

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

CAS 2020/A/7220 Michel Turk v. FIM

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Prof. Dr Stephan Breidenbach, Professor of law in Berlin, Germany

in the arbitration between

Michel Turk, Luxembourg, Luxembourg

Represented by Mr John Mehrzad QC and Ms Lydia Banerjee, Barristers at Littleton Chambers in London, United Kingdom

- Appellant -

and

Fédération Internationale de Motocyclisme (FIM), Mies, Switzerland

Represented by Mr Paolo Marzolini and Mr Daniel Durante, Attorneys-at-law at Pattochi & Marzolini, in Geneva, Switzerland, and by Mr Ludovic Agassiz, FIM Legal Director and by Ms Sara María Moreno Sánchez, FIM Legal Advisor

- Respondent -

I. PARTIES

1. Mr Michel Turk (the “Appellant”), with Luxembourgish nationality, is a former president of the Luxembourgish Fédération of Motorcycling and was affiliated to the Motorcycle Federation of Macedonia at the time of the dispute, which in turn is affiliated to the Fédération Internationale de Motocyclisme.
2. The Fédération Internationale de Motocyclisme (the “FIM” or the “Respondent”), with its registered seat in Mies, Switzerland, is the international governing body of the motorcycling sport.
3. Together the Appellant and the Respondent are referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 27 June 2018, the Appellant informed the FIM President at the time about his intent to run as a candidate for a seat in the FIM Board of Directors during the General Election in Andorra on 1 December 2018.
6. On 17 October 2018, the Motorcycle Federation of Macedonia informed the FIM President about its proposal and support of the candidature of the Appellant for the 2018 FIM Board of Directors election.
7. On 10 September 2018, an anonymous e-mail was sent to several FIM member federations, indicating that Mr Jorge Viegas (candidate to the 2018 FIM presidential elections) was involved in two criminal proceedings regarding fraud and corruption charges.
8. On 12 September 2018, Mr Jorge Viegas sent an e-mail to the FIM representatives denying the facts of corruption and fraud alleged against him.
9. By letter of 25 November 2018, the Appellant filed a motion with FIM’s President, the FIM’s Board of Directors and the FIM’s CEO to defer the election of the new FIM President, which was about to take place on FIM’s General Assembly of 1 December 2018, to FIM’s General Assembly in 2019, based on the following reasons:
 - (i) there was only one candidate, Mr. Jorge Viegas, now standing given another candidate, Dr Wolfgang Srb, had recently unexpectedly withdrawn due to ill-health;

- (ii) there was no opportunity for another candidate to stand given that the deadline for candidatures had now passed; and
 - (iii) the one remaining candidate, Mr. Jorge Viegas, was “questionable” considering the report by a Portuguese journalist who had reported that there were two criminal proceedings concerning Mr. Jorge Viegas.
10. On 1 December 2018, Mr. Jorge Viegas was duly elected the FIM’s new President on an unopposed basis.
11. On 6 March 2019, Mr Stephan Carapiet, President of the National Motorcycle Sports and Safety Association (“NAMSSA”) of the Philippines and in its capacity of member of the FIM’s newly elected Board of Directors, filed a complaint with the FIM International Commission of Judges against the Appellant pursuant to Article 6.1 of the FIM Code of Ethics, following the Appellant’s letter dated 25 November 2018.
12. On 5 May 2020, the FIM Ethical Chamber rendered its decision (the “Appealed Decision”), in which it found the Appellant to be in breach of Articles 3.6, 4.2 and 4.13 of the Code of Ethics, following which it imposed the following sanctions on the Appellant:

“For a period of eight years from the date of the decision:

- a. under clause 5, h) of the Code, exclusion from all FIM events or activities*
 - b. under clause 5, j) of the Code, a ban on entering any FIM event*
 - c. under clause 5, m) of the Code, exclusion from meetings or activities of FIM and/or CONU statutory bodies*
 - d. under clause 5, o) of the Code, ineligibility for any FIM and/or CONU office or licence*
 - e. under clause 5, p) of the Code, a ban on taking part in any motorcycling-related activity.”*
13. The Appealed Decision was notified on the same day to the Appellant.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 26 May 2020, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”) directed against the Respondent with respect to the Appealed Decision, pursuant to Article R47 and R48 of the 2019 edition of the CAS Code of Sports-related Arbitration edition (the “CAS Code”). In his Statement of

Appeal, the Appellant requested that the case be submitted to a panel of three arbitrators, and that Mr Patrick Lafranchi, Attorney-at-law in Bern, Switzerland be appointed as an arbitrator. Furthermore, the Appellant requested CAS Legal Aid and his time limit to file his Appeal Brief to be suspended until a *pro bono* Counsel would be appointed.

15. On 3 June 2020, the CAS Court Office informed the Appellant that CAS Legal Aid does not cover the CAS Court Office fee of CHF 1'000, and invited the Appellant to pay the CAS Court Office fee, failing which the CAS Court Office shall not proceed.
16. On 15 June 2020, the CAS Court Office informed the Appellant that it still did not receive payment of the CAS Court Office fee, and, therefore, pursuant to Article R64.1 of the CAS Code, the CAS shall not initiate an arbitral procedure in this matter.
17. On 19 June 2020, the Appellant informed the CAS Court Office that in its letter of 3 June 2021, no deadline for payment was mentioned. He further indicated that he had a car accident and was therefore not in the position to go to the bank and make the transfer of the CHF 1'000.-.
18. On the same date, the Appellant paid the CAS Court Office fee.
19. On 2 July 2020, the CAS Court Office invited the Respondent to nominate an arbitrator, and to declare whether it agreed with the Appellant's request for an extension of the time limit to file his Appeal Brief, during which the aforementioned time limit remained suspended.
20. On 9 July 2020, the Respondent informed the CAS Court Office that it did not agree with the Appellant's request for an extension to file his Appeal Brief, and that it requested the appeal to be withdrawn pursuant to the Appellant's failure to file a proper Statement of Appeal pursuant to Article R48 of the CAS Code, to file his Appeal Brief in time pursuant to Article R51 of the CAS Code and to pay the CAS Court Office fee in time pursuant to Article R64.1 of the CAS Code.
21. On 13 July 2020, the CAS Court Office informed the Parties that it would be for the CAS Appeals Arbitration Division President to decide on the Appellant's request for an extension of the deadline to file his Appeal Brief, during which the aforementioned deadline remained suspended. In the same letter, the CAS Court Office invited the Appellant to submit his comments/observation on the Respondent objection to the admissibility of the appeal.
22. On 16 July 2020, the Respondent requested the CAS Court Office for the nomination of a sole arbitrator in the present proceedings and reiterated its position with respect to the inadmissibility of the appeal until 20 July 2020.
23. The Appellant did not submit any position on the admissibility of his appeal within the prescribed deadline.

24. On 7 September 2020, the CAS Court Office informed the Parties that, pursuant to Article R50 of the CAS Code, the President of the CAS Appeals Arbitration Division had decided to submit the present case to a sole arbitrator, and that the issue of admissibility of the appeal raised by the Respondent would be decided upon by the Sole Arbitrator, once constituted.
25. On 27 January 2021, the CAS Court Office informed the Parties that, in view of the decision granting legal aid to the Appellant for the CAS procedural costs, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, Prof. Dr Stephan Breidenbach, Professor of Law in Berlin, Germany, was appointed as a Sole Arbitrator to decide on the case.
26. In the same letter, the CAS Court Office advised the Appellant that the deadline to file his Appeal Brief resumed as from that date.
27. On 11 February 2021, the CAS Court Office informed the Parties, on behalf of the Sole Arbitrator, that the Appellant's further request for extension for filing his Appeal Brief was exceptionally granted until 17 February 2021.
28. On 17 February 2021, further to the granted extension requests, the Appellant filed his Appeal Brief with the CAS Court Office within the prescribed deadline.
29. On 11 March 2021, the Respondent filed its Answer with the CAS Court Office.
30. On 18 March 2021, the Appellant requested the CAS Court Office to hold a public hearing in this matter. On the same day, the Respondent requested the CAS Court Office to decide the case on the basis of the Parties' written submissions, without the need of holding a hearing.
31. On 23 March 2021, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, the Sole Arbitrator had decided to hold a hearing by video-conference in this matter. The CAS Court Office further informed the Parties that, in view of the current pandemic situation and the COVID-19 restrictions imposed by the Swiss Government, public hearings were not possible. The Appellant was invited to declare whether he would insist on a public hearing, and in such an event, the hearing must be postponed to a later date.
32. On 26 May 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to dismiss the Respondent's exception of inadmissibility of the appeal. The reasons for such decision would be explained in the final Award.
33. On 8 June 2021, the CAS Court Office informed the Parties, on behalf of the Sole Arbitrator, that a hearing would be held by video-conference on 14 June 2021.
34. On 10 June 2021, the Appellant duly signed and returned the Order of Procedure, issued by the CAS Court Office on behalf of the Sole Arbitrator, to the CAS Court Office.

35. On 11 June 2021, the Respondent duly signed and returned the Order of Procedure to the CAS Court Office.
36. On 14 June 2021, the hearing took place by videoconference. Apart from the Sole Arbitrator and Mrs Andrea Sherpa-Zimmermann, Counsel to the CAS, the following persons attended the hearing:
- For the Appellant:
 - Mr Michel Turk, the Appellant
 - Mr John Mehrzad, lawyer to the Appellant
 - Ms Lydia Banerjee, lawyer to the Appellant
 - Ms Bláthnaid Breslin, lawyer to the Appellant
 - Mr Nicola Noth,
 - For the Respondent:
 - Mr Paolo Marzolini, lawyer to the Respondent;
 - Mr Daniel Durante, lawyer to the Respondent
37. At the outset of the hearing, the Parties declared that they had no objections as to the constitution of the Sole Arbitrator. The Sole Arbitrator heard evidence from the Appellant Mr Michel Turk, a witness called by both Parties. He was invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witness.
38. Thereafter, the Parties were given a full opportunity to present their case, submit their arguments and submissions, and answer the questions posed by the Sole Arbitrator. At the end of the hearing, the Parties confirmed that they were satisfied with the conduct of the hearing and that their right to be heard was fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

39. The Appellant's submissions, in essence, may be summarised as follows:
- At the date of the alleged breaches of the Respondent's Code of Ethics, the Appellant was not subject to the Respondent's Code of Ethics, as the Appellant did not fall under the scope of Article 2 of the Respondent's Code of Ethics, as he was not participating or involved in any capacity in an FIM sports event or FIM activity or acting on behalf of the FIM. Therefore, the Respondent had no jurisdiction to consider any allegation of a breach of the Code of Ethics.

- The Appealed Decision did not consider or refer to any basis for the Appellant to fall under the scope of the FIM Code of Ethics, and, therefore, failed to consider the issue of its own jurisdiction.
- The complaint against the Appellant was not admissible under the Code of Ethics, as Article 6.1.2 of the Code of Ethics provides that a complaint shall be filed within one month of the complainant's knowledge of the alleged breach (*i.e.* 25 November 2018), whilst the complaint was only filed on 6 March 2019.
- The Appellant did not breach Articles 3.6, 4.2 and 4.13 of the Code of Ethics, as he merely repeated allegations about Mr Jorge Viegas that were already in the public domain and as he merely raised concerns about these allegations.
- The Respondent has violated the Appellant's right to be heard, as he did not receive notice that an Ethical Chamber of the Respondent had opened an investigation against him, nor was he informed about the investigation report or heard to defend himself.
- The sanction imposed on the Appellant violates the principle of proportionality, as an eight-year ban is grossly disproportionate to the alleged offence, *inter alia* since (i) the Appealed Decision fails to explain its reasoning for such a long ban, (ii) fails to consider alternative sanctions, and (iii) fails to examine mitigating circumstances.

40. The Appellant submitted in his Appeal Brief the following prayers for relief:

- “(i) the Appealed Decision is null and void;*
- (ii) alternatively, the Appealed Decision is annulled;*
- (iii) the Respondent shall pay all costs including the CAS Court Office fee, administrative costs of the CAS, the cost and fees (and contribution) of the arbitrators and ad hoc clerk; and,*
- (iv) taking into account that (a) this matter is to be considered at a public hearing pursuant to Article R57 of the CAS Code; and/or (b) the fundamental right of the Appellant to participate in his profession of motorcycling; and/or (c) the Respondent publishing to the world that the Appellant has been banned from the sport for eight years; and/or (d) publication being the default position under Article R59 of the CAS Code, the Award (the operative part and its reasons) shall be published.”*

B. The Respondent

41. The Respondent's submissions, in essence, may be summarised as follows:

- The appeal is inadmissible because the Appellant was given an irregular deadline to submit his Appeal Brief, the CAS Code has been applied arbitrarily affecting the equal treatment and the Appellant lost the opportunity to object to the

inadmissibility. Moreover, the appeal shall be deemed withdrawn due to the non-payment of the entire advance of costs within the time limit fixed by CAS.

- There was no violation of the Appellant's right to be heard, but a deliberate non-appearance of the Appellant. Numerous notifications were sent to the Appellant requesting his participation at the proceedings of the FIM Ethical Chamber, however, the Appellant never replied to such notifications and never filed written submissions.
- The Appellant accepted wilfully to be bound by the FIM Code of Ethics. When participating in the 2018 FIM Board of Directors elections, the Appellant did not only accept to be bound by the FIM Codes and Regulations through the online platform when uploading his application, but also signed the Declaration of Interest and Incompatibilities including the application of the FIM Code of Ethics. He was also member of the Macedonian Motorcycle Federation, and therefore also bound by the FIM Code of Ethics.
- The Appellant is estopped from challenging the jurisdiction from the FIM Ethical Chamber, as he accepted it through his application for the FIM Board of Directors elections.
- The complaint made before the FIM Ethical Chamber was admissible. Art. 6.2.1 of the FIM Code of Ethics provides that if a complaint has been filed after the one month period specified in section 6.1.2 above has elapsed, the Ethical Chamber may nevertheless decide to open an investigation.
- The Appellant decided deliberately to opt for a negligent and malicious behavior breaching the FIM Code of Ethics. He sent the letter intentionally to the maximum audience possible at a worldwide level in the motorcycling community, using false and unverified information, showing a total lack of due diligence and a malicious intention. It is not because illegal content is in the public domain that a person is legally entitled to act as an accomplice of a defamation crime.
- The burden of proof is on the Appellant on the basis of Art. 8 of the Swiss Civil Code.
- The sanction ordered by the FIM Ethical Chamber was not evidently and grossly disproportionate. The CAS has limited discretion to review sanctions imposed by disciplinary bodies of federations with jurisdiction to resolve ethical cases. The suspension imposed on the Appellant could also be indefinitely. The sanction had to reflect the gravity and seriousness of the offences.

42. The Respondent submitted in its Answer the following prayers for relief:

- "i. *DECLARING the Statement of Appeal inadmissible and withdrawn, issuing as well a termination order.*

Alternatively:

- ii. *DISMISSING in its entirety the Appeal filed against the Decision of the FIM Ethical Chamber*
- iii. *UPHOLDING the Decision rendered by the FIM Ethical Chamber.*
- iv. *REJECTING the Appellant's request to hold a public hearing as well as the publication of the award on the CAS website.*
- v. *REJECTING the Appellant's request to order the FIM the payment of all costs including the administrative costs of the CAS, the costs and fees of the Sole Arbitrator and clerk.*
- vi. *ORDERING the Appellant to bear all the administrative costs and legal fees incurred by the FIM in this arbitration on a full-indemnity basis plus interest at the rate of 5% p.a. running from the date of the notification of the Award (included) until full and final payment".*

V. JURISDICTION

51. Article R47 of the CAS Code provides the following:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

52. The jurisdiction of CAS, which is not disputed by the Parties, follows from Article 5 of the FIM Statutes, which stipulates: *"Final decisions handed down by the jurisdictional bodies or the GA of the FIM shall not be subject to appeal in the ordinary courts. Such decisions must be referred to the Court of Arbitration for Sport (CAS) which shall have exclusive authority to impose a definitive settlement in accordance with the Code of Arbitration applicable to sport".*

53. The jurisdiction of CAS also derives from Article 9.1 of the FIM Code of Ethics, which reads as follows: *"A final decision of the Ethical Chamber may be appealed to the Court of Arbitration for Sport (CAS) within 21 days from the date of receipt of such reasoned decision by the accused party and the FIM. Subject to the possibility for the FIM to call for a reformation in peius before the CAS, even when acting as Respondent, Articles R47 ff. of the Code of Sports-related Arbitration shall apply".*

54. It follows that CAS has jurisdiction to decide the present case.

VI. ADMISSIBILITY

55. The Appellant filed its Statement of Appeal with the CAS Court Office on 26 May 2020, within 21 days of receipt of the Appealed Decision, pursuant to Article R48 of the CAS Code.
56. The Respondent argues, however, that the appeal should be declared inadmissible, because the Appellant was given an irregular deadline to submit his Appeal Brief, the CAS Code has been applied arbitrarily affecting the equal treatment and the Appellant did not pay the CAS Court Office Fee within the time limit fixed by CAS.
57. The Sole Arbitrator notes that, pursuant to Article R48 of the CAS Code, and upon filing the Statement of Appeal, the Appellant shall pay the CAS Court Office fee, and that, if this requirement is not fulfilled when the Statement of Appeal is filed, the CAS Court Office may grant a one-time-only short deadline to the Appellant to complete its Statement of Appeal, failing receipt of which within the deadline, the CAS Court Office shall not proceed. The Sole Arbitrator further notes that, pursuant to Article R51 of the CAS Code, the Appellant shall file its Appeal Brief within ten days following the expiry of the time limit for the appeal.
58. The Sole Arbitrator observes that, due to an administrative oversight, the CAS letter of 3 June 2020 did not contain any deadline for the payment of the Court Office fee by the Appellant. However, the Appellant was granted an additional time-limit to pay the CAS Court Office fee as well as to file his Appeal Brief. The Sole Arbitrator further stresses that both situations of the Appellant not respecting the initial time limits as provided in the CAS Code and the granting of extensions of those time limits by the CAS, were further related to the Appellant's request for legal aid. Moreover, the Sole Arbitrator observes that the Appellant eventually paid the CAS Court Office fee, and filed his Appeal Brief within the additional time limit as provided for by the CAS Court Office, and that the Respondent was given an additional time limit as well to file its Answer.
59. In relation to the time limits provided for in the CAS Code, Article R32 of the CAS Code provides that, *"upon application on justified grounds and after consultation with the other party (or parties), either the President of the Panel or, if she/he has not yet been appointed, the President of the relevant Division, may extend the time limits provided in these Procedural Rules, with the exception of the time limit for the filing of the statement of appeal"* and that *"the Panel or, if it has not yet been constituted, the President of the relevant Division may, upon application on justified grounds, suspend an ongoing arbitration for a limited period of time"*.
60. Furthermore, according to Article R48 of the CAS Code, the CAS Court Office is able to grant an additional deadline to the appellant in order to rectify possible mistakes or to complete an incomplete statement of appeal. Such practice is in compliance with the jurisprudence of the Swiss Federal Tribunal and the Swiss doctrine (See also ATF 96 I 521 of 16 December 1970, De Burgener). The denial of such additional deadline would be a form of excessive formalism, which is prohibited by the Swiss Federal Constitution (See also Besson, S., 'Commentary on the Introduction and on Art. 31-33 of the new

Swiss Rules of International Arbitration’, in *Ouvrage Collectif*, eds Zuberbuehler, T. / Müller Ch. / Habegger, Ph., (Zurich: Schulthess, 2005), n.1.2.4 ad Article 30, p. 179). CAS deals with disputes between parties from different countries and talking different languages, and the CAS Court Office should be flexible and grant an additional period to a claimant whose request does not comply with all the requirements of Article R38 of the Code (See CAS 2003/O/460, *W. v. B.*, preliminary decision of 4 June 2003, para. 4.5).

61. The extension of the time limit is decided by the Panel or by the President of the respective Division alone, even if one of the parties does not agree as to the granting of the additional deadline (See e.g. CAS 2011/A/2678, *IAAF v. RFEA & F. Peláez*, award of 14 March 2012, para. 60). Article R32, par 3 of the CAS Code provides that an ongoing arbitration may be suspended for a limited period of time by the Panel or, if it has not yet been constituted, by the President of the relevant Division. The procedure may be suspended until the decision on legal aid (See D. MAVROMATI and M. REEB, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials*, 2015, p128).
62. Moreover, the Sole Arbitrator finds that the Respondent did not provide convincing arguments that the extended or suspended time limits in favour of the Appellant due to the Appellant’s legal aid, caused an unequal treatment of the Parties, or caused harm to the Respondent’s rights.
63. Taking into account all of the above, the Sole Arbitrator decides that the appeal is to be considered admissible.

VII. APPLICABLE LAW

64. Article R58 of the CAS Code provides the following:

“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”.
65. The Appellant argues that, subject to whether the Respondent’s Code of Ethics applied to the Appellant in the first place (which is denied by the Appellant), the laws of the country in which the Respondent is domiciled, namely Swiss Law, shall apply.
66. The Sole Arbitrator observes that the Respondent did not file any submissions on the issue of applicable law, however, in its submissions, the Respondent refers several times to Swiss law.

67. The Sole Arbitrator further observes that both the Respondent's Statutes and Code of Ethics also remain silent on the issue of applicable law.
68. On the basis of the foregoing, and pursuant to Article R58 of the CAS Code, the Sole Arbitrator shall apply the Respondents Statutes and Regulations, in particular the FIM Code of Ethics (2019 edition), and, subsidiarily, Swiss law.

VIII. MERITS

A. Scope of review

69. Article R57 of the CAS Code stipulates, *inter alia*, as follows: "*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*".
70. The Sole Arbitrator will thus conduct a *de novo* review of the present dispute within the scope set out below of the appeal of the Appellant.

B. The main issues

71. The main issues in this case to be decided by the Sole Arbitrator are:
- a. Did the Appellant fall under the scope of the FIM Code of Ethics and, therefore, under the jurisdiction of the FIM Ethics Chamber?
 - b. If so, was the complaint against the Appellant admissible under the FIM Code of Ethics and was the Appellant's right to be heard respected?
 - c. If so, did the Appellant violate the FIM Code of Ethics?
 - d. If so, was the sanction imposed on the Appellant proportionate?

(a) Did the Appellant fall under the scope of the FIM Code of Ethics and, therefore, under the jurisdiction of the FIM Ethics Chamber?

72. In his Appeal Brief, the Appellant contested that he fell under the scope of the FIM Code of Ethics, and, therefore, under the jurisdiction of the FIM, as he was not an active member of the FIM anymore nor did he participate in any FIM event. The Respondent, however, argued that the Appellant accepted the application of the FIM Code of Ethics and the jurisdiction of the FIM Ethics Chamber, when he applied for the FIM Board Member elections.
73. The Sole Arbitrator observes that Article 2 of the FIM Code of Ethics reads, *inter alia*, as follows: "*This FIM Code of Ethics is intended to apply broadly when the interests of the FIM are involved. It is intended firstly to be applied to all persons participating or*

involved in any capacity in an FIM sports event or FIM activity or acting on behalf of the FIM, (including but not limited to consultants and all people conducting business with or on behalf of the FIM)”.

74. The Sole Arbitrator notes that, at the hearing, the Appellant did not longer object to the application of the FIM Code of Ethics and the jurisdiction of the FIM Ethics Chamber.
75. Therefore, without further legal analysis on this issue, the Sole Arbitrator finds that the Appellant did fall under the scope of the FIM Code of Ethics and under the jurisdiction of the FIM Ethics Chamber.

(b) If so, was the complaint against the Appellant admissible under the FIM Code of Ethics and was the Appellant’s right to be heard respected?

76. According to the Appellant, the complaint against the Appellant under the FIM Code of Ethics was inadmissible, as Article 6.1.2 of the FIM Code of Ethics provides that a complaint shall be filed within one month of the complainant’s knowledge of the alleged breach (*i.e.* 25 November 2018), whilst the complaint was only filed on 6 March 2019.
77. The Respondent, on the other hand, claims that the complaint was admissible, as Article 6.2.1 of the FIM Code of Ethics provides that if a complaint has been filed after the one-month period specified in section 6.1.2 has elapsed, the Ethical Chamber may nevertheless decide to open an investigation.
78. The Sole Arbitrator observes that Article 6.1.2 of the FIM Code of Ethics reads as follows:
- “To be admissible, the complaint shall be filed within one month of the said person’s knowledge of the alleged breach of the Code. The complaint shall be submitted (by email/fax or registered mail) to the Director of the FIM International Commission of Judges (CJI) with a copy to the FIM President, FIM CEO and FIM Legal Department. It shall outline (briefly) the relevant facts related to the alleged breach of the Code”* (Sole Arbitrator’s underlining).
79. The Sole Arbitrator further observes that Article 6.2.1 of the FIM Code of Ethics reads as follows:
- “Full discretion is left to the Ethical Chamber to open and conduct an investigation, on its own initiative and ex officio, if it comes into possession of evidence of facts that may be considered, prima facie, as breaches of the Code. The Panel, by a majority vote, shall take a decision to open or not to open any ex officio investigation. If a complaint has been filed after the one month period specified in section 6.1.1 above has elapsed, the Ethical Chamber may nevertheless decide to open an investigation. No right of appeal lies against such decisions”* (Sole Arbitrator’s underlining).
80. On the basis of Article 6.2.1 of the FIM Code of Ethics, the Sole Arbitrator finds that the complaint of Mr Stephan Carapiet, member of the FIM Board of Directors, was

admissible due to the discretion of the FIM Ethical Chamber to open an investigation at all time.

81. Secondly, the Sole Arbitrator needs to decide whether or not the Appellant's right to be heard was violated during the procedure before the FIM.
82. According to the Appellant, the Appellant did not receive notice that an Ethical Chamber had opened an investigation against him, and that he did not receive either the Initial Report or the alleged invitations to give submissions to the investigation or otherwise.
83. The Respondent, on the other hand, argues that the FIM Code of Ethics does not provide any particular form of notification, and that there is no mandatory formality for ethical cases applying to notification, the usual practice being to notify by email. Nevertheless, according to the Respondent, the FIM Ethical Chamber acted extremely careful in this case and used all the available means of communication to inform the Appellant about the status of the proceedings before the FIM Ethical Chamber.
84. 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; CAS 2004/A/777, para 20; CAS 2010/A/2275, para 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.
85. The Sole Arbitrator observes that the Appellant was indeed never heard by the FIM Ethical Chamber during the investigation, nor during the disciplinary proceedings, which is not denied by the Respondent. However, the Sole Arbitrator also observes that the FIM Ethical Chamber informed the Appellant about the investigation as well as invited the Respondent to provide its submissions, but only by e-mail, to an e-mail address of the Appellant that, according to the Appellant, did not work and was not used by the Appellant at the time. Only the investigation report itself, once finalised, was sent to the Appellant by DHL courier. The Respondent did also not provide evidence of inviting the Appellant to provide written submissions or oral submissions during a hearing by way of correspondence with proof of receipt by the Appellant such as DHL courier or e-mail receipt, nor did the Respondent try to call the Appellant.
86. On the basis of the above, the Sole Arbitrator finds that the Respondent did not take sufficient measures to assure that the Appellant's right to be heard would be respected. The fact that the FIM Code of Ethics does not provide for procedural formalities regarding notifications and the protection of the right to be heard, does not acquit the Respondent from applying the general legal principle of the right to be heard and for the Appellant to have a due process.

87. However, there is an established CAS jurisprudence based on Art. R57 of the CAS Code (“*The Panel shall have full power to review the facts and the law*”), according to which the CAS appeal arbitration procedure cures any infringement of the right to be heard or to be fairly treated committed by a sanctioning sports organization during its internal disciplinary proceedings. Indeed, a CAS appeal arbitration procedure allows a full *de novo* hearing of a case with all due process guarantees, granting the parties every opportunity not only to submit written briefs and any kind of evidence, but also to be extensively heard and to examine and cross-examine witnesses or experts during a hearing (see CAS 2003/O/486, para 50; CAS 2009/A/1880-188, paras 142-146; CAS 2008/A/1545, para 15).
88. The Sole Arbitrator harbours no doubt that in the present CAS procedure the Appellant was given ample latitude to fully plead his case and to be heard; accordingly, the Sole Arbitrator deems as cured any possible violation that might have occurred during the FIM Ethics Chamber proceedings.

(c) If so, did the Appellant violate the FIM Code of Ethics?

89. The Sole Arbitrator observes that the FIM Ethical Chamber in its Report dated 14 January 2020 states, *inter alia*, as follows:

“(…)

5. The alleged breaches.

On the evidence available to it as a result of its investigation the panel is of the view that there are three provisions of the Code that may have been breached by Mr. Turk. They are:

section 3.6 – acting in a manner which is improper, and bringing the FIM into disrepute

section 4.2 – lack of respect for others

section 4.12 – acting prejudicial to the interests of the FIM or motorcycle sport.

6. The evidence

The evidence that is capable of supporting those breaches is as follows:

1. Mr Turk is bound by the code. The letter (attachment 2) identifies him as “FIM family member since 1976” and his “CV” (attachment 10) also supports this.

2. Mr Turk made the statements complained of by Mr Carapiet. The evidence supporting this comprises the content of the letter and Mr Turk having signed it.

3. The statements complained of were false. The evidence capable of supporting that view comprises:

(a) Mr Viegas' denials (attachments 6 and 9)

(b) corroboration of denials by lawyers (attachment 8)

(c) the denials of Mr Viegas and their corroboration can more readily be accepted in the absence of any response from Mr Turk for details about the criminal cases.

(d) there is nothing from the Portuguese authorities. They will provide details only to those involved in the proceedings.

(...) To assert falsely, and without apparent justification, that a person was "embroiled" in "mega criminal proceedings" is capable of amounting to conduct that breaches sections 3.6, 4.2 and 4.13 of the Code. (...)

90. The Sole Arbitrator further observes that the Appealed Decision of 5 May 2020 states, *inter alia*, as follows:

"(...)

The Panel refers to the Initial Report and particularly to paragraphs 5 and 6. The Panel is satisfied as to the truth of the facts set out in the Initial Report in so far as they support the complaint.

The Panel is satisfied that, not only was Mr Turk's conduct capable of amounting to conduct that breached clauses 3.6, 4.2 and 4.13 of the Code, his conduct did in fact breach those clauses. (...)

The breaches of the Code that Mr Turk is guilty of are set out at paragraph 5 of the Initial Report. It is significant to note that the principal facts that give rise to those breaches are:

- 1. The allegation that the candidate for presidency was of questionable character and*
- 2. The allegation that the candidate for presidency was embroiled in two mega criminal proceedings involving fraud and corruption.*

These allegations were false, were of the most scurrilous kind and were made intentionally. It is even open to be inferred that the allegations were made maliciously. On this point the Panel has decided to give Mr Turk the benefit of any doubt and not conclude that the allegations were made maliciously. Nothing, however, has been provided to the Panel by way of mitigation. (...)

91. Finally, the Sole Arbitrator observes that Articles 3.6, 4.2, and 4.13 of the FIM Code of Ethics read as follows:

- Article 3.6:

“All persons who are bound by this Code shall be deemed to agree that the undertakings contained in the Personal Commitment below are to be observed and honoured as if expressed in a written document solemnly signed by them. They shall at all times act in accordance with the above values and in the best interests of sport and motorcycling and shall not act in any manner which is improper or brings the FIM, motorcycle sport or the motorcycling community into disrepute, as set out in the Personal Commitment below, which is expressed in the first person to emphasise the solemn nature of this Ethical Code and the principles it enshrines” (Sole Arbitrator’s emphasis).

- Article 4.2:

“As a person bound by this Code, I undertake to observe at all times the FIM Code of Ethics and specifically: (...) I acknowledge that fair play and sporting attitude embrace more than complying with the sporting rules and that they encompass cooperation, friendship, respect for others, sportsmanship and fairness “on and off the track” (Sole Arbitrator’s emphasis).

- Article 4.13:

“As a person bound by this Code, I undertake to observe at all times the FIM Code of Ethics and specifically: (...) I acknowledge and agree that all the above undertakings are personal commitments and that I may be sanctioned (disciplinary liability) in accordance with this Code by the Ethical Chamber in the case of failure to abide by them. Moreover, I acknowledge and agree that any action or misconduct on my part outside the “field of play” prejudicial to the interests of the FIM or of motorcycle sport (including but not limited to violent or dishonest conduct, racist, threatening, abusive, indecent or insulting words or behaviour) may be sanctioned in accordance with this Code by the Ethical Chamber” (Sole Arbitrator’s emphasis).

92. The Respondent argues that the Appellant deliberately decided to opt for a negligent and malicious behaviour breaching the FIM Code of Ethics, and that the burden of proof is on the Appellant in relation to the allegations made by the Appellant.
93. The Sole Arbitrator notes that articles 3.6, 4.2 and 4.13 of the FIM Code of Ethics are sanctioning ethical misconduct against the FIM or to the detriment of the FIM’s interests or reputation, on the one hand, and against others, as members of the FIM family, on the other hand. In this regard, the Sole Arbitrator does not see how the FIM or the FIM’s interests or reputation, was brought into disrepute by the letter of the Appellant, that was (i) sent only to and within the FIM family and not outside the FIM, and (ii) that merely repeated accusations about one FIM member that was already made before. The Sole Arbitrator finds that the FIM Ethical Chamber did not prove in any way that the FIM’s reputation or interests were disrepute by the Appellant’s letter. The only reputation or interests that might have been disrepute by the Appellant’s letter was clearly Mr Viegas’ reputation. Nevertheless, even despite the Appellant’s letter, Mr Viegas was elected as new FIM President. Therefore, the Sole Arbitrator does not see how Mr Viegas’ interests were violated.

94. Moreover, Mr Viegas did not file the complaint with the FIM Ethical Chamber himself, nor did Mr Viegas provide any witness statement about his interests or reputation being hurt.
95. With respect to the Appellant's letter itself, the Sole Arbitrator notes that the Appellant mainly requested for the FIM new Board elections to be postponed for two reasons: (i) the opposing candidate of Mr Viegas had unexpectedly withdrawn due to ill-health and there was no opportunity for another candidate to stand given that the deadline for candidatures had now passed; and (ii) the only candidate left to be the new FIM President, Mr Viegas, was 'questionable', considering the recent allegations that were made by an anonymous Portuguese journalist in relation to criminal proceedings pending against him. As such, the Sole Arbitrator considers that the Appellant's request does not seem unreasonable in the given circumstances. On the contrary, one might say that the Appellant acted in a way to protect the interests of the FIM by raising his concerns in relation to the elections of the new FIM President.
96. Furthermore, as the FIM Ethical Chamber concluded herself in the Appealed Decision: *"It is even open to be inferred that the allegations were made maliciously. On this point the Panel has decided to give Mr Turk the benefit of the doubt and not conclude that the allegations were made maliciously"*. Therefore, there is no proof of any kind that the allegations made by the Appellant in relation to Mr Viegas, whereby in fact the Appellant only repeated the allegations already made before by a third party, were made maliciously with the sole intention to disrepute the FIM or Mr Viegas. The Respondent in no way provided evidence of any kind that the Appellant acted in bad faith, intentionally trying to disrepute the FIM, nor that the FIM had actually been disrepute or that the FIM has suffered any damages. On the contrary, the Appellant simply asked to clarify these allegations in order to avoid the FIM being disrepute by such allegations.
97. On the basis of the foregoing, the Sole Arbitrator finds that the Appellant did not violate Articles 3.6, 4.2, and/or 4.13 of the FIM Code of Ethics, and, therefore, the Appellant's suspension of eight years was unjustified.

(d) If so, was the sanction imposed on the Appellant proportionate?

98. Taking into account the conclusion above, the issue of the proportionality of the disciplinary sanction imposed on the Appellant has become void.

C. Conclusion

99. On the basis of the foregoing, the Sole Arbitrator concludes that the Appellant did not violate the FIM Code of Ethics, and, therefore, the Appealed Decision has to be annulled.

IX. COSTS

100. Article R64.4 of the CAS Code provides as follows:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs”.

101. Article R64.5 of the CAS Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties”.

102. Having taken into account the outcome of the arbitration procedure, the Sole Arbitrator hereby orders that the costs of the procedure, to be determined and served to the Parties by the CAS Court Office, shall be entirely borne by the Respondent.

103. Taking into account that the Appellant was represented by a *pro bono* counsel under the CAS Legal Aid Program, the Respondent shall not make a contribution to the Appellant’s legal costs.

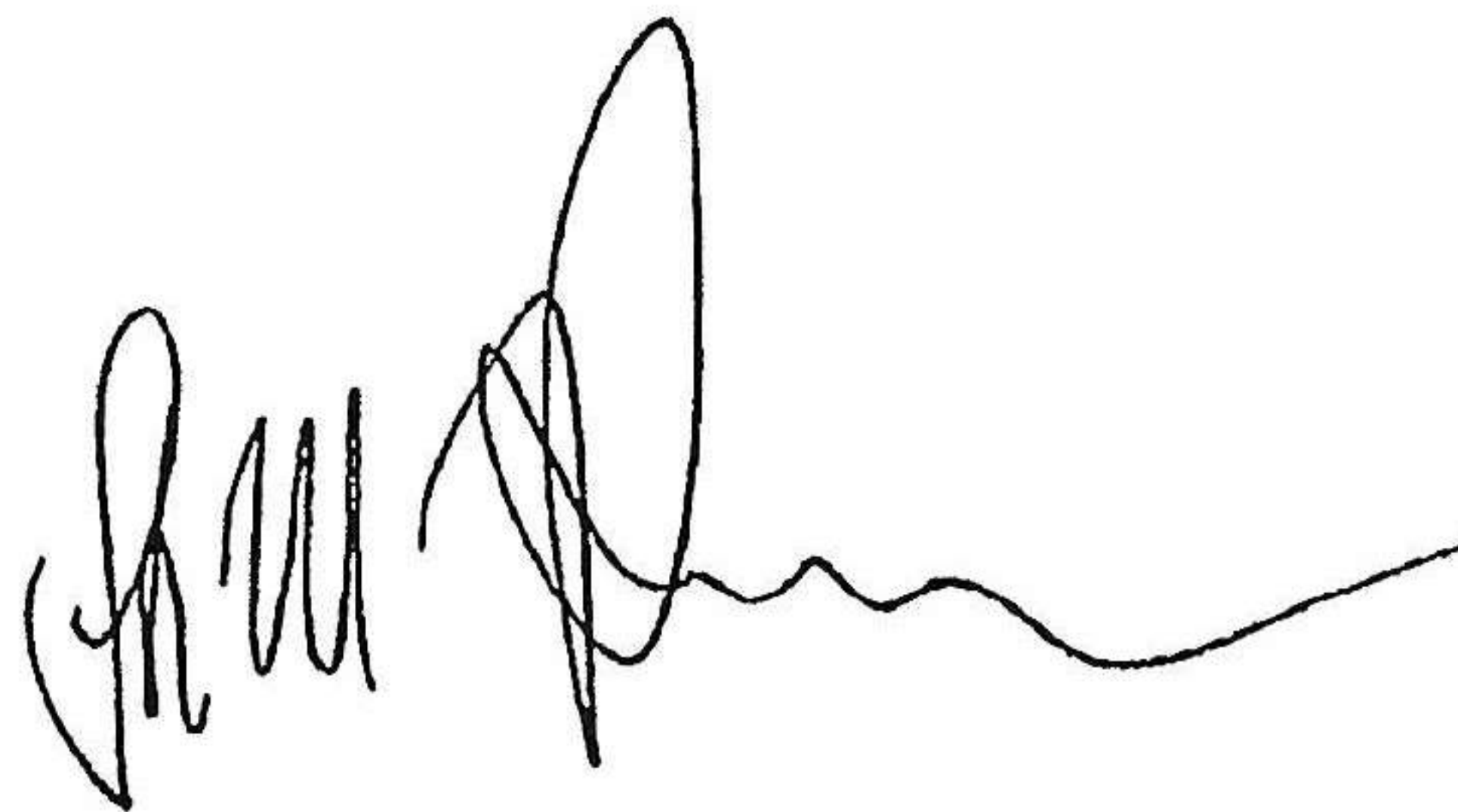
ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Michel Turk against the decision rendered by the FIM Ethical Chamber on 5 May 2020 is upheld.
2. The decision rendered by the FIM Ethical Chamber on 5 May 2020 is annulled.
3. The costs of the arbitration, to be determined and served by the CAS Court Office, shall be borne entirely by the FIM.
4. No order is made as to the Parties' costs incurred in connection with the present arbitration procedure.
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 22 December 2021

THE COURT OF ARBITRATION FOR SPORT

A handwritten signature in black ink, appearing to read 'Stephan Breidenbach', with a long horizontal flourish extending to the right.

Stephan Breidenbach
Sole Arbitrator