CAS 2021/A/7973 Islamic Republic of Iran Judo Federation v. International Judo Federation

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr. Jacques Radoux, Legal secretary at the European Court of Justice, Luxembourg
Arbitrators:	Mr. Ahmadreza Barati, Attorney-at-law in Tehran, Iran
	Dr. Hans Nater, Attorney-at-law in Zurich, Switzerland

in the arbitration between

Islamic Republic of Iran Judo Federation, Tehran, Iran

Represented by Dr. Amir Saed Vakil, Attorney-at-law, Tehran, Iran

Appellant

and

International Judo Federation, Lausanne, Switzerland

Represented by Mr. François Carrard and Mr. Nicolas Zbinden, Attorneys-at-law with Kellerhals Carrard, Lausanne, Switzerland

Respondent

I. PARTIES

1. The Islamic Republic of Iran Judo Federation (the "Appellant" or the "IRIJF") is the governing body of judo in the Islamic Republic of Iran ("IRI"), which in turn is affiliated to the International Judo Federation.

2. The International Judo Federation (the "Respondent" or the "IJF') is the governing body of judo worldwide and is recognized by the International Olympic Committee (the "IOC"). The IJF is an association according to article 60 and following of the Swiss Civil Code and has its registered office in Lausanne, Switzerland.

   The Appellant and the Respondent will be referred to collectively hereinafter as "the Parties".

II. FACTUAL BACKGROUND AND PREVIOUS PROCEEDINGS

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

A. Background Facts

4. The present proceeding, which concerns an appeal filed against a decision rendered by the Disciplinary Commission of the IJF with respect to the IRIJF, finds its origin in two other decisions, respectively dated 18 September 2019 and 22 October 2019, rendered by the Disciplinary Commission of the IJF against the IRIJF. The dispute between the Parties in the center of these two decisions revolved around allegations, according to which the IRIJF had instructed one of its athletes to withdraw from competing to avoid a potential contest against an Israeli judoka. The IRIJF disputed these allegations. The operative part of the IJF Disciplinary Commission's decision dated 22 October 2019 (the "Suspension Decision"), reads as follows:

   "- *To pronounce against the Iran Judo Federation a suspension from all competitions, administrative and social activities organized or authorised by the IJF and its Unions, until the Iran Judo Federation gives strong guarantees and proves that they will respect the IJF Statutes and accept that their athletes fight against Israeli athletes;*

   - *To ask to the IJF Executive Committee to determine the modalities of the guarantees to be given and actions to be undertaken in order to demonstrate its commitments to respect the IJF Statutes by the Iran Judo Federation;*

   - *Decides that the Commission protective suspension on 18 September 2019 still is valid until this decision will gain force.*"

5. The two decisions were appealed before the Court of Arbitration for Sport ("CAS") in Lausanne, Switzerland, in two different appeals, registered as CAS 2019/A/6500 IRIJF v. IJF and CAS 2019/A/6580 IRIJF v. IJF. These two proceedings were consolidated, and on 16 September 2020 a hearing was held in Lausanne. At the outset of that hearing, the Parties declared that they had no objections as to the constitution of the panel, composed of Mr. Franco Frattini, Judge in Rome, Italy (President), Mr. Jahangir Baglari, Attorney-at-law in Tehran, Iran and Mr. Pierre Muller, Former Judge in Lausanne, Switzerland (the "First Panel"). The First Panel heard evidence from witnesses named by each of the Parties. All witnesses were invited to tell the truth subject to the actions of perjury under Swiss law. The Parties and the First Panel had the opportunity to examine and cross-examine the witnesses. The First Panel also heard the testimony of Mr. Saied Mollaei, an Iranian judoka (the "Athlete"). Thereafter, the Parties were given a full opportunity to present their case, do their pleadings and answer the questions posed by the First Panel. At the end of hearing, the Parties' counsel confirmed that they were satisfied with the hearing and that their right to be heard was provided and fully respected.

6. In its award, rendered on 1 March 2021 (the "First Award"), the First Panel addressed, amongst others, the following issues: (i) whether the IRIJF instructed the Athlete not to compete or to voluntarily lose contests in order to avoid competing against Israeli opponents, at the Tokyo World Championships Senior which took place from 25 to 31 August 2019; (ii) whether these facts constitute a violation of the IRIJF's obligations under IJF Statutes and other related rules, namely the principle of political neutrality and the principle of non-discrimination; (iii) whether the IJF breached the principle of fairness or other rules; (iv) whether the sanction imposed upon the IRIJF in the Suspension Decision of the Disciplinary Commission of the IJF has the necessary legal basis and is proportionate.

7. Regarding these issues, the First Panel reached the following conclusion: (i) it is established that the IRIJF instructed the Athlete to deliberately lose his contests at the 2019 Tokyo Judo World Championships in order to avoid competing against an Israeli athlete at a later stage;

(ii) by instructing the Athlete to deliberately lose these contests, the IRIJF breached the principles of political neutrality and non-discrimination as provided under the IJF Statutes and the Olympic Charter. In light of these findings, as well as the serious character of the occurred violations and the result of the procedure, the First Panel considered that it did not need to address the other allegations of breach that were included in the decision dated 18 September 2019 and the Suspension Decision;

(iii) in the hypothesis that the first instance procedure before the IJF Disciplinary Commission would have presented flaws – a question that the First Panel left open –, such flaws would have been cured by the *de novo* character of the appeals proceedings before the CAS and that the claim with respect to the behaviour of the IJF officials is not supported by any evidence. In the Panel's view, the behaviour of the IJF officials reflected respect of the principle of political neutrality rather than unfairness;

(iv) the violations committed by the IRIJF undoubtedly qualify as "serious breach" within the meaning of Article 28.1 of the IJF Statutes and, accordingly, the IRIJF could validly be imposed a suspension or expulsion. However, according to Article 28.1 of the IJF Statutes read in combination with Article of the IJF Statutes and Article 12 of the IJF Disciplinary Code, the sanction imposed in the Suspension Decision represented an undue integration in the IJF Disciplinary Code, which requires the IJF Disciplinary Commission to limit a "suspension" to a "competition or duties".

8. The First Panel, in the light of the above, held, in para. 128 of the First Award that "*the Suspension Decision lacks necessary legal basis. As a result, the* [First Panel] *finds that the Suspension Decision must be annulled. Based on Article R57 of the CAS Code, the* [First Panel] *holds that the case shall be referred back to the IJF Disciplinary Commission, for its appropriate sanction(s), taking into account all relevant circumstances – inter alia – the suspension already imposed on the* [IRIJF]".

9. On 1 March 2021, the First Panel rendered an award [the "First Award"] in which it ruled that:

"*1. The appeal filed on 7 October 2019 by the [IRIJF] against the [IJF] with respect to the Decision of the Disciplinary Commission of the [IJF] dated 18 September 2019 on temporary protective measures is dismissed.*

2. The appeal filed on 9 November 2019 by the [IRIJF] against the International Judo Federation with respect to the Decision of the Disciplinary Commission of the [IJF] dated 22 October 2019 is partially upheld.

3. The Decision of the Disciplinary Commission of the [IJF] dated 22 October 2019 is annulled.

4. The case shall be referred back to the Disciplinary Commission of the [IJF] for its eventual further decisions.

5. The Award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the [IRIJF] in each procedure, which is retained by the Court of Arbitration for Sport.

6. The [IRIJF] shall pay to the [IJF] a contribution in the amount of CHF 5'000 (five thousand Swiss Francs) to its legal fees and expenses incurred in connection with the present proceedings.

7. All other motions or prayers for relief are dismissed."

B. Proceedings Before the Previous Instance

10. On 28 April 2021, the IJF Disciplinary Commission, to which the case was referred back to, rendered a new decision (the "Appealed Decision") in which, pursuant to Article 12 of the IJF Disciplinary Code, it decided:

"- *To pronounce against the [IRIJF] a provisional withdrawal of its status of IJF member and all affiliated components for four (4) years, from September 2019 until 17 September 2023.*

- *To notify this decision to […]*

- *To inform the IRIJF that this decision is subject to appeal with the [CAS]. The time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*

- *To inform the [IRIJF] that this decision has immediate effect*."

11. The Appealed Decision contains, *inter alia*, the following grounds:

"- *Having considered [para. 35 and 128 of the First Award], the Disciplinary Commission is now tasked with deciding the appropriate sanction(s) to be imposed on IRIJF. The facts of the matter and the violations committed by the IRIJF have been finally determined by the [First Panel]. The IRIJF was already granted ample opportunity to set out its position. The Disciplinary Commission is sufficiently informed to decide on this question without any further written submissions.*

- *With respect to sanctions, […]. The relevant provision is art. 12 of the IJF Disciplinary Code, which sets out the list of applicable sanctions available to the Disciplinary Commission.*

- *The Disciplinary Commission notes that the [First Panel] quoted the relevant provision in its English version (para. 124). However, as per art. 6.1 of the IJF Statutes, '[t]he official languages of the IJF are English, French and Spanish. […] In the event of a discrepancy in interpretation between the three (3) languages, the original language in which the document was written shall prevail'. As the original language of the Disciplinary Code is French, it is the French version, which shall prevail.*

- *As noted by the [First Panel], in view of the severity of the IRIJF's breaches, it 'could validly be imposed a suspension or on expulsion'. However, having duly considered the facts of the matter at hand, the Disciplinary Commission is of the opinion that an expulsion ('retrait définitif du statut de member de la FIJ' in the original French text) is not warranted.*

- *The Disciplinary Commission notes that the [First Panel] focused on art. 12 lit. c) as a basis for a suspension (see eg. para 126). However, it seems to the Disciplinary Commission that art. 12 lit. c) would have been intended for individuals rather than member federations. In the opinion of Disciplinary Commission, art. 12 lit e) is the relevant provision to impose a suspension on a member federation (or in other words a 'provisional […] withdrawal of the status of the IJF member'). Having said this, the Disciplinary Commission notes that article 12 lit c), in its French iteration, in no doubt allows for a suspension from participating in competitions (and not only*

"a competition" as per inadvertent English translation) and the IJF duties to be imposed ('suspension de competition ou d'exercice de fonctions').

- *Under art. 12 lit. e) of the Disciplinary Code, the Disciplinary Commission is empowered to provisionally or definitively withdraw the status of IJF member. In view of the repeated and very severe breaches of the IJF Statutes and the Fundamental Principles of Olympism committed by of IRIJF, as acknowledged by the [First Panel], the Disciplinary Commission considers that the status of IJF member of IRIJF should be provisionally withdrawn (with all affiliate components) for a period of four years, i.e. a full Olympiad. As the IRIJF has already served a period of (protective) suspension […] the Disciplinary Commission finds it appropriate under art. 13 of the IJF Disciplinary Code that the start date of the provisional withdrawal be backdated to 18 September 2019. The Disciplinary Commission considers that this sanction, especially given the backdating and the effect of the Covid-19 pandemic (which led to no competition being organised for most of 2020), is proportionate to the extremely severe offences committed by IRIJ*F.

- *For the sake of completeness, the Disciplinary Commission notes that the sanction imposed is also justified in application of art. 12 lit. c) of the Disciplinary Code, which would have led to the same material outcome (i.e. a suspension of competition and all duties for a period of four years) if applicable to member federation*s."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 16 May 2021, the IRIJF filed its statement of appeal, designated as appeal brief, against the IJF with respect to the Appealed Decision in accordance with Article R47 and Article 51 of the Code of Sports-related Arbitration, edition in force since 1 July 2020 (the "CAS Code") and Articles 1 and 29.1 of the IJF Disciplinary Code. In its Statement of Appeal, the IRIJF nominated Mr. Ahmadreza Barati, attorney-at-law in Tehran, Iran, as an arbitrator.

13. On 20 May 2021, the CAS Court Office acknowledged receipt of the statement of appeal and informed the Respondent, *inter alia*, that according to Article R53 of the Code, it should nominate an arbitrator within ten (10) days of receipt of the said letter.

14. On 27 May 2021, the Respondent nominated Mr. Pierre Muller, former judge, Lausanne, Switzerland, as an arbitrator.

15. On 4 June 2021, the Appellant filed a challenge to the nomination of Mr. Pierre Muller as an arbitrator in the present matter.

16. On 10 June 2021, Mr. Pierre Muller informed the CAS Court Office of the withdrawal of his acceptance to serve as arbitrator in this matter.

17. On 17 June 2021, the Respondent nominated Mr. François Klein, attorney-at-law in Paris, France, as arbitrator in the present proceeding.

18. On 23 June 2021, the Appellant filed a petition for challenge against the nomination of Mr. François Klein as arbitrator in the present matter.

19. On 25 June 2021, the Respondent filed its answer.

20. On 1st July 2021, Mr. François Klein informed the CAS Court Office that he renounced to serve as an arbitrator in the present matter.

21. On 5 July 2021, the Respondent nominated Dr. Hans Nater, attorney-at-law in Zurich, Switzerland, as arbitrator and informed the CAS Court Office that it did not consider it necessary to hold a hearing in the present case.

22. On the same day, the Appellant informed the CAS Court Office that it had a preference for a hearing to be held in the present matter.

23. On 7 July 2021, the CAS Court Office informed the Parties that the Panel appointed to decide this appeal was constituted as follows:

President: Mr. Jacques Radoux, Legal Secretary to the European Court of Justice, Luxembourg

Arbitrators: Mr. Ahmadreza Barati, Attorney-at-law in Tehran, Iran

Dr. Hans Nater, Attorney-at-law in Zurich, Switzerland.

24. On 31 August 2021, the CAS Court Office informed the Parties that the President of the Panel, with the agreement of his co-arbitrators, had decided to grant the Parties the opportunity to file a second round of written submissions.

25. On 15 September, the Appellant filed its Reply.

26. On 4 October 2021, the Respondent filed its Rejoinder.

27. On 21 October 2021, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing by videoconference in the present matter.

28. On 25 October 2021, the Appellant requested the Panel to hold the hearing in person. In support of its request, the Appellant argued that (i) its right to be heard has been violated and it was deprived from the opportunity to provide its defence and position on the matter in the previous instance, (ii) the main part of its written submissions concentrates on statements of witnesses and experts which were referred to. The physical presence of these individuals would lead the Panel to discover the reality and reach the justice in the case on hand; (iii) based on its experience about witnesses testifying in a video conference, *i.e.* possible problems due to technical interruptions, weak internet coverage, and sound ambiguities, physical appearance of all participants at the hearing seemed significantly helpful.

29. On 27 October 2021, the CAS Court Office, on behalf of the Panel, informed the Appellant that, in light of Article R56 of the CAS Code, its request to have witnesses and/or experts heard at the hearing was late and, therefore, rejected. As a consequence, it considered that a hearing in person was not necessary.

30. On 29 October 2021, the Appellant requested the Panel to reconsider its decision about appearance of experts and witnesses in the physical hearing. In the alternative, the Panel was invited to clarify the domain of the hearing with respect to all submissions submitted by both parties to this case.

31. On 3 November 2021, the CAS Court Office, on behalf of the Panel, advised the Parties that these appeal proceedings are governed by Article R56 of the CAS Code and not by Article R44.1 of that same Code. Consequently, they were not granted the right to bring new evidence such as the witness/expert statements attached to the Appellant's reply. Further, the Parties were informed that the Appellant's request to hear these witnesses/experts at the hearing was rejected as the facts they are supposed to establish were already bindingly established by the First Panel in the First Award (BGE 142 III 360). Finally, it was recalled that, pursuant to Article R57 in connection with Article R44.2 of the CAS Code, the Panel has the power to conduct the hearing by video-conference.

32. On 4 November 2021, the CAS Court Office notified the order of procedure to the Parties. The same day, the Respondent signed and returned the order of procedure. The Appellant signed and returned the order of procedure on 7 November 2021.

33. On 23 November 2021, a hearing took place. In light, *inter alia*, of the COVID-19 pandemic, the hearing was conducted only by video. The Panel was assisted at the hearing by Mr. Antonio De Quesada, Head of Arbitration at the CAS, who was physically present at the CAS Court Office in Lausanne, Switzerland. The Panel was joined by the following participants, all attending by video:

For the Appellant:
Dr. Amir Saed Vakil, leading counsel;
Dr. Pouria Askary, counsel;
Mr. Milad Gazerani, para-legal;
Mr. Arash Miresmaeilie, President of the IRIJF;
Ms. Sedigheh Kabizadeh, Vice-President & General Secretary of the IRIJF.

For the Respondent:
Mr. Nicolas Zbinden, counsel,
Ms. Larisa Kiss, IJF International Relations Manager.

34. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel. At the conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected and that they had no objections as to the manner in which the proceedings had been conducted.

IV. SUBMISSIONS OF THE PARTIES

35. The following summary of the Parties' positions and submissions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all of the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant's submissions

36. The Appellant's submissions might be summarized as follows.

37. As a preliminary point, the Appellant observed, *inter alia*, that after analysing the First Award and relevant evidence in the file, it noted that some propositions in that award were baseless according to the witnesses' statement submitted by the Respondent in the previous case and cross-examined testimonies in the rendered hearing. Moreover, in the Appealed Decision, the IJF Disciplinary Commission relies on disputed facts, references and information of relevance which were not verified by the First Panel in the hearing and are not warranted by the First Award. The Appellant requested the production of, amongst other, the hearing transcript or video from the case CAS 2019/A/ 6500 & 6580 as well as the formal evidence and documents related to the procedures taken to appoint the composition of the IJF Disciplinary Commission. It would be essential for the Panel to be provided with every relevant document to reach its final decision. The Appellant highlines that it is not seeking to remark conflicts of evidence to question the validity of the First Award, but the unsubstantiality of that award may be helpful for the Panel to determine an appropriate and proportionate sanction, if any.

38. As regards the merits, the Appellant argues, first, that the Appealed Decision is illegitimate. Indeed, pursuant to Articles 1.2.1. of the Sport and Organization Rules of the IJF (the "IJF SOR") and Article 8.3 lit. (l) and (m) of the IJF Statutes, the IJF Disciplinary Commission would not have the competence to decide on the sanction which deprives a national federation from the status of membership, whether provisional or definite. Such a decision would only be of the capacity of the IJF Congress. Thus, the Appealed Decision would be outside the "domain of powers" of the IJF Disciplinary Commission and should, thus, be regarded as illegitimate. Moreover, there would be a strong presumption that, contrary to the requirements set out in Article 11.14 and Article 13 of the IJF Statutes, the IJF President determined the composition of the IJF Disciplinary Commission to decide the present matter. As would be clear from the First Award, the IJF President appointed the members of said Commission. However, as the IJF President was involved in the facts of the case, he had a conflict of interest in the sense of, inter alia, Article 6 of the IJF Code of Ethics, and the modality for designation of these members to deal with the case would thus lack basic standards of impartiality and independence. This would be contrary to the principle of fairness. Finally, the Appealed Decision would violate Article 28.2.1 of the IJF Statutes as (i) the case at hand has not been submitted by the IJF Executive Committee to the IJF Disciplinary Commission, (ii) the sanction imposed against the Appellant has not been issued by the "IJF Disciplinary Commission of the first instance" and (iii) the IJF Executive Committee had to propose its measures to the IJF Disciplinary Commission but failed to do so leading the Disciplinary Commission, itself, to decide illegitimately.

39. Second, pursuant to Article 1.2.1 of the IJF SOR a possible sanction decision can only be taken after the person concerned and any potential witnesses were heard. The same would follow from Article 28.2.3. of the IJF Statutes. However, in the present case and before rendering the Appealed Decision, the Disciplinary Commission did not invite the Appellant to provide its comments and positions, whether in writing or in person, on new circumstances raised from the First Award. According to the Appellant, the Appealed Decision was taken in a "new disciplinary proceedings" as (i) the context of the First Award created different decisive foundations and the Appellant had to be granted adequate opportunity to submit its argumentation or leave comments in relation to the new circumstances in order for the IJF Disciplinary Commission to adopt an appropriate and proportionate sanction, (ii) the composition of the IJF Disciplinary Commission was completely different with the body whose disciplinary decision was annulled by the First Panel; (iii) the First Panel having annulled the decision at stake, "no kind of effect may be recognised" to that decision, including legal and factual presumptions of the former IJF Disciplinary Commission; (iv) the First Award is final, *i.e. res judicata*, and, consequently, the Appealed Decision cannot be considered as "continuation of the adjudicated matter". All in all, it would be clear that the Respondent sanctioned the Appellant without holding any hearing and that the Appellants' right to be heard has been drastically violated. This would be, according to the Swiss Federal Tribunal (the "SFT"), contrary to the international public order which the CAS has always protected.

40. Third, there was a clear mis-interpretation, by the IJF Disciplinary Commission, of the IJF Disciplinary Code when, on basis of Article 6.1 of the IJF Statutes, it decided that the original language of the Disciplinary Code was French and that the French version should thus prevail. In this respect, the Appellant argues that the French version cannot be prevailing because the English version had received consensual preferential force when the Parties expressly agreed that English would be the language of the proceedings. Further, in the present matter the rules were clear and there was no "discrepancy in interpretation" that needed to be solved as the First Panel had guided the Respondent to decide the issue based on Article 12 al. 2) lit. c) of the Disciplinary Code. Moreover, there would be no provision or article in the Disciplinary Code indicating that French was the original language of that document. All other indications would be wrong. Finally, the principle of *contra proferentem* would impede the Respondent from applying, in the present matter, the French version of the text. Thus, there would be no valid basis in the Disciplinary Code for the sanction imposed in the Appealed Decision.

41. Fourth, the sanction imposed in the Appealed Decision would be illegal. In this respect, the Appellant criticizes "appropriateness" and the "proportionality" of that sanction.

42. Regarding the first of these two elements, the Appellant considers that the Appealed Decision is contrary to the values emanated from fundamental, universal ethical principles the IJF adhered to under article 1.2 of the IJF statutes, *i.e.* mutual understanding, universality, maintenance of harmonious relations with government authorities and protection of human rights. The sanction would run against Article 2 of the IJF Statutes as it would be too harsh against the Appellant and diminishing the aims of the IJF, in particular, developing judo and improving its quality throughout the world.

Moreover, in the light of paragraphs 115-129 of the First Award, the sanction imposed in the Appealed Decision would be unfounded and inappropriate for the following reasons:

- The Respondent breached the principle of legality because the misconduct attributed to the Appellant is not prescribed in the IJF regulations.

- Because of the non-clarity and non-precision of the IJF regulations with which the Appellant is charged, the Respondent violates the principle of predictability, namely, *nulla poene sine lege clara*. There would be no legal certainty and thus no guarantee for equal treatment of the IJF members. This would constitute a violation of the principle of fairness as interpreted by constant CAS jurisprudence.

- Article 28.1 of the IJF Statutes authorises the suspension or expulsion of a national federation on the grounds of serious breach, pursuant to a final decision of one of the IJF Disciplinary Commissions. If it is true that the First Panel has, in para. 125 of the First Award, recognised a certain discretionary power to the IJF Disciplinary Commission to qualify the alleged violation as a "serious breach", it did not itself qualify the misconduct in that way. However, the IJF Disciplinary Commission was not competent, pursuant to Articles 11.1, 28.3 and 28.2.4 of the IJF Statutes to impose the sanction contained in the Appealed Decision.

- According to Article 28.2.1 of the IJF Statutes, the only sanction to choose from would be "restricting or suspending participation in activities" but not the withdrawal of the status of membership.

- It is clear from paragraphs 121 and 122 of the First Award that the First Panel considered that the sanction was limited "to suspension from a competition or duties" pursuant to Article 12 al. 2) lit c) of the IJF Disciplinary Code.

- It is clear from paragraph 123 of the First Award, that the IJF Disciplinary Commission is not authorised to impose the sanction provided for in the list of possible sanctions set out in Article 12 of the IJF Disciplinary Code. As set out in paragraph 127 of that same award, the IJF Disciplinary Code required the Disciplinary Commission to limit any suspension of the IRIJF to "*a competition or duties*".

- The Respondent's interpretation of Article 12 al. 2) lit. c) of the IJF Disciplinary Code, according to which this provision has been intended for individuals rather than member federations, would be absurd. Even the French version of that provision would show that it is applicable to a member federation. There would be no issue of interpretation with this provision and if there were, the provision should be interpreted against the Respondent.

43. Addressing the second of these elements, the Appellant argues that the First Award required the Respondent to take mitigating circumstances into consideration. As the allegations against the appellant have been sentenced for the first time, the IJF Disciplinary Commission should have taken into account Article 14 of the IJF

Disciplinary Codes according to which the "*sanctions mentioned in 2 (c) and 2 (e) of Article 12 of the present byelaw may, in the case of the first sanction, be totally or partially suspended*". The IJF Disciplinary Commission should have taken into account (i) that high ranked Iranian officials sent a letter to the President of the IJF to prove their willingness to respect of fundamental principles of the Olympic charter, (ii) the charge attributed to the Appellant, whether true or not, relate to events which took place for the first time, while the Appellant was never called to order prior to now; (iii) the hearing before the First Panel revealed that considerable parts of the witnesses' statements introduced by the respondent were unsubstantial; (iv) in spite of proposals submitted by the Iranian Parliament to prohibit Iran athletes to compete with Israeli athletes, the proposals were rejected and there is no law or statutory obligation which prohibits such competition. The Appealed Decision, contrary to constant CAS jurisprudence and to what the First Panel has decided in paragraph 128 of the First Award, did not take into account "all relevant circumstances". The imposed Sanction would be contrary to the disciplinary policy of the CAS, as it would eradicate judo from Iran. Further, the length of the suspension would be disproportionate as the Iranian athletes would be unable to attend competitions for many years and the date of effectiveness of the sanction would deprive Iranian judokas from taking part at two Olympic games. Moreover, the sanction imposed in the Appealed Decision would, contrary to CAS case law, put the Respondent in a less favourable status than the one it found itself in before the First Award. Finally, in similar cases, other national federations have been sanctioned less harshly, *i.e.* the United Arab Emirates and Tunisia.

44. Fifth, the Appealed Decision would run against the principle of fairness as the members of each session of the IJF Disciplinary Commission are nominated by the President of the IJF. Procedural public policy within the meaning of article 190 (2) (e) of the Federal Statute on International Private Law (PILA) guarantees to the parties the right to an independent judgement as to the submissions and effects presented to the arbitral tribunal in accordance with applicable procedural law. According to the SFT, procedural public policy is violated when some fundamental and generally recognised principles are violated, leading to an unbearable contradiction with the notion of justice, so that the decision is incompatible with the values recognised under the rule of law. The respect of the fundamental procedural rights would be mandatory, and their violation would constitute a ground for legal challenge.

45. Sixth, the Appellant argues that it has a right to be compensated for the direct damages to the integrity of judo in Iran, the damages incurred by the Iranian judokas as well as the unnecessary legal costs and expenses that the Appellant had to spend for the present proceedings. The Appealed Decision brought the Iranian judo in disrepute and led to the termination of many contracts amongst judokas, coaches and sponsors have been terminated because of the sanction imposed.

46. Regarding the arguments raised by the Respondent, the Appellant replies, inter alia, that:

- It has serious objections against the findings made by the First Panel and the course of evaluation of evidence by that Panel which violates elementary components of fair trial and public policy. However, as the case was referred back to the IJF Disciplinary Committee for a further decision, the Appellant did not appeal the First

Award to the SFT, but reserves its right to appeal the First Award and the award to be rendered in the present proceedings cumulatively.

- A precise review of the factual matters related to the whole case is a must for the Panel to be able to assess whether the imposed sanction is appropriate and proportionate. The Panel would have the power to re-consider the pending appeal with regard to the entire conclusions reached in the First Award, whether matter of law or fact. Indeed, the Panel has to be independent and autonomous to be able to perform its judicial function properly. Moreover, the present proceedings cannot be assigned as the "leftover judgment" of the First Award which is done. The present proceedings cannot be considered as an appeal from the First Award as the two proceedings are separate.

- The Appealed Decision is invalid as the Disciplinary Commission was not correctly appointed, as the case was not correctly submitted to that Commission, as the IJF Executive Commission has not made a proposal for the sanction to be imposed and as there was no hearing held before the IJF Disciplinary Commission after the case had been referred back to it by the First Panel.

- The Appealed Decision violates the principle of *nulla poena sine lege,* as the alleged misconduct is not clearly defined in the IJF Disciplinary Code. The same would be true for the sanction imposed: it would not be clear from the texts whether the alleged misconduct would fall under the provision of lit. c) or lit. e) of Article 12 al. 2) of the IJF Disciplinary Code. Thus, there would be a clear lack of predictability of the sanction. In any event, in para. 126 of its award, the First Panel had clearly indicated that the IJF Disciplinary Commission was to apply Article 12 lit. c) and the Respondent's arguments according to which that provision only applies to individuals would be absurd. The last sentence of that Article, might it be in its French or its English version, would confirm that Article 12 al. 2) lit. c) of the IJF Disciplinary Code would apply to legal entities.

- According to the First Award and pursuant to Article 14 of the IJF Disciplinary Code, the IJF Disciplinary Commission had the obligation to take into account mitigating circumstances when taking its decision. However, it failed to do so.

47. In view of the above arguments, the Appellant requests the Panel to rule as follows:

"*(a) That the CAS has jurisdiction to entertain the dispute and rule upon the claims submitted by the Appellant;*

(b) That the Appeal of the IRIJF is admissible;

(c) That the Appealed [D]*ecision is set aside;*

(d) That the sanction imposed against the Appellant by the Respondent, are to the extent determined by the Court, inconsistent with the provision of the IJF Statutes, the IJF Disciplinary Code, the IJF SOR, and the IJF Code of Ethics as they are elaborated in the present Appeal Brief;

(e) That by its acts referred to above, the Respondent has breached its obligation to the Appellant – inter alia - fairness, due process, personal rights, etc.

(f) That the Appellant is entitled to attend all international competitions, and contribute social and administrative activities organized or authorized by the IJF and its Unions;

(g) That the Respondent is under an obligation to compensate morally and materially in an amount to be determined by the Court;

(h) Order the Respondent's to bear any in all legal costs and attorneys' fees incurred by the Appellant in connection with the present proceedings;

(i) Order the Respondent to reimburse the costs paid by the Appellant related to the present arbitration; and

(j) Any other remedy the Court may deem appropriate."

B. The Respondent's submissions

48. The Respondent's submissions may be summarized as follows.

49. The Respondent considers that, in its award, the First Panel fully endorsed the findings of the IJF Disciplinary Commission according to which there existed a discriminatory policy within the IRIJF. The IRIJF has not appealed the First Award to the SFT and, thus, that award is final and binding. The scope of the proceedings before the IJF Disciplinary Commission was limited to the question of the appropriate sanction, based on the conclusions reached by the First Panel. As a result, the scope of the present appeal would be limited to the issues live before the previous instance, *i.e.* the question of the appropriate sanction.

50. As to the validity of the decision-making progress, the Respondent argues, first, that, contrary to what the Appellant's alleges, the IJF Disciplinary Commission clearly had the powers to take the Appealed Decision. Indeed, the case was initially referred to the IJF Disciplinary Commission by the IJF Executive Board under Article 28.2.1 of the IJF Statutes, the misconduct of the IRIJF was established by the First Panel, who clearly stated that the violations committed by the IRIJF would undoubtedly qualify as "serious breach" within the meaning of Article 28.1 of the IJF Statutes and could warrant a suspension or expulsion. Article 12 al. 2) lit e) of the IJF Disciplinary Code giving the Disciplinary Commission the right to impose a provisional or definitive withdrawal of the status of the IJF member and all its affiliated components, it would be obvious that the IJF Disciplinary Commission, when adopting the Appealed Decision, did not exceed its competence. Second, the composition of the IJF Disciplinary Commission has been determined according to all the relevant rules, the IJF President having designated the members from a designated list, the IJF Executive Board approved the designated members, and the case was initially submitted to the IJF Disciplinary Commission by

the Executive Board. As regards the alleged conflict of interest of the IJF President, allegation which the Respondent disputes, the latter notes that it is difficult to see how a conflict of interest, if established, *quod non*, could affect the IJF president's ability and obligation to appoint said members. Third, the Appellant had been given ample opportunity to express itself during the initial proceedings before the IJF Disciplinary Commission and before the First Panel so that, when the case was referred back to the IJF Disciplinary Commission, the latter did not have the obligation to hear the Appellant in its submissions again. The IJF Disciplinary Commission was bound by the findings of the First Panel and the question in front of it was purely legal, thus there was no infringement of the Appellant's right to be heard. In any event, even if there had been such an infringement, it would, according to constant CAS jurisprudence, be cured by the *de novo* principle applicable to the CAS appeals under Article R57 of the CAS Code.

51. Regarding the validity of the sanction imposed, the Respondent states that Article 12 al. 2) lit. e) of the IJF Disciplinary Code is the right provision to be applied in the present case. First, the IJF Disciplinary would have a discretionary power to decide which sanction to impose and that discretion was not limited by the First Award. Second, it would be clear from its wording, especially in the French version of the IJF Disciplinary Code which is the one that prevails as the original text of said Code was written in French, that Article 12 al. 2) lit. c) applies to individuals and that lit. e) is its pendent for legal entities. The Appellants' arguments that the English version of the IJF Disciplinary Code should prevail in the present proceedings are ill founded. The principle of *nulla poena sine lege* would be of no avail to the Appellant as, on one hand, the misconduct of the Appellant has been found, by the First Panel, to constitute a violation of the principles of political neutrality and non-discrimination as provided under the IJF Statutes (Articles 1.2.2 and 1.2.4 of the Statutes) and the Olympic Charter (Articles 2. 5., 2.6. and 2.11.) and, on the other hand, the sanction is fully in line with Article 12 al. 2) lit. e) of the IJF Disciplinary Code.

52. As to the proportionality of the sanction, the Respondent notes, inter alia, first, that the assurances given so far by the Appellant did not prevent the latter to nonetheless violate the IJF Statutes. Thus, they cannot be taken into account. Second, although it is true that, before the initial proceedings in front of the IJF Disciplinary Commission, the IRIJF had not been sanctioned for similar past offences, the fact remains that it was explicitly warned that it risked a suspension and fully disregarded this warning, which would also support a more severe sanction. Third, the fact that draft laws seeking to enact the discriminator policy were rejected by the Iranian Parliament is irrelevant for the present proceedings as the First Panel has explicitly confirmed that the discriminatory policy was in place. Fourth, the claims that the imposed sanction would ruin judo in Iran and would effectively deprive the Iranian judokas from participating in two Olympic Games would be purely speculative. In any event, it would follow from the CAS jurisprudence that a sanction like the one at hand is proportionate and that the consequences for the national athletes are justified by the overarching objectives of the international federation (CAS 2015/A/4319). Fifth, it could not be validly argued that the sanction imposed in the Appealed Decision places the Appellant in a "more unfavourable status" than the sanction it appealed in the proceedings CAS 2019/A/6500 & 6580. Indeed, the sanction initially imposed was open ended – and there were no signs

that the IRIJF was willing to make the requested changes – whereas the sanction imposed in the Appealed Decision has a fixed duration of 4 yeas and, thus, is certainly more favourable. Finally, according to constant CAS jurisprudence, sanctions imposed by federations using their discretion should only be interfered with where the sanction is "*evidently and grossly disproportionate*" (CAS 2016/A/4871). In the present case, the First Panel found that the violations committed by the Appellant undoubtedly qualified as a "*serious breach*" of the IJF Statutes and that Appellant could validly be imposed a "*suspension or an expulsion*". In the light of these findings, a suspension of 4 years would be appropriate and could even be considered as rather moderate.

53. Regarding the appellant's request for compensation, the Respondent argues that this request lacks any basis if the Appealed Decision is upheld. Further, and in any event, that request should be dismissed because it falls outside the scope of the present appeal proceedings and because the Appellant's claim is unsubstantiated.

54. In view of these arguments, the Respondent submits the following prayers for relief:

"*i. The appeal filed by the Islamic Republic of Iran Judo Federation is dismissed.*

ii. The arbitration costs (if any) are borne by the Islamic Republic of Iran Judo Federation.

iii. The Islamic Republic of Iran Judo Federation is ordered to significantly contribute to the International Judo Federation's legal and other costs."

V. JURISDICTION

55. Article R47 of the CAS Code provides, *inter alia*, 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.*"

56. The jurisdiction of the CAS in the present matter derives from Article 29.1 of the IJF Statutes, which reads as follows:

"*The Court of Arbitration for Sport in Lausanne is the only organism empowered by the IJF to ensure the arbitration between the parties.*"

57. In addition, Article 1 of the IJF Disciplinary Code enclosed as Annex I to the IJF Statutes provides as follows:

"*The decision of the IJF Disciplinary Commission is subject to appeal by the person concerned or the IJF Executive Committee with the Court of Arbitration for Sport (CAS).*"

58. The Panel notes that the Appealed Decision was rendered by the IJF Disciplinary Commission and can be appealed against before the CAS. The Panel further notes that the jurisdiction of the CAS to hear the present appeal has not been disputed by the Parties and even been confirmed by both Parties' signature of the Order of Procedure.

59. In the light of the foregoing, the Panel finds that it has jurisdiction to decide on the present appeal.

VI. ADMISSIBILITY

60. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. […]*"

61. The Appealed Decision was notified to the Appellant on 29 April 2021 and the Appellant filed its Statement of Appeal on 16 May 2021.

62. By doing so, the Appellant respected the twenty-one (21) day period set out in Article R49 of the CAS Code to file the appeal.

63. In the light of the foregoing, the Panel finds that the appeal is admissible.

VII. THE MANDATE OF THE PANEL

64. According to Article R57 of the Code, the Panel has full power to review the facts and the law. However, these powers conferred upon the Panel are limited to the matter in dispute before it. The Respondent submit that the Panel's mandate is limited to the purely legal question relating to the legality of the imposed sanction because that's the only issue the Appealed Decision deals with. The Appellant objects to this and submits that besides examining the legality of the imposed sanction, the Panel will have to assess whether the imposed sanction is appropriate and proportionate and, in order to do so, will have to re-assess the evidence and testimonies submitted to the First Panel.

65. In the present case, the First Panel found, on basis of the evidence and testimonies before it, that the Appellant had breached the principle of political neutrality and non-discrimination under the IJF Statutes and the Olympic charter and held that the IJF officials had not violated the principals of fairness and political neutrality. The Panel holds that it is clear from the First Award, that the First Panel finally and bindingly found that the Appellant had committed a serious breach of the IJF Statutes as well as the Olympic Charter. For the rest, it follows from the content of the First Panel's award that it only annulled the Suspension Decision insofar as the sanction imposed did not have a legal basis and that it referred the case back to the IJF Disciplinary Commission "*for its appropriate sanction(s), taking into account all relevant circumstances – inter*

alia – the suspension already imposed on the Appellant" (para. 127 of the First Award), or as stated in the operative part of that award "*for its eventual further decisions*".

66. It follows from the above, that the matter in dispute before the previous instance, *i.e.* the IJF Disciplinary Commission, only covered the type and the amount of the sanction to be imposed, if any.

67. In view of the above, the Panel finds that its mandate only covers the legality, including the proportionality, of the sanction imposed in the Appealed Decision.

VIII. APPLICABLE LAW

68. Article R58 of the Code provides 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.*"

69. To decide on the present matter, the Panel shall apply primarily the IJF Statutes and all other IJF rules and regulations. Since the Respondent, who has issued the Appealed Decision, is domiciled in Switzerland, Swiss Law applies subsidiarily.

IX. MERITS

A. Procedural Flaws at the Previous Instance

70. The Panel notes that the Appellant argues that the proceeding before the IJF Disciplinary Commission was flawed as it's right to be heard has been grossly violated. Indeed, the Appellant was not granted the right to submit any written submissions nor was a hearing held before the IJF Disciplinary Commission adopted the Appealed Decision. This would constitute a clear violation, *inter alia*, of Article 1.2.1 of the IJF SOR and Article 28.2.3 of the IJF Statutes.

71. The Respondent argues, in this regard, that as the factual findings had all been done and confirmed by the First Panel, the issue pending before the IJF Disciplinary Commission was of a purely legal nature and, thus, a hearing was not necessary. Further, there was no need to grant the Appellant the opportunity to submit written submissions, as it already had been granted ample opportunity to express itself in the first proceedings before the IJF Disciplinary Commission and during the appeal proceedings before the First Panel.

72. In this regard, the Panel observes that it is true that, according to Swiss practice and in line with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (the "ECHR"), there may

be proceedings in which an oral hearing is not required at all under Article 6, "*for example where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the patties' submissions and other written material*" [judgement of the European Court of Human Rights (the "ECtHR") of 2 October 2018, *Mutu & Pechstein v. Switzerland*, Applications nos. 40575/10 and 67474/10)]. Even where a court has jurisdiction to review a case as to both the facts and the law, the ECtHR said that it could not "*find that Article 6 always requires a right to a public hearing irrespective of the nature of the issues to be decided*". Indeed, the ECtHR noted that it had "*previously found that proceedings devoted exclusively to legal or highly technical questions may comply with the requirements of Article 6 even if there was not public hearing*". Hence, in a case like the present, the IJF Disciplinary Commission was not under the legal obligation to hold a hearing. However, in order for a court or a tribunal to be able to decide a case solely on the basis of the parties' "*written submissions and other written material*", the parties must have been given the opportunity to file such submissions or material.

73. In the present case, the Panel considers that although the Appellant had already filed some written submission in the initial proceedings before the IJF Disciplinary Commission as well as in the appeal proceedings before the First Panel, the Appellant should have been given the opportunity to reassess its legal argumentation in the light of the final and binding findings of the First Panel and should, thus, have been invited to file a supplementary set of written submissions limited to the issue that was still pending, *i.e.* the sentencing (the decision on the appropriate sanction). By not giving such opportunity to the Appellant, the IJF Disciplinary Commission has, in the Panel's view, infringed the Appellant's right to be heard.

74. However, the Panel recalls that it is widely recognised that the *de novo* power of review that is granted to CAS Panels by Article R57(l) of the CAS Code allows, in principle, violations of procedural rights in first instance to be "cured" by CAS in appeal proceedings.

75. The Panel further adheres to the analysis in CAS 2009/A/1880-1881, where it was determined that:

"[T]he Panel must point out that there is a long line of CAS awards, even going back many years, which have relied on Art. R.51 of the CAS Code ('The Panel shall have full power to review the facts and the law') to firmly establish that the CAS appeals arbitration allows a full de novo hearing of a case, with all due process guarantees, which can cure any procedural defects or violations of the right to be heard occurred during a federation's (or other sports body's) internal procedure. Indeed, CAS appeals arbitration proceedings allow the parties ample latitude not only to present written submissions with new evidence, but also to have an oral hearing during which witnesses are examined and cross-examined, evidence is provided and comprehensive pleadings can be made. This is exactly what happened in the present CAS proceedings, where the Appellants were given any opportunity to fully put forward their case and to submit any evidence they wished."

76. Therefore, even though the Appellant's right to be heard has, in the view of the Panel, been violated in the proceedings before the IJF Disciplinary Commission, any such violation was cured in the present arbitration before CAS under its *de novo* competence.

B. As to the necessity to hear witnesses or experts in the present appeal proceedings

77. Next, the Panel notes that the Appellant asserts that it was necessary, in the present appeals procedure, to hear witnesses and experts in order for the Panel to be able to reassess, *inter alia*, the seriousness of the sanctioned misconduct, given that the Appellant argues that "some propositions in the [First Award] are baseless according to witnesses' statements submitted by the Respondent in the previous case and cross-examined testimonies in the rendered hearing".

78. In this regard, the Panel considers it sufficient to recall that, as already set out above, the scope of the present appeal and the mandate of the Panel are limited to the examination of the legality of the sanction imposed in the Appealed Decision, the facts of the case and the seriousness and gravity of the violation having been finally and bindingly determined by the First Panel. Thus, as already mentioned in the CAS Court letter dated 3 November 2021, the Appellant's request to hear witnesses and/or experts at the hearing had to rejected as the facts they were supposed to establish were already bindingly established by the First Panel in cases CAS 2019/A/6500 & 6580.

C. As to the procedural invalidity of the Appealed Decision

79. The Appellant argues that the validity of the Appealed Decision is, for the reasons already summarized above, negatively affected and that said decision has, thus, to be annulled.

80. In this regard, the Panel notes that it is uncontested that the initial proceedings against the Appellant were, in accordance with article 28.2.1 of the IJF Statutes, submitted to the IJF Disciplinary Commission of the first instance by the IJF Executive Board and that the latter had made a proposal regarding the sanction to be imposed.

81. The fact that this initial referral to the IJF Disciplinary Commission led to a decision that was, subsequently, annulled by the First Panel does not, contrary to what the Appellant argues, entail that the entire procedure had to be started anew. Indeed, as is clear from the operative part of its award, the First Panel directly referred the case "*back to the Disciplinary Commission of the International Judo Federation for its eventual further decisions*". In those circumstances, for reasons of economy of procedure and procedural efficiency it cannot be expected that the whole procedure set out in Article 28.2.1 of the IJF Statute be started again.

82. The same argument applies to the composition of the IJF Disciplinary Commission that was, as ruled by the First Panel, to take an eventual further decision regarding the sanction to be imposed on the Appellant. There is no legal basis in the IJF texts to support the Appellant's claim according to which the composition of the IJF Disciplinary Commission that was to take an eventual further decision on the sanctions should have been different from the one that had adopted the Suspension Decision.

83. Moreover, although the First Panel annulled the Suspension Decision, it is clear that this annulment did not affect the factual findings that led to the sanction in question. To the contrary, the First Panel (i) held that "*it is established that the [IRIJF] instructed the Athlete to deliberately lose his contests at the 2019 Tokyo Judo World Championships in order to avoid competing against an Israeli athlete at a later stage*" (para 94 of the First Award) and (ii) found that "*by instructing the Athlete to deliberately lose his contests at the 2019 Judo World Championship Senior, the [IRIJF] breached the principles of political neutrality and non-discrimination as provided under the IJF Statutes and the Olympic Charter*" (para. 107 of the First Award). Its findings even led the First Panel to the conclusion that the occurred violation had "*serious character*" (para. 108 of the First Award) and qualified as "*serious breach*" within the meaning of Article 28.1 of the IJF Statutes (para. 121 of the First Award) which could lead to a suspension or an expulsion of the IRIJF (para. 121 of the First Award). The finding that the annulment of the Suspension Decision exclusively due to the circumstance that the imposed sanction lacked the necessary legal basis is corroborated by the fact that the First Panel held that "*the case shall be referred back to the IJF Disciplinary Commission, for its appropriate sanction(s), taking into account all relevant circumstances – inter alia – the suspension already imposed on the* [*IRIJF*]" and decided that, given, inter alia, the outcome of the arbitration, the IRIJF had to pay a "*contribution in the amount of CHF 5'000 to the IJF's legal fees and other expenses*" incurred in connection with that arbitration. However, as follows from Swiss and CAS jurisprudence (CAS 2017/A/4954), when a case is referred back to the previous instance exclusively in order to re-assess the scope of the sanction, it is not necessary for the previous instance to sit in a different composition. Thus, the Panel holds that this argument has to be rejected.

84. Regarding the competence of the IJF Disciplinary Commission to impose a sanction like the one at hand, *i.e.* a provisional withdrawal of the status of IJF member and all affiliated components for four (4) years, the Panel holds that it follows from the combined lecture of Articles 28.2.1 of the IJF Statutes, Article 30.1 of the IJF Statutes ("*The Disciplinary Commission of the first instance may lay down the sanctions listed in the IJF Disciplinary Code against IJF Members […]*") and Article 12 al. 2) lit. e) of the IJF Disciplinary Code, that the IJF Disciplinary Commission has the necessary statutory competence to pronounce a suspension or an expulsion of a IJF member like the IRIJF.

85. As regards the allegation that the IJF President determined the composition of the IJF Disciplinary Commission in violation of the requirements set out in Article 11.14 and Article 13 of the IJF Statutes, the Panel notes that the Appellant did not contest the exhibits submitted by the Respondent in order to prove that the appointment of the members of the IJF Disciplinary Commission was fully in line with the relevant provisions. More particularly, it is uncontested that the IJF Executive Committee explicitly agreed to the appointment of the said members which is, if one were to follow the Appellant's submission, exactly what should have been done.

86. Regarding the IJF President's alleged conflict of interest, the Panel observes, first, that the fact that the IJF President supposedly gave, as the Appellants' stated, "*full guarantee to protect the [Athlete]*" does not allow to draw the conclusion that he "*prejudged*" the

case in the course of the administration of incidents or that he was "*himself involved in the facts of the case*". The Panel holds, second, that such guarantee can by no means be considered to lead to a conflict of interests on the part of the IJF President as it has no correlation to the facts of the case which were to be assessed by the competent IJF bodies nor does it amount to a "*interfering situation of a nature that may influence or appear to influence the independent, impartial and objective exercise of [the IJF President's] position*" in the sense of Article 6 of the IJF Code of Ethics. Consequently, the Panel also fails to see any basis for the Appellant's argument according to which the modality for designation of the members of the IJF Disciplinary Commission to deal with the case lacks basic standards of impartiality and independence. In any event, this allegation was of a purely general nature and was unsubstantiated as regards the different members having composed the IJF Disciplinary Commission.

87. In view of the above, the Panel holds that the argument drawn from an alleged invalidity of the Appealed Decision is ill-founded and has to be dismissed.

D. As to the substantive validity of the Appealed Decision

88. As the Appellant itself pointed out during the hearing, its three main arguments in relation to the substantive validity of the Appealed Decision are that (i) it is totally inappropriate due to its main concentration of an annulled decision, (ii) the imposed sanction is illegal because it is based on Article 12 al. 2) lit. e) of the IJF Disciplinary Code and not, as instructed by the First Panel, on Article 12 al. 2) lit. c) of the same Code, (iii) the imposed sanction is, in all aspects, disproportionate.

89. In order to address the different arguments raised by the Appellant, the Panel will start by examining the question whether the First Panel gave, as the Appellant maintains, instructions to the IJF Disciplinary Commission to base the sanction it was called to eventually adopt exclusively on Article 12 al. 2) lit. c) of the IJF Disciplinary Code.

90. In this regard, the Panel notes, first, that the operative part of the First Award contains no indication that such instruction was given. Second, as rightly pointed out by the Respondent, it is clear from para. 125 and 126 of the First Award, that the First Panel exclusively examined whether Article 12 al. 2) lit. c) of the IJF disciplinary Code empowered the IJF Disciplinary Commission to inflict a sanction like the one imposed in the Suspension Decision. In doing so, the First Panel concluded that the "modalities" of the "suspension" imposed by the IJF Disciplinary Commission in the Suspension Decision were not in line with the wording of Article 12 al. 2) lit. c) of the IJF Disciplinary Code, this provision being the only one containing the word "suspension" and, thus, being *prima facie* the provision that the "suspension" imposed by the IJF Disciplinary Commission had to respect. However, this finding does not allow to draw the inference that the First Panel instructed the IJF Disciplinary Commission to base any eventual sanction exclusively on Article 12 al. 2) lit. c) of the IJF Disciplinary Code. Indeed, third, in para. 128 of its award, in which the First Panel concluded that the Suspended Decision had to be annulled and the case referred back to the IJF Disciplinary Commission for its appropriate "sanction(s)", the First Panel did neither make a reference to Article 12 al. 2) lit. c) nor limit the IJF Disciplinary Commission's discretion as to the sanction to be imposed. It clearly did not state that the sanction was

limited to a "suspension". The First Panel did however state that, when imposing a sanction, the IJF Disciplinary Commission is "*bound by* [the] *exhaustive list of possible sanctions* [provided in Article 12 of the IJF Disciplinary Code]" (para. 124 and 125).

91. It follows from the foregoing that, contrary to the Appellant's submissions, the IJF Disciplinary Commission was not bound to use Article 12 al. 2) lit c) of the Disciplinary Code as legal basis for the sanction imposed in the Appealed Decision.

92. The Panel will examine, next, whether the IJF Disciplinary Commission was entitled to validly base the sanction inflicted in the Appealed Decision on Article 12 al. 2) lit e). of the IJF Disciplinary Code. In this regard, it must be noted that it is clear from its wording ("*Provisional or definitive withdrawal of the status of the IJF member and its affiliated components*") that this provision is manifestly and exclusively meant to be applied to IJF members. The Appellant being such an "IJF member" it follows that this provision could be applied to the Appellant. Given the seriousness of the violation committed by the Appellant, the Panel finds that the sanctions foreseen under lit a), b) and d), seem, *prima facie*, inadequate to the case at hand. As for lit. c) of that same Article 12 al. 2), the Panel considers that even without having to decide whether or not the French version of the texts prevails, it is clear from the last sentence of Article 12, that this provision is meant to be applied to a "person", *i.e.* an individual, and not to legal entities like a national federation. Thus, the Panel holds that the IJF Disciplinary Commission was entitled to apply, in the present case, a sanction on basis of Article 12 al. 2) lit. e) of the IJF Disciplinary Code.

93. This conclusion is not invalidated by the Appellant's argument according to which the relevant IJF texts lack an express provision describing in sufficient clarity and specificity the reproached misconduct and the applicable sanction. Indeed, the Panel fully shares the position adopted by the First Panel in this regard when it held that the Appellant's misconduct amounts to a "*serious breach*" of "*the principles of political neutrality and non-discrimination as provided under the IJF Statutes and the Olympic Charter*" which could lead to a suspension or an expulsion of the IRIJF (para. 107 and 121 of the First Award). The fact that legal dispositions such as Articles 1.2.2 and 1.2.4 of the IJF Statutes as well as Articles 2.5 and 2.6 of the Olympic Charter do not expressly prohibit a member federation to instruct its athletes to deliberately lose a contest in order to avoid competing against an Israeli athlete at a later stage of the competition is intrinsically linked to the rather general character of those dispositions and cannot be considered as depriving these provisions of the necessary clarity or specificity to be validly applied.

94. The same is true for the sanction imposed in the Appealed Decision as it is clearly stated in Article 28.1 of the IJF Statutes that a national federation may be suspended or expelled from the IJF on the ground of a "*serious breach […] pursuant to a final decision of one of the IJF Discipline Commissions […]*" and in Article 12 al. 2) that the IJF Disciplinary Commission can impose a "*provisional or definitive withdrawal of the status of the IJF Member and all its affiliated components*". Hence, the Appellant's argument according to which the Appealed Decision violates the principle of *nulla poena sine lege clara* has to be dismissed.

95. As regards the proportionality of the sanction imposed, the Panel notes that, as argued by the Appellant, constant CAS jurisprudence has held that in disciplinary matters, each situation must be evaluated on a case-by-case basis and interests at stake have to be balanced in respect of the principle of proportionality. Account must be taken of the seriousness of the facts and other related circumstances as well as of the damage that the penalised conduct entails for the parties involved, for the federation in question and for its sport. In the same way, disciplinary bodies may evaluate any aggravating and/or extenuating circumstances that might be related to the infringement (CAS 2016/A/4595 and CAS 2016/A/4871).

96. The Panel fully adheres to this consistent jurisprudence, as it adheres to the jurisprudence according to which CAS panels shall give a certain level of deference to decisions of sports governing bodies in respect of the proportionality of sanctions; those sanctions can only be reviewed when they are evidently and grossly disproportionate to the offence. Accordingly, in CAS appeal proceedings against a decision by a disciplinary body of an international federation imposing sanctions on one party, the test to be applied by the CAS panel is not whether the fine imposed is in accordance with that body's longstanding practice, but rather whether the fine imposed is evidently and grossly disproportionate to the offence (CAS 2016/A/4595, para. 59 and references).

97. With regard to the seriousness of the present case, the Panel recalls that the First Panel held that, in view of the fact that the case did not concern a unique event but rather involves a scheme; that the case reveals an institutionalised scheme and that said scheme violates principles of paramount importance, the violations committed by the Appellant qualify as "*serious breach*" within the meaning of Article 28.1 of the IJF Statutes and, thus warrant the imposition of a "sanction" or an "expulsion" (para. 121 of the First Award). The Panel further considers that the fact that, by letter dated 1 March 2019, the IJF President had warned the Appellant that it would be suspended for an unlimited period, and that the Appellant nonetheless continued to implement the above-mentioned scheme is corroborating the seriousness of the violation committed by the Appellant.

98. As regards the other circumstances of the case referred to by the Appellant [*i.e.* that (i) high ranked Iranian officials sent a letter to the President of the IJF to prove their willingness to respect of fundamental principles of the Olympic charter, (ii) the charge attributed to the Appellant relate events which took place for the first time, while the Appellant was never called to order prior to now; (iii) the hearing before the First Panel revealed that considerable part of the witnesses' statements introduced by the Respondent were unsubstantiated, (iv) the proposals submitted by the Iranian Parliament to prohibit Iran athletes to compete with Israeli athletes were rejected] and which, according to the latter, had to be taken into consideration by the IJF Disciplinary Commission, as mitigating factors, the Panel notes, first, that is not apparent from the Appealed Decision that the IJF Disciplinary Commission did not take these elements into account. To the contrary, as is clear from the Appealed Decision, the IJF Disciplinary Commission was well aware that it was take "*into account all relevant circumstances*" (first words on page 2 of the Appealed Decision).

99. Second, in any event, the circumstances referred to by the Appellant do not diminish the seriousness of the violation as (i) the letter of the high ranked Iranian officials was sent on 9 May 2019 and did not prevent the Appellant from committing the violation at the 2019 Tokyo Judo World Championships which took place from 25 to 31 August 2019; (ii) that while the Appellant has indeed not been priorly sanctioned for similar or identical infringements, it had received, on 1 March 2019, a warning for similar violations in a letter from the IJF President; (iii) any finding, by the First Panel, that the witness statements submitted by the Respondent were unsubstantiated did not prevent the First Panel to conclude that the breach was of "serious character" and could validly lead to a suspension or an exclusion of the Appellant; (iv) the removal from an Anti-Israeli Sports motion from a bill does neither allow the inference that such removal would prevent the violation from happening nor the deduction that the violation was the result of a requirement set out in a mandatory legal provision.

100. Third, contrary to what the Appellant maintains, the IJF Disciplinary Commission did, manifestly, take into account that the Appellant had already been suspended as it decided that the starting point of the sanction imposed in the Appealed Decision would be 18 September 2019, which was the starting date of the initially inflicted suspension.

101. Fourth, as to the argument that the imposed sanction is not proportionate as it would lead to the eradication of judo in Iran, the Panel notes that the objective of the sanction at hand is surely not to eradicate judo in Iran, but to sanction the IRIJF for a serious breach of the IJF Statutes and the Olympic charter. A legitimate purpose of that sanction could legitimately be to serve as a deterrent to parties who do not wish to respect the rules set out in the IJF Statutes or a warning like the one to be found in the IJF President's letter dated 1 March 2019. As a result, a sanction like the one at hand cannot be seen as running against the objective to develop judo and improve its quality throughout the World. Finally, and in any event, the Panel does not see why this sanction would eradicate judo in Iran, as the Iranian judokas and coaches can still exercise their sport, and teach, train, and compete although not on an international level. This entails that, contrary to what the Appellant maintains, the imposed sanction cannot, according to the Panel, be considered as infringing the Iranian judokas' individual right to choose a sport, freedom of social activities and free participation to cultural life. In this regard, the Panel further notes that the IJF Disciplinary Commission cannot be held responsible for the alleged indirect negative effects on the Iranian people as these effects are solely attributable to the behaviour of the IRIJF.

102. Fifth, regarding the Appellant's submission according to which the date of the effectiveness of the imposed sanction, *i.e.* from 18 September 2019 until 17 September 2023, would prevent the Iranian judokas from taking part at two Olympic Games as they will not be able to gather the necessary ranking points to be qualified for the 2024 Olympic Games, the Panel notes that there is no substantive evidence to support that claim. Indeed, it follows from the Respondent's answer to a question from the Panel that, on one hand, the qualification system for the 2024 Olympic Games has not yet been finally approved by the IJF and, on the other hand, the deadline for said qualification is likely to be the 23 June 2024, leaving thus nine (9) months to the Iranian judokas to gather points for such qualification. Hence, this argument has to be dismissed.

103. Sixth, as regards the Appellant's argument that in cases similar to the one at hand, the IJF Disciplinary Commission imposed less severe sanction, the Panel deems it sufficient to point out that during the hearing the Respondent has, without being contradicted by the Appellant, provided a certain number of elements shoving that the alleged precedents were not comparable to the case at hand. Indeed, theses precedents were related to a misconduct of event organizers and not to an institutionalised scheme of a member federation of the IJF. This argument is thus ill-founded.

104. Finally, contrary to what the Appellant argued, the IJF Disciplinary Commission was not under an obligation, under the *lex mitior* rule, to pronounce the suspension of the imposed sanction in application of Article 14 of the IJF Disciplinary Code. Indeed, first this provision cannot be seen as a *lex mitior* as it is part of the same set of rules than the ones applied in the present case and only constitutes a different modality than the one set out in Article 12 of the same Code. Further, pursuant to Article 14 of the IJF Disciplinary Code the sanction mentioned in Article 12, al. 2) lit e) of that code "*may, in case of the first sanction be totally or partially suspended*". Thus, in any event, the application of the modality set out in this provision is not mandatory and was at the discretion of the IJF Disciplinary Commission. Given the circumstances of the case, in particular the seriousness of the violation and the fact that the Appellant had already received a warning letter on 1 March 2019, the Panel considers that it would not be appropriate to apply Article 14 of the IJF Disciplinary Code in the present matter. Thus, it holds that the IJF Disciplinary Commission's decision to not resort to this provision was legitimate and has to be confirmed.

105. The Panel finds that, in view of these elements, and given the fact that, on basis of the applicable rules, *i.e.* the IJF Statutes or the IJF Disciplinary Code, the Appellant could have, given all the circumstances of the case, validly been imposed an expulsion, the imposed sanction, *i.e.* a provisional withdrawal of its status of IJF member and all affiliated components for four (4) years, from September 2019 until 17 September 2023, not only does not appear to be evidently and grossly disproportionate to the offense in the senses of the CAS jurisprudence but (has to be considered as) is proportionate.

106. This finding is not invalidated by the Appellant's allegation that the imposed sanction places it in a less favourable situation that the one it was in before appealing the Suspension Decision. Indeed, as the Respondent rightly pointed out, the sanction imposed in the Suspension Decision was open-ended and thus, indisputably, potentially longer than the sanction imposed in the Appealed Decision. Moreover, the Panel deems that the appropriateness of the sanction imposed in the Suspension Decision was further increased by the fact that, pursuant to that decision, the IJF Executive Committee was "*to determine the modalities of the guarantees to be given and the actions to be undertaken in order to demonstrate its commitments to respect the IJF Statutes by the* [*IRIJF*]". This requirement entailed that there were supplementary modalities the IRIJF had to comply with to have the suspension lifted whereas the end of the sanction imposed in the Appealed Decision is not tributary to any such modalities. The sanction inflicted in the Appealed Decision comes to an automatic end on 17 September 2023 without the IRIJF having to give any guarantees whatsoever. The Panel thus holds that the Appealed Decision does not place the Appellant in a less favourable position than the Suspension Decision.

107. Finally, the finding that the sanction inflicted in the Appealed Decision is proportionate is not overturned either by the Appellant's allegation that the Appealed Decision violates the principle of fairness. In support of this allegation, the Appellant maintains, first, that the procedure foreseen in the IJF texts to choose and appoint the members of the IJF Disciplinary Commission affects the independence of these members and, second, that the "*protection of procedural rights is to some extent a mandatory or forced normative element as failure to respect certain fundamental procedural rights constitutes a violation of ordre public and grounds for legal challenge*". In this respect, the Panel notes that these allegations are of purely general nature and lack the necessary specificity when it comes to the independence of the different members of the composition of the IJF Disciplinary Commission who had to adjudicate the matter at hand. Further, the Panel recalls that the alleged lack of independency of the members of the IJF Disciplinary Commission or other procedural flaws having potentially affected the validity of the Appealed Decision are, as already mentioned above, "cured" through the *de novo* power of review that is granted to the Panel by Article R57(l) of the CAS Code.

108. In view of all of the above considerations, the Panel concludes that the Appealed Decision is lawful and thus to be upheld and that the Appellant's appeal is to be dismissed.

109. Given this conclusion, the Appellant's request for compensation lacks the necessary legal ground and has, thus, to be rejected.

110. Any other and further claims or requests for relief are dismissed.

X. COSTS

111. Article R65.1 of the CAS Code provides that:

"*This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. […]*"

112. Article R65.2 of the CAS Code reads as follows:

"*Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.*

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.-- without which CAS shall not proceed and the appeal shall be deemed withdrawn. […]"

113. Article R65.3 of the Code provides:

"*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has*

discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties."

114. The present appeal being directed against a disciplinary decision from an international sports-body, it is free, except for the CAS Court Office fee of CHF 1,000 paid by the Appellant, which is retained by the CAS.

115. (…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Islamic Republic of Iran Judo Federation against the decision issued on 28 April 2021 by the Disciplinary Commission of the International Judo Federation is dismissed.

2. The decision issued on 28 April 2021 by the Disciplinary Commission of the International Judo Federation is confirmed.

3. This award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the Islamic Republic of Iran Judo Federation, which is retained by the Court of Arbitration for Sport.

4. (…).

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

Seat of arbitration: Lausanne, Switzerland

Award issued on 1 September 2022

COURT OF ARBITRATION FOR SPORT

Jacques Radoux
President of the Panel

Ahmadreza Barati
Arbitrator

Hans Nater
Arbitrator