



**Arbitration CAS 2012/A/3024 Slovak Tennis Federation (STF), Slovak Cycling Federation (SCF), Slovak Handball Federation (SHF), Slovak Football Association (SFA) v. Slovak Olympic Committee (SOC), award of 8 May 2013**

Panel: Mr Romano Subiotto QC (United Kingdom), President; Mr Quentin Byrne-Sutton (Switzerland); Mr Vit Horacek (Czech Republic)

*Multiple sports*

*Decision of the supreme body of a National Olympic Committee*

*CAS jurisdiction*

*Consent to arbitrate*

- 1. If the parties have not concluded a specific arbitration agreement establishing CAS' jurisdiction, the latter is only given in the statutes or regulations of the sports-related body from whose decision the appeal is being made so provide. In the case of an appeal against the decision of a NOC, CAS' jurisdiction cannot therefore be derived by virtue of a direct applicability of the IOC Olympic Charter.**
- 2. Since submitting to arbitration is a process that amounts to excluding the jurisdiction of ordinary courts, according to general principles governing international arbitration it must be voluntary and consensual. Furthermore, where consent to arbitration does not derive directly from a bilateral agreement but from a set of rules or a regulation to which parties have submitted, it is important that the scope of the particular reference to arbitration be clearly recognizable if it is to be deemed accepted. Otherwise, parties could be drawn into arbitration against their will and despite their basic right to invoke the jurisdiction of ordinary courts.**

## **I. THE PARTIES**

- 1. The Slovak Tennis Federation, the First Appellant (the "STF"), is the national federation governing the sport of tennis in Slovakia, and is based in Bratislava, Slovakia. STF is recognized by the Slovak Olympic Committee as a member of the International Tennis Federation, an international federation governing the sport of tennis, which is based in London, United Kingdom.**
- 2. The Slovak Cycling Federation, the Second Appellant (the "SCF"), is the national federation governing the sport of cycling in Slovakia, and is based in Bratislava, Slovakia. SCF is recognized by the Slovak Olympic Committee as a member of the Union Cycliste**

Internationale, an international federation governing the sport of cycling, which is based in Aigle, Switzerland.

3. The Slovak Handball Federation, the Third Appellant (the “SHF”), is the national federation governing the sport of handball in Slovakia, and is based in Bratislava, Slovakia. SHF is recognized by the Slovak Olympic Committee as a member of the International Handball Federation, an international federation governing the sport of handball, which is based in Basel, Switzerland.
4. The Slovak Football Association, the Fourth Appellant (the “SFA”), is the national federation governing the sport of football in Slovakia, and is based in Bratislava, Slovakia. SFA is recognized by the Slovak Olympic Committee as a member of the Fédération Internationale de Football Association, an international federation governing the sport of football, which is based in Zurich, Switzerland. The First, Second, Third, and Fourth Appellants are collectively referred to as the “Appellants”.
5. The Slovak Olympic Committee, the Respondent (the “SOC”), is the National Olympic Committee for Slovakia, and is based in Bratislava, Slovakia. SOC is the governing body of the Slovak Olympic sports and has exclusive powers for the representation of Slovakia at the Olympic Games. SOC is a member of the International Olympic Committee (the “IOC”), a body governing Olympic sports and responsible for the Olympic Movement at an international level. The Appellants and the Respondent are collectively referred to as the “Parties”.

## II. FACTUAL AND PROCEDURAL BACKGROUND

6. The General Assembly (the “GA”) is the supreme body of the SOC (“GA of the SOC”) and is held at least once a year. The GA of the SOC comprises all SOC’s members with voting rights. Currently, the SOC has 82 members with voting rights, in particular including (i) the President of the SOC, (ii) members of the executive committee of the SOC (the “Executive Committee”), (iii) member of the IOC from Slovakia, (iv) national sports associations affiliated in international federations governing sports included in the program of the Olympic Games, (v) elected representatives of athletes that have taken part in the Olympic Games, (vi) national sports associations affiliated in international federations governing sports recognized by the IOC but not included in the program of the Olympic Games, (vii) individual members mostly elected from outstanding athletes such as Olympians and sports personalities, and (viii) multi-sports groups and other sports-oriented organizations.
7. On November 24, 2012, the SOC held the 44<sup>th</sup> GA (the “44<sup>th</sup> GA”). The program of the 44<sup>th</sup> GA included the (i) approval of the rules of procedure of the 44<sup>th</sup> GA (the “Rules of

- Procedure”), (ii) approval of the electoral regulations of the 44<sup>th</sup> GA (the “Electoral Regulations”), (iii) election of the President of the SOC, (iv) election of the members of the Executive Committee, (v) election of the members of the supervisory board of the SOC, and (vi) election of the SOC’s individual members *i.e.* outstanding athletes such as Olympians and sports personalities. The 44<sup>th</sup> GA was attended by 77 members with voting rights.
8. The 44<sup>th</sup> GA carried out a separate vote for each subject-matter of the 44<sup>th</sup> GA’s program, and (i) approved the Electoral Regulations and Rules of Procedure of the 44<sup>th</sup> GA, (ii) elected the President of the SOC, members of the Executive Committee, members of the supervisory board, and SOC’s individual members, and (iii) approved and took notice of other issues specified in the Resolution of the 44<sup>th</sup> GA.
  9. The Resolution of the 44<sup>th</sup> GA was delivered by the Respondent to the Appellants’ Attorney-at-law on December 12, 2012.
  10. On December 12, 2012, the Appellants requested that the Respondent provided them with (i) the Minutes from the 44<sup>th</sup> GA, (ii) the Resolution of the 44<sup>th</sup> GA, (iii) the Electoral Regulations, (iv) a letter or statement from Mr. Jérôme Poivey, the Head of Institutional Relations and Governance of the IOC, and (v) correspondence between the SOC and the IOC related to the SOC’s Statutes.
  11. On December 12 and December 14 respectively, the Respondent provided the Appellants with the requested documents, except for the Minutes from the 44<sup>th</sup> GA, on the grounds that the 30-day time period set forth in the Rules of Procedure for the preparation and delivery of the Minutes from the 44<sup>th</sup> GA had not expired yet.

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

12. The Appellants filed, pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”), the Statement of Appeal on December 14, 2012 at the Court of Arbitration for Sport (the “CAS”) against the Resolution of the 44<sup>th</sup> GA of the SOC and all subsequent decisions taken by the SOC’s officials and members elected by the 44<sup>th</sup> GA during its official 44<sup>th</sup> meeting on November 24, 2012 (the “Appealed Decision”). The Appellants appointed Mr. Quentin Byrne-Sutton as Arbitrator.
13. By letter dated December 19, 2012, the CAS Court Office acknowledged the receipt of the Appellants’ statement of appeal (the “Statement of Appeal”) and requested that the Appellants file with the CAS, pursuant to Article R51 of the Code, an appeal brief or inform the CAS that the Statement of Appeal is to be considered as the appeal brief. The CAS Court Office further requested that the Respondent nominated an arbitrator from the list of CAS

arbitrators. This letter was delivered to the Respondent via fax on December 19, 2012, and via courier on December 20, 2012.

14. By letter dated December 21, 2012, the Respondent appointed Mr. Vit Horacek as Arbitrator.
15. The Appellants filed an appeal brief on December 27, 2012 (the "Appeal Brief"), which contained the following requests for relief:

*FIRST – The Appeal filed by the Appellants against the Appealed decision is be upheld; and*

*SECOND – The Appealed decision is annulled (considered null and void); and*

*THIRD – The case is referred back to the Respondent for a new decision process of the GA, which has to take place within 30 days at latest counted from the notification of the CAS award; and*

*FOURTH – The Respondent is ordered to take all measures to assure that the Slovak national sports associations/federations affiliated as members to the international sports federations governing sports included in the program of the Olympic Games, shall have the voting majority at the GA in accordance with Article 28 para. 3 of the IOC Olympic Charter;*

*FIFTH – The provisions of Article 3 para. 5 letter d) last sentence of the SOC Statute and Article 28 para. 3 first sentence of the IOC Olympic Charter do not apply to the individual or collective members of the SOC other than Slovak national sports associations/federations affiliated as members to the international sports federations governing sports included in the program of the Olympic Games, at the same time respecting the principle of only one vote for every Slovak national association/federation affiliated as a member to the international sports federations governing sports included in the program of the Olympic Games, therefore votes of other SOC members shall not be calculated into the voting majority of the GA under provisions of Article 3 para. 5 letter d) last sentence of the SOC Statute and Article 28 para. 3 first sentence of the IOC Olympic Charter; and*

*SIXTH – The Respondent is ordered to bear all costs of the arbitration proceedings as well as all legal fees, costs and expenses of the Appellants and their Attorney-at-law incurred in connection with the present arbitration proceedings.*

16. On December 28, 2012, the CAS Court Office informed the Parties that it had received the Appellants' Appeal Brief dated December 27, 2012, a copy of which was enclosed for Respondent's attention. The CAS Court Office further requested that the Respondent submitted to the CAS an Answer within 20 days of the receipt of the letter dated December 28, 2012.
17. On January 11, 2013 and further to a request for a time extension formulated in their Appeal Brief, the Appellants submitted the Minutes from the 44<sup>th</sup> GA as an Exhibit R to the Appeal Brief.
18. The Respondent filed its Answer on January 18, 2013 which contained the following requests for relief:

Slovak Tennis Federation, Slovak Cycling Federation, Slovak Handball Federation,  
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*FIRST – The Court of Arbitration for Sport has no jurisdiction to decide upon the Appeal by Slovak Tennis Federation, Slovak Cycling Federation, Slovak Handball Federation, and Slovak Football Association aimed at the Resolution of the 44<sup>th</sup> General Assembly of the Slovak Olympic Committee and all partial decisions of the General Assembly made on November 24, 2012;*

*SECOND – The Appeal filed by the Slovak Tennis Federation, Slovak Cycling Federation, Slovak Handball Federation, and Slovak Football Association is inadmissible;*

*THIRD – Slovak Tennis Federation, Slovak Cycling Federation, Slovak Handball Federation, and Slovak Football Association are jointly and severally ordered to pay to Slovak Olympic Committee all costs of the arbitration proceedings and related legal fees, costs and expenses of the Slovak Olympic Committee and its Attorney-at-law within 30 days of the date of this decision.*

*Or, in the alternative,*

*FIRST – The Appeal by Slovak Tennis Federation, Slovak Cycling Federation, Slovak Handball Federation, and Slovak Football Association is dismissed;*

*SECOND – Slovak Tennis Federation, Slovak Cycling Federation, Slovak Handball Federation, and Slovak Football Association are jointly and severally ordered to pay to Slovak Olympic Committee all costs of the arbitration proceedings and related legal fees, costs and expenses of the Slovak Olympic Committee and its Attorney-at-law within 30 days of the date of this award.*

19. Furthermore, the Respondent proposed to forego a hearing. By letter of January 22, 2013, the CAS Court Office invited the Appellants to inform it whether they would prefer a hearing in the present matter or whether they agreed with the Respondent's proposal.
20. By said letter, the CAS Court Office acknowledged receipt of the Respondent's Answer dated January 18, 2013 and informed the Parties that further information on the Respondent's objection on lack of jurisdiction and inadmissibility would follow soon after the panel's constitution.
21. By letter dated January 29, 2013, the Appellants confirmed that they would prefer for the award to be based on the Parties' written submissions. The Appellants also informed the CAS Court Office that they would submit their written submissions on the CAS's jurisdiction upon the receipt of the CAS's invitation following the formation of the Panel.
22. On February 7, 2013, the CAS Court Office informed the Parties that Mr. Romano Subiotto QC had been appointed President of the Panel, and that the Panel was thus constituted.
23. Following the formation of the Panel, the Appellants were invited by the CAS Court Office's letter dated February 25, 2013, to file, within 14 days of the receipt of such letter, their submissions strictly limited to the Respondent's exception of lack of jurisdiction, lack of *locus standi*, and inadmissibility. The Appellants filed their respective submissions on March 11, 2013.

24. By letter dated March 19, 2013 and following the Appellants' submissions of March 11, 2013, the CAS Court Office informed the Parties that, subject to the possibility of the Panel putting written questions to the Parties prior to its deliberations on the preliminary questions of jurisdiction, *locus standi*, and admissibility, the Panel confirmed that the exchange of written submissions was closed. The CAS Court Office further notified the Parties that despite previous confirmations on the preference for the issuance of an award on the basis of Parties' written submissions, Parties were granted an opportunity to modify this position within 3 days. The CAS Court Office reiterated that in accordance with the Article R57 of the Code, it would in any event be for the Panel to decide whether to hold a hearing. The Respondent expressly maintained its preference for the issuance of an award based on the Parties' written submissions while the Appellants tacitly maintained the same position.
25. By letter dated March 28, 2013, the CAS Court Office informed the Parties that the Respondent submitted a reply to the Appellants' comments on the CAS's jurisdiction of March 11, 2013, while it was not invited to do so, as it followed from the CAS Court Office letters of February 25, 2013 and March 19, 2013 respectively. The CAS Court Office therefore invited the Appellants to submit their position or observations on the admissibility of the Respondent's statement of March 22, 2013. The Appellants objected, in their submission of April 2, 2013, to the admissibility of Respondent's statement of March 22, 2013. By letter dated April 12, 2013, the CAS Court Office informed the Parties that taking due account of CAS letters of February 25, 2013 and March 19, 2013 respectively, Article R56 of the Code, and the fact that the Appellants shall have the final say on the exception to the lack of jurisdiction, which the Appellants stipulated in their submission of March 11, 2013, the Respondent's reply of March 22, 2013 was excluded from the CAS file. The CAS Court Office further invited the signatories (for the Appellants) of the powers of attorney enclosed in the Statement of Appeal to provide the CAS Court Office with documents evidencing their effective powers on or before April 18, 2013, with reference to objection raised in this regards in the Respondent's Answer. Finally, the CAS Court Office informed the Parties that the Panel had decided to render an award on the basis of the written submissions only.
26. By letter dated April 17, 2013, the Appellants provided the Panel with documents sufficiently evidencing the effective powers of the signatories (for the Appellants) of the powers of attorney enclosed in the Statement of Appeal.
27. On April, 30, 2013, the CAS Court Office issued, on behalf of the President of the Panel, an Order of procedure, which was duly signed by both Parties.

#### IV. JURISDICTION

28. Article R47 of the Code provides as follows:

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

29. Pursuant to Article R47 of the Code, the CAS has the power to decide appeals against a sports organization only if: (i) there is a decision of a federation, association or another sports-related body; (ii) all internal legal remedies have been exhausted prior to appealing to the CAS; and (iii) the parties have agreed to the CAS’s jurisdiction<sup>1</sup>.

##### A. The existence of a decision

30. According to the CAS jurisprudence, a decision is a unilateral act sent to one or more determined recipients and is intended to produce legal effects<sup>2</sup>. In addition, the form of communication has no relevance to determine whether a decision exists<sup>3</sup>.

31. In the present case, the 44<sup>th</sup> GA adopted the Appealed Decision, in essence constituting a unilateral act intended to produce legal effects. Moreover, the qualification of the Appealed Decision as a “decision” for the purposes of Article R47 of the Code was not disputed by the Respondent. Hence, the Appealed Decision constitutes a “decision” for the purposes of determining whether the CAS has jurisdiction in the present dispute.

##### B. The exhaustion of the internal legal remedies

32. Article 5(1) of the Statutes of the SOC provides as follows:

*“The General Assembly of SOC (SOC GA) is the supreme body of the SOC”.*

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<sup>1</sup> CAS 2008/A/1583; CAS 2008/A/1584.

<sup>2</sup> CAS 2004/A/659; CAS 2008/A/1634.

<sup>3</sup> CAS 2008/A/1634.

33. Article 5(2) of the Statutes of the SOC provides *inter alia* as follows:

*“If at least one third of members ask in writing for summons of the General Assembly or if an extraordinary situation requires it, the President is obliged to summon the extraordinary General Assembly within 30 days since the submitting of the proposal to summon the extraordinary General Assembly”.*

34. Article 6(8)(k) of the Statutes of the SOC, listing the rights and responsibilities of the Executive Committee, provides as follows:

*“It solves and adjudicates disputes inside the Slovak Olympic movement”.*

35. Article 6(8)(l) of the Statutes of the SOC, listing the rights and responsibilities of the Executive Committee, provides as follows:

*“It appoints a temporary disciplinary committee to deal with violations of the provisions of the Olympic Charter, Statutes of SOC, and Ethical Codex of IOC and other agreements with the members of the Slovak expeditions throughout the Olympic Games”.*

36. Article 6(9), first sentence, of the Statutes of the SOC, provides *inter alia* as follows:

*“It is possible to appeal against the decision made by SOC executive committee or disciplinary committee up to 21 days to the SOC General Assembly that will decide the matter with final validity”.*

37. Pursuant to Article 5(1) of the Statutes of the SOC, the GA is the supreme body of the SOC. Contrary to the Respondent’s view, the Statutes of the SOC do not envisage that the decisions of the GA will be subject to review by any internal body. Moreover, to the extent that the Article 6(8)(k) and Article 6(8)(l) envisage a decision-making power on the part of the Executive Committee and the disciplinary committee (the “Disciplinary Committee”) respectively, the latter bodies are not empowered to review decisions of the GA of the SOC. On the contrary, the decisions of the Executive Committee or the Disciplinary Committee can be appealed to the GA of the SOC, as stipulated in the Article 6(9), first sentence, of the Statutes of the SOC.

38. Further, the option to summon an extraordinary GA, as provided for in the Article 5(2) of the Statutes of the SOC, which inevitably depends on collective action, cannot, logically and in practice, present an effective legal remedy enabling a member of the SOC to challenge a decision of the GA. In the Panel’s view, Article 5(2) of the Statutes of the SOC establishes a procedure to summon an extraordinary GA, but is not designed for the purpose of reviewing decisions of the GA of the SOC.



39. For the foregoing reasons, the Panel takes the view that the Appealed Decision is final, with no internal legal remedies available. As a result, the requirement that all internal remedies be exhausted is clearly met.

### C. The consent to arbitrate

40. According to Article R55 of the Code, the Panel may rule upon its own jurisdiction. Pursuant to Article R47, the CAS derives its jurisdiction to hear an appeal either from (i) a specific arbitration agreement concluded by the Parties, or (ii) insofar as the Statutes of the SOC so provide<sup>4</sup>.
41. The Panel notes that the Parties had not concluded a specific arbitration agreement establishing the CAS's jurisdiction in the present case. It therefore follows that in the absence of a specific arbitration agreement, the CAS only has jurisdiction to entertain the present dispute if the "*the statutes of the federation, association or sports-related body so provide*"<sup>5</sup>.
42. The Appellants referred to the statutes of two bodies in order to invoke the jurisdiction of the CAS, namely (i) the Statutes of the SOC, and (ii) the IOC Olympic Charter. The Panel turns, first, to the issue of the applicability of the IOC Olympic Charter.
43. Article 61 of the IOC Olympic Charter provides as follows:
- "1. The decisions of the IOC are final. Any dispute relating to their application or interpretation may be resolved solely by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport (CAS).*
- 2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration".*
44. The Appellants stipulated that the CAS has jurisdiction in the present dispute by virtue of a direct applicability of Article 61 para. 2 of the IOC Olympic Charter to the present dispute. Moreover, the Appellants have cited three CAS awards in support of their position.
45. Contrary to the Appellants' argument, the Panel takes the view that its jurisdiction cannot be derived directly from Article 61 para. 2 of the IOC Olympic Charter. No textual or jurisprudential support enables the Panel to conclude otherwise. First, Article R47 of the Code

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<sup>4</sup> CAS 2011/A/2435; CAS 2012/A/2731.

<sup>5</sup> Article R47 of the Code.

expressly stipulates that “*an appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide [...]*” [Emphasis added by the Panel]. The Appealed Decision is a decision of the SOC. The Statutes of the SOC should thus provide for CAS jurisdiction. This view is also consistent with CAS jurisprudence<sup>6</sup>. Secondly, the jurisprudence<sup>7</sup> cited by the Appellants does not, even by analogy, envisage the circumstances of the present dispute. The cases cited by the Appellants concerned the applicability of anti-doping rules, a body of separate substantive rules, to which a particular federation or association adheres. This is, in the Panel’s view, materially different to the applicability of the IOC Olympic Charter to a decision of a body of a National Olympic Committee like the GA of the SOC. In contrast to the Appellants’ interpretation by analogy of the three CAS awards<sup>8</sup>, CAS jurisprudence expressly stipulates that “*as art. R47 of the Code of Sports-related Arbitration states, the statutes or regulations of the sports-related body from whose decision the appeal is being made, must expressly recognize the CAS as an arbitral body of appeal, in order for the CAS to have jurisdiction to hear an appeal*”<sup>9</sup>.

46. In light of the foregoing, the CAS’s jurisdiction in the present dispute cannot be derived by virtue of a direct applicability of Article 61 para. 2 of the IOC Olympic Charter.
47. The Panel therefore considers the Statutes of the SOC, and in particular Article 6(9), to be of the essence to determine whether the CAS has jurisdiction.
48. Article 6(9) of the Statutes of the SOC provides as follows:
- “It is possible to appeal against the decision made by SOC executive committee or disciplinary committee up to 21 days to the SOC General Assembly that will decide the matter with final validity. Appeal against SOC GA decision in the matter is possible only by submission to the Tribunal of Arbitration for Sport (CAS) with registered office in Lausanne, Switzerland, in a period of 21 days from the decision of SOC GA”* [Emphasis added by the Panel].
49. Article 6(9) of the Statutes of the SOC, literally interpreted, only applies to a decision of the Executive Committee or Disciplinary Committee, which is appealed to the GA of the SOC. The GA of the SOC then decides the matter with final validity, and it is the decision of the GA in that matter that can be appealed to the CAS.
50. This textual interpretation of the Article 6(9) is supported by the following two considerations.

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<sup>6</sup> CAS 2005/A/952; CAS 2002/O/422.

<sup>7</sup> CAS 2002/A/399; CAS 2005/A/830; CAS 2007/A/1373.

<sup>8</sup> CAS 2002/A/399; CAS 2005/A/830; CAS 2007/A/1373.

<sup>9</sup> CAS 2005/A/952; CAS 2002/O/422.

51. Firstly, the wording “*matter*” in the first sentence of the Article 6(9), followed by the wording “*in the matter*” in the second sentence of the Article 6(9), reflects a connection between the first and the second sentence of the Article 6(9). The connection and relationship between the first and second sentence of Article 6(9) leads the Panel to conclude that Article 6(9) literally provides for the CAS’s jurisdiction solely with respect to specifically defined disputes. It follows that these are disputes brought before the Executive Committee or Disciplinary Committee resulting in a decision by either body, which is subsequently appealed to the GA of the SOC, which will then decide on the appeal.
52. Secondly, Article 6(9) is located in Article 6 of the Statutes of the SOC, which deals with the Executive Committee (and also with the Disciplinary Committee which is appointed by the Executive Committee), as opposed to Article 5 of the Statutes of the SOC, which deals with the GA. This further supports the view that CAS’s jurisdiction depends on a decision of the Executive Committee or Disciplinary Committee subsequently appealed to the GA, which finally rules on such matter. Given that the Appealed Decision does not constitute a decision of the GA of the SOC adjudicating on appeal a decision of the Executive Committee or the Disciplinary Committee, the Appealed Decision fails to come within the scope of the Article 6(9) of the Statutes of the SOC.
53. Notwithstanding the above and for the sake of completeness, the Panel has considered whether, when logically construed, Article 6(9) of the Statutes of the SOC can be interpreted to provide the second sentence of Article 6(9) a standalone basis for the CAS’s jurisdiction, thereby disregarding the connection between the two sentences of Article 6(9) that is otherwise apparent from the literal interpretation of the provision.
54. If the latter interpretation is adopted, the second sentence of the Article 6(9) would essentially point towards CAS’s jurisdiction *vis-à-vis* any and all decisions of the GA of the SOC. However, no clear evidence has been adduced showing the regulatory intent of the SOC when designing and adopting the provision of the Article 6(9) of the Statutes of the SOC.
55. Since submitting to arbitration is a process that amounts to excluding the jurisdiction of ordinary courts, according to general principles governing international arbitration it must be voluntary and consensual. Furthermore, where consent to arbitration does not derive directly from a bilateral agreement but from a set of rules or a regulation to which parties have submitted, it is important that the scope of the particular reference to arbitration be clearly recognizable if it is to be deemed accepted. Otherwise, parties could be drawn into arbitration against their will and despite their basic right to invoke the jurisdiction of ordinary courts.
56. Bearing in mind the foregoing general principles of international arbitration, the Panel has also used as a point of comparison the statutes of other National Olympic Committees, including those provided by the Appellants themselves.

57. Clause 10 of the Statutes of the Swiss Olympic Association provides as follows:

*“Disputes between members or of members of Swiss Olympic Association that result from the statutes and regulations as well as from financial obligations towards Swiss Olympic Association are subject to dispute resolution under exclusion of ordinary courts.*

*The relevant tribunal is the Court of Sports Arbitration (tribunal Arbitral du Sport, TAS) in Lausanne.*

*The procedural rules of the Code of Sports-related Arbitration (Code de l'arbitrage en matière de sport) apply. Appeal can be made within 30 days”.*

58. Clause 33 of the Statutes of the German Olympic Committee provides as follows:

*“(1) Disputes between the DOSB and its members shall be decided by an Arbitration Panel, to the exclusion of action before the courts. This shall also apply to disputes concerning the validity of these Statutes, to disputes between members of the DOSB arising from the nature of their membership or from actions by a governing body or other establishment of the DOSB, and to disputes regarding the adoption or exclusion of members.*

*(2) The Arbitration Panel shall only be summoned, however, if an attempt by an appointee of the Executive Board to settle the dispute has proved unavailing.*

*(3) The Arbitration Panel shall consist of three arbitrators. They must be qualified to hold the office of judge. No person may be appointed as an arbitrator who is engaged or employed by the DOSB.*

*(4) The Arbitration Panel shall not be a governing body of the DOSB. The members of the Arbitration Panel shall be independent and not bound to any instructions.*

*(5) Disputes with an athlete nominated for the Olympic Games, or with an Olympic sport federation, or with the IOC, which may arise during the Olympic Games or result from events held at the Olympic Games or their preparation or administration, or which may concern these, shall be subject, irrespective of Paragraphs 1 to 4, solely to the arbitration procedure of the Court of Arbitration for Sport (CAS)” [Emphasis added by the Panel].*

59. Article 9 of the Statutes of the Olympic Committee of the Czech Republic provides as follows:

*“(1) Adjudication of the disputes between the sport associations and its members falls within the competence of the respective bodies of these sport associations, unless provided otherwise by these Statutes.*

2) *The decisions of the sport associations – members of the Czech Olympic Committee or decisions of the Czech Olympic Committee in disputes, the subject-matter of which relates to the Olympic Games, can, after exhausting all legal remedies within particular sport association or Czech Olympic Committee, be appealed to the Arbitration committee of the Czech Olympic Committee.*

3) *The decision of the Arbitration committee in matters stipulated in Article 9(2) can be appealed to the Court of Arbitration for Sport with its registered office in Lausanne (CAS), which is, in accordance with the Code of Sports-related Arbitration, empowered to adopt a final decision. The time period for submitting appeal is 21 days from delivery of the decision. The time period for adjudicating the appeal is provided by the CAS Code*” [Emphasis added by the Panel].

60. The above examples illustrate how a sports organization – in this case National Olympic Committees – delineate in a specific and clear manner the scope of jurisdiction they intend to attribute to arbitration panels, including CAS, in disputes with their members, making such scope of jurisdiction recognizable for the members subject to the rules.
61. This can be done either by clearly providing CAS with overall jurisdiction as the final appellate body, as is the case with the Statutes of the Swiss Olympic Association which provide for the general jurisdiction of CAS, or, on the contrary, by specifically delineating the scope of decisions subject to appeal to CAS by defining the subject matter of such decisions, as done in the Czech and German Statutes.
62. These various approaches reflect a policy decision of a particular National Olympic Committee, which is implemented by drafting the reference to arbitration accordingly.
63. In the present case, the Panel finds that the Statutes of the SOC, including in particular Article 6(9), indicate the SOC’s policy decision not to accord CAS’s jurisdiction against any and all decisions of the GA of the SOC. Otherwise, the SOC could have provided this clearly in a general clause akin to the Statutes of the Swiss Olympic Association. Instead, the SOC has delineated and limited the scope of decisions that could be sent to appeal to the CAS, as explained above.
64. For the foregoing reasons, and in the absence of clear evidence on the SOC’s intent providing to the contrary, the Panel finds that the provision of the Article 6(9) of the Statutes of the SOC, establishing the CAS’s jurisdiction, must be interpreted in a manner excluding a general jurisdiction of the CAS against any and all decisions of the GA of the SOC, and instead providing for a narrower jurisdiction of the CAS *vis-à-vis* decisions of the GA of the SOC adjudicating on appeal a decision of the Executive Committee or Disciplinary Committee acting within the sphere of their competence as provided for by the Statutes of the SOC.
65. Given that the Appealed Decision does not constitute a decision of the GA of the SOC adjudicating on appeal a decision of the Executive Committee or Disciplinary Committee,

acting within the sphere of their competence as provided for by the Statutes of the SOC, the Appealed Decision fails to come within the scope of the Article 6(9) of the Statutes of the SOC providing for the CAS's jurisdiction.

66. Therefore, the Panel finds that it lacks jurisdiction to adjudicate the merits of the present dispute.

## **ON THESE GROUNDS**

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

1. The Court of Arbitration for Sport lacks jurisdiction to decide upon the present Appeal.
2. The Appeal of the Slovak Tennis Federation, Slovak Cycling Federation, Slovak Handball Federation, and Slovak Football Association is dismissed.
3. (...).
4. (...).