (...)*

*We are currently going through the process with our lawyers of repatriating IFAF’S assets, both financial and other, to the control of the Executive Board.*

*We respectfully request that until further notice no payments are made to IFAF for global matters. We can also confirm that the meeting scheduled by Mr Wiking in March is not legitimate and does not represent IFAF business. As detailed in my previous statement, details of the 2016 Congress will be published shortly. Please note that the social media accounts are not under our control and [www.ifaf.info](http://www.ifaf.info) is not representative of our Executive Board”.*

55. On the same day, the following statement was released by IFAF under the title “Noronen registered as IFAF President”:

*“I write following the recent uncertainty in the leadership of the International Federation of American Football (IFAF) and my statement from January - a copy of which can be found on [www.ifaf.org](http://www.ifaf.org).*

*I can confirm that in our organization’s legal seat in Paris, the Minutes of the Congress which saw me elected as President and Minette Rogner elected as Secretary, stand as the authoritative documentation. (...)*

*We are currently going through the process with our lawyers of repatriating IFAF'S assets, both financial and other, to the control of the Executive Board.*

*We request that until further notice no payments are made to IFAF for global matters.*

*We can also confirm that the meeting scheduled by Mr Wiking in March is not legitimate and does not represent IFAF business.*

*As detailed in my previous statement, details of the 2016 Congress will be published shortly.*

*Please note that the social media accounts are not under our control and [www.ifaf.info](http://www.ifaf.info) is not representative of our Executive Board".*

56. On 22 February 2016, the group presided over by Mr Wiking filed an application for provisional measures with the *Tribunal de Grande Instance* of Bobigny, France, applying for it to "order Mr Roope Noronen, both on a personal basis and in the name and on behalf of the IFAF, to refrain from filing a declaration mentioning himself as President of IFAF at the Prefecture of Seine-Saint-Denis" (free translation of the French original).
57. The application for provisional measures was granted the same day, "until a Court has issued a ruling on the merits regarding the claim seeking the invalidation of the decision appointing [Mr Roope Noronen] to this position".
58. On the same 22 February 2016, Mr Noronen issued the following statement:
 

*"Further to recent communications we can confirm that Mr. Noronen is registered in Paris as President of IFAF.*

*Other parties are now seeking to challenge this through the French courts".*
59. On 29 February 2016, the group presided over by Mr Wiking initiated proceedings before the *Tribunal de Grande Instance* of Bobigny, France, in order to obtain the invalidation a) of the decisions taken by the Congress chaired by Mr Kaneuji on 17 July 2015; b) of Mr Noronen's election; and c) of all subsequent actions taken by him or his group on behalf of IFAF.
60. The Vice President of the said court ordered Mr Noronen on the same day to refrain from registering himself with the Préfecture of Seine Saint-Denis as the legal representative of IFAF until a final decision is passed on the merits of the case (the *Tribunal de Grande Instance* eventually dismissed the case for lack of jurisdiction).
61. Later that evening, a draft statement by Mr Noronen was circulated from [info@ifaf.org](mailto:info@ifaf.org) to [info@ifaf.org](mailto:info@ifaf.org) and received by Mr Wiking, who (according to the chain of emails he himself produced) in turn circulated it within his group a couple of hours later. The draft statement reads as follows:

*“Further to recent communications we can confirm that Mr. Noronen is registered in Paris as President of IFAF.*

*Other parties are now seeking to challenge this through the French courts.*

*We will issue no further comment at this time.*

*We look forward to working with all members in the coming weeks.*

*Mr Noronen can be contacted via [roope.noronen@ifaf.org](mailto:roope.noronen@ifaf.org)*

*Ends”*

62. There is no contemporaneous evidence on file that this statement was ever issued or sent to all IFAF member federations.

63. On 11 March 2016, the IOC wrote to Mr Noronen that it did *“not normally get involved in IF internal governance issues and hope[d] that the IFAF will be able to settle the dispute amicably or through an appropriate dispute resolution mechanism, including, ultimately, the Court of Arbitration for Sport (CAS)”*.

### **C. Paris, France – March 2016**

64. On 19 March 2016, the group led by Mr Wiking held the Extraordinary Congress that it had called on 13 January 2016, in Paris, France.
65. According to the issued minutes, the Congress was attended by 17 *“countries with voting rights”*. Three countries *“without voting rights (until topic 15)”* were also in attendance.
66. Item 15 on the agenda was a proposal to increase the number of member federations by an additional 36, out of which 13 had applied for membership. The proposal and the applications were unanimously voted and *“[a]t this point all elected federations, provided they have paid their enrolment fees, will be allowed to vote for the remainder of the meeting”*. According to the minutes, the three attending countries without voting rights having paid the enrolment fee, *“the number of votes [was from] raised by three”*.
67. The next and last item on the agenda, item 16, consisted in a number of votes of trust to confirm members of the Executive Board and/or elect new members. According to the minutes, Mr Makoto Kaneuji, Mr Jose Jorge Orobio and Mr Marc Angelo Soumah, who were not present at the meeting, *“failed to gather a majority of votes”* and *“were removed from office”*. Thereafter, Mr Robert Huber was elected as Senior Vice-President and Mr Shahim Komurcu as Vice-President; two new additional members were also elected to Executive Board.
68. A general vote of trust for the Executive Board as amended followed, which was unanimously supported.

**D. Events up until 17 September 2016**

69. On 24 April 2016, the IOC officially invited Mr Wiking to attend the XXXI Rio Olympic Games.
70. On 16 May 2016, the group led by Mr Wiking called for an Ordinary Congress to be held on 16-17 September 2016 in Paris, France.
71. In a decision dated 26 May 2016, the *Tribunal de Grande Instance* of Bobigny, France, ruled that it had no jurisdiction to decide on the merits of the case *vis-à-vis* the entity presided over by Mr Noronen in view of the CAS arbitration clause contained in the IFAF Statutes and referred the parties to CAS arbitration.
72. Mr Wiking applied on the same day with the Préfecture to register him as IFAF President and Mr Robert Huber as Vice-President.
73. On 14 July 2016, the group chaired by Mr Noronen announced on its website that New York City, USA, would host its annual Congress on 17 September 2016. The invitation specified that a) the agenda would be published 30 days prior to the event, b) people seeking election to the available IFAF Executive Board roles should file an application 60 days prior to the event, and c) any proposals for inclusion on the agenda should also be submitted 60 days in advance of the event.
74. On 17 August 2016, the agenda for the Congress called by the group lead by Mr Wiking was issued.
75. On 6 September 2016, counsel purporting to act for the Spanish, French and German federations wrote to Mr Noronen raising various alleged irregularities in the calling of the 2016 IFAF Congress, concluding that *“the Congress that you pretend to hold on behalf of IFAF is null and void, as much as every decision that could be made during such congress”*.
76. On 8 September 2016, the International Federation of American Football, La Courneuve, France, Mr Wiking, Sweden, and the Turkish American Football Federation, Ankara, Turkey, filed an application for an urgent request for provisional measures under Article R37 of the Code of Sports-related Arbitration (“CAS Code”) with the following Prayer for Relief:
  - I. *to order Roope Noronen to cease and desist from acting as and referring to himself as the current President of IFAF;*
  - II. *to order Roope Noronen and Richard MacLean to cease and desist from staging and promoting a so called IFAF Congress to be held on 17 September 2016 in New York City;*
  - III. *to order Roope Noronen to cease and desist from using the website ifaf.org and e-mail server @ifaf.org and to release the access codes to the website ifaf.org and e-mail server @ifaf.org to IFAF;*

*IV. to order Roope Noronen and Richard MacLean to pay the costs of the present proceedings; and*

*V. to order Roope Noronen and Richard MacLean to pay a contribution towards the legal fees and other expenses incurred by IFAF, Tommy Wiking and the Turkish American Football Federation in connection with the present proceedings, the amount of which will be specified at a later stage”.*

77. The application was dismissed on 14 September 2016.
78. On 16 September 2016, Mr Wiking’s IFAF group issued a statement suspending USA Football from all competitions *“until such time as they comply fully with article 5.6.6. of the IFAF Anti-Doping Rules. When compliance is proved the suspension should be lifted by vote of the IFAF Presidium”.*

**E. Paris, France and New York City, USA – 17 September 2016**

***i. The meeting chaired by Mr Wiking in Paris***

79. According to the minutes of the meeting held on 17 September 2016, 34 representatives of member federations with voting rights and 15 without voting rights attended the meeting held in Paris.
80. New Statutes were adopted that allowed the use of proxies. 13 proxies given to 13 attending countries were counted under item 10 of the minutes. Thereafter, Mr Wiking was re-elected unanimously (item 17.a of the minutes).
81. On the same day, Mr Wiking and his group applied with the Préfecture for the registration of Mr Wiking as IFAF President and of Mr Huber as Vice-President.

***ii. The meeting chaired by Mr Noronen in New York City***

82. On the same 17 September 2016, 19 member federations attended the meeting held in New York City.
83. According to item 15 of the minutes, a motion to approve the institution of CAS proceedings was approved unanimously less two votes (one vote against and one abstention). A further motion to create a sub-committee to oversee these CAS proceedings was also approved (item 16 of the minutes).
84. Mr Richard MacLean was elected as IFAF President for a four-year term.
85. On 26 September 2016, USA Football replied to the suspension issued by Mr Wiking and his group on 16 September 2016 as follows:

*“As acknowledged in the Court of Arbitration for Sport’s Order on Request for Provisional Measures in the matter [CAS 2016/O/4779], the present IFAF leadership dispute presents a “delicate factual*

*situation". USA Football wishes to reiterate that, for the reasons detailed in its response to the "TEAF Disciplinary Committee" dated September 14, 2016, and the Respondents' Response on Provisional Measures Request in [I] v. [N], it does not recognize the authority of the "Disciplinary Committee". Accordingly, USA Football considers the sanctions imposed by the "Disciplinary Committee" null and void. Without prejudice to this position, USA Football reserves the right to take any and all appropriate actions against this rogue group purporting to be IFAF, its so-called "Disciplinary Committee", and the illegitimate suspension".*

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

86. On 7 March 2017, the Claimants filed a joint request for arbitration against Mr Wiking in accordance with Articles R38 *et seq.* of the CAS Code.
87. On 13 March 2017, the CAS Court Office acknowledged receipt of the Claimants' request for arbitration, and of their payment of the CAS Court Office fee, and took note of their nomination of Mr Andrew de Lotbinière McDougall as arbitrator. The CAS Court Office also invited Mr Wiking a) to comment within 10 days on the Claimants' request to submit the present matter to a Panel of three arbitrators and b) to nominate an arbitrator within the same deadline.
88. On 3 April 2017, Mr Wiking confirmed to the CAS Court Office that he agreed to have a three-member Panel and that he was appointing Mrs Jennifer Kirby as arbitrator.
89. On 12 April 2017, Mr Wiking filed his answer to the request for arbitration.
90. On 2 May 2017, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Mrs Dominique Brown-Berset, President of the Panel, Mr Andrew de Lotbinière McDougall and Mrs Jennifer Kirby, arbitrators.
91. On 23 June 2017, within the extended deadline granted by the Panel, the Claimants filed their joint statement of claim.
92. On 10 July 2017, the Parties were informed that the Panel had decided to hold a hearing on 31 August 2017, with the Parties' agreement.
93. On 10 July 2017, Mr Wiking applied for an extension to file a statement of defence until 28 July 2017.
94. On 13 July 2017, the Claimants confirmed that they agreed *"that the Statement of Defence be filed on Monday 24 July 2017 (effectively a 6 day extension) on the condition that the Respondent commits to providing an electronic courtesy copy to the Claimants at the time of filing"* (emphasis in original).
95. On the same day, the CAS Court Office informed the Parties that the deadline for Mr Wiking to file his statement of defence was extended until 24 July 2017.



96. On 24 July 2017, Mr Wiking reiterated his request for an extension of time to file his statement of defence until 28 July 2017.
97. The CAS Court Office invited the Claimants to take position by 25 July 2017.
98. On 25 July 2017, the Claimants informed the CAS Court Office that they objected to Mr Wiking's request.
99. Thereafter the CAS Court Office informed the Parties that the Panel had accepted to extend the time limit granted to Mr Wiking to file his statement of defence until 27 July 2017.
100. Mr Wiking filed his statement of defence within the applicable deadline.
101. The Parties signed the Order of Procedure issued by CAS on 9 August 2017.
102. A hearing was held on 31 August 2017 at CAS's premises in Lausanne, Switzerland. The Panel was assisted by Mr William Sternheimer, Deputy Secretary General of the CAS, and by Mr Patrick Grandjean, acting as *ad hoc* Clerk.
103. The Parties confirmed, at the outset of the hearing, that they did not have any objection as to the composition of the Panel.
104. The following persons were in attendance:
  - Mr Antonio Rigozzi and Mr William McAuliffe, Counsel for the Claimants;
  - Mrs Jennifer Phelps, in-house Counsel for USA Football;
  - Mr Scott Hallenbeck, also representing USA Football;
  - Mr Richard MacLean;
  - Mr Christian Keidel and Mr Heiner Kahlert, Counsel for the Respondent.
105. The following party-representative and witnesses were called by the Respondent, and were heard, cross-examined and questioned by the Panel:
  - Mr Wiking;
  - Mr Robert Huber; and
  - Mrs Elena Zehndorfer (via teleconference, with the agreement of the President of the Panel, see Article R44.2 para. 4 of the CAS Code).
106. The testimony of the only witness called by the Claimants, Mr Andrew Fuller, IFAF Managing Director, was withdrawn during the hearing, which was accepted by the Respondent, who waived his cross-examination.

107. During the course of the discussion related to Mr Andrew Fuller, the Respondent proposed to waive the hearing of the fourth witness he had originally called, Mr Guillermo Suarez. The Claimants accepted this withdrawal and to waive their cross-examination.
108. Each witness was invited by the President of the Panel to tell the truth subject to the sanctions of perjury.
109. Due to time restrictions, the Panel decided, with the Parties' agreement, to replace the originally planned oral closing arguments by post-hearing briefs, to be filed on or before Friday, 8 September 2017.
110. At the conclusion of the hearing, the Parties confirmed that their right to be heard and to be treated equally before the Panel had been fully respected.
111. On 8 September 2017, the Parties filed their post-hearing briefs.
112. On 22 September 2017, the Panel issued a partial operative part of the present decision, which read as follows:

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

- 1. Mr Tommy Wiking resigned as President of IFAF on 3 February 2015 with effect on 30 April 2015, which was accepted by IFAF;*
- 2. Any and all actions by Mr Tommy Wiking, either as IFAF President, or more generally on behalf of IFAF after 30 April 2015 are null and void;*
- 3. Mr Tommy Wiking shall cease and desist from acting as and referring to himself as the President of IFAF;*
- 4. All other decisions, including any decision as to costs, are reserved” (emphasis in original).*

#### **IV. THE PARTIES' POSITION AND PRAYERS FOR RELIEF**

##### **(i) The Claimants' statement of claim and prayers for relief**

113. The Claimants' submissions may, in essence, be summarized as follows:
  - On 3 February 2015, Mr Wiking notified his resignation as IFAF President to the Executive Board with effect on 30 April 2015, which was formally accepted by the Board. No further action from Mr Wiking or from IFAF was necessary for his resignation to come into effect and materialize on 30 April 2015.

- Mr Wiking's decision to resign was freely, thoroughly and unequivocally communicated. It was made in compliance with applicable French law requirements and was thus binding on both Mr Wiking and IFAF.
- As a consequence of Mr Wiking's resignation, the only valid IFAF Congress held on 17 July 2015 was that chaired by Mr Kaneuji, during which Mr Noronen was elected as *ad interim* IFAF President.
- The Congress chaired by Mr Kaneuji on 17 July 2015 complied with all applicable requirements under the IFAF Statutes, contrary to the meeting chaired simultaneously by Mr Wiking, which accordingly cannot be considered as a legitimate IFAF Congress.
- There are serious doubts as to whether the delegates who attended the Congress chaired by Mr Wiking on 17 July 2015 were actually vested with the necessary powers to represent the member federations they purported to represent.
- The 2015 IFAF Congress chaired by Mr Kaneuji on 17 July 2015 elected the only legitimate IFAF Executive Board, which was therefore the only statutory body having authority to call the 2016 IFAF Congress. Given that all member federations had the opportunity to be present or be represented at the 2016 IFAF Congress, any possible non-compliance with the statutory formal requirements relating to the calling of the general assembly would be of no legal consequences whatsoever assuming such non-compliance was to be proved, which has not been the case according to the Claimants.

114. In their statement of claim, the Claimants submitted the following prayers for relief:

*"The Claimants respectfully requests [sic] the Arbitral Tribunal to:*

- (i) *Declare that Mr. Wiking resigned as President of IFAF on 3 February 2015 and that this was accepted by IFAF;*
- (ii) *Declare that the IFAF Congress held in Ohio on 17 July 2015 in which Mr. Roope Noronen was elected as interim President was the only legitimate IFAF Congress held on that date;*
- (iii) *Declare that any actions by the rogue-IFAF lead by Mr. Wiking are null and void;*
- (iv) *Declare that Mr. Richard MacLean was duly elected as President of the IFAF in the Congress held in New York on 17 September 2016;*
- (v) *Order that Mr. Wiking cease and desist from acting as and referring to himself as the President of IFAF;*
- (vi) *Order that Mr. Wiking shall bear all the arbitration costs and reimburse the Claimants for any advance on such costs, including the filing fee;*

(vii) *Order Mr. Wiking to reimburse the Claimants' legal fees and other expenses related to the present arbitration*".

**(ii) The Respondent's answer and statement of defence and prayers for relief**

115. Mr Wiking's submissions, in essence, may be summarized as follows:

- IFAF did not give any power of attorney to the Claimants' Counsel to represent it before CAS. Consequently, Mr Rigozzi was not authorized to file the request for arbitration or the statement of claim on IFAF's behalf and IFAF is not a party to the present arbitral proceedings.
- The Claimants' effort to exclude Mr Wiking from the IFAF presidency is in fact an attempted "*coup d'état*" led by a small group of individuals guided by personal rather than sport interests. Amongst them are individuals who claim to have become IFAF President and Vice-President while others wanted to ensure that their respective national federations play the leading role in IFAF matters.
- Just as they tried to cause confusion among the member federations with insidious or false information, the Claimants are now seeking to mislead the Panel by painting a rather unflattering picture of Mr Wiking. The truth of the matter is, however, that IFAF member federations did extend their trust and confidence in Mr Wiking by casting unanimous votes of trust both at the 2015 IFAF Congress in Canton, Ohio, and at the 2016 IFAF Extraordinary Congress held in Paris. Moreover, Mr Wiking was re-elected as President for a further 4-year term in 2016 by 54 IFAF member federations and is regarded as IFAF legitimate President by all relevant sport governing bodies.
- Mr Wiking never resigned from his position as IFAF President. His letter of 3 February 2015 was a mere declaration of his intent to resign on 30 April 2015, as opposed to a legally binding declaration of will. In any event, assuming he had resigned, which he denies, Mr Wiking's resignation was certainly not the result of a free and explicit decision. Moreover, this alleged resignation would not have complied with the necessary formal requirements applicable under French law and it was not sent to the correct addressee. Consequently, this alleged resignation would in any event be invalid under French law.
- Mr Noronen was not validly elected as IFAF President at the 2015 Congress chaired by Mr Kaneuji. The election process conducted during this assembly failed to meet multiple requirements under both the IFAF Statutes and French law, such as, *e.g.*:
  - In order for the Congress to be valid, the IFAF President (assuming this was still Mr Wiking) should have opened it. An exception to this rule could only be conceivable if a majority of the delegates present at the meeting had taken a decision as to who could or could not open the meeting. This did not happen in the present case.

- It was impossible to elect Mr Noronen as IFAF President as long as Mr Wiking was still in office.
- Pursuant to the applicable regulations, a candidate wishing to run for any IFAF office must be nominated at least 60 days prior to the Congress. In the present case, Mr Noronen was nominated by Mr Martin Cockerill (from the British member federation) immediately before the election and thus not early enough.
- The issued minutes are too vague to verify whether the delegates who elected Mr Noronen as new IFAF President were indeed authorized to validly represent their member federations. Although it is established that *“at least 6 of the 19 federations could not have been represented by their Presidents, and that at least one of the Presidents who attended was not a citizen of the country of her member federation”*, Mr Wiking denies that Mr Noronen was elected by the necessary quorum of duly authorized delegates.
- In contrast, the 2015 Congress chaired by Mr Wiking was validly opened by him as IFAF President. The delegates who attended this Congress were duly authorized to represent their respective IFAF member federations. Consequently, the vote of trust in favour of Mr Wiking and the decisions taken on that occasion were definitely valid.
- The Extraordinary Congress held in Paris on 19 March 2016 was called in conformity with the applicable IFAF Statutes. Thus, the decisions taken and elections carried out are binding on all IFAF member federations. The same applies to the 2016 Congress held on 17 September 2016 in Paris.
- The alleged legitimate Congress held in New York City, USA, on 17 September 2016 was marred by irregularities, such as: a) the agenda did not contain the necessary documents and provided for a vote on the IFAF Presidency without mentioning any nominee; b) the minutes do not specify whether the delegates who elected Mr Richard MacLean as new IFAF President were indeed authorized to validly represent their member federation; c) the Congress was not convened by the IFAF Executive Board and was not opened by the IFAF President; d) the invitations to take part in the Congress were sent almost two months after the deadline provided under the applicable IFAF Statutes. Under such circumstances, Mr Richard MacLean could not have been and was not validly elected as IFAF President.

116. Mr Wiking submitted the following prayers for relief:

*“The Respondent respectfully requests the Panel to*

***I. Dismiss in their entirety any and all requests for relief submitted in the***

***Request for Arbitration and in the Statement of Claim.***

***II. Order the Claimants to bear all arbitration costs and to reimburse Mr. Wiking's legal fees and other expenses related to the present arbitration"***  
*(emphasis in original).*

**V. JURISDICTION**

117. During the 31 August 2017 hearing, the Parties expressly reiterated their acceptance of CAS's jurisdiction over their dispute, which they had already confirmed by signing the CAS Order of Procedure dated 9 and 11 August 2017.
118. It is therefore established that CAS has jurisdiction over the present dispute.

**VI. APPLICABLE ARBITRATION LAW AND LAW GOVERNING THE DISPUTE**

119. It is generally accepted that the choice of the place of arbitration also determines the arbitration law governing the arbitration (*lex arbitrii*). In the present case, CAS's seat is in Lausanne, Switzerland, and the provisions of Chapter 12 of the Swiss Private International Law Act ("PIL Act") therefore govern the proceedings since at least one of the Parties had neither its domicile nor its usual residence in Switzerland when the arbitration started (Article 186 PIL Act).
120. Pursuant to Article 187 PIL Act, the arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection.
121. In a similar vein, Article R45 of the CAS Code states as follows:

*"Law Applicable to the Merits*

*The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law. The parties may authorize the Panel to decide ex aequo et bono".*

122. Article 13 of the IFAF Statutes provides that:

*"French law shall be applicable in all matters of dispute and Paris shall be the legal seat of decision. Should the legal seat be transferred to another country, this provision will be changed".*

123. On this basis, the Panel confirms that French law is the law governing the present dispute, as acknowledged by the Parties who/which exclusively referred to French law in their submissions in relation to all relevant issues.

124. Finally, the Panel observes that the facts relevant to these proceedings all occurred after 15 July 2014, which is the date when the IFAF Statutes (2014 edition) were adopted and came into force. The Panel shall accordingly rely on the 2014 version of the IFAF Statutes to adjudicate the present dispute.

## VII. THE ADDITIONAL EVIDENCE FILED BY THE CLAIMANTS ON 28 AUGUST 2017

125. Article R44.1 para. 2 of the CAS Code provides that:

*“Together with their written submissions, the parties shall produce all written evidence upon which they intend to rely. After the exchange of the written submissions, the parties shall not be authorized to produce further written evidence, except by mutual agreement, or if the Panel so permits, on the basis of exceptional circumstances”.*

126. On 28 August 2017, the Claimants filed several new exhibits, the admissibility of which was challenged by the Respondent. These documents essentially consisted of screenshots of certain individuals’ Facebook profiles or Twitter accounts. According to the Claimants, these documents were only *“identified (...) as a direct result of the research into [Mr Tommy Wiking’s] contention in his Statement of Defence”*.
127. However, the Respondent filed his statement of defence on 27 July 2017, and the Claimants failed to provide any explanation as to why the new exhibits could not have been submitted earlier than three days before the 31 August 2017 hearing. They further failed to establish the existence of any exceptional circumstances that might justify departing from the general principle set out in Article R44.1 of the CAS Code. The Panel also observes that the concerned documents were readily available and could thus easily have been obtained earlier since they are the result of a simple Google search.
128. For all these reasons, the Panel decides to dismiss the Claimants’ application for leave to file the additional documents on 28 August 2017, which are therefore excluded from the record before the Panel.
129. During the hearing, the Parties also agreed to produce the following documents:
- A list of competitions organised under the presidencies of Mr Noronen and Mr Richard MacLean since the “split” of the two groups; and
  - Copies of emails sent and received by Mr Wiking between 4 and 18 February 2015.
130. On 6 September 2017, the Claimants offered to file the typed transcript of the hearing and of the testimonies of Mr Wiking, Mr Robert Huber and Mrs Elena Zehndorfer, all of which had been provided as a tape recording by the CAS Office. The Panel accepted the offer on 8 September 2017, and the Respondent was granted the possibility to *“file a short note **by latest***



noon on Tuesday September 12, 2017 listing any possible error(s) in the passages referred to” (emphasis in original).

131. On 12 September 2017, the Respondent submitted a short list of inaccuracies he had observed in the typed transcript.

### VIII. MERITS

132. The main issues to be resolved by the Panel in this case are:

- Does IFAF has standing in the present proceedings?
- Did Mr Wiking resign as IFAF President in early 2015 and what consequences flow from the answer to this question?
- Was Mr Noronen validly elected as IFAF *ad interim* President on 17 July 2015?
- Who is the current President of IFAF?

#### A. Does IFAF has standing in the present proceedings?

133. The Respondent questions the standing of the first Claimant in the present proceedings on the ground that the only competent and legitimate IFAF is the one presided over by Mr Wiking, who had not instructed Counsel for the Claimants to represent IFAF in the present case.
134. This question is intimately linked to the Panel’s decision as to whether Mr Wiking effectively resigned as of 30 April 2015 or remained IFAF’s legitimate President and whether Mr Richard MacLean had the authority to grant the Power of Attorney dated 9 February 2017 issued to Mr Antonio Rigozzi to represent IFAF in the present matter.
135. If the Panel decides that Mr Wiking did resign as President of IFAF in 2015, that Mr Noronen validly succeeded him as *ad interim* President on 17 July 2015 and that Mr Maclean is IFAF’s current President, the first Claimant represented by Mr Rigozzi and Mr McAuliffe undoubtedly has standing in the present case. Should the Panel decide conversely that Mr Wiking did not resign in 2015 and remains IFAF President, the question of the first Claimant’s standing could be called into question.
136. It is therefore necessary to examine the other merit questions before the issue of IFAF’s standing can be decided.

**B. Did Mr Wiking resign as IFAF President in early 2015 and what consequences flow from the answer to this question?**

137. While it is the Claimants' case that Mr Wiking stepped down as IFAF President prior to the Congress held in Canton, Ohio, on 17 July 2015, Mr Wiking claims on the contrary that he never resigned from his position. He contends that his email dated 3 February 2015 was a mere declaration of his intention to resign on 30 April 2015 and cannot, therefore, be construed as a legally binding declaration of his will to resign.
138. The Panel observes that the Parties agree that, under French law, resigning from a position in a company or association is a unilateral act that can occur at any time by way of a free, thorough and unequivocal declaration of will. Mr Wiking argues, however, that his email dated 3 February 2015 does not reflect such a declaration of will but is rather a mere expression of intent. Mr Wiking further argues that even if the Panel were to find that there was a declaration of will, such declaration could not be binding because the 3 February 2016 email was sent under duress, lacked the requisite form, was sent to the wrong addressee and was not confirmed by a formal letter.
139. It is undisputed that the key document around which the whole debate centres in the present case is the email sent by Mr Wiking to the members of the IFAF Executive Board dated 3 February 2015. It is not disputed either that in order to assess the meaning, scope and legal effect of this document, it is necessary not only to take into account the wording of the email but also the context within which it was sent, how it was *bona fide* understood by the addressees and the sequence of events before and after it was sent. The Panel observes in this regard that the Respondent expressly agrees in his statement of defence that the context and the events surrounding his 3 February 2015 email are fundamental to its proper interpretation.

***i. The context***

140. From 2000 until 2014, Mr Wiking was the President of the SAFF.
141. In 2006, he was elected as IFAF President. He was re-elected in this position for four-year terms in 2008 and again in 2012. His last term of office was thus to end in 2016.
142. During his presidency, the organisation of the 2015 IFAF World Championship was awarded to SAFF.
143. It is around that time that Mr Wiking found himself confronted with a number of difficulties and challenges which, according to the adduced evidence, he did not disclose to IFAF Executive Board:
- Until the end of 2014, the other members of the IFAF Executive Board had not been informed that there were serious difficulties with the organisation of the 2015 IFAF

World Championship in Sweden, which eventually led to the cancellation of the event and its transfer to another venue.

- There were allegations that some of the funds paid by SAFF to Amfium (which was chaired by Mr Wiking) for the organisation of the Championship had disappeared.
  - At the 31 August 2017 hearing, Mr Wiking confirmed that he spent some time in police custody in 2014 and that he did not inform the IFAF Executive Board of this fact until it became public knowledge. According to his testimony, his arrest related to allegations of breach of trust towards his former employer, a large Swedish food chain, which had nothing to do with the sporting world. Mr Wiking further indicated that he had no reason to disclose what he considered to be irrelevant personal issues to the other members of the IFAF Executive Board. He also confirmed that he was still under investigation in the matter.
  - Also unbeknownst to the other members of the Executive Board in 2014, Mr Wiking was directly or indirectly involved in various agreements or negotiations, closely linked to the interests of SAFF and/or IFAF. It is only around mid-December 2014 that the IFAF Executive Board discovered that Mr Wiking was exploring the possibility for China to host the 2015 IFAF World Championship. The Panel observes in this regard that an email sent to IFAF members dated 13 May 2015 and filed by Mr Wiking in support of his case explains that Mr Noronen exposed this fact at the Executive Board meeting held in Dallas on 30 January 2015, saying that *“the Board was astonished to learn that a representative from China had travelled to the United States to present a bid for the [2015 IFAF World Championship]. No-one present had been aware that other nations had been approached and the Executive Board were left feeling acutely embarrassed on behalf of those who attended, especially as the discussions had seemingly been going on since the summer of 2014”*.
  - Following the discovery of these events, IFAF announced, on 18 December 2014, that Mr Wiking would be on leave of absence until the end of 31 January 2015. Mr Wiking testified at the hearing that he was ordered by his doctor to take a break from his presidency because he was under too much stress.
144. Members of the IFAF Executive Board had a number of oral and written contacts with Mr Wiking with a view to agreeing on a path to resolve the difficulties encountered in the best interest of all concerned, in particular Mr Wiking, who had been eager to preserve his reputation as much as possible, something the Executive Board not only understood but agreed to respect. These discussions led the Board to ask Mr Wiking to resign from his position as President of IFAF (cf., in particular, Mr Kaneuji’s emails of 30 and 31 January 2015, which immediately preceded Mr Wiking’s 3 February 2015 email).
145. During the hearing of 31 August 2017, Mr Wiking alleged that the other members of the IFAF Executive Board had tried to oust him from the presidency, not because of the cancellation of the 2015 IFAF World Championship in Sweden or his personal issues but rather because they

had “*a different idea of how IFAF should be run. They have an idea that IFAF should be run by the top countries, as they say, and that the competition should be done for them only*”. In spite of the Panel’s efforts to clarify the concrete differences of views that could have led to this alleged “*coup*” against him, Mr Wiking did not provide any examples or references to evidence supporting this allegation. He remained vague and tried to elude the Panel’s questions, focusing instead on criticizing the Executive Board for not having seized an ethics committee that had not yet been fully set up at the time, or for not having organised a vote of trust during a congress. Mr Wiking did not adduce any evidence in support of these allegations or offer any credible clarification as to how and why mere differences of views between him and the other members of the IFAF Executive Board would have triggered a call for his resignation.

146. Both in his submissions and when he was heard on 31 August 2017, Mr Wiking insisted that the other members of the IFAF Executive Board were only interested in his resignation because of their own personal agendas and were thus not interested in his explanations. The Panel observes that Mr Wiking’s representation of the facts is at odds with the evidence on file, which establishes on the contrary that throughout the discussions the Executive Board was not only mindful of Mr Wiking’s desire to be involved in his succession and the transition to a new management but also agreed to his proposal to resign effective 30 April 2015 and remain on leave of absence until then. Thus in his email dated 30 January 2015, Mr Kaneuji clearly stated that the Board was “*keen to ensure that the actions of the IFAF Board are based upon all relevant information and ensure that the IFAF Board can act in the best interests of the IFAF membership*”. Mr Kaneuji emailed Mr Wiking the next day that the Executive Board was concerned about the events that had led to the cancellation of the 2015 IFAF World Championship in Sweden and expressly asked him to provide a full and detailed description of all actions undertaken in his capacity as IFAF President in relation to the Championship with Swedish partners and with wider organizations. Mr Kaneuji also confirmed that the Board had accepted Mr Wiking’s two-step approach to resign effective 30 April 2015 and to remain on leave of absence until then.
147. In fact the evidentiary record shows that Mr Wiking failed to provide any of the explanations requested from him and did not attempt to adduce any evidence to the contrary during the course of the proceedings. It is only at the 31 August 2017 hearing that he for the first time claimed that he had intended to provide a detailed account of his actions in person at the Board meeting held on 30 January 2015 in Dallas, but that he could not do so because he was not invited. The Panel observes that this allegation is unconvincing given that he also insisted throughout the hearing that he was on leave of absence at the time, “*upon urgent advice of his doctor*”, which renders his belated attempt to justify his silence unconvincing.
148. Mr Wiking’s further allegation at the hearing that the true reason for the cancellation of the 2015 IFAF World Championship in Sweden was the lack of interest of the Swedish public for American football is not convincing either. Had this really been the case, he presumably would have said so at the time, but instead left Mr Kaneuji’s email dated 30 January 2015 unanswered on this issue. Nor does Mr Wiking explain why he did not deem it necessary to react to Mr Kaneuji’s second email dated 31 January 2015 that specifically addressed the issue again, as well as Mr Tommy Wiking’s arrest and his contacts with China to transfer the venue of the 2015

Championship. That email ended with the following invitation: *"If you are in disagreement with any of the above, please inform us in writing at the earliest opportunity so that we can address this"*. Yet, far from raising any disagreement regarding any of these issues or providing the explanations expected by the Board, Mr Wiking emailed on 3 February 2015 that he would resign under certain conditions set out in his email.

149. In light of the foregoing, the Panel holds that the context clearly shows that, contrary to Mr Wiking's contentions, the Executive Board's request for his resignation was not based on their alleged personal agendas. Moreover, the existence of such alleged personal agendas was not proven by Mr Wiking and is indeed contrary to the evidence in the file.

**ii. The sequence of events**

150. The relevant sequence of events surrounding the issue of Mr Wiking's 3 February 2015 email is set out again below for the sake of clarity:

- Following the unexplained cancellation of the 2015 IFAF World Championship in Sweden, the IFAF Executive Board discovered in December 2014 that its President had not been transparent regarding numerous aspects relevant to the functioning and purposes of IFAF and had knowingly withheld information that could have serious implications for IFAF.
- On 30 January 2015, following the Executive Board meeting held earlier that day in Dallas, Mr Kaneuji emailed Mr Wiking to express the Board's *"deep concerns relating to the events that led to the cancellation of the Championship and issues which have subsequently arisen"*. Based on the available information, which was scarce at the time, Mr Kaneuji advised Mr Wiking that the Board did *"not have confidence that the resumption of [his] leadership of IFAF is in the best interests of the Federation and the sport as a whole"*. Mr Wiking was thus requested to extend his leave of absence and *"to provide a full and detailed description of all actions undertaken in your capacity as IFAF President relating to the Championship, both as regard to the Swedish partners and the wider organizations"*.
- On 31 January 2015, Mr Kaneuji sent a second email, making reference amongst other things to a conversation between Mr Wiking and another member of the Executive Board, Mr Kyung Kyoo Park, who was copied on the email that had been reported to the Board as follows:
  - Mr Wiking understood *"the issues which IFAF face in light of the cancellation of the 2015 World Championships in Sweden and the acceptance that there needs to be a clear plan for managing the governance of IFAF between now and the Congress scheduled for this summer"*.
  - Mr Wiking proposed as a first step that his leave of absence be extended and that he would *"be seeking to leave [his] role as President and that we must manage this sensitively and effectively"*.

- On this basis, Mr Kaneuji informed Mr Wiking that *“we agree that the first step is to extend your leave of absence from the role of President. During this time you will not act in any capacity for or on behalf of IFAF”*, and *“we accept that you will be seeking to leave your role as President and that we must manage this sensitively and effectively”*.
- Mr Kaneuji further advised that: *“Having discussed this, we are in agreement that we should like a confirmation of your intention to resign your Presidency by 7th 2015, so we can work with you to establish a clear timetable for succession”*.
- As already mentioned, Mr Kaneuji concluded his email as follows: *“We would respectfully request that you acknowledge this email and confirm and agree with the content detailed within. If you are in disagreement with any of the above, please inform us in writing at the earliest opportunity so that we can address this”*.
- Mr Wiking reacted by email dated 3 February 2015. In his email, Mr Wiking:
  - did not express any disagreement with any part of Mr Kaneuji’s emails of 30 and 31 January 2015;
  - confirmed conversely that he would remain on sick leave until 30 April 2015 *“as ordered by my medical doctor so it’s true”*, and that he would not act *“for or on behalf of IFAF during this period”*;
  - proposed that *“At April 30th I will communicate to the members something along these lines:*  
  
*‘I’ve been on a IFAF leave of absence since mid-December for health reasons and now have decided that it is best for me to resign – due to my health issues – so IFAF leadership can move forward on the important business ahead. I look forward to continuing my legacy of contributing to IFAF’s progress and future when the time and my health is right’;*
  - restated immediately thereafter that: *“I will as you can see per above resign at April 30th”*;
  - explained that the *“the main reasoning behind resigning at April 30th”* was to transfer the network and contacts built over the years in Sport Accord, ARISF and IOC to IFAF leaders by attending the coming Sport Accord convention with Mr Noronen and Mr Scott Hallenbeck;
  - emphasised that having *“now declared my intentions to you. It shouldn’t be unclear to you what will happen April 30th”*;
  - insisted on informing the IFAF members himself of his resignation because he did not wish for them to find out about it *“via some website or social media. The part that I’m*



*on leave of absence can of course be communicated. But not that I'm resigning April 30th. Confidentiality is important for both parties and I trust that you all will honor this agreement".*

- On 6 February 2015, Mr Noronen confirmed via email to Mr Wiking that the members of the IFAF Executive Board had met on 4 February 2015, and decided to:

*"Accept Mr. Wiking's resignation effective from April 30<sup>th</sup>, 2015*

*Accept continuation of Mr. Wiking's leave of absence until April 30<sup>th</sup>, 2015*

*Accept that Mr. Wiking will not act for or on behalf of IFAF while on leave of absence*

*Accept that Mr. Wiking attends Sport Accord together with two IFAF representatives*

*IFAF will make news release regarding the continuation of Mr Wiking's leave of absence. Other details will not be forwarded to anyone at this point*

*Details regarding the transition will be discussed on later date*

*take care,*

*Roope".*

- Mr Wiking did not reply to, correct or challenge the content of this email.

### **iii. The wording of Mr Wiking's resignation**

151. In his submissions, Mr Wiking emphasises the particular wording of a couple of expressions in his 3 February 2015 to attempt to establish that it contained an unbinding expression of his intention to resign as opposed to a binding declaration of his will to resign. To support his assertion, Mr Wiking relies, in particular, on the following facts:

- Mr Wiking first contends that his email dated 3 February 2015 was in fact no more than the confirmation requested in Mr Kaneuji's 31 January 2015 email and that he confirmed his *"intention to resign [his] Presidency by February 7th 2015"* but not his will to resign. According to Mr Wiking the penultimate paragraph of his 3 February 2015 email is further evidence of this understanding when it states: *"I have now declared my intentions to you"*.
- In his email, Mr Wiking used several times the future tense (*"At April 30th I will communicate to the members something along the lines"; "I will as you can see per above resign at April 30th"; "It shouldn't be unclear to you what will happen April 30th"*), which according to him demonstrates that he was willing to resign on 30 April 2015 and not before. His statement of defence alleges that *"Mr Wiking cannot reasonably be understood to have envisaged resigning twice, once towards the IFAF Executive Board and once towards the membership"*.



**iv. The Panel's findings**

152. The Panel is not convinced by Mr Wiking's submission that his email dated 3 February 2015 is a mere non-binding declaration of intention that can have no legal effect.
153. Mr Kaneuji's email dated 31 January 2015 asked Mr Wiking to "*resign from the presidency by 7 February 2015*" so that "*we can work with you to establish a clear timetable for succession*". Mr Wiking was further requested to "*acknowledge this email and confirm and agree with the content detailed within*". Finally, Mr Wiking was asked to inform the Board in writing should he be "*in disagreement with any of the above (...) at the earliest opportunity so that we can address this*". Mr Tommy Wiking confirmed on 3 February 2015 that he was "*resigning April 30th*", that he would remain on sick leave until then and communicate to member federations that he had "*decided that it is best for me to resign*" and that until then the fact that he was "*resigning April 30th*" should not be communicated to the member federations. Thus, for the Panel, Mr Wiking unequivocally declared that he was resigning on 3 February 2015 effective 30 April 2015 so that he could remain on sick leave until then and so that he would announce his resignation himself first. Consequently the content of his email was not a mere "*declaration of intentions*" but an unequivocal declaration of resignation. Such a unilateral act falls within the ambit of the juridical acts intended to produce legal effects pursuant to Article 1100-1 of the French Civil Code. Such an act was subject to receipt by IFAF, which happened in the present case on 6 February 2015, upon Mr Noronen's communication in his 3 February 2015 email to Mr Wiking that the Executive Board had accepted his resignation and the conditions for it to become effective.
154. The Panel observes in this regard that it also results from the context that Mr Wiking's resignation was based on serious grounds and not simply motivated by the alleged and unproven personal agenda of members of the Executive Board or national federations representing countries where American football is a popular and major sport. Indeed, Mr Wiking failed to be transparent on numerous issues, which – in the eyes of the other members of the IFAF Executive Board – were important for the sound and proper governance of IFAF matters. It is in these circumstances that a dialogue was initiated by the authorized IFAF representatives with Mr Wiking to negotiate the terms of his requested resignation.
155. The IFAF Executive Board first asked Mr Wiking to extend his leave of absence by a couple of weeks during which he was asked to disclose full and detailed information regarding the cancellation of the 2015 IFAF World Championship (cf. Mr Kaneuji's email of 30 January 2015). Thereafter the Board asked Mr Wiking to tender his resignation, promising to handle it "*sensitively and effectively*" (Mr Kaneuji's email of 31 January 2015). According to the evidentiary record before the Panel, Mr Wiking did not raise any objection at the time against the request put to him and did not allege that the process followed would in any way be improper, for instance because the matter should not have been handled by the Executive Board but by an ethics committee or a vote of trust during a congress, as he claims now.
156. For his part, Mr Wiking not only accepted the extension of his leave until 30 April 2015 in his 3 February 2015 email but also consented to resign. To this effect, he set out and listed the practical arrangements to be put into place to preside over his departure, *viz.*: a) he drafted the

content of the announcement to be released by IFAF to IFAF members; b) he chose the date at which such announcement would be released (30 April 2015); c) he made specific recommendations to ensure a smooth transition; d) he suggested introducing IFAF leaders to his various contacts during the forthcoming Sport Accord Convention; and e) he requested that the IFAF Executive Board keep his resignation confidential until 30 April 2015 because he wanted *“to be the one who informs the member federations”*. The Panel observes in this regard that there is an obvious contradiction between Mr Wiking’s contemporaneous request for his resignation to be kept confidential until he would himself announce it on 30 April 2015 and his allegation in the arbitration that the matter should have been put for a decision to a congress, which by definition would imply public disclosure of the reasons why he was asked to resign.

157. In view of its content, Mr Wiking’s email dated 3 February 2015 clearly does not appear to have been written by someone under duress (Articles 1130 *et seq.* of the French Civil Code). It does not appear either that the email was written by someone suffering from excessive weakness or submissiveness. On the contrary, in his email dated 3 February 2015, Mr Wiking appears to be very directive when setting out his expectations and demands regarding the way in which his resignation was to be handled, and does not appear to have been intimidated by Mr Kaneuji’s emails dated 30 and 31 January 2015. He seemed to have been in control, imposing his conditions, the actions to be taken and the applicable calendar.
158. There is no indication, let alone evidence, before the Panel that the resignation of Mr Wiking was anything other than the result of a decision freely and unambiguously taken given the context within which it was taken.
159. Mr Wiking’s resignation was thus binding upon him and had immediate effect since the members of the IFAF Executive Board had asked him on 31 January 2015 to extend his sick leave and made it clear that from then on he would *“not act in any capacity for or on behalf of IFAF”*. Thus in his email dated 3 February 2015, Mr Wiking confirmed that he would remain absent upon his doctor’s order until 30 April 2015 and acknowledged that he would not act *“for or on behalf of IFAF”* until then. In other words, the parties agreed that, as from 31 January 2015, Mr Wiking would no longer act as IFAF President.
160. The date of 30 April 2015 was chosen unilaterally by Mr Wiking, who represented at the time that *“the main reasoning behind resigning at April 30th”* was to attend the Sport Accord convention for transitional purposes (cf. his 3 February 2015 email). Consequently, the choice of 30 April 2015 results from Mr Wiking’s own personal choice that he would announce his resignation himself on that date, prior to any statement by IFAF, to which the IFAF Executive Board acquiesced.
161. As stated in his 3 February 2015 email, Mr Wiking wanted *“to be the one who informs the member federations. I don’t want the members to find out via some website or social media. The part that I’m on leave of absence can of course be communicated. But not that I am resigning April 30th. Confidentiality is important for both parties and I trust that you all will honor this agreement”*.

162. For the Panel, the content of the 3 February 2015 email shows that Mr Wiking sent it after careful and detailed examination of the situation and of the risks his resignation might trigger for his reputation, which he was eager to preserve. It is not difficult to understand why the members of the IFAF Executive Board agreed to comply with his various demands: it was the price to pay to “*manage this sensitively and effectively*”, to use the terms of Mr Kaneuji’s email dated 31 January 2015. Had Mr Wiking refused to step down as requested, the story would have been completely different and less flattering for him, which is precisely what he wanted to avoid with his carefully drafted email dated 3 February 2015 concerning the ways and means of his departure. This excludes that there could have been any dissension with the Executive Board’s request that he resign.
163. At the hearing before the CAS, Mr Wiking argued for the first time that he had been hospitalized on or around 6 February 2015 for approximately two weeks, and thus unable to read emails or be actively involved in any kind of business during that period of time.
164. In reaction to this new allegation, the Claimants immediately filed a string of emails (admitted into the evidentiary record with the consent of all the Parties) that had been sent and received by Mr Wiking between 4 and 18 February 2015. These emails show, *inter alia*, that contrary to his commitments made in his email dated 3 February 2015, Mr Wiking emailed Mr Marius Vizer on 6 February 2015, attaching a letter of intent on behalf of IFAF to participate in the first World Beach Games. Between 6 and 18 February 2015 he also had email exchanges with Mr Scott Hallenbeck regarding travel arrangements to attend the Sport Accord Convention. All this shows that, contrary to his contentions at the hearing, Mr Wiking was able to read and send emails and was in a position to react had Mr Noronen’s email dated 6 February 2015 not accurately summarized the circumstances surrounding his resignation as IFAF President. The Panel observes that at the hearing, when questioned by the Panel, Mr Wiking actually conceded that he had agreed to leave the presidency but changed his mind while attending the Sport Accord Convention in April 2015.
165. Mr Wiking also claims that his resignation is in any event invalid because it was not sent to the correct addressee. He argues that since he had been elected as President by the Congress, his resignation should have been sent to the IFAF members for it to be valid, not to the Executive Board.
166. The Panel does not find this allegation to be convincing, because it is clearly inconsistent with Mr Wiking’s own position at the time the events unfolded. The Panel fails to understand why Mr Wiking would have emailed his resignation to the Executive Board as he did rather than directly seize the member federations or call for a congress if that had been a condition for his resignation to be valid. Mr Wiking’s new arguments are also inconsistent with his assertion, at paragraph 162 of his statement of defence, that “*a resignation is a unilateral act that is incompatible with the notion of being ‘accepted’*”. Given that both the Claimants and the Respondent agree that under French law a resignation is a unilateral juridical act that may be subject to acknowledgement of receipt but not to formal acceptance, its validity cannot, by definition, depend on the capacity of the party to which it was communicated. It would also seem

unreasonable to require from a president who wants to step down that he sends his resignation to each and all members of his federation. The Panel observes that, logically, there is no such requirement in the applicable IFAF Statutes.

167. Finally, on the basis of a decision of the “*Cour d’Appel de Paris*” dated 14 April 2015, Mr Wiking also argues that to be valid his email dated 3 February 2015 should have been followed by a formal confirmation letter.
168. It appears from careful examination of this judgement that the “*Cour d’Appel de Paris*” does not, however, suggest that a resignation sent by email should systematically be confirmed by a formal letter in order to be valid. The court merely observed that, in the specific case at hand, in which a board member had resigned by email following the start of proceedings to dismiss him by the other members of the board, the real intent to resign of the author of the email could not be established with certainty in the absence of any formal confirmation. The situation is very different in the present case where the Panel can rely not only on the resignation email by the Respondent but also on a whole array of converging documents evidencing that Mr Wiking’s decision to resign was taken freely, after careful consideration and thorough planning, and is unequivocal not only based on the wording used but also when read within the context in which it was made. Consequently, the Panel considers that Mr Wiking’s resignation was taken and communicated in accordance with the applicable requirements under French law and is therefore valid and binding upon him.
169. Given the foregoing, the Panel concludes that Mr Wiking validly resigned as President of IFAF on 3 February 2015, which the Executive Board expressly acknowledged on 6 February 2015. The Executive Board also accepted the terms and conditions set out in Mr Wiking’s email dated 3 February 2015. Consequently, Mr Wiking’s resignation automatically became effective on 30 April 2015 upon the fulfilment of these conditions, in particular upon the expiry of Mr Wiking’s extended sick leave. His late change of mind about this could not affect the clear legal situation and is thus irrelevant. His presidency automatically ended on 30 April as he himself had requested. There is no way Mr Wiking could have revived his presidency unilaterally.
170. Consequently, from 30 April 2015 on Mr Wiking was no longer entitled to act on IFAF’s behalf or to represent that he was still IFAF President. He should have immediately ceased from acting or referring to himself as IFAF President, and indeed had committed to do so from 3 February 2015. Therefore all actions and decisions directly or indirectly taken by Mr Wiking since 30 April 2015 either as alleged IFAF President or more generally on behalf of IFAF or its legitimate bodies are null and void. Such is the case, *inter alia*, of the steps taken to register Mr Wiking as IFAF President and Mr Robert Huber as Vice-President with the *Préfecture de la Seine Saint-Denis* in July 2015 and in May 2016 (cf. paragraphs 49 and 72 above). In particular, any attempt by Mr Wiking or his group to exercise control over IFAF’s property, in particular the *www.ifaf.info* website and IFAF’s various social media accounts, the IFAF bank accounts at Société Générale or at any other banks are unlawful.

**C. Was Mr Noronen validly elected as IFAF *ad interim* President on 17 July 2015?**

**i. The context**

171. The situation on 30 April 2015 following Mr Wiking's change of mind was summarized in the following terms by Mr Noronen in his reply to Mr Wiking's email on that day:

*"That you wish to change a prior agreement is understandable given the emotions which come when leaving a post. However, the decision has been made and accepted.*

*A failure to honour this would see an erosion of trust which means that there could in effect, be no effective working relationship between yourself and the Board even if your request to be reappointed were to be considered.*

*We will be releasing the statement which states that the Executive Board have accepted your resignation and complied with the requested attendance at events".*

172. In compliance with the agreement reached, IFAF announced Mr Wiking's resignation shortly thereafter. From then on, Senior Vice-President Mac Kaneuji continued to lead the Federation as he had done during Mr Wiking's leave of absence until 30 April 2015.
173. Mr Wiking reacted the next day, 1 May 2015, by sending an email to all member federations stating that IFAF's statement was not correct, that he had not resigned and that he had no intention to do so. Asserting that there was a "*coup d'état attempt from a minority within IFAF*", he wrote that if "*anyone wants to challenge I being the president of IFAF it can be done at the upcoming Congress*".
174. As set out above, the agenda for the 2015 IFAF Congress to be held on 17 July 2015 in Canton, Ohio was issued to all member federations on 16 June 2015. Item 15 of the agenda was the election of the IFAF President "*for the remainder of the current term until 2016*".
175. Motions for the Congress to attempt to resolve the situation created by Mr Wiking's resignation and subsequent allegations that he had not resigned and was still IFAF President were presented by the Indian and Irish federations.
176. As established on the basis of the adduced evidence and set out above, two simultaneous meetings were held on 17 July 2015. The first meeting was chaired by Mr Kaneuji and attended by 19 national federations which unanimously elected Mr Noronen as *ad interim* President until 2016 (the end of Mr Wiking's original term of office).
177. The second meeting was chaired by Mr Wiking, who by then was no longer IFAF President, according to the Panel's finding regarding his valid and binding resignation effective 30 April 2015, or indeed of the Swedish federation either. Mr Wiking claims this second meeting was attended by 22 national federations which, upon the motion submitted by the Indian federation, voted by secret ballot to extend their confidence in him as President and in Mr Kaneuji as Senior



Vice- President. The attendees apparently did not renew their confidence in Mr Noronen and in Mr Hallenback and elected instead Mr Robert Huber as vice-president and Mr Marco Cobar as treasurer.

178. The Panel observes that based on Mr Wiking's representations, 41 national federations apparently attended the two meetings altogether, whilst only 35 federations with voting rights had registered for the Congress. The Parties have divergent views as to whether all the national federations that attended the two meetings had authority to vote (*i.e.* had paid their annual dues in compliance with Article 4.F of the applicable Statutes), were validly registered national federations and if so were validly represented.

**ii. *The Parties' positions***

179. The Claimants consider that the dispute is largely moot should the Panel find that Mr Wiking effectively resigned from his position as President of IFAF because there could be no dispute in such a case that the only legitimate IFAF meeting held on 17 July 2015 was that chaired by Mr Kaneuji which elected Mr Noronen as President of IFAF. The Claimants further assert that all actions and decisions taken at the meeting led by Mr Wiking were devoid of any basis emanating from the IFAF Statutes and/or the IFAF Congress which is IFAF's supreme authority. Consequently, these decisions were of no effect and thus null and void.
180. The Respondent takes the view that even if the Panel finds that Mr Wiking did resign and upholds the Claimants' first prayer for relief, all the Claimants' other reliefs would have to be dismissed anyway. In particular, the Claimants' second prayer for relief (declaration that Mr Noronen was elected as *ad interim* President of IFAF on 17 July 2015) should fail because the Claimants did not submit any evidence that Mr Noronen was elected "*by even one authorized delegate, despite this being expressly contested by the Respondent*". Based on this contention, the Respondent applies for the dismissal of the Claimants' second prayer on the ground that the Claimants did not discharge their burden of proving that Mr Noronen was himself validly elected.

**iii. *The Panel's findings***

181. It is stating the obvious to observe that if Mr Wiking had resigned and was no longer President of IFAF, as concluded and held by the Panel above, Mr Wiking had no authority to chair an IFAF Congress on 17 July 2015. Consequently, the only legitimate Congress that could take place on that date was that chaired by Mr Kaneuji, which elected Mr Noronen as *ad interim* President of IFAF until 2016.
182. The onus of proving that the election process conducted during this assembly "*failed to meet multiple requirements under both the IFAF Statutes and French law*" rests on the Respondent. The Respondent fails to discharge it for the following reasons:

- Contrary to what he alleges, Mr Wiking was no longer President of IFAF on 17 July 2015, and thus could no longer chair the meeting.
- As he was no longer in office, there was no impediment or obstacle preventing the election of Mr Noronen as *ad interim* President for a one-year term.
- Item 15 of the agenda sent to member federations on 16 May 2015 provided for the election of the IFAF President in accordance with Article 9 of the Statutes “*for the remainder of the current term until 2016*”. Pursuant to Article 9 of the Statutes, “*In case of resignation or expulsion of one or more members of the Executive Board that seat will remain vacant for the rest of the period until the next Congress sits*”. Item 15 was thus calling for the election of a replacement for Mr Wiking following his resignation until the end of his last term of office in 2016, in compliance with the applicable rules. The Respondent argues that because Mr Noronen was nominated for this position at the Congress, his election was invalid because such nomination should have been made at least 60 days prior to the Congress. The Panel observes, however, that Article 8.B of the Statutes provides *in fine* that a congress “*can accept late nominations if the majority at the congress decides so*”. According to the minutes of the meeting, this is precisely what happened (item 15 of the minutes) and “[n]o other nominations for the position of IFAF President were received before to or during the Congress”. On this basis, Mr Noronen was unanimously elected to succeed Mr Wiking until 2016 and the Respondent has not adduced any evidence to the contrary.
- The Respondent also claims that Mr Noronen was not elected by the necessary quorum of duly authorized delegates. The Panel observes that according to the minutes of the meeting chaired by Mr Kaneuji, “*19 votes were present at the start of the meeting*” and they contain no indication that this might have changed during the course of the meeting. The delegates who attended the meeting chaired by Mr Wiking had left the room before the formal start of the meeting chaired by Mr Kaneuji. Mr Wiking did not adduce any evidence supporting his allegation that 22 validly registered and represented federations with voting rights took part in the meeting he chaired. The record before the Panel shows on the contrary that only 16 such federations attended the breakaway meeting, as listed in Mr Andrew Fuller’s email to all members dated 22 July 2015, and there are doubts as to the authority and standing of the other allegedly legitimate federations that were in attendance. Regardless of these questions, the Panel observes that Article 8.I of the applicable Statutes provides that elections are by secret ballot and that “[t]he absolute majority of the votes shall decide”. Assuming *arguendo* that Article 8.I requires a vote by a number of voters constituting more than half of the number of the attending federations, this requirement was met at the meeting chaired by Mr Kaneuji. According to the unrebutted evidence before the Panel, 35 member federations with voting rights had registered and were present in Canton, Ohio, for the IFAF Congress. The necessary quorum (if one was necessary) was therefore 18. And 19 federations attended the meeting chaired by Mr Kaneuji and elected Mr Noronen by a unanimous vote. By contrast, only 16 federations attended the meeting chaired Mr Wiking.

183. Given the foregoing, the Panel finds that Mr Noronen was elected *ad interim* President of IFAF on 17 July 2015 with the necessary quorum (if one was necessary) and by unanimous vote and that the Respondent has failed to adduce any evidence to the contrary.
184. The Panel further observes that pursuant to Article 8.L of the applicable Statutes, “*Congress decisions are binding for Members*” and that decisions regarding elections have immediate effect. Consequently, Mr Noronen became President of IFAF for a one-year term immediately upon his unanimous election and such decision was binding on all member federations.

#### **D. Who is the current President of IFAF?**

##### ***i. The Parties’ positions***

185. The Claimants contend that the Congress held in New York City on 17 September 2016 was the only legitimate IFAF Congress because it had been called by the Executive Board that had authority to do so, and was chaired by Mr Noronen, IFAF’s *ad interim* President.
186. IFAF’s decision to call for the Congress on 14 July 2016 was triggered by the earlier announcement by the group led by Mr Wiking that their ordinary congress would be held on 16-17 September 2017. In order to try to minimize the risks of confusion for the member federations, IFAF decided to await the outcome of the proceedings initiated by Mr Wiking and his group before the *Tribunal de Grande Instance* of Bobigny, France, before organising the annual Congress. In the end, the *Tribunal de Grande Instance* ruled that it had no jurisdiction over the case and referred the parties to CAS arbitration.
187. While the Congress was called on 14 July 2016, the agenda for the meeting was sent on 18 August 2016, that is to say 30 days before the proposed 17 September 2016 Congress and in accordance with Article 8.B of the IFAF Statutes.
188. The Claimants argue that there is no legal deadline imposed under French law for issuing a call for a general assembly. The rule is that the call or convocation should be issued or sent in a reasonable period of time before the meeting so that the participants have sufficient time to prepare and to consider the proposed agenda. Neither French law nor the IFAF Statutes provide for any explicit sanction in case a deadline is not respected.
189. While they acknowledge that the four-month deadline to be observed by the Executive Board to notify the member federations of the date and venue of the Congress had not been complied with, the Claimants contend that this cannot lead to the cancellation of an assembly held prematurely if all members were able to be present or to be duly represented. According to the Claimants, such was the case here.
190. The Claimants rely in particular on a 27 February 2013 decision by the French *Cour de Cassation* that held that the failure to respect the deadline set under the statutes of a sports federation to call for a general assembly does not trigger the nullity of the deliberations and decisions taken



unless the statutes expressly provide this or when the non-respect of the deadline has an impact on the proper conduct and sincerity of the consultation. *"This was clearly not the case and no issues of nullity arises"*.

191. On this basis, the Claimants consider that it is undisputed that Mr MacLean was elected as IFAF President at the Congress presided over by Mr Noronen in New York City on 17 September 2016. This election has not been challenged before the CAS within the applicable time limit. Consequently, *"irrespective of the fact that not all the technical formalities might have been followed, Mr. MacLean has become final"*. The Panel observes that this last sentence seems to have been intended to read that *"the election of Mr. MacLean has become final"*.
192. The Respondent submits on his part that the Sixth Claimant, Mr Richard MacLean, was never elected as IFAF President on 17 September 2016 because a) the meeting was not properly convened by the Executive Board; b) the invitation to attend the meeting came almost two months late; and c) the meeting was not opened by Mr Tommy Wiking, the alleged legitimate IFAF President.
193. The Respondent maintains that the invitation to attend the New York City Congress was an anonymous email sent *"on behalf of the members of the Executive Board"*, as if it were not, therefore, sent on behalf of the Executive Board. The Respondent contends that such language can only be understood to refer to some members of the Board only. This formulation was used, according to the Respondent, because among the persons who had been confirmed as members of the Executive Board at the "Extraordinary Congress" held in Paris on 19 March 2016 and were registered at the Préfecture, seven were members of Executive Committee chaired by Mr Kaneuji and seven were members of the Executive Committee chaired by Mr Wiking. Accordingly, the former members could not call a meeting on behalf of the majority of the Executive Board. The Respondent further alleges that the seven members of the Board chaired by Mr Kaneuji had already decided *"privately"* to hold a parallel congress in New York City on the same date fixed by the group led by Mr Tommy Wiking. All this, he asserts, confirms that the New York City Congress was not convened by the IFAF Executive Board.
194. Mr Wiking also alleges that, even if the meeting had been convened by the legitimate Executive Board, it was still not validly convened because the invitation *"was manifestly late and severely curtailed the members' rights"*. It was sent less than four months prior to the meeting, in breach of Article 8.A of the IFAF Statutes and thus did not allow for the necessary travel arrangements and even less for the necessary preparation for the meeting. The Respondent relies for the latter allegation on the same 27 February 2013 decision by the *Cour de Cassation* as do the Claimants, but to draw the opposite conclusion.
195. According to the Respondent, the fact that the invitation for the New York City Congress was sent almost two months before the meeting as opposed to the four months provided in Article 8.A of the IFAF Statutes was sufficient to render any decision taken by that Congress, including the election of the Sixth Claimant, invalid.

196. Mr Wiking argues that the Claimants' attempt to justify the delay on the ground that they were "*prudently awaiting the outcome*" of the French proceedings must fail, in particular because the Court issued its decision on 26 May 2016, that is to say 49 days before the New York City Congress was called. He says that the Claimants do not explain why they did not act earlier.
197. He contends further that the invitation was issued nearly 65 days before the meeting, which left member federations with only five days to submit proposals and nominations, as opposed to the two months foreseen in Article 8.B of the IFAF Statutes. It is "*science fiction*" to assume that members could, under such circumstances, initiate internal debates on potential proposals and nominations, obtain nominees' approval and convene the relevant federation body that could take decisions to do so. Given that "*the time left to the federations to submit proposals and nominations was prohibitively short, there can be no doubt that the 'unwinding and sincerity of the consultation' was severely affected, thus rendering the deliberations null and void based on the jurisprudence submitted by the Claimants themselves*".
198. The Respondent also argues that the meeting was not validly opened as it should have been opened by IFAF's legitimate President, Mr Wiking.
199. Finally, the Respondent argues that the Claimants have failed to provide "*even the names of those delegates who allegedly voted for Mr MacLean. Much less did they provide any shred of evidence for those delegates' authorization. Thus, the Claimants plainly failed to meet their burden of proving that Mr MacLean was elected*". This allegation is to be read in conjunction with the Respondent's general contention that despite the fact that they had the onus of proving their claims, "*surprisingly, the Claimants did not call a single witness to discharge their burden of proof. Instead, the only witness that the Claimants had initially called, Mr Fuller, became suddenly unavailable during the hearing, even though the Claimants had never indicated before that there were any limitations on his availability. The unavailability of Mr Fuller forced the Respondent to forego any cross-examination, and also the Panel lost its chance to ask questions to at least one person from the Claimants' side. As a result, the party bearing the burden of proof did not call a single witness from their side who could testify on the questions that the Panel found important*".

## **ii. The Panel's findings**

200. Given the Panel's decision that Mr Wiking resigned as President of IFAF effective 30 April 2015 and was thus not entitled to act on IFAF's behalf or to represent that he was still IFAF President from then on, the Respondent's allegation that the New York City meeting was not properly convened because Mr Noronen was not the legitimate IFAF President is moot, in particular in light of the ruling above that Mr Noronen was validly elected. The same applies to Mr Wiking's argument that to be valid the Congress should have been opened by Mr Wiking.
201. As to whether the Congress was called and the members invited to attend in accordance with the requirements of Article 8 of the IFAF Statutes, the Panel first observes that the invitation to attend the Congress that was issued on 14 July 2016 advised that the agenda would be published 30 days prior to the event. The agenda was accordingly issued on 17 August 2016.

202. The agenda contained, in particular, a motion by Great Britain that read as follows:

*“This Motion recognises that according to the Statutes, the Congress is the supreme authority and legislative body of the International Federation. This Motion proposes that the Congress accept that the initial notification deadline for Congress as detailed in the Statutes has been missed but that the Congress consents to the short notice in calling the Congress and notwithstanding the same, confirm and ratify the calling notice and all Agenda items”.*

203. It was therefore undisputed that the meeting was called late, hence the motion included in the agenda for the Congress to cure the delay by consenting to the shorter notice and confirming and ratifying the calling notice and the agenda attached to it.

204. According to item 4 of the minutes of the Congress, the motion was approved unanimously.

205. On this basis, given the steps taken by Mr Wiking and his group at the time to confuse matters and to attempt to take control over IFAF in Paris, the Panel finds that the approach resorted to by the Executive Board chaired by Mr Noronen to convene the annual Congress and ensure that that the delayed notice would be properly cured was not only transparent but also perfectly comprehensible. The Congress is the supreme authority of IFAF (Article 1 of the IFAF Statutes), and Great Britain’s motion was duly submitted to members in the agenda issued on 17 August 2016.

206. Had any member federation taken a contrary view, it could have challenged the decision before the CAS (Article 14 of the IFAF Statutes). Based on the record, none did so.

207. Given the foregoing, the Panel holds that the 17 September 2016 Congress held in New York City was validly convened.

208. Item 13 of the 17 August 2016 agenda provided for the election of the IFAF President *“(in accordance with the Statutes)”*. The agenda did not contain any nominations for this office or any motion proposing a candidate.

209. Item 23 of the minutes of the New York City Congress, entitled *“Election of the IFAF President”*, indicates that Mr Richard MacLean was nominated at the Congress by Panama and seconded by Israel. Mr Richard MacLean accepted his nomination and there was no other candidate. Thereafter, the USA submitted a motion *“to accept nomination after the deadline”*, which was seconded by Great Britain. The motion was accepted unanimously less one vote, and *“Richard MacLean elected IFAF President; MacLean accepts gavel”*.

210. The Panel observes that according to Article 8.B of the Statutes, *“the congress can accept late nominations if the majority at the congress decides so”*. Accordingly, the Congress accepted the motion to accept the late nomination of Mr Richard MacLean.

211. There is no indication in the record before the Panel that such decision was challenged.

212. On this basis, the Panel finds that Mr Richard MacLean was elected as President of IFAF for a four-year term by a validly called and constituted Congress.

**E. Standing of IFAF in the present proceedings**

213. Given the Panel's conclusion that Mr Robert MacLean has been the President of IFAF since 17 September 2016, IFAF has standing in the present case and Mr Antonio Rigozzi was duly empowered to represent it in this arbitration as per the Power of Attorney granted to him by Mr MacLean on behalf of IFAF on 9 February 2017.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport rules and declares that:**

1. Mr Tommy Wiking resigned as President of IFAF on 3 February 2015 with effect on 30 April 2015, which was accepted by IFAF;
2. Any and all actions by Mr Tommy Wiking, either as IFAF President or more generally on behalf of IFAF after 30 April 2015 are null and void;
3. Mr Tommy Wiking shall cease and desist from acting as and referring to himself as the President of IFAF;
4. Mr Roope Noronen was elected *ad interim* President of IFAF on 17 July 2015;
5. Mr Richard MacLean was elected President of IFAF on 17 September 2016 and is IFAF's current President;
6. (...);
7. (...);
8. All other claims or requests are dismissed.