Arbitration CAS 2010/A/2275 Croatian Golf Federation (CGF) v. European Golf Association (EGA), award of 20 June 2011

Panel: Mr. Dirk-Reiner Martens (Germany), President; Mr. Quentin Byrne-Sutton (Switzerland); Prof. Denis Oswald (Switzerland)

Golf
Expulsion of a member due to bankruptcy
Expulsion of a member and violation of its right to be heard
Obligation of federations to respect their members' right to be heard when making their decisions and within their internal proceedings
Limits in the Panel's full power of review

1. **It is doubtful whether bankruptcy proceedings can *per se* justify the expulsion of a member under the EGA Constitution. While in general terms Article 16 par. 3 of the EGA is in keeping with Luxembourg laws and pertinent for resolving many types of issues that may arise within an association, with respect to resolutions which severely affect the basic rights of a member – such as a decision to expel a member – the application of this provision raises legal concerns linked to the right to be heard. In that relation, it is also noteworthy that the particular seriousness of an expulsion is underscored by the fact that the EGA's Constitution contains an express provision fixing the conditions of expulsion of members, which requires a "violation" of the EGA's Constitution and Rules.**

2. **The right to be heard is a fundamental and general principle which derives from the elementary rules of natural justice and due process. CAS has always protected the principle *audiatur et altera pars* in connection with any proceedings, measures or disciplinary actions taken by an international federation vis-à-vis a national federation, a club or an athlete. There is no doubt that the right to be heard is a legal principle which has to be respected by federations when making their decisions and within their internal proceedings such as the expulsion of a Member federation from its European association.**

3. **The *de novo* proceedings before CAS cannot be deemed to have cured the violation of the Appellant's right to be heard. A vote taken by the Annual General Meeting of an Association on the Resolution of one of its members is not a decision which was largely determined by legal standards and which the Panel could therefore take in lieu of the delegates. It is still very much a "political" decision within the discretion of the delegates whether or not to expel a member. As established through CAS case law, *"the Panel's function is to review the propriety, in the broadest sense, of the decision of the decision maker; it is not to become the decision maker itself. […] There are, of course, exceptional cases when a body such as this Panel, can overlook a clear departure from due process because it can determine that the decision would have***

been the same in any event; i.e. that there was nothing that the victim of the decision could have said to persuade a reasonable decision maker to change his mind. But the law has always recognized that such cases are rare […]". **The Panel would only be able to cure the violation of the Appellant's right to be heard if it could exclude the possibility that this violation had a bearing on the outcome of the case.**

The Croatian Golf Federation (the "Appellant") is the federation of Croatian golf clubs and has its seat in Zagreb, Croatia.

The European Golf Federation (EGA or the "Respondent") is an association of national golf federations in Europe and has its seat in Höhenhof, Senningerberg, Grand-Duché de Luxembourg, Luxembourg.

The Appellant has been the EGA's member federation for the Republic of Croatia since October 1992. By resolution adopted at the EGA Annual General Meeting held in Luxembourg on 17 October 2010 (the "AGM 2010") the Appellant was expelled as a member of the EGA (the "Resolution"). The Resolution is the subject-matter of the present appeal (the "Appeal").

The present dispute finds its starting point on 26 February 2009. On this date, the Zagreb City Office of General Administration pronounced, according to the certified translation provided by the Appellant, that the Appellant must be deemed to have "ceased its activities" due to the opening of bankruptcy proceedings against it. According to the certified translation provided by the Respondent, it ordered the "dissolution" of the Appellant.

On 2 April 2009, the Appellant filed an appeal against the 26 February 2009 decision. This appeal was dismissed by the Croatian Central State Bureau for Administration on 4 May 2010. The Appellant's appeal against the latter decision before the Administrative Court of the Republic of Croatia, which was filed on 28 May 2010, is still pending according to the Appellant's submissions.
In September 2009, the EGA sent to its member federations the official agenda for the EGA Annual General Meeting 2009 (the "AGM 2009"). This agenda included the following item:

> *"5. Decision on the exclusion of the Croatian Golf Federation in bankruptcy (see enclosed)".*

Enclosed was a proposed resolution by the Executive Committee which reads, in relevant part, as follows:

> *"Considering that in accordance with article 3 of its Constitution, only a federation representing golf activites in its country is eligible for membership,*
>
> *[…]*
>
> *Considering that Croatia is currently represented by the Croatian Federation in Bankruptcy,*
>
> *Considering that according to general principles of law, the only activity allowed associations in bankruptcy is the realization of assets in view of paying creditors,*

That under these circumstances, the Croatian Golf Federation in Bankruptcy is in no position whatsoever to manage golfing activities in Croatia,

[…]

Considering that the Croatian national Olympic Committee, in a letter dated July 31, 2009, notes that the Croatian Federation in Bankruptcy is devoid of a constitution, has no institutional body and no longer fulfills requisites for a national sports federation,

That the Croatian National Olympic Committee, in the same letter, notes that the situation is on the verge of being liquidated from an administrative aspect,

Considering that, in application of article 6 of its Constitution, the European Golf Association may exclude a member no longer fulfilling statutory conditions,

That this is manifestly the case of a national federation who can no longer exercise an activity as such,

Based on considerations mentioned above, the resolution proposed by the Executive Committee to the Annual General Meeting is to exclude the ***Croatian Golf Federation in Bankruptcy*** *from the European Golf Association".*

On 6 October 2009, the Appellant sent a letter to all members of the EGA, explaining its situation and arguing against its expulsion.

On 17 October 2009, the following decision by the EGA's Executive Committee (taken at its meeting on 15 October 2009) was presented to its member federations at the AGM 2009:

"Last September, the Executive Committee sent all member federations a resolution, proposing to exclude as member from the EGA the Croatian Golf Federation, due to information that they were in bankruptcy proceedings. The proposition was based on the fact that, to be a member of the EGA, you must be a national golf federation representing the golf activities of its country.

The Croatian Golf Federation in bankruptcy proceedings with due respect doesn't look like meeting that condition.

Up till now, the Executive Committee has not received formal proof whether the Croatian Golf Federation in bankruptcy is recognised by Croatian authorities. There is therefore a doubt affecting the legal situation of the entity.

The following proposal is based on discussions in zone meetings and the Executive Committee: to allow evidence to be brought forward by the federation and the Croatian authorities, the Executive Committee has decided to postpone its resolution to the next EGA General Assembly in 2010, hoping in the meantime to receive a clarification of the legal situation for the good sake of development of golf in Croatia".

The AGM 2009 unanimously agreed with the Executive Committee's proposal.

By letter dated 20 October 2009, the EGA's counsel informed the Appellant that it was its responsibility to submit proof of its legal situation and of its qualification as national federation recognised by the *"Croatian olympic authorities"* and by the Ministry of Science, Education and Sport.

By letter dated 22 July 2010, the Appellant informed the Respondent that the

"Croatian Golf Federation went out from the bankruptcy proceedings on 29 June 2010. […]

Our bankruptcy plan was voted unanimously with 100% of votes and was immediately confirmed in full by bankruptcy judge. Court issued formal decision in writing, effective immediately, ending bankruptcy proceedings. […] It became enforceable and valid on 20 July 2010. […]

I emphasise that Croatian Golf Federation is obliged to continue and permanently execute all activities as national sports federation for golf within Republic of Croatia; it is strictly stated in bankruptcy plan. That means organizing national championships, governing national teams and representing Croatian golf and itself at international golf institutions as main activities plus many others.

We are already doing that; Croatian Team Championship was completed on 27 June after six days of play during two months. Croatian Individual Championship is scheduled from 9 – 12 September this year".

It is undisputed that the EGA received this letter and was thus aware of the decision of the Zagreb Commercial Court to which the Appellant's foregoing letter referred. In the certified English translation on record, the decision's operative part reads, in relevant part, as follows:

"I. The bankruptcy proceedings against the Bankruptcy Debtor "CROATIAN GOLF FEDERATION" [...] are concluded.

II. Upon the issue of this Decision the functions of the Bankruptcy Trustee and members of the Board of Creditors cease to exist.

III. The Debtor regains the right to avail itself of the bankruptcy estate".

On 3 September 2010, the EGA sent to its member federations the agenda for the 2010 AGM. The agenda did not include any item relating to the Appellant's expulsion.

On 7 September 2010, the Croatian Olympic Committee (COC) took the decision to terminate the Appellant's membership.

According to the Appellant's submissions which were not contested by the EGA, the Appellant was not heard before the decision was taken.

The main reasons given by the COC for the termination were that the Appellant's bodies were not elected (but appointed by the Zagreb Commercial Court by adopting the Insolvency Plan), that its statutes were not in accordance with the Croatian Sports Act and Association Act, that the majority of golf clubs in Croatia had withdrawn from the Appellant and that the Appellant's debts had been *"rescheduled until 2023, which indicates that there were no material conditions for the Associations's proper functioning"*.

By letter dated 16 September 2010, the COC informed the EGA that the Appellant's membership with the COC had been terminated and that the COC had decided to *"admit the Croatian Golf Association (HGU) to the associate members of the Croatian Olympic Committee"*. In the same letter, the COC also outlined the reasons for the Appellant's expulsion.

On 13 October 2010, the Respondent's Executive Committee received a letter from the Croatian Ministry of Science, Education and Sport, which according to the certified English translation provided by the Respondent reads as follows:

> *"The Croatian Olympic Committee is defined by the Sport Act as the supreme nongovernmental national sport organization, which is autonomous in its operation and performs the following activities according to the Sport Act: provides conditions for undisturbed development of sport, provides consent to the Articles of Associations of its members that must be in conformity to the Articles of Association of the Croatian Olympic Committee, represents Croatian sport before the International Olympic Committee, and represents Croatian sport before the relevant international sport organizations and associations.*
>
> *The Ministry of Science, Education and Sport is not competent in connection with status issues of organizations, but supports any efforts and measure of the Croatian Olympic Committee contributing to provision of conditions for undisturbed development and promotion of golf as a sport".*

On 16 October 2010, Mr. Dino Klisovic, Chairman of the Appellant's Board of Directors, gave a report on the current state of golf in Croatia to the EGA South Zone meeting, *inter alia* mentioning that the Appellant was no longer in bankruptcy proceedings. The EGA's President, Mr. Luis Gonzaga Escauriaza, was present at the South Zone meeting in his role as the President of the Spanish golf federation. There were no specific questions raised as to the legal or financial situation of the Appellant. Also, no plans were mentioned to expel the Appellant the next day.

Just before dinner on 16 October 2010, the EGA's President and General Secretary explained to both of the Appellant's delegates (Mr. Klisovic and Mr. Bozidar Ivacic) that around 7 pm that evening, the EGA Executive Committee had decided to propose a resolution to the AGM 2010 to expel the Appellant. The General Secretary said that the EGA was in possession of documents from relevant Croatian authorities which compromised the Appellant's status as the representative national golf federation. However, the EGA General Secretary refused to hand over said documents to the Appellant's delegates. The EGA President offered as a reason for the expulsion that the Appellant had lost its membership with the Croatian Olympic Committee and the Secretary General reminded the Appellant's delegates of the bankruptcy proceedings.

The next day, during the AGM 2010, the EGA Secretary General reminded the members present of the decision of the Executive Committee the prior year to submit if necessary to the AGM 2010 a resolution on the expulsion of the Appellant. The Secretary General's speech is reproduced in the minutes of the AGM 2010 as follows:

> *"On behalf of the Executive Committee, the General Secretary wished to remind the assembly on the decision reached at the last Annual General Meeting held in Hamburg when it was decided to adjourn the decision on the resolution to exclude the Croatian Golf Federation from membership in the EGA. To allow evidence to be brought forward by the Croatian Golf Federation and Croatian athorities, it was decided to postpone the resolution to the Annual General Meeting 2010, hoping in the meantime to receive clarification of the legal situation for the good sake of the development of golf in Croatia. The proposition was based on the fact that to be a member of the EGA, you must be a national golf federation representing the golf acitivities of your country and recognised by the governing authorities for the sport in the country, in the present case, the Croatian Olympic Committee.*

A few days prior to the meeting, the Executive Committee received formal proof that the Croatian Golf Federation, with due respect, does not meet that condition. This has been confirmed by our lawyers and legal experts. The Executive Committee consequently asked the Croatian Golf Federation to resign immediately from EGA membership. This offer being declined, according to article 16 of the EGA Constitution, the Executive Committee decided to submit the resolution on the exclusion of the Croatian Golf Federation. In order to be able to vote on this resoluation, according to third paragraph of article 16 of the constitution, it needs a two-thirds majority of those delegates present and represented".

In his presentation to the AGM 2010, Mr. Klisovic, Chairman of the Appellant's Board of Directors, unsuccessfully requested the EGA to immediately hand out to all delegates the proposed resolution and all documents it was based on.

In the subsequent vote, 81 votes were cast in favour of taking a vote on expulsion of the Appellant. Thereafter, 76 votes were cast in favour of the expulsion. The total number of votes present and represented was 108.

By letter dated 20 October 2010, the EGA informed the Appellant as follows:

"The European Golf Association (EGA) hereby informs you that during the last EGA Annual General Meeting held in Luxembourg on Sunday, 17th October 2010, delegates voted on the resolution to expel the Croatian Golf Federation from EGA membership.

Voting was carried out as follows:

- *According to paragraph 3 of article 16 of the constitution, delegates voted in favour of an immediate decision to be taken on the resolution to expel the Croatian Golf Federation from EGA membership.*

  Total number of votes present and represented: 108

  Votes in favour: 81

- *Thereafter and according to article 6, delegates voted in favour of the expulsion of the Croatian Golf Federation from EGA membership.*

  Total number of votes present and represented: 108

  Votes in favour: 76

The resolution was submitted to delegates based on following official documents:

- *Letter of the Republic of Croatia Ministry of Science, Education and Sport dated 13 October 2010.*
- *Letter of the Croatian Olympic Committee dated 16 September 2010.*
- *Republic of Croatia, City of Zagreb, City Office of Administration statement of 26 February 2010 regarding the dissolution of the Croatian Golf Federation.*
- *Republic of Croatia, Ministry of Administration statement of 4 May 2010 regarding the appeal dismissal".*

By letter dated 17 November 2010 and received by the Court of Arbitration for Sport (CAS) on the same day, the Appellant filed its Statement of Appeal with CAS against the Resolution.

By letter dated 1 December 2010, CAS granted, upon request by the Appellant of 29 November and 1 December 2010, an extension of the time limit to file the Appeal Brief until 9 December 2010. Upon a further application by the Appellant on 8 December 2011, the time limit was extended until 20 December 2010 by CAS' letter dated 10 December.

On 20 December 2010, the Appellant filed its Appeal Brief.

By letter dated 8 February 2011 and received by CAS on the same day, the Respondent filed its Answer.

A hearing was held in Lausanne on 3 May 2011 (the "Hearing").

The Appellant submitted the following prayers for relief to CAS:

> *"The Appellant hereby respectfully requests CAS to rule that:*
>
> *1. The Decision is null and void*
>
> *2. The Decision is, in any event, set aside*
>
> *3. The Appellant is granted an Award for all proceeding costs".*

The Respondent submitted the following prayers for relief to CAS:

> *"The Respondent hereby respectfully requests the Court of Arbitration for Sport to decide:*
>
> *1. That the decision taken by the Respondent excluding the Appelant [sic] of the EGA on October 17 2010 is confirmed and declared valid.*
>
> *2. That the Croatian Golf Federation bears all costs relating to the appeal.*
>
> *3. That the Croatian Golf Federation is ordered to pay to the European Golf Association all costs of the Arbitration, including, but not limited to the costs and fees of the Arbitral Tribunal, the costs and expenses of the European Golf Association related to the Arbitration, including attorney's and witnesses' fees as well as all internal costs".*

LAW

CAS Jurisdiction

1. The Panel finds that it has jurisdiction to adjudicate the present dispute.

2. Neither side has raised any objection to the jurisdiction of CAS over the present dispute and both Parties signed the Order of Procedure which includes the following statement:

"The jurisdiction of the CAS in the present case is based on Article 20 of the European Golf Association Constitution. It is confirmed by the signature of the present order by all parties".

Applicable law

3. The Panel finds that the EGA regulations and the laws of Luxembourg are applicable to the present dispute.

4. Article R58 of the CAS Code stipulates that

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

5. It can be left open whether Article 21 of the EGA Constitution, which provides that

"The terms of the Luxembourg Law pertaining to a non profit-making Association will generally apply in cases not scheduled in this Constitution"

can be interpreted as a choice of law in proceedings before CAS.

6. Indeed, even if this were not the case, the applicability of the laws of Luxembourg would derive from the fact that the EGA – as the association which has issued the challenged decision – has its seat in Luxembourg.

Admissibility

7. The Panel finds that the Appeal is admissible and in particular that it was timely filed.

8. According to Article R49 of the CAS Code,

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

9. At the end of the Hearing, the EGA challenged for the first time the timeliness of the appeal. The Appellant submitted that this challenge was unfounded and, in any event, belated.

10. In its Statement of Appeal, the Appellant submitted that it received the Resolution on 3 November 2010. This statement was not contested by the EGA in its Answer and it did not file any documents with its Answer or make any allegations therein that cast any doubt on the Appellant's contention that it received notice of the Resolution on 3 November. In such circumstances, the mere fact that the letter notifying the Resolution is dated 20 October 2010

is not sufficient to satisfy the Panel that it was notified on that date, since it could very well have been sent later.

11. Only at the end of the Hearing did the EGA contend that the appealed decision had been received by the Appellant at an earlier date, and it did so without producing any corroborating evidence relating e.g. to the date of dispatch of the letter of notice.

12. In addition, even if at such a late stage the EGA had offered any evidence, it would not necessarily have been admissible on record since according to Article R56 of the CAS Code:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".

13. In that connection, it is noteworthy that the Appellant expressly objected to the admission of the EGA's late submission on the issue of the timeliness of the Appeal and that the EGA did not invoke any exceptional circumstances within the meaning of Article R56 of the CAS Code, nor is there any indication in the facts submitted to the Panel that such circumstances exist.

14. For the above reasons and in the absence of any evidence to the contrary, the Panel deems reasonable to consider that the Appellant only received notice of the EGA's Resolution on 3 November 2011, which means that the last day of the time limit was 24 November 2011. As the Statement of Appeal was filed on 17 November 2011, the Appeal was therefore timely filed.

Merits

15. The Panel finds that the Appeal is well-founded because the Resolution was either based on invalid reasons and/or the Appellant's fundamental right to be heard was clearly violated.

16. First of all, the Panel finds that it is not clear from the EGA's submissions and pleadings what exactly were the reasons for the expulsion at the time it was decided.

17. The Resolution itself does not expressly give any reasons. It merely refers to four attachments and states that the Resolution was submitted to the delegates on the basis of these attachments.

18. Two of the attachments concern the consequences of the bankruptcy proceedings, i.e. the decision that the Appellant is deemed to have ceased its activities or (depending upon the translation) that it is dissolved. However, during the Hearing, the Respondent emphasized repeatedly that for the Respondent the Appellant's bankruptcy only served as an "alarm bell" but was, in itself, no reason at all for the Appellant's expulsion. If this is the case, however, it

remains unclear why the Resolution was in its own words "based" (albeit *inter alia*) on said two attachments.

19. As to the remaining two attachments, the Panel finds that the relevance of the letter from the Ministry of Science, Education and Sport, which expressly states that the Ministry *"is not competent in connection with status issues of organizations"*, lies (if anything) in its confirming that the constitution of the COC's members *"must be in conformity to the Articles of Association of the [COC]"*. Therefore, the Ministry's letter obviously does not contain a reason for expulsion in itself, but must be read in conjunction with the COC's letter. In any event, the Panel finds it hard to understand why the Respondent deemed this letter to *"confirm that the decision by the [COC] was right"*, as submitted in the Answer.

20. At the Hearing, the Respondent largely relied on the content of the letter from the COC, submitting that the Resolution was based on the Appellant's expulsion from the COC and alleging that the majority of Croatian golf clubs had left the Appellant and that it was not in a position to manage Croatia's golf activities.

21. It can be left open whether this uncertainty as to the grounds for the Resolution at the time it was taken can as such affect the Resolution's validity. Even if the Resolution was based (cumulatively or alternatively) on the bankruptcy proceedings, the expulsion from the COC, Croatian golf clubs leaving the Appellant and the Appellant's inability to manage Croatia's golf activities, these reasons could not, under the circumstances presented to the Panel, justify the expulsion of the Appellant from the EGA.

22. As for the bankruptcy proceedings, it is unclear whether such proceedings can *per se* justify the expulsion of a member under the EGA Constitution. Even if this was the case, the Panel doubts whether Article 16 para 3 of the EGA Constitution would entitle the Respondent to take a vote on the Appellant's expulsion on the basis of its bankruptcy without including this item on the agenda. Article 16 para 3 of the EGA Constitution reads as follows:

"Any resolution which has not been properly notified and which does not alter the Constitution or Rules may be discussed, but it shall not be voted on except when a two-thirds majority of those present and represented, deems it to be of sufficient urgency to require an immediate decision".

23. While in general terms Article 16 para 3 of the EGA is no doubt in keeping with Luxembourg laws and pertinent for resolving many types of issues that may arise within an association, the Panel finds that with respect to resolutions which severely affect the basic rights of a member - such as a decision to expel a member - the application of this provision raises legal concerns linked to the right to be heard. In that relation, it is also noteworthy that the particular seriousness of an expulsion is underscored by the fact that the EGA's Constitution contains an express provision (Article 6) fixing the conditions of expulsion of members, which requires a "violation" of the EGA's Constitution and Rules.

24. Even if such legal concerns could be ignored in cases of extreme urgency, the Panel doubts whether a situation of urgency has been established in the present case. The Appellant's expulsion as a result of the bankruptcy proceedings had already been discussed on the AGM

2009 and was postponed until the AGM 2010. Hence, it was clear (as expressly submitted by the Respondent in its Answer) that this subject would again be broached at the AGM 2010. As acknowledged by the Respondent's President at the Hearing, even if the Appellant had not submitted any documents as requested by the EGA on 20 October 2009, the latter should nevertheless have informed its members of that fact and put the item on the agenda.

25. In summary, therefore, it is doubtful whether the application of Article 16 para 3 of the EGA Constitution would be legally acceptable under the circumstances of this case.

26. However, the Panel finds that the questions raised in the previous paragraphs can eventually be left open. It is undisputed that the bankruptcy proceedings were lifted due to the decision of the Zagreb Commercial Court on 29 June 2010. The Respondent was notified by the Appellant of said court decision by letter dated 22 July 2010, i.e. nearly three months before the AGM 2010. Therefore, even if bankruptcy proceedings could generally justify an expulsion and even if Article 16 para 3 of the EGA Constitution was applicable under the circumstances described above, the Resolution could not be based on the Appellant's bankruptcy proceedings because the Respondent was well aware that these proceedings were no longer pending when the Resolution was taken.

27. With respect to the Appellant's expulsion from the COC, it is doubtful whether this fact could in itself justify the Resolution. It has been held by CAS in the case CAS 2005/A/971 that

"Unless relating to the participation of the national association's athletes in the Olympic Games, the provisions of [Rules 26 and 28 of the Olympic Charter] do not vest any authority whatsoever in the NOCs which permit them to determine or co-determine the [...] expulsion of a national association by its IF. This does not prohibit the NOC from making a recommendation to the IF [...], but the IF is not required to follow such recommendation".

28. However, it is not necessary for the Panel to decide upon this issue in the present matter. Even if the Resolution was not based upon the expulsion from the COC as such, but – additionally or exclusively – on the reasons given in the COC's letter (mainly: a *"vast majority"* of Croatian golf clubs allegedly having left the Appellant and the Appellant's alleged inability to manage Croatia's golfing activities), the Resolution is invalid due to a blatant violation of the Appellant's right to be heard.

29. The right to be heard is a fundamental and general principle which derives from the elementary rules of natural justice and due process (see, for example, CAS OG 96/005, para 7; CAS 2001/A/317, para 6). CAS has always protected the principle *audiatur et altera pars* in connection with any proceedings, measures or disciplinary actions taken by an international federation *vis-à-vis* a national federation, a club or an athlete (CAS 98/200, para 58 with numerous references to CAS jurisprudence; see also CAS 2004/A/777, para 20 with further references).

30. There is no doubt that the right to be heard is a legal principle which has to be respected by federations when making their decisions and within their internal proceedings (see CAS

91/53, in REEB M. [ed.], *Digest of CAS Awards 1986-1998*, p. 79, 86 et seq.; CAS 2001/A/317, para 6) such as the Appellant's expulsion from the EGA.

31. As already mentioned above (para 25), it is doubtful whether Article 16 par. 3 of the EGA Constitution can be applied in the present case in view of the Appellant's right to be heard. However, even if this were the case and even if the letter from the COC contained information which would meet the "urgency" requirement in Article 16 par. 3 of the EGA Constitution, the Appellant's right to be heard would at the very least have required the EGA Respondent to immediately inform the Appellant (and the other members) that the EGA deemed the information received from the COC to be relevant for a possible expulsion of the Appellant at the AGM 2010. This course of action would have allowed the Appellant to prepare its defence against the Resolution, which is quite obviously of crucial importance to its future, and enabled the other members to consider the issue.

32. The letter from the COC is dated 16 September 2010.

33. Absent any evidence on record or any submission by the Respondent to the contrary, there is no reason to consider that the Respondent did not receive the COC's foregoing letter well in advance of the day on which the AGM 2010 took place.

34. Consequently, the Panel finds nothing that justifies the EGA having waited until the eve of the AGM 2010 before informing the Appellant, let alone its refusal to provide the Appellant with the relevant documents on that occasion and at the AGM 2010 itself.

35. In particular, the Panel finds that the letter from the Ministry of Science, Education and Sport which the Respondent, according to its Answer, received on 13 October 2010, does not constitute such justification. First of all, even if this letter did in fact, as submitted by the Respondent, confirm the legality of the COC's decision to expel the Appellant (which the Panel finds highly doubtful, see para 19 above), the question would remain whether the Appellant's expulsion from the COC could *per se* justify the Resolution in light of the CAS jurisprudence mentioned in para 27 above. Because only then would the Ministry's letter have contained relevant information with regard to the Resolution.

36. However, the questions raised in the previous paragraph can be left open. Given that the AGM 2010 was at best one month ahead when the Respondent received the COC's letter, time was of the essence in order to provide the Appellant with the opportunity to prepare its defence. The Respondent was therefore obliged to inform the Appellant immediately upon receipt of any information which could later form the basis for a resolution to expel the Appellant. Waiting for a confirmation of any sort could not discharge the Respondent from this obligation given the fundamental importance of the right to be heard. Also, immediate notification would not have hurt any reasonable interests of the Respondent. If the sought-after confirmation would not have been received before the AGM 2010, the Respondent could have decided either – if it deemed the available information sufficient – to nonetheless take a vote on the Appellant's expulsion or – if it deemed the confirmation a *conditio sine qua non* for the expulsion – to postpone the vote once again.

37. Hence, in view of the fact that the Resolution was (at least *inter alia*, if not exclusively) based on the information contained in the letter from the COC, the Respondent was obliged to immediately notify the Appellant thereof. The outstanding confirmation from the Ministry did not justify the Respondent's waiting until the eve of the AGM 2010 before informing the Appellant that its expulsion would be sought on the basis of facts which had come to the Respondent's knowledge weeks before. Even less could it justify the Respondent's refusal to provide the Appellant with the documents on which the Resolution was taken, even after being expressly requested to do so on both 16 and 17 October 2010. This course of action constituted a severe violation of the Appellant's right to be heard.

38. Unlike in other cases (see CAS 2004/A/714, para 11 or CAS 1920/A/2009, para 87 with further references), the *de novo* proceedings before CAS (in accordance with Article R57 of the CAS Code) cannot be deemed to have cured the violation of the Appellant's right to be heard. The vote taken by the AGM 2010 on the Resolution is not a decision which was largely determined by legal standards and which the Panel could therefore take in lieu of the delegates.

39. Article 6 para 1 of the EGA Constitution reads as follows:

"All members shall observe the Constitution and Rules of the Association. In the event of their violation any member may be expelled by a majority of two-thirds of those present and represented voting at an Annual General Meeting or an Extraordinary General Meeting".

40. Article 6 para 1 of the EGA Constitution might or might not stipulate that the facts presented to the delegates by the Respondent's Secretary General justified the expulsion of the Appellant (this can be left open here). In any event, it is still very much a "political" decision within the discretion of the delegates whether or not to expel a member. In particular, it follows from the wording of Article 6 par. 1 of the EGA Constitution (*"<u>may</u> be expelled"*, emphasis added) that the delegates certainly did not have a legal duty to vote in favour of the Appellant's expulsion.

41. As has been established in the case CAS OG 96/005, paras 10 *et seq.*

"the Panel's function is to review the propriety, in the broadest sense, of the decision of the decision maker; it is not to become the decision maker itself. […] There are, of course, exceptional cases when a body such as this Panel, can overlook a clear departure from due process because it can determine that the decision would have been the same in any event; i.e. that there was nothing that the victim of the decision could have said to persuade a reasonable decision maker to change his mind. But the law has always recognized that such cases are rare […]".

42. Pursuant to Article 6 para 1 of the EGA Constitution, the Annual General Meeting is the decision maker with regard to the expulsion of members. The Panel would only be able to cure the violation of the Appellant's right to be heard if it could exclude the possibility that this violation had a bearing on the outcome of the case (cf. also CAS 2004/A/777 para 58).

43. In this case the Panel finds that it cannot exclude such possibility, since had the Appellant been given the chance to prepare its case a few weeks before the AGM 2010 began, the Appellant might very well have succeeded in convincing enough members in order to prevent a two-thirds majority in favour of the Resolution. This is especially true given that the vote was relatively close and in view of the fact that the EGA's delegates, as its witness Mr. Pfeiffer testified, understandably do not take a vote on the expulsion of a member "light-heartedly".

44. In 2009, when the Appellant sent a letter to all of the EGA's members arguing against its expulsion, the vote on the expulsion was postponed. The Panel is not in a position to judge whether this result was a consequence of the Appellant's efforts back then or not. However, the Panel considers that affording the Appellant the opportunity to defend itself again in 2010 and to comment on the documents invoked by the EGA would at least have left the possibility that some additional members would have voted against the Resolution. This might have prevented a two-thirds majority in favour of the Appellant's expulsion.

45. For these reasons, the Panel finds that the Resolution is illegal. Either, if based on the bankruptcy proceedings, the Resolution is illegal because this allegation was, as the Respondent was aware, no longer accurate at the time the Resolution was taken. Or, if based on any or all of the circumstances contained in the letter from the COC to the Respondent, the Resolution is illegal because the procedure leading to the Resolution clearly violated the Appellant's fundamental right to be heard.

The Court of Arbitration for Sport rules:

1. The appeal filed on 17 November 2010 by the Croatian Golf Federation is upheld.

2. The decision taken by the European Golf Association on 17 October 2010 at its Annual General Meeting to expel the Appellant is set aside.

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

(…).