

B E T W E E N

NATIONAL PARALYMPIC COMMITTEE OF THE REPUBLIC OF BELARUS

Appellant

and

INTERNATIONAL PARALYMPIC COMMITTEE

Respondent

REASONED DECISION OF THE APPEALS TRIBUNAL

The Appeals Tribunal:

Mark Copeland, Chairperson

Alberto Predieri, Member

Sami Arap, Member

Assistants:

Leen Coudenys, Appeals Tribunal Assistant

Louis Muncey, Appeals Tribunal Clerk

Appellant

National Paralympic Committee of the Republic of Belarus ("**NPC Belarus**")

Respondent

International Paralympic Committee ("**IPC**")

1. Introduction

1.1 This is the reasoned decision of the IPC ad hoc appeals tribunal (the "**Appeals Tribunal**") in respect of an appeal by the National Paralympic Committee of the Republic of Belarus ("**NPC Belarus**") to set aside the decision taken by the IPC Membership, at an Extraordinary General Assembly on 16 November 2022, to suspend all NPC Belarus' membership rights until further notice (the "**Appeal**").

1.2 A substantive in-person hearing of the Appeal took place on 26 April 2023, at which the Appeals Tribunal heard detailed submissions from the legal representatives of the parties in respect of the Appeal (the "**Hearing**"). The Appeals Tribunal is grateful to the parties, and their representatives, for the detailed written and oral submissions provided. References to the submissions advanced by the parties in the sections below are made where necessary, even though all such submissions and arguments have been considered.

2. Jurisdiction

2.1 Article 18.2 of the IPC Constitution 2022 states:

Decisions to sanction an IPC Member pursuant to Articles 15 to 17 may be challenged by that IPC Member exclusively by appeal to the Appeals Tribunal in accordance with its procedural rules. The decision of the Appeals Tribunal resolving the appeal may not be challenged in any forum or on any ground except to the extent permitted under German law.

2.2 Article 66.1 of the IPC Constitution 2022 states:

Unless otherwise specified in this Constitution or in the Regulations (including the IPC Anti-Doping Code), to the extent that this Constitution or the Regulations give a party a right of appeal against any decision, that appeal is to be made exclusively to the Appeals Tribunal, in accordance with its procedural rules. Pending resolution of the appeal, the decision being appealed will remain in full force and effect unless the Appeals Tribunal orders otherwise. The decision of the Appeals Tribunal resolving the appeal may not be challenged in any forum or on any ground except to the extent permitted under German law.

2.3 The Appeals Tribunal was formed pursuant to Article 66.1 of the IPC Constitution 2022. Neither party disputed the jurisdiction of the Appeals Tribunal to hear and determine the Appeal.

2.4 Further discussion on the IPC Constitution 2022 and the parameters of the Appeals Tribunal's approach to the Appeal is set out in this reasoned decision. However, as a preliminary point, the Appeals Tribunal notes that it does not have jurisdiction to consider the GB Decision (as defined below) as it is not the substantive decision that has been appealed by NPC Belarus. As such, the Appeals Tribunal has not referenced or taken into account the GB Decision in reaching its determinations as set out in this reasoned decision.

3. Background Facts

3.1 The genesis of the Appeal lies in the military actions carried out by the Russia Federation in Ukraine, which commenced on 24 February 2022, and the role the Republic of Belarus in those actions. The Appeals Tribunal did not consider it necessary, for the determination of the Appeal, to make any finding in respect of this point, nor did the Appeals Tribunal consider it appropriate to further comment on the wider geo-political situation triggered by the said military actions.

3.2 By way of background, in the Appeal, the following facts were not in dispute:

- (a) on 2 March 2022, the IPC President wrote to the IPC Membership setting out, inter alia, that NPC Belarus Para Athletes would only be able to compete at the Beijing 2022 Paralympic Winter Games as neutral athletes and that the membership status of NPC Belarus would be considered at an extraordinary general meeting of the IPC Membership to be called later in 2022;
- (b) on 3 March 2022, the IPC Governing Board resiled from the position set out in the letter from the IPC President dated 2 March 2022 and decided to refuse entries from NPC Belarus Para Athletes to the Beijing 2022 Paralympic Winter Games;
- (c) on 30 March 2022, the IPC Governing Board decided to not accept entries from NPC Belarus Para Athletes (or appointments of technical officials and classifiers from Belarus) to the World and Regional Championships and sanctioned-level competitions within the 10 Para Sports then administered by the IPC (the "**GB Decision**");
- (d) on 30 September 2022, the IPC wrote to NPC Belarus attaching a motion (the "**Motion**") to be put before the IPC Membership at an Extraordinary General Assembly to be held on 16 November 2022 (the "**EGA**"). The Motion was submitted by the IPC Governing Board and proposed that "*The General Assembly suspends all membership rights of NPC Belarus until further notice, in accordance with Article 16(1)(i) of the IPC Constitution*";
- (e) on 16 November 2022, at the EGA, the IPC Membership voted in favour of the Motion to suspend all membership rights of NPC Belarus until further notice (the "**Suspension Decision**"). The Suspension Decision was passed by a majority vote, in accordance with the IPC Constitution 2022; and
- (f) the Suspension Decision was communicated to NPC Belarus by the IPC on 25 November 2022.

4. Proceedings

4.1 On 25 November 2022, NPC Belarus filed a notice of appeal and appeal brief (the "**NPC Belarus Appeal Brief**").

4.2 Pursuant to directions provided by the Chairperson of the Appeals Tribunal, the parties provided further written submissions contained in:

- (a) the IPC's answer brief dated 17 February 2023 (the "**IPC Answer Brief**");
- (b) NPC Belarus' reply to the IPC Answer Brief dated 15 March 2023 (the "**NPC Belarus Reply**");
- (c) the IPC's response to NPC Belarus' Reply dated 6 April 2023 (the "**IPC Response**");
- (d) NPC Belarus' skeleton argument for the Hearing, read out as NPC Belarus' oral opening submission (the "**NPC Belarus Skeleton**"); and
- (e) the IPC skeleton argument for the Hearing (the "**IPC Skeleton**").

4.3 These written submissions were supplemented by oral submissions made at the Hearing.

5. Considerations of the Appeals Tribunal

A. The Legal and Regulatory Framework

5.1 Article 1.5 of the IPC Constitution 2022 states that:

This Constitution and the Regulations are governed by German law, and are to be interpreted and applied in accordance with German law, subject to any rules of interpretation set out in Appendix 1 or the Regulations.

5.2 Article 70.1 of the IPC Constitution 2022 states:

Unless the IPC has explicitly agreed to the contrary, any dispute resolution proceedings involving the IPC, of whatever nature and in whatever forum:

[...]

70.1.2 will be governed by this Constitution and the Regulations, and (subsidiarily) by German law;

5.3 The IPC submitted that the Appeal is governed by the IPC Constitution 2022 and Regulations and that, in the event there was an issue not addressed by the IPC Constitution 2022 and Regulations, then German law would apply.¹

5.4 NPC Belarus submitted that thee "*IPC's activities are regulated by the IPC Constitution ad other documents, forming IPC Law*" and that, as per Article 1.5 of the IPC Constitution 2022, that the "*IPC's actions are regulated by German law*".² NPC Belarus further submitted that the Appeals Tribunal should consider public international law in the Appeal.³

5.5 The Appeals Tribunal was comfortably satisfied that the wording of Article 1.5 of the IPC Constitution 2022 was clear in that the IPC Constitution 2022 (and Regulations) are governed by, and should be interpreted in accordance with, German law.

5.6 Further, the Appeals Tribunal was comfortably satisfied that the Appeal constitutes dispute resolution proceedings involving the IPC for the purposes of Article 70.1 of the IPC Constitution 2022. As such, to determine the Appeal, the Appeals Tribunal needed to consider the IPC Constitution 2022 (and the IPC Constitution 2011 as explained below), the Regulations (defined as meaning "*various rules and regulations of the IPC issued by the Governing Board or (in the case of Reserved Regulations) by the General Assembly*"), and German law.

B. The approach of the Appeals Tribunal

5.7 Article 18.2 of the IPC Constitution 2022 sets out that an appeal of a decision taken pursuant to Articles 15 to 17 (inclusive) of the IPC Constitution 2022 can be appealed to the Appeals Tribunal "*in accordance with its procedural rules*".

5.8 However, the Appeals Tribunal did not, at any material time relating to this Appeal, have any existing procedural rules to which reference could be made.

5.9 It was therefore necessary for the Appeals Tribunal, with the assistance of the parties' respective written and oral submissions, to explore its powers in determining the Appeal and the correct approach it should take in assessing the Suspension Decision. The Appeals Tribunal noted in this regard this would include the application of the IPC Constitution 2022, the IPC Constitution 2011, the Regulations and German Law (as per Article 70.1 of the IPC Constitution 2022).

¹ IPC Answer Brief, paragraph 3.3.

² NPC Belarus Response, paragraph 3.1

³ NPC Belarus Response, paragraph 3.2

- 5.10 The IPC referred to authority from the Court of Arbitration for Sport ("**CAS**") and German law for the proposition that sports governing bodies are afforded a "*margin of appreciation*" in respect of deciding what rules to promulgate for the performance and governance of their sport, and as regards to their application.⁴ The legal proposition being that sports governing bodies generally know what is best for their sport, and tribunals and courts should be wary of interfering with their actions or decisions made in this context. Accordingly, the IPC further submitted that the Appeals Tribunal should not interfere with the Suspension Decision unless it contravenes applicable law, is irrational, grossly disproportionate or is the product of an unfair procedure.⁵
- 5.11 Notwithstanding that submission, at odds with the position set out in the IPC Answer Brief, the IPC also contended, at paragraph 4.4 of the IPC Skeleton, that:
- ...the Appeals Tribunal is entitled to approach this matter de novo i.e., starting afresh, with a full power to review not only the law but also all relevant facts, including facts that were not specifically before the EGA.*
- 5.12 The IPC cited that there was no identified rule which prevented the Appeals Tribunal from limiting its review to matters before the original decision-maker. The IPC further invited the Appeals Tribunal to consider the Appeal on a *de novo* basis in its oral submissions at the Hearing.
- 5.13 Whilst NPC Belarus did not address this point directly, in making submissions as to various grounds of appeal (in their written and oral submissions) they invited the Appeals Tribunal to consider all matters of procedure and substance relating to the Suspension Decision.
- 5.14 The Appeals Tribunal was not persuaded by the arguments that it should consider the suspension of NPC Belarus' membership rights on a *de novo* basis. The Appeals Tribunal reached this conclusion because:
- (a) only the Suspension Decision was subject to an appeal and the Appeals Tribunal was loathe to wholly substitute itself for the IPC Membership which voted on the Suspension Decision (and also considered it inappropriate to disregard the majority which voted in favour of the Suspension Decision) without due cause, or such a broad jurisdiction being stated in the IPC Constitution 2002 from which the Appeals Tribunal derives its jurisdictions and powers;
 - (b) Article 70.1 of the IPC Constitution 2022 makes it clear that where there is a lacuna in the IPC Constitution 2022 (and/or the Regulations), as is the case here where there are no procedural rules which establish the Appeals Tribunal's parameters of review, then German law will apply; and
 - (c) of the clear submissions that German law affords discretion to associations in regulating their own affairs and as such a review of the Suspension Decision should be limited to reviewing whether the Suspension Decision was consistent with applicable law and/or whether it was irrational, grossly disproportionate or unfair.
- 5.15 The Appeals Tribunal was therefore limited to considering whether the Suspension Decision:
- (a) is the result of an unfair procedure;
 - (b) contravenes applicable law; and/or

⁴ *USOC v IOC*, CAS 2011/O/2422; Federal Supreme Court (Bundesgerichtshof), NJW 1995, 583; Fritzweiler/Pfister/Summerer, *Praxishandbuch Sportrecht*, 3. Chapter, para 3-5.

⁵ IPC Answer Brief, paragraph 3.3 referring to FIFA & WADA, CAS 2005/C/976 & 986, *Bradley v Jockey Club* [2004] EWHC 2164 (QB), German Basic Law (Article 9) and the German Civil Code (sections 21 et seq).

(c) is unreasonable or grossly arbitrary.

5.16 The Appeals Tribunal noted that, in light of the foregoing and the fact that the decision subject to appeal was the Suspension Decision, only matters before the EGA should be taken into consideration in its review of the Suspension Decision. This is in keeping with the commentary in the *Football Union of Russia v FIFA* case in which the CAS Panel stated:

*The Panel also emphasises that it has not taken into consideration any events occurring since 28 February 2022 which, retrospectively and with the benefit of hindsight, may, arguably, have led to a different decision being taken had they been known at the time of the Appealed Decision itself. The Panel has focused on the Parties' evidence and legal submissions as to the circumstances known or foreseeable on 28 February 2022, which underlay the Appealed Decision.*⁶

C. Review of the procedure taken in respect of the Suspension Decision

5.17 In the Appeals Tribunal's view, in order to determine the Appeal, it needed to first be satisfied that the vote taken at the EGA was not the result of an unfair procedure.

5.18 Article 16.1 of the IPC Constitution 2022 states:

*Subject to Article 12.5, **the General Assembly may suspend some or all of an IPC Member's rights as an IPC Member by motion passed by a Simple Majority where (i) the Governing Board recommends such suspension, and the General Assembly agrees with such recommendation, or (ii) the General Assembly decides in favour of a motion submitted by an IPC Member that any one or more of the grounds set out in Article 15.1 apply. Any suspension imposed on an IPC Member by the General Assembly will be subject to such conditions as the General Assembly may determine.***

(emphasis of the Appeals Tribunal added)

5.19 The Motion was moved specifically pursuant to Article 16.1(i) of the IPC Constitution 2022. Applying this provision, it appears, *prima facie*, that all that was required to affect a suspension of NPC Belarus' membership rights was for a motion advanced by the IPC Governing Board recommending such suspension to receive support from a Simple Majority of the IPC General Assembly.⁷

5.20 The Simple Majority, being "at least one more than 50% of the valid votes cast by those present and entitled to vote",⁸ was achieved at the EGA. The Appeals Tribunal had no reason to doubt that the IPC Members' votes were validly cast.

5.21 However, during the Hearing, the Appeals Tribunal specifically sought submissions from the parties as to whether the existence of a breach of membership obligations was required to utilise the suspension provisions at Article 16.1(i) of the IPC Constitution 2022.

5.22 The IPC submitted that a breach was not required on the strict application of Article 16.1(i) but that, in any event, NPC Belarus had breached their membership obligations which warranted the suspension of their membership rights. As noted above, the IPC also submitted that the Appeals Tribunal should consider all matters on a *de novo* basis.

⁶ Football Union of Russia v Federation International de Football Association et al, CAS 2022/A/8708

⁷ The Appeals Tribunal notes that under the IPC Constitution 2022 there are other mechanisms for the IPC to suspend IPC Members.

⁸ IPC Constitution 2022, Appendix 1: Rules of interpretation and definitions

- 5.23 NPC Belarus submitted on a general basis that they had not breached any membership obligations.
- 5.24 The Appeals Tribunal considered this issue in detail, given the potential ramifications for its approach to the Appeal. If the existence of a breach was not required, then the Appeals Tribunal's review of the procedural aspects of the Suspension Decision would be limited to being satisfied that the Suspension Decision was reached by a Simple Majority (and there were no other procedural defects) and to dealing with NPC Belarus' other conceptual arguments in respect of the legality to suspend and whether to suspend was proportionate etc. Alternatively, if the existence of a breach of membership obligations was required to enable the suspension of NPC Belarus through Article 16.1(i), then the Appeals Tribunal would need to be satisfied that that breach or breaches were put before and properly evidenced to the IPC Membership prior to the EGA.
- 5.25 The Appeals Tribunal considered that there must be evidence of a breach of membership obligations in order to utilise the suspension mechanism at Article 16.1(i) of the IPC Constitution 2022, for the following reasons:
- (a) Article 18.1 of the IPC Constitution 2022 states:
- The Governing Board or General Assembly (as applicable) **will review the facts**, give the IPC Member concerned a right to be heard, and impose any sanctions in accordance with this Constitution and the procedures set out in the IPC Membership Regulations.*
- (emphasis of the Appeals Tribunal added)
- This confirms that the IPC Membership would have to "review the facts" relating to the proposed suspension of NPC Belarus' membership rights at the EGA which would necessitate a review of the alleged breaches of obligations by NPC Belarus (or at least the reasoning for the proposed suspension).
- (b) As set out by the CAS in *Russian Olympic Committee & Adams et al v IAAF* (quoted at paragraph 4.27 of the IPC Answer Brief):
- ...it is a fundamental principle of the law of associations in all applicable jurisdictions that members of associations have an obligation to satisfy the requirements for membership in the association and **if they fail to do so those members may have their association membership adversely affected**. In many ways, this is the contract for being part of an association and the rules upon which all association members are expected to conduct themselves.⁹*
- (emphasis of the Appeals Tribunal added)
- (c) The Motion included a rationale setting out the grounds for its recommendation to suspend the NPC Belarus' membership rights (the "**Rationale**") in which the breaches of the membership obligations were expressly mentioned: this indicates that the Motion required reasoning for the vote of the IPC Membership;
- (d) The IPC's written submissions tied the sanction of suspension to a breach of membership obligations, for example:
- (i) at paragraph 4.3 of the IPC Answer Brief, the IPC noted that the "*Rationale circulated to the IPC membership alongside the Suspension Motion in*

⁹ *Russian Olympic Committee & Adams et al v IAAF*, CAS 2016/O/4684

September 2022 identified three central membership obligations that the IPC Governing Board considered that NPC Belarus had breached..."

(ii) at paragraph 4.19 of the IPC Answer Brief, the IPC submitted that the "*IPC Constitution (which has been reviewed approved by the German Registry) provides the IPC with the explicit and unambiguous right to suspend the rights of a member NPC that fails to comply with its membership obligations.*".

(iii) at paragraph 4.23.1 of the IPC Answer Brief, the IPC submitted that "*the Governing Board recommended the Suspension Motion **for the reasons set out in the Rationale, and in particular based on the breaches of Article 13 by NPC Belarus...***"

(emphasis of the Appeals Tribunal added)

(iv) at paragraph 4.35 of the IPC Answer Brief, the IPC noted that NPC Belarus "*is suspended because of its failures to adhere to its membership obligations*";

(v) at paragraph 4.50 of the IPC Answer Brief, the IPC made submissions in respect of a sporting bodies' ability to suspend membership and note that the authorities cited in support of that argument "*demonstrate that the EGA Decision, **which is linked solely to the violation of NPC Belarus' membership obligations, is well within the IPC's margin of appreciation***"

(emphasis of the Appeals Tribunal added)

(vi) at paragraph 2.1 of the IPC Response, the IPC submitted that "*NPC Belarus advances various arguments as to why it is not in breach of its membership obligations **as alleged in the Rationale and Answer Brief.***"

(emphasis of the Appeals Tribunal added)

(vii) at paragraph 2.3 of the IPC Skeleton, the IPC submitted that "*as expressly stated in the IPC Constitution, such breach [of membership obligations] also triggers the lesser remedy of suspension of all membership rights (Article 15.2.7/16.1), or suspension of some membership rights (Article 15.2.8/16.1).*"

5.26 Consequently, the Appeals Tribunal carefully considered the Rationale provided by the IPC Governing Board in support of the Motion, to determine whether the alleged breaches of the NPC Belarus' membership obligations had been properly made out.

5.27 In reviewing the Rationale, the Appeals Tribunal considered that it was flawed to such an extent that the Suspension Decision is fatally undermined. The Appeals Tribunal reached this conclusion for the following reasons:

5.27.1 The Rationale itself did not clearly evidence the breaches of membership obligations NPC Belarus was alleged to have committed.¹⁰ The Appeals Tribunal was also not provided with evidence to comfortably satisfy itself that probative evidence of NPC Belarus' alleged breaches was appropriately put before the EGA so that the IPC Membership was fully informed prior to voting on the Motion.

¹⁰ The Appeals Tribunal note in this regard that although allegations of breaches of membership obligations were made orally by certain IPC Members, the EGA Minutes contained no specific reference to evidence of the alleged breaches and that, for example, NPC South Africa had concerns that "*the members had not received explanation as to what the NPC Belarus had done wrong as per the Constitution.*"

5.27.2 Further, and in any event, the majority of alleged breaches (set out in detail in the IPC's written submissions¹¹) occurred when the IPC Constitution 2022 was not in force and were not been appropriately addressed in the Rationale. In this regard:

(a) the IPC Constitution 2022 was adopted by the IPC General Assembly on 11 December 2021 and came into force on 24 August 2022.

(b) Article 68.5.4 of the IPC Constitution 2022 states:

Unless provided otherwise, any matters brought on or after the effective date of this Constitution based on acts or omissions that occurred prior to that effective date will be governed by the substantive rules that were in force at the time the acts and omissions occurred, but procedural issues will be governed by the procedural rules set out in this Constitution, the Regulations, and/or other applicable procedural rules (in place of procedural rules in force at the time the acts and omissions occurred).¹²

(c) the Suspension Decision was not taken until 16 November 2022. Therefore, pursuant to Article 68.5.4 of the IPC Constitution 2022, evidence of certain alleged breaches fall to be assessed by reference to the IPC Constitution 2011.

(d) put simply, the sport rules for dealing with alleged breaches by NPC Belarus of their membership obligations occurring before 24 August 2022 fell under the IPC Constitution 2011. Then, the sport rules for dealing with alleged breaches by the NPC Belarus of their membership obligations occurring from 24 August 2022 to the date of the EGA on 16 November 2022 fell under the IPC Constitution 2022.

(e) the IPC Constitution 2011 states:

9.2 *A member may be suspended for following reasons:*

9.2.1 *Failure to pay the annual membership fee as determined at the General Assembly, unless otherwise decided by the Governing Board; or*

9.2.2 *Not fulfilling the conditions for membership and not complying with the obligations of members, as defined in the bylaws.*

(f) the relevant obligations of NPC Belarus, as an IPC Member, in respect of any alleged breaches which occurred prior to 24 August 2022 are therefore set out in the "bylaws" referred to in Article 9.2.2 of the IPC Constitution 2011.

(g) these bylaws were not put before the EGA or the Appeals Tribunal for consideration and yet, as per Article 68.5.4 of the IPC Constitution 2022, these

¹¹ For example, at paragraph 4.12 of the IPC Answer Brief, the IPC submitted that the attendance of NPC Belarus and participation of Belarussian Athletes at an event hosted by the Russian Paralympic Committee in Khanty-Manisysk in March 2022, was in breach of NPC Belarus' membership obligations. The IPC submitted that at the Khanty-Manisysk event, the "Z" insignia (a symbol of support for the Russian Armed Forces) was displayed across event venues along with other symbols (in particular, the St George ribbon) and slogans (e.g., we are together)). NPC Belarus denied that attendance at such an event was in breach of their membership obligations and was to provide their Para Athletes with the opportunity to compete.

¹² The principle that alleged breaches shall be evaluated under the relevant rules in force at the time of the breach would apply in any case (even if it was not stated in Article 68.5.4 of the IPC Constitution 2022) as otherwise there would have been an inadmissible retroactive application of the IPC Constitution 2022.

were the "*substantive rules*" by which any allegations of breach prior to 24 August 2022 should have been assessed.¹³

- (h) as such, the Appeals Tribunal is not in a position to assess whether any IPC membership obligations were breached by NPC Belarus between 24 February 2022 and 23 August 2022, and consequently that such breaches were properly set out (and evidenced) before the IPC Membership at the EGA.

5.27.3 The Appeals Tribunal is not comfortably satisfied that any breaches occurring between 24 August 2022 and 16 November 2022 were properly evidenced before the IPC Membership at the EGA. The Appeals Tribunal therefore cannot be comfortably satisfied that the Suspension Decision was appropriately taken.

5.27.4 As noted above, the Appeals Tribunal does not believe it can consider allegations (or evidence thereof) of breaches by NPC Belarus of their membership obligations occurring after the EGA on 16 November 2022.

5.27.5 The Appeals Tribunal further noted that the Rationale:

- (a) referred to breaches of the Olympic Truce, which the Appeals Tribunal considered irrelevant to the question of whether NPC Belarus was in (or was not) in breach of its membership obligations since the Olympic Truce is not legally binding on its signatories and, in any event, NPC Belarus is not itself a signatory; and
- (b) referred to "*a very significant risk that NPC Russia or NPC Belarus might be influenced by their respective governments to support the military invasion and that IPC events and activities may be used by NPC Russia or NPC Belarus (or its athletes or officials) as a political platform to express support for the military invasion of Ukraine.*"¹⁴ The Appeals Tribunal concluded that an assertion of the existence of a risk that membership obligations might be breached could not properly support the contention that a breach had occurred. Further, the Appeals Tribunal did not find a relevant rule of law which would support the imposition of significant sanctions in response to a perceived risk (only) of a breach of membership obligations.

6. Appeal Tribunal's Decision

6.1 The Appeal therefore must be allowed on the basis that there has been a procedural failure in respect of the Suspension Decision, in that there was a lack of cogent evidence before the EGA to support findings of a breach of membership obligations as expressly claimed by the IPC Governing Board in the Rationale and a failure to reference alleged breaches to the applicable "*substantive rules*" under the prevailing IPC Constitutions (as per Article 68.5.4).

6.2 The nature of the procedural failure in this case is such that the Appeals Tribunal considers it cannot reasonably be cured, particularly (as already stated) where the Appeals Tribunal is not accepting of approaching the Appeal on a *de novo* basis. The procedural failing directly affected the voting on the motion to suspend NPC Belarus' membership rights.

¹³ During the Hearing, the IPC submitted to the Appeals Tribunal that the relevant alleged breaches by NPC Belarus under the IPC Constitution 2011 would have fallen under the IPC Code of Ethics then (and now) in place, and that no matter which '*substantive rules*' were applicable, the '*rules*' are largely the same in the IPC Constitution 2011 and IPC Constitution 2022 (and the same IPC Member obligations are effectively mirrored). This position may be correct, however the Appeals Tribunal notes that (a) there was no mention of those '*substantive rules*' in the Motion and (b) it could not take any view on this as the full relevant '*substantive rules*' were not provided to, or pleaded before, it.

¹⁴ See Paragraph 5(b) of the Motion.

- 6.3 The Appeals Tribunal hereby allows the Appeal and confirms that the Suspension Decision is set aside.
- 6.4 In light of the determination that there has been a fatal procedural breach (as noted in item 6.1 above), the Appeals Tribunal has not considered the various other submissions advanced by the IPC and NPC Belarus in respect of the Appeal. For completeness, the Appeals Tribunal again notes that this determination of the Appeal does not affect the validity of the GB Decision.
- 6.5 As this determination to allow the Appeal largely centres on a significant procedural defect which was not pleaded by either party, the Appeals Tribunal makes no award as to costs of the Appeal.
- 6.6 The Appeals Tribunal confirms that the decision to allow the Appeal was taken unanimously.

7. Embargo and Confidentiality

- 7.1 By order of the Appeals Tribunal, the outcome of this Appeal and content of this reasoned decision (in whole or in part) is held under embargo until midday (Central European Summer Time) on 12 May 2023. During this time, this decision (in whole or in part) should not be communicated beyond key individuals within the organisations of both NPC Belarus and the IPC (but excluding the IPC Membership at large) and their relevant legal representatives or advisers.
- 7.2 The Appeals Tribunal did not receive submissions as to the publication of this reasoned decision. However, the Appeals Tribunal considered that there were compelling reasons to direct that this reasoned decision should be published, not least since the IPC Membership (beyond the parties in the Appeal) voted on the Suspension Decision and should therefore be fully informed as to why the Appeal has been allowed. Further, the Appeals Tribunal considered that there was a wider public interest in the Appeal (beyond the Paralympic Movement) and that publication would also leave no doubt that:
- (a) the Appeal has been upheld on a significant failure of procedure, and the Appeals Tribunal has not made any determination of various alleged (historic or current) breaches by NPC Belarus of the IPC Constitution 2022 (or the IPC Constitution 2011 or other relevant regulations); and
 - (b) the GB Decision remains in force.
- 7.3 Consequently, in accordance with the broad discretion afforded to it under the IPC Constitution 2022 to determine its own procedural rules, the Appeals Tribunal directs that this reasoned decision is provided to all IPC Members, and is also published on the IPC website, following the expiry of the embargo noted above.

8. Determination

8.1 The Appeals Tribunal hereby directs:

- (a) the Appeal is allowed;
- (b) this reasoned decision is held under embargo until midday (Central European Summer Time) on 12 May 2023;
- (c) once the embargo has expired, this reasoned decision shall be published on the IPC website;
- (d) there is no award as to costs.

10 May 2023

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Mark Copeland
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Mark J Copeland LL.B, CMIInstDir (NZ)
Appeals Tribunal Chairperson

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Alberto Predieri
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Alberto Predieri
Appeals Tribunal Member

DocuSigned by:
Sami Arap Sobrinho
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Sami Arap
Appeals Tribunal Member