

**CAS 2024/A/10593 Swimming Federation of the Republic of Kazakhstan v. Asia Swimming Federation / Asia Aquatics**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Mr Mario Vigna, Attorney-at-law in Rome, Italy  
Arbitrators: Mr Olivier Carrard, Attorney-at-law in Geneva, Switzerland  
Prof Thomas Clay, Professor in Paris, France

**in the arbitration between**

**Swimming Federation of the Republic of Kazakhstan, Kazakhstan**

Represented by Mr Shahram Dini, Attorney-at-law at Dini & Lardi Avocats, Geneva, Switzerland

**Appellant**

**and**

**Asia Swimming Federation / Asia Aquatics, Kuwait**

Represented by Mr Emanuel Cortada and Mr Basil Kupferschmied, Attorneys-at-law at Bär & Karrer AG, Zurich, Switzerland

**Respondent**

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## **I. PARTIES**

1. The Swimming Federation of the Republic of Kazakhstan (the “Appellant”) is the national swimming federation of Kazakhstan. It has its seat in Almaty, Kazakhstan, and is a member of both Asia Swimming Federation /Asia Aquatics and World Aquatics (the “WA”).
2. Asia Swimming Federation / Asia Aquatics (the “AA” or the “Respondent”) is the governing body of aquatic sports in Asia which WA recognises. It has its seat in Oman. It notably has the authority to recognise national bodies governing aquatics in any country within the geographical territory of the Asian continent. It has 45 members corresponding to the 45 national swimming federations in Asia, including the Appellant. It is governed by: (i) the General Congress, (ii) the Bureau, (iii) the Executive and (iv) various committees.

## **II. INTRODUCTION**

3. This is one of the two cases brought by the Appellant against AA in connection with the events at the 15<sup>th</sup> Extraordinary Congress of the AA held on 12 February 2024 in Doha, Qatar (the “Doha Extraordinary Congress”) and at the subsequent 16<sup>th</sup> Ordinary General Congress of the AA held on 26 April 2024 in Bangkok, Thailand (the “Elective General Congress”).
4. The other case (*CAS 2024/A/10387 Swimming Federation of the Republic of Kazakhstan v. Asia Swimming Federation (AASF) / Asia Aquatics*) concerns a challenge by the Appellant against the decisions of the AA at the Doha Extraordinary Congress by which AA’s 2018 Constitution (the “Old Constitution”) was amended and ratified (the “New Constitution”) and the existing Bureau and Executive of AA continued to remain in power till the Elective General Congress.
5. The present case (*CAS 2024/A/10593 Swimming Federation of the Republic of Kazakhstan v. Asia Swimming Federation (AASF) / Asia Aquatics*) concerns a challenge by the Appellant against the subsequent decisions of the AA at the Elective General Congress (the “Appealed Decisions”) by which a new AA Bureau and Executive were appointed and some items were approved in alleged violation of the Old Constitution.
6. There is significant overlap in the factual and legal framework underpinning both these cases. The Panel, the legal representatives and the Parties are common to both proceedings. In line with CAS practice, each procedure is resolved through a separate Award addressing the specific legal and factual matters relevant to that case (see *infra* at paras. 65 to 66). Nevertheless, also given that a joint hearing was held for both disputes, during which the Parties presented their arguments concerning both matters, the Panel will, where appropriate and necessary, reference arguments and jurisprudence applicable to both disputes.

### III. FACTUAL BACKGROUND

7. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidence adduced during these proceedings. Additional facts and allegations found in the Parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to those submissions and evidence it deems necessary to explain its reasoning.
8. On 9 October 2016, the AA's General Congress (the "Congress") elected the members of the AA Bureau (the "Bureau") for a four-year term.
9. There have been no elections until the events that resulted in the present proceedings. For completeness, the next elections took place at the Elective General Congress.
10. On 3 December 2023 (with a letter dated 27 November 2023), following the AA Executive's (the "Executive") approval, the President convened the Doha Extraordinary Congress on 12 February 2024 in Doha with the following agenda item: "*Votes on proposal for adopting and amending the [AA] Constitution, Code of Ethics*". The invitation to AA's member federations (the "Members") enclosed the draft of the New Constitution.
11. On 12 February 2024, the Doha Extraordinary Congress took place in Doha, Qatar.
12. According to the minutes of the Doha Extraordinary Congress (the "Minutes"), the veracity of which is disputed by the Appellant, the Congress approved a proposal regarding "*the continuation of the current Bureau/Executive until the next election*". Such a proposal was put forward by Mr Nanavati (Vice-President of AA) after the Appellant's representative brought to the Members' attention that the President, Executive and Bureau were operating without being in power. According to the minutes, "*the vote was for the approval of the extension of the executive offices/bureau members based on the new approved constitution until next elective General Congress*". There were 26 votes in favour, three votes against and two abstentions. The minutes record the result of the vote as follows:  
  
"*DECISION: The Congress approved the new Constitution, which included an extension of the President, Bureau/Executive members until the next elective General Congress, based on the new approved constitution.*"
13. The Congress then voted on "*the proposal for adopting the amendments of the [AA] Constitution*". The New Constitution was adopted with 27 votes in favour, one vote against and 8 abstentions. The Minutes record the result of the vote as follows:  
  
"*DECISION: The Congress approved and adopted amendments of the [AA] Constitution with effect of today, 12 February 2024.*"
14. The Appellant's representative voted against both proposals.

15. The President then proposed the following, based on the New Constitution:
  - Appointment of Mr Farid Fatahian as Executive Director for AA (the “Executive Director”).
  - Appointment of Mr Mohamad Mostafa Abdulghafour a lawyer for AA to run its legal affairs.
  - Replacement of the Secretary General with Mr Al Jabir as Asian representative to WA until 2025.
  - Reactivation of the bank account in Kuwait and opening of a small office in Budapest, the future headquarters of WA.
  - The Secretary General should transfer all remaining money to AA’s bank account and send the financial details to AA’s Secretariat.
16. On 12 February 2024, post the Doha Extraordinary Congress, the President convened, in accordance with Article C22.3 of the New Constitution, a meeting of the Executive.
17. On 14 February 2024, the Executive Director invited all the Members to the Elective General Congress, and invited them to complete and submit the nomination forms for the various elections.
18. On 16 April 2024, the Executive Director sent the formal, detailed convocation of the Elective General Congress, together with the agenda and the nominee’s list, to all Members.
19. On 26 April 2024, the Elective General Congress was held in Bangkok, Thailand. 41 out of 45 Members attended the Elective General Congress.
20. At the Elective General Congress, the Members took the following decisions:
  - The Minutes were unanimously approved.
  - The agenda of the Elective General Congress (the “Agenda”) was unanimously approved.
  - The appointment of the three scrutinizers was approved.
  - The appointment of three representatives of recognised Members to check and approve the Elective General Congress minutes was approved.
  - The amendment of Article C20 of the New Constitution was unanimously approved.
  - The discussion on the proposal of the Bureau to add two seats in the Bureau that are reserved only for women and to add three Bureau members as “Associate Members” was approved by 39 Members.

- The proposal of the Bureau to extend the Bureau by five members was approved by 39 Members.
- The President was re-elected with 40 votes.
- The list of candidates for the Bureau was approved by 37 Members.
- The new members of AA's Bureau (the "New Bureau"), including the General Secretary of Appellant, Mr Sergey Drozdov, were each elected with at least 36 votes and some with as many as 39 votes.
- The proposal of the President for the positions as Associate Bureau members was approved by 38 Members.
- The proposed members for AA's Audit & Compliance Committee were elected by 38 Members.
- The proposed members for AA's Disciplinary Committee were elected by 38 Members.
- The proposed members for AA's Ethics Committee were elected by 38 Members.
- The Asian World Aquatics Bureau members were each elected with at least 38 and some with as many as 40 votes.

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

21. On 17 May 2024, the Appellant, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code"), filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decisions. Consequently, procedure *CAS 2024/A/10593 Swimming Federation of the Republic of Kazakhstan v. Asia Swimming Federation (AASF) / Asia Aquatics* was opened by the CAS Court Office.
22. In its Statement of Appeal, the Appellant requested for the consolidation of the proceedings in CAS 2024/A/10387 with the present proceedings.
23. On 22 May 2024, the CAS Court Office informed the Parties that the Appellant's request for the consolidation of the proceedings in CAS 2024/A/10387 with the present proceedings is denied.
24. On 18 June 2024, the CAS Court Office notified the Parties that the Panel appointed to decide the matter would be constituted by Mr Mario Vigna as president, Mr Olivier Carrard, nominated by the Appellant and Prof Thomas Clay, nominated by the Respondent.
25. On 5 July 2024, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.

26. On 16 August 2024, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.
27. On 17 September 2024, the CAS Court Office provided the Parties with an Order of Procedure, which was duly signed and returned by both Parties on 23 September 2024.
28. On 9 October 2024, a few hours before the first day of the hearing, the Appellant sent a letter to the CAS Court Office enclosing a list of relevant legal doctrine and case law on which the Appellant based its legal arguments. In a separate communication, the Respondent objected to such production and its timing.
29. On 9 and 10 October 2024, a hearing was held via video conference. The following persons were in attendance at the hearing:
  - The Panel, which was assisted by Ms Delphine Deschenaux-Rochat (CAS Counsel).
  - On behalf of the Appellant:
    - (a) Mr Andrey Kryukov, president of the Appellant and former Vice-President of the AA;
    - (b) Mr Shahram Dini, legal counsel;
    - (c) Mr Mathias Karsegard, legal counsel; and
    - (d) Ms Zhuldyz Baimagambet, interpreter.
  - On behalf of the Respondent:
    - (a) Mr Emanuel Cortada, legal counsel; and
    - (b) Mr Basil Kupferschmied, legal counsel.
30. The Panel heard oral evidence from the following individuals, who were subjected to examination and cross-examination as well as to questions from the Panel:
  - Ms Lailani M. Velasco, former president of Philippines Swimming Inc. and Bureau member (witness called by the Appellant - in attendance only on day 1);
  - Mr Azat Muradov, Bureau member (witness called by the Appellant - in attendance only on day 1);
  - Mr Sergey Drozdov, General Secretary of the Appellant and current AA bureau member (witness called by the Appellant - in attendance only on day 1);
  - Mr Andrey Kryukov, as a representative of the Appellant (in attendance both on days 1 and 2);
  - Mr Alisher Ganiev, General Secretary of the Uzbekistan Swimming Federation (witness called by the Appellant - in attendance only on day 2);

- Mr Dmitriy Balandin, member of the Athletes Committee of WA and chair of the athletes committee of AA (witness called by the Appellant - in attendance only on day 2);
  - Mr Farid Fatahian, current Executive Director of AA (witness called by the Respondent - in attendance only on day 2); and
  - Prof Dr Vito Roberto of the University of St. Gallen and Director of the Institute for Legal Studies and Legal Practice (expert called by the Respondent - in attendance only on day 2).
31. At the beginning of the hearing, the Panel addressed the Respondent's objection to the admissibility of the legal doctrine and case laws produced by the Appellant (see *supra* para. 28). The Panel deemed the aforementioned filing admissible and, in order to ensure compliance with the adversarial principle, allowed the Respondent to also produce a similar filing by no later than 11 October 2024.
32. Furthermore, on the first day of the hearing, after the opening statements, both counsels were allowed to conduct the examination and cross-examination of some of the witnesses for the Appellant. The representative of the Appellant was given the chance to comment on the facts that led to the present proceedings. On the second day of the hearing, both counsels were allowed to conduct the examination and cross-examination of the remaining witnesses called by the Appellant as well as of the witness and the expert witness for the Respondent. The Parties also presented their closing statements.
33. After their closing pleadings and before the end of the hearing, all Parties confirmed their satisfaction with the manner in which the Panel had conducted the hearing and raised no procedural objections.
34. On 11 October 2024, the Respondent filed its list of legal doctrine and case laws pursuant to the invitation by the Panel during the hearing.

## **V. SUBMISSIONS OF THE PARTIES**

35. The following summary of the Parties' respective positions is illustrative and does not necessarily comprise every argument advanced by the Parties. However, the Panel has carefully considered all of the submissions put forward by the Parties, even if there is no explicit reference to those submissions in the following discussion.



**A. The Appellant**

36. The Appellant, in its Statement of Appeal and Appeal Brief, requested the following reliefs:

- *“On the admissibility of the appeal:*
  1. *Declare the present appeal admissible.*
- *On procedural requests:*
  2. *Join the present appeal proceedings with the appeal proceedings CAS 2024/A/10387 already pending between the Appellant and the Respondent and submit both proceedings to the same Panel.*

- *On the merits:*

*Mainly*

3. *Declare null and void the calling dated 14 February 2024, to the alleged [AA] Elective General Congress held on 26 April 2024.*
4. *Declare null and void the holding of the alleged [AA] Elective General Congress held on 26 April 2024.*
5. *Declare null and void the decisions taken on 26 April 2024 by the alleged [AA] Elective General Congress.*

*Alternatively*

6. *Annul the decisions taken on 26 April 2024 by the alleged [AA] Elective General Congress.*
- *In any events:*
7. *Order [AA] to bear the entire costs of these arbitration proceedings.*
  8. *Order [AA] to bear the all expenses, including legal costs, incurred by the Swimming Federation of the Republic of Kazakhstan in the present arbitration proceedings.” (emphasis omitted)*

37. The Appellant’s submissions, in essence, may be summarized as follows:

***Appellant has standing to appeal and legal interest in challenging the Appealed Decisions:***

- Since the CAS Code, the New Constitution and the WA Constitution do not contain any clause on the standing to appeal against a decision taken by one of the AA’s bodies, Swiss law applies. The principles in Swiss law in this regard are:

- (i) Article 75 of the Swiss Civil Code (“CC”), which expressly reserves standing to appeal to members of the association. As a result, non-members do not have standing to appeal. Similarly, the aim of protecting members pursued by Article 75 of the CC should not allow the association’s board or other bodies to bring the action instituted by this legal provision. Furthermore, the plaintiff must still be a member at the time the judgment is handed down.
  - (ii) Standing to bring an action is granted only to those who did not agree with the contested decision (and who did not subsequently approve it either).
  - (iii) Finally, the plaintiff must have an interest in the action. This interest must be “legitimate” pursuant to Article 59.2(a) of the Swiss Civil Procedure Code (“CPC”). Given the purpose of Article 75 of the CC, it must be “broadly understood” and does not presuppose that the plaintiff is individually affected by the impugned decision.
- In view of the fact that the Appellant is a member of an association i.e. AA, the Appellant is entitled to appeal. If the Appellant does not have standing to bring an action for annulment or for a declaration that the decisions taken by the association are *null and void*, this means that no one has the power to challenge those decisions, which is absolutely contrary to Swiss law and to Article C40.1 of the Old Constitution.
  - In view of the above arguments and the Appellant’s interest in seeing the nullity of the decisions as a member of an association whose functioning and rights depend on the rules and governance of AA, the Appellant is entitled to appeal.

***Violations in convening and holding of the Elective General Congress:***

- The decision to approve the Minutes and the amendment of Article C20 of the New Constitution was not on the agenda of the Elective General Congress – which violates Article C19.13 of the Old Constitution.
- Article C19.14 of the Old Constitution stipulates that any amendment to the Old Constitution must be received by AA’s Secretary General at least three months before the General Congress and must be expressly included in the agenda sent to the Members.
- The relevant minutes of the Elective General Congress indicate that approval of the Minutes (of the Extraordinary Congress) was voted after the vote to approve the Agenda – which confused all Members, including Mr Sergey Drozdov (the Appellant’s representative at the Elective General Congress). Moreover, contrary to what the minutes of the Elective General Congress indicate, the Appellant voted against this decision, which was therefore not approved unanimously. Reliance is placed on the affidavit of Mr Sergey Drozdov, which *inter alia* stated that:

- (i) The approval of the Minutes was sudden and without prior notice, which is why he was unaware that he was voting on an item not previously on the Agenda.
- (ii) He systematically voted against all the other proposals, including his election as a member of the New Bureau.
- (iii) He voted against the amendment of Article C20 of the Old Constitution, which was therefore not approved unanimously.
- (iv) The meeting was run by the President of WA and not the President.

***Decisions taken at the Elective General Congress are null and void:***

- There exists the possibility of bringing an action for a declaration that a decision of the association is null and void under Article 88 of the CPC, which is subject to conditions that differ from those laid down in Article 75 of the CC.
- A decision that does not exist cannot be annulled. Although a “decision” that is null and void cannot be challenged under Article 75 of the CC, it can be the subject of an action for a declaration of nullity.
- An action seeking a declaration that an association’s decision is null and void falls under Article 88 of the CPC and may be brought by any person, whether or not a member, who can demonstrate a legitimate interest. Moreover, the plaintiff is not required to first exhaust domestic remedies. Invalidity must be established by the court of its own motion.
- As per various jurisprudence (CAS 1997/O/168; SFT 71 I 383), the following principles would emerge:
  - (i) A decision is null and void when, due to a formal or substantive defect, it cannot be regarded as a decision of the general assembly.
  - (ii) The following would constitute invalid “decisions” because they are vitiated by a formal defect: (a) a “decision” taken at an informal meeting of members; (b) a “decision” taken by a general assembly convened by a person or body not competent to do so; (c) a “decision” taken by the general assembly when certain members were intentionally not convened; (d) a “decision” taken by a general assembly when the statutory attendance quorum was not met; and (e) a “decision” taken when certain members were prevented by manoeuvres from taking part in the general assembly or were not admitted to it.
  - (iii) A decision is null and void and not merely voidable when the general meeting has been convened by a person who was not entitled to do so under the law or the articles of such association.

- (iv) New elections are null and void if they are held when the term of office of the officials has not expired.
- The Bureau, Executive and President were not in power and therefore could not convene shareholders' meetings under Swiss law. This is confirmed by the jurisprudence of the Swiss Federal Tribunal (the "SFT") which has held that:
  - (i) The rules applicable to the convening of meetings of legal entities under the CO (company limited by shares) apply by analogy to the association (SFT 5A\_142/2019, consid. 5.2).
  - (ii) The board of directors of a company limited by shares loses its powers as soon as its term of office expires and directors not duly re-elected cannot validly convene shareholders' meetings. This case law thus expressly precludes the tacit continuation or renewal of a board of directors term of office (SFT 148 III 69, consid. 3.3).
  - (iii) The view that directors, whose term of office has expired can validly convene meetings based on their *de facto* director status, a position taken by many legal practitioners, was rejected. The court also confirmed that shareholder resolutions passed at meetings convened by directors whose term of office had expired are null and void (SFT 4A\_387/2023 of 2 May 2024).
- In view of the well-established and unequivocal case law of the SFT cited above, the absence of new elections at the end of the term of office of the members of the Bureau and the Executive (including the President) did not result in the tacit renewal of their term of office. Moreover, the Old Constitution does not provide for a tacit renewal of the term of office of the members of the Bureau or the Executive.
- When transposed by analogy to associations, these case laws indicate that as soon as the term of office of the president, the bureau or the executive committee of the association has expired, these bodies no longer have any powers and are therefore no longer able to convene meetings. If these bodies nevertheless convene meetings, all decisions taken at these meetings are null and void.
- Events at the Doha Extraordinary Congress (and the meeting itself) are null and void, or at the very least voidable as they were taken in flagrant violation of numerous provisions of the Old Constitution.
- Based on Article C20.11 of the Old Constitution, the term for the Bureau and the Executive is four years. Since the last election took place on 9 October 2016, their term expired on 9 October 2020. The Bureau and the Executive therefore had no legitimate authority to act.
- Therefore, applying the relevant case laws and in light of the factual scenario, all decisions rendered at the Elective General Congress are null and void since decisions taken in the meetings were convened by bodies whose term of office had

expired. Such a circumstance would render the decisions taken in the Doha Extraordinary Congress null and void and, consequently, would imply that the Executive Director did not have the authority to convene the Elective General Congress.

- The decisions to approve: (i) the Minutes; and (ii) the amendments to Article C20 of the New Constitution, were not in the meeting's Agenda. The Members did not expressly agree to the amendment of the Agenda, which constitutes a breach of Article C19.13 of the Old Constitution, which establishes an additional ground for the nullity of these decisions, or, in the alternative, for their annulment.
- Furthermore, the decision to amend Article C20 of the New Constitution was taken in violation of the process set out in Article C19.14 of the Old Constitution, namely that the amendment be transmitted to the AA's Secretary General at least three months before the Congress and be expressly included on the agenda.
- Therefore, the decisions taken during the Elective General Congress are null and void or, in the alternative, voidable.

## **B. The Respondent**

38. The Respondent, in its Answer to the Appellant's Appeal Brief, requested the following reliefs:

1. *"To dismiss Appellant's prayers nr. 2 – 8 in the proceedings CAS 2024/A/10593 Swimming Federation of the Republic of Kazakhstan v. [AA];*
2. *In any event, to reject the Appeal of Appellant in the proceedings CAS 2024/A/10593 Swimming Federation of the Republic of Kazakhstan v. [AA];*
3. *In any event, to order Appellant to pay all costs of the arbitration, including the costs of CAS, and to pay a contribution to the legal costs and expenses of [AA] of at least CHF 40,000".*

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

### ***The Appellant has no legal interest in appealing against the Appealed Decisions:***

- The Appellant does not mention the election of its own General Secretary in the New Bureau nor provide any explanation at all as to who should have managed the day-to-day business of AA until the elections. Accordingly, in such a case, this would still have been done by the same Bureau and Executive as before. This underscores that the Appellant has no legal interest worthy of protection whatsoever and is instead pursuing other goals with its Appeal, i.e. to "create" bad rumours about all associations that do not support Mr Sheikh Talal in his fight against the International Olympic Committee.
- Pursuant to Article C40.1 of the New Constitution, the *"appealing party must have a direct interest in the appeal and the decision"*. This rule does make explicit what

in any event applies under Swiss law, where an appealing party must always be able to substantiate and prove to have a “legitimate” interest in appealing a decision i.e. no legal interest worthy of protection means no legitimacy to challenge a decision. Accordingly, a request (or claim) is dismissed by the CAS if it lacks sufficient legal interest (CAS 2019/A/6132 & 6146, para. 74; CAS 2016/A/4602, paras. 48 *et seq*).

- Under Swiss law, membership alone is not sufficient to demonstrate a legal interest worthy of protection for the annulment of a decision. A court shall only decide on the merits if the applicant has a sufficient legal interest worthy of protection in the outcome of the decision – as recognised by the CAS (CAS 2016/A/4602, para. 49).
- The President, the members of the New Bureau (which includes the Appellant’s General Secretary, Mr Sergey Drozdov), the Ethics Committee, the Disciplinary Committee, the Audit & Compliance Committee, as well as the Asian World Aquatics Bureau members were all duly elected at the Elective General Congress. These bodies are now responsibly managing the affairs of AA, in accordance with the mandate given to them by Congress and in full compliance with the New Constitution.
- Contrary to the Appellant’s unfounded allegations, the annulment of the elections would in fact create great uncertainty among the Members and certainly harm their interest. Indeed, the Members trust in the fair and properly held AA elections and rightly expect that the representatives of AA continue to fulfil their mandate as done in all the months following the Elective General Congress.

***The Appellant’s prayers for declaring events at the Elective General Congress as null and void are procedurally inadmissible:***

- The Appellant cannot request the CAS to declare null and void the calling and holding of the Elective General Congress, since they are merely matters of fact, and, as confirmed by CAS jurisprudence and the SFT, facts cannot be the subject of declaratory reliefs (CAS 2011/A/2612, para. 52; CAS 2009/A/1870, para. 55; SFT 79 II 253, consid. 4). Therefore, for procedural reasons alone, these declaratory reliefs (prayers nr. 3 and 4) are inadmissible.
- A request for a declaratory judgment requires a special legal interest, i.e. a sufficient interest for a declaration (CAS 2020/A/7590, para. 105 and CAS 2013/A/3272, para. 69). The Appellant failed to demonstrate any special interest that would justify such declaratory judgements.
- The declaration sought is *de facto* subject to other reliefs, such as the request to annul or to set aside the Appealed Decisions. The CAS has rightly held in previous cases that there is no interest in a declaratory judgment where an appellant has already requested the annulment of a decision and has failed to show any further legal interest in the declarations sought.

- The Appellant has requested the annulment of the Appealed Decisions, yet it has not substantiated at all why the declaratory reliefs would be necessary in addition to its request for the annulment of the Appealed Decisions.

***The Appellant's actions constitute an abuse of right under Swiss law and qualify as "venire contra factum proprium":***

- The Appellant's entire Appeal is based on the manifestly ill-founded allegation that the former members of the Executive and the Bureau did not have any formal power within AA since 10 October 2020. It is clear that these members were duly elected on 9 October 2016 and were validly in office until the Elective General Congress on 26 April 2024. In any case, it was upon the request of the Appellant that the Congress ended up voting on the extension of the term of the former Bureau and Executive until the Elective General Congress.
- The Appellant's President, Mr Kryukov, was for all the years and up until the Elective General Congress, one of the vice presidents of AA and a member of the Executive – who also was fully involved in and participated in the relevant AA meetings and events, without any objection.
- At no time did Mr Kryukov claim that either himself or any of the colleagues of the Executive had not been validly elected. In all these years, no one had challenged the legitimacy of the Bureau and the Executive, neither the Appellant nor Mr Kryukov.
- The Appellant cannot allege that the vote on the extension of the term is "invalid because such an item could not be submitted to vote" since the Appellant's request was the sole reason for that vote in the first place. The Appellant's behaviour is an exemplary case of the "*venire contra factum proprium*".
- The Appellant's allegation of the Executive and Bureau's invalidity due to the expiry of their term is not only completely wrong but also highly contradictory. It contradicts the fact that the Appellant attended the Elective General Congress in Bangkok and even proposed, successfully, the candidature of one of its representatives (Mr Drozdov), who was later elected to the New Bureau.
- The Appellant's allegation is therefore entirely contradicted by its previous conduct, as well as by the reality of years of practice of an entire Asian continental organisation, run by the elected and re-confirmed bodies, exactly those bodies that convened and duly prepared the Elective General Congress against which Appellant now tries to oppose without any valid legal ground.
- The Elective General Congress also unanimously approved the Minutes – which included the participation of the Appellant.
- The Appellant's requests are therefore not only moot and inadmissible, but its conduct qualifies as "*venire contra factum proprium*". This abuse of a right deserves no legal protection, as captured under Article 2 of the CC.

***The past Bureau and Executive were validly in office:***

- The Appellant’s argument that the past Bureau, Executive and President were not in power and therefore could not convene shareholders’ meetings under Swiss law – which relies on findings of the SFT (particularly in SFT 4A\_387/2023), regarding the application of rules governing companies by analogy to associations – has no merit. In particular:
  - (i) Associations and companies limited by shares are fundamentally distinct legal entities:
    - (a) SFT 4A\_387/2023 concerns a company limited by shares (situated in Switzerland), and does not apply to an association like AA (with headquarters in the State of Kuwait). These two legal forms of entities, from a legal perspective, are entirely different in structure, governed by different sets of rules, and focus on different objectives.
    - (b) Furthermore, under Swiss law, a company limited by shares is a rather rigid structure that must adhere to many (and often mandatory) rules. The company limited by shares is almost exclusively governed by over 140 statutory provisions (Article 620 of the CO *et seq.*), whereas an association, on the other hand, possesses “association autonomy”, as recognised by constant CAS jurisprudence (CAS 2017/O/5264, 5265 & 5266, para. 193). Associations are therefore primarily governed by their own set of rules and regulations, as democratically established by their members.
    - (c) A company limited by shares and an association are therefore two entirely different legal entities. Consequently, there is no legal ground to apply SFT 4A\_387/2023 directly to associations, nor is there any legitimate reason to apply SFT 4A\_387/2023 by analogy to the present case.
  - (ii) The subject matter of the proceedings in the present dispute is distinct from those in SFT 4A\_387/2023:
    - (a) The procedure of SFT 4A\_387/2023 concerned a defect in the organisation of the company as per Article 731(b) of the CO and not an action for annulment of the decisions taken at a general meeting.
    - (b) As different legal questions were central to SFT 4A\_387/2023, the latter is also clearly not applicable to the case at hand.
  - (iii) Rules for convening a general meeting of a company limited shares do not apply to associations:
    - (a) It is evident that a company limited by shares must adhere to a lot of mandatory provisions that govern the convening and holding of a



general meeting, while an association, in line with its “association autonomy”, can decide how and when, and who can convene a general assembly. The rules applicable to the convening of a general meeting of a corporation (e.g. Article 700 of the CC) therefore do not all “apply by analogy to the association”, as alleged by the Appellant.

- (b) In another decision of the SFT cited by Appellant (SFT 5A\_142/2019, consid. 5.2), the SFT merely stated that Article 699.4 of the CO, which concerns the request of the shareholders to convene a general meeting (and thus a completely different situation than in the present case), can apply by analogy to associations. However, nowhere did the SFT state that this analogy shall apply to all the rules governing the convening of a general meeting of shareholders, nor that this analogy shall apply to other provisions, such as the term limit of the board of directors.
  - (c) It must be noted that even SFT 4A\_387/2023 did not state that its considerations apply to associations. On the contrary, the SFT had to decide whether, apart from the term of office of the board directors, the term of office of other bodies, such as the external auditors, expire if the general meeting is not held as foreseen in the statutory provisions. Indeed, SFT 4A\_387/2023 explicitly stated that its considerations and conclusions regarding the expiration of the term of office of the board of directors cannot be extended by analogy to the external auditors.
  - (d) This entirely contradicts the Appellant’s attempt to apply SFT 4A\_387/2023 by analogy to the case at hand. If SFT 4A\_387/2023 and its conclusions regarding the expiry of the term of office do not apply to all bodies of a company limited by shares, then they are not applicable to a completely different type of legal entity, such as an association.
- (iv) Rules of the term limit of the board of directors in a company limited by shares do not apply to associations:
- (a) Finally, unlike SFT 4A\_387/2023, in the present dispute, all the Members agreed to extend the mandate of the Bureau members, as was done by multiple associations in the recent past during the COVID pandemic. Therefore, there is no basis to apply by analogy an SFT decision that concerns not only a different legal entity but also a different situation, where a term of office has expired, and no decision has been taken to extend it.
  - (b) Further, even if all the rules applicable to the convening of a general meeting of shareholders were to apply to associations, the SFT 4A\_387/2023 cannot be extended by analogy to associations

because the term of office of the board of directors is restrictively regulated and limited by statutory provisions (Article 710 of the CO). On the other hand, the few statutory provisions that govern the associations do not provide for a term limit of the bodies of the association (which, *nota bene*, would contradict the association autonomy of such legal entity), nor do they specify how long a term of office should last.

- (c) There is simply no legitimate reason to apply the conclusions of SFT 4A\_387/2023, which only affects the term limit of the board of directors of a company limited by shares as per Article 620 *et seq.* of the CO, by analogy to the present case.
- (v) The factual background in SFT 4A\_387/2023 is entirely different from the facts of the present case, rendering it inapplicable:
  - (a) Unlike in the case underlying SFT 4A\_387/2023, the Members not only tacitly but explicitly approved the term of office of the former Executive and the Bureau at the Doha Extraordinary Congress.
  - (b) In SFT 4A\_387/2023, the appealing party had explicitly objected to the convening of the general meeting and stated that the board of directors lacked authority. Such objection was made immediately after the appealing party had received the notice to the general meeting, and the appealing party expressly stated that it did not accept the validity of the convening and that it would consider all decisions taken at such general meeting as illegitimate and invalid. For this reason, the STF considered that the appealing party had not violated Article 2.2 of the CC. In the present case however, the Appellant never objected to the convening of the Doha Extraordinary Congress, to the convening of the 14<sup>th</sup> General Congress of 7 November 2020, nor to any meeting) and never claimed that the former Executive lacked authority. On the contrary, the Appellant, for years and years, participated in the meetings duly conducted by the former Executive and Bureau, and in the events and competitions duly organised by these same bodies, did so without any objection. In this respect, the Panel notes that no compelling evidence was presented to suggest that Members participation throughout the years was made under protest or reservation.
  - (c) Moreover, the SFT explicitly dealt with the question of whether the appellant had violated Article 2.2 of the CC and indicated that, even if the term of office expired, there are cases where an appeal is not admissible (if the Appellant's conduct qualifies as *venire contra factum proprium*).

- No Member – and neither the Appellant – ever objected against the fact that AA’s bodies continued to perform their duties as of 10 October 2020, including: (i) organising events and championships; (ii) convening the Doha Extraordinary Congress; and (iii) proposing amendments to the Old Constitution. Therefore, the Members, i.e. the Congress as the competent body, tacitly approved the authority and the actions of the Bureau, the Executive and the President, including the organisation and the convening of the Doha Extraordinary Congress.
- The decision relating to the extension of the term of the Bureau and Executive was also re-confirmed at the Elective General Congress. By holding new elections, the Congress recognised that the Bureau, the Executive and the President had been validly in office up to that point.
- In any case, the terms of the Bureau and Executive, extended at the Doha Extraordinary Congress and against which the Appellant directs its Appeal, have in the meantime expired. Accordingly, the request of the Appellant to annul the extension of the term of the Executive and the Bureau until 26 April 2024 is moot and shall be dismissed.

***The Elective General Congress was duly convened and held:***

- AA fully complied with all three requirements under Article C19.1.2 of the New Constitution for convening of the Elective General Congress:
  - (i) Firstly, the Executive shall fix the place and date of the General Congress. In that regard, the President convened, in accordance with Article C22.3 of the New Constitution, a meeting of the Executive on 12 February 2024. At such meeting, the Executive *inter alia* decided: (a) to convene the Elective General Congress and to set its date and place; (b) to circulate the notification to the Elective General Congress; and (c) in view of the elections to be held, to set the timelines for the submissions of the nomination forms and the delegate form.
  - (ii) Secondly, the Members should be notified 21 days prior to such General Congress. In that regard, on 14 February 2024, following the above-mentioned meeting of the Executive, the Executive Director notified and invited all Members to attend the Elective General Congress and sent them the delegate and nomination forms. The Members were therefore notified more than two months in advance of the Elective General Congress. This was not disputed by the Appellant.
  - (iii) Thirdly, the agenda must be formally communicated by the President or the Executive Director seven days before the date of such General Congress. In that regard, it is undisputed that the Executive Director sent the formal convocation, together with the Agenda and the nominee’s list, to all Members on 16 April 2024, i.e. ten days before the Elective General Congress.

- It follows that the Elective General Congress was convened in full compliance with both the New Constitution and Swiss law (Article 64.3 of the CC).
- 41 Members, including the Appellant, attended the Elective General Congress – thereby meeting the quorum requirement of 12 Members as per Article C19.1.2 of the New Constitution.
- The Elective General Congress was conducted by the (outgoing) Bureau and presided over by the President, by Articles C27.2 and C19.7 of the New Constitution. Further, no objection has been raised by any of the attending Members.
- Accordingly, the Elective General Congress was held in full compliance with the New Constitution.

***The decisions at the Elective General Congress were taken in full compliance with the New Constitution:***

- According to Article C19.1.1 of the New Constitution, the Congress is the highest body within AA and can thus decide on any matter. The decisions by the Congress “are made on vote of a majority of those Members present and voting”, according to Article C19.11 of the New Constitution. All the decisions were taken – either unanimously or at least by an overwhelming majority. The decisions taken are thus valid, final and binding.
- In particular, it must be noted that the Appellant approved the following decisions:
  - (i) The Agenda of the Elective General Congress. This decision was approved unanimously.
  - (ii) The Minutes of the Extraordinary Congress. This decision was approved unanimously.
  - (iii) The amendment of Article C20 of the New Constitution. This decision was approved unanimously.
  - (iv) The appointment of the representatives from Maldives, Thailand and Pakistan as scrutinizers.
  - (v) The appointment of the representatives from China, India and Iran to check and approve the minutes of the Elective General Congress.
- Since the Appellant itself approved these decisions, it has no standing to appeal said decisions. Under Swiss law, members who have – expressly or tacitly – agreed to a decision of a congress have no right to file an appeal against such decision. They have no standing to appeal (SCHERRER/BRÄGGER, Basler Commentary Civil Code I, 7<sup>th</sup> edition, Article 75 CC, para. 19).

***Approval of items not on the Agenda and rebuttals against Appellant's other allegations:***

- In relation to the approval of items not on the Agenda i.e. the Minutes and the approval of the amendment of Article C20 of the New Constitution, Article C19.13 of the New Constitution permits the alteration of the Agenda with a three-fourth majority and, more importantly, both decisions were unanimously approved (including by the Appellant) at the Elective General Congress. Any possible formal defect (*quod non*) was therefore cured.
- In relation to Mr Drozdov's allegation that he had voted against the amendment of Article C20 of the New Constitution, the minutes of the Elective General Congress were checked and approved by the appointed representatives from China, India and Iran and then sent to all the Members. No Member, and not even the Appellant, has questioned the accuracy of the minutes of the Elective General Congress. Therefore, there can be no doubt as to the voting results of the decisions taken at the Elective General Congress.
- In relation to the Appellant's allegation that there was a violation of the process to amend Article C20 of the New Constitution, the WA Bureau (by decision of 23 April 2024) and the Bureau (by decision of 25 April 2024), approved the amendment of Article C20.2 of the New Constitution regarding the implementation of one new first Vice-President seat in the New Bureau. The amendment of Article C20 of the New Constitution was then unanimously approved at the Elective General Congress.

**VI. PRELIMINARY REMARKS**

40. As a preliminary remark, the Panel observes that the Appellant, in its legal submissions, relies on the provisions of the Old Constitution since it disputes the validity of the New Constitution. On the other hand, the Respondent in its legal submissions, relies on the provisions of the New Constitution.
41. As established in the other proceeding of CAS 2024/A/10387, the Doha Extraordinary Congress was validly convened, and the Panel has therefore confirmed and upheld the validity of the New Constitution (see *supra* para. 3 ff.). As a result of those findings, the Panel deems it unnecessary to evaluate the merits of any arguments of the Appellant that rely on the Old Constitution. Instead, the Panel will assess such arguments against the same (or similar) provision, if any, under the New Constitution.
42. In conclusion, about the events surrounding this dispute which undoubtedly occurred after the New Constitution came into force, where applicable, the Panel will rely only on the provisions of the New Constitution (see *infra* para. 57).
43. Furthermore, the Panel notes that many of the arguments raised by the Parties in these present proceedings are closely related to those raised in CAS 2024/A/10387 (see *supra* at para. 3 ff.), the finding of which have already addressed numerous overlapping issues. Therefore, in light of the intertwined nature of the two proceedings and to ensure

procedural efficiency and avoid unnecessary repetitions, the Panel will only expand on upon matters that: (i) were not already addressed in CAS 2024/A/10387; or (ii) arise from a distinct set of facts and circumstances compared to those in CAS 2024/A/10387. For issues already sufficiently addressed by the Panel in CAS 2024/A/10387, which are to be read in conjunction with the present decision, this award will simply refer to the conclusion reached by the Panel in that case and provide cross-references where appropriate.

## **VII. JURISDICTION**

44. Article R47 of the CAS Code reads as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.*

45. Article C40.1 of the New Constitution provides that:

*“Disputes between [AA] and any of its Members or members of Members, or between Members that are not resolved by an Executive decision may be referred for arbitration by either of the involved parties to the CAS within twenty-one (21) days of the decision of different [AA] bodies. The appealing party must have a direct interest in the appeal and the decision. Any decision made by the Arbitration Court shall be final and binding on the parties concerned.”*

46. Furthermore, Article C17.1 of the New Constitution states that: *“The Congress is the highest authority in [AA] within the Constitution and Rules of [WA] and [AA] and shall meet in person or virtually every two years.”*

47. It follows that the Appealed Decisions are final (internally), and therefore an appeal can only be filed before the CAS.

48. The Parties did not dispute the jurisdiction of the CAS and have also confirmed it by signing the Order of Procedure.

49. Therefore, the CAS has jurisdiction to decide the present dispute.

## **VIII. ADMISSIBILITY**

50. Article R49 of the CAS Code reads 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”*

*The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document”.*

51. The Statement of Appeal was filed on 17 May 2024, within the 21 days prescribed under Article C40.1 of the New Constitution (see *supra* para. 45).
52. The Appeal Brief was filed on 5 July 2024, in line with the extension granted by the CAS Court Office.
53. Therefore, the Appeal complied with the requirements of Articles R47 and R48 of the CAS Code.
54. It follows that the Appellant’s appeal is admissible.

#### **IX. APPLICABLE LAW**

55. Article R58 of the CAS Code reads as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

56. Under Article R58 of the CAS Code, the Panel must primarily apply the “applicable regulations”, which in the present case are undoubtedly the applicable rules and regulations of the AA.
57. In this regard, considering the outcome of CAS 2024/A/10387, in which the Panel upheld the validity of the New Constitution (which entered into force on 12 April 2024 following its approval by the Doha Extraordinary Congress) (see *supra* para. 3 ff.), the Panel observes that the Appealed Decisions were adopted at the Elective General Congress on 26 April 2024, undoubtedly after the New Constitution had come into force. It follows that the New Constitution shall apply.
58. The Panel recalls that according to Article R58 of the CAS Code, the Parties’ choice of law is relevant only “subsidiarily” (see CAS 2015/A/3896, para. 72; CAS 2020/A/7605, para. 169).
59. In their respective submissions, the Parties have indicated that Swiss law should be “subsidiarily” applied.
60. The Panel notes that the New Constitution is silent about which law shall be applied in case of disputes. Nonetheless, it must be noted that Articles C5 and C45.1 of the New Constitution require the New Constitution to comply with the WA Constitution. As a result, reference shall be made to Article 31.3 of the WA Constitution, which, in turn, provides for a “subsidiary” application of Swiss law.

61. According to Article C5 of the New Constitution:

*“The [AA] Constitution must comply with the [WA] Constitution and Rules and must be approved by the [WA] Bureau, in accordance with Article 11 of the [WA] Constitution and shall be submitted to the [AA] Congress for final approval. In case of any conflict or contradiction between the [AA] Constitution, Rules and/ or Decisions and the [WA] Constitution, Rules and/ or Decisions, the [WA] Constitution, Rules and Decisions shall prevail.*

*Any subsequent amendments to the [AA] constitution or rules shall follow the same course of approval from both [WA] and [AA]”.*

62. Per Article C45.1 of the Old Constitution:

*“This Constitution will be in compliance with the [WA] Constitution and Rules. However, in case of any conflict the [WA] Rules will prevail.”*

63. Pursuant to Article 31.3 of the WA Constitution:

*“The CAS shall resolve any dispute in accordance with the Code of Sports-related Arbitration (the “CAS Code”), this Constitution, the applicable World Aquatics Rules and subsidiarily Swiss law.”*

64. Therefore, the Panel concludes that the “applicable regulations” are the applicable rules and regulations of the AA, in particular, the New Constitution and Swiss law shall apply “subsidiarily”.

## **X. MERITS**

### **A. Request of the Appellant for consolidation of these proceedings**

65. The Panel notes that the Appellant requested the consolidation of the appeal proceedings CAS 2024/A/10387 and CAS 2024/A/10593.

66. However, the Panel rejected such a request, and the reasoning for this rejection is already detailed in the Award of CAS 2024/A/10387 (see *supra* para. 43).

### **B. Does the Appellant have a legal interest in bringing this dispute before the CAS?**

67. The Panel recalls the relevant submissions of the Parties regarding the existence or absence of the Appellant’s legal interest in bringing this dispute before CAS.

68. In this regard, the Panel considers that the Appellant’s legal interest in challenging the Appealed Decisions aligns with the conclusions reached in CAS 2024/A/10387. It was established therein that standing to appeal under Article 75 of the CC encompasses a legitimate interest in seeking the nullity of decisions impacting the functioning of the association. Accordingly, the Panel finds that the Appellant’s interest is not negated by its prior conduct and warrants consideration.



**C. Are any of the Appellant’s prayers to be dismissed due to procedural irregularities?**

69. The Panel recalls that the Appellant, in its prayers, sought, *inter alia*, the following motions for relief:

- Mainly:

- (i) To declare null and void the calling dated 14 February 2024, to the Elective General Congress held on 26 April 2024.
- (ii) To declare null and void the holding of the Elective General Congress held on 26 April 2024.
- (iii) To declare null and void the decisions taken on 26 April 2024 by the Elective General Congress.

- Alternatively:

- (iv) To annul the decisions taken on 26 April 2024 by the Elective General Congress.

Hence, the Appellant’s primary request is for a declaration to the effect that the convening of the Elective General Congress, its proceedings, and its decisions are null and void. The alternative request sought by the Appellant is to annul the decisions made at the Elective General Congress.

70. In this regard, in the Award of CAS 2024/A/10387 (see *supra* para. 43), the Panel evaluated similar motions requested by the Appellant concerning the Doha Extraordinary Congress and concluded that the Appellant has a legal interest in seeking the nullity of the calling, holding, and decisions taken at the Doha Extraordinary Congress. Given the similarity of the requested declarations, and for the sake of brevity, the Panel finds that its conclusions therein also apply to the present proceedings concerning the Elective General Congress.

71. Therefore, the Panel holds that the Appellant has a legal interest in seeking the nullity of the calling, holding and decisions taken at the Elective General Congress, as requested in its motions for relief.

**D. Was the Elective General Congress duly convened and held?**

72. The Panel must also determine whether the Elective General Congress was duly convened and held in compliance with the procedures established in the New Constitution (see *supra* paras. 40 and 42).

73. According to Article C19.1.2 of the New Constitution:

*“The Ordinary General Congress shall be held every two (2) years or earlier. The Executive shall fix the place and date of the Ordinary General Congress. The Members*

*shall be notified in writing within twenty-one (21) days prior to the date of the Congress. The Executive will decide the timeline of the notification. The formal convocation with the agenda shall be made in writing at least seven (7) days before the date of the Congress by the President or Executive Director. The quorum of the Ordinary Congress shall be twelve (12) Members.”*

74. An analysis of Article C19.1.2 of the New Constitution reveals the following requirements for convening and holding an Ordinary General Congress: (i) the convening of an Ordinary General Congress must be based on a decision of the Executive (as also required under Article C19.8 of the New Constitution); (ii) Members must be notified at least 21 days prior to the Congress; (iii) the agenda must be formally communicated by the President or the Executive Director at least seven days before the Congress; and (iv) the quorum for holding such Congress is 12 Members (as stipulated under Article C19.11 of the New Constitution).
75. Based on the evidence on file, the Panel observes that:
- The Elective General Congress was convened by a decision of the Executive. In detail, the President convened a meeting of the Executive on 12 February 2024, in accordance with Article C22.3 of the New Constitution (see *supra* para.16). At such meeting, the Executive, *inter alia*, decided: (i) to convene the Elective General Congress and to set its date and place; (ii) to circulate the notification to the Elective General Congress to the Members; and (iii) in view of the elections to be held, to set the timelines for the submissions of the nomination forms and the delegate form. Therefore, the convening of the Elective General Congress was duly made by a decision of the Executive.
  - The Members were duly notified of the Elective General Congress more than two months in advance. More specifically, on 14 February 2024, following the decision of the Executive, the Executive Director notified and invited all Members to attend the Elective General Congress and sent them the nomination forms for the positions within AA and the delegate form in order to attend the Elective General Congress (see *supra* para. 17). Therefore, the Executive duly complied with the 21 days notification requirement.
  - The Agenda was communicated ten days before the Elective General Congress was held. In detail, on 16 April 2024, the Executive Director sent the formal convocation, together with the Agenda and the nominee’s list, to all Members (see *supra* para. 18). Hence, the seven-day notification requirement of the Agenda was met and was sent by the competent authority i.e. the Executive Director.
  - Since the relevant minutes of the Elective General Congress reveal that 41 Members attended the Elective General Congress, the quorum requirement of 12 Members being present is fulfilled (see *supra* para. 19).
76. The Panel is therefore satisfied that the Elective General Congress was convened in full compliance with the New Constitution. The convening is also perfectly in line with Article 64.3 of the CC, which states that: “*General meetings must be convened in*

*accordance with the rules set out in the articles of association and also, as required by law, if one fifth of the members so request”* – which in this case, was met by the Executive.

77. In light of the above considerations, the Panel concludes that the Elective General Congress was duly convened. Consequently, the calling and holding of the Elective General Congress are neither null and void nor annulable.

**E. Were the decisions taken at the Elective General Congress null and void or annulable?**

78. The Panel notes that the Appellant contested the validity of the various decisions taken at the Elective General Congress, asserting that the past Bureau and Executive were not validly in office after the expiry of their four-year term on 9 October 2020 and were therefore incompetent to convene and hold the Doha Extraordinary Congress. Furthermore, the Appellant referred to jurisprudence from the Swiss Federal Tribunal (SFT 5A\_142/2019, consid. 5.2; SFT 148 III 69, consid. 3.3), particularly its judgment in SFT 4A\_387/2023 of 2 May 2024, to argue that all subsequent actions following the Doha Extraordinary Congress, including the convening, holding, and resultant decisions of the Elective General Congress, were null and void.

79. In this regard, the Panel recalls that it has already addressed the following issues:

- In the other proceeding of CAS 2024/A/10387, which concerned the Doha Extraordinary Congress (see *supra* paras. 4 and 43), the Panel held that: (i) the Members had approved the extension of the term of the past Bureau and Executive and that such approval could cure the formal defect in their term; (ii) the jurisprudence referenced by the Appellant (in particular, the principles established in SFT 4A\_387/2023) concerning companies cannot be transposed to associations in those proceedings; (iii) the past Bureau and Executive were entitled to convene the Doha Extraordinary Congress; (iv) decisions taken at the Doha Extraordinary Congress were valid; and (v) the New Constitution was validly amended.
- In this proceeding: (i) the Appellant’s requests to declare null and void the calling and holding of the Elective General Congress are rejected as the Elective General Congress was duly convened and held (see *supra* paras. 72 to 77).

80. With regard to the decisions taken at the Elective General Congress, namely the approval of the Minutes and the amendment of Article C20 of the New Constitution, the Panel notes that these items were not included in the Agenda circulated to the Members. Nevertheless, the Members explicitly voted on these items (see *supra* para. 20).

81. According to Article C19.1.2 of the New Constitution:

*“The agenda of the Ordinary General Congress may be altered, provided three-quarters (¾) of the Members present at the Congress and eligible to vote agree to such a motion.”*

82. The Panel observes that, according to the minutes of the Elective General Congress, the decisions to approve the Minutes and the amendment of Article C20 of the New Constitution were recorded as unanimous.
83. In any case, even if it is assumed that Mr Sergey Drozdov, acting on behalf of the Appellant, voted against both proposals, the required three-quarters majority for altering the Agenda by the Members (present and eligible to vote) would still have been met. Furthermore, the Panel acknowledges the broad autonomy granted to associations to regulate and manage their own affairs under Article 63 of the CC, a principle also reflected in Swiss and CAS jurisprudence (SFT 97 II 108, consid. 3; CAS 2017/O/5264, 5265 & 5266; CAS 2014/A/3828).
84. Therefore, the decisions taken by the Members during the Elective General Congress – relating to the approval of the Minutes and amendment of Article C20 of the New Constitution – were valid under the New Constitution and Swiss law, and resultantly, were neither null and void nor annulable.

**F. To what extent are the actions of the Appellant’s representative significant in relation to this dispute?**

85. Having resolved all substantive issues in this dispute, the Panel considers it necessary to assess the significance of the Appellant’s submissions in light of its alleged inconsistent behaviour, as argued by the Respondent, during the series of events leading to this dispute. In this regard, even though, in the other Award of CAS 2024/A/10387 (see *supra* para. 43), the Panel has already concluded that the Appellant’s actions constitute a clear case of *venire contra factum proprium*, the Panel considers it pertinent to set out its reasoning in respect of these arguments in light of the differing factual scenario to these proceedings.
86. Before delving into these events, the Panel wishes to clarify the distinction between the actions of the Appellant’s representative (namely, Mr Sergey Drozdov) when acting in an individual capacity versus when representing the Appellant.
87. Articles C14.1 and C14.2 of the New Constitution stipulate that each Member may appoint a maximum of two representatives to a General Congress or an Extraordinary Congress, but only one vote is permitted per Member.
88. Further, as per Article C20.9 of the New Constitution, no two members can be from the same country in the New Bureau.
89. Thus, while Mr Drozdov was an individual member of the New Bureau, his actions at Congresses and other events (such as those related to championships) were undertaken in his capacity as the Appellant’s representative.
90. Based on the evidence on record, the Panel notes that Mr Drozdov was the sole representative of the Appellant at the Elective General Congress. Accordingly, during the following events, which occurred after the expiration of the term of AA’s bodies and during or after the Doha Extraordinary Congress, Mr Drozdov acted as the

Appellant's representative and did not, at any point, raise objections to or dispute the authority of the members of the past Bureau or Executive to carry out their functions:

- An invitation by the Executive Director (acting on behalf of the Executive), received by the Appellant on 14 February 2024 (sent to all Members), to attend the Elective General Congress.
- The circulation of the formal Agenda and the nominee's list to all Members on 16 April 2024.
- The 16<sup>th</sup> Elective General Congress held in Bangkok on 26 April 2024.

91. In his individual capacity, it is undisputed that Mr Drozdov was elected as a member of the New Bureau during the Elective General Congress. Before his election, he attended the 15th Doha Extraordinary Congress on 12 February 2024 as an observer (as confirmed by Mr Drozdov during the hearing). On 5 March 2024, he submitted his completed nomination form, applying for a position in the New Bureau. The minutes of the Elective General Congress reveal that Mr Drozdov initially voted against his own approval and announced his withdrawal from candidacy but later reconsidered and re-entered the election. At no point did Mr Drozdov raise any objections regarding the expired term of the past Bureau and Executive or the convening of the Elective General Congress.
92. The Panel notes that, despite being aware (through various events) of the expiry of the term of the past Bureau and Executive, Mr Drozdov, both as the Appellant's representative and in his individual capacity, did not raise any objection to the authority of the members of the past Bureau or Executive, nor to the convening or conduct of the Elective General Congress. The Appellant alleges the Elective General Congress was invalid, yet it proposed and accepted its General Secretary (Mr Drozdov) to be elected to the New Bureau at the same Congress. Furthermore, the Elective General Congress unanimously approved the Minutes, which recorded the Appellant's participation.
93. These actions and omissions demonstrate that the present appeal is in violation of the principle of *venire contra factum proprium*, a doctrine providing that where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from altering its course of action to the detriment of the second party (see CAS 2015/A/4195, para. 42; CAS 2015/A/4327, para. 128; CAS 2008/O/1455, para. 16). Reference is also made to CAS 2008/A/1699, in which it was held as follows:

*“It is a general principle of law acknowledged by CAS jurisprudence that an appellant has standing to sue if she/he has an interest worthy of protection (CAS 2002/O/372, para. 73). However, this interest ceases to be legally protected if the appellant has changed its course of action to the detriment of the respondent. Indeed, according to the doctrine of “venire contra factum proprium”, where the conduct of one party has led to the legitimate expectations on the part of a second party, the first party is estopped from changing its course of action to the detriment of the second party (CAS 2006/A/1189, para. 8.4; CAS 2006/A/1086, para. 8.21; CAS 98/200, para. 91)”.*

94. Specifically, the Panel underscores that the Appellant's conduct cannot contradict its prior actions or the legitimate expectations it created among other Members by subsequently challenging the continuation of operations it had previously and clearly endorsed.
95. Such a prohibition is further encapsulated by the doctrine of *estoppel*, which applies when one party makes a statement or admission that induces another party to act in reliance upon it, resulting in reasonable and detrimental reliance by the latter (see CAS 2011/A/2473, para. 33; CAS 2018/A/5552, para. 81). Additionally, no objections were raised by any Member or individual, including from Mr Drozdov.
96. It is evident that the Appellant remained silent regarding the mandate of the past Bureau and Executive. Furthermore, its own General Secretary participated in the Doha Extraordinary Congress and the Elective General Congress. However, the Appellant failed to provide any substantive argument or explanation for its change in position regarding the past Bureau and Executive's mandate. Such inconsistent and contradictory conduct also constitutes an "abuse of right" under Article 2 of the CC, (*see also*, PETER LEHMANN/HEINRICH HONSELL, Basler Commentary, Civil Code I, 7<sup>th</sup> edition, Article 2 CC, para. 43).
97. Accordingly, the Panel holds that the Appellant is bound by its own acts. Having legitimised the mandate of the past Bureau and Executive beyond their expiry, the Appellant cannot later assert that these AA's bodies were not competent to represent AA following the expiration of their term.
98. In light of the above, the Panel concludes that the Appellant's request for a declaration that the past Bureau and Executive were not in power, as well as the nullification of all their subsequent decisions, constitutes a clear case of *venire contra factum proprium* and must therefore be dismissed.

## **XI. CONCLUSIONS**

99. In view of the above, after considering all evidence produced and arguments made by the Parties, the Panel concludes as follows:
  - The consolidation of the proceedings in CAS 2024/A/10593 with those of CAS 2024/A/10387 proceedings is not possible.
  - The Appellant has a legal interest in bringing this dispute before CAS.
  - The Appellant has a legal interest in seeking the nullity of the calling, holding and decisions taken at the Doha Extraordinary Congress or, alternatively, its annullability.
  - The Elective General Congress was duly convened and held in compliance with the New Constitution and Swiss law, and resultantly, there are no grounds for its nullity or annullability.

- The decisions taken during the Elective General Congress complied with the New Constitution and Swiss law, and resultantly, there are no grounds for its nullity or annullability.
- The Appellant's actions clearly contravene the prohibition of *venire contra factum proprium*, demonstrating that it is legally bound by its own acts.

100. Consequently, the appeal is rejected.

101. The above conclusions render it unnecessary for the Panel to consider any other requests submitted by the Parties, which are accordingly rejected.

## **XII. COSTS**

(...).

## **ON THESE GROUNDS**

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

1. The Appeal filed on 17 May 2024 by the Swimming Federation of the Republic of Kazakhstan against the decisions rendered at the Elective General Congress on 26 April 2024 is dismissed in its entirety.
2. (...).
3. (...).
4. All further or different motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 17 March 2025

## **THE COURT OF ARBITRATION FOR SPORT**

Mario Vigna  
President of the Panel

Olivier Carrard  
Arbitrator

Thomas Clay  
Arbitrator