

INTERNATIONAL HANDBALL FEDERATION
ARBITRATION COMMISSION

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Case
Eng. Hisham Nasr v International Handball Federation

J U D G E M E N T

1. Parties:

1.1. Mr Hisham Nasr, represented by ME. Sami Boussarsar, Attorney-at-Law, Centre Urbain Nord, Tunis (Appellant)

1.2. International Handball Federation (IHF), represented by Dr Hassan Moustafa, President (Respondent)

2. Composition of the panel:

2.1. Mr Tomislav Grahovac (CRO) – Chairman

2.2. Mr Miguel Nuno Sá Nogueira Ferreira Fernandes (POR) and Mr Mouadh Ben Zaied (TUN) – Panel members

3. Facts:

3.1. On 7 May 2021 IHF Head Office received an appeal from Maître Sami Boussarsar, Attorney-at-Law on behalf of Mr Hisham Nasr, challenging and requesting the annulment of the IHF Council decision dated 14 March 2021 which confirmed the preliminary IHF Council decision issued on 19 February 2021 suspending temporarily Mr Hisham Nasr, President of the Egyptian Handball Federation, from all handball activities with immediate effect until the next IHF Congress which is scheduled to take place from 5 to 8 November 2021.

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3.2. The appeal was timely made, pursuant to the Article 2.2.13 of the IHF Legal Provisions.

3.3. The Appellant has paid the sum of CHF 5,000 as appeal fee, in accordance with the Article 2.2.10 of the IHF Legal Provisions.

4. Appellant's arguments:

4.1. The Appellant lodged an appeal to the IHF Arbitration Commission against the decision issued on 14 March 2021 by the IHF Council which confirmed the preliminary decision issued on 19 February 2021 by the IHF Council during its meeting held by video conference on 19 February 2021, agenda item 5.2, "Disciplinary Commission decision at 2021 Men's World Championship".

4.2. The appeal of Mr Hisham Nasr is based on the following submissions:

4.2.a) Submission concerning an alleged disciplinary procedure nullity

The Appellant stated the nullity of the disciplinary decision issued against him because of lack of signed decision from the IHF Council, and a lack of a decision to refer from the Executive Committee.

The Appellant highlights that he did not receive any correspondence concerning any suspension decision neither at his personal address, by email nor addressed to the Egyptian Handball Federation.

The Appellant also states that the letter signed by Mrs Amal Khalifa dated 14 March 2021 is nothing more than a notification of a verbal decision, but cannot be considered as a decision per se.

4.2.b) Submission concerning procedural violations

The Appellant considers the IHF Council decision to be unlawful from a procedural point of view because it suffers from a number of serious procedural defects, and it violates fundamental procedural rights.

The Appellant invokes a procedural violation of the statutory regulations by not presenting the documents related to the case to the members of the IHF Council at least 30 days for study before taking a decision. The Appellant states that issue was referred from the Executive Committee to the Council meeting on the same day (19 February 2021). In fact, he does not find that the decision was ever voted on.

Furthermore, the Appellant stated there is no material evidence of the reasons for the decision taken on 14 March 2021, no indication that the Council convened on 14 March 2021, no evidence that a vote has taken place in the first instance regarding the temporary suspension sanction taken on 19 February 2021, and also that the suspension was proposed by the Executive Committee to the Council on 19 February 2021, at the same day as the council meeting.

The Appellant therefore concludes that the contested disciplinary decision violates the provisions of Article 14.2.10 of the IHF Statutes which stipulates that members must have the power to obtain all supporting documents 30 days before the scheduled session to discuss the resolution:

“All participants shall be in receipt of the documents being the basis for the decision-making process at least 30 days prior to the council meeting.”

4.2.c) Doubts about a submission of his explanatory report dated 8 March 2021 during the meeting held on 14 March 2021

The Appellant states that application of basic procedure must be verified, because he doubts that his explanatory report dated 8 March 2021 was presented to the members.

Article 14.2.13 of the IHF Statutes, which is explicit about formalities, states:

“In case of urgent business, the President may seek to make resolutions and decisions by mail between Council meetings.”

The Appellant states there is no trace of the IHF President’s submitting the matter to deliberation by email and then to an email vote, as there is no material evidence of respect for this procedure.

4.2.d) Conflict of interest affecting the regularity of the IHF Council meeting

The Appellant invokes through this ground of appeal a violation of Article 14.2.14 of the IHF Statutes, which requires that the IHF President shall not be present or vote when the matter is related to a person of the same nationality.

“If a Council member has the same nationality as the matter of concern or if the matter of concern is a personal request made by himself, he/she is not entitled to be present and vote (reference is made to the Rules on Conflicts of Interest of IHF Officials included in the IHF Ethics Code). In case of doubt, the IHF President shall decide whether or not the member concerned may be present and take part in a vote.”

4.2.e) Inability to apply a sanction twice on the Appellant for the same acts and a violation of the Medical Precaution Plan regulations

The Appellant states that the 27th IHF Men's World Championship was governed by special regulations and provisions organised and regulated by a special text: "COVID-19 Medical Precaution Plan". These regulations include degrees of penalties. For this reason, the Appellant concludes that in this case, the only competent body to decide is the Disciplinary Commission who was exclusively assigned to decide on all violations committed and apply the necessary penalties.

The aforesaid Appellant bases his position on the following regulations:

Article 22.4 of the IHF Statutes

“The adjudicating bodies are:

4. The Disciplinary Commission and the Jury are active only during sports events”.

Article 2.1.1 of the IHF Legal Provisions (Edition: 3 October 2019)

“The appropriate Disciplinary Commission and Jury shall be responsible for settling disputes at international events (Olympic Games, World Championships and World Cups).”

Article 1.2 of the COVID-19 Medical Precaution Plan includes

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“Scope of application and sanctions”.

The Appellant therefore considers he was sued and sanctioned for the alleged offences, as indicated by Decision No. 8 of the Disciplinary Commission headed by Mr. Zoran Radojicic, rendered on 19 January 2021 during the tournament, and the following sanction was explicitly inflicted on him:

“The President of the Egyptian Handball Federation, Mr. Hisham Nasr, shall be imposed entry restrictions into red zones of the sports halls where the matches of the 27th Men's Handball World Championship are played, as well as into red zones of the hotels where the participants of the concerned Championship are accommodated.”

Therefore, the Appellant concludes noting that his alleged offences were subject to a double disciplinary prosecution and that he was sanctioned twice for the same offences, which contradicts the simplest general legal principle that prohibits a person from being sued twice for the same acts.

4.2.f) Misinterpretation and implementation of Article 14.3.27 of the IHF Statutes

The Appellant considered, when this penalty is applied, it is assumed first to refer to Article 8.3 of the IHF statutes, which lists in paragraphs a to g the duties and obligations of any national federation. Then, in its last paragraph, it refers to Chapter 14.3.27 to determine the disciplinary decision for violating one of the obligations and duties by the relevant national federation.

Furthermore, in case of committing a violation, Article 8.5 requires following specific procedures, the first of which is to impose a warning. The Appellant notices that this measure was not respected in the current case and that there is no effect of prior warning submitted to the Egyptian Handball Federation.

The Appellant concludes that, on the other hand, when the disciplinary decision of suspension is applied in this particular situation- for a Member Federation- this measure is a prerogative of the Congress of the IHF and not of the Council, according to the Article 14.3.27.

Ultimately, the Appellant concludes that the legal basis for the sanction applied in relation to the alleged offences, issued on 14 March 2021 is missing, and it is not valid to be held legally in application of a legal text specifically devoted to sanction legal entities rather than individuals and persons.

The Appellant notices that there is no special provision that could allow for the sanction against him by the decision issued on 19 January 2021 based on the COVID-19 Medical Precaution Plan. The Appellant considers that all the facts and the accusation against him shall be dealt with the IHF Ethics Commission in accordance with the IHF Ethics Code. Finally, the disciplinary decision was issued by a non-competent authority with an improper interpretation of its jurisdiction, which makes it poorly reasoned and liable to veto and repeal.

4.2.g) In addition to the aforesaid, the Appellant also pointed out that it should be remembered that Egypt was honoured to organise the 27th IHF Men's World Championship during the COVID-19 pandemic with zero infections reported. Regardless of the difficulties around the organisation caused by the COVID-19 pandemic, Egypt decided to overcome this obstacle and to commit to a very hard, costly, and tiring event that brought back life to handball, the IHF, the EHF, and the entire world handball community that now started to plan events after such success taking inspiration for their strategy from the Egyptian experience of organisation.

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The Appellant also stated that to have such a successful event, a new system was developed along with new rules and sanctions related to it, for example, the bubble (all stakeholders to be isolated in place of accommodation, in this case the hotel, or leaving place of accommodation for team practice or match, all within the bubble's boundaries), or the definition of close contacts, i.e., to directly engage with a positive COVID-19 case for more than 15 minutes without a mask and within a distance that is less than 1.5 meters (according to doctors' explanation who made this system and was explained to all participants and organisers several times.)

4.2.h) Continuing his argumentation, the Appellant notices that because of his three missions and titles throughout the tournament (President of Egyptian Handball Federation, President of the Organising Committee for 27th IHF Men's World Championship and one of the supervisors on Egypt's national team), after a consultation to solve this issue (Mr Moemen Safa, EHF's treasurer and Mr Alaa El Sayed were diagnosed with COVID-19), and due to having an efficient role as manager for the tournament, the Appellant joined the Egyptian national team as head of delegation (not as president of the Egyptian Handball Federation or as the president of the Organising Committee of the 27th IHF Men's World Championship) in the bubble until the other supervisors were fully recovered.

4.2.i) Furthermore, the Appellant pointed out all facts attributed to him, and emphasises again that he has never broken any rules during the tournament.

1/ 13 January 2021: being in the VIP tribune during the opening ceremony with the Prime Minister, Minister of Sports, and IHF President to give out the medals and trophies at the end of the tournament, after having to do a rapid COVID-19 test giving a negative result for all of them. Therefore, they were all safe in the opening and closing ceremonies.

2/ 15 January 2021: Meeting with representatives from Cape Verde embassy Captain Effat Rashad, head of the sports hall during the tournament, who told the Appellant that the head of Cape Verde's delegation (who is also their Sports Minister and a member of the bubble taking all tests for corona regularly) was sitting in a wrong zone (VIP tribune) and is refusing to leave it.

3/ Therefore, the Appellant went forward and solved the issue knowing that he is one of the members of the bubble, convincing him to move to the correct area and red zone

4/ 17 January 2021: Welcoming a member from the parliament and receiving an email from Mr. Dietrich Späte, Head of the Competition Management: This incident took place on 15 January, the same day of the incident mentioned above, however, the Appellant met with a member from the parliament who is also a member of the Egyptian Committee responsible of sports and he was sure that she regularly takes tests for COVID-19 and is checked on daily, the same way the Minister of Sports, IHF President, President of the tournament, and Mr Hisham Nasr took the tests to meet with the Prime Minister and members of the parliament, who also regularly did the tests to make sure they were safe and healthy.

A reply was sent to Mr Dietrich Späte on 18 January explaining these points and disagreeing on such accusations.

5/ 18 January 2021: Replying to Mr Dietrich Späte's letter

This is to stress the fact that he is making sure he is COVID-19 negative before meeting with anyone else and that he does the tests regularly because, as mentioned before, the Appellant had several roles, one of which being the head of the Organising Committee.

6/ 18 January 2021: The Appellant was pleased to be accompanied by Dr Zoran Radojicic, Disciplinary Commission Chairperson, along with his personal translator travelling to Cairo stadium in the car that would drop them off at the hall. By mistake the driver dropped them off in a wrong area (VIP tribune) out of our zone. Therefore, they decided to cross the pitch, without getting in contact with anyone, to the other side in their red zone. However, at first Mr Dietrich Späte refused and stopped them but after Dr Zoran Radojicic and the Appellant

explained what happened and due to the fact that they were going to their correct place without getting in contact with anyone outside the bubble, he then agreed that they all move forward. The Appellant didn't remain in the VIP tribune as what was claimed, he was just trying to fix the situation and headed to the right zone.

7/ Even though the Appellant explained his situation repeatedly of not breaking the bubble, he was still asked to leave the hotel and stay out of the red zone during the tournament to follow the rules and regulations. Not only was he excluded from the rest of the tournament (11 days), but he also had to go through the current severe decision though he did not make any deliberate breach.

4.2.j) The Appellant applied to the IHF Arbitration Commission, asking to revoke the provisional suspension decision issued by the IHF Council on the subject of the correspondence dated 14 March 2021, in all of its branches, cancel all its legal effects, and refund all the ensured expenses related to the penalty fines to the Appellant.

5. Basis and merits of the decision:

5.1. The Arbitration Commission examined the documents provided by the parties which included the following:

- Email by IHF dated 11 March 2021 stating the period of appeal
- Email from IHF to IHF Council dated 14 March 2021
- Letter from IHF to Mr Hisham Nasr dated 14 March 2021 informing him that the IHF Council unanimously reconfirmed its decision of suspension
- Extract of the minutes of IHF Council Meeting No. 10 held by video conference on 19 February 2021 (agenda item 5.2 – Disciplinary Commission decision at 2021 Men's World Championship)
- Official statement on the suspension of Egyptian Handball Federation President Mr Hisham Nasr published on the IHF website on 25 February 2021
- Minutes of IHF Council Meeting No. 9 dated 9 December 2020 approving the COVID-19 Medical Precaution Plan Egypt 2021 and the assignment of the Disciplinary Commission
- COVID-19 Medical Precaution Plan Egypt 2021
- Disciplinary Commission decision against EHF president Mr Hisham Nasr
- Official letter from the Egyptian Ministry of Health and Population addressed to IHF President Dr Hassan Moustafa dated 3 January 2021
- Letter from IHF President to IHF Member Federations dated 27 October 2020
- Email from IHF Office to IHF Member Federations dated 28 December 2020
- Email from IHF Office to IHF Member Federations dated 7 January 2021
- Letter from General Director Mrs Amal Khalifa to IHF Member Federations dated 14 January 2021
- Email from IHF Office to IHF Member Federations dated 22 January 2021
- Input received from the Appellant dated 8 March 2021
- Statement from the IHF Disciplinary Commission Chairman regarding incident dated 18 January 2021
- Email from IHF Office to the Appellant dated 17 January 2021

5.2. Referring to the submissions of the Appellant

5.2.a) The IHF COVID-19 Medical Precaution Plan, which defines medical and operational protocols to safeguard players, coaches, team officials, referees, match officials, and other stakeholders during the 2021 IHF Men's World Championship in Egypt, was circulated to all

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National Federations and remaining stakeholders participating in the World Championship concerned. The first edition of the document was published on 27 October 2020 followed by an updated edition on 2 December 2020 as well as three related Questions & Answers documents dated 2 December 2020, 15 December 2020, and 23 December 2020.

According to Chapter 6 of the COVID-19 Medical Precaution Plan, a bubble concept was applied, considering that “all the stakeholders involved in the World Championship should enter the bubble without any external contact within three days before and throughout the event”.

Chapter 9.3 provides further details about the different zones inside the arenas, stating that “each arena will contain a bubble zone which is exclusively reserved for stakeholders entering the bubble without any external contact within three days before and throughout the event”.

In Annex 1 (Terminology), the term “bubble” is defined once more as follows: “Group of people being accommodated at the same hotel and working at the same arena without any external contact throughout their stay (from arrival to Egypt until departure)”.

In an official letter from the Egyptian Ministry of Health and Population addressed to IHF President Dr Hassan Moustafa dated 3 January 2021, the Ministry stressed the importance of constant and strict compliance with the full bubble concept as described in the COVID-19 Medical Precaution Plan to guarantee the safety of the participants of the World Championship.

All National Federations and remaining stakeholders participating in the 2021 IHF Men’s World Championship were urged and reminded several times by the IHF to comply with all obligations set out in the COVID-19 Medical Precaution Plan at all times throughout their stay to ensure the organisation of the 2021 IHF Men’s World Championship in a healthy and safe environment for all parties involved.

The Egypt 2021 COVID-19-Related Regulations as well as the legal procedures with regard to the COVID-19 Medical Precaution Plan (including but not limited to the scope of application and sanctions) were approved by the IHF Council on 4 December 2020 and communicated to all National Federations and remaining stakeholders participating in the 2021 IHF Men’s World Championship.

5.2.b) Referring to the submission that the decision of suspension imposed on Mr Hisham Nasr by the IHF Council 14 March 2021 is null due to a lack of a signed decision from the IHF Council as well as a lack of a decision to refer from the IHF Executive Committee, the panel finds such submission unfounded and incorrect for the following reasons.

The IHF Executive Committee, further to the instruction of the IHF Disciplinary Commission, discussed the entire matter in its virtual meeting held on 19 February 2021 and proposed to the IHF Council to suspend Mr Hisham Nasr from all handball activities with immediate effect until the next IHF Congress according to Article 14.3.27 of the IHF Statutes in connection with Article 27 of the IHF Regulations concerning Penalties and Fines.

The IHF Council decision of suspension dated 19 February 2021 was communicated to the Appellant by official letter of the IHF dated 25 February 2021. In the same letter, the Appellant

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was asked to provide his input on this matter by 11 March 2021 to be submitted to the IHF Council.

According to the usual practice, the minutes of the IHF Council meeting held by video conference on 19 February 2021 were sent to the IHF Council members for comments and approval on 11 March 2021.

In general, the minutes of IHF Council and IHF Executive Committee meetings are not signed by the respective members due to the fact that the IHF Statutes do not contain any provision to that effect. The final version of the minutes was communicated to all IHF Member Federations on 18 March 2021.

After studying the input received from the Appellant on 8 March 2021, the IHF Council decided on 14 March 2021 by electronic communication to reconfirm the decision of suspension dated 19 February 2021.

The Appellant was notified of the IHF Council decision of 14 March 2021 by official letter of the IHF dated 14 March 2021. No provision of the IHF Statutes and Regulations obliges the IHF to communicate a signed decision document to the person concerned.

According to the usual practice, IHF Council decisions taken by electronic communication between IHF Council meetings are included in the minutes of the subsequent IHF Council meeting.

5.2.c) Referring to the allegation that the decision violates Article 14.2.10 of the IHF Statutes stipulating that all participants shall be in receipt of the documents being the basis for the decision-making process at least 30 days prior to the IHF Council meeting, the panel concludes that such a statement is not right.

Article 14.2.10 of the IHF Statutes refers to physical meetings of the IHF Council. The IHF Council meeting on 19 February 2021 was held by video conference, i.e., the 30-day deadline for distributing the working documents to the participants is not applicable.

In any event, the IHF Council members were invited to IHF Council Meeting No. 10 by email dated 8 February 2021 while the corresponding working documents, including the IHF Disciplinary Commission decision dated 19 January 2021 related to the Appellant, were communicated to the IHF Council members on 16 February 2021.

Furthermore, the IHF Disciplinary Commission decision was also sent to the IHF Executive Committee members prior to the IHF Executive Committee meeting held by video conference on 19 February 2021. Both the IHF Executive Committee and the IHF Council were well aware of the entire matter, which would have made the 30-day deadline redundant. Ultimately, no member of the IHF Executive Committee or the IHF Council complained about the process.

The IHF Council decision of 14 March 2021 reconfirming the decision of suspension dated 19 February 2021 was taken by electronic communication, taking into consideration that the 30-day deadline does not apply to urgent business conducted by email.

Indeed, votes by email are governed specifically by Article 14.2.13 and can be called by the IHF President in case of urgency, such as in the present matter. In such case, it is obvious that the 30-day deadline does not apply, as it would be absurd (and counter-productive) if the IHF

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Council had to systematically wait for 30 days in order to deliberate on urgent matters (which might need to be decided upon in a matter of days).

In addition, all of the above applies *mutatis mutandis*, in the sense that the members of the IHF Council were manifestly familiar with the matter, and no one complained about the process. It cannot be open to an officer of a National Federation to challenge the decision-making process of a body of the IHF when no one within this body complained about it.

5.2.d) Referring to the allegation that there is no material evidence of the reasons for the decision taken on 14 March 2021, the panel concludes that the IHF Council members studied and took into consideration the input received from the Appellant dated 8 March 2021 before reconfirming the decision of suspension dated 19 February 2021.

5.2.e) Referring to the claim that there is no indication that the IHF Council convened on 14 March 2021, the panel concludes that, as mentioned above, the IHF Council members were consulted by email, taking into consideration that urgent business is usually conducted by email communication as per Article 14.2.13 of the IHF Statutes.

Moreover, urgent consultation was in the direct and personal interest of the Appellant, as he was provisionally suspended at the time of the IHF Council decision and would remain provisionally suspended for as long as no decision was taken.

5.2.f) Referring to the allegation that there is no evidence that a vote has taken place in the first instance regarding the temporary suspension penalty taken on 19 February 2021, the panel concludes that according to the usual practice all IHF Council members were asked during the agenda item concerned if they agree to the proposal of the IHF Executive Committee, considering that no IHF Council member raised any objection. Therefore, the decision was made unanimously, taking into account that IHF President Dr Hassan Moustafa as usual abstained from voting, as outlined below. The decision is therefore valid and effective.

5.2.g) Referring to Appellant's submission that the decision violates Article 14.2.14 of the IHF Statutes stipulating that if an IHF Council member has the same nationality as the matter of concern or if the matter of concern is a personal request made by himself, he/she is not entitled to be present and vote, the panel finds this submission unfounded.

Article 14.2.14 of the IHF Statutes only refers to IHF Council members entitled to vote, but not to other participants such as the IHF General Director as claimed by the Appellant.

Further, it results from the minutes of the IHF Council held by video conference on 19 February 2021, that IHF President Dr Hassan Moustafa was present when the agenda item concerned was handled, according to Article 14.2.14 of the IHF Statutes (*"In case of doubt, the IHF President shall decide whether or not the member concerned may be present and take part in a vote"*). However, he did not take part in the vote of the matter concerned, taking into account that he as usual abstains from voting to give the IHF Council members the freedom to vote. (Please refer to the corresponding note on page 2 of the minutes of the IHF Council meeting: available [here](#)).

The arbitration panel also notes on this point that the initiation of disciplinary proceedings against the Appellant was made following the instruction of the IHF Disciplinary Commission and that the IHF Executive Committee discussed the entire matter in its virtual meeting held on 19 February 2021 and proposed to the IHF Council to suspend Mr Hisham Nasr from all

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handball activities with immediate effect until the next IHF Congress according to Article 14.3.27 of the IHF Statutes in connection with Article 27 of the IHF Regulations concerning Penalties and Fines. The arbitration panel therefore notices that IHF President Dr Hassan Moustafa was not the initiator of this disciplinary procedure. By claiming a supposed violation of Article 14.2.14 of the IHF Statutes, the Appellant has not demonstrated how the presence of IHF President Moustafa could be detrimental or harmful to him, especially since it was verified that the President of the IHF did not take part either in the debates or in the vote that led to the provisional suspension of the Appellant. The panel notices that at this meeting, IHF President Dr Hassan Moustafa had assumed a purely coordinating role without seeking to interfere in any debate on the present issue.

From a legal point of view, the panel notes that Article 14.2.14 of the IHF Statutes may lead to a supposed conflict of interest if the member who has the same nationality as the person prosecuted is present **and** votes during the meeting. The arbitration panel reminds that the two conditions (to be present (1st condition) and to vote (2nd condition)) are cumulative in order to assess the existence of any presumed conflict of interest, according to this text. It is clear that by abstaining from voting or giving any opinion on this case, the IHF President, Dr Hassan Moustafa, does not fulfil the second condition, and thus cannot be considered to be in a conflict of interest situation during this meeting, even if Article 14.2.14 must be strictly applied.

5.2.h) Referring to the claim that the Appellant was subject to disciplinary prosecution twice for the same offences, contradicting the simplest general legal principles that prohibit a person being sued twice for the same acts, which is more generally known as the principle of “ne bis in idem”, the panel concludes that this submission is inadmissible.

The panel reminds that the basic legal principle of “ne bis in idem” generally states that one cannot be judged for the same charges again after a legitimate and final judgement eventually pronounced by a jurisdiction instance. The principle of “ne bis in idem” is also known as “double jeopardy” in common law countries.

The "ne bis in idem" principle only prevents imposing sanctions for facts already entirely judged and penalised by a final disciplinary decision rendered by a competent jurisdiction.

According to Chapter 1.2. of the COVID-19 Medical Precaution Plan, non-compliance with any of the obligations set out in the COVID-19 Medical Precaution Plan as well as the COVID-19 Competition-Related Guidelines for Egypt 2021 may lead to the following sanctions to be imposed by the IHF Disciplinary Commission:

- a) Warning;
- b) Fine;
- c) Temporary suspension;
- d) Loss of points;
- e) Exclusion from the competition.

In its decision dated 19 January 2021, the IHF Disciplinary Commission did not impose any of the above-mentioned sanctions on the Appellant. The IHF Disciplinary Commission decision was a protective measure to prevent the Appellant from entering the bubble, aiming to protect all stakeholders staying within the bubble of the World Championship.

The violations committed by the Appellant could have jeopardised the organisation of the World Championship, taking into account the huge investment made by the Egyptian government in implementing the COVID-19 Medical Precaution Plan, aiming to reduce the risk

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of transmission of COVID-19 and safeguard the health of all stakeholders involved in the World Championship.

Such precautionary measure, of an anticipatory nature, aimed to provide immediate precautions - considering the seriousness of the circumstances of fact and law - and anticipate the realisation of the rule of law that would predictably be recognised in the final decision. Such anticipatory injunction cannot be confused with the final suspension decision that was rendered.

As the IHF Disciplinary Commission only imposed a protective measure and not a sanction, there cannot be a double sanction as a matter of principle. The adoption of precautionary measures, whether of a conservatory or anticipatory nature, within the scope of disciplinary proceedings is a basic principle of the rule of law. That precautionary measure was therefore valid and effective.

In addition, as indicated in the IHF Disciplinary Commission decision, the decision was to be submitted to the IHF Executive Committee which, in its virtual meeting dated 19 February 2021, proposed to the IHF Council to suspend the Appellant from all handball activities with immediate effect until the next IHF Congress according to Article 14.3.27 of the IHF Statutes in connection with Article 27 of the IHF Regulations Concerning Penalties and Fines.

If the nature of the measures sought in the two proceedings were different, the first one being a minimum administrative and preventive measure – which, in fact, could be compared to an interim measure taken during the tournament to protect the safety of the competition and the safety of the other stakeholders, – the second one being a final disciplinary measure taken by the IHF Council in accordance with its statutory prerogatives to sanction a repeated misconduct of the offender.

The panel should note that the sanction imposed on the Appellant was based on the IHF Statutes, which is the highest and the supreme binding text in the IHF legal system. In terms of hierarchy of the IHF norms and regulations, the provisions of the IHF Statutes must always prevail over the provisions of the IHF Regulations and other legal texts and documents.

In addition, Article 14.3.27 of the IHF Statutes is a more specific provision, which is triggered only when a stakeholder breaches the IHF Regulations seriously and repeatedly, as was the case here. As a matter of fact, these particular facts reproached to the Appellant, reporting a clear, repeated, serious breach of safety measures during the same handball World Championship, fall outside the jurisdiction of the other IHF disciplinary authorities. Therefore, the initiation of a disciplinary case by the IHF Council is justifiable.

5.2.i) Referring to the claim that Article 14.3.27 of the IHF Statutes relates to National Federations, i.e., public entities and structures, but not to natural persons, including individuals and managers, and that the power to impose suspensions is with the IHF Congress, not with the IHF Council, the panel concludes it is not correct.

Article 14.3.27 of the IHF Statutes applies to all handball stakeholders – including the Appellant, in his capacity and position as President of the Egyptian Handball Federation and must be qualified as a handball stakeholder as defined in Article 2 of the IHF Statutes. This same analysis is confirmed by Article 3 of the IHF Code of Ethics, which considers any person

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in charge of organising a sport competition awarded by the IHF as a person subject to the application of the provisions of the IHF Statutes and all its legal texts. The Appellant cannot deny that he is a stakeholder to whom the IHF statutes automatically apply.

The arbitration panel notes that the IHF Council only decided to suspend the Appellant from all handball activities with immediate effect until the next IHF Congress according to Article 14.3.27 of the IHF Statutes in connection with Article 27 of the IHF Regulations Concerning Penalties and Fines, taking into account that the suspension would be confirmed at the next Ordinary IHF Congress scheduled to take place from 5 to 8 November 2021.

5.2.j) Referring to the claim that no single COVID-19 infection was reported during the 2021 IHF Men's World Championship in Egypt, the panel concludes that this information is not correct in the light of the evidence and the elements of this case.

According to an official statement issued from the Egyptian Ministry of Health and Population, 27 positive COVID-19 cases were detected among all participating players, officials, IHF nominees, and media representatives during the World Championship concerned.

5.2.k) Referring to the information on the three different missions carried out by Mr Hisham Nasr during the 2021 IHF Men's World Championship in Egypt, the panel concludes that every single stakeholder involved in the mentioned World Championship was urged and reminded several times by the IHF to comply with all obligations set out in the COVID-19 Medical Precaution Plan at all times throughout his/her stay irrespective of his/her function(s) during the event concerned.

5.2.l) Referring to the claim that the Appellant was tested regularly for COVID-19 before meeting with anyone else, the panel concludes that carrying out regular tests does not justify his violations of the COVID-19 Medical Precaution Plan, taking into consideration that he could still be infectious despite a negative test result in view of the incubation period.

Therefore, his repeated behaviour by switching between the bubble and non-bubble zones is considered a serious violation of the COVID-19 Medical Precaution Plan, which could have severely harmed the organisation of the World Championship as a whole as outlined above.

5.2.m) Referring to the incident occurred on 18 January 2021, where the Appellant, accompanied by IHF Disciplinary Commission Chairman Zoran Radojicic and the latter's assistant, entered the VIP area (non-bubble zone) at Cairo Main Stadium, the panel concludes that the Appellant admitted and recognised in his appeal that he was aware of his driver's mistake which led to the mentioned violation: *"By mistake the driver dropped them off in a wrong area (VIP tribune) out of our zone."*

Despite the fact that the Appellant was well aware of the different entrances at the arena, he still entered the arena through the wrong entrance and violated the COVID-19 Medical Precaution Plan by entering the non-bubble zone.

5.2.n) Referring to the Appellant's argument that the sanction is disproportionate and unjustified, the panel will analyse the facts that Mr Hisham Nasr is accused of while referring

to the conditions and framework rules governing the organisation of the 27th World Championship, as follows.

The Appellant is well aware that the 2021 IHF Men's World Championship was the first World Championship organised by a major Olympic sport since the outbreak of the COVID-19 pandemic and all eyes were on the event.

In view of the current situation, it was of utmost importance for the IHF and the sport of handball that the COVID-19 regulations, including the COVID-19 Medical Precaution Plan, be strictly complied with, to avoid a crisis which would have been extremely damaging.

The panel recalls that this World Championship was held following a commitment given by the International Handball Federation to the 32 participating delegations, officials, and referees and all worldwide stakeholders to ensure a strict application of the COVID-19 Medical Precaution Plan in a serious worldwide pandemic context. It is evident that the success of the health bubble system, which is based on a chain of linked health actions, could only be ensured through a strict application of the health rules by all the participants. The Organising Committee, headed by its president, must be the first to work for a strict and diligent application of hygiene and safety rules.

As a prominent member of the Organising Committee of the event, the Appellant was more than aware of the above-mentioned measures and he was obliged to be a role model in the implementation of this preventive system. For this reason, his responsibility in the application of these safety rules must be strictly checked and closely assessed.

Nonetheless, as the evidence shows, the Appellant fully disregarded the rules on a number of occasions during the event, even after he had been specifically notified of his violation by the IHF on 17 January 2021. The Appellant does not even challenge that he repeatedly left the bubble in breach of the COVID-19 Medical Precaution Plan.

The arbitration panel should emphasise the fact that it is largely admitted that the committee in charge of organising any international sport event must deploy the utmost diligence in the strict application of sport laws and the regulatory recommendations released by the international federation delegating the event. This obligation to respect the regulations must always be observed in an exemplary and rigorous behaviour on the part of the organisers during the competition. According to this analysis' logic, the International Handball Federation is responsible for ensuring that public order in sport is fully respected during each official competition that could be organised by any national federation. Any serious violations of hygiene rules, safety rules and the integrity of the competitions are components of this public order which is the responsibility of the governing bodies of the International Handball Federation.

The organising committee of all national federations in charge of any sport event awarded by the IHF remains consequently responsible for any transgression or misconduct that may jeopardise this public order of sport.

Note: The article numbers of the IHF Statutes included in the judgement of the Arbitration Commission correspond to the version of the IHF Statutes in force at the time the judgement was rendered.

The arbitration panel outlines that some general principles of sport must also be considered as belonging to the public order of sport, not only because of their imperiousness but also because of their structuring function in the legal order of sport. Without any doubt, the principle of integrity of sport competitions, but also the principles of fairness, sincerity, safety, and fair play that flow from it, are the cardinal elements of this public order component.

Insofar as the organisation of sport competitions is a matter of sport public order, since it is usual that cases of fraud, doping, match-fixing, violations of safety and security rules can occur and if it happens, it falls to competent bodies of the International Federation to conduct a follow-up of those cases, and to eventually issue a sanction against offenders. All those matters are so subject to sports law regulations, which aim to prevent any disturbance of any specific public order in sport. This sport public order is closely linked to the organisation of sport events by national federations, who are the guarantors of their proper conduct.

For all these considerations, **a principle of zero tolerance** must systematically guide the analysis of any arbitration panel hearing appeals and claims against decisions adopted by sport organisations regarding deviant or irresponsible situations or misbehaviour considered to threaten the integrity, safety, and credibility of sport competitions. This principle will be implemented without any application of any special or extenuating circumstances as soon as it has been established that the offender was fully aware of and held accountable for any misconduct that may have been committed in the sport competition in which he was taking part.

In the light of the elements of the current case, it is obvious that the Appellant was called upon to set an example as a "good father" and a role model representative to all the parties involved in the organisation of the 27th IHF Men's World Championship, given that he was primarily responsible for the organisation of the event, as a head of the organising team of the event. Similarly, he was fully aware of the health and protocol recommendations and requirements that were issued to him by the International Handball Federation and the Egyptian governmental authorities. The principle of zero tolerance will be fully applied to the Appellant as a result of his irresponsible and woefully negligent behaviour in the application of the health rules regarding the prevention of COVID-19 Medical Precaution Plan. The application of the zero tolerance principle is justified in the light of the repeated negligence and excesses committed by the Appellant during the tournament, considered to be the major sport event always organised by the IHF. Such a sport event is widely followed by the world handball community and the eyes of the handball world are focused on the sport conditions and health measures under which it takes place.

By other way, the panel reminds that the Appellant, from the moment he was accredited by the IHF to ensure the organisation of the 27th Men's World Championship in his capacity as President of the local Organising Committee, becomes subject to the IHF Ethics Code and more particularly to its Article 5 which provides *"Any individual who wishes to be involved in handball as an Official shall demonstrate reliability and respect to the values of the Code and commit to be subject to the Code before being nominated. Any individual who attempts or agrees with another individual to act in a manner that would constitute or culminate in the commission of a violation of the Code, shall be treated as if a violation has been committed, whether or not such attempt or agreement in fact resulted in such violation. Any individual who knowingly assists, fails to report or is otherwise complicit in any act or omission, which*

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constitutes or culminates in the commission of a violation of the Code, shall himself be treated as having committed a violation under the Code.”

The panel notices that provisions of Article 3 of IHF Ethics Code state clearly that *"The IHF Statutes shall always apply."*

By failing to report to the IHF the negligence and excesses that he had committed during the tournament in application of Article 5 of IHF Ethics Code, the Appellant cannot invoke any good faith whatsoever and should be considered to have breached his legal obligation to declare and report those repeated violations. Consequently, in application of Article 14.3.27 of the IHF Statutes and Article 3 of the IHF Ethics Code, the decision of the IHF Council to handle the disciplinary case of the Appellant and to impose a provisional sanction to him was founded and justified.

To conclude this point of analysis, the panel should recall that international sport jurisprudence considers that it is legitimate to sanction any person who has failed to comply with his or her obligation to declare and report offences or misconduct in accordance with the ethics rules (***Court of Arbitration for Sport, 2011/A/2433 sentence of 8th mars 2012***)

Concerning the arguments put forward by the Appellant, who claims that the IHF Council did not take into consideration the huge efforts made by the Organising Committee in the successful organisation of the 27th Men's World Championship, the arbitration panel points out that the responsibility for organising a world sport event cannot not only be equated to a technical or sport process of organising the competition. It also implies that the Organising Committee shall behave as the bearer of fundamental values safeguarding the sport public order. In the present case, the Organising Committee has the obligation to respect the sanitary rules and to preserve the health of the participants in this international competition. Such obligation should be strictly observed by the president of the Organising Committee who should in turn make sure that the other members are well-informed about the measures and strictly observe them. He is also responsible of providing data related to good implementation of the sanitary measures as well as any shortcoming in the application of the health and safety measures.

In light of the facts and elements of the case, these repeated breaches committed by the Appellant were extremely serious and potentially damaging for the IHF, for its credibility, for its safety rules, and for the sport of handball. The panel highlights that the Appellant engaged in grossly negligent conduct which implies his liability for the facts he is charged with.

A behaviour is qualified as an “unsportsmanlike conduct”, if such behaviour was intentional or at least grossly negligent (***Court of Arbitration for Sport, 2011/A/2525, award of 13 December 2012***)

Relying on all the above mentioned information, it is obvious that the sanction imposed unanimously by the IHF Council shall be considered proportionate and it is disappointing that the Appellant sought to minimise the seriousness of his offences. In this case, the panel finds that the Appellant never sought to express an attitude of self-questioning. The Appellant must be considered strictly liable for the repeated violations committed during a major sport event

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that was organised during a serious worldwide pandemic context which requires extreme caution and attentiveness, considering in particular that the IHF fought and made huge investments, hand in hand with the Egyptian authorities, to convince participants and sports delegations that the preservation of their health would be a priority and every single measure would be conducted without major flaws.

The panel reminds that it is fully and consistently admitted in international sport jurisprudence that «in cases of fan misconduct, strict liability is necessary in view of the seriousness of the threat that misconduct poses to the sport; the need to prevent recurrence through deterrence; the need to effect behavioural change» (*Court of Arbitration for Sport 2020/O/6689, sentence of 17th December 2020, P.122*)

Based on the foregoing, the arbitration panel concludes by stating that the IHF Council decision to provisionally suspend the Appellant from all handball activities with immediate effect until the next IHF Congress is a justified decision in the light of the infringements and serious negligence the Appellant committed, and that it is well-founded insofar as it is based on the statutory and disciplinary texts of the IHF.

6. Conclusion:

6.1. Based on the aforementioned facts, the panel concludes that the Appellant did not demonstrate that the grounds of his submissions were founded, and therefore the panel decided to reject the appeal.

To sum up, the panel finds that the Appellant violated safety rules during the 27th IHF Men's World Championship with reference to "repeated misconduct and serious negligence" and that the IHF Council had the competence to provisionally suspend the Appellant from all handball activities with immediate effect until the next IHF Congress which is scheduled to take place from 5 to 8 November 2021.

6.2. The panel finds that the provisional suspension is not evidently and grossly disproportionate and that it therefore needs to respect the IHF Council decision.

DECISION

The Arbitration Commission of the International Handball Federation renders the following decision:

1. The Appeal filed on 7 May 2021 by Mr Hisham Nasr, represented by ME. Sami Boussarsar, Attorney-at-Law, Centre Urbain Nord, Tunis, is rejected.
2. The decision issued on 14 March 2021 by the International Handball Federation Council is confirmed.

7. Right to appeal:

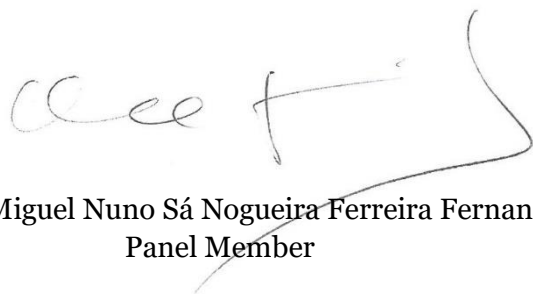
7.1. According to Article 2.2.14 of the IHF Legal Provisions, a final appeal may be lodged against an Arbitration Commission ruling with the Arbitration Tribunal at the latest up to one month after receipt of the ruling. The petitioner, according to Article 2.2.10 of the IHF Legal Provisions, shall pay an amount of CHF 10,000 (Swiss francs) to the IHF as appeal fee, at the time of lodging the final appeal.

Basel, 7 July 2021

INTERNATIONAL HANDBALL FEDERATION
ARBITRATION COMMISSION



Tomislav Grahovac
Chairman



Miguel Nuno Sá Nogueira Ferreira Fernandes
Panel Member



Mouadh Ben Zaid
Panel Member