

CAS 2006/A/1088 RBF v/IBF

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr François **Carrard**, Attorney-at-Law in Geneva, Switzerland

Arbitrators: Mr Odd **Seim-Haugen**, Attorney-at-Law in Oslo, Norway

The Hon. Michael J. **Beloff** QC, Barrister in London, England

in the arbitration between

RUSSIAN BADMINTON FEDERATION, Moscow, Russia

represented by Mr Neil Cameron, London, England

- Appellant -

and

INTERNATIONAL BADMINTON FEDERATION, Kuala Lumpur, Malaysia

represented by Mr Richard Hewitt of Wedlake Bell Solicitors in London, England

- Respondent -

IN FACT

1. Parties

- 1.1. The Appellant, Russian Badminton Federation (“RBF”) was founded in 1962 and became a member of the International Badminton Federation (“IBF”) in 1992 upon the formation of the Russian Federation. The Appellant claims 536 affiliated clubs and 24,566 players in membership from 62 Russian regions.
- 1.2. The Respondent, IBF, is the world's governing sport federation for the sport of badminton and was founded in 1934. The Respondent currently has 155 member associations. Its purposes and principles are set forth in Section 3.1 its “Rules” in their currently governing version of 2005/2006. These include, *inter alia*, the following:
- “3.1.1 *controlling the game, from an international aspect, in all countries and continents*”;
- “3.1.2 *enabling mutual recognition of Member Associations in their dealings with each other*”;
- “3.1.9 *strengthening the bonds of friendship between the existing Member Associations and encouraging the formation of new Member Associations*”;
- 1.3. The Respondent belongs to the Olympic Movement and has accepted the Olympic Charter in Section 3.2 of its Rules. There, it is stated:
- “3.2 *The general and fundamental principles of the Olympic Charter are applicable and no provision of the rules and other Regulations shall be deemed to conflict with or derogate from those principles.*”

2. The Issue

The issue before the Panel is whether the RBF can retain membership of the IBF

3. Procedural History

The Russian proceedings

- 3.1. On 27 July 2005, the Nikulinsky District Court of Moscow City (the “Moscow District Court”) issued a default judgment on a petition brought by the Federal Registration Office of the Ministry of Justice of the Russian Federation (the “Federal Registration Office”).
- 3.2. The claim by the Federal Registration Office was based on the RBF’s failure to provide annual notification of its activities to the Federal Registration Office (as required by Russian law) for five years. The Moscow City Court found that: (i) the RBF had failed to provide the information required under Russian law to the Federal Registration Office; and (ii) the RBF had terminated its activities. The Moscow District Court ordered that the RBF be terminated as a legal entity and be excluded from the Uniform State Register of Legal Entities.
- 3.3. Accordingly, on 31 August 2005, the Federal Tax Service of the Ministry of the Russian Federation issued a certificate confirming the entry on the Uniform State Register of Legal

Entities (“USRLE”) with regards to cessation of activity of the public association RBF as legal entity.

- 3.4. On 25 October 2005, following an appeal filed by the Appellant, the Moscow District Court restored the period in which the RBF could contest the July 2005 Judgment and set aside its July 2005 Judgement.
- 3.5. On 22 December 2005, the Judicial Division for Civil Cases of the Moscow City Court (“Moscow Appeal Court”) gave judgment on the Federal Registration Service’s appeal from the October 2005 Judgment. The Moscow Appeal Court allowed the Federal Registration Service’s appeal, set aside the October 2005 Judgment, and dismissed the RBF’s application to restore the period for contesting the July 2005 Judgment. Accordingly, the July 2005 Judgment of the Moscow District Court remains valid and binding on the RBF.

The First CAS Award

- 3.6. On 13 October 2005, the RBF issued an appeal to the CAS in respect of the IBF’s decision to suspend recognition of the RBF as a member of the IBF pending the determination of any appeal against the Moscow District Court Judgment brought by the RBF.
- 3.7. On 31 January 2006, the CAS rendered an Award in that first arbitration between the RBF and the IBF (“the First Award”).
- 3.8. In this Award, the CAS ruled that:
 - “1. The IBF’s order of 19 September 2005, which suspended the RBF’s recognition as the authorized national association for the representation of Russian badminton players pending the outcome of the RBF’s appeal before the competent courts of the Russian Federation, is declared null and void.
 2. The IBF is ordered to forthwith reinstate in good standing the RBF as the authorized Affiliated Member of the IBF for the Russian Federation pending the proper completion of member termination or suspension procedures pursuant to the IBF’s governing Rules (...)”
- 3.9. The 22 December 2005 document, purporting to be the decision of the Moscow Appeal Court, was provided to the Sole Arbitrator during the hearing held on 11 January 2006. The document provided was unsigned, uncertified and its translation not intelligible. Taking those elements into account together with the fact that its authenticity was challenged by the Appellant, the Sole Arbitrator did not refer to that decision in his ruling.

Events following the First Award

- 3.10. On 22 February 2006, the IBF sent the RBF a letter which stated, in substance, the following:
 - As required by the First Award, the IBF continued to recognise the RBF as a member of the IBF;
 - However, the IBF had continued to receive information and document which indicated that the Court decision of 22 December 2005 (which was brought to RBF’s attention

during the first CAS hearing) is a final ruling to dissolve RBF which is not subject to any further appeal;

- Such information was provided by the Russian Olympic Committee (“ROC”) which confirmed that according to the ROC Statutes, the membership in the ROC is automatically terminated if the ROC member’s legal entity has been dissolved. The ROC expressly mentioned the Moscow Appeal Court decision of 22 December 2005 which legally confirmed the dissolution of the RBF;
 - The IBF stressed the fact that the RBF had asserted during the CAS hearing that it had no knowledge of this decision and that it would investigate the position on return to Russia, but the RBF had as yet not communicated with the IBF on this point;
 - The IBF mentioned as well that they had been notified by the Head of the Federal Agency for Physical Culture and Sport (“ROSSPORT”) that the sole right to conduct championships, primacies, cup games and other sport events in the territory of Russia had been accorded to the National Badminton Federation of Russia for a term until 31 December 2008;
 - The IBF placed the RBF on notice that unless the RBF provided the IBF as soon as possible with firm and conclusive evidence from a competent Russian court that the RBF was legally entitled to continue to operate then the IBF would be left with no alternative but to invoke procedures to remove the RBF as a member of IBF;
 - The letters of the ROC and ROSSPORT were enclosed in IBF’s letter.
- 3.11. On 3 March 2006, the RBF sent the IBF an e-mail attaching an extract of the First Award and a translation of a document which was described by the RBF as an appeal against the December 2005 decision of the Moscow Appeal Court.
- 3.12. On 20 April 2006, the RBF provided the IBF with a legal opinion issued by Dr Nadezda Brekhova. This opinion confirmed that the RBF was deprived of its status as a juridical body by the Russian Court decisions but that nonetheless, the RBF was still able to operate. The opinion did not mention the December 2005 Moscow Appeal Court Judgment but confirmed that the RBF

“continues the court argument against the default decision of the Nikulinsky District Court of Moscow at the Moscow City Court, and there are reasons to believe that the decision of the court of the first instance will be cancelled completely. All the court instances to argue against the decision of the court of first instance are not exhausted”.

- 3.13. On 21 April 2006 the IBF replied the RBF by a letter, which made, *inter alia*, the following points:
- The IBF’s Russian lawyers had confirmed that the RBF had been terminated as a legal entity and excluded from the Uniform State Register of Legal Entities;
 - The Judgment of the Moscow District Court of July 2005 came into force after the Moscow Appeal Court in its Judgment of 22 December 2005 refused to revive the period for contesting the July Judgment and those judgments are not subject to further appeals under Russian law;

- The IBF required confirmation that the RBF admitted that its status as a juridical body had been terminated and that the issue of the RBF's ability to control and develop the sport of badminton in Russia, was accordingly in question;
 - The IBF sought answers from the RBF to the questions identified by 27 April 2006.
- 3.14. By e-mail, the RBF sought an extension of time for its reply to the IBF's letter.
- 3.15. Such extension was granted by the IBF until 4 May 2006.
- 3.16. On 3 May 2006, the RBF sent an e-mail to the IBF which made, *inter alia*, the following points:
- The RBF were in the process of obtaining confirmation of its juridical status as at that date, which could take two weeks from the time of application, but that the RBF did not consider that this was a matter for the IBF at all as it was an internal Russian matter;
 - As to the fact that the Moscow Appeal Court Judgment was final and not subject to appeal, the RBF stated that this was not a matter for the IBF, it was an internal Russian matter; the RBF asserted that it had provided the IBF with evidence of an appeal but that even if the appeal failed the RBF was still entitled to operate in Russia and it had already supplied a legal opinion to substantiate this;
 - As to the admission sought that the RBF was not a juridical body, the RBF stated that it was a juridical body, but that this was not a question for the IBF or an issue relevant to membership of the IBF.
- 3.17. On 5 May 2006, the IBF Council decided that it would no longer recognise the RBF as a member of the IBF considering, *inter alia*, that the RBF had ceased to exist as a legal entity as a result of Russian Court decisions and its exclusion from the Uniform State Register of Legal Entities.
- 3.18. The IBF did not send any written communication of this decision to the RBF or its representatives as it considered that the RBF no longer existed. The decision was communicated orally to the President of RBF.
- 3.19. On the same day, the RBF asked twice for a written confirmation of the decision.
- 3.20. On 6 May 2006, the IBF Annual General Meeting ("AGM") took place. The President of IBF informed the members of the IBF of the IBF Council's decision on 5 May 2006 with respect to the RBF. He then asked for a show of hands in support of the Council's decision and the majority of member present supported it, with only three hands against.
- 3.21. On 8 May 2006, the RBF asked for the third time a written confirmation of the IBF Council's decision.
- 3.22. By a letter dated 6 June 2006, the Federal Registration Service confirmed that the liquidation of the RBF as a legal entity has been completed as at 31 August 2005 and that subsequent appeal concerning the Moscow District Court was dismissed by the Moscow Appeal Court.

The Second Appeal before the CAS

- 3.23. On 16 May 2006 the Appellant filed its statement of appeal.
- 3.24. In letters dated 17 May 2006 and 3 July 2006 the Appellant filed an application for a stay of execution of the decision appealed against.
- 3.25. On 29 June 2006 the Respondent filed its answer.
- 3.26. In a letter from the Respondent dated 6 July 2006 the Respondent objected to the Appellant's application for a stay of execution of the decision appealed against.
- 3.27. On 24 July 2006, the CAS Court Office confirmed the composition of the Panel after each party designated an arbitrator and the third arbitrator – the President – being designated by the President of the CAS Appeals Arbitration Division. Thus, the Panel sat in the following composition:

President: Mr François Carrard, Attorney-at-Law in Lausanne, Switzerland

Arbitrators: Mr Odd Seim-Haugen, Attorney-at-Law in Oslo, Norway
Mr Michael Beloff QC, Barrister in London, England

- 3.28. On 28 July 2006 the Panel issued an Order rejecting the Appellant's request for provisional measures.
- 3.29. On 28 July 2006 the Respondent was ordered to produce a copy of its file.
- 3.30. On 28 July 2006 the parties were requested to sign and return a copy of the Order of Procedure to the CAS Court Office on or before 4 August 2006.
- 3.31. On 27 July 2006 the Panel appointed Secretan Troyanov, a Swiss law firm with an office in Moscow, as Independent Experts.
- 3.32. On 31 July 2006 the CAS Court Office invited the Independent Experts to provide their considered response to the following questions:
- i.) Does the Russian Badminton Federation presently exist as a legal entity under the laws of the Russian Federation and if so, since when? More specifically, did it exist as a legal entity under the laws of the Russian Federation on 5 May 2006 and on 16 May 2006?*
- ii.) If the answer to question i) above is negative, did the Russian Badminton Federation ever exist as a legal entity under the laws of the Russian Federation, and if so when was it founded, when was it registered and when did it cease to exist?*
- 3.33. On 9 August 2006 the Independent Experts filed their report with the CAS Court Office.
- 3.34. On 11 August 2006 a copy of the Independent Experts' Report was forwarded to the parties for comment on or before 17 August 2006.

3.35. On 14 August 2006 the Respondent's File was received at the CAS Court Office and copies were forwarded to the Panel and the Appellant.

3.36. On 17 August 2006 the Respondent informed the CAS Court Office that:

“having considered the opinion provided by Secretan Troyanov to the Tribunal, our clients consider that it concurs with the Russian law evidence that they have submitted in the Respondent's brief and therefore, have no further comment to make on it.”

3.37. On 17 August 2006, the Appellant sent its comments to the CAS Court Office regarding the Independent Experts' Report.

3.38. On 21 August 2006 the Appellant sent its comments to the CAS Court Office regarding the Respondent's File.

3.39. On 24 August 2006 the hearing was held in Lausanne.

3.40. The following persons gave oral evidence:

For the Appellant: Mrs Nadezda Brekhova.

For the Respondent: Mr Eraj Wijesinghe
Mrs Alena Shubina

3.41. The Appellant and the Respondent made oral statements during the hearing.

3.42. During the hearing, the Panel decided that a second expert opinion from Secretan Troyanov on the meaning and effect of Russian Law No. 82 Article 46 was necessary to assist it in its determination.

3.43. On 19 October 2006 the CAS Court Office invited the Independent Experts to provide their considered response to the following question:

“In consideration of article 46 of the Federal Law No. 82 on Public Association, in particular the definition of a “Russian Public Association” as referred to in such law, does the Russian Badminton Federation have legal capacity, under Russian law, to join and be a member of, an International Public Association, in particular the International Badminton Federation ?”

3.44. On 19 October 2006, the parties were requested to submit before 24 October 2006 any comments regarding the question submitted to the Independent Experts.

3.45. Both parties sent their comments to the CAS Court Office regarding the question to the Independent Experts.

3.46. On 10 November 2006 a copy of the second Independent Experts' Report was forwarded to the parties for comment on or before 17 November 2006.

3.47. On 17 November 2006, the Appellant sent its comments but added new submissions in relation to Article 1186 of the Civil Law.

- 3.48. The Respondent concurred in the conclusions of the Independent Experts' second Report.
- 3.49. On December 1, 2006, the CAS Court Office granted a final deadline of 6 December 2006 to submit any further comments that either party might wish to file.
- 3.50. On 6 December 2006, both parties filed their comments.

4. The Appellant's contentions and motions

- 4.1. During the whole process that lead to the IBF Council's decision of 5 May 2006, the Appellant claims that it was unaware of what was being considered and did not have the opportunity to challenge evidence nor to put forward their own arguments and supporting evidence. For these reasons the Appellant considers that the Respondent did not follow principles of "natural justice" in issuing the IBF Council's decision. In particular the Appellant claims that it was never told that the basis for loss of membership would be the dissolution of the implicit contract of membership. According to the Appellant, it is important that a National Federation under threat of losing its membership should be told under which Rule and on what basis this will happen. If the Appellant had known what was envisaged, it could then have properly argued its case, allowing it natural justice at the IBF Council meeting.
- 4.2. In relation to natural justice, the Appellant also stressed the fact that the Respondent did not provide the RBF with its Council's actual decision, making it extremely and unnecessarily difficult to assess the appropriateness of an appeal to the CAS.
- 4.3. Furthermore, the Appellant considers that the decision whereby it was no longer recognised as IBF's Member Association in Russia should have been taken by the AGM since IBF Rules provide that all membership issues are decided only at the AGMs by the Membership. The AGM did not approve the Council decision, and in any case it would have been invalid for it to do so as it was not, as required by IBF Rules, on the published AGM agenda.
- 4.4. According to the Appellant, the decision violated the conditions of the previous CAS ruling. Specifically, there was an incomplete court process ongoing in Russia, and the action taken by the Respondent did not comply with the IBF Rules. The decision ignored the reality of the visible and continuing operation of the Appellant, as for example, the participation of a Russian team in the Thomas Cup in February 2006, in the European Championships and the European Badminton Union Annual Meeting in April 2006 as well as legally continuing to operate bank accounts.
- 4.5. The Appellant relied on the expert evidence brought by Mrs Nadezda Brekhova and even though it may not still enjoy Russian juridical status, stated that such requirement, according to the IBF Rules, is not necessary for the purpose of IBF membership. Moreover, the Appellant insists on the fact that no procedure of liquidation has ever started since it never committed any unlawful acts contrary to the laws of the Russian Federation.
- 4.6. The Respondent never enquired about the Appellant's claim about its legal status when it was admitted to IBF membership. In any case, Article 46 of Russian Law 82 provides for Public Associations to join international organisations. Considering that the first Independent Expert's opinion was vague on this issue and Russian Law extremely unclear as well, the Appellant should get the benefit of the doubt.

- 4.7. For all these reasons, the Appellant requests that the IBF Council's decision be declared null and void.
- 4.8. After the hearing was closed, the Appellant introduced a further line of argument in reliance on Article 1186 of the Russian Civil Law.

5. The Respondent's contentions and motions

- 5.1. The Respondent claims that the Appellant is not entitled to invoke arbitration before the CAS as that procedure is only open to those who are members of IBF and the Appellant was not a member at the time it purported to commence this arbitration. The Respondent notes that it is common ground that the Appellant lost its status as a legal entity on 30 August 2005. The overwhelming weight of the expert Russian law opinion is that only legal entities have contractual capacity, the right to hold property and to sue and be sued. A consequence of the loss of its legal entity status was that the Appellant could no longer maintain its contract of membership in IBF.
- 5.2. Additionally, the contract of membership in IBF is governed by Malaysian law which in this area is the same as English law. Therefore it relies on the decision in the English case of *Re RAC Holdings Limited* as authority for the proposition that the contract of membership between IBF and RBF ceased to exist when the Appellant lost its ability to enter into and maintain contractual rights and obligations on 30 August 2005.
- 5.3. In relation to the "natural justice" argument raised by the Appellant, the Respondent considers that there can be no suggestion that IBF has acted unfairly in reaching the decision it took on 5 May 2006 not to recognise the Appellant as a member. It has not acted inconsistently with the stipulations of the first award published on 31 January 2006. Neither can there be any suggestion that IBF breached in any way its own rules when making its decision as Rule 6.1 provides a legal basis for its decision. Starting with its letter to the Appellant of 22 February 2006, the Respondent has given every opportunity to the Appellant to set out its case fully and to adduce any evidence that it wished, prior to the IBF Council's decision of 5 May 2005.
- 5.4. As to Article 46 of Law 82 put forward by the Appellant, the Respondent relies on the second Independent Experts' opinion and claims that the current RBF could not, as a matter of Russian law, have succeeded to the contract of membership entered into between the former (legal entity) RBF and IBF in 1992 as no new contract of membership has been made between the Appellant and the Respondent since 30 August 2005.
- 5.5. Additionally, the Respondent claims that the appeal is futile since the evidence is that the Appellant is no longer recognised in Russia by either Rossport or the Russian Olympic Committee as being authorised to organise badminton nationally within Russia. On that basis alone, the Appellant is unable to fulfil a critical membership criterion of the Respondent.
- 5.6. In relation to the new submission made by the Appellant, the Respondent relied also on the fact that such line of argument was not advanced neither in the Appellant's written case, nor even at the hearing.

IN LAW

6. Jurisdiction

- 6.1. The competence of the CAS to act as an appeal body is based on Article R47 of the Code of Sports-related Arbitration (“the Code”) which provides that:

“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.”

- 6.2. The decision of a federation is, in the case at hand, the IBF Council’s decision of 5 May 2006 whereby the IBF decided that it would no longer recognise the RBF as a member of the IBF because it no longer satisfied qualification for membership. The competence of the IBF Council derives from IBF Rules 6.1.

- 6.3. CAS’s jurisdiction derives from Section 2.4 of the IBF’s Rules in which it is stipulated that “Members of the Federation” shall not be permitted to bring disputes with the Federation before a court of justice and that membership of the IBF shall “involve members in renouncing the right to take a dispute before the Courts.”

“Any such dispute shall be referred to the Court of Arbitration for Sport, unless agreed otherwise by the parties in the dispute.”

- 6.4. The IBF submitted that the CAS has no jurisdiction to determine the present appeal because, as matter of Russian law, the RBF no longer exists as a legal person, it is not a member of the IBF and therefore, there is no dispute between the IBF and a member of the IBF within the scope of IBF Rule 2.4 nor is there any arbitration agreement to which the RBF and IBF are a party.

- 6.5. Whether or not CAS has jurisdiction depends upon whether the Appellant is a “Member of the Federation”.

- 6.6. In the view of the Panel, to deny CAS jurisdiction would involve its acceptance – in advance – of the Respondent’s case. The main issue in the appeal is whether the Appellant is, or was at a definite time, a member of the federation. It would be contrary to any idea of justice to deny the RBF, or someone in the same position, the right to an appeal: ‘Member’ in the sense of IBF Rule 2.4 must properly be construed to include in this instance a former member claiming to be a member.

- 6.7. The same is applicable in relation to the existence of an arbitration agreement. Here as well, it would be contrary to any idea of justice to deny the RBF the right to have its case heard by an appeal body merely because under domestic law, it apparently has ceased to exist as a legal entity.

- 6.8. For these reasons, the Panel shall consider that the CAS has jurisdiction to determine the present appeal.

7. Applicable law

7.1. Article R58 of the Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in 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.”

7.2. The applicable regulations in this case are the IBF Rules.

7.3. The parties have not expressly or impliedly agreed on a choice of law applicable to these proceedings before the CAS. Therefore, the rules and regulations of IBF shall apply primarily, and Malaysian law, as IBF is domiciled in Malaysia, shall apply subsidiarily.

7.4. As a key issue of the present appeal is the legal capacity of the RBF and as it is domiciled in Russia, Russian law shall apply to assess the legal capacity of this entity.

8. Admissibility of the appeal

8.1. The appeal is admissible for the following reasons:

8.2. The IBF Council’s decision was issued on 5 May 2006. According to Article R49 of the Code, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The appeal was sent to the CAS Court Office on 16 May 2006, namely within the time limit set by the Code. The Respondent has raised no objection regarding the timeliness of the Appellant’s statement of appeal.

8.3. In the case, the Appellant, even though the Respondent did not send any written decision, has met the deadline set by Article R49 of the Code.

8.4. Besides, the appeal complies with all other requirements of Articles R47, R48 and R51 of the Code.

9. The merits

Does the RBF presently exist as a legal entity under the law of the Russian Federation?

9.1. On this matter, the Panel relied on Independent Experts in Russian Law. After the parties had the opportunity to comment on their conclusions, the Panel deems necessary to stress on the following points made by the Independent Experts:

- As a public association RBF is regulated by Law 82 on Public Associations;
- According to Article 29 of Law 82, the repeated failure of a public association to provide updated information necessary to make amendments to the Uniform State Register of Legal Entities (“USRLE”) entitles the authority having taken the decision on the state registration of the public association to file a demand with the competent

court to acknowledge such association as having ceased its activity as a legal entity and exclude it from the USRLE.

- Article 63/8 of the Civil Code says “*The liquidation of a legal entity is considered terminated and the legal entity ceased its existence when the relevant entry is made in the state register of legal entities*”. Article 49/3 of the Civil Code adds: “*The legal capacity of a legal entity arises upon its creation and ceases when entry on the exclusion of the legal entity from the USRLE is made*”. The Civil Code therefore clearly links the cessation of the existence of a legal entity to the relevant entry having been made in the USRLE.
 - Based on this legislation, the Independent Experts are of the opinion that a legal entity organised under Russian law ceases to exist upon an entry in the USRLE on the cessation of its activity and that such entry may be made pursuant to (i) its reorganisation, (ii) its liquidation, (iii) its exclusion from the USRLE based on a decision of the registering authority. It seems therefore irrelevant whether RBF has or should have been liquidated in due form.
 - The certificate issued by the RF Federal Tax Service which is the authority in charge of the USRLE clearly and unambiguously states that the entry on RBF having ceased its activity as a public association in the form of a legal entity was made in the USRLE on 31 August 2005. This entry confirms the cessation of RBF as a legal entity.
- 9.2. Based on the above, the Panel holds that the Respondent lost its legal entity as a result of its exclusion of the USRLE no matter of its pending of future liquidation.
- 9.3. The Panel notes that the Appellant has produced no evidence of any pending proceedings against the previous court orders depriving it of legal entity status. Therefore, the Panel holds that the Moscow Appeal Court allowed the Federal Registration Service’s appeal, set aside the October 2005 Judgment, and dismissed the RBF’s application to restore the period for contesting the July 2005 Judgment. Accordingly, the July 2005 Judgment of the Moscow District Court that ordered the RBF to be terminated as a legal entity and be excluded from the Uniform State Register of Legal Entities has to be considered as the final decision.

In consideration of the above and of article 46 of Federal Law No. 82 on Public Associations, in particular the definition of a “Russian Public Association” as referred to in such law, does the RBF have legal capacity, under Russian Law, to join and be a member of an International Public Association, in particular the IBF ?

- 9.4. On this matter as well, the Panel relied on the opinion of Independent Experts in Russian Law. After the parties had the opportunity to comment on their conclusions, the Panel stresses the following points made by the Independent Experts :
- Article 27 of Law No. 82 clearly distinguishes the rights which belong to a public association which is a legal entity and the rights which belong to a public association which is not a legal entity. The Article states that legal entities may exercise the rights granted by the law on public associations “in their full scope”. As concerns public associations which are not legal entities the law states that they may exercise other rights in the cases where there is a direct indication of such powers in the federal laws on specific types of public associations. The last sentence of Article 27 adds that additional rights may be conferred by federal laws and international treaties of the Russian Federation and international treaties of the Russian Federation.

- Since no such other laws have been adopted in relation to a public association such as the RBF, the Independent Experts consider that a public association has only those rights which are exhaustively listed in said Article 27 and which are:
 - the right to freely disseminate information on its activity;
 - the right to hold assemblies, meetings and demonstrations, marches and pickets;
 - (...)
 - In the opinion of the Independent Experts the rights granted by Law No. 82 are in essence of a factual character, the language used refers to actions other than those “directed to establish, modify or terminate civil rights and duties”.
 - Neither the right to own property nor the right to enter into contracts are among the rights specified by Law No. 82 with respect to public associations without the status of a legal entity.
 - Article 2 of the Civil Code says: “*Participants of the relationships regulated by civil legislation are individuals and legal entities. The Russian Federation, the subjects of the Russian Federation and municipal formations may also participate in the relations regulated by civil legislation.*”
 - The Civil Code therefore clearly recognizes only two categories of persons having legal capacity as far as civil or private law is concerned, *inter alia* the capacity to own property or enter into contracts: individuals and legal entities. The Civil Code wholly ignores organizations which are not legal entities. The Independent Experts therefore consider that Russian law does not forbid the RBF to participate in the work of a foreign public association on a purely factual basis. The Experts consider that the RBF cannot enter into a contract of membership, as the Civil Code confers this power only on persons, i.e. individuals and legal entities. In particular, Law No. 82 cannot, neither explicitly nor - even less – implicitly, confer the right to have civil or contractual rights and obligations to a public association which is not a legal entity and thus create a third category of persons not known to the Civil Code. Accordingly, the Independent Experts confirmed that the right to join and be a member of a foreign public association, in particular the IBF cannot be derived from Article 46 of Law No. 82.
- 9.5. Based on the above, the Panel holds that, according to Russian law, the Appellant had no legal capacity to own property or enter into contracts. Therefore, it had, under such law, no right to continue to be a member of IBF.
- 9.6. This issue however needs to be addressed also by reference to Malaysian law and in relation to the nature of IBF’s membership.
- 9.7. The relationship that exists between the IBF and each of its members appears to the Panel to be governed exclusively by contract and on the terms that are set out in the IBF Rules 2.1.

“Membership of the Federation shall be open to national badminton association (or corresponding organisation) which recognise the Federation as the sole governing body of the game of badminton throughout the world and which adhere to the Rules of the Federation.”

and on the affiliation form (“Schedule A”):

“We, undersigned, being duly authorised for the purpose, hereby apply on behalf of (name of the association) for election to membership of IBF. We enclose a copy of our own Rules and undertake that, if elected to membership, and while retaining such membership, the (name of the association) will observe and be bound by the Rules of the IBF.”

- 9.8. Based on the above, the Panel holds that, on the proper construction of the IBF Rules, a member’s contractual right to membership of the IBF automatically ceases on the date that the member ceases to exist as a legal person. The membership of the IBF does not continue by virtue of the fact that the rights or obligations of membership which have accrued prior to the member ceasing to exist as a legal person may devolve to a successor entity. The passing of such accrued contractual rights does not mean that the full personal rights of membership can also pass to a person different in law from the original one.
- 9.9. In conclusion, the right of membership of the RBF under the IBF Rules involved a personal contractual right which automatically ceased when it ceased to exist as a legal person.
- 9.10. Additionally, the Panel notes that RBF is no longer recognised in Russia by the Russian Olympic Committee (“ROC”) since 22 December 2005 nor by the Federal Agency for Physical Culture and Sport (“ROSSPORT”) since 29 June 2005.
- 9.11. As such, the Appellant is no longer authorised to conduct Championships, Primacies, Cup games and other official sport events in the Russian Federation. Without the support of those two entities, the Appellant has lost the status of “*national badminton association*” in the sense of IBF Rules 2.1 and cannot therefore be considered as a Respondent’s member any longer.
- 9.12. The Panel has no reason to doubt that the Appellant was an effective promoter of the Sport of Badminton in the Soviet Union and Russia and recognizes that it may be the victim of an internal power battle for control of the game of Badminton in Russia but can only take note of the outcome of that battle.
- 9.13. The Panel emphasises that each of the two reasons it has relied upon to dismiss the appeal in paragraphs 9.5, 9.9 and 9.11 above, is sufficient in itself to justify the Panel’s conclusion.

IBF Decision of 5 May 2006

- 9.14. During the whole process that led to the IBF Council’s decision of 5 May 2006, the Appellant claims that it was unaware of what was being considered and did not have the opportunity to challenge evidence nor to put forward its own arguments and supporting evidence. For these reasons the Appellant considers that the Respondent did not follow principles of “natural justice” in issuing the IBF Council’s decision. The Appellant stressed as well on the fact that the Respondent did not provide the RBF with its Council’s decision making it extremely and unnecessarily difficult to assess the appropriateness of an appeal to the CAS. Furthermore, the Appellant considers that the decision whereby it was no longer recognised as its Member Association in Russia should have been taken by the AGM since IBF Rules provide that all membership issues are decided only at the general meetings by the Membership. The AGM did not approve the Council decision, and in any case it would have been invalid for it to do so as it was not, as required by IBF Rules, on the published AGM agenda.

- 9.15. The Panel stresses that according to R57 of the Code it shall have full power to review the facts and the law. Accordingly, the hearing is a hearing de novo and any infringement to procedural rules or otherwise perpetrated by the IBF can be corrected on appeal. The virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the proceedings before the authority of first instance fade to the periphery (Michelle De Bruin v/ FINA, TAS 98/211, p.19). The RBF's entitlement, which is fully received, is to a system which allowed any defects in the proceedings before the IBF to be cured by the hearing before the CAS.
- 9.16. Nevertheless, the Panel notes, for completeness, that the IBF acted fairly and in accordance with the rules of natural justice:
- The RBF was made fully aware of the allegation concerning its lack of legal status and the documents in support of that contention by the IBF prior to the 5 May decision. By the IBF's letter dated 22 February 2006, the RBF was informed of the concern that the RBF had lost its status as a legal entity as a result of the Russian Court judgments and the exclusion from the USRLE.
 - By the IBF's correspondence, the RBF was also given a full opportunity to respond in writing to the allegations concerning the RBF's legal status under Russian law. It was as well perfectly clear that from the 22 February letter that the IBF was going to take a final decision prior to the 2006 AGM.
 - Concerning the entitlement to a physical meeting with the IBF at which oral evidence would be given and oral submissions would be made prior to the IBF's decision, the Panel notes that the right to procedural fairness and right to be heard does not necessarily include a right to a physical meeting with IBF or some sort of oral and adversarial hearing, where the right to be heard can be - and was - provided by way of inviting written submissions and evidence (USA Shooting & Q v/ International Shooting Union, CAS 94/129, para. 58).
 - Concerning the absence of notification of the IBF Council's decision, the Panel notes that it did not preclude the Appellant from filing an appeal in due time to the CAS. During the proceedings it had the opportunity to get a full copy of the decision and to make submissions about it.
 - Concerning the competence of the IBF Council, the Panel notes that according to IBF Rules 6.1, each AGM shall appoint a Council which shall have administrative powers to carry on the work of the Federation between AGMs. These powers include the authority to decide on matters under dispute and not provided for in the Federation's Statutes. Therefore, the IBF Council shall be considered as competent when it issued the 5 May decision.
- 9.17. As a consequence, the Panel holds that, for a number of reasons, the "natural justice" or "due process" argument fails.

New argument made by the Appellant

- 9.18. After the Independent Experts submitted their second report, the Panel authorised the parties to submit any comments regarding its content. In its letter to the CAS dated 17 November

2006, the Appellant made a new submission in relation to the applicable law to “*civil-legal relations complicated by another foreign element*”.

- 9.19. As provided in Article R56 of the Code, unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer.
- 9.20. In filing new submissions, the Appellant went beyond simply commenting on the report. There was no agreement with the Respondent on this matter, nor was the Respondent authorised to do so. The Panel therefore was entitled to refuse to entertain the submissions and has done so as a matter of exceptional grace only. This indulgence does not stand as a precedent for future cases. It is important that CAS’s procedural rules, designed to achieve a fair and expeditious hearing, are observed.
- 9.21. Without prejudice to that, the new submission made relates to the applicable law, according to the Russian International Private Legislation, in a given international situation. As provided in Article R58 of the Code, 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 has issued the decision is domiciled. This rule was expressly recognised by the parties in the Order of procedure which they have signed. There is therefore no room for application of Russian International Private Law. The new submission was wholly without merit.

10. Costs

- 10.1. Pursuant to Article R65.4 of the Code, the proceedings related to disciplinary cases of an international nature ruled in appeal shall be free. The fees and the costs of the arbitrators are borne by the CAS.
- 10.2. In the present case, the appeal filed by the RBF is unfounded and the decision is confirmed by the CAS.
- 10.3. The cost of the Independent Experts’ first report shall be borne by the CAS as well.
- 10.4. As the second report had to be requested from the Independent Experts due to the raising by the Appellant of new arguments for the first time during the hearing, the Appellant shall bear the cost related to the production of the Independent Expert’s second report.
- 10.5. The award is therefore pronounced without costs, except for the Court Office fee of CHF 500.- that is retained by the CAS according to Article R65.2 and the costs of the second Independent Experts’ report, which shall be borne by the Appellant.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by the Russian Badminton Federation on 16 May 2006 is rejected.
2. The decision of the International Badminton Federation Council, dated 5 May 2006, is confirmed.
3. The award is rendered without costs, except for the Court Office fee of CHF 500 (five hundred Swiss Francs), which is retained by the CAS and the cost of the production of the Independent Expert's second report, which shall be borne by the Russian Badminton Federation. The cost of such report shall be notified to the parties by the CAS Secretary General.

Done in Lausanne, 29 December 2006

THE COURT OF ARBITRATION FOR SPORT

François Carrard
President of the Panel

Odd Seim-Haugen
Arbitrator

Michael Beloff QC
Arbitrator