



**Arbitration CAS 2015/A/3905 Vasily Kraynikovskiy v. European Karate Federation (EKF), award of 17 September 2015**

Panel: The Hon. Michael Beloff QC (United Kingdom), Sole Arbitrator

*Karate*

*Removal of a member from the executive committee of a federation and replacement by another member*

*Conditions for re-election in case of loss of support of the national federation*

*Contra proferentem rule and democratic principle in an election process*

*Freedom of a federation to withhold support from a member and public policy*

*Conditions for co-option under the EKF Statutes*

1. Article 10.11 of the EKF Statutes applies to the elected members of the EKF Executive Committee (EC) and the chairman of an EKF commission. It cannot be read as applying to an elected member of a commission because all commission members are appointed not elected. In circumstances where either an elected member of the EKF EC or a chairman of a commission loses the support of his national federation, he will need the support of 2/3rds of the EKF EC to remain in office. When elected members of the EKF EC seek re-election, there are two classes of such members: a) those who have been elected for less than two times in the last four year terms will be able to present themselves for election only with the support of 2/3rds of the EKF EC and b) those who have been elected for at least that period may present themselves for re-election in the normal way.
2. The *contra proferentem* rule does not operate where, whatever ambiguities appear in a legal provision at first blush, they evaporate on rigorous analysis, *a fortiori* where the provision is not a disciplinary one. Democratic principle does not require that persons elected by one process can never be removed by another.
3. Subject to some overriding principle of public policy, and according to the EKF Statutes, a national karate federation and the EKF EC are free to withhold support from whomsoever they chose. Exercise of power is not, without more, abuse of power. It is politics.
4. There are two bases on which a member may be co-opted onto the EKF EC. The first is under Article 13.11 EKF Statutes where the pre-condition is a vacancy. The second is under Article 13.4 where there is no express precondition and the only implied precondition is that co-option must reasonably be thought to be in the interests of the EKF EC.

## **I. PARTIES**

1. Mr. Vasily Kraynikovskiy (the “Appellant”) is a former member of the Executive Committee of the European Karate Federation.
2. The European Karate Federation (the “EKF” or “Respondent”) is the federation governing the sport of Karate in Europe. Its legal seat is in Madrid, Spain.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the submissions made and evidence adduced by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. On 9 September 2005, the Appellant was elected to membership of the Executive Committee of the European Karate Federation (the “EKF EC”). The Appellant was re-elected to the same position in 2009.
5. By letter dated 3 March 2011, L.L Popov (“LLP”), the then President of the Russian Karate Federation (“RKF”), asked for the Appellant to be removed from that position (the “March letter”). The March letter provides the following:

*Dear President of European Karate Federation, Mr Antonio Espinos,*

*I would like to inform you about the following:*

*After my election on duty of President of Karate Federation of Russia (KFR), on KFR General Assembly held on 7 October and 8 October 2010, ex-president, Vassily Kraynikovskiy liquidate account of Federation and removed from the account all the funds that were at that moment on it. He handed over only Arrangement and Constitution of Federation, but he did not give to us any kind of working documents or materials, from last 6 years. Federation at that time had no office, had no kind of electronic communication, and any basic working conditions. During the negotiations on issues of extradition documents Mr. Kraynikovskiy showed any willingness to cooperate or to make any contribution in order to overcome this problem. During this period an after Mr Krainikovskiy showed no interest for the development of Karate Federation of Russia or karate sport in Russia.*

*Considering all above mentioned General Assembly of Karate Federation of Russia stand on position that Mr Kraynikovskiy cannot represent Russia in the Directing Committee of the European Karate Federation and thoughtfully asks you that this information and opinion of Karate Federation of Russia take into consider*

*in resolving issues about the participation of Mr Kraynikovskiy in the leadership of European Karate Federation.*

6. On 11 February 2012, at a meeting in Baku, the EKF EC rejected LLP's request. The minutes record as follows:

*The President raised the issue between the Russian Federation and the 2<sup>nd</sup> EKF Vice-President and decided to keep the support necessary for the 2<sup>nd</sup> Vice-President, moreover taking into account that in little more than 1 year from now there will be elections, and at the same time decided that a meeting between both parties and the EKF General Secretary will take place in Baku to unify criteria and approach positions.*

7. During the 2013 elections, the Appellant was re-elected to that position.
8. On 5 November 2013, the Appellant notified the EKF of his change of e-mail address.
9. On 6 March 2014, a draft agenda for a forthcoming EKF EC meeting in Tampere was prepared.
10. On 28 April 2014, the then President of the RKF, Mr Sergey Sokolovski ("SS"), wrote a letter (the "April letter") to the President of the EKF, Mr Antonio Espinos ("AE"), stating that RKF no longer supported the Appellant as the representative of Russia on the EKF EC and proposed himself (i.e. SS) as such representative. The April letter was in the following terms:

*Dear Mr President,*

*On behalf of Russian Karate Federation ("RKF") I would like to inform you that Mr Vassily Kraynikovskiy is not supported any more RKF as a representative of Russia in EKF Executive Committee. We express our appreciation to Mr Vassily Kraynikovskiy for his long term work at the position of EKF EC member and EKF vice President. Therefore based on the Article 10.11 of the EKF Statutes, Mr Vassily Kraynikovskiy cannot represent Russia in EKF EC any more.*

*At the same time RKF has decided to apply to the EKF EC with candidature of Mr Sergey Sokolovski as a President of Russian Karate federation representing Russia in the EKF EC.*

11. On 30 April 2004, the EKF EC held a meeting in Tampere (the "Tampere meeting") in Finland - the location of the 49<sup>th</sup> European Championships. The EKF EC was presented with the April letter and unanimously agreed that the Appellant was no longer a member of the EKF EC (That item was not on the original draft agenda but was included on an amended agenda created at the outset of the meeting.).
12. The Appellant was not present at the Tampere meeting as he had not been invited (although the original draft agenda had been sent to his old e-mail address) nor was he thereafter informed of his removal from the EKF EC. His name was, however, removed from the EKF website.
13. On 29 August 2014, AE, by email (the "September email") invited the EKF EC members to co-opt SS to the EKF EC so as "*to fill the vacancy produced in Tampere*".

14. On the same day (or the next day), the EKF EC members notified AE of their agreement to SS's co-option.
15. So on 7 October 2014, AE wrote a letter (the "October letter") to SS informing him of his co-option as a member of the EKF EC and congratulating him thereon.
16. On 29 October 2014, Mr Gleb Ivanov, editor of the Karate related website [www.karate.ru](http://www.karate.ru), notified the Appellant of his removal from the EC and his replacement by SS.
17. On 30 October 2014, the Appellant emailed AE and the General Secretary of the EKF, Stjepan Celan ("SC") enquiring and protesting about his removal from the EKF EC and his replacement by SS.
18. On 19 November 2014, in the absence of any reply to his enquiry and protest, the Appellant lodged an appeal before the EKF Disciplinary and Legal Commission (the "DLC") challenging his removal from the EKF EC.
19. On 13 January 2015, the DLC issued its decision (No. 1/2015) rejected the Appellant's appeal (the "Decision"). It is from the Decision that the Appellant now appeals to the Court of Arbitration for Sport (the "CAS").

**B. Proceedings before the Court of Arbitration for Sport**

20. On 3 February 2015, the Appellant filed his Statement of Appeal at the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code") against the Respondent with respect to the Decision. In his Statement of Appeal, the Appellant nominated Mr. Lucio Colantuoni as arbitrator. In addition, the Appellant sought the suspension of his deadline to file his appeal brief pending the Respondent's production of various documents.
21. On 10 February 2015, the Respondent provided the various documents requested by the Appellant and on the next day, 11 February 2015, the CAS Court Office set a 10-day deadline for the Appellant to file his Appeal Brief in accordance with Article R51 of the Code.
22. On 24 February 2015, the Appellant filed his Appeal Brief in accordance with Article R51 of the Code.
23. On 26 March 2015, the Appellant requested that this appeal be referred to a Sole Arbitrator, instead of a three-member Panel as originally suggested.
24. On 7 April 2015, the Respondent confirmed its agreement that a Sole Arbitrator be appointed to decide this appeal.
25. On 10 April 2015, the Respondent filed its Answer in accordance with Article R55 of the Code.

26. On 16 April 2015, the Respondent informed the CAS Court Office that it did not deem a hearing necessary in this appeal.
27. On 20 April 2015, the Appellant stated that he preferred that this case be decided without a hearing, but under these circumstances, he sought leave to file a letter from the RKF to the EKF dated 4 March 2011 (the “March letter”).
28. On 21 April 2015, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the parties that the Hon. Michael J. Beloff, Q.C., barrister in London, United Kingdom, had been appointed Sole Arbitrator.
29. On 28 April 2015, the Respondent informed the CAS Court Office that it did not object to including the March letter in the file, and provided a copy of such document accordingly.
30. On 30 April 2015, the Appellant filed a letter with the CAS Court Office responding to certain comments made by the Respondent in its 28 April 2015 letter.
31. On 1 May 2015, the CAS Court Office confirmed the inclusion of the March letter into the file.
32. On 7 May 2015, the Respondent responded to the Appellant’s 30 April 2015 letter.
33. On 18 May 2015, the CAS Court Office, on behalf of the Sole Arbitrator, directed the Respondent to file its complete file concerning the Appellant’s removal from the EKF EC, as well as any documentary evidence establishing that the Appellant lost support from the RKF. In addition, the Appellant and AE were directed to file a statement setting forth their expected testimony at the hearing. Moreover, the parties were informed that a hearing would be held in this appeal in accordance with Article R44.2 of the Code.
34. On 18 May 2015, the RKF was invited to file its case file concerning the Appellant’s involvement with the EKF EC.
35. On 2 June 2015, the Respondent filed its response to the CAS Court Office letter dated 18 May 2015, including written statements from AE and Francisco Alegrete (“FA”) and asserting that Exhibit A-18.1 (being an undated statement from Andrey Potapov (“AP”) said to be illegally prepared on RKF letterhead without RKF’s permission) should be excluded.
36. On the same day, 2 June 2015, the Appellant filed his response, including a written statement from the Appellant himself.
37. On 12 June 2015, the Appellant objected to certain statements made by the Respondent’s 2 June 2015 submission, including responding to the Respondent’s assertions that Exhibit A-18.1 should be excluded.
38. On the same day, 12 June 2015, the CAS Court Office informed the parties that the Sole Arbitrator did not wish to exclude Exhibit A-18.1 in advance, but that he would decide on its

admissibility at the hearing. (It was in the event taken into account with all other documentary material adduced by the parties).

39. On 24 June 2015, the parties signed and returned the Order of Procedure to the CAS Court Office. In addition, the Respondent filed additional comments concerning Exhibit A-18.1.
40. A hearing was held in this appeal at the Lausanne Palace in Lausanne, Switzerland on 1 July 2015. The Sole Arbitrator was assisted by Mr. Brent J. Nowicki, counsel to the CAS, and was joined by the following:

For the Appellant:

Mr. Ioannis Mournianakis (counsel)  
Mr. William McAuliffe (counsel)  
Mr. Andrey Potapov  
Mr. George Yerolimpos

For the Respondent:

Mr. Jorge Ibarrola (counsel)  
Ms. Natalie St. Cyr-Clarke (counsel)  
Mr. Francisco Alegrete  
Mr. Antonio Espinos (by telephone)

41. At the beginning of the hearing, the parties confirmed that they had no objection to the appointment of the Sole Arbitrator. At the conclusion of the hearing, the parties confirmed that their right to be heard had been fully respected.

### **III. SUBMISSIONS OF THE PARTIES**

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

On the true construction of the applicable EKF statutes, the removal of the Appellant from the EKF EC was neither lawful nor democratic. Further, and in any event, there was insufficient evidence that the Appellant had lost the support of the RKF as claimed in the April letter. Given that his removal was invalid, so must necessarily be his replacement by SS which was vouched for neither by Article 13.4 nor by Article. 13.11. AE was guilty of an abuse of power "*in order to achieve the extermination of an enemy*".

43. In his request for relief, the Appellant requests the following:

**1. On the merits**

- (i) *to set aside the decision of the EKF Executive Committee or of the EKF President to remove Mr Kraynikovskiy from his position as a member of the EKF Executive Committee, and to reinstate him as such, and*

- (ii) *to set aside the decision of the EKF Executive Committee or of the EKF President to co-opt Mr Sokolovski as a member of the EKF Executive Committee replacing Mr Kraynikovskiy.*

*Or, subsidiarily*

- (iii) *to make a decision that the CAS deems appropriate in the particular circumstances;*

## **2. On costs**

- (iv) *to order the Respondent to pay the entire costs of the present proceedings, as well as the entire costs for the Appellant's legal representation as well as other costs incurred by the Appellant in the course of the present request of the CAS Court Office.*

44. The Respondent's submissions may be summarized, in essence, as follows:

On the true construction of the applicable EKF statute the removal of the Appellant from the EKF EC was lawful and therefore did not offend democratic principle. The EKF EC properly relied on the April letter to conclude that the Appellant had lost the support of the RKF. The replacement of the Appellant by SS was vouched for by both Article 13.4 and Article 13.11. The allegation of abuse of power by AE was robustly rejected.

45. In its request for relief, the Respondent requests the following:

*"In light of the above, the World Karate Federation (sic)<sup>1</sup> respectfully requests the Court of Arbitration for Sport to rule as follows:*

- i. *The appeal filed by Vasily Kraynikovskiy on 3 February 2015 is dismissed.*
- ii. *The decision of the European Karate Federation Disciplinary and Legal Commission, issued on 13 January 2015, is confirmed.*
- iii. *Vasily Kraynikovskiy shall bear all the costs of this arbitration.*
- iv. *Vasily Kraynikovskiy shall reimburse the European Karate Federation for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel".*

## **IV. JURISDICTION**

46. Article R47 of the Code provides as follows:

*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific*

---

<sup>1</sup> Presumably European Karate Federation was intended.

*arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

47. Article 21.12 of the EKF statutes and Clause 36 of the EKF disciplinary and legal rules provide for an appeal to CAS. CAS jurisdiction is confirmed by the signature of the parties to the Order of Procedure and the Respondent does not dispute jurisdiction.

## **V. ADMISSIBILITY**

48. Article R49 of the Code provides as follows:

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

49. The Decision was received by the Appellant on 13 January 2015. The statement of appeal was filed on 3 February 2015. The appeal is therefore admissible. Nevertheless, it is noted that the Respondent does not dispute the admissibility of this appeal.

## **VI. APPLICABLE LAW**

### **A. General**

50. Article R58 of the Code provides as follows:

*The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

51. The applicable regulations are the statutes of the EKF. Spanish law applies subsidiarily.

### **B. The Relevant Provisions**

52. Article 10 of the EKF Statutes provides so far as material, as follows:

*10.1 First time election to any EKF office is only open to persons officially put forward as candidates by the National Federation of their own country, and then only when the National Federation has become effective full rights ("permanent") of the EKF for the last 2 (two) years, and the national Federation is up to date with all payments due to the EKF at the time of opening of the Congress. The incumbent EKF Executive Committee members can individually put forward their candidates to the Executive Committee.*

[...]



10.9 Any National Federation cannot have more than 1 (one) Executive Committee member, this without counting the President, the co-opted member(s) and the former EKF President(s).

10.10 If an appointed member other than a Commission chairman **loses the support of his National Federation**, the appointment will be immediately forfeited, barring appeal to the Disciplinary and Legal Commission in application of the Rules of the latter.

10.11 If an elected member or the Chairman of a Commission loses the support of his National Federation, he will need, to remain in office, the **support of 2/3 (two thirds) of the Executive Committee** and subsequently – for the elected member – the support of 2/3 (two thirds) of the Congress when elections take place. When the elected member has been elected at least 2 (two) times in the last 4 (four) 4 (four) year terms this condition cannot be applied. The member in question can then present himself for the re-election in the normal way.

Article 13.2 provides

*“All Executive Committee elective positions shall be elected by the whole Congress”*

Article 13.4 of the EKF Statutes provides, so far as material, as follows:

*The Executive Committee will have the right to co-opt a number of additional female members in the event that after the elections the number of women members of the Executive committee, in the Committee’s own opinion, is considered insufficient for female representation. The Executive Committee will have also the right to **co-opt 1 (one) additional member**. The term of the co-opted member(s) will be at the **discretion of the Executive Committee**, who may at any time revoke the co-option(s). These co-opted members are appointed with simple majority of the Executive Committee members and once co-opted will enjoy full membership and voting rights until the next ordinary election or until being revoked if earlier.*

Article 13.11 of the EKF Statutes provides, so far as material, as follows:

*If for any reason a **position should become vacant** in the Executive Committee, the Executive Committee may proceed to **co-opt a member** in accordance with the terms of Article 10 herein. The co-opted member(s) shall remain in office at the discretion of the Executive Committee and as a limit until the following Congress, when regular elections for the co-opted position(s) are held.*

Article 13.18 of the World Karate Federation (“WKF”) statutes provides

*“All members of the Executive Committee of the WKF are its representatives in their respective countries and not delegates of their countries within the WKF. This is also applicable at continental federations level”*

(Sole Arbitrator’s emphasis).

## **VII. MERITS**

### **A. The Issues**

53. In substance, the Appellant challenges two decisions which although factually related, are legally distinct:

- (i) his removal from the EKF EC (“Removal”)
- (ii) his replacement by SS (“Replacement”)

54. As to Removal, there are three issues:

- (a) whether the EKF statutes, on their true construction, entitled the EKF to remove the Appellant from the EC on the basis that he had lost the support of his national federation. This is an issue of law.
- (b) whether the Appellant had lost the support of his national federation. This is an issue of fact.
- (c) whether the removal was a politically motivated decision. This is an issue of mixed law and fact.

55. As to Replacement, there are four issues:

- (a) whether the EKF statutes entitled the EKF to replace the Appellant if he had been wrongly removed. This is an issue of law.
- (b) whether the replacement and co-option of SS was taken under Article 13.4 or Article 13.11. This is an issue of fact.
- (c) whether if taken under Article 13.4 of the EKF Statutes it was validly reached by the required majority. This is an issue of fact.
- (d) whether the replacement was a politically motivated decision. This is an issue of mixed fact and law.

### **B. Analysis: Removal**

56. Article 10.11 of the EKF Statutes is composed of three sentences. The first sentence applies to two classes:

- (1) Elected members of the EKF EC
- (2) Chairmen of a Commission

It cannot be read as applying to an elected member of the commission because all commission members are appointed not elected. (It is not in issue that throughout the EKF statutes a distinction is drawn between the EKF EC and various EFK commissions – for e.g. Article.10.8, Article. 10.12, Article 16, etc.).

57. The second sentence provides for what occurs in circumstances where either an elected member or a Chairman of a Commission loses the support of his national federation. In those circumstances, he will need the support of 2/3rds of the EKF EC to remain in office.
58. The second sentence, read together with the third, also provides for what is to happen when elected members seek re-election. There are two classes of such members. Those who have been elected for less than two times in the last four year terms will be able to present themselves for election only with the support of 2/3rds of the EKF EC. Those who have been elected for at least that period may present themselves for re-election in the normal way.
59. The alternative construction advanced on behalf of the Appellant is that “the condition” referred to in the second sentence embraces both remaining in office and presenting oneself for re-election.
60. The Sole Arbitrator rejects this construction for a number of reasons:
  - (1) Remaining in office and presenting oneself for re-election describe two different activities;
  - (2) The adverb “subsequently” builds a bridge between the two activities and makes it clear that the latter comes chronologically after the former;
  - (3) The phrase “the elected member” is used only in connection with the election process; the phrase “an elected member” is used in connection with remaining in office;
  - (4) If the condition embraced both categories, the third sentence would be redundant since there would be no need for an express provision that the elected member should present himself for re-election as there would be no impediment to him so doing. (For completeness, however, it is noted that the age limit in Article 10.8 for membership of the EKF EC is irrelevant to this issue.)
61. The Sole Arbitrator has considered the Appellant’s submissions in support of that alternative construction but finds them unpersuasive.
  - (1) The *contra proferentem* rule does not operate where, whatever ambiguities appear in a legal provision at first blush, they evaporate on rigorous analysis, *a fortiori* where the provision is not a disciplinary one.
  - (2) There is a perceptible policy reason for requiring someone who has lost the support of his federation to be at risk of losing his post on the EKF EC. However, he will only actually lose his position if he cannot gain the support of 2/3rds of the EKF EC.

- (3) Democratic principle does not require that persons elected by one process can never be removed by another.
  - (4) WKF statute Article 13.8 which makes a member of the EKF EC a representative of the WKF in his respective country, not a delegate of his country on the WKF:
    - (i) only describes the members function once elected, not his eligibility to perform those functions;
    - (ii) is concerned with the WKF not EKF;
    - (iii) applies *mutatis mutandis* to continental federations, not national federations such as RKF;
    - (iv) cannot aptly be described as a principle of the WKF to which continental federations must subscribe (WKF Statutes 2.3) for example, non-discrimination (ditto 3) or compliance with the principles of the Olympic charter (ditto 4).
    - (v) creates no inherent inconsistency between being a representative of an international federation on a national federation, not a delegate of a national federation on an international federation, and requiring someone to retain support of his national federation.
62. Applying this analysis to Article 10.11, there are two questions of fact to be resolved before a determination can be made as to whether the Appellant was validly removed from his office as a member of the EKF EC: (1) Had he lost the support of his National Federation (i.e. RKF); and (2) Did he have the support of 2/3rds of the EKF EC?
63. As to (1) while the Sole Arbitrator has sympathy with the stance adopted by the EKF EC that, if told by the President of a National Federation that one of its members has lost the support of that Federation it has no option but to take that loss as a given, that is not what the opening part of Article 10.11 stipulates. It requires that the loss of support be actual, not merely asserted (although the assertion of the President of the National Federation that such support has been lost has obvious weight in this context). SS's statement of 3 June 2015 explains how the Appellant's loss of support referred to in the April letter was gauged, and produced evidence of formal ratification in May 2015, i.e. the signatures of those who no longer supported the Appellant. It would, in the Sole Arbitrator's view, before the Appellant faced with this concrete evidence, to establish that there was some formal requirement in the rules of the RKF as to how to assess such loss of support which had not been complied with and so to defeat the presumption of regularity. None was forthcoming. The Appellant's reliance on a statement by AP, a former Vice President of the RKF, that he was unaware of such loss of support is devalued by the fact that AP's authority had itself been suspended by the RKF on 19 July 2014.
64. The questions of whether someone has lost support and why he has done so must be distinguished. Let it be assumed first that within the RKF, EKF, and WKF there were two

camps in the context of the dispute between the former General Secretary of the WKF, George Yerolimpos (“GY”), and AE - those who supported GY and those who supported AE (a dispute well documented in two earlier CAS decisions CAS 2014/A/3516 and CAS 2014/A/3671); second, that it was the Appellant’s misfortune to be in the camp which supported GY whereas those whose support he had lost supported AE and indeed that his loss of support stemmed from precisely those two preceding facts. That in no way makes the loss of support any less real. Nor would the fact that the Appellant had no opportunity to make representations at the Tampere meeting affect this conclusion. He faced no charge to be rebutted. He was simply on the wrong side.

65. There are indeed a variety of factors which support the Appellant’s thesis that the assumption that the Sole Arbitrator has made corresponded with actuality, i.e. that it was the Appellant’s support of GY in GY’s struggle for power with AE which sealed his own fate:
- (1) The opportunity given to the Appellant at the Baku meeting to contest earlier allegations by LPP of mismanagement can be compared with the lack of such opportunity given to him at the Tampere meeting to contest discrete allegations of indifference.
  - (2) There was no good reason why when the Appellant in November 2013 requested that his new email address be used for important messages, given the problems that he had with his previous one, shared with his son, the EKF did not use it to inform him about and invite him to the Tampere meeting. The fact that in October 2014 he himself reverted to use of his previous email is not evidence of bad faith on his part nor does it create any kind of estoppel. Furthermore - and critically - it does not serve to explain the EKF’s disregard of the November 2013 request which request which was itself devoid of any sinister connotation.
  - (3) The Appellant gave evidence that when he telephoned the new General Secretary to ask about why he had received no formal invitation to the Tampere meeting, the General Secretary reminded him of his support of GY which the Appellant interpreted as an indication that he was indeed being frozen out of the EKF inner circle. The Appellant was not challenged on this evidence, nor was contradictory evidence adduced by the EKF. The Sole Arbitrator accepts that the Appellant would have been aware of the imminent Tampere meeting and could in theory have attended but the relevant issue is not why he did not come, but why he was not invited.
  - (4) AE says that the fact that two Presidents of the RKF, LLP and SS, had each complained about the Appellant made the endorsement by the EKF EC of his removal from the EKF EC explicable. This explanation, however, leaves unanswered the question why if the complaint of the former had left real doubts in the EC’s mind, the latter’s complaint of an entirely different nature could remove those doubts.
  - (5) SS’s lack of elaboration in the April letter as to how and why the Appellant had lost the support of the RKF coupled with the express advancement of his own candidature should reasonably have prompted enquiry by the EC into the underlying facts, but none was apparently made.

- (6) AE's statement that he made no intervention of any kind at the Tampere meeting on the issue of whether the EKF EC should endorse the Appellant's removal from the EC is hard for the Sole Arbitrator to accept given his role as an experienced and powerful President of the EKF, never reticent to articulate his own views on any issue, a feature of his character vividly displayed in his own oral testimony.
- (7) AE's self-serving suggestion that SS was not *entirely* in his camp has to be juxtaposed with SS's own contradictory statement that he was entirely supportive of AE.
- (8) The Sole Arbitrator is prepared to accept that when the Appellant resigned his post as President of the RKF to concentrate on a governmental role in promoting Russian-Japanese cultural and sporting links, he devoted *pro tanto* less time to RKF activities but remain unpersuaded that this was the only or even the most important reason for his fall from grace. It is to be noted that SS's own letter to the EKF of 15 February 2013 stated expressly "*Working for Karate's development for many years (the Appellant) has done a lot for RKF as well as for EKF*".

The Sole Arbitrator detected nothing in the Applicant's removal which reflects adversely on his honour. It appears simply that the balance of power within the EKF (and RKF) had shifted to his disadvantage.

- 66. But the Sole Arbitrator repeats that it is unnecessary for him to form any conclusion as to *why* the Appellant had lost support of the RKF or whether the reasons were good or bad. Subject to some overriding principle of public policy - and he can identify none in play - the RKF and the EKF EC were free to withhold support from whomsoever they chose. Exercise of power is not, without more, abuse of power. It is politics.

### **C. Analysis: Replacement**

- 67. As to SS's replacement of the Appellant, the issue is less complex. There are two bases on which a member may be co-opted onto the EKF EC. The first is under Article 13.11 where the pre-condition is a vacancy. The second is under Article 13.4 where there is no express precondition and the only implied precondition is that co-option must reasonably be thought to be in the interests of the EKF EC.
- 68. No submission was advanced that the second sentence of Article 13.4, like the first, was concerned only with gender diversity and the Sole Arbitrator sees no reason to conclude that it was. Were it so, it would indeed be otiose since the right to co-opt a number of additional female members must include the right to co-opt one.
- 69. Given that, as the Sole Arbitrator has concluded, for better or for worse, there was a vacancy Article 13.11 was available and Article 13.4 was in any event, as explained in the preceding paragraph, also available.
- 70. The question as to which Article was actually used cannot be dispositively answered (although given the terms of the September e mail, Article 13.11 is the likelier candidate). The Sole

Arbitrator doubts that any particular thought was given to the matter of mechanics. However, in the circumstances, he has outlined that this does not matter. No conscious decision to rely on a particular legal provision is required if the criteria for its use are objectively satisfied. Molière's Monsieur Jourdain famously spoke prose without being aware that he was doing so.

71. It was common ground (see the Decision para 57), that there is nothing to prevent the Appellant from resubmitting himself for election in the next round in the normal way. While his case does not fall within Article 10.1, it falls within the last sentence of Article 10.11.

## **ON THESE GROUNDS**

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

1. The appeal filed by Mr. Vasily Kraynikovskiy on 3 February 2015 against the decision of the European Karate Federation's Disciplinary and Legal Commission dated 13 January 2015 is dismissed.
2. (...)
3. (...)
4. All other motions or prayers for relief are dismissed.