TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Arbitration CAS 2023/A/9364 Hisham Nasr v. International Handball Federation (IHF), award of 23 October 2023

Panel: Mr Jacob Jørgensen (Denmark), President; Prof. Ulrich Haas (Germany); Mrs Carine Dupeyron (France)

Handball
Ethics
Nulla poena sine lege principle in disciplinary proceedings
Burden of proof
Standard of proof
Waiver agreement and res judicata effect
Direct involvement in the alleged violation

1. **It has been established several times that the *nulla poena sine lege* principle applies in disciplinary cases. For a sanction to be imposed, sports regulations must proscribe the misconduct with which the subject is charged, i.e. *nulla poena sine lege* (principle of legality), and the rule must be clear and precise, i.e. *nulla poena sine lege clara* (principle of predictability). The inherent vagueness of concepts such as ethics and integrity does not preclude them to be used by sports legislators as a basis to impose disciplinary sanctions on officials that do not conform their behaviour to those standards. The fact that it is broadly drawn does not necessarily lack sufficient legal basis because of that characteristic, as generality and ambiguity are different concepts.**

2. **The principle of burden of proof applies if the requisite degree of conviction that an alleged fact is fulfilled is not reached. In such a case, the principle of burden of proof defines which party has to bear the consequences of such a state of non-conviction on the part of the arbitral tribunal with respect to the establishment of an alleged fact. Except where an agreement would determine otherwise, the arbitral tribunal shall allocate the burden of proof in accordance with the rules of law governing the merits of the dispute.**

3. **The standard of proof is defined as the level of conviction that is necessary for a panel to conclude in the arbitral award that a certain fact happened and is a question of Swiss substantive law. Following article 3.3 of the IOC Code of Ethics, which forms part of the IHF Ethics Code the standard of proof applicable in such case is "balance of probabilities". According to the standard of proof of a "balance of probabilities", a sanctioning authority must establish the disciplinary violation to be more probable than not. It is noted that this standard of proof is lower than the "comfortable satisfaction" standard widely applied by CAS panels in disciplinary proceedings.**

4. **A waiver agreement which would have been embodied into an arbitral award, could**

potentially have been given *res judicata* effect under Swiss law provided that the elements of the "triple identity test" would have been satisfied. However, in case a waiver agreement has not been embodied in an arbitral award, it cannot have *res judicata* effect as it would only be a private agreement and not a decision of a court or an arbitral tribunal.

5. In the absence of any evidence of misconduct on the part of an individual, any sanctions imposed on that individual by way of disciplinary decisions are illicit and, therefore, to be treated as null and void and without any legal effect.

I. THE PARTIES

1. Mr Hisham Nasr ("Mr Nasr" or the "Appellant") is an Egyptian national who, at the time relevant in this arbitration, was a member of the Board of Directors and subsequently the President of the Egyptian Handball Federation (the "EHF").

2. The International Handball Federation (the "IHF" or the "Respondent") is the governing body of handball at worldwide level, headquartered in Basel, Switzerland.

3. The Appellant and the Respondent, collectively, are also referred to as the "Parties" in the following.

II. BACKGROUND FACTS

4. Below is a summary of the main relevant facts, established on the basis of the written and oral pleadings of the Parties and the evidence submitted to the Panel. Although the Panel carefully considered all the facts submitted to it by the Parties, only those relevant for deciding the present dispute are set out below. Additional facts may be set out, where relevant, in connection with the legal discussion.

5. The present matter arises from a number of Alleged Violations committed by the officials of the Egyptian Handball Federation ("EHF"), including the Appellant, in relation to the EHF Electoral Congress held in November 2017 and the governance of the EHF in the period from 2017 until 2020.

6. Mr Ahmed Ehab Nour El-Din Al-Nahhas ("Mr Al-Nahhas") was one of the candidates running for the position of Vice-President of the EHF during the 2017 EHF Electoral Congress (the "2017 Congress"), which was scheduled to be held on 18 November 2017. Shortly before the elections, the EHF decided to exclude him from the list of candidates. Mr Al-Nahhas appealed the decision of the EHF to the Egyptian Sports Settlement and Arbitration Center ("ESSA Center").

7. On 12 November 2017, the ESSA Center decided to stop the implementation of the EHF

decision and ordered the EHF to include Mr Al-Nahhas in the list of candidates.

8. On 18 November 2017, the 2017 EHF Electoral Congress was held, during which *inter alia* the EHF President and the EHF Board of Directors were elected for the period from 2017 until 2020.

9. The Appellant was elected as the EHF President at the 2017 Congress. Before becoming the EHF President, he was a member of the EHF Board of Directors during the term up until 2017.

10. On 18 December 2017, Mr Al-Nahhas filed an appeal to the ESSA Center seeking the cancelation of the election results of the 2017 Congress. He claimed that several violations had allegedly occurred during the Congress, including the following:

- Mr Al-Nahhas was allegedly not given the opportunity to present his electoral programme because the EHF did not postpone the date of the 2017 Congress after he had been re-included in the list of candidates pursuant to the decision of the ESSA Center;

- the voting cards used during the elections were allegedly invalid because they identified the voting member clubs;

- about twenty members had allegedly failed to pay their annual fee prior to the 2017 Congress and were therefore allegedly not eligible to participate in the voting process; and

- 40 (out of 89) members allegedly did not comply with the requirement of being active members for more than one year prior to being eligible to vote at the 2017 Congress.

11. These alleged irregularities are referred to as the "2017 Alleged Congress Irregularities" in the following.

12. On 18 March 2018, the ESSA Centre admitted the appeal of Mr Al-Nahhas and annulled the results of the elections to the EHF Board of Directors held on 18 November 2017 (the "ESSA Decision"). In its decision, the ESSA Centre found that the above-mentioned 2017 Alleged Congress Irregularities had *"change[d] the result of the entire election process and [made] it completely disgraceful"*. As a result, the entire election process was declared invalid.

13. On 22 April 2018, the EHF appealed against the ESSA Decision.

14. On 8 May 2018, Mr Al-Nahhas and the EHF (represented by the Appellant in his capacity of President) concluded a waiver agreement (the "Waiver Agreement") according to which the EHF agreed to withdraw its appeal against the ESSA Decision, and Mr Al-Nahhas agreed not to implement the ESSA Decision and to nullify its legal consequences, *i.e.*, the election results of the 2017 Congress would be maintained despite the alleged irregularities.

15. On 19 February 2021, the IHF found that Mr Nasr was in breach of the IHF COVID-19 Medical Precaution Plan during the 2021 IHF Men's World Championship held in Egypt and

suspended Mr Nasr from all handball activities with immediate effect until the next IHF Congress, which included his position of President and Head of the EHF Board of Directors[1].

16. On 13 March 2021, the IHF received a letter from the Egyptian Olympic Committee (the "EOC"), which reported a number of Alleged Violations committed by the EHF during the period from 2017 until 2020. In particular, the EOC claimed that:

    i. The EHF had allegedly failed to obtain the approval of the IHF in connection with the adopting of the 2017 EHF Statutes in violation of the IHF Statutes and the Egyptian Sports Act.

    ii. The EHF had allegedly failed to submit the amendments to the EHF Statutes made during the EHF Extraordinary Congress in October 2019 to the IHF for approval and to the EOC for publication in the official *Gazette* in violation of the IHF Statutes and the Egyptian Sports Act.

    iii. The EHF had allegedly failed to fill the vacancies of three resigned members of the EHF Board of Directors during the elections at the 2020 EHF Congress in violation of the EHF Statutes.

    iv. The EOC finally also alleged that, because the Appellant was suspended and the three other members had not been replaced due to the omission of the EHF, only five out of nine members remained on the EHF Board of Directors, which meant that no quorum could be reached.

17. These Alleged Violations are referred to as the "2017 Alleged Violation", the "2019 Alleged Violation", and the "2020 Alleged Violation", individually, and to the "2017-2020 Alleged Violations", collectively in the following.

18. On 15 March 2021, the IHF Executive Committee decided to appoint an "Interim Committee" to manage the EHF until the next EHF Electoral Congress. The decision was based on the above mentioned 2017-2020 Alleged Violations:

    "According to the above-mentioned exchange of communication, a series of violations have been committed by the Egyptian Handball Federation, including but not limited to the following:

    1. Failure to obtain the IHF's approval on the 2017 EHF Statutes, violating Article 8.1.6 of the IHF Statutes and Article no. 3 of the Egyptian Sports Act no. 71 of 2017.

    2. Failure to fill the vacancies of the three resigned members of the EHF Board of Directors in the 2020 EHF Congress, violating Articles 42.2 and 53 of the EHF Statutes and the EHF Congress members' rights.

    3. Failure to send the amendments of the EHF Statutes made by the EHF Extraordinary Congress in October 2019 to the IHF for approval and to the Egyptian Olympic Committee for publication in the official Gazette

[1] See CAS 2021/A/8427 Hisham Nasr v. International Handball Federation.

until after more than 15 months of delay, violating Article 8.1.6 of the IHF Statutes and Article no. 3 of the Egyptian Sports Act no. 71 of 2017".

19. On 23 March 2021, the EOC confirmed the decision of the IHF to appoint the Interim Committee to act on behalf of the EHF.

20. On 22 August 2021, Mr Al-Nahhas sent a letter to the EHF Interim Committee, in which he summarized the alleged occurrence of the 2017 Alleged Congress Irregularities.

21. On 8 September 2021, the EHF forwarded a copy of the letter of Mr Al-Nahhas to the IHF *"in order to take the necessary procedures in this regard".*

22. On 22 October 2021, the IHF Executive Committee decided to submit the matter to the IHF Ethics Commission for investigation and potential action. The relevant letter, with elements of the case file, was submitted to the IHF Ethics Commission on 27 October 2021.

23. On 6 April 2022, the IHF Ethics Commission issued a decision, finding that nine EHF officials, including the Appellant, who were members of the EHF Board of Directors during the period from 2017 until 2020 and before the 2017 Congress (for three of them), had breached the provisions of the IHF Ethics Code related to Integrity and Good Governance, and each of them was sanctioned with a one-year suspension from participating in any activity related to handball (the "Ethics Commission Decision").

24. In the Ethics Commission Decision it was decided as follows:

    "1.- The conduct attributed to Eng. Hesham Nasr, […], President and members of the former Board of Directors of the Egyptian Handball Federation (EHF), represents a violation of the IHF Ethics Code, particularly its Article 5, according to the reasons and conclusions established in this decision.

    2.- The decision rendered by the INTERNATIONAL HANDBALL FEDERATION ETHICS COMMISSION, given the serious nature of the failure and the principle of proportionality and adequacy of the sanction, as well as considering the circumstances in determining the measure of the sanction, is to impose on Eng. Hesham Nasr, […], President and members of the former Board of Directors of the Egyptian Handball Federation (EHF) a one-year ban from participating in any activity related to handball, including any event, participation in Assemblies of any kind, or the appointment of members of the former Board of Directors to positions within the International Handball Federation, the African Handball Confederation and the Egyptian Handball Federation, counted from the notification of this Decision, for violation of the Integrity and Good Governance principles contained in Article 5 of the Ethics Code, in accordance with the provisions of Article 9 of the IHF Ethics Code, further urging the sanctioned parties not to repeat the conduct in the future".

25. Article 5 of the Ethics Code, which constitutes the legal basis of the Ethics Commission Decision (and is therefore worth citing *in extenso*) provides as follows:

*"**V. Conduct***

The Code and all applicable laws and regulations shall at all times be complied with.

Any individual who wishes to be involved in handball as an Official shall demonstrate reliability and respect to the values of the Code and commit to be subject to the Code before being nominated.

Any individual who attempts or agrees with another individual to act in a manner that would constitute or culminate in the commission of a violation of the Code, shall be treated as if a violation has been committed, whether or not such attempt or agreement in fact resulted in such violation.

Any individual who knowingly assists, fails to report or is otherwise complicit in any act or omission, which constitutes or culminates in the commission of a violation of the Code, shall himself be treated as having committed a violation under the Code.

The acts and omissions stated in the PF shall be prohibited.

Dignity

Safeguarding the dignity of the individual is a fundamental requirement of the IHF.

All forms of harassment in handball be it physical, professional, verbal, mental or sexual are prohibited.

There shall be no discrimination in handball on the basis of race, gender, ethnic origin, colour, culture, religion, political opinion, marital status, sexual orientation or other grounds.

Doping is strictly prohibited in accordance with the IHF Anti-Doping Regulations. Article 6 of the Statutes shall also apply.

Betting or support in any form of betting on handball, manipulation of the results of IHF Events or any other corrupt conduct are prohibited.

The Code incorporates by reference the Olympic Movement Code on the Prevention of the Manipulation of Competitions of 8 December 2015 (Appendix) as well as any amendment made thereafter by the IOC. In case of any amendment by the IOC, the Appendix will be updated accordingly.

Every reference to "Sporting Organisation" in this IOC Code shall mean the IHF and its affiliated organisations, where applicable.

The IOC Integrity and Compliance Hotline at www.olympic.org/integrityhotline is available for anonymous reports.

Candidates for elected IHF positions shall conduct their candidacies with honesty, dignity and respect for other candidates in accordance with the IHF Rules concerning Candidacy for IHF Office and Conduct of Elections (Appendix).

Integrity

Individuals shall not act in a manner likely to adversely affect the reputation of the IHF, or the sport of handball generally, nor shall they act in a manner likely to bring the sport into disrepute.

Any individual shall act with the utmost integrity, honesty and responsibility in fulfilling his role in the sport of handball and shall not be engaged in any criminal or other improper activity within or outside handball.

Individuals shall not, directly or indirectly, offer, promise, give, solicit or accept any personal remuneration or commission, financial or other benefit, any concealed benefit or service of any nature connected with the organisation of IHF Events, IHF elections or appointment to IHF offices, except gifts of nominal value as a mark of respect or friendship not exceeding average of well-established prevailing local customs. Article 6 of the Statutes shall also apply.

The IHF Parties shall not be involved with individuals or legal entities, the activities or reputation of which are inconsistent with the values stated in the Code.

IHF Officials shall act for the benefit of the IHF, when making decisions, which affect or may affect the IHF without reference to their own personal interest, financial or otherwise, according to the IHF Rules on Conflicts of Interest of IHF Officials (Appendix).

IHF Officials shall remain politically neutral in their dealings on behalf of the IHF with

government institutions, national and international organisations.

Good Governance

The basic universal principles of good governance, in particular transparency, responsibility and accountability shall be respected.

IHF, NF or CHC resources may only be used for their intended purposes to the benefit of handball.

Income and expenditures shall be recorded in accounts in accordance with generally accepted accounting principles. The accounts shall be annually audited and reported to the Congress".

26. Article 9 of the Ethics Code which constitutes the legal basis of the sanction imposed by the Ethics Commission on the Appellant provides as follows:

"IX. Measures and Sanctions

In case of a violation under the Code the measures and sanctions, which may be imposed by the EC, are the following:

- *To caution or censure,*

- *To issue fines,*

- *To suspend an individual, with or without conditions, or expel an individual from office,*

- *To suspend or ban an individual from taking part in any handball related activity including any Events and IHF Events, as defined by the EC,*

- *To remove any medal, prize, award or other honour bestowed on the individual by the IHF,*

- *To impose any other measure or sanction set out in any Appendix to this Code or in the PF or the EC may otherwise deem appropriate.*

The EC may impose provisional measures or sanctions at any time pending the outcome of the case".

27. In its decision, the Ethics Commission first of all relies on the above-cited letter dated 15 March 2021 sent by the IHF to the EHF regarding the IHF's Executive Committee's decision to appoint the Interim Committee, *i.e.*, the Ethics Commission relies on the 2017-2020 Alleged Violations. Furthermore, reference is made to the ESSA Decision and the 2017 Alleged Congress Irregularities, which the Appellant was found to have tolerated. This can be seen from the following excerpts from the Ethics Commission Decision (emphasis added):

"VI.B).- EVIDENCE OF THE FACT(S) BY THE IHF EXECUTIVE COMMITTEE

Analyzing the evidence presented by the IHF Executive Committee, we find that the aforementioned fact is accredited with the proof exhibited in the initial brief, which is:

*"…**6.- Communication dated 15 March 2021 sent by IHF to Egyptian Handball Federation regarding the IHF Executive Committee decision to appoint an Interim Committee**…".*

Said proof is be considered as fully transcribed in this part of the decision for the legal effects that may arise".

[…]

*"**However, it does not go unnoticed by this IHF Ethics Commission that these facts were indirectly tolerated by the former EHF Board of Directors 2017–2020 consisting of Eng. Hesham Nasr, President** […] and even three of the members of that former EHF Board of Directors 2017–2020 […] were part of the previous one whose actions were the cause of the **electoral conflict** described in Facts 1, 2, 3 and 4 of the letter of the members of the IHF Executive Committee.*

In that sense, these tolerated Facts and the evidence related to them will only be taken into consideration to permeate the a posteriori criterion of this IHF Ethics Commission on the actions of the members of the former Board of Directors 2017–2020".

*"VII.C).- **For the IHF Ethics Commission it does not go unnoticed that in accordance with the fact stated in numeral VI.A) of this Decision, accredited with the proof indicated in numeral VI.B) also of this Decision – which was not objected or contradicted by the parties involved in this procedure –, and with the integral review of***

the documents of the present file related to the fact in question, the following is punctually accredited:

1.- That the Egyptian Handball Federation (EHF) headed by the then Board of Directors made up of the accused parties in this proceeding committed a series of violations of various IHF regulations, which consisted, among others, of the following:

"…1.Failure to obtain the IHF's approval on the 2017 EHF Statutes, violating Article 8.1.6 of the IHF Statutes and Article no. 3 of the Egyptian Sports Act no. 71 of 2017….2.Failure to fill the vacancies of the three resigned members of the EHF Board of Directors in the 2020 EHF Congress, violating Articles 42.2 and 53 of the EHF Statutes and the EHF Congress members' rights….3.Failure to send the amendments of the EHF Statutes made by the EHF Extraordinary Congress in October 2019 to the IHF for approval and to the Egyptian Olympic Committee for publication in the official Gazette until after more than 15 months of delay, violating Article 8.1.6 of the IHF Statutes and Article no. 3 of the Egyptian Sports Act no. 71 of 2017…".

28. On 28 April 2022, the Appellant filed an appeal to the International Handball Federation Arbitration Tribunal (the "IHF Arbitration Tribunal") against the Ethics Commission Decision seeking its annulment.

29. On 15 December 2022, the IHF Arbitration Tribunal dismissed the appeal.

30. The decision of the IHF Arbitration Tribunal dated 15 December 2022 (the "Appealed Decision") is the decision appealed against in the context of these present CAS proceedings.

31. In the Appealed Decision, the Ethics Commission Decision was upheld with the following reasoning:

"6.11. The content of the Egyptian Sports Settlement and Arbitration Centre decision unambiguously indicates significant infringements of the IHF Ethics Code, committed by the EHF Board of Directors during the 2017 electoral procedure.

On 18 March 2018, the Egyptian Sports Settlement and Arbitration Centre, further to the complaint of Mr Ahmed Ehab Nour El-Din Al-Nahhas, annulled the results of the elections of the EHF Board of Directors (electoral period 2017-2020) held on 18 November 2017, as well as the consequences of the elections. Furthermore, the whole electoral process was declared null and void.

By the mentioned decision, the following facts were undoubtedly determined:

1. The elections were not postponed after the decision of the Advisory Authority of the Sports Settlement and Arbitration Centre issued on 12 November 2017. Therefore, Mr Ahmed Ehab Nour El-Din Al-Nahhas was placed in an unfavourable position, as he did not have an opportunity to present his electoral programme.

2. The invalidity of all electoral cards used in the electoral process due to the presence of serial numbers on all cards, indicating the identity of the voters.

3. Failure of some EHF member associations, who voted during the electoral Congress meeting, to fulfil their financial obligations (payment of membership fees) prior to the date of the Congress, which represents a breach of Article 13, point 14 of the EHF Statutes.

4. Attendance of 40 EHF member associations, whose active membership in the federation has not passed a full year, which is against Article 20 of the EHF Statutes.

Consequently, the above-mentioned decision of the Egyptian Sports Settlement and Arbitration Centre was issued".

32. In relation to the Appellant's alleged responsibility for the 2017 Alleged Congress Irregularities the following part of the Appealed Decision should be noted:

"However, it does not go unnoticed by this IHF Ethics Commission that ***these facts were indirectly tolerated by the former EHF Board of Directors 2017–2020 consisting of Eng. Hesham Nasr*** *[…], and even three of the members of that former EHF Board of Directors 2017–2020 (Mr […], Eng. Hesham Nasr, and Mrs […]) were part of the previous one whose actions were the cause of the electoral conflict described in […] the letter of the members of the IHF Executive Committee.*

In that sense, these tolerated facts and the evidence related to them will only be taken into consideration to permeate the a posteriori criterion of this IHF Ethics Commission on the actions of the members of the former Board of Directors 2017–2020" (emphasis added).

33. Specifically, with respect to the 2017-2020 Alleged Violations (that resulted in the appointment of the Interim Committee) the IHF Arbitration Tribunal held that:

*"****It is concluded that the activities of the EHF administration were not in accordance with the principle of good governance established in the IHF Ethics Code*** *because there was no transparency and responsibility in the actions of the parties involved, that is, of the members of the former Boards of Directors of the EHF, who had to exercise their duties according to the applicable regulations, which was not the case.* ***These failures caused the necessity of designating an internal interim committee of the EHF****"* (emphasis added).

34. With respect to the legal effect of the Waiver Agreement, which the EHF and Mr Al-Nahhas had entered into on 8 May 2018, the IHF Arbitration Tribunal stated as follows in the Appealed Decision:

*"None of the members of the EHF Board of Directors, having been heard in front of the IHF Ethics Commission, denied the above-stated facts****. Therefore, as far as the IHF Ethics Commission and the IHF Arbitration Tribunal Panel are concerned, it is obvious that the stipulations of the IHF Ethics Code have been breached, regardless of the existence of a signed waiver agreement dated 08 May 2018.***

The waiver agreement concerned does not give the possibility to justify already determined failures and irregularities occurred during the 2017 electoral procedure, or to vindicate the breach of ethical norms during the elections. The waiver agreement enabled the EHF Board of Directors, elected in 2017, to manage the Egyptian Handball

Federation until 15 March 2021, when the IHF Executive Committee appointed the Interim Committee to run the daily activities until the EHF Electoral Congress" (emphasis added).

35. On this basis, the IHF Arbitration Tribunal rendered the following decision, which upheld the Ethics Commission Decision and thereby the sanction imposed on the Appellant in the form of a one-year ban from participating in any activity related to handball:

"The appeal filed by Eng. Hesham Nasr on 28 April 2022 against the decision adopted by the IHF Ethics Commission on 06 April 2022 is dismissed.

1. Each party shall bear their own costs of proceedings".

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. On 3 January 2023, the Appellant filed a Statement of Appeal with the CAS against the IHF pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code"). In his Statement of Appeal, the Appellant requested that a panel of three arbitrators be appointed and that the proceedings be conducted both in English and French, without the need of any translation. The Appellant nominated Professor Dr Ulrich G. Haas as its party-appointed arbitrator.

37. On 20 January 2023, the Respondent requested that the case be submitted to a sole arbitrator pursuant to Article R50 of the Code to ensure a cost-efficient and swift resolution and of the case and as the Respondent did not believe that the case involved any issues of a particularly complex nature.

38. On 23 January 2023, the CAS Court Office informed the Parties that unless the Appellant accepted the Respondent's proposal related to the referral of the dispute to a sole arbitrator by 24 January 2023, the issue would be referred to the Deputy Division President for a decision.

39. On 24 January 2023, the Appellant informed the CAS Court Office that he maintained his request that the case be resolved by a panel of three arbitrators, *inter alia*, in light of the complexities involved in this matter.

40. On 24 January 2023, the CAS Court Office informed the Parties that the Deputy Division President had decided that the matter should be referred to a panel of three arbitrators. Accordingly, the Respondent was invited to nominate an arbitrator.

41. On 25 January 2023, the Respondent informed the CAS Court Office that it nominated Ms Carine Dupeyron as arbitrator.

42. On 30 January 2023, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code and within the previously extended time limit.

43. On 17 March 2023, the Respondent filed its Answer in accordance with Article R55 of the Code and within the previously extended time limit.

44. On 20 March 2023, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division and pursuant to Article R54 CAS Code, informed the Parties that the Panel appointed to decide the present dispute is constituted as follows:

President: Mr Jacob C. Jørgensen, Attorney-at-Law in Birkerød, Denmark

Arbitrators: Mr Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany

Ms Carine Dupeyron, Attorney-at-Law in Paris, France.

45. On 12 April 2023, the CAS Court Office informed the Parties that the Panel, after consultation with the Parties, had decided to hold a hearing. Furthermore, the Parties were invited to file Witness Statements of the Witness indicated in their submissions. The Parties complied with the request of the Panel within the granted deadline.

46. On 19 April 2023, the CAS Court Office, noting the Parties' availability, confirmed the date of 26 June 2023 for the hearing, to be held in Lausanne at the CAS offices.

47. On 17 May 2023, the CAS Court Office issued an order of procedure (the "Order of Procedure") on behalf of the President of the Panel and invited the Parties to return a signed copy of it, which the Respondent did on 23 May 2023 and the Appellant on 26 May 2023.

48. On 26 June 2023, a hearing was held in Lausanne, Switzerland, at the CAS headquarters. The Panel was assisted by Mr Giovanni Maria Fares, Counsel to the CAS. The Panel was joined at the hearing:

i. for the Appellant: by Mr Sami Boussarsar, counsel, and Mr Nasr, personally; and

ii. for the Respondent:by Mr Nicolas Zbinden and Mr Anton Sotir, counsels, and by Ms Amal Khalifa, IHF Secretary General, via video conference.

49. None of the Parties raised any objections as to the appointment of the Panel. The Parties agreed to waive their opening statements in the interest of a more efficient conduct of the hearing.

50. The Panel then heard witness testimonies via video conference of the Appellant's witnesses and the Appellant himself who were all duly instructed by the President of the Panel that they had a duty to tell the truth under penalty of perjury under Swiss law.

51. The Panel, furthermore, heard witness testimonies via video conference of the Respondent's witnesses who were all duly instructed by the President of the Panel that they had a duty to tell the truth under penalty of perjury under Swiss law.

52. The Parties were given full opportunity to present their case, submit their arguments and answer the questions posed by the members of the Panel.

53. Before the hearing was concluded, the Club and CAF expressly stated that they had no objection

to the procedure adopted by the Panel and that their right to be heard had been respected.

IV. THE RESPECTIVE POSITIONS OF THE PARTIES

54. The following outline is illustrative only. As a result, it does not necessarily comprise every single argument put forward by the Parties. The Panel, indeed, has carefully considered all of the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Position of the Appellant

55. In his Statement of Appeal, the Appellant seeks the following relief:

i. The Appeal of Mr Hisham Nasr is admissible.

ii. The Appealed decision rendered on 15 December 2022 by the IHF Arbitration Tribunal is cancelled in all its provisions.

iii. Refund [of] all the [incurred] expenses related to the penalty fines before the IHF Adjudicating bodies to the client [the Appellant].

iv. The Respondent is to reimburse the defense costs of Eng. Hisham Nasr, the Appellant, with a total amount of CHF 5'000,00 (Swiss Francs).

v. All costs of the proceedings of the Appellant are to be paid in full by the Respondent.

56. In support of his requests for relief, the Appellant states *inter alia* as follows in his Statement of Appeal and in his Appeal Brief:

i) The Appealed Decision

57. In support of the Appellant's claim that the Appealed Decision should be cancelled, the Appellant submits the following arguments:

1) Article 41 of the EHF Statutes

58. The Appellant submits that the general aim of the disciplinary case against him was to exclude him from any participation in future elections (in relation to handball in Egypt) in accordance with Article 41 of Egyptian Handball Federation Statutes, which requires candidates not to having been *"suspended or removed by a resolution of the General Assembly or any board of any international federation"*.

2) Burden of proof

59. Neither the IHF Ethics Commission nor the IHF Arbitration Tribunal have provided evidence supporting the contention that the Alleged Violations were tolerated by the former EHF Board of Directors (2017-2020) headed by the Appellant.

60. The burden of proof should not be reversed, as the Appellant cannot be required to prove that he is not responsible for the Alleged Violations.

3) Res judicata defence

61. With respect to the 2017 Alleged Congress Irregularities, the Appellant submits that these alleged wrongdoings cannot be invoked against him due to the Waiver Agreement, which according to the Appellant constitutes a form of a *"final judicial judgment on the merits"* which has res judicata effect under Swiss law (this is referred to as the *"res judicata* defence" in the following).

4) Ne bis in idem defence

62. The Appellant further argues that, even if the Alleged Violations were established, he should not have been sanctioned by the IHF Ethics Commission because *"the same three 'violations' which caused the [Appealed Decision] were previously used to order the dissolution of the elected EHF Board headed by [the Appellant]"*, *i.e.*, that he should not be subjected *"to disciplinary prosecution twice for the same violations"* (this is referred to as the *"ne bis in idem* defence" in the following).

5) Nulla poena sine lege defence

63. The Appellant further argues that there is no legal basis for the sanction applied against him. In this regard, he submits that the *"principle of legality"* dictates that sports organizations cannot impose sanctions without a proper legal or regulatory basis for them and that such sanctions must also be predictable. The principle of legality and predictability of sanctions requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision (this is referred to as the *"nulla peona sine lege* defence*"* in the following).

6) The 2017 Alleged Congress Irregularities

64. In relation to the 2017 Alleged Congress Irregularities, the Appellant submits the following arguments:

65. The disciplinary proceedings against the Appellant (and the other members of the EHF) began following a complaint filed on 22 August 2021 by Mr Al Nahhas who had informed the EHF Interim Committee about a number of irregularities that had allegedly occurred, four years earlier, namely during the 2017 elections.

66. The Appellant submits, with reference to the witness testimony given by Mr Nabil Ibrahim Mohamed Khashba, that the case was never discussed in the Interim Committee before it was submitted to the IHF Ethics Commission on 27 October 2021.

67. The electoral EHF Ordinary General Assembly was held on 18 November 2017 and was chaired by the former EHF President, Prof. Mohamed Khaled Hammouda, in the presence of the EOC and of Mr Mohamed Al-Alfy (as representative of the IHF), and headed by the Supreme Judicial Committee supervising the elections and the Legal Committee appointed by the Egyptian Ministry of Youth and Sports.

68. The Appellant submits that neither he nor the other members of the EHF Board were involved in any of the procedure for convening the electoral EHF (ordinary) General Assembly, as they were merely candidates for the vacancies. He and the rest of the Board Members took control over the work of the EHF after a handover process from the previous Board of Directors was done in the presence of the representative of the EOC and the representative of the Egyptian Ministry of Youth and Sports.

69. Accordingly, the Appellant did not participate in the decision issued by the previous Board of Directors of the EHF and the EOC regarding the exclusion of Mr. Al Nahhas from the list of candidates.

70. Similarly, the determination of the procedures for categorisation of the sports bodies with voting rights in the Electoral Assembly was made by the outgoing Board of Directors and not by the Appellant or the other members of the new Board of Directors.

71. On this basis, it is submitted that the Appellant and the other members of the new Board of Directors (for the term of office 2017-2020) have the status of "third parties" in relation to all of the complaints emanating from Mr Al Nahhas.

72. Moreover, the Appellant submits that the EOC approved the results of the elections in a decision dated 23 November 2017.

7) The 2017-2020 Alleged Violations:

a) The 2017 Alleged Violation

73. In relation to the 2017 Alleged Violation (that the EHF had allegedly failed to obtain the approval of the IHF on the 2017 EHF Statutes in violation of the IHF Statutes and the Egyptian Sports Act), the Appellant submits that this alleged violation solely pertains to and is the responsibility of the outgoing Board of EHF Directors and not of the newly elected Board, which were not involved in any of the procedures related to the 2017 EHF Statutes.

74. Accordingly, the Appellant submits that he cannot be held accountable for the 2017 Alleged Violation.

b) The 2019 Alleged Violation

75. In relation to the 2019 Alleged Violation (that the EHF had allegedly failed to send the amendments of the EHF Statutes made by the EHF Extraordinary Congress in October 2019 to the IHF for approval and to the EOC for publication in the official *Gazette* in violation of the IHF Statutes and the Egyptian Sports Act), the Appellant submits as follows:

76. The IHF was informed of the proposed amendments to the Statutes. The Appellant refers in this respect to his letter dated 1 October 2019 to Ms. Khalifa with which the proposed amendments to the EHF Statutes were forwarded to the IHF. From the attached proposed amendments it appears that they were *"for discussion at the Ordinary General Assembly on Friday, 4/10/19 at the headquarters of the Federation"*.

77. Mr Gautier Müller of the IHF acknowledged receipt of the proposed amendments by e-mail dated 2 October 2019 to Mr Sameh George of the EHF. In this e-mail, Mr Müller requested that the proposed amendments be discussed with Mr Moustafa upon his arrival in Egypt and further requested to be informed of the result of the meeting in order for the IHF to be able to confirm the amendments to the EHF Statutes.

78. The Appellant further submits that until 3 October 2019, the IHF Statutes provided that the IHF was only required to be informed of amendments to the Statutes. An approval was not required according to the Appellant.

79. With respect to the question of the *publication* of the amendments, the Appellant submits that they were in fact sent to the Egyptian Olympic Committee for publication and that the Egyptian Olympic Committee approved all of the amendments in its official correspondence addressed to the Minister of Sport, seeking the agreement of the Egyptian Ministry of Sport to publish them in the Gazette.

80. In this context, the Appellant notes that the Ministry is the only official body authorized to make the publication and points to a copy of a letter dated 26 December 2019 sent by the Appellant on behalf of the EHF to the President of the Egyptian Olympic Committee, Mr. Hisham Hatab, requesting approval and publication of the amendments and minutes of the two assemblies held on 4 October 2019.

81. Further, the Appellant points to a letter dated 1 February 2021 from the President of the Egyptian Olympic Committee, Mr Hisham Hatab, to the Minister of Sport, Mr Ashraf Sobhi, with which Mr Hatab forwarded a copy of *"Resolution no. 2 of 2021"* setting out the amended Statutes of the EHF, and requests Mr Sobhi to arrange for the publication of the amended Statutes in the Egyptian Gazette, noting that the federation would bear the costs of the publication, in which regard a form of receipt for the amount of EGP 5,700 is attached to the letter.

82. On this basis the Appellant argues that there has been no violation by him in relation to the amended EHF Statutes.

c) The 2020 Alleged Violation

83. With respect to the 2020 Alleged Violation (regarding the alleged failure to fill the vacancies of three resigned members of the EHF Board of Directors during the elections at the 2020 EHF Congress in violation of the EHF Statutes), the Appellant submits that after the amendment in 2019 of Article 40 of the EHF Statutes the number of Board Members was reduced from nine to seven.

84. Only two resignations were registered until September 2020, which reduced the number of Board Members to seven, which was in line with the amended EHF Statutes.

85. The third resignation of Mrs Mona Amine happened on 3 September 2020, which was after the date when the EHF Congress and the agenda had been fixed, thereby preventing the Appellant and his Board from adding any new agenda items.

86. In this vein, the Appellant submits that a single-seat election was scheduled to be held in 2021 to fill the vacancy, however, unfortunately, the decision of the IHF Executive Committee to appoint the Interim Committee, occurred on 15 March 2021 and therefore prevented the organization of this election.

87. On this basis, the Appellant submits that the 2020 Alleged Violation is unfounded.

ii) Monetary claims

88. The Appellant is of the view that the Appealed Decision issued against him is illicit and that the internal judicial bodies of IHF (including the IHF Arbitration Tribunal) erred when dismissing his appeals. The Appellant, therefore, requests that in case the Appealed Decision is set aside, he is entitled to recover from the IHF the costs incurred before the internal instances. In this respect, the Panel notes the Appellant's testimony at the hearing, according to which he *"invested more than 50,000 EUR in legal costs on defending himself"*. According to the Appellant, so questioned by the Panel, this amount includes in particular the appeal fee of CHF 10'000 before the IHF Arbitration Tribunal, for which the Appellant ask a full reimbursement.

B. The Position of the Respondent

89. In its Answer, the Respondent requests the Panel to rule as follows:

a) The appeal filed by Hisham Nasr on 3 January 2023 is inadmissible and/or dismissed in its entirety.

b) Hisham Nasr is ordered to pay the CAS arbitration costs, if any.

c) Hisham Nasr is ordered to make a significant contribution to the legal and other costs of the International Handball Federation.

i) The 2017 Alleged Congress Irregularities:

90. With respect to the 2017 Alleged Congress Irregularities the Respondent submits as follows:

91. After the ESSA Centre nullified the election results of the 2017 EHF Congress following the complain of Mr Al-Nahhas, and after the Appellant appealed this decision, Mr Al-Nahhas and the EHF (represented by the Appellant) concluded the Waiver Agreement, according to which the EHF agreed to withdraw its appeal against the ESSA Decision and Mr Al-Nahhas agreed not to implement the ESSA Decision despite the 2017 Alleged Congress Irregularities.

92. With respect to the Appellant's argument that the Waiver Agreement has *res judicata* effect, the Respondent asserts that the scope and application of *res judicata* must be assessed based on the *lex fori*, *i.e.,* Swiss law. In order for *res judicata* to apply, the decisions in question must meet the triple identity test[2]: (i) identity of the parties, (ii) identity of purpose, and (iii) identity of facts.

93. The Waiver Agreement cannot have *res judicata* effect, since the Waiver Agreement is a private agreement and not a decision of a court or an arbitral tribunal. Furthermore, the subject matter of the decision (and the Waiver Agreement) was the nullity of the election results of the 2017 Congress and was against the EHF, whereas the Ethics Commission Decision is a disciplinary matter against individuals based on the IHF Ethics Code.

94. The Respondent also argues that the Appellant's allegation that he was *"a mere candidate"* during the 2017 Congress is factually incorrect since the Appellant was a member of the EHF Board of Directors until the 2017 Congress, and was even considered *de facto* the EHF Vice President, responsible and directly involved in the organisation and conduct of the 2017 Congress. In this regard, the Respondent points to the witness statement of Mr Ehab Elazzab.

ii) The 2017 Alleged Violation:

95. With respect to the 2017 Alleged Violation the Respondent submits the following arguments:

96. The Appellant, was a member of the EHF Board of Directors until the 2017 Congress, when he was elected the EHF President. The violation was therefore committed *"under his watch"* according to the Respondent.

97. Article 7.1(6) of the 2016 IHF Statutes provides that:

> *"National Federations applying for membership in the IHF should comply with standard Statutes formulated by the IHF for all National Federations. […] In case of any change to these Statutes, the National Federation must communicate them to the IHF for assessment before submitting them to the National Federation's Congress".*

98. On this basis, the Respondent argues that the IHF Statutes did require an approval of the EHF Statutes, and the Appellant failed to present any evidence that this requirement was complied

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2 See, for example, CAS 2019/A/6483.

with by the EHF Board of Directors.

99. The Respondent further submits that the email by Ms Khalifa, confirming that an IHF observer would attend the EHF Congress and *"guarantee the smooth running of the [2017 Congress] and compliance of the decisions with the provisions of the IHF Statutes as well as your federation's Statutes"* does not show that the IHF had received and assessed the new version of the EHF Statutes according to the Respondent.

100. In addition, it is submitted - based on letters of the EOC dated 13 March 2021 and 17 March 2023 - that assurances were given to the EOC that the 2017 EHF Statutes had been approved by the IHF, which is a requirement under Egyptian law for their validity. On the basis of these assurances, the EOC approved the new Statutes and published them in the official Gazette. The Respondent submits that this approval was never given by the IHF.

iii) The 2019 Alleged Violation

101. With regards to the 2019 Alleged Violation the Respondent submits as follows:

102. It is not disputed that the EHF was obliged to send the amendments to the 2019 EHF Statutes *"to the IHF for assessment before submitting them to the National Federation's Congress"* as per Article 8.1(6) of the 2018 IHF Statutes.

103. On 3 October 2019, the 2019 IHF Statutes came into force, which provided that, apart from the assessment, the amendments to the national federation's Statutes must also be approved by the IHF.

104. The 2019 EHF Congress was scheduled for and held on 4 October 2019, *i.e.*, after the 2019 IHF Statutes came into force.

105. On 1 October 2019, Mr Nasr forwarded the sought amendments of the EHF Statutes to the IHF. He explicitly asked the IHF to "revise and confirm it".

106. In the communication between the IHF and the EHF of 2 October 2019, it was stated as follows:

"Please discuss these changes with Dr Moustafa [i.e. the IHF President] upon his arrival in Egypt. Kindly inform us of the result of the meeting in order for us to confirm these amendments to the EHF Statutes".

107. Eventually, the amendments to the 2019 EHF Statutes were submitted to the EHF Congress without any confirmation from the IHF, despite the fact that the IHF expressly stated that the amendments should have been discussed and confirmed by the IHF.

108. With respect to the approval of the 2019 EHF Statutes by the EOC and its publication in the official Gazette, the Respondent submits that: (i) the Appellant had not provided any corroborative evidence confirming that the amendments were sent to the EOC on 4 October 2019, (ii) the payment of the publication costs is dated 4 February 2021, *i.e.*, more than 15 months after the Statutes were adopted at the EHF Congress, and (iii) the EOC itself reported

to the IHF that the EHF Board of Directors did not send the required documents *"to the [EOC] to take proper measures to publish it in the official Gazette for more than 15 months"*. Further, with reference to an email dated 17 March 2023, the Respondent submits that the EOC has confirmed that they did not consider that the 2019 EHF Statutes were even applicable.

iv) The 2020 Alleged Violation

109. With respect to the 2020 Alleged Violation the Respondent has submitted documents showing the following resignations of Board Members: Mr Khaled El Awady resigned on 13 March 2019, Mr Moustafa Shawki resigned on 7 October 2019, and Mrs Mona Amine resigned on 30 September 2020. Furthermore, the Respondent has submitted evidence showing that the 2020 EHF Congress was scheduled for 7 November 2020.

110. The Respondent asserts that since the amended 2019 EHF Statutes were never approved by the IHF or by the EOC, there is no basis for claiming that the number of members of the EHF Board of Directors required at the time of the 2020 EHF Congress had been validly reduced from nine to seven.

111. The Respondent further points to article 42.2 of the EHF Statutes which provides:

"In case of vacancy of the positions of the President or the Vice-president or the Treasurer, the Congress shall elect in its next meeting new President or Vice-president or Treasurer for the remaining period of the term of the Board of Directors".

112. As Mr Khaled El Awady, the EHF Vice President, resigned in March 2019, his position had to be replaced during the 2019 EHF Congress, which did not happen. Nor was the position filled in during the 2020 EHF Congress. The EHF's management therefore failed to comply with Article 42.2 of the EHF Statutes according to the Respondent.

113. The Respondent finally notes that according to the EHF Statutes, an ordinary Congress of the EHF should be convoked not less than within 45 days and its agenda should be published not less than within 15 days. As Ms Mona Amine resigned more than a month prior to the 2020 EHF Congress, there was ample time to include the election of a replacement for Ms. Amine as an item on the agenda.

114. With regards to the Appellant's *ne bis in idem* defence, the Respondent submits that like *res judicata*, the principle of *ne bis in idem* is subject to the so-called *"triple identity"* test, i.e. identity of parties, of the facts and of the object or legal grounds.

115. In this vein, the Respondent submits that the suspension of the Appellant imposed by the IHF Ethics Commission had a different scope and purpose compared to the decision of the IHF Executive Committee to appoint an Interim Committee, which was not a sanction, but rather a measure imposed on the EHF. Therefore, the conditions for applying the *ne bis in idem* rule are not met in this present matter.

116. With respect to the monetary claims raised by the Appellant, the Respondent submits with

reference to established CAS case law that *"it is not for the CAS to reallocate the costs of the proceedings before the previous instances"*[3].

117. The Respondent furthermore submits that there is no provision in the IHF Statutes or other regulations that could entitle the Appellant to a reimbursement of the costs of previous instances. In fact, Article 2.2.12 of the IHF Legal Provisions stipulates as follows:

"Fees and procedural costs will not be refundable by the IHF on rejection or withdrawal of an appeal. Acceptance of an appeal will entitle the petitioner to a refund of the fee paid and the IHF will cover the procedural costs incurred, unless they are imposed on the party responsible".

118. On this basis, the Respondent asserts that the Appellant's claim for cost compensation related to the previous proceedings falls outside the scope of these appeal proceedings, which solely relates to the validity of the Appealed Decision, and as a result, his request for reimbursement of those costs should be dismissed.

V. JURISDICTION

119. The jurisdiction of the CAS has been invoked by the Appellant on the basis of Article 22 (*"Court of Arbitration for Sport"*) of the IHF Statutes, which stipulates:

"All disputes arising from these Regulations will be handled by the IHF legal bodies. After exhaustion of the internal IHF remedies, the final decision of IHF can be appealed to the Court of Arbitration for Sport (CAS) in Lausanne / Switzerland in accordance with the CAS Code that shall definitely resolve the dispute in accordance with IHF Regulations, additionally Swiss Law. The decision of CAS will be final according to Articles R46 and R59 of the CAS Code".

120. The CAS jurisdiction has not been disputed by the Respondent and has been confirmed by the Parties' signature of the Order of Procedure.

121. Therefore, the CAS has jurisdiction to decide the present dispute between the Parties.

VI. ADMISSIBILITY

122. *Ex officio* the Panel notes that the Statement of Appeal complies with the requirements of Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee. In addition, the Statement of Appeal was filed with the CAS Court Office within the deadline set by Article R49 of the CAS Code, applicable in this arbitration in the absence of a time limit set in the IHF Statutes. Accordingly, the Appeal is formally admissible.

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[3] See CAS 2013/A/3054, para. 89; CAS 2016/A/4387, para. 181-182. See also CAS 2018/A/5868, para. 133 *et. seq.*

VII. APPLICABLE LAW

123. Article R58 of the CAS Code stipulates as follows in relation to the question of the applicable law in an appeal arbitration procedure before the CAS:

"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".

124. Pursuant to Article 23 of the IHF Statutes:

"[…] the Court of Arbitration for Sport […] shall definitely resolve the dispute in accordance with IHF Regulations, additionally Swiss Law. […]"

125. As a result, the IHF regulations are primarily applicable in this matter. Swiss law applies *"additionally"*. However, for legal questions relating to the EHF it is the latter's rules and regulations that apply and subsidiarily Egyptian law.

VIII. OTHER PROCEDURAL ISSUES

In connection with the testimony of Mr Hatab, the Respondent offered to produce a copy of the mentioned e-mail dated 8 March 2021 into evidence. The Appellant protested against this.

126. The Panel notes that the Respondent did not file the said document with its Answer and did not offer any explanation in this regard. As the Respondent failed to put forward any exceptional circumstance justifying the late submission of the said document, the Panel found that the document should not be allowed into evidence in accordance with Article R56 of the CAS Code.

127. The Respondent at the hearing also challenged the legal interest of the Appellant in this procedure. More particularly, the Respondent found that the Appellant should have applied for a stay of the disciplinary sanction and because he has failed to do, he lost all interest in these proceedings. The Panel does not follow this. The disciplinary proceedings inflicted on the Appellant impacts on the latter personality rights. For this reason only, the Appellant has a legal interest to appeal the sanction and to have the legality of said decision analysed by this Panel.

IX. THE MERITS

1. Preliminary matters

1.1 Scope of review of CAS

128. It is a well-established principle that all appeals to CAS are heard *de novo*, as enshrined in Article

R57 of the CAS Code. The Panel has indeed the full power to review the facts and the law of the present matter.

1.2 The Appellant's Nulla poena sine lege defence

129. It has been established several times in CAS case law[4] that the *nulla poena sine lege* principle applies in disciplinary cases such as the present. One award[5] sums up how the legal principle is applied as follows:

> *"For a sanction to be imposed, sports regulations must proscribe the misconduct with which the subject is charged, i.e. nulla poena sine lege (principle of legality), and the rule must be clear and precise, i.e. nulla poena sine lege clara (principle of predictability). A provision prescribing that all officials show commitment to an ethical attitude and behave and act with complete credibility and integrity, is sufficiently clear and precise and unambiguous, and provides a sufficient legal basis for sanction. The fact that it is broadly drawn does not necessarily lack sufficient legal basis because of that characteristic, as generality and ambiguity are different concepts. According to the principle of predictability, the offenses and sanctions of a sports organizations must be predictable, to the extent that those subject to them must be able to understand their meaning and the circumstances in which they apply. The inherent vagueness of concepts such as ethics and integrity does not preclude them to be used by sports legislators as a basis to impose disciplinary sanctions on officials that do not conform their behaviour to those standards. Disciplinary sanctions imposed by sport associations must conform to civil law standards and not to criminal law ones, and civil law standards are often inherently vague and reveal their full meaning on the basis of judicial application".*

130. On this basis, the Panel finds that Articles 5 and 9 of the IHF Ethics Code (cited above at paras. 25 and 26), *per se*, are sufficiently clear in terms of constituting a legal basis for imposing the sanction that has been imposed on the Appellant in this case.

1.3 Burden of Proof and Standard of Proof

131. As a preliminary matter, the Panel furthermore finds it relevant to determine on which of the parties the burden of proof should be placed in relation to proving (or disproving) that the Appellant should be held responsible for the Alleged Violations to a degree where it is warranted to uphold the Appealed Decision and thereby the disciplinary sanction ordered by the IHF Ethics Commission and confirmed by the IHF Arbitral Tribunal.

132. The principle of burden of proof applies if the requisite degree of conviction that an alleged fact is fulfilled is not reached. In such a case, the principle of burden of proof defines which party has to bear the consequences of such a state of non-conviction on the part of the arbitral tribunal with respect to the establishment of an alleged fact (SFT BGE 132 III 626).

133. Except where an agreement would determine otherwise, the arbitral tribunal shall allocate the burden of proof in accordance with the rules of law governing the merits of the dispute, *i.e.*, the

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4 CAS 2016/A/4921 & 4922, award of 30 May 2017. CAS 2019/A/6393, award of 19 April 2021. CAS 2017/A/5498, award of 3 July 2019. CAS 2017/A/5155, award of 21 September 2017.

5 CAS 2017/A/5086, award of 9 February 2018.

lex causae (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 2015, No. 1316).

134. As set out above the *lex causae* in the matter at hand are primarily the various regulations of the IHF, notably the IHF Ethics Code, and subsidiarily Swiss law.

135. Whereas the IHF Ethics Code, itself, is silent on the issue, Article 3.3 of the IOC Code of Ethics, which forms part of the IHF Ethics Code, stipulates as follows:

"Burden and standard of proof

The Sports Organisation shall have the burden of establishing that a violation has been committed. The standard of proof in all matters under this Code shall be the balance of probabilities, a standard that implies that on the preponderance of the evidence it is more likely than not that a breach of this Code has occurred".

136. The Panel further notes that Article 8 of the Swiss Civil Code stipulates as follows:

"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact".

137. In the present case, the Respondent requests the Panel to confirm a sanction imposed on the Appellant. Accordingly, it is the Respondent that has the burden of demonstrating, on the balance of probabilities, that a breach of the Code of Ethics has occurred.

138. That said, in accordance with Swiss law, each party shall bear the burden of proving the specific facts and allegations on which it relies. This is even more relevant in cases where difficulties of proving arise (*"Beweisnotstand"*). In such situation, as was acknowledged by the Swiss Federal Tribunal, *"Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact* (SFT 132 III 715, E. 3.1; BK-ZPO/BRÖNNIMANN, 2012, Article 157 no. 41; BSK-ZPO/GUYAN, 2nd ed. 2013, Article 157 no. 11; CAS 2013/A/3256, para. 281).

139. The standard of proof is defined as the level of conviction that is necessary for the Panel to conclude in the arbitral award that a certain fact happened (SFT 5C_37/2004, 3.2.3) and is a question of Swiss substantive law (HASENBÖHLER, Kommentar zur Schweizerischen Zivilprozessordnung, 2016, No. 20 to Article 147 SPC).

140. As set out above, the standard of proof is described in Article 3.3. of the IOC Code of Ethics, which forms part of the IHF Ethics Code. Consequently, the Panel finds that the evidential threshold to be met in the present matter is a *"balance of probabilities"*.

141. According to the standard of proof of a *"balance of probabilities"*, a sanctioning authority must establish the disciplinary violation to be more probable than not. It is noted that this standard of proof is lower than the *"comfortable satisfaction"* standard widely applied by CAS panels in

disciplinary proceedings[6].

1.4 Res judicata and ne bis in idem issues

142. As noted above, the Appellant has argued with respect to the 2017 Alleged Congress Irregularities, that these alleged wrongdoings cannot be invoked against him due to the Waiver Agreement, which according to the Appellant constitutes a form of a *"final judicial judgment on the merits"*, which has *res judicata* effect under Swiss law.

143. The Panel notes that the Waiver Agreement has not been embodied into an arbitral award, which could potentially have given the Waiver Agreement *res judicata* effect under Swiss law provided that the elements of the *"triple identity test"* were satisfied[7].

144. The Panel agrees with the Respondent that the Waiver Agreement cannot have *res judicata* effect since the Waiver Agreement is a private agreement and not a decision of a court or an arbitral tribunal.

145. With respect to the Appellant's *ne bis in idem* defence the Panel agrees with the Respondent that the principle of *ne bis in idem* is subject to the *"triple identity"* test, *i.e.* identity of parties, of the facts and of the object or legal grounds[8].

146. The Panel notes in this regard that whereas the Appealed Decision imposes clear sanctions on the EHF officials, including the Appellant, pursuant to Article 9 of the IHF Ethics Code, no sanctions were imposed on the Appellant or on any of the EHF Board Members by the IHF Executive Committee when it decided to establish the Interim Committee on 15 March 2021 on the basis of Article 9.3 of the IHF Statutes.

147. The Panel finds that the decision by the IHF Executive Committee to establish the Interim Committee, on the one side, and the Appealed Decision rendered by the IHF Arbitration Tribunal imposing a one-year ban on the Appellant from participating in any activity related to handball, on the other side, do not meet the requirements of the *"triple identity test"*.

148. Accordingly, the Panel agrees with the Respondent that the Appealed Decision does not constitute a violation of the *ne bis in idem* principle.

149. On this basis, the Panel finds that it has the required jurisdictional powers to decide the present matter on its merits.

2. The main questions of substance

150. We now turn to the main issues of substance in the present case. In consideration of the facts in dispute, the witness testimonies presented, the submissions of the parties, and taking into

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6 CAS 2016/A/4921 & 4922, award of 30 May 2017.
7 CAS 2017/A/5163, award of 25 May 2018.
8 See CAS 2018/A/5500, para. 36 with further reference to CAS 2007/A/1396 & 1402; CAS 2018/A/5805, para. 73.

account the content of the Appealed Decision, the main questions of substance to be determined by the Panel are the following:

1) Whether the Respondent has demonstrated, on a balance of probabilities, that the Alleged Violations occurred, and in the affirmative, whether the Appellant can be held personally liable for the violations?

151. Where the first question is answered in the affirmative, it is necessary to determine:

2) Whether the Appellant's conduct amounts to a violation of the Integrity and Good Governance principles contained in Article 5 of the IHF Ethics Code, and in the affirmative, whether the imposed sanction pursuant to Article 9 of the IHF Ethics Code in the form of *"a one-year ban from participating in any activity related to handball […]"* is warranted.

2.1 Has the Respondent demonstrated, on a balance of probabilities, that the Alleged Violations occurred, and in the affirmative, that the Appellant can be held personally liable for the Alleged Violations?

a) The 2017 Alleged Congress Irregularities and the 2017 Alleged Violation

152. In assessing whether the Appellant can be held liable for these Alleged Violations pursuant to the IHF Code of Ethics, the Panel notes that the Appellant was a member of the Board of Directors of EHF during the period when the 2017 Congress was being prepared and held and also during the period when the 2017 Alleged Violation purportedly took place.

153. As stated above, the 2017 Alleged Congress Irregularities include the following allegations:

a) Mr Al-Nahhas was allegedly not given the opportunity to present his electoral programme because the EHF did not postpone the date of the 2017 Congress after he had been re-included in the list of candidates pursuant to the decision of the ESSA Center;

b) the voting cards used during the elections were allegedly invalid because they identified the voting member clubs;

c) about twenty members had allegedly failed to pay their annual fee prior to the 2017 Congress and were therefore allegedly not eligible to participate in the voting process; and

d) 40 (out of 89) members allegedly did not comply with the requirement of being active members for more than one year prior to being eligible to vote at the 2017 Congress.

154. The Panel notes that the translated copies of the ballots purportedly used in the 2017 Congress election, which have been submitted into evidence by the Respondent, carry the names of the voting member clubs with respect to two of the ballots. This would seem to support the alleged invalidity of the voting cards, however, no documentary evidence has been presented to

demonstrate that the other alleged irregularities actually occurred.

155. With respect to the 2017 Alleged Violation, the Panel notes that neither of the Parties has submitted a copy of the 2017 EHF Statutes, or any evidence showing how these Statutes were amended compared to the 2016 EHF Statutes.

156. It is clear, however, from Article 7.1(6) of the 2016 IHF Statutes that there was no mandatory requirement for the EHF to obtain an *approval* of the amendments to the EHF Statutes in 2017. It was sufficient that the amendments be sent to the IHF *"for assessment"* according to the provision. The Panel notes the Respondent's arguments that the EHF Statutes had to be approved by the IHF and the EOC, in order to become valid pursuant to Article 3 of the Egyptian Sports Act. As explained below at para. 218 *et seq*., the Panel does not agree with this interpretation of Article 3 of the Egyptian Sports Act. Furthermore, even if Egyptian law required an approval of the amendment of the EHF Statutes, this is irrelevant under the IHF Ethics Code, since the purpose of the latter is surely not to enforce Egyptian law.

157. Irrespective of the issues related to the proper legal interpretation of the mentioned provisions, the Panel notes the Appellant's submission that he and the new Board of Directors had nothing to do with the 2017 Statutes. The Panel notes in this regard that the 2017 Statutes according to an email dated 17 March 2023 from the EOC to the IHF adopted on 25 August 2017 under the Board of Directors led by Dr Khaled Hammouda, that they were approved through Decision no. 70 of 2017 by the President of EOC on 12 September 2017 and finally that the Statutes were published in the Egyptian Official Gazette on 13 September 2017. All of these procedures took place before the Appellant was elected President of the EHF at the 2017 Congress.

158. On this basis, it requires fairly clear evidence that the Appellant - as an ordinary Board Member – can be held liable for the 2017 Alleged Violation and/or for the 2017 Alleged Congress Irregularities.

159. In this context, the Panel notes the witness testimony given by Mr Ahmed Mahfouz Elsayed Ahmed, the former legal consultant to the EHF, who explained that he had personally assumed the legal supervision of the elections in 2017, and the electoral Congress held on 18 November 2017, which was chaired by former EHF President, Dr Khaled Hammouda.

160. According to this witness the Appellant did not have any role in the elections or the organisation of the 2017 Congress, and the Appellant did not have any authority over the members of the Congress or over the members and directors of the EHF during the voting or sorting processes. Further, the witness explained that all of the procedures and actions taken by the extraordinary Congress to amend the EHF Statutes in August 2017 and the electoral Congress in November 2017 were under the responsibility of Dr Khaled Hammouda. The witness also explained that the Appellant had not assumed the duties of the resigned Vice President or the duties and powers of the President for that matter. Rather, Dr Khaled Hammouda had continued to exercise his powers extensively and sometimes individually due to the vacancy of the position of Vice President.

161. The Panel also notes the written witness testimony provided by, the former EHF President, Dr Khaled Hammouda who stated in his witness statement that when the Vice President of the

EHF, Mr Khaled Diwan, resigned in 2017, the Appellant effectively took over his role and was considered the *de facto* EHF Vice President. Dr Khaled Hammouda also stated that the Appellant was responsible and directly involved in the organisation and conduct of the 2017 Congress, including the electoral process and drawing up the list of its participants.

162. Finally, the Panel notes the testimony given by Mr Ehab Elazzab, who among other things explained that the Appellant was treated as the President of the Federation, and dominated all administrative matters, especially the general assembly's procedures. According to this witness, the Appellant made decisions by himself in complete secrecy with Mr Mostafa Shawky and Mr Mohamed Abu Al-Khair in a variety of matters.

163. In assessing the evidentiary weight of these conflicting testimonies, the Panel notes that several witnesses referred to and confirmed the existence of the problematic relationship between the Appellant and Dr Khaled Hammouda.

164. The Panel furthermore attaches importance to the fact that the Respondent has not presented any documentary evidence showing that the Appellant, personally, had any direct involvement in causing the 2017 Alleged Congress Irregularities or the 2017 Alleged Violation pertaining to the EHF 2017 Statutes.

165. Against this background, the Panel finds, in line with established CAS case law, that in the absence of any evidence of misconduct on the part of an individual, any sanctions imposed on that individual by way of disciplinary decisions are illicit and, therefore, to be treated as null and void and without any legal effect[9]. In this connection, the Panel does not find that the Respondent has demonstrated that the Appellant *"tolerated"* the alleged irregularities as held in the Appealed Decision, nor that the Appellant as a Board Member of the EHF breached his duties under Article 50 of the EHF 2014 Statutes.

166. The fact that the Interim Committee was established does not, *per se*, constitute evidence that the Appellant was personally accountable for any of these Alleged Violations.

167. On this basis, the Panel finds that the Respondent has not, on a balance of probabilities, demonstrated that the Appellant, can be held personally liable for the 2017 Alleged Congress Irregularities or the 2017 Alleged Violations as a former member of the Board of Directors of the EHF.

b) The 2019 and the 2020 Alleged Violations

168. With respect to the 2019 and the 2020 Alleged Violations the Panel notes that the Appellant was the President of the EHF during the periods when these violations allegedly took place. As such, the Appellant had a higher degree of responsibility for ensuring that the EHF complied with applicable rules and procedures compared to the responsibility of the ordinary Board Members.

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9 CAS 2018/A/5876, award of 21 January 2021

169. Article 8.1.6 of the IHF statute dated 11 February 2018 stipulates as follows:

"National Federations applying for membership in the IHF should comply with standard Statutes formulated by the IHF for all National Federations. They should submit their application to the IHF before the next Congress. In case of any change to these Statutes, the National Federation must communicate them to the IHF ***for assessment*** *before submitting them to the National Federation's Congress. The National Federation should also comply with the IHF Regulations"* (emphasis added).

170. The Article 8.1.6 of the IHF Statutes dated 3 October 2019 stipulates as follows:

"National Federations applying for membership in the IHF should comply with standard Statutes formulated by the IHF for all National Federations. They should submit their application to the IHF before the next Congress. In case of any change to these Statutes, the National Federation must communicate them to the IHF ***for assessment and approval*** *before submitting them to the National Federation's Congress. The National Federation should also comply with the IHF Regulations"* (emphasis added).

171. The Respondent on the one hand argues that the 2019 version of the provision applied and required the EHF to seek an *approval* from the IHF in connection with the proposed changes to the EHF Statutes that were discussed during the Ordinary General Assembly of the EHF on 4 October 2019.

172. The Appellant on the other hand argues that the 2018 version of the provision was applicable and that this provision merely required the EHF to send the proposed amendments to the IHF in order for the IHF to *assess* them.

173. The Appellant has provided evidence that the proposed amendments were indeed communicated to the IHF General Secretary, Ms Amal Khalifa, by e-mail letter dated 1 October 2019, *i.e.*, four days before the Ordinary General Assembly of the EHF, with the request that Ms. Khalifa *"revise and confirm it by return mail"*. In the reply e-mail of 2 October 2019 from IHF's Mr. Gautier Müller to EHF's Mr Sameh Georges, Mr Müller stated:

"Please discuss these changes with Dr Moustafa upon his arrival in Egypt.

Kindly inform us of the result of the meeting in order for us to confirm these amendments to the EHF Statutes".

174. The Panel notes that the amended 2019 IHF Statutes do not contain any provision specifying on which date the Statutes were to enter into force. The earliest date from when the Statutes were applicable was 3 October 2019, *i.e.*, the day before the EHF Congress was held. That being said, the 2018 IHF Statutes, which merely required the EHF to communicate the proposed amendments to the IHF *"for assessment"* before submitting them to the EHF Congress, were clearly applicable on 1-2 October 2019 when the above-mentioned e-mails were exchanged.

175. On this basis, the Panel does not find that Article 8.1.6 of the IHF Statutes has been violated by the Appellant as alleged by the Respondent since the proposed amendments to the EHF Statutes were indeed communicated to the IHF for assessment prior to the EHF Congress as required by the then applicable IHF Statutes. The fact that the IHF Statutes were amended the

day before the EHF Congress was held does not change the Panel's conclusion on this point.

176. It is furthermore telling that – up until today – there was no further reaction by the IHF to EHF's email dated 1 October 2019. More particularly, at no time did the IHF object to any of the amendments or stated that it needed more time to complete its assessment. If one were to follow the Respondent's reasoning, then the EHF would not have been entitled to amend its statutes for about three and a half years. This is incompatible with good governance. Thus, the email sent by IHF on 2 October 2019 cannot be interpreted otherwise as to constitute an approval of the amended 2019 IHF Statutes. This is all the more true considering that – as submitted by the Appellant and not disputed by the Respondent – Dr Moustafa attended the Ordinary General Assembly of the EHF and praised the changes made.

177. Finally, the Panel notes that the 2017 and 2019 Alleged Violations date back a significant period of time. If IHF thought that these alleged violations were serious, *i.e.*, so serious as not to send a warning notice to the Appellant one would have expected IHF to act without delay. IHF was in possession of all the necessary information. This follows from of Mr Hesham Hatab. Why did the IHF wait so long to initiate disciplinary proceedings against the Appellant under such circumstances? It appears that such behaviour constitutes a breach of the principle of *venire contra factum proprium* and cannot be accepted.

178. With respect to the 2020 Alleged Violation, the Panel notes that Article 3 of the Egyptian Sports Act stipulates: *"[b]efore being published in the Egyptian Chronicles, the articles of association of these organizations* ***should*** *be approved both by the international organization they join and the Olympic Committee of Egypt"* (emphasis added).

179. The Respondent has argued that Article 3 of the Egyptian Sports Act required the 2019 EHF Statutes to be approved by the IHF and the EOC. Absent such approvals, the amended EHF Statutes never came into force according to the Respondent.

180. The Panel notes that in several provisions of the Egyptian Sports Act the modal verb, "should", is used, cf. for example Article 2: *"In order to be notarized, a sports organisation* ***should*** *fulfil the following terms […]".*

181. In other provisions the modal verb, "shall", is used, cf. for example Article 5:

"The Founders of a sports organisation **shall** *elect, from among themselves, the first Board of Directors for four years. This board* ***shall*** *authorize one of more of its members to represent it for accomplishing the notarization procedures. The authorized member* ***shall*** *[…]"* (emphasis added).

182. In the first paragraph of Article 3 both forms of the verb are used, cf.:

"The General Assemblies of the Egyptian Olympic Committee, the Egyptian Paralympic Committee, the sports clubs and federations and all members of the General Assemblies of the Egyptian Sports Federations ***shall*** *lay down their articles of association […]. These Articles of Association* ***should*** *comprise all the rules and regulations organizing their work, and the following in particular […]".*

183. On this basis, it appears that the two verbs are not used randomly by the legislatures (or by the

translator of the document), and that the last part of Article 3 of the Egyptian Sports Act stipulating that *"the articles of these organisations should be approved both by the international organisations they join and the Olympic Committee of Egypt"* cannot as it is worded be interpreted as a mandatory requirement or a condition of validity, which would have been the case if the verb "shall" had been used.

184. Accordingly, and in the absence of *travaux* or case law supporting the Respondent's interpretation of the provision, the Panel cannot conclude that the Respondent has demonstrated, on a balance of probabilities, that the amended 2019 EHF Statutes never entered into force, as alleged, due to the fact that they were never approved by the IHF and the EOC pursuant to Article 3.

185. Consequently, the Panel finds that the Respondent has not demonstrated that the EHF Statutes, at the time of the 2020 EHF Congress, required a minimum of nine members on the EHF Board of Directors. Furthermore, as already mentioned, the purpose of the IHF Ethics Code is not to enforce Egyptian law and/or ensure compliance of the IHF's members with Egyptian law. Consequently, even if there was a breach of Article 3 of the Egyptian Sports Law Act this would be of no relevance under the IHF Ethics Code.

186. The Panel notes, that following Ms Mona Amine's resignation on 3 September 2020 there were only six members of the Board of Directors as opposed to seven which the amended 2019 Statutes required. In this regard, the Appellant has argued that this resignation occurred after the date when the 2020 Congress was announced to be held on 7 November 2020, and therefore it was not possible to add a new item to the agenda. This is disputed by the Respondent with reference to Article 23 of the EHF Statutes.

187. With respect to the 2020 Alleged Violation the Respondent finally also points to Article 42.2 of the EHF Statutes, which stipulates as follows:

"In case of vacancy of the positions of the President or the Vice-president or the Treasurer, the Congress shall elect in its next meeting [a] new President or Vice-president or Treasurer for the remaining period of the term of the Board of Directors".

188. With reference to the fact that the EHF Vice President, Mr Khaled El Awady, resigned in March 2019, his position had to be replaced during the 2019 EHF Congress, which did not happen. Nor was Mr Awadi replaced during the 2020 EHF Congress.

189. The Panel notes the Appellant's submissions with respect to this issue and agrees that the COVID 19 restrictions imposed by the Egyptian government in 2020 plausibly prevented the election of a new Vice President of the EHF at the 2020 Congress. If the IHF thought otherwise, one would have expected it to send a warning notice to the EHF to rectify the alleged mistake. None of this happens, which shows that the IHF was less interested in remedying an alleged illegal situation than finding a pretext to initiate disciplinary proceedings against the Appellant. The Panel further notes that the extract of the minutes of the 2019 Ordinary General Assembly shows the following agenda item:

"Completion of vacant positions in the Board of Directors which includes the election of the Vice-President".

However, the extract also reflects that:

"No one applied for the position and this point was dismissed".

190. On this basis, the Panel does not find that the Respondent has demonstrated on a balance of probabilities that the Appellant can be held responsible for the 2020 Alleged Violation.

2.2 Conclusions

191. In conclusion, the Respondent has not put before the Panel convincing evidence demonstrating, on a balance of probabilities, that the Appellant can be held responsible for the Alleged Violations.

192. In this context, it seems relevant to underline that the facts described in the Appealed Decision, in the Ethics Commission Decision, in the ESSA Decision and in the decision dated 15 March 2021 of the IHF Executive Committee regarding the Interim Committee do not amount to evidence in these CAS proceedings, nor do they create presumptions or reverse the burden of evidence, which as explained rests firmly with the Respondent in this matter.

193. In light of the above findings, the Panel concludes that the Appealed Decision shall be annulled in its entirety. It follows, therefore, that the sanction imposed on the Appellant by way of the Ethics Commission Decision as upheld by the Appealed Decision is also to be treated as void *ab initio*, that is to say retroactively null and void and without any legal effects.

3. Monetary claims

194. As reported above, the Appellant has asked the *"Refund [of] all the [incurred] expenses related to the penalty fines before the IHF Adjudicating bodies"*.

195. The Panel further notes the Appellant's testimony according to which he has invested *"50,000 EUR in legal costs on defending himself"* and that such amount, in particular, also includes the payment of the CHF 10'000 IHF Arbitral Tribunal fee, for which he asks a refund.

196. With respect to the monetary claims raised by the Appellant, the Panel notes that the Appealed Decision stipulates that: *"The Appellant has paid the non-refundable fee, amounting to CHF 10,000 to the IHF bank account for services of the Arbitration Tribunal, second instance body, in accordance with Article 12 of the IHF Ethics Code"*.

197. Other than this, the Appellant has not offered any evidence in support of his claim for compensation of his *"expenses related to the penalty fines before the IHF Adjudicating bodies"*.

198. That said, in light of the Panel's conclusion according to which the decision rendered on 15 December 2022 by the IHF Arbitration Tribunal shall be annulled in its entirety, in the Panel's view this shall also have the as a consequence the cancellation and refund of the IHF Arbitration Tribunal fee of CHF 10'000.

199. The Appellant's claim for compensation of legal expenses and the question of the allocation of the costs of these proceedings are dealt with below.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Mr Hisham Nasr against the International Handball Federation with respect to the decision rendered on 15 December 2022 by the IHF Arbitration Tribunal is upheld.

2. The decision rendered on 15 December 2022 by the IHF Arbitration Tribunal, by which the Ethics Commission Decision dated 6 April 2022 was upheld, is annulled, which includes the cancellation and refund of the IHF Arbitration Tribunal fee of CHF 10'000.

3. (…).

4. (…).

5. All other or further claims are dismissed.