



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2024/A/11043 Vladan Spaic & Cercle des Nageurs de Marseille v. European Aquatics**

**ARBITRAL AWARD ON JURISDICTION**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: Dr Despina Mavromati, Attorney-at-law in Lausanne, Switzerland

**in the arbitration between**

**1/ Vladan Spaic, Marseille, France**

**2/ Cercle des Nageurs de Marseille, Marseille, France**

Both represented by Mr Julien Berenger, Selarl Kelten Sport, Marseille, France

**Appellants**

**and**

**European Aquatics**

Represented by Jonas Gürtler and Emanuel Cortada, Bär & Karrer, Zurich, Switzerland

**Respondent**

## **I. PARTIES**

1. Vladan Spaic (“the Athlete”) is a professional water-polo player of Montenegrin nationality and is currently playing for the Cercle des Nageurs de Marseille (“the Club”), a water-polo club based in Marseille, France (jointly referred to as “the Appellants”).
2. European Aquatics (“EA” or the “Respondent”) is the governing body of water-polo in the continent of Europe and the organizer of the Water Polo Champions League. It is one of the regional Confederations of World Aquatics and it is based in Nyon, Switzerland. Together with the Appellants they will be referred to as “the Parties”.
3. The appeal is directed against a decision rendered by the EU Disciplinary Panel Commission on 10 November 2024 (“the Appealed Decision”).

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, she refers in her Award on Jurisdiction only to the submissions and evidence she considers necessary to explain her reasoning.
5. On 9 October 2024, the first water polo Champions League group match took place between Cercle des Nageurs de Marseille and PVK Jordan HN, in Marseille.
6. At 3:41 in the second half of the match, the Athlete struck an opponent, Mr Vuk Milojevic (the “Incident”). Prior to the Incident, the Athlete had been pushed underwater by an opponent on two occasions and a fault was whistled by the referee, with the opponent player temporarily sent off and the Club getting the ball back.
7. In a subsequent action, the Athlete gave Vuk Milojevic a blow underwater and caused him an injury. Only two minutes later, the referee noted that Mr Vuk Milojevic had sustained a mouth injury and sanctioned the Athlete with a red card for violent conduct.
8. After the match, the Athlete publicly apologized through his Instagram account.
9. Furthermore, the day after the match, the Athlete spoke to Mr Vuk Milojevic and offered his apologies, that were accepted.

### **B. Proceedings before the previous instance**

10. On 11 October 2024, namely two days after the match, the Club was notified of the decision of the EA TWPC Commission (the “First Decision”), rendered by the President of European Aquatics, its Vice-President, and its Secretary, which read as follows:

*“After analysing all the actions and the facts that led to the violent action committed by Vladan Spajic and seriousness of the injury to the opponent player, TWPC Commission made decision regarding sanction to be imposed as follows:*

*Due to gravity of violent action committed by intentional punch which as consequence has serious injury of opponent player and according to the EA WP Code of Discipline, as per rule 2.2, player Vladan Spajic has been sanctioned with ten (10) games suspension.*

*Sanction imposed will be served at next ten (10) games of CN Marseille under EA jurisdiction. Regardless of the sanction imposed, according to the “Regulations for the European Cups for Club Teams” point CLUB 10.3.5, CN MARSEILLE may substitute the suspended player and have thirteen (13) players listed on the Players list on those games.*

*The additional fine sanction of 500€ will be processed by the European Aquatics Office after the end of the competition. According to the Rule E 21.3 a) an appeal against decision of TWPC Commission may be submitted to the European Aquatics Panel within twenty-one (21) days after notification (Rule C 15.2.1.4)”.*

11. The First Decision was issued without previously consulting with the parties concerned.
12. On 14 October 2024, the Club sent an email to EA informing it of its wish to appeal the First Decision and requested clarification as to the procedure to be followed.
13. On 17 October 2024, EA informed the Club that it needed to submit a written appeal with evidence or facts justifying the appeal and stated that the appeal would be forwarded to “the appropriate body in accordance with the regulations”.
14. On the same day, the Club indicated that it wished to file an appeal by email and asked whether evidence should be filed at the same time or upon the initiation of the appeal procedure.
15. This email remained without a response and the Club sent again an email on 22 October 2024, requesting confirmation of receipt of the appeal and information on the progress of the proceedings. On the same day, the Club sent EA various attestations, exchanges between the players and the Player’s apology on Instagram.
16. On 24 October 2024, EA informed the Club that the appeal had to be filed in writing (and therefore not by email) and should set out the facts and evidence justifying the appeal.
17. On 25 October 2024, the Club sent a written appeal by email, along with the exhibits that had already been sent before.
18. On 10 November 2024, the EA Disciplinary Panel Commission issued the Appealed Decision and decided as follows:

*“The EA Disciplinary Panel commission fully supports the decision of the EA TWPC, confirming Mr. Vladan Spaic’s suspension for a total of 10 matches.*

*Given that the player has already served two matches, the imposed sanction will be served in the next eight (8) matches of CN Marseille under the jurisdiction of the EA.*

*This sanction imposed on the player Vladan SPAIC is an indication to all other players that European Aquatics will not tolerate violent behavior of any kind”.*

19. The Club told EA that it was astonished by the *“the manner in which this case has been handled, as the current procedure undermines all principles of the right to defense (...)”*. It also said that the Club and the Player were both deprived of their right to present their version of events and to consult the case file, but also that EA considered that this was *“an intentional punch”* and *“a serious injury”*. As such, the Club requested EA to provide *“the official documents detailing such a procedure, as well as the complete disciplinary file concerning Mr. Spaic (...)”*.
20. This email remained without a response from EA.

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

21. On 29 November 2024, the Appellants filed a Statement of Appeal and a Request for Provisional Measures to the CAS against the Appealed Decision, indicating that the Statement of Appeal should be considered as an Appeal Brief, in accordance with the letter of 23 December 2024 and Article R51, para. 1 of the CAS Code. The Statement of Appeal was filed in French and the Appellants requested that a Sole Arbitrator be appointed.
22. On 29 November 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal against the Appealed Decision of 10 November 2024 and invited the Appellant to file its Appeal Brief, unless it intended to use its Statement of Appeal as an Appeal Brief and invited the Respondent to express itself on the request for provisional measures until 3 December 2024.
23. On 2 December 2024, the CAS Court Office acknowledged receipt of the Appellants’ email requesting confirmation of receipt and information on the next steps, informing the Appellants that an Order on Provisional Measures would soon be issued. On the same day, the CAS Court Office acknowledged receipt of the Appellants’ email that they had not received the CAS letter dated 29 November and forwarded it to them anew.
24. On 3 December 2024, the CAS Court Office noted that the Respondent had not filed any submissions with respect to the Appellants’ Request for Provisional Measures and informed the Parties that the President of the Appeals Division or her Deputy would issue an Order on Provisional Measures shortly.
25. On 3 December 2024, the Respondent informed the CAS Court Office that it had not been able to respond on the Request for Provisional Measures within the given deadline and that, in accordance with Article R29 of the CAS Code, the present proceedings

should be conducted in English. In the same letter, the Respondent informed the CAS that it did not recognize the jurisdiction of the CAS in the given matter and reserved its right to make further submissions in fact and in law, including on the issue of provisional measures.

26. On 4 December 2024, the CAS Court Office acknowledged receipt of the Respondent's email and granted three days to the Appellants to express themselves on the language issue raised by the Respondent.
27. On the same day, the CAS Court Office acknowledged receipt of the Respondent's new email whereby it requested the procedural correspondence of the case and informed the CAS that the next pertinent match of the Appellants was scheduled on 4 February 2025, therefore there was no urgency to decide on the Request for Provisional Measures submitted by the Appellants, requesting a new time limit to rebut the Appellants' allegations on provisional measures. In its letter, the CAS Court Office noted that the time limit to file the observations on the Request for Provisional Measures had already expired and any request for extension should have been filed prior to the expiry of such time limit. The CAS Court Office invited the Appellants to file their observations on the Respondent's request to reinstate the time limit to file observations on their Request for Provisional Measures by 6 December 2025.
28. On 5 December 2025, the Appellants sent a letter to the CAS objecting to the request for reinstatement of the time limit filed by the Respondent, indicating that the Player had already been suspended for five matches out of a total of ten matches. On the language of the proceedings, the Appellants noted that the Respondent had equally missed the time limit to object to French being the language of the proceedings. In any event, English was imposed on the Appellants during the internal disciplinary proceedings and therefore the Respondent's arguments could not be pertinent in the sense of Article R29 of the CAS Code. According to the latter provision, French was one official language of the CAS and an official language of EA, and the decisions could be easily translated into French. Moreover, the Club is based in France and the Player of Montenegrin nationality based in France since 2020.
29. On 6 December 2024, the CAS Court Office acknowledged receipt of the Appellants' letter dated 5 December 2024 and informed the Parties that the Respondent will not benefit from a reinstatement of the time limit to file observations on the Request for Provisional Measures and that an Order would shortly be issued in this respect. With respect to the language of the proceedings, the CAS Court Office noted that the time limit to file objections on the language would expire on 9 December 2024 only, therefore the Respondent's objections were filed on time, but in view of the Appellants' objections it invited the Respondent to indicate to the CAS whether it intended to maintain or withdraw its objection to the language by 10 December 2024, during which time the time limit to file an Appeal Brief would be suspended.
30. On 10 December 2024, the Respondent reiterated its objection to French being the language of the proceedings and noted that, as per Articles C8.1 and C8.2 of the EA Constitution, "*in cases of doubt, the English language shall prevail*" and "*that the working language shall be English*". Finally, Article C.20.2 of the same rules provided

that “(...) *The arbitration proceedings shall be conducted in English unless the parties agree otherwise*”.

31. On 10 December 2024, the CAS Court Office acknowledged receipt of the Respondent's letter of the same day and informed the parties that the President of the Appeals Division or her Deputy would issue an order on this matter shortly.
32. On 20 December 2024, the Deputy President of the Appeals Arbitration Division issued an Order on Language, deciding that English should be the language of the proceedings and requesting the Appellants to file their Appeal Brief in English within ten (10) days from notification of the Order.
33. On the same day, the CAS Court Office responded to an email sent by the Appellants clarifying that they should indicate whether they intended to use their Statement of Appeal as an Appeal Brief and that they could file a request for extension of the time limit if necessary pursuant to Article R32 of the CAS Code.
34. On 23 December 2024, the CAS Court Office acknowledged receipt of the Appellants' letter informing the CAS that their Statement of Appeal should be considered as their Appeal Brief and granted the requested extension of 10 days in order to file the translated submissions in line with Article R32 para. 2 of the CAS Code.
35. On 9 January 2025, the CAS Court Office acknowledged receipt of the Appellants' email dated 8 January 2025 with the English translation of their Appeal / Appeal Brief and its exhibits and granted the Respondent twenty days to file its Answer.
36. On 27 January 2025, the Respondent requested an extension to file its Answer until 18 February 2025.
37. On 28 January 2025, the CAS Court Office acknowledged receipt of the Respondent's letter dated 27 January 2025 whereby it requested an extension of 20 days and granted a 10-day extension based on Article R32 para. 2 of the CAS Code, while it invited the Appellants to comment on the additional 10-day extension requested by 29 January 2025.
38. On 30 January 2025, the CAS Court Office acknowledged receipt of the Appellants' objection to the extension of the time limit that was requested by the Respondent, considering that this a dilatory measure, and informed the Parties that the CAS Appeals Arbitration Division President would issue a decision in due course.
39. On 4 February 2025, the CAS Court Office notified the Parties of the Order on Request for Provisional Measures rendered by the Deputy President of the Appeals Arbitration Division whereby she granted the request filed by the Appellants. By the same letter, it informed the Parties that the Deputy Division President had decided to grant ten (10) additional days to the Respondent to submit its Answer.
40. On 7 February 2025, the CAS Court Office informed the Parties that the Panel appointed to decide this matter was constituted as follows:

Sole Arbitrator: Dr Despina Mavromati, Attorney-at-law in Lausanne, Switzerland.

41. On 6 February 2025, the Respondent filed a request for bifurcation to the CAS, supporting that the CAS should deal with the jurisdictional issue prior to deciding on the merits. In the same letter, the Respondent requested that the Order on Provisional Measures “shall be set aside immediately”.
42. On 12 February 2025, the CAS Court Office acknowledged receipt of the Appellant’s two letters, objecting to the request for bifurcation filed by the Respondent and invited the Parties to refrain from filing unsolicited submissions. In these letters, the Appellants indicated, as a precautionary measure, that they were firmly opposed to the lifting of the provisional measures granted by the Division President on 4 February 2025; in the second letter, the Appellants objected to the request for bifurcation filed by the Respondent, considering that the criteria for bifurcation were not granted in the given case and considering, in essence, that the jurisdictional issue could not be separated from the purely disciplinary question of the case.
43. On 14 February 2025, the CAS Court Office informed the Parties that, after considering the Parties’ respective submissions, the Sole Arbitrator had decided to bifurcate these proceedings and to analyse the jurisdiction of the CAS as a preliminary issue and granted ten (10) days to the Respondent to file its submissions on the jurisdiction of the CAS.
44. On 25 February 2025, the CAS Court Office acknowledged receipt of the Respondent’s submissions on jurisdiction and granted ten (10) days to the Appellants to file their submissions on the jurisdiction of the CAS. On the same day, the CAS Court Office acknowledged receipt of the Appellants’ request for a ten-day extension of their time limit to file their submissions on the jurisdiction of the CAS and invited the Respondent to comment on such request.
45. On 3 March 2025, the CAS Court Office acknowledged receipt of the Respondent’s letter dated 28 February 2025 whereby it did not object to the granting of an extension to the Appellants to file their observations on the jurisdictional issue and granted such request.
46. On 18 March 2025, the CAS Court Office acknowledged receipt of the Appellants’ Brief on jurisdiction filed on 17 March 2025.

#### **IV. SUBMISSIONS OF THE PARTIES**

47. While the Sole Arbitrators has read and considered the Parties’ entire submissions, she only reproduces below a summary of the Appellants’ submissions as exposed in their Statement of Appeal / Appeal Brief and the Parties’ subsequent respective submissions on the issue of jurisdiction.

**A. The Appellants' Submissions in their Statement of Appeal / Appeal Brief with respect to the jurisdiction of the CAS**

48. Since these proceedings have been bifurcated to focus on the jurisdiction of the CAS, the Sole Arbitrator shall only refer to the Appellants' submissions on such issue, which can be summarized as follows:

- The Appellants were faced with a conflict of norms among several regulations, on the one hand among the 2022 Constitution and the 2023 Constitution regarding the internal appeal procedure and on the other hand among the EA and the World Aquatics By-laws. The First Decision stated that an appeal would be possible *“to the European Aquatics Panel within twenty-one (21) days after notification (Rule C 15.2.1.4)”*. However, said provision only existed in the 2022 Constitution. Article C 15 of the 2022 Constitution was replaced in the 2023 Constitution by article C 16 entitled *“European Aquatics Integrity Unit (EAIU)”*, with different prerogatives from the former LEN Panel.
- The notification of the First Decision of October 11, 2024 does not mention an appeal to the EA Integrity Unit but only to the EA Disciplinary Panel without further details or operational guidelines. This is the reason that the 2022 version of the EA Constitution should apply in the present case.
- Article C 15.4 of the 2022 Constitution provides that the Appellants must be entitled to the right to a fair trial, the right to respond to the violation and resulting consequences, the right to present evidence, and the right to a written, reasoned decision.
- Article 15.2.3 of the 2022 Constitution provides that *“A decision taken by the LEN Panel according to C 15.2.1.4 and C 15.2.1.5 shall be final”*. At first glance, therefore, it would appear that a decision by the LEN Panel is not subject to external appeal.
- However, the Respondent is a Continental Organization of World Athletics, Article 11 of the World Aquatics Constitution provides that *“The constitution and rules of a Continental Organisation must comply with this Constitution and the World Aquatics Rules. [...] In case of any inconsistency between this Constitution and the World Aquatics Rules and the constitution and rules of a Continental Organisation, this Constitution and the World Aquatics Rules shall prevail”*. Moreover, Article 4.2.5 of the By-laws of World Aquatics provides for all aquatic athletes' rights, including their right to an independent and impartial panel, with a right to appeal to the CAS. This provision providing for an appeal to the CAS must therefore prevail over Article 15.2.3 of the 2022 Constitution.

49. The Appellants filed the following requests for relief:

*“In view of the urgency of the matter:*

*The granting of provisional measures to allow the Player to participate without delay in the Water Polo Champions League and to provisionally lift the suspension imposed on the Player by the Respondent with immediate effect;*

*The suspensive effect of this Appeal; Primarily:*

*The reduction of the sanction imposed on Mr. SPAIC to a fine of €500 and a suspension of less than five matches under the jurisdiction of European Aquatics;*

*In the alternative :*

*Refer the case back to the EA Disciplinary Panel Commission for a fresh decision;*

*In such a case, the Panel of Arbitrators will enjoin the EA Disciplinary Panel Commission to comply with its regulations and in particular with the rights of the defense provided for in article C 15.4 of its Constitutional Rules 2022;*

*In any case:*

*Order European Aquatics to pay all the costs of the arbitration proceedings and to pay Mr. Vladan SPAIC and the Cercle des Nageurs de Marseille a contribution towards their legal fees, as well as compensation for other costs incurred in the context of the present proceedings, in an amount to be set at the discretion of the CAS Arbitration Panel.”*

## **B. The Respondent’s Submissions on Jurisdiction**

50. The Respondent’s submissions on jurisdiction can be summarized as follows.

- The Appealed Decision is final as per the rules and regulations of EA and therefore cannot be appealed to the CAS.
- First, there is no jurisdiction that can be derived by the EA Rules. In accordance with Article R47 of the CAS Code, jurisdiction is granted if “*the statutes or regulations of the said body so provide (...)*”. As such, it is the statutes or regulations of EA that should foresee an arbitration clause to that effect, as the “*body issuing the decision*” according to CAS case law. Even though the Appellants acknowledge the absence of an arbitration clause within the rules of EA, they nevertheless attempt to establish such jurisdiction by combining outdated provisions of EA and those of World Aquatics, which is not a party to the present proceedings and has no relevance for the Appealed Decision, to the extent that said decision was rendered by EA in a competition organized and governed exclusively by EA.
- The Appellants’ reference to the EA Constitution is for its 2022 and 2023 edition, however at the time of the incident, the EA Constitution of 2024 (the “2024 Constitution”) was already fully in force. While older versions of the EA Constitution can be used for interpretational purposes, older versions of the Constitution cannot apply when the current edition is already in force. However,

neither version of the EA Constitution foresees the possibility to appeal a decision of the EA Disciplinary Panel to the CAS.

- Article C20.1 of the 2024 Constitution provides that only final decisions made by the Congress or Bureau that violate the Constitution or mandatory legal provisions may be submitted to the CAS, which *e contrario* means that decisions of the EA Disciplinary Panel cannot be appealed to the CAS.
- According to Article 15.2.1.4 of the 2022 Constitution, the respective EA Disciplinary Panel (i.e. the LEN Panel under the older versions) had jurisdiction to decide on appeals by a party involved in regard *“to sanctions imposed by either a LEN Delegate or a LEN Committee (...)”*, and Article 15.2.3 provided that *“decision[s] taken by the LEN Panel according to C 15.2.1.4 and C 15.2.1.5 shall be final”*.
- When a decision is final according to the federation’s regulations, no appeal can be lodged to the CAS, as the latter requires a valid arbitration agreement and even acknowledged by the Appellants who state that *“[a]t first glance, therefore, it would appear that a decision by the LEN Panel, on appeal from a decision of the EA TWPC Commission, is not subject to external appeal”*.
- Second, the Respondent submits that there is no jurisdiction that can be derived from the Rules of World Aquatics. Article 4.2.5 of World Aquatics By-Laws provides for the athletes’ right to due process, *“including the right to a fair hearing within a reasonable time by the Disciplinary Chamber of the Aquatics Integrity Unit, the CAS Anti-Doping Division or other applicable independent and impartial panel, with a right to appeal to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland”*.
- To the extent that CAS jurisdiction can only be derived from the rules of the body that issued the appealed decision, the only pertinent rules should be those of the EA and not of World Aquatics. There is further no contradiction between the EA rules and Article 4.2.5 of World Aquatics By-Laws and the latter should not prevail over the former based on Article 11.2 of the World Aquatics Constitution.
- In this case, there is no inconsistency between the various rules but only a lack of jurisdiction in favour of the CAS. Article 4.2.5 does not impose an obligation to EA to foresee an appeal to the CAS in its own rules, and it is common for other associations to limit the appeal to CAS to specific cases. In the case of EA, this is only possible for decisions made by the Congress and the Bureau. Moreover, the EA rules have been approved by World Aquatics pursuant to Article C21.1.3 of the 2024 Constitution.
- Even if there were such an obligation imposed by World Aquatics, it would not be possible to directly invoke said obligation directly by the Appellants in order to establish a jurisdiction of the CAS in the present case.

- In summary, the Respondent submits that in the present case there is neither a parties' agreement to bring this case to the CAS nor an arbitration clause in the rules of EA for decisions of the EA Disciplinary Panel, and it is not possible to derive a jurisdiction from the rules and regulations of World Aquatics.

51. The Respondent submitted the following requests for relief:

*(i) Declare that it has no jurisdiction to hear the appeal in the proceedings TAS 2024/A/11043 Vladan Spaic & Cercle des Nageurs de Marseille v. European Aquatics;*

*(ii) In any event, to order Appellant to pay a contribution to the legal costs and expenses of European Aquatics of at least CHF 20'000.*

52. The Respondent reserved the right to submit further requests for relief on any aspects of this case, including a request for a higher contribution to the legal costs and expenses in case that the CAS rule that it has jurisdiction in the present case.

### **C. The Appellants' Subsequent Submissions on Jurisdiction**

53. The Appellants' subsequent submissions on jurisdiction can be summarized as follows:

- The 2024 Constitution, even though likely to have been approved in 2024, was not published on the European Aquatics website on the date of the Appellants' filing of the Statement of Appeal.
- Furthermore, the notification of the First Decision of the EA TWPC Commission, stated that *"According to Rule E 21.3 a) an appeal against decision of TWPC Commission may be submitted to the European Aquatics Panel within twenty-one (21) days after notification (Rule C 15.2.1.4)" Exhibit A.1 - EA TWPC Commission decision of October 11, 2024*".
- Rule E corresponds to the General Events Rules, and Rule E 21.3 a) states as follows:

*"All actions of misconduct and disciplinary matters which do not require an immediate decision at the European Aquatics Event shall be decided: a) by the Chairman, the Vice-Chairman and the Secretary of the respective Technical Committee, if sanctions are provided for in one of the Codes of Conduct; An appeal against such a decision may be submitted to the European Aquatics Panel within twenty-one (21) days after notification (Rule C 15.2.1.4)".*

- Regarding the appeal procedure, Article E 21.3 a) refers to Article C 15.2.1.4, which, in the document in force since September 2023 and in the 2024 Constitution, Article C 15.2.1.4 does not exist. This provision however existed in an earlier document, namely the 2022 Constitution, which provided that *"The LEN Panel shall deal with cases which are under the jurisdiction of LEN and: [...] 15.2.1.4 decide on appeals put forward to the LEN Panel by a party involved*

*in regard to sanctions imposed by either a LEN Delegate or a LEN Committee, subject to the payment of a fee of five hundred (500) EUR to LEN;”.*

- The 2023 Constitution has ratified the change of name of the former “Ligue Européenne de Natation (LEN)” to its current name “European Aquatics”. In the 2023 and the 2024 Constitution, Article C 15 entitled “LEN Panel for Disciplinary Matters and Disputes” does no longer exist and has been replaced by Article C 16 entitled “European Aquatics Integrity Unit (EAIU)”, which does not confer the same prerogatives as the former LEN Panel. What is more, the notification of the First Decision does not mention the EA Integrity Unit but rather the “European Aquatics Panel”, the competence of this body and its functioning not being detailed anywhere. This is why the Appellants submit that the 2022 Constitution should determine the rights of those subject to disciplinary proceedings by the EA Disciplinary Panel.
- Accordingly, Article C 15.4 specifies that all the rights relating to a fair trial that the appellant is entitled to, namely “5.4 *Relevant Principles of due Process*, 15.4.1 *The hearings of the LEN Panel shall respect the following principles taking into account the urgency of the matter, if applicable:*, 15.4.1.1 *a timely hearing either personally or by written submissions*; 15.4.1.2 *a fair and impartial hearing body*; 15.4.1.3 *the right to be represented by counsel at the hearing, with no expense to LEN*; 15.4.1.4 *the right to be fairly and timely informed of the relevant violation*; 15.4.1.5 *the right to respond to the violation and resulting consequences*; 15.4.1.6 *the right of each party to present evidence, including the right to call and question witnesses (subject to the hearing body's discretion to accept testimony by telephone or written submission)*; 15.4.1.7 *the right to an interpreter at the hearing, at no expense to LEN*; and 15.4.1.8 *the right to a timely, written, reasoned decision; specifically, including an explanation of the reason(s) for any period of suspension*. 15.4.2 *The LEN Panel may conduct a hearing or decide a matter based upon written submissions of the parties, however in any case the principles expressed in C 15.4.1 must be respected*”.
- Notwithstanding Article 15.2.3 of the 2022 Constitution providing that “[a] decision taken by the LEN Panel according to C 15.2.1.4 and C 15.2.1.5 shall be final”, the Appellants submit that the Respondent’s position is based on an erroneous interpretation of all the rules applicable to water-polo players and clubs and that the CAS should have jurisdiction based on the case law of the CAS and the Swiss Federal Tribunal.
- More specifically, the CAS has jurisdiction based on a general reference in the respective rules of the federation. Citing federal case law, a general reference in the national rules whereby said federation must observe the rules of the international federation is sufficient to establish the jurisdiction of the CAS in the light of R47 of the CAS Code. According to the Appellants, as members of a national or continental federation whose regulations make general reference to the regulations of the international federation of which it is a member, and that

these regulations include an arbitration clause in favour of the CAS, athletes and clubs can benefit from such arbitration clause.

- Furthermore, the Appellants consider that a restriction on the jurisdiction of CAS cannot be provided for by a norm that is less important in the hierarchy of norms than the one giving CAS this jurisdiction. There is a conflict of standards between the rules of EA and the By-laws of World Aquatics. A finality of the Appealed Decision, however, would conflict with World Aquatics, to which EA is accountable as a Continental Organization.
- Moreover, the EA Constitution provides for a general reference to the World Aquatics regulations insofar as it states that the rules for the competitions authorized by European Aquatics are “*the established EA Regulations and the World Aquatics rules*”. Inversely, the World Aquatics rules require Continental Organizations to comply with the World Aquatics Constitution and the World Aquatics Rules and provide that, in case of inconsistency between the various rules, the ones of World Aquatics shall prevail.
- The Appellants submit that Article 4.2.5 of World Aquatics Constitution granting athletes the right to due process cannot be restricted by Continental Organizations. As such, any provision in the EA Constitution providing for finality of the Appealed Decision is contrary to the World Aquatics rules. The “compliance” certificate granted to the Respondent is only a certificate of expediency but cannot be used to deviate from the regulatory provisions in force.
- Most importantly, the Appellants consider that the general reference to the World Aquatics regulations in the EA Constitution allows athletes to benefit from all procedural guarantees included therein, and in particular to the right to appeal to the CAS as per Article 4.2.5 of the By-laws of World Aquatics.
- In summary, the Appellants submit that a general reference is sufficient to establish CAS jurisdiction pursuant to Article 47 of the CAS Code; the reference in the EA rules specifying that the competitions organized by EA are subject to the rules of World Aquatics and the fact that World Aquatics rules have precedence over EA rules in case of inconsistency should allow for an appeal to the CAS. *In casu*, there is such inconsistency since the EA rules do not provide for an appeal to the CAS, while the World Aquatics rules do provide for an appeal to the CAS. Therefore, all aquatic athletes have the right to appeal to the CAS in disciplinary matters under the World Aquatics regulations and the fact that the European Aquatics rules do not provide for such an appeal does not prevent the CAS from having jurisdiction, but on the contrary guarantees it. As such, the Appellants – and at least the Athlete, as an aquatic athlete, should have a right to appeal to the CAS based on Article 4.2.5 of the World Aquatics By-laws, to the extent that these rules take precedence over Article C 15.2.3 of the EA Constitution.
- The Appellants further submit that the jurisdiction of CAS is necessary to guarantee them the right to a fair trial under Article 6 paragraph 1 of the

European Convention on Human Rights. In the present case, the Appellants were deprived of knowing their rights regarding the disciplinary proceedings due to an absence of provision in the EA rules. However, only the 2022 Constitution included due process provisions, safeguarding the parties' rights. The Appellants were however deprived of all their procedural rights during the EA proceedings, as they could not attend a hearing, produce written observations or be represented by a lawyer.

- Therefore, Article 15.2.3 of the 2022 Constitution is without effect and the CAS should accept its jurisdiction, to the extent that the EA Commissions did not respect the regulations and violated the Appellants' right to a fair trial.

54. The Appellants submitted the following request:

*“i. That the CAS has jurisdiction to hear the appeal filed on November 29, 2024 in French and January 8, 2025 in English against the decision of the EA Disciplinary Panel of European Aquatics of November 10, 2024, by virtue of the jurisdiction clause provided for by the regulations of World Aquatics, to which the regulations of European Aquatics refer;*

*ii. That the CAS has jurisdiction to hear the appeal filed on November 29, 2024 in French and January 8, 2025 in English against the decision of the EA Disciplinary Panel of European Aquatics of November 10, 2024, in that it is the only available recourse to allow the Appellants to preserve their right to a fair trial;*

*And in the alternative, that in the event of a decision of inadmissibility, the Appellants request the Sole Arbitrator to rule:*

*i. That each party shall bear the burden of its legal costs;*

*ii. In the extremely unlikely event that they are ordered to bear the Respondent's costs, that these costs be reduced to a fairer level.”*

## **V. APPLICABLE LAW**

55. Article R58 of the Code provides as follows:

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

56. In line with the aforementioned provision, the Sole Arbitrator considers that the EA Constitution and relevant rules should be applied in the present matter.

57. Regarding the applicable version of the EA Constitution, and even though all Parties refer to the EA Constitution, the Appellants refer to the 2022 Constitution, while the Respondent supports that only the 2024 Constitution is applicable. The Sole Arbitrator agrees that previous editions of the EA Constitution may be used for interpretational purposes if needed; however, and in accordance with the principle of *tempus regit actum*, only the 2024 Constitution shall apply for the determination of the existence or validity of an arbitration agreement in favour of the CAS, to the extent that this version was approved and fully and formally in force at the time of the filing of the claim (cf. CAS 2018/O/5822, § 63). In this respect, it is immaterial that the applicable version was not yet published in the EA website or that the notification of the First Decision gave a reference to a provision that does no longer exist in the 2023 or the 2024 Constitution.
58. Moreover, Article 20.2 of the 2024 Constitution, i.e. the only provision that refers to applicable law in the 2024 Constitution provides that “[t]he time limit for filing an appeal shall be 21 days after receipt of the decision against which the appeal is directed. The governing law of the appeal shall be the Constitution and the Rules and Regulations of European Aquatics and complementarily, Swiss law. The arbitration proceedings shall be conducted in English unless the parties agree otherwise”.
59. It follows that the applicable law in the present proceedings will be 2024 Constitution and, complementarily, Swiss law.

## **VI. PRELIMINARY ISSUE: BIFURCATION OF THE PROCEEDINGS**

### **A. Parties’ Submissions on Bifurcation**

60. Disputing the CAS jurisdiction in this matter from the beginning, the Respondent requested a bifurcation of the present proceedings to deal with the issue of jurisdiction as a preliminary matter.
61. In its letter dated 6 February 2025, the Respondent submitted that the requested bifurcation would contribute towards procedural efficiency and save valuable resources for both Parties as well as the CAS, even more as there was no urgency to obtain a decision on the merits due to the granted provisional measures. Moreover, the Order on the Request for Provisional measures dated 4 February 2025 did not preclude the bifurcation of the proceedings as it only examined the CAS jurisdiction on a “*prima facie*” basis and in the absence of any submissions filed by the Respondent.
62. The Appellants objected to the Respondent’s request to bifurcate these proceedings referring to CAS case law, stating that the criteria for bifurcation should include the efficiency of the proceedings, the interest of justice and safeguard of the parties’ interests.
63. The Appellants considered that a bifurcation would only lengthen the procedure before the issuance of a final award and force them to endure additional costs; furthermore, there is no issue of urgency as the request for bifurcation was made more than two months after the starting of the proceedings. What is more, the granting of provisional

measures would not allow for a bifurcation only for this reason. In the Order on Provisional Measures, the Deputy President of the Appeals Arbitration Division held that “*the jurisdiction of the CAS is not entirely crystal clear*”, but also considered that “*on a prima facie basis, she is not in a position to consider that CAS lacks jurisdiction to entertain this appeal*”, and that if this had been the case, she would have “terminate the arbitration procedure if she considered that the CAS clearly had no jurisdiction.

64. Finally, the Appellants submit the question of the jurisdiction of CAS cannot be separated from the merits of the case, as the entire disciplinary system of European Aquatics is being challenged by the Appellants. This disciplinary procedure, which does not respect the rights of the defence and goes against the World Aquatics regulations, which should nevertheless prevail, “*does not allow the athletes to benefit from an appeal before CAS, which is precisely strongly criticized and contradicted by the Appellants in their declaration of appeal*”. According to the Appellants, this is a global issue that should not be separated from the purely disciplinary question of the case, i.e. the reduction of the sanction.
65. Having heard the Parties’ submissions on this matter and having consulted the case file, the Sole Arbitrator decided to bifurcate the present proceedings for the reasons that follow.
66. First, the jurisdiction in the present case appears to be doubtful. In such a case, and for reasons of procedural economy, an Award on jurisdiction can save substantive time and financial resources if the Sole Arbitrator finds that the CAS does not have jurisdiction to hear the appeal. In any event, the bifurcation of the proceedings does not prejudice the procedural rights of the Appellants to the extent that the latter have already been granted a suspension of the sanction through the Order on Provisional Measures of 4 February 2025.
67. Finally, the Sole Arbitrator is not convinced by the Appellants’ argument that the jurisdiction of the CAS in the present case cannot be separated from the merits, as they challenge the entire disciplinary system of the Respondent. In fact, the jurisdiction of the CAS is a threshold matter and only if the Sole Arbitrator confirms that the CAS has jurisdiction to hear the case can she subsequently review the legality of the EA disciplinary system and its decision-making process altogether. The CAS does not have an “omnibus jurisdiction” to review possible malfunctions or bad administration of justice unless its jurisdiction is granted under the conditions enshrined in Article R47 of the CAS Code.

## VII. JURISDICTION

68. First, it must be noted that these arbitration proceedings are international insofar as the CAS has its seat in Lausanne and the Appellants were not domiciled in Switzerland at the relevant time. Therefore, the proceedings are governed, alongside the CAS Code, by the underlying legal framework of the 12<sup>th</sup> Chapter of the Federal Act on Private International Law of December 18, 1987 (PILA; RS 291).

69. According to Article 178 para. 1 of the PILA, the arbitration agreement must be made in writing or any other means of communication allowing it to be evidenced by text. Pursuant to Article 178 para. 2 of the PILA, the arbitration agreement is then valid as to its substance if it conforms either with the law chosen by the parties, or with the law governing the subject-matter of the dispute, or with Swiss law. The EA is based in Nyon, Switzerland, and the Parties have provided submissions with references to CAS case law and the jurisprudence of the Swiss Federal Tribunal (SFT). As a result, the substantive validity of the arbitration agreement will be determined in accordance with Swiss law and, more specifically, the principles developed by the SFT (cf. 4A\_388/2012, at 3.4.1.).
70. Article R47 of the Code provides as follows:
- An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*
71. Article R47 of the Code therefore provides for the possibility of bringing an appeal to the CAS either through a specific arbitration agreement or through a statutory basis (i.e. an arbitration agreement enshrined in the rules of the federation of the body that issued the appealed decision).
72. Generally, the arbitration agreement enshrined in Article R47 of the Code is an agreement pursuant to which the parties agree to have existing and / or future disputes decided by an arbitral tribunal according with the relevant procedural provisions, excluding the competence of state courts (4A\_430/2023 of 23 February 2024, at 5.2).
73. In the case at hand, it is uncontested among the Parties that the latter have not concluded a specific arbitration agreement as per Article R47 of the CAS Code. However, in line with Article 178 para. 4 of the PILA and Article R47 para. 1 of the CAS Code, it is also possible to confer jurisdiction to an arbitral tribunal through an arbitration clause included in the rules of an association. Therefore, the Sole Arbitrator will need to determine, according to Article R47 para. 1 of the Code, whether the 2024 Constitution provides for a valid arbitration clause and an appeal to the CAS against the Appealed Decision.
74. In their Statement of Appeal, the Appellants refer among others to Article C 15.2.1.4 of the 2022 Constitution, which states as follows: *“A decision taken by the LEN Panel according to C 15.2.1.4 and C 15.2.1.5 shall be final”*.
75. Even though the Appellants acknowledge that *“[a]t first glance, (...) it would appear that a decision (...) is not subject to external appeal”*, they subsequently refer to a series of other rules, including the ones of World Aquatics, in order to establish the CAS jurisdiction in the present appeal proceedings. In their submissions on jurisdiction, the Appellants request *“[t]hat the CAS has jurisdiction to hear the appeal filed on November 29, 2024 in French and January 8, 2025 in English against the decision of*

*the EA Disciplinary Panel of European Aquatics of November 10, 2024, by virtue of the jurisdiction clause provided for by the regulations of World Aquatics, to which the regulations of European Aquatics refer”.*

76. In view of the above, the Sole Arbitrator must proceed to a detailed examination of the applicable rules and interpret the arbitration clause, in order to determine its validity and its scope.
77. Having established that only the 2024 Constitution is applicable for the determination of the jurisdiction of CAS in the present matter, the Sole Arbitrator considers that the Appellants’ references to the 2022 Constitution do not offer any help in this regard, all the more since Article 15.2.3 of the 2022 Constitution did not provide for an appeal to the CAS for decisions of the LEN Panel (i.e. the current EA Disciplinary Panel) in that “[a] decision taken by the LEN Panel according to C 15.2.1.4 and C 15.2.1.5 shall be final”. In turn, Article 15.2.1.4 of the 2022 Constitution covers decisions “in regard to sanctions imposed by either a LEN Delegate or a LEN Committee (...)”.
78. The Sole Arbitrator emphasizes that the key question is whether, based on the 2024 Constitution and the various regulations, the CAS has jurisdiction to hear the appeal against a decision rendered in second instance by the EA Disciplinary Panel. From the first sight, it seems evident that the possibility to bring the Appealed Decision to the CAS is nowhere to find in the 2024 Constitution, which is the only regulatory framework applicable for the determination of the CAS jurisdiction between the Parties.
79. In this respect, the only provision in the 2024 Constitution that foresees an appeal to the CAS is in Article C 20.1 of the 2024 Constitution for “*final decisions made by the Congress or Bureau that violate the Constitution or mandatory legal provisions*”. It is however clear that the scope of such arbitration clause is limited to decisions made by the Congress or Bureau violating the Constitution or mandatory legal provisions, i.e. not related to the dispute that led to the Appealed Decision.
80. The Appellants’ efforts to derive an arbitration clause from a combined reading of the (non-applicable) 2022 Constitution together with references to the World Aquatics rules are misplaced. They even acknowledge that “[a]t first glance, therefore, it would appear that a decision by the LEN Panel, on appeal from a decision of the EA TWPC Commission, is not subject to external appeal”. From the above it follows that there is no arbitration clause that can be derived directly from the EA Constitution. It is however in the applicable version of the EA rules (i.e. the 2024 Constitution) that one should seek the arbitration clause in favour of the CAS, as the body that issued the Appealed Decision.
81. The Sole Arbitrator now turns to the Appellants’ arguments to establish jurisdiction through the regulatory provisions of other federations, such as the rules of World Aquatics, or rather the existence of a valid reference in the relevant EA rules to the rules of World Aquatics that would allow for an appeal to the CAS against the Appealed Decision.

82. In accordance with the jurisprudence of the SFT, the interpretation of the statutory arbitration clause inserted in the rules of a (major) sports federation is made according to the rules of statutory interpretation (4A\_314/2017, at 2.3.1; 4A\_490/2017, at 3.3.2; 4A\_600/2016, at 3.3.4.1). Generally, the principles of statutory interpretation are the literal interpretation, the systematic interpretation, the teleological interpretation and the historical interpretation. However, it is possible to depart from the clear text if the other methods of interpretation show that this does not correspond to the true meaning of the provision in question. The SFT does not favour any method of interpretation and does not establish a hierarchy but draws rather on pragmatic pluralism by seeking the true meaning of the norm (ATF 142 III 402, at 2.5.1).
83. In the case at hand, as shown above, the 2024 Constitution is clear in that there is no arbitration clause against the Appealed Decision in favour of the CAS. In terms of systematic and teleological interpretation, the Sole Arbitrator cannot find any provision in the 2024 Constitution or the other EA regulations that would establish the drafter's will to allow for an appeal against the EA Disciplinary Panel decisions. As seen above, the historical interpretation by looking at the previous versions of the EA Constitution is equally not helpful, to the extent that it foresaw the finality of the decisions rendered by the LEN Panel.
84. The Sole Arbitrator now turns to the Appellants' further argument based on Article 4.2.5 of World Aquatics By-Laws, which provides for the athletes' right to due process, *"including the right to a fair hearing within a reasonable time by the Disciplinary Chamber of the Aquatics Integrity Unit, the CAS Anti-Doping Division or other applicable independent and impartial panel, with a right to appeal to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland"*.
85. However, and as stated above, the Sole Arbitrator agrees with the Respondent that CAS jurisdiction can only be derived from the rules of the body that issued the appealed decision, and therefore the only pertinent rules should be those of the Respondent and not of World Aquatics. What is more, Article 4.2.5 explicitly refers to proceedings of the Disciplinary Chamber of the Aquatics Integrity Unit, the CAS Anti-Doping Division or other applicable independent and impartial panel within the ambit of its own jurisdiction, i.e. World Aquatics. As such, there is nothing in Article 4.2.5 that seems to oblige EA to provide for an appeal to the CAS for decisions of the EA Disciplinary Panel, either in its own rules or by reference to Article 4.2.5.
86. Moreover, and even if there were such an obligation imposed by World Aquatics (*quod non*), it would not have been possible for the Appellants to invoke said obligation directly in order to establish a jurisdiction of the CAS in the present case, all the more since the EA Rules have been officially approved by World Aquatics as per Article C 21.1.3 of the 2024 Constitution. In other words, and according to CAS case law, the World Aquatics rules do not contain any mandatory provision obliging a Continental Association like EA to introduce a right of appeal to the CAS against its decisions, and the World Aquatics rules do not provide such mandatory right for appeal (cf. CAS 2021/A/8403, § 85). Also, in line with CAS 2005/A/952, even though the rules of an international federation may compel a national federation to provide for a right of appeal

from its decisions, no right of appeal to the CAS can exist until the national federation has actually inserted such clause in its own regulations (cf. CAS 2021/A/8403, § 85).

87. For the same reason, the Sole Arbitrator must discard the Appellants' argument that the CAS has jurisdiction to review the decision of the EA Disciplinary Panel in that "*it is the only available recourse to allow the Appellants to preserve their right to a fair trial*": the CAS being an arbitral institution, the Sole Arbitrator cannot rewrite or interpret an association's rules in such a way as to establish jurisdiction from a non-existent arbitration clause; this would amount to overstepping her jurisdictional limits as exposed above. That said, the Respondent is an association under Articles 60 ff. of the Swiss Civil Code (CC), and its members have all the rights enshrined therein, including but not limited to the right to challenge its decisions in accordance with Article 75 CC.
88. Furthermore, the Sole Arbitrator cannot accept the Appellant's argument that the CAS has jurisdiction based on a general reference to World Aquatics in the EA rules. The judgment relied upon by the Appellants in order to corroborate their argument, i.e. 4A\_460/2008, does not seem to be relevant in the case at hand. Specifically, that case involved an appeal to the CAS filed by FIFA and WADA against a decision rendered by a Brazilian football tribunal against a Brazilian football player; however, the jurisdiction of the CAS in that case was enshrined in the FIFA's Statutes, which granted FIFA and WADA the right to appeal directly to the CAS against a decision rendered by one of FIFA's members. In the present proceedings, World Aquatics is not a party to these proceedings.
89. As a result, and even though it is indeed possible to recognize the validity of arbitration clauses integrated by reference in the rules of sports federations, such reference must be specific in its personal and material scope in order to bind the respective parties and cover the scope of the dispute. It is on the contrary not possible to derive CAS jurisdiction from a few scattered provisions and possible combinations of older, non-applicable versions of the EA Constitution and the rules of World Aquatics (that was not even a party in these proceedings) against decisions for which even the 2022 EA Constitution explicitly provides that are "final" (cf. also 4A\_564/2020, at 6.5).
90. For the same reason, the Appellants' arguments based on references to CAS 2009/A/1817 & CAS 2009/A/1844 and CAS 2009/A/1881 should also be dismissed. In CAS 2009/A/1817 & CAS 2009/A/1844, like in the 4A\_460/2008 mentioned above, the case related to appeals filed by WADA and FIFA against decisions rendered by a national football association, the rules of which mandated conformity with FIFA regulations. Again, in that case it was FIFA and WADA that filed an appeal to the CAS, that right being explicitly provided in the FIFA statutes for the specific category of doping-related matters, clearly distinguishing that case from the present dispute.
91. Similarly, in CAS 2009/A/1881, the CAS interpreted the meaning of the "general reference" in favour of the CAS as a reference (in the rules of the body which issued the appealed decision) that does not "*explicitly cite the arbitration clause, but may include by way of general reference a document containing such a clause*". Such clause is however nowhere to find in the 2024 Constitution and the general obligation of each

Continental Organization (including EA) to comply with the World Aquatics Rules enshrined in Article 11 of the World Aquatics is clearly not a sufficient basis to establish CAS jurisdiction in the present matter. There is therefore no reference, either general or specific, in the 2024 Constitution that would otherwise allow for an appeal to the CAS.

92. Furthermore, the Appellants' reference to CAS 2016/A/4654 and the hierarchy of norms is equally irrelevant, to the extent that the CAS award referred to the hierarchy of norms within the same association (FIFA) and not among different associations, given the principle of autonomy of the association anchored in Swiss law (cf., among others, CAS 2019/A/6278, § 46). For the same reason, based on the principle of autonomy of associations and their freedom to include an arbitration clause in favour of the CAS in their own rules, the Sole Arbitrator does not consider that the present case presents a conflict of standards between the EA Constitution and the By-laws of World Aquatics. In any event, a World Aquatics rule providing that, in case of inconsistency between the various rules, the ones of World Aquatics shall prevail, cannot be employed in order to artificially create an arbitration clause in the 2024 Constitution.
93. In the absence of a valid arbitration agreement, either direct or by reference, in the rules of EA, i.e. the body that issued the Appealed Decision, there is no general vested "right of stakeholders" to appeal to the CAS. For the same reason, the Sole Arbitrator does not consider that the Athlete – as an "aquatic athlete" under the Article 4.2.5 of the World Aquatics By-laws, can rely on said provision in order to challenge a decision rendered by another association and whose regulations do not provide for a right to appeal.
94. The Sole Arbitrator thus concludes that, for all the reasons explained above and refuting the Appellants' arguments, the CAS lacks jurisdiction to hear an appeal against the Appealed Decision in the present matter.
95. In a second line of arguments, the Appellants endeavour to establish CAS jurisdiction based on their right to a fair trial as it is guaranteed by Article 6 (1) of the European Convention of Human Rights ("the Convention"), which provides as follows:

*"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".*
96. The Sole Arbitrator agrees with the Appellants that the CAS applies said principles of procedural public policy, including the right to a fair trial (cf. CAS 2009/A/1995). The CAS, however, as a private arbitral tribunal with its seat in Switzerland, can only review and apply said principles *insofar as* it has jurisdiction to hear a present matter.
97. Again, the Sole Arbitrator reiterates that the issue of jurisdiction and the existence of a valid arbitration clause in favour of the CAS should be distinguished from the

Appellants' fundamental rights in line with mandatory Swiss law (in particular with respect to Article 75 CC that allows members of an association the right to challenge unlawful decisions of associations before ordinary courts). As such, the dispute at hand must be differentiated from CAS 2017A/5042, which related to the lack of exhaustion of legal remedies and not the lack of personal or material jurisdiction of the CAS, and CAS 2018/A/5994, whose factual matrix is entirely irrelevant to the present matter. As such, and to the extent that it was established that the only applicable set of rules is the 2024 Constitution, all arguments related to the previous versions of the EA Constitution – including the insinuated lack of independence and impartiality of the deciding bodies that issued the Appealed Decision - must be discarded.

98. Overall, the Sole Arbitrator considers that the Appellants' effort to establish CAS jurisdiction through an overly expansive interpretation of the various regulatory provisions and reliance to rules of other associations such as World Aquatics must be dismissed as they contradict the clear wording and structure of the applicable 2024 Constitution. It follows that the CAS lacks jurisdiction to entertain the appeal filed by the Appellants.

#### **VIII. COSTS**

(...)

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## **ON THESE GROUNDS**

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

1. The CAS does not have jurisdiction to entertain the appeal filed by Vladan Spaic and Cercle des Nageurs de Marseille on 29 November 2024 against the decision issued by the European Aquatics Disciplinary Panel on 10 November 2024.
2. The stay of the execution of the decision issued the European Aquatics Disciplinary Panel on 10 November 2024, granted by the President of the Appeals Arbitration Division on 4 February 2025, is revoked with immediate effect.
3. (...).
4. (...).

Seat of arbitration: Lausanne, Switzerland  
Date: 5 May 2025

## **THE COURT OF ARBITRATION FOR SPORT**

Dr Despina Mavromati  
Sole Arbitrator