



Arbitration CAS 2008/O/1483 Asian Handball Federation (AHF), Kazakhstan Handball Federation (KzHF), Kuwait Handball Association (KHA) v. International Handball Federation (IHF), award of 20 May 2008

Panel: Mr John A. Faylor (USA), President; Judge Robert Reid QC (United Kingdom); Mr Jean-Philippe Rochat (Switzerland)

Handball

Qualifying Tournaments for the 2008 Olympic Games

Formal validity of an arbitration agreement

Scope of review of the CAS

Validity of a decision taken by the IF

Field of play decision

- 1. With regard to the formal validity of the arbitration agreement, Swiss law is very liberal in determining the criteria for “written form”. Any party’s written expression will be considered to meet the requirements of Article 178 para. 1 PILS. Furthermore, the parties’ written statements can be expressed in one or several documents.**
- 2. If both parties to an arbitration have expressed in their petitions the desire to achieve a final and binding resolution of the dispute by *de novo* decision, one party cannot request that the CAS Panel be empowered to decide only on one of the decisions being the object of the dispute but be denied, at the same time, to decide on the other decision.**
- 3. If, within its broad decision-making competence granted by the IHF rules and regulations, the IHF Council chooses to act neither as an administrative nor as a legislative body, but rather as an adjudicative gremium by imposing sanctions, it must, just as any court of law, observe rules of procedure and apply fundamental principles of natural justice.**
- 4. When a CAS Panel holds, based on all the evidence, that bias was present in the officiating of a game and accordingly decides that the tournament must be cancelled and replayed, it is not substituting its judgment of the penalty calls for that of the referees. Therefore, it is not engaging in a field of play decision.**

The First Claimant, the Asian Handball Federation (AHF), is the continental governing body or “federation” for the sport of handball in eastern and western Asia. Founded in 1976, AHF is one of

five continental federations recognized by the International Handball Federation. AHF is comprised of 33 member federations which represent the sport of handball in their respective countries.

The Second Claimant, the Kazakhstan Handball Federation (KzHF), is a member federation of both the AHF and IHF and is recognized as the sole governing body for the sport of handball in Kazakhstan.

The Third Claimant, the Kuwait Handball Association (KHA), is a member federation of both the AHF and IHF and is recognized as the sole governing body for the sport of handball in Kuwait.

The Respondent, the International Handball Federation (IHF), is recognised by the International Olympic Committee as the sole representative of international handball. Its purpose is to lead, develop and promote the sport of handball around the world. Founded in 1946, it is comprised of 159 member federations, including the aforesaid Claimants.

On 25-29 August 2007, the AHF conducted in Almaty, Kazakhstan its Women's Qualifying Tournament (the "Women's Tournament") for the 2008 Olympic Games. Several days later, between 1-6 September 2007, the AHF held its Men's Qualifying Tournament (the "Men's Tournament") for 2008 Olympic Games in Toyota, Japan.

The qualification and participation criteria for the handball competition at the 2008 Beijing Games were already set out in a letter of the International Olympic Committee (IOC) to the National Olympic Committees and their continental associations dated 19 June 2006. This letter was received by the IHF and circulated among its member federations.

The letter informed the IHF that, with regard to the Olympic handball competitions, twelve (12) teams were to be chosen for each of the men's and women's Olympic handball events. The winners of each of the 2007 Men's and Women's World Championships, which later turned out to be Germany in the men's event and Russia in the women's event, were to qualify automatically for the Beijing Games as were the respective men's and women's teams of the host country, China.

Four (4) of the remaining ten (10) teams for each of the men's and women's events were to be chosen from the IHF's four continental handball federations (Africa, Asia, Europe and Pan-America) in the qualifying Men's Tournament and the qualifying Women's Tournament to be organized and conducted by each of the continental federations. The remaining 6 teams were to qualify through IHF-organized qualifying events (the "IHF Qualifying Events") to be held at the end of March 2008 (Women's) and at the end of May 2008 (Men's), whereby a portion of the competing teams in these IHF Qualifying Events were to qualify from the runner-up teams from each of the continental qualifying events, excluding those teams which had already qualified.

The IOC's qualification and participation criteria also contained a "qualification timeline" which set out the deadlines by which each continental qualifying event had to be completed. For the AHF, the IOC's "qualification timeline" established deadlines "by the end of 2007" for the Women's Tournament and "by the end of January 2008" for the Men's Tournament.

At the first match during Men's Tournament held in Toyota, Japan between 1-6 September 2007, the team fielded by the Third Claimant (KHA) won by a score of 28-20 against the South Korean handball team (KOR). Indeed, Kuwait won all four matches against its opponents in the remaining competition, Japan (29-27), UAE (37-26) and Qatar (29-23).

The first match between Kuwait and South Korea at the Men's Tournament was officiated by two Jordanian referees, neither of whom stood on the list of IHF-qualified referees having "IHF Status", meaning that they had not completed the Global Referees Training Programme (GRTP), a program established by the IHF for the development of IHF-level referees. The remaining four (4) referee couples officiating at the Men's Tournament possessed such IHF Status. One of these couples, Messrs. Lemme and Ulrich from Germany, was nominated by the IHF.

With regard to the Women's Tournament held in Almaty, Kazakhstan on 26-29 August 2007, the team fielded by the Kazakhstan Handball Federation (KzHF) won against Qatar (44-14), Japan (28-22), but lost against South Korea (31-32).

South Korea, which was considered to be the strongest of the competing teams in the Women's Tournament, lost its initial match against Japan (29-30) played on 25 August 2007, but won its subsequent matches against Qatar (45-17) and Kazakhstan (32-31) played on 27 and 28 August 2007, respectively. Kazakhstan finished with the same number of points as the runner-up, South Korea, but won the Women's Tournament on the basis of its superior goal difference.

The AHF nominated all of the officiating referees for the Women's Tournament.

In a letter dated 21 November 2007 from the Korean Handball Federation (KoHF) to Sheikh Ahmed Al-Fahad al-Sabah, President of the AHF, the KoHF's 1st Vice President raised a "formal objection" with a request for "punishment" regarding the "unfair referees' judgments and officials of Asian Handball Federation (AHF) who have unfairly conducted AHF events".

With regard to the Women's Tournament, the KoHF criticized the exclusion of the IHF appointed referees and cited the fact that only 3 referee pairs from west Asia (KUW, IRI, UAE) officiated the matches. It charged that "AHF intentionally made the result of the matches".

With regard to the Men's Tournament, the KoHF alleged that the IHF had informed the AHF regarding the appointment of referees from Germany to officiate at the match between South Korea and Kuwait, but "the AHF appointed the referees from Jordan", which intentionally resulted in a manipulated result.

With regard to both Tournaments, the KoHF charged the AHF with having "made the result of AHF events not through competition, but the scenario being made by AHF". It further alleged that

"... the most important matches of all AHF events have been performed by referees and officials from West Asia. AHF [has] excluded referees appointed by IHF and AHF has appointed 90% of the AHF events' officials to officials from West Asia".

At the semi-annual meeting of the IHF Council held in Paris on 17-18 December 2007, the attending Council members discussed under agenda item no. 5.1, entitled the “Asian Qualifying Games”, the performance of the Jordanian referee pair who officiated at the match between Kuwait and South Korea at the AHF Men’s Tournaments on 1 September. This meeting culminated in the adoption of a resolution which cancelled the results of the Men’s and Women’s Tournaments and ordered their replay (“Council Decision”).

The President of the IHF Playing Rules and Referees Commission (IHF/PRC), Mr. Christer Ahl (United States), summarized the conclusions which he and two other members of the PRC, namely Messrs. Manfred Prause (Germany) and Ramon Gallego (Spain), had drawn from watching a video of the match. Their “overall impressions and conclusions” were recorded in a document entitled “Conclusions from Analysis of Match Kuwait-Korea” and dated “November 2007” which was submitted for the first time to the Council members at the meeting.

Noteworthy in the document was the following statement:

***“Nomination of the Jordanian referees.** As background information, it should be noted that the nomination of the JOR referees for this event and this match was highly remarkable. There is an agreement with the IHF/PRC that, due to the limited number of IHF referees in Asia, a small group of former IHF couples, now with Continental status, may be used, in addition to current IHF referees, for Asian Qualifying events. Two of the couples in the event are current IHF referees, and two are in the special category of former IHF referees. These were all pre-approved after discussion between the IHF/PRC President and the Asian Referee Chief.*

By contrast, the JOR referees were never mentioned as possible participants in the event. The JOR referees have never been IHF referees and do not have the experience for this type of event. One of them has been seen once by IHF/PRC, whereas the other one is unknown to IHF/PRC. However, as noted below, the real issue was not a lack of experience or competence. (It should also be added that the JOR referees were from the beginning not nominated for the KUW-KOR match, that was supposed to have been handled by GER (Lemme/Ulrich), but Asian H.F. changed this shortly before the match)”.

(Underlinings and bold lettering are taken from the original document.)

The document proceeds to point out that “regrettably but inevitably” referee performance in handball competition will become disputed, even in IHF events. It is possible, for example, for an otherwise strong referee “to be overwhelmed in a particular match, being unable to handle the pressure”.

“This may then cause an excess of errors, and furthermore an imbalance of errors in the direction of one of the teams, despite any bias on the part of the referees”.

The “Conclusions” go on to state that it can also happen that a referee couple which handles the match very well, but through one or two “important mistakes in the critical late stage of the match” causes an impact on the outcome of the match. “Such cases are regrettable but cannot be helped”.

But the authors of the document then draw a clear contrast between “mistake” and “bias”:

“The performance of the JOR referees, however, was of a totally different nature. The mistakes were excessive and one-sided but, more remarkable, the majority of them were impossible to understand or explain. Inexperienced referees may have difficulties in maintaining consistency in punishment or in 7-meter decisions, or they may have problems in judging correctly the balance between offensive or defensive fouls, but these were not the issues here. Instead, the referees saw fouls or infringements that obviously did not happen, essentially ‘inventing’ decisions. The chronology accompanying this text gives a long list of such decisions. In other words, it is clear the issue was not incompetence but bias and specific intentions (or instructions).

It is regrettably possible for highly experienced referees who want to use bias in a match to do so without detection other than by alert experts. In the KUW-KOR match, however, the referees made their mistakes in such ways, and in such situations, that it is understandable that the general public who watched the match ‘live,’ or later on in video excerpts, could not avoid noticing the unmistakable bias and the excess of clear mistakes.

It is also revealing that the first half of the match had more than 20 wrong or strange decisions and that all of them were against Korea. This situation continued for the first part of the second half, until finally there was a tendency to more unbiased refereeing, which included some correct punishments against Kuwait. In fact, the referees showed in this way that they were capable of reasonable refereeing when they wanted to!

Impact of the referee performance on the match result. *The text above, and the chronology, should make it extremely clear that the referee performance had an enormous influence on the result of the match. Again, the many mistakes were essentially in one direction and they were often major in nature: disallowing correct goals, giving the ball to the opponents without justification, punishing players in a totally erratic and inconsistent manner. In such a situation it is not meaningful and realistic to speculate in what would have been the result of the match if there had been neutral referees. The match would have had a different character. However, one could note that the number of serious mistakes by a large margin exceeds the difference in goals in the final result of the match. And one must also take into account the demoralizing impact on a team which sees itself being treated in this way. Clearly, it is difficult to accept the validity of the outcome of the match”.*

(Underlinings and bold lettering are taken from the original document.)

Following a discussion of the above IHF/PRC report by Mr. Ahl at the Council Meeting, the minutes record that “the following motion drawn up by different Council members” was put forward to form the basis for the voting of a replay of the Tournaments:

“The IHF Council moves that the Asian Qualification Tournament for 2008 Olympic Games must be replayed before the end of January 2008 for both men and women under full responsibility of the IHF”.

The above resolution was put to a separate vote in open ballot for each of the Men’s and Women’s Tournaments with the result that the motion was adopted to replay both Tournaments. Taken from the minutes of the Council meeting, of the 17 Council members attending, 11 members voted in favor against 3 abstentions for the replay of the Men’s Tournament. The President of the Council did not participate in the voting. With regard to the Women’s Tournament, the motion passed on 8 votes in favor with 1 vote against and 6 abstentions. Again, the President did not participate in the voting.

The replays of the Men’s and Women’s Tournaments took place on 29 and 30 January 2008 in Tokyo, Japan with Korea winning against the Japanese in the women’s competition (18 – 12) with

Korea qualifying to play in the Beijing Games. The replay of the Men's Tournament on 30 January 2008 resulted in a win for Korea over Japan (14-11). The Korean team qualified for the Olympic Games. Only the Korean and the Japanese teams participated in the replays. In both cases, men's and women's, the Japanese teams won the opportunity to qualify for the Olympic Games in the upcoming IHF Qualifying Events to take place in March and May 2008.

In a Statement of Claim dated 18 February 2008, the Claimants requested the CAS panel to:

- (a) set aside the Decision taken by the IHF Council on 17 December 2007 and to order the IHF to recognise the results of the Tournaments as being valid;
- (b) order the IHF to annul the results of the replayed tournaments, and
- (c) order the Respondent to bear the costs of the arbitration and to pay the legal costs incurred by the Claimants in connection with the proceedings.

In its Response dated 10 March 2008, the Respondent petitioned the CAS Panel to reject the claims of the Claimants, to confirm the Decision taken by the IHF Council on 17 December 2007 in Paris and to impose all costs, fees, expenses and damages upon the jointly liable Claimants.

A hearing of the case took place in Lausanne before the CAS Panel on 19 March 2008.

LAW

The Arbitration Agreement between AHF and IHF

1. The competence of the CAS to decide this dispute in ordinary arbitration proceedings pursuant to Article R38 et seq. of the Code of Sports-related Arbitration ("the Code") is based on the arbitration agreement of the parties. This agreement, according to the parties, was initially "discussed" between the respective Presidents of the AHF and the IHF in early February 2008. The content of these discussions was thereupon reduced to writing in AHF's letter to IHF dated 11 February 2008 in which it offered to resolve the dispute by CAS arbitration. This proposal was accepted by the IHF in its written response dated 14 February 2008.
2. Pursuant to the case rulings of the Swiss Supreme Court, the validity of an arbitration agreement must be determined accordance with the rules of Swiss private international law, in particular, Article 178 PILS, when the seat of international arbitration lies in Switzerland. With IHF having its registered domicile in Basel, Switzerland, and in consideration that both parties have accepted the application of Swiss law, Article 178 PILS will apply to the case at hand.
3. With regard to the formal validity of the arbitration agreement, Article 178 PILS requires written form:

“As regards its form, an arbitration agreement is valid if made in writing, by telegram, telex, telecopy or any other means of communication which permits it to be evidenced by a text”.

4. Swiss law is very liberal in determining the criteria for “written form”. Any party’s written expression will be considered to meet the requirements of Article 178 para. 1 PILS. Furthermore, the parties’ written statements can be expressed in one or several documents (Andreas BUCHER, *Le nouvel arbitrage international en Suisse*, Bâle/Francfort-sur-le-Main 1988, n° 122, p. 49 ; Gabrielle KAUFMANN-KOHLER/Antonio RIGOZZI, *Arbitrage international – Droit et pratique à la lumière de la LDIP*, Zurich/Bâle/Genève 2006, p.75). In this particular case, the arbitration agreement arises from an exchange of letters between AHF and IHF on 11 and 14 February 2008.
5. In this regard, the AHF letter of 11 February 2008 states, in particular:

“We are writing in relation to the AHF Petition, which was filed with the IHF on Thursday, 31 January 2008, and the dispute between the Asian Handball Federation (“AHF”) and the International Handball Federation (“IHF”) to which it relates.

As part of the ongoing cooperation between the AHF and IHF in relation to this matter, we now understand that the AHF and IHF have agreed that it would be in the interests of all parties concerned that the dispute be submitted to the Court of Arbitration for Sport in Lausanne (“CAS”) for urgent final review and resolution on the merits pursuant to ordinary arbitration proceedings before the CAS arbitral panel.

In order that we can make arrangement expeditiously with the CAS, please could you confirm in writing:

(a) the AHF agreement to refer the dispute to CAS; and (b) that the AHF would agree to be bound by the decision of CAS on the merits in this regard. For the avoidance of doubt, the AHF agrees to be bound by the decision of CAS on that basis”.
6. IHF’s written response to AHF dated 14 February 2008, which is specifically addressed to the two signatories of the AHF letter of 11 February 2008, namely Dr Roschan Anan, AHF’s General Secretary, and Dr Ahmad Abu Al-Lail, Executive Director, states as follows:

“In the interest of a speedy resolution in this affair, we agreed to refer our dispute to the Court of Arbitration for Sport in Lausanne (CAS) and that the CAS decision would be final and binding for both parties”.
7. Considering the above, the Panel finds that the arbitration agreement, although evidenced in separate letters, has satisfied the requirement of written form under Article 178 para. 1 PILS. Moreover, under Article 178 para. 2 PILS an arbitration agreement is valid if the parties have expressed a mutual assent to submit their case to the arbitration. In this case, there is a clear meeting of the minds that the dispute be decided by CAS in ordinary arbitration with the CAS decision on the merits being final and binding on each of them.
8. With regard to the scope of the arbitration agreement, general principles of interpretation under Swiss law apply.

In its letter of 11 February 2008 to IHF, the AHF clearly referenced the Arbitration Petition of “Thursday, 31 January 2008”. The parties expressed their intent to submit the entire dispute to CAS as it was defined in the AHF’s Arbitration Petition of 31 January 2008:

“Finally, please confirm that, pending resolution of this matter by the Arbitration Commission, the result of : (a) the women’s international handball tournament staged by the First Claimant in Kazakhstan on 25-29 August 2007; and (b) the men’s international handball tournament staged by the First Claimant in Japan on 1-6 September 2007, will remain valid, binding and recognised by all relevant parties”.

9. The Arbitration Petition also expressly refers to the decision taken by the IHF Council during the session held on 17/18 December 2007 in Paris and requests its nullification. The objective parameters of the dispute are, therefore, in the view of the Panel, clearly defined.

KzHF and KHA are not Parties to this Arbitration

10. Having established the existence of an arbitration agreement between AHF and IHF, the Panel declines to accept jurisdiction with regard to the Second Claimant (KzHF) and the Third Claimant (KHA) or to grant AHF’s motion to join these Claimants in the arbitration proceedings. Pursuant to Article R41.4 of the Code, “a third party may only participate in the arbitration if it is bound by the arbitration agreement or if itself and the other parties agree in writing”.
11. Although the Panel recognizes that both KzHF and KHA were named as parties in the original request for arbitration to the IHF submitted by AHF on 31 January 2008 under IHF dispute resolution rules, the Panel notes that neither the KzHF nor the KHA are specifically mentioned in the AHF’s written offer of 11 February 2008 to arbitrate before the CAS.
12. The confirmatory letter of 14 February 2008 sent by IHF to AHF mirrors the party references contained in the AHF letter of 11 February 2008. It is addressed exclusively to the AHF, makes no mention of KzHF and/or KHA, and refers to a resolution of “our dispute” which will be “final and binding for both parties”. The term “both parties” can be interpreted to mean only AHF and IHF.
13. AHF’s request to arbitrate before the CAS is rooted in a separate and independent agreement between AHF and IHF. The instant proceedings before the CAS cannot and do not represent a continuation of IHF proceedings “in new clothing” nor can the fact of KzHF and KHA having been former parties to the original IHF proceedings provide a basis to infer that both national federations were intended to be included as parties to these CAS proceedings.
14. Accordingly, the Panel recognizes IHF’s objection that it never agreed in writing, as required by Article R41.4 of the Code, to accept KzHF and KHA as co-Claimants in the CAS arbitration.

The Scope of the Panel's Decision

15. The AHF letter of 11 February 2008 requests IHF to agree to submission of the dispute to the CAS “for urgent review and resolution on the merits pursuant to ordinary arbitration proceedings before a CAS arbitral panel”.
16. The confirmatory letter of IHF to AHF dated 14 February confirms IHF’s agreement in writing that, “in the interest of a speedy resolution of this affair”, the CAS decision “will be final and binding for both parties”.
17. Under Article R57 of the Code, the Panel has “full power to review the facts and the law” of this case.
“It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.
18. The urgency of a final and binding CAS decision was emphasized by both parties to the Panel in view of the approaching IHF Qualifying Events which were scheduled for 31 March 2008 (women’s) at the end of May 2008 (men’s). Indeed, IHF reminded the Panel both in its Response and in its closing statement at the hearing that, in the event it determines that the Council Decision of 17 December 2008 is invalid, it “must not, under any circumstances, decide to affirm the result of the Tournaments in August/September”.
“Rather, any decision to set aside the decision of the Respondent must be replaced by a “de novo” decision along the same lines”.
19. For this reason, the Panel recognizes the desire of both parties to achieve a final and conclusive resolution of this dispute by *de novo* decision prior to the IHF Qualifying Events, the contestants in which will be chosen on the basis of a possible confirmation of the results of the Men’s and Women’s Tournaments by the Panel or, in the event of their cancellation, the results of their respective replays.
20. Having established the above, it should be obvious to IHF that its request to exclude a determination of the validity or invalidity of the results of the “Replayed Tournaments” from the scope of review by CAS (see para. 4, page 2 of IHF’s Response) is counter-productive to its declared purpose of achieving a final and binding decision. If CAS were empowered to annul only the decision cancelling the results of the Tournaments in Almaty and Toyota, while being denied, at the same time, authority to decide the validity of the “Replayed Tournaments”, this dispute, in the broader sense, will not have been decided.
21. It is, therefore, the understanding of the Panel, as requested in the petitions of the parties, that its decision shall be a final and conclusive resolution of the entire dispute, including the replayed Tournaments, on the merits, shall be binding upon the AHF and IHF and shall not be subject to further appeal or revision. The IHF proceedings initiated prior to the instant proceedings have been, or will be, following the issuance of this decision, irrevocably terminated. Article R46 para. 2 of the Code shall apply.

Applicable Law

22. Pursuant to Article R45 of the Code, “*the Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law*”.
23. AHF has recognized that Swiss law governs this dispute. IHF is an association organized pursuant to the laws of Switzerland with its registered domicile in Basel, Switzerland. Therefore, to the extent, the rules and regulations of the IHF do not address a specific issue arising from this dispute or in the event of a required interpretation or construction of the applicable provisions governing this dispute, the laws of Switzerland shall apply.

The Time Limitation contained in Article 75 of the Swiss Civil Code

24. Article 75 of the Swiss Civil Code provides as follows:
“Resolutions that violate the law or bylaw [of an association] can be contested before the court by any member who did not vote for it, within one month of becoming aware of it”.
25. This provision not only protects the rights of the association’s members against invalid and/or unlawful resolutions of the association, but it also permits a procedure for controlling and contesting resolutions in order to ensure compliance with the association’s bylaws, statutes and regulations, and the applicable rules of law, generally (ATF 108 II 18, c.2).
26. Pursuant to Article 75 SCC, contesting claims of an association’s members must be directed against final resolutions of the association’s competent internal authorities or deciding bodies (ATF 108 II 15), taking into account (and permitting) the application of the association’s own internal dispute resolution procedures. These procedures, as in the case of the IHF, may permit a longer limitation period than the one month period provided under Article 75 SCC.
27. Stated differently, actions to set aside or, in the case at hand, to nullify the resolutions adopted in Council Meeting of 17/18 December 2007 pursuant to Article 75 SCC will succeed only to the extent the resolutions so adopted become final and unchallengeable after exhaustion of the IHF’s own internal review procedures by its own decision-making bodies. Member rights (here AHF’s) must also be prejudiced. Challenge on the basis of Article 75 SCC will fail to the extent the resolution can still be contested internally within the IHF, for example, before the IHF’s Arbitration Tribunal as its final appeal instance.
28. In filing its Arbitration Petition to the Arbitration Commission on 31 January 2008, AHF cited Article 37 para. 1 of the IHF Bylaws and Articles 21 and 28 of the IHF Legal Provisions as the grounds for IHF jurisdiction. These provisions provide that “*in case of disputes arising out of international events, in business matters or between IHF member federations, the Arbitration Commission and the Arbitration Tribunal shall become active*”. Absent arbitration before the CAS, the resolution would, therefore, not become final until the Arbitration Tribunal had ruled as the final instance in the dispute.

29. Implicit in the filing of AHF's Arbitration Petition on 31 January 2008 is the assumption that the Council Decision of 17 December 2007 had not yet become final, but was still open for challenge within the 2 month limitation period set forth in Article 34 of the IHF Bylaws. Article 34 prescribes that "*an appeal may be filed with the Arbitration Tribunal at the latest up to two months after the disputed event via the IHF Head Office*". The AHF, acting through its legal counsel, filed its Arbitration Petition on 31 January 2008 with the IHF's Head Office in Basel, Switzerland.
30. It was during the pendency of the AHF's Arbitration Petition before the Arbitration Commission that the parties entered into the arbitration agreement on 11/14 February 2008. As a consequence, the IHF, in derogation of its own review procedures under Article 37 para. 1 of its Bylaws, accepted the jurisdiction of the CAS, including any decision to be rendered by it, as being final and binding upon them.
31. Based upon the above considerations, it is clear to the Panel that Article 75 SCC finds no application in the instant case. The one month limitation period set forth under this provision of Swiss law would have begun to run only after the internal dispute resolution procedures of the IHF had become final.
32. Therefore, Article 34 of the IHF Bylaws is to be applied to this case. As will be pointed out further below, AHF was neither invited to, nor did it attend the Council Meeting on 17/18 December 2008. Notwithstanding IHF's admission that notification of the Decision was first made to AHF on 21 December 2007, the earliest possible date on which AHF could have been informed of the Council Decision would have been 18 December 2007. It was on this date that the Council's minutes of the meeting were executed and possibly also published to IHF member federations. Using this date as the earliest possible commencement date, and taking into account that under Swiss law the two month period runs from the day following the date of communication (HEINI/SCHERRER, in: HONSELL/VOGT/GEISER (eds), *Zivilgesetzbuch I*, 3rd ed., Basel/Geneva/Munich 2006, *ad* article 75 no. 23), 19 February 2008 would have been the earliest date on which the two month limitation period under Article 34 of the IHF Bylaws could have expired.
33. By filing its request for arbitration to the IHF on 31 January 2008 and its statement of claim to CAS on 18 February 2008, AHF would have complied with the limitation period fixed by Article 34 of the IHF Bylaws.

The Merits

- A. *IHF's jurisdiction to decide issues involving the Men's and Women's Tournaments of the Continental Federations*
- (i) Mission and Role of the IHF within the Olympic Movement
34. Pursuant to Rule 26 of the Olympic Charter, *"each International Federation maintains its independence and autonomy in the administration of its sport"*.
35. Under Rule 27 no. 1.1 and no. 1.5 of the Olympic Charter, each IF, as the solely accredited International Federation for its respective sport, recognizes, *inter alia*, as its "mission and role" within the Olympic Movement
- "... to establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application"*.
36. With regard to the selection of athletes for competition in the Olympic Games, Rule 27 no. 1.5 states that it is the "mission and role" of the IFs
- "... to establish ... criteria of eligibility for the competitions of the Olympic Games in conformity with the Olympic Charter and to submit these to the IOC for approval"*.
37. IHF has recognized its responsibility for the Olympic Games in Article 27 para. 1 of its Bylaws.
- "The IHF shall have the exclusive right to hold World Championships for men, women, men's juniors, women's juniors, men's and women's youth and in beach handball as well as Olympic tournaments ..."*.
38. Pursuant to Article 4 para. 4 of the IHF Bylaws, IHF has the authority *"to issue Bylaws, Regulations and official Rules of the Game for all forms of handball, for relations among national member federations and shall regulate its rights and obligations towards its member federations ..."*.
39. The member federations of the IHF, in turn, are bound to recognize the binding character of IHF Bylaws, Regulations and resolution. As a member federation of the IHF, the AHF is bound under Article 11 para. 3 (a) to recognize the "binding character" of these rules.
40. Chief of these rules is Article 7 para. 1 of the Bylaws which states that *"the IHF shall be committed to fairness in sports and prohibit any attempts at unfair performance improvement"*. This important Article is also binding upon AHF. It also is committed to "fairness in sports".
- (ii) Delegation of duties and responsibilities by IHF to AHF
41. In regulating the rights and obligations of the IHF towards its member federations, IHF has the power to delegate duties and responsibilities. IHF has exercised this right with regard to

organising and conducting the qualifying matches for the Olympic Games. Article 11 para. 3 (c) of its Bylaws provides:

“(3) The continental federations have the following rights and duties:

c) Selecting, in good time, participants for the Olympic Games, World Championships and World Cups, according to IHF stipulations”.

42. From both the terms of the IOC’s letter of 19 June 2006 and in the fact of the IOC’s recognition of the IHF’s Bylaws, it is evident that the IOC has recognized and approved the internal delegation of IHF’s authority for the holding of the Men’s and Women’s Tournaments to the continental federations.
43. However, inherent in the IOC’s recognition and approval of the IHF’s authority to delegate responsibility for the Olympic qualifying games to the continental federations is IHF’s responsibility to “supervise and control” the holding of the qualifying matches. AHF has been granted, for the Asian continent, the right to select participants for the Olympic Games; this right is, however, subject to “IHF stipulations”.
44. “IHF stipulations” with regard to the holding of the qualifying matches for the Olympic Games are found, directly and indirectly, in numerous provisions of the Bylaws. These are premised on the IHF’s right to supervise and control functions and responsibilities which it has delegated to its member federations. Relevant among these provisions are the following:

Article 32 para. 1 of the IHF Bylaws:

“In exercising its rights and fulfilling its duties as well as supporting and supervising the organiser, the IHF shall engage representatives, officials technical delegates and referees at World Championships, Olympic Games (including the necessary qualifying matches) ...”.

Article 32 para. 3 of the IHF Bylaws:

“The number of officials and technical delegates to be engaged shall be laid down by the council according to a formula also containing the number of technical delegates to be provided by the IHF Commissions”.

Article 33 para. 3 of the IHF Bylaws:

“The officials engaged are the on-site IHF agents vis-à-vis the organiser. They shall supervise the matches and the work of the Match Management”.

45. With regard to the Men’s and Women’s Tournaments, IHF exercised its supervision rights by naming Mr. Kozhukhov as technical delegate and supervisor whose specific function and responsibility was to assume a position on the Technical Committee appointed by the AHF to oversee the officiating of the Men’s Tournament. With regard to the Women’s Tournament, the IHF originally named Ms. Nilsson as supervisor, but for reasons which remain unknown to the Panel, agreed to replace her with Mr. Al-Theyab, a member of the IHF Council and also Treasurer of the AHF.

46. The IHF's right to name these representatives as supervisors to the Men's and Women's Tournaments was recognized by AHF. This right remains unchallenged by the AHF. The issue arose with regard to the IHF's appointment of referees. As will be further discussed below, it was apparently the understanding of the IHF that it also had the right to appoint international referees ("IHF-List referees") to the Tournaments.
47. To the Women's Tournament, it appointed the Danish referees Olesen and Pedersen and the German referees Lemme and Ulrich to officiate at the Men's Tournament. In turn, the AHF appointed the Jordanian referees, Al-Shoubaki and Hirzallah, and announced this appointment for the first time to the IHF in Mr. Al-Theyab's letter dated 20 August 2007.
48. It was on this issue, the appointment of referees, that the parties demonstrated marked differences of position and understanding. This is apparent from the letter of Sheikh Al-Sabah dated 12 July 2007 to Dr. Moustafa of the IHF in which it is stated:
- "... you promised me in person that the continental qualifications shall remain under the umbrella of the continents, on the other hand the IHF has the right to dispatch only supervisors to observe the qualifications, in addition to the marketing rights during these qualifications".*
49. When the first charges of unfairness, false and biased judgments by the referees and the manipulation of results were raised by the Korean Olympic Committee in its letter to the IHF on 3 September 2007, followed by the letter from the Korean Handball Federation to the AHF on 21 November 2007, it was clear to the IHF that it was being accused of violating its "mission and role" within the Olympic Movement and its core function and responsibility in the administration of the sport of handball, namely its obligation under Article 7 para. 1 of its Bylaws to ensure "fairness in sports".
- (iii) Internal jurisdiction of the IHF Council to impose penalties against the continental federations
50. In reviewing the facts of this dispute, the Panel must address the issue whether the IHF Council had jurisdiction to impose the penalty of "cancellation and optionally replaying of rematches" as provided in the IHF's "Regulations Concerning Penalties and Fines" or whether this jurisdiction was vested in another IHF internal body.
51. Article 14 of the Bylaws, which contains the provisions governing the IHF Congress, makes it clear that the Congress, although being the highest IHF body, has no competence to decide upon motions concerning one continent.
- "Motions concerning one continent only shall be referred back to the continental federation concerned. A simple majority vote of the Congress shall determine whether a motion concerns only one continent".*
52. Pursuant to the Legal Provisions of the IHF, the Disciplinary Commission and Jury "shall be responsible for settling disputes at international events" (Article 9 IHF Legal Provisions). These disputes include "protests filed at international events against rulings and actions both on and off the field".

They also include “*judging of a game where a breach of the rules may have been decisive for the outcome of the game*” (Article 13 IHF Legal Provisions).

53. International events are defined in Article 9 of the IHF Legal Provisions as being the Olympic Games, the World Championships and the World Cups. They do not include the men’s and women’ qualifying tournaments for the Olympic Games organized by the continental federations which fall within the responsibility of the continental federations (Article 27 para. 3 IHF Bylaws). As a result, the Disciplinary Commission did not have jurisdiction under the IHF Legal Provisions to decide upon protests against rulings and actions both on and off the field of play at the Men’s and Women’s Tournaments. This right was reserved by the AHF.
54. But rulings on the field of play were not the only issue. The unfairness perceived by IHF to have determined the outcome of the Tournaments impacted directly on IHF’s “mission and role” within the Olympic Movement and its commitment to fairness in sports. Pursuant to Article 21 of the IHF Legal Provisions, “*disputes about business activities between member federations and continental federations and the latter and the IHF*” shall come under the jurisdiction of the Arbitration Commission and Arbitration Tribunal of the IHF.
55. It is clear on the facts of this case that this dispute involves claims of the IHF against the AHF with regard to the alleged unfairness of the officiating and its impact on the outcome of the Tournaments. It is more than merely a dispute between the Korean Handball Federation and the AHF on the issue of the referees’ “mistakes” on the field of play. The issue which arises under Article 21 of the IHF Legal Provisions arises from the requirement that the dispute be “about business activities” between the AHF and the IHF. A definition of “business activities” or “business matters” (Article 37 para. 1 of the IHF Bylaws) is not given in the Legal Provisions.
56. Inherent in the IHF’s right to delegate responsibility for selecting participants for the Olympic Games to AHF was its corresponding duty to supervise and control the exercise of this delegated authority by AHF. The latter, in turn, was entitled to exercise this authority under the condition that it conscientiously and diligently observed the IHF’s stipulations. In making its decision to pursue charges of unfairness against the AHF before the IHF Council, the IHF Executive Committee acted within the parameters of its “business activities” with the AHF.
57. The Panel has determined that, even if the Arbitration Commission, acting upon the petition of the IHF Council, its Executive Committee, or one of the IHF Commissions, had jurisdiction to decide this dispute, Article 15 para. 8 (a) grants the IHF Council parallel and competing jurisdiction to decide this dispute. Article 15 para. 8 (a) provides that the Council’s duties include:

“Decision-making outside the Congress’s competence or decisions which, according to these Bylaws, are transferred to other bodies”.

The Panel wishes to note, however, that Council should have considered, in view of the urgency, the competence of the Arbitration Commission as an alternative forum, the rules of

procedure of which may have spared it the errors which ultimately render its decision null and void.

B. *The Procedural Invalidity of the IHF Council Decision of 17 December 2007*

58. In the case at hand, the IHF attempted to redress an alleged violation of the fundamental rule of fairness rooted in Article 7 para. 1 of the Bylaws which impacted directly on its “mission and role” as an accredited International Federation under the Olympic Charter. The Council was confronted with the task of imposing a sanction (cancellation and replay) within the framework of its “Regulations Concerning Penalties and Fines”.
59. In so doing, the IHF Council chose to exercise its broad decision-making competence, not as an administrative or legislative body, but rather as an adjudicative gremium. The Council, not incorrectly, perceived its responsibility similar to that of a court. It sought to provide a forum for an open discussion and evaluation of the charges raised over the previous weeks to be followed by an appropriate decision and the resolution of appropriate measures to redress the grievance and “protect the image of the sport”. However, the Council overlooked the fact that, just as in any court of law, when sanctions are to be imposed, rules of procedure must be observed and fundamental principles of natural justice must be applied. In this regard, the IHF Council failed and failed badly.
60. Failure to provide a proper agenda. The IHF Council failed to properly announce to its members that the issue of the officiating referees and the possibly manipulated results of the Men’s and Women’s Tournaments would be a subject for discussion and decision in the invitation to the Council meeting on 17/18 December 2007.
61. Pt 5.1 of the agenda cites merely “Asian Qualifying Games” in the same manner as it announces the “Pan-American Qualifying Games” as Pt. 5.2 and the “2008 Qualifying Games and Nominations” as Pt. 5.3. An issue of such importance as the possible cancellation and replay of the Men’s and Women’s Tournaments should have been announced with, at the very least, a rendition of the charges which had been raised and a description of the possible resolutions and penalties.
62. As a result of the failure to announce pending charges with the prospect of redress by resolution of the Council Meeting in the days leading up to the Council meeting, especially in the period during the women’s championship games in Paris, rumour and innuendo regarding the “referee affair” and possible sanctions abounded. In such an atmosphere, there exists little prospect that a fair and equitable resolution of the issue will arise.
63. Failure to furnish preparatory documents. Pursuant to Article 15 para. 9 of the IHF Bylaws
“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”.

64. Given that the invitation with the meeting agenda was received by the participants prior to 17/18 November 2007, it is uncontested that neither the match reports, nor the minutes of the technical meeting of 1 September 2007, nor the Brief Report of Mr. Kozhukhov regarding the KOR-KUW match, nor the official tournament reports, much less the letter from the Korean NOC of 3 September 2007 to the IHF were attached to the invitation and agenda.
65. Even though the approaching Council meeting on 17/18 December 2007 would not have permitted receipt of the documents “at least 30 days prior to the meeting”, the organizers of the meeting should have made an attempt to send such important correspondence as the letters from the Korean NOC dated 23 October 2007, the letter from the KHF to the IHF dated 21 November 2007, the agenda request of the Japanese Handball Federation and the KHF of 10 December 2007 to the participants in advance of the meeting.
66. Most importantly, the participants at the meeting were not in receipt of the IHF/PRC “Conclusions from Analysis” of the KOR-KUW men’s match until the day of the meeting. If this critical and defining document of the dispute was completed sometime “in November 2007”, it is not understandable to the Panel why it was not circulated to the Council members immediately upon completion. IHF made no attempt, neither in their Response nor at the hearing, to explain this obvious violation of its own rules. Receiving the documents “in a folder” on the date of the meeting, as stated by Mr. Ahl, is obviously too late.
67. Failure to officially invite AHF to the Council meeting. Not only did AHF not receive an invitation to the Council meeting, it was also, at no time, officially informed of the charges raised against it or the possibility that sanctions such as annulment and replay of the Tournaments could be imposed. As a result, fundamental natural rights were denied AHF as the accused party.
68. The receipt of the meeting invitation with agenda by the IHF Council members Al-Theyab, Wantanabe and Bu Marzouq does not constitute an invitation of the AHF. The IHF finds itself a victim of self-contradiction when it argues, on the one hand, that AHF is “not a member of the IHF Council” and hence has “no standing” or “legitimation to contest the IHF Council Decision”, but then, on the other hand, emphasizes that AHF was “fully represented” at the Council meeting “by two of its members” and was thus informed of the entire matter.
69. This line of argumentation assumes an almost absurd, but revealing quality when the IHF cites a telephone call “during a coffee break” between the AHF President and IHF President at the meeting on 17 December as evidence that AHF was aware “of the decisions that were made and how the decision process had developed”. Members of the Council are indeed “five continental Vice-Presidents” and “five continental Council members” (Article 15 para. 1 of the IHF Bylaws); none of the five continental federations, however, are members the IHF Council. Only their functionaries as individual person are IHF Council members.
70. AHF’s natural rights were violated by (i) not having received an invitation to attend the Council meeting on 17 December 2007, (ii) not having received a statement of the charges

raised against it and the possible sanctions which could be imposed, (iii) copies of all documents relevant to the decision-making process, (iv) the opportunity to file a written statement and to raise defences either before or at the meeting.

71. Having given due consideration to these egregious procedural failures, the Panel finds that the Council Decision of 17 December 2007 is null and void.

C. *The CAS Panel's Decision to Annul the Results of the Men's Tournament and to Reinstate the Results of the Replay held on 30 January in Tokyo, Japan*

(i) The "mistakes" of the Jordanian Referees

72. The consequence of declaring the Council Decision of 17 December 2007 null and void is to reinstate the results of both the Men's and Women's Tournaments. This result places the Panel in the position of having to address the IHF's primary challenge to the validity of the Tournament results. IHF charges that the playing field decisions of the referees at these Tournaments were intentionally manipulated and the result of bias or fraud.

73. With regard to the Men's Tournament, IHF refers specifically to the opening match between Korea and Kuwait. In evidence of its charges of intentional manipulation, the IHF cites the findings of Messrs. Ahl, Gallego and Prause in their "Conclusions from Analysis of Match Kuwait-Korea", the content of which is summarized above.

74. The quintessence of their findings is that the "mistakes" of the Jordanian referees were not the result of a lack of experience or incompetence. The performance of the Jordanian referees was of a "totally different nature". Not only being "excessive and one-sided", the majority of calls were "impossible to understand or explain".

"The referees saw fouls or infringements that obviously did not happen, essentially 'inventing' decisions. ... In other words, it is clear the issue was not incompetence but bias and specific intentions (or instructions)".

75. In his testimony before the Panel on 19 March 2008, Mr. Christer Ahl confirmed the conclusions drawn from the IHF/PRC's review of the match video, stating that each of the experts had viewed and evaluated the video separately. What was so "surprising", in the words of the Mr. Ahl, were the total number of mistakes. "Up to 5 mistakes", in his view, would be a "normal number".

"If the referees are inexperienced and not competent, 5 mistakes are o.k., but not 40. We could find no errors in favour of Korea. A result like this is unheard of. We know the common mistakes, for example, overstepping the line, but a number of these mistakes were totally invented".

76. Clearly inferable from the "Conclusions" and Mr. Ahl's testimony is the statement that the nature and number of these "mistakes" were sufficient, and did indeed influence the results of the match. The result of the match was achieved by the "mistakes" committed by the officiating referees. The Panel finds no reason to question the judgment of qualified experts

from neutral countries with long years of experience in officiating handball competition. Mr. Ahl himself has 15 years of referee experience.

77. This conclusion is supported in the “Brief Report” submitted in September shortly after the Men’s Tournament by Mr. Kozhukhov, President of the IHF COC, who acted as Technical Delegate and Supervisor to the Men’s Tournament. There, he states that the officiating at the Men’s Tournament was “rather good”,

“except [for] the first match KOR-KUW, of which the referees were from JOR, and whom, to my opinion, in the first half of the match had given priority to the KUW team”.

78. Mr. Kozhukhov, although named as witness, but who did not appear before the Panel to provide testimony, states further in the report that after a “talk” during the half-time with the referees together with Mr. Khalaf Al-Enezi, also a member of the Technical Committee,

“... the referees were rather proper with officiating in the second half of the match, but the team of KOR nevertheless could not get the result in their own favour – they could manage to win only one goal back. Further on the referees from JOR had not been used for officiating”.

(Emphasis by the CAS Panel)

79. The witness Al-Enezi, confirmed both in his written statement and in his testimony given by telephone to the Panel that Mr. Kozhukhov spoke with him during the first half of the match and said that “we must speak with the referees”. “They must take care with regard to both teams”. Mr. Al-Enezi stated that Mr. Kozhukhov said nothing at this time about the presence of “bias”, neither during nor after the game. Commenting on the results of the match, however, Mr. Al-Enezi concludes in his written statement:

“The goal difference in the result between KOR and KUW was 8 goals so the KOREAN team could not rectify the result”.

80. Based upon the above “Conclusions” and the Report of Mr. Kozhukhov, which is reinforced by the oral testimony of the witnesses Ahl and Al-Enezi, the Panel is persuaded beyond a reasonable doubt that the number and nature of the “mistakes” committed by the Jordanian referees rule out the possibility of fair and unmanipulated officiating of this match. The fact that the majority of these “mistakes” (more than 40 against Korea; 0 against Kuwait) took place in the first half of the match and noticeably subsided in frequency following the “talk” with Messrs. Kozhukhov and Al-Enezi indicates, in overwhelming measure, that the reason for the mistake lay less in the inexperience and lack of competence of the referees and more in the realm of bias. The “mistakes” impacted determinatively upon the outcome of the game.

81. In relying on the observations and conclusions of the IHF PRC members, Messrs. Ahl, Gallego and Prause, the Panel wishes to note that each of these individuals, by reason of their European nationalities, should have no cause or motive to be influenced in their judgment by considerations other than fairness in competition and the integrity of handball.

- (ii) Lack of Qualification of the Jordanian Referees at the Men's Tournament.
82. Adding to the Panel's considerations in evaluating the fairness of the calls is the perception that the AHF and the IHF had no clear understanding of their respective authority to determine the qualifications, the right to nominate and appoint, supervise and control referees at the AHF-organised Men's and Women's Tournaments. This is apparent in the testimonies of Mr. Al-Theyab and Mr. Tawakoli on behalf of AHF, and Mr. Ahl, on behalf of IHF. The Panel questions whether the AHF and the IHF properly understand the lines of authority regarding the appointment, training and assignment of referees to matches and tournaments within the AHF.
83. In this regard, AHF takes the position that because it has the right and duty under Articles 11 para. 3 (c) and 27 para. 3 of the IHF Bylaws to organize and conduct the AHF-organized qualification tournaments for (among other events) the Olympic Games, neither IHF nor any of its nominated "technical delegates" or other representatives has any power to appoint specific match referees to officiate at the Tournaments.
84. Taking into consideration the exchange of correspondence between Dr. Moustafa and Sheikh Ahmad Al-Fahad on 18 April 2007 regarding AHF's sole right to appoint referees to the Tournaments and, in particular, the subsequent process leading to the appointment of the Jordanian referees, it is apparent to the Panel that misconceptions exist regarding the distribution of functions and responsibilities between AHF and IHF with regard to Olympic competition. This resulted in the appointment of unqualified referees by AHF.
85. As pointed out above, Article 11 para. 3 of the Bylaws grants the continental federations "rights and duties". With regard to the continental matches referred to in Article 27 para. 3, the exercise of these "rights and duties" is placed "under IHF stipulations".
86. Pursuant to Article 27 para. 3 (f) of the IHF Bylaws, the continental federations have the right "to draw up their own list of referees". This right is, however, restricted to "continental referees". The IHF's PRC retains the following rights with regard to "international referees":
- *Selecting, training, deploying and monitoring international referees*
 - *Issuing international referee identification*
 - *Drawing up IHF referee list, which have to be confirmed by the Executive Committee*
87. The issues surrounding the appointment of the Jordanian referees, who undisputedly did not possess "international referee" status, result from an interpretational gap in the formulation of Article 34 para. 1 of the Bylaws. This Article provides as follows:
- "Referees for official IHF championships, Olympic Games, the World Cup and for international matches held under the responsibility of the IHF shall be nominated by the IHF's PRC. They must be listed in the official IHF referee list.*
88. Article 27 para. 3 of the Bylaws clarifies in light of the broadness of the term "Olympic tournaments" in Article 27 para. 1 that AHF has the right to hold "continental qualifying

matches” for the Olympic competition. A similar clarification regarding the right to appoint referees for continental qualifying matches for the “Olympic tournaments” is missing in the Bylaws. This lack of clarity is at the root of misconceptions between AHF and IHF with regard to the Jordanian referees.

89. If, as conceded by IHF, its President, Dr. Moustafa, was compelled to admit “that the appointment of the German referees Lemme and Ulrich for the first match in the Men’s Tournament was a step too far” and, for this reason, withdrew their appointment for the first match, the impression of the Panel is that the parties had been testing each other to see who could venture into the jurisdiction of the other before the other would object. Clear lines of definition did not exist.
90. This is also clear in the dispute between Mr. Tawakoli and Mr. Ahl regarding the appointment of the Jordanian referees as the “fifth referee couple”. Mr. Ahl vehemently refuted the allegation before the Panel that he was told on the telephone by Mr. Tawakoli on or about 20 August 2007 that the Jordanians had been nominated to officiate. When Mr. Ahl “exploded” upon learning sometime after September 1st that the Jordanians had officiated at the first match, his anger derived from the fact that, although the Jordanians were continental referees, they were not on the “IHF List” and had no prior international referee experience.
91. As Mr. Ahl stated in his testimony before the Panel that, due to the shortage of “IHF-List” referees, agreement prevailed with the AHF to permit the use of continental referees at qualifying tournaments and such other international matches where “IHF-List” referees were mandated, provided the continental referees had been former international referees. The IHF did not challenge AHF’s right to select referees as long as they were international referees from the IHF-List (e.g. the German referees, Lemme/Ulrich) or, if such IHF-List referees were in shortage, they could be continental referees as long as they had formerly been international referees. In the view of Mr. Ahl, this was not the case with the Jordanian referees.
92. Hence, in the view of the IHF, Mr. Tawakoli had violated past practice and the ongoing understanding with the IHF. As Mr. Ahl testified:

“The AHF have used these continental referees (Level 3 referees) only when we [IHF] agree to use them. They [AHF] cannot use, on their own, unapproved continental referees. We have always sought a ‘pragmatic application’. The Jordanian referees were continental referees, but not on the IHF List. We heard nothing from Tawakoli regarding the nomination of referees. We ran through names on the telephone to see who could be used, but agreed only to 4 couples, not 5, and 3 couples for Almaty”.
93. The Panel has no reason to doubt the reliability of Mr. Ahl’s statement and the AHF’s Rules regarding the Nomination of Referees do not contradict the proposition that the parties had previously agreed, when and where needed, to permitting continental referees to officiate at AHF-held qualifying Tournaments and in other international matches where IHF-List referees were required, provided that had been previously IHF-List referees.

94. The AHF's violation of the "pragmatic application" between AHF and IHF regarding the use of internationally-qualified referees and the fact that the Jordanian referees were unannounced and not "approved" by the President of the IHF/PRC further supports IHF's case that the "mistakes" of the Jordanian referees during the KOR-KUW match were the result of bias. Separately, it also supports the case that because the rules and procedures for ensuring that qualified referees officiate at the AHF-organized Olympic qualification matches and the terms upon which AHF was entrusted with holding the Tournaments were violated, the results of the game at which the Jordanian referees officiated should not be recognized. The fact that Mr. Ahl was no longer available to receive the AHF's letter of 20 August 2007 in which the Jordanian referees are announced for the first time has no relevance in the Panel's decision that the results of the KOR-KUW cannot stand. The Jordanian referees were not IHF-qualified referees.

(iii) The Officiating of the Women's Tournament

95. With regard to the Women's Tournament, on the other hand, the Panel finds that the evidence submitted by the IHF is not sufficient to justify the cancellation of the Almaty results and the acceptance of the results of the replay on 29 January 2008.

96. Not only is an analysis of the Women's Tournament between 25-29 August 2007, similar to the "Conclusions of Analysis" submitted for the Men's Tournament, missing in the submissions of IHF, but the statistical evidence regarding the referees' calls and the results of the matches themselves do not speak overwhelmingly (as is the case in the Men's Tournament) for the presence of manipulation and/or bias. If a conscious or unconscious manipulation of the results took place in Almaty, it requires a stretch of the imagination to perceive how this could have taken place when the determination of the qualifying team was based upon only a marginal goal difference.

97. The Panel places little credence on the testimonies of the witnesses Bouwers, Gamo and Ms. Sakugawa. The Panel finds it difficult to follow (and hold credible) a coordinated line of testimony of all three witnesses which states, on the one hand, yes, we were happy to have won against the Koreans, but, at the same time, sad that the better team, namely the Koreans, lost against us.

98. Although Mr. Bouwers, who has been coach of the Japanese women's team for the past 100 days, took the position, and clearly firmly believed, that the Japanese victory over the Korean team was the direct result of several two-minute penalties imposed against the Korean team, no independent substantiation of these claims was provided.

99. The Panel can lend no credence to the claims raised by Mr. Bouwers and Mr. Gamo, much less the other members of the Korean and Japanese Handball Associations, that referee manipulations had taken place over the past 10 years, when no protests were raised during this time in which the alleged manipulated penalties were substantiated and made part of the

official record. “The Japanese are shy”, responded Mr. Bouwers to the corresponding question of the Panel. This is no excuse.

100. The Panel was also unable to determine on the basis of the testimony of the witnesses Bouwers, Gamo and Professor Chung, who was responsible for the prohibition on taking video recordings, films or photos of the Women’s Tournament in Almaty. Mr. Bouwers referred only to “security personnel” without being able to state whether such personnel were acting under the instructions of the Kazakhstan government, the media organisation who also recorded the matches, or the KzHF as the organizer of the event. The refusal to allow or supply video, film or photos at the Women’s Tournament could not, in any event, be evidence of bias of any form, since it impacted equally on all teams. It is worth noting also that the witness testimony established that there was a blanket prohibition on filming, so much so that even children were prevented from taking pictures.

(iv) This is not a “field of play” decision

101. The Panel wishes to establish that in making the decisions regarding the cancellation and replay of the Men’s Tournament and confirmation of the Women’s Tournament, it is not substituting its judgment of the penalty calls for that of the referees. The Panel is not engaging in a “field of play” decision. It bases its decision on the statistical evidence from the matches, the opinion of (what the Panel believes to be) neutral and qualified experts, and the facts and circumstances surrounding the selection of the Jordanian referees.

102. The Panel concludes that the preponderance of the evidence submitted by the IHF, none of which has been convincingly refuted by the AHF’s submissions, supports the charge that bias was present in the officiating of the Korean-Kuwait opening match. The Panel has not been persuaded on the basis of the evidence submitted that the calls of the referee’s officiating at the Women’s Tournament were the result of bias, intentional manipulation or some other form of bad faith.

103. CAS Panels have consistently ruled in past awards that it will not review a field of play decision (CAS OG 02/007; CAS 2004/A/727; CAS OG 00/013; CAS OG 96/006). In CAS 2004/A/727, the Panel held:

“Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, ... there must be some evidence of preference for, or prejudice against, a particular team or individual. The best example of such preference or prejudice was referred to by the Panel in [CAS OG 00/013], where they stated that one circumstance where the CAS Panel could review a field of play decision would be if a decision were made in bad faith, e.g. as a consequence of corruption. The Panel accepts that this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of place decision”.

104. The Panel does not wish to speculate on the cause or the origins of the “bias” alleged by the IHF, does not wish to call it “fraud” or charge that it was motivated by “malicious intent”. To

be sure, several witnesses suggested that ethnic and political rivalries between the western and eastern regions of the AHF's broad continental jurisdiction were here in play. If this is the case, it is a matter for the AHF and IHF's Congresses to consider re-organisational measures such as the creation of separate and independent East Asian and West Asian Federations, as suggested by Professor Chung, in order to avoid the repetition of such a regrettable situation as has arisen in this case.

105. On the basis of the above, and taking into consideration the request of the parties for a *de novo* decision on the merits, the Panel holds that the Council Decision of 17 December 2007 is null and void, including the order to replay the Women's Tournament.
106. Having determined that the result of the KOR-KUW match could not stand, and because the KOR-KUW match was regarded as the decisive match of the Men's Tournament, the Panel concludes that the Men's Tournament, in its entirety, could not stand. If the IHF had followed proper procedures in adopting the Council Decision on 17 December 2007, it would have come to the same conclusion.
107. Considering the circumstances and the time constraints for the scheduling of the required replay, it would not be appropriate to nullify the replay which took place on 30 January 2008. The replay took place under the supervision of the IHF with IHF-qualified referees officiating. It is, therefore, in the view of the Panel, the fair and expeditious solution to allow the results of the Men's replay to stand. Therefore, the Panel confirms the validity of the replayed Men's Tournament which took place on 30 January 2008.

The Court of Arbitration for Sport rules:

Preliminarily,

1. The Kazakhstan Handball Federation and the Kuwait Handball Federation are not parties to this arbitration procedure.

And further rules:

2. The decision of the Council of the International Handball Federation of 17-18 December 2007 is set aside.

And, as requested by the terms of the Arbitration Agreement, further rules de novo:

3. The results of the Asian Men's Qualification Tournament of 1 and 6 September 2007 held in Toyota, Japan are annulled.

4. The results of the replay of the Asian Men's Qualification Tournament for the 2008 Beijing Olympic Games held in Tokyo on 30 January 2008 are valid.
 5. The results of the Asian Women's Qualification Tournament of the 2008 Beijing Olympic Games held in Almaty between 25 and 29 August 2007 are confirmed.
- (...).