

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2018/A/5702 Pere Hernández Ripoll v. Federación Internacional de Pádel**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Prof. Massimo Coccia, Attorney-at-law, Rome, Italy  
Arbitrators: Mr. Michele A.R. Bernasconi, Attorney-at-law, Zurich, Switzerland  
Dr. Hans Nater, Attorney-at-law, Zurich, Switzerland  
*Ad hoc* Clerk: Mr. Francisco A. Larios, Attorney-at-law, Miami, Florida, USA

**in the arbitration between**

**Mr. Pere Hernández Ripoll**, Barcelona, Spain

Represented by Dr. Toni García, Attorney-at-law, Barcelona, Spain

**Appellant**

**and**

**Federación Internacional de Pádel (FIP)**, Lausanne, Switzerland

Represented by Mr. Bernardo Palmeiro, Attorney-at-law, 14 Sports Law, Porto, Portugal

**Respondent**

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### I. INTRODUCTION

1. This appeal is brought by Mr. Pere Hernández Ripoll against a decision of the *Federación Internacional de Pádel* (“FIP”) taken on 3 April 2018 dismissing Mr. Ripoll from the FIP Board of Directors (hereinafter the “Appealed Decision”).

### II. PARTIES

#### A. The Appellant

2. The Appellant, Mr. Pere Hernández Ripoll, was a member of the FIP Board of Directors until his dismissal on 3 April 2018. He is also the President of the Catalan Padel Federation (the *Federació Catalana de Pàdel* or FCP), which is an autonomous federation within the Spanish Padel Federation (the *Federación Española de Pádel* or FEP).

**B. The Respondent**

3. The Respondent, the *Federación Internacional de Pádel*, is the international governing body of padel at worldwide level, headquartered in Lausanne, Switzerland.

**III. BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the written submissions, oral pleadings and evidence adduced by the Parties. 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 Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 5 September 2017, the Appellant attended, as the FCP President, the General Assembly of the Olympic Committee of Catalonia.
6. In reaction to his attendance, on 15 September 2017, the FEP dismissed the Appellant from its Board of Directors. According to the Appellant, he was dismissed by telephone only and never received a written communication to that effect.
7. According to the testimony of Mr. Daniel Patti, the then FIP President, on that same day he received a phone call from the FEP informing him of the Appellant's dismissal from the FEP Board of Directors and requesting that he be replaced on the FIP Board of Directors. Mr. Patti replied that doing so would not be permitted because, under Article 17.2 of the FIP Bye-laws, a member of the FIP Board of Directors sits in that body in his personal capacity and not as a representative of the national federation that proposed him as a candidate for the Board. Mr. Patti further testified that at the end of September 2017, he received the following letter from the FEP, which has been introduced to the record:

*“Unfortunately, and with great displeasure of all those sitting on the Spanish Padel Federation’s Board of Director, I have been bound to dismiss Pere Hernández as a member of our Board, due to his explicit support for the holding of a referendum declared to be illegal by the Spanish Constitutional Court, as well as for his support of the independence of Catalonia from Spain, both through his public presence and his dissenting vote.*

*Regrettably, these events are as serious as they are incoherent: we are either with Spain or against Spain, but both things at once are completely incompatible.*

*In addition to his post on the FEP’s Board of Directors, Pere Hernández was a FIP vice-president in the FIP’s Board of Directors, since he was the person that I proposed to the Assembly at the time as Spain’s representative on the FIP,*

*since Spain was voted by the General Assembly in Portugal 2016 as one of the member of its Board of Directors.*

*Due to the importance and seriousness of the foregoing, this Spanish Padel Federation and the Spanish Government's High Council for Sports wish to substitute him on the FIP with another person proposed by the FEP, always in accordance with the possibilities set forth in the FIP's Articles of Association and Regulations.*

*We consider that ideally Pere Hernández should gracefully and discretely tender his resignation and give up his position; otherwise, we formally request the inclusion on the Agenda of the next General Assembly of this specific point of his dismissal to be deliberated and voted on by the members of the Assembly.*

*In this latter case, we request all your support and recommendations as President before the other countries to resolve this pitiful affair so that Spain can have a representative on the FIP's Board of Directors, worthy of its full and absolute trust. Neither the Spanish Padel Federation nor the Spanish Government's High Council for Sports would accept the failure to reach a positive solution to this serious case”.*

Translated from the Spanish original:

*“Lamentablemente y con gran disgusto por parte de todos los que componemos la Junta Directiva de la Federación Española de Pádel, me he visto obligado a cesar a Pere Hernández, como miembro de nuestra Junta Directiva FEP, debido a su apoyo explícito a la celebración de un referéndum declarando ilegal por el Tribunal Constitucional Español, así como a la independencia de Cataluña de España, tanto con su pública presencia como con su voto particular.*

*Desgraciadamente estos hechos son tan graves como faltos de la más mínima coherencia, o se está con España o se está contra España, ambas cosas a la vez no son absolutamente incompatibles.*

*Adicionalmente al cargo que tenía en la Junta Directiva FEP, Pere Hernández ostenta el cargo de Vicepresidente FIP en la Junta Directiva FIP, por ser la persona a la que propuse a la Asamblea en su día como representante de España en la FIP, al ser votada España por la Asamblea General de Portugal 2016 como uno de los miembros de su Junta Directiva.*

*Por la importancia y gravedad de lo anteriormente expuesto, es deseo de esta Federación Española de Pádel y del Consejo Superior de Deportes del Gobierno de España su relevo en la FIP por otra persona propuesta por la FEP, siempre de manera conforme a las posibilidades que marquen los Estatutos y Normativas FIP.*

*Entendemos que lo idóneo y elegante sería que Pere Hernández presentase discretamente su dimisión y renuncia al cargo; en caso contrario solicitamos formalmente la inclusión en el Orden del Día de la próxima Asamblea General de este punto específico de su relevo a tratar y votar públicamente por parte de los miembros de la Asamblea.*

*En este último caso solicitamos Presidente todo tu apoyo y recomendación ante el resto de países para solucionar este penoso asunto y que España pueda tener un representante, en la Junta Directiva de la FIP, digno de su total y absoluta confianza. Ni esta Federación Española de Pádel ni el Consejo Superior de Deportes del Gobierno de España entenderíamos que no se alcanzase una solución positiva a este gravísimo caso”.*

8. On 12 October 2017, the FIP held in Málaga (Spain) an Ordinary General Assembly (hereinafter the “General Assembly”) which the Appellant attended as a member of the FIP Board of Directors.
9. The Panel observes that the Parties submitted two versions of the minutes of this General Assembly. The Appellant provided the first version of the minutes which the then President Mr. Patti, as he confirmed at the hearing, circulated by email to the FIP Board of Directors on 28 December 2017 soliciting their comments, if any. The Respondent, on the other hand, introduced an excerpt of a later amended version. The Respondent’s version is unaccompanied by any email or other form of communication proving its delivery to the FIP Board of Directors or its approval by a subsequent General Assembly.
10. In entering into the last point of the agenda of the General Assembly (“15: *Questions and Answers*”), the FIP General Secretary, Mr. Francisco Javier Marín Cao, informed the FIP members that the FEP President, Mr. Alfredo Garbisu, had proposed to include a new item on the agenda: a vote on the Appellant’s dismissal from the FIP Board of Directors.
11. Mr. Marín Cao informed the FIP members that a majority of 4/5<sup>th</sup> was required to move forward with deliberating and voting on the FEP’s proposal.
12. This threshold was reached by vote and, consequently, the item was added to the agenda.
13. According to the version of the minutes submitted by the Appellant, after the new item was added to the agenda, the General Assembly was informed that “*given the particularity of the topic to be dealt with, a vote of 2/3<sup>rd</sup> majority would be required for it to pass*” (translated from the Spanish original: “*Sucesivamente se indica a la Asamblea que debido a la particularidad del tema a ser tratado será requerida la mayoría de 2/3 para el éxito de cualquier votación. El Consejo de la Asamblea aprueba tal moción*”). This sentence is noticeably missing in the later version of the minutes submitted by the Respondent, who maintains that this never occurred and only a simple majority was required.

14. Mr. Marín Cao then gave the floor to the FEP President who distributed to the General Assembly the FEP's letter to the FIP of September 2017 (see *supra* at para. 7) in which he expressed the FEP's intention to request the Appellant's dismissal from the FIP Board of Directors at the General Assembly if he did not voluntarily resign from his position.
15. The FEP President explained that both the FEP and the Spanish government (through the Spanish High Council for Sport) had asked the Appellant to resign from the FEP and the FIP and that, following his refusal, the FEP was forced to sanction and remove him from the FEP Board of Directors and to request that the FIP remove him from the FIP Board of Directors. The relevant part of the minutes read:

- Appellant's version of the oral statement of the FEP's President: "...*Hernández has been asked by the Spanish Federation and the Government of Spain, through the Spanish High Council for Sport, to resign from the FEP and also from the FIP. That would have been, in his view, the easiest way to resolve the issue. Due to his refusal, he was forced to dismiss him from the FEP Board of Directors and send a letter to the FIP requesting that he be removed [from the FIP Board of Directors]. It therefore requests the Assembly to comply with the FIP Bye-laws, in particular Article 17.3.3. This article specifies the conditions necessary to maintain a position on the FIP Board of Directors, and the dismissal from the FEP represents a sanction of more than 90 days, since it is final*".

Translated from the Spanish original: "...*desde la Federación Española y desde el Gobierno de España a través del Consejo Superior de Deportes se le ha solicitado a Pere Hernández que presente su dimisión en la FEP y también en la FIP. Esa hubiera sido según su modo de ver, el modo más fácil para resolver la cuestión. De frente a su negativa se vio obligado a cesarlo de la Junta Directiva de la FEP, y envió a la FIP una carta solicitando que se lo cese. Por lo tanto solicita a la Asamblea el cumplimiento de los Estatutos de la FIP, en concreto el artículo 17.3.3. Este artículo indica las condiciones necesarias para mantener un cargo en la Junta Directiva de la FIP, y el cese en la FEP representa una sanción superior a 90 días, ya que es definitiva*".

- Respondent's version: "*Mr. Garbisu frames the situation and explains that the Spanish Padel Federation as well as the Spanish Government through its High Council for Sport has asked Mr. Pere Hernandez to resign from the FEB and also the FIP. Due to his refusal, he explains that he was forced to sanction him and dismiss him from the FEP's Board of Directors and sent a letter to the FIP requesting that he be dismissed [from the FIP Board of Directors] in accordance with the FIP Bye-laws, specifically Article 17.3.3*"

Translated from the Spanish original: "*Sr. Garbisu encuadra la situación y explica que tanto desde la Federación Española y desde el Gobierno de España a través del Consejo Superior de Deportes se la ha solicitado a Pere Hernández que presente su dimisión en la FEP y también en la FIP. De frente a su negativa, explica que se vio obligado a sancionarlo y cesarlo de la Junta Directiva de la*

*FEP, y envió a la FIP una carta solicitando que se lo cese de acuerdo de los Estatutos de la FIP, en concreto el artículo 17.3.3”.*

16. According to the version of the minutes provided by the Respondent, after the FEP President explained his proposal, Mr. Marín Cao, indicated that he may have wished to refer to (“*que tal vez él deseaba referirse a*”) Article 19.9(vii) of the FIP Bye-laws, which states: “*The office of a member of the Board of Directors shall ipso facto be vacated in the event that a member...: (vii) have been sanctioned or disqualified by any national or international sport organisation for a period higher than ninety (90) days*”. This sentence is not contained in the version of the minutes submitted by the Appellant.
17. The Appellant then took the floor and defended his position, arguing that a dismissal would be against the FIP’s Bye-laws since it would be purely political in nature.
18. After deliberation between the FIP members and further words from the FEP President and the Appellant, a vote ensued.
19. At the time of the vote, 14 member federations were present with a total of 101 votes available (given the multiple votes to which some federations were entitled). The result of the vote was as follows: 31 votes in favour of the Appellant’s dismissal, 24 votes against, and 46 abstentions. The FEP expressed its 12 votes in favour of the Appellant’s dismissal.
20. According to the version of the minutes submitted by the Appellant, after the vote it was publicly announced that the General Assembly rejected the FEP’s proposal. Those minutes state that “*The General Assembly decides not to accept the proposal to dismiss Mr. Pere Hernández I Ripoll presented by the FEP*” (translated from the Spanish original: “*La Asamblea decide por no aceptar la solicitud de cese del Sr. Pere Hernández I Ripoll presentada por la FEP*”).
21. The version of the minutes introduced by the Respondent confirms that the FIP Secretary General announced that, as a result of the vote, the General Assembly rejected the FEP’s proposal. However, it adds that, following the announcement of said decision, a discussion ensued about whether abstentions should have been considered in calculating whether a simple majority was reached. According to these minutes, Mr. Marín Cao was to verify after the General Assembly whether under the FIP Bye-laws and Swiss law abstentions were supposed to be considered. Once that matter was resolved, he would then inform the General Assembly of the final decision on the FEP’s proposal. The relevant part of that version of the minutes (which, as said, was absent from the first version of the minutes) reads as follows:

*“...the Secretary General informs the Assembly that it has been decided not to approve the motion submitted by the FIP concerning the request for the removal of Mr. Pere Hernández I Ripoll from the FIP’s Board position.*

*However, with regard to the final calculation of votes, there was widespread doubt in the Assembly as to whether or not abstention votes should be counted in the final calculation of the vote, as this would change the final result of the*

*vote. If the abstention votes were to be counted, the “do not dismiss” would have obtained a majority of the votes. On the contrary, if the abstention votes were not to be counted the “dismissal” would have obtained the majority of vote.*

*Since it was not possible to clarify the situation immediately, and taking into account the long hours of the meeting, it was agreed that the Board of Directors and the Secretary General would confirm under the Statutes (and Swiss law, if necessary) whether the abstention votes were counted for the calculation of the final vote and would inform the Assembly of the final decision as soon as possible”.*

Translated from the Spanish original:

*“...el Secretario General informa la Asamblea que se ha decidido no aprobar la moción referida a la solicitud de cese del Sr. Pere Hernández I Ripoll presentada por la FEP.*

*No obstante, en relación al cálculo final de los votos, se generó una duda generalizada en la asamblea sobre si los votos de abstención cuentan para el cálculo final de la votación o no, una vez que eso cambiaría el resultado final de la misma. Si los votos de abstención, son computados el “no cese” habría tenido la mayoría de los votos. Al contrario, si los votos de abstención no son computados, el “cese” habría tenido la mayoría de los votos.*

*Una vez que no fue posible aclarar la situación de inmediato, y una vez que se llevaban largas horas de reunión, se acordó que la Junta Directiva y el Secretario General iban a confirmar bajo los Estatutos (y la ley suiza, si necesario) si los votos de abstención son computados para el cálculo de la votación final e informarían la Asamblea de la decisión final luego que posible”.*

22. According to Mr. Patti’s testimony at the hearing, the delegates attending the General Assembly left the meeting convinced that the FEP’s proposal had been rejected. He also testified that the delegates who abstained did so in the belief that, in order to calculate the majority, the abstentions would be counted as part of the so-called quorum and that, therefore, a high number of votes would be needed to exclude the Appellant from the FIP Board. In fact, according to Mr. Patti’s testimony, many delegates abstained as an expression of disapproval of the FEP’s proposal, which they considered should not be addressed by the General Assembly as it concerned a national issue.
23. On 17 December 2017, the FEP President sent a letter to the FIP in which he again demanded the dismissal of the Appellant as a FIP Board Member pursuant to Article 19.9(vii) of the FIP Bye-laws and in accordance with the vote by simple majority taken at the General Assembly. The FEP President enclosed a certificate dated 17 October 2017 signed by only himself, certifying that the Appellant had been sanctioned by the FEP. The relevant part of the certificate read as follows: “I, Alfredo Garbisu Elzaurdy, in the capacity of President of the Spanish Padel Federation, formally certify that Mr. Pere Hernández I Ripoll has been sanctioned and dismissed definitively as a member of the Board of Directors of the Spanish Padel Federation effective 15-09-2017,



*dismissal ratified on 16-09-2018 at the meeting of the Board of Directors of the Spanish Padel Federation...*” (translated from the Spanish original).

24. On 16 January 2018, the FIP requested the FEP to confirm that the Appellant had received a final and definitive sanction exceeding 90 days.
25. In response, the FEP sent a second certificate only signed by its President – this time dated 17 December 2017 – confirming that the Appellant had been sanctioned permanently and definitively. This certificate reads: “*I, Alfredo Garbisu Elzaurdy, in the capacity of President of the Spanish Padel Federation, formally certify that Mr. Pere Hernández I Ripoll has been sanctioned permanently and definitively as a member of the Board of Directors of the Spanish Padel Federation effective 15-09-2017, sanction and dismissal definitively ratified on 16-09-2018 at the meeting of the Board of Directors of the Spanish Padel Federation...*” (translated from the Spanish original).
26. On 28 February 2018, the Appellant’s lawyer sent a letter to the FIP (i) contesting that the FEP ever initiated a disciplinary proceeding against the Appellant or sanctioned him, and (ii) raising that, according to Article 35.1(b) of the FEP Statutes, only the FEP Secretary General had the capacity to issue a certificate of the kind issued by the FEP President on 17 October and 17 December 2018.
27. On 1 March 2018, Mr. Marín Cao sent the members of the FIP Board of Directors, including the Appellant, a draft resolution of the Appellant’s dismissal from the board.
28. On that same day, the FIP’s Board of Directors met and decided that, for the time being, it would not issue the final resolution to the Appellant, in order to give the FIP Secretary General and the lawyers time to study the issue.
29. On 2 March 2018, the FIP forwarded to the FEP the Appellant’s lawyer’s letter of 28 February 2018 and indicated that it was “*self-explanatory and casts serious doubt over whether a sanction exists with respect to Mr. Hernández, whether any proceedings have commenced and which competent bodies are involved, etc., together with other disputes that may be detailed in such mail*” (translated from the Spanish original). The FIP requested the FEP to clarify the situation in order to aid the international federation take a decision on the matter.
30. On the same day, the FEP President responded that “*the FEP did dismiss him as a sanction for incorrect and improper behaviour*” (translated from the Spanish original) and that the opinion of the Appellant’s lawyer was irrelevant since the General Assembly had already decided by simple majority that the Appellant should be dismissed. In the FEP President’s view, there was a “*clear non-compliance, disobedience, transgression and indiscretion by the FIP Board of Directors and its President for not instituting the decision of the FIP General Assembly, the supreme organ of the FIP*” (translated from the Spanish original).
31. On 27 March 2018, the FEP President expressed his disappointment with the FIP’s President and Board of Directors for “*breaching their institutional responsibilities*”

(translated from the Spanish original) and informed the FIP that the FEP would file a complaint against it before the CAS.

32. On 3 April 2018, Messrs. Marín Cao and Patti, in their capacities as FIP Secretary General and President, respectively, informed the Appellant that, after ascertaining that under a correct interpretation of Article 16.21 of the FIP Bye-laws abstentions should not count towards the calculation of a majority vote, the FEP's proposal to dismiss him as FIP Board Member had passed by simple majority on 12 October 2018. Therefore, in accordance with the General Assembly's decision of that date, he had been dismissed from the Board of Directors (the "Appealed Decision"). The full letter reads:

*"For the attention of Mr. Pere Hernández Ripoll*

*As you are aware, on 12-10-2017, the annual meeting of the International Padel Federation's General Assembly was held in Málaga.*

*At the aforementioned Assembly, the Spanish Padel Federation (FEP) requested authorization from the members present to debate a matter that had not been included on the agenda. The Assembly approved such request by a majority (90 votes against the 82 required in favour, with 12 abstentions).*

*Consequently, the SFP informed the members present that you had been dismissed from your position on the FEP's Board of Directors, setting forward the bases for the foregoing, and requested that a vote be taken to dismiss you from your position on the FIP's Board of Directors.*

*This request of the FEP was voted on, with 31 votes in favour and 24 against, with 46 abstentions.*

*Once the voting ended and still during the Assembly, the abstention votes were considered to be valid for calculating the votes necessary to reach a majority, and the participants were notified that the request filed by the FEP had not obtained sufficient votes in favor and therefore had not passed.*

*Having subsequently analysed the formal matter on a statutory basis, as set forth in Article 16.21 of the FIP's Bye-laws, in which it was stated that the abstentions must not be considered in the voting, it turns out that the motion of your dismissal presented by the FEP was approved by a simple majority.*

*As a result of all the foregoing, we state that, in accordance with the decision taken by the Annual General Assembly of the International Padel Federation held in Málaga on 12-10-2017, you have been dismissed from your functions".*

Translated from the Spanish original:

*"Como es de su conocimiento, el pasado día 12 de octubre de 2017, se celebró la reunión anual de la Asamblea General de la Federación Internacional de Pádel (FIP) en Málaga.*

*En la citada Asamblea, la Federación Española de Pádel (FEP) solicitó la autorización de los miembros presentes para exponer un tema que no había sido incluido en el orden del día. La Asamblea aprobó dicha solicitud por mayoría (90 votos de los 82 necesarios a favor, con 12 votos de abstención).*

*En consecuencia, la FEP informó a los miembros presentes que usted había sido cesado de sus funciones en la Junta Directiva de la FEP, exponiendo los fundamentos para tal y solicitó que se votase el cese de sus funciones en la Junta Directiva de la FIP.*

*Se procedió a la votación sobre dicha solicitud de la FEP, dando un resultado de 31 votos a favor, 24 en contra y 46 abstenciones.*

*Finalizada la votación y aún durante la Asamblea se consideraron los votos de abstención como válidos para el cómputo de los necesarios para alcanzar la mayoría, comunicándose a los participantes que la solicitud presentada por la FEP no había alcanzado los votos a favor suficientes y por lo tanto no había procedido.*

*Analizada con posterioridad la cuestión formal y estatutariamente, tal y como recoge el artículo 16.21 del Estatuto de la FIP, en el que se expone que las abstenciones no deben ser consideradas en las votaciones, resulta que la moción de su cese presentada por la FEP quedó aprobada por mayoría simple.*

*Por todo lo expuesto, le comunicamos que de acuerdo con la decisión tomada por la Asamblea General Anual de la Federación Internacional de Pádel en Málaga el pasado día de 12 de octubre de 2017, ha sido cesado de sus funciones”.*

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

33. On 20 April 2018, in accordance with Articles R47 and R48 of the Code of Sport-related Arbitration (the “CAS Code”), the Appellant filed a statement of appeal in Spanish.
34. On 2 May 2018, in accordance with Article R51 of the CAS Code, the Appellant filed his appeal brief in Spanish.
35. On 7 May 2018, the CAS Court Office indicated that, in light of Respondent’s disagreement with Spanish as the language of the proceedings, English would be used.
36. On 25 June 2018, the CAS Court Office notified the Parties that, on behalf of the President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the CAS Code, the Panel appointed to decide the matter would be constituted by Prof. Massimo Coccia (Rome, Italy) as chairman, Mr. Michele A.R. Bernasconi (Zurich, Switzerland) designated by the Appellant, and Dr. Hans Nater (Zurich, Switzerland) designated by the Respondent.

37. On 13 July 2018, the CAS Court Office notified the Parties that Mr. Francisco A. Larios, Esq. (Miami, FL, USA) had been appointed *ad hoc* clerk.
38. On 19 July 2018, in accordance with Article R55 of the CAS Code, the Respondent filed its answer.
39. On 20 August 2018, the CAS Court Office sent the Parties the Order of Procedure, which was signed and returned by the Appellant on 21 August 2018 and the Respondent on 28 August 2018.
40. On 21 and 24 August 2018, following the instructions of the Panel, the Appellant submitted translations from Spanish to English of the Statement of Appeal, the Appeal Brief and their accompanying exhibits.
41. On 6 November 2018, the hearing took place at CAS headquarters.
42. The following persons were in attendance at the hearing:
  - The Panel, assisted by Messrs. Francisco A. Larios (*ad hoc* clerk) and Antonio de Quesada (CAS Counsel).
  - The Appellant, accompanied by his counsel, Mr. Toni García, Mr. Jordi Bertomeu Garcia and Ms. Isabel Pérez.
  - For the Respondent: Mr. Daniel Patti (former FIP President) and Mr. Bernardo Palmeiro (counsel).
43. At the outset of the hearing, the Parties confirmed they had no objections to the constitution and composition of the Panel. However, the Appellant objected to the presence of Mr. Daniel Patti at the hearing since he was no longer the FIP President, and, consequently, no longer a party representative of Respondent. Following the objection, the Parties agreed to allow Mr. Patti remain in the hearing room but only after his testimony.
44. The Respondent also informed the Panel at the beginning of the hearing that the FIP Board of Directors no longer existed since all of its member had either resigned or been dismissed. The Respondent explained that currently the FIP only had a President and a Secretary General and that it was unknown if and when the FIP Board of Directors would be reinstated.
45. The Parties then presented their arguments and examined the following witnesses: Messrs. Patti, Marín Cao, and Ricardo da Silva Oliveira (President of the Portuguese Padel Federation).
46. At the end of the hearing, the Parties acknowledged the Panel had fully respected their rights to be heard and to be treated equally. Neither side made any procedural objections at closing.

**V. SUBMISSIONS OF THE PARTIES**

**A. Mr. Pere Hernández Ripoll**

47. In his motions for relief, the Appellant requested the CAS Panel to:

*“1. Set aside the decision of the International Padel Federation dated 3 April 2018.*

*2. Reinstate Mr. Pere Hernández Ripoll as Vice-president and member of the Board of Directors of the International Padel Federation.*

*3. Order the International Padel Federation to bear the entire costs of the proceedings and to grant a contribution towards the legal fees and other expenses of Mr. Pere Hernández Ripoll for an amount of at least CHF 10,000 according to Art. R64.5 of the CAS Code”.*

48. The Appellant’s submissions, in essence, may be summarized as follows:

- Unknown origin of the minutes submitted by Respondent: The only minutes that the Appellant ever received were those circulated by Mr. Patti to the members of the FIP Board of Directors by email on 28 December 2017.
- Lack of legal basis: Article 19.9(vii) of the FIP Bye-laws cannot serve as a legal basis for his dismissal since that article only applies to individuals who have been sanctioned by a national or international sports organization. The Appellant, however, was never subject to any disciplinary proceedings or a sanction.
- The Appealed Decision violates Swiss law and, in particular, the principles of good faith and *venire contra factum proprium*. On 12 October 2017, the General Assembly rejected the FEP’s proposal to dismiss the Appellant from his post as FIP vice-president. For six months immediately following the General Assembly, all communications reflected this. The FIP thus created a legitimate expectation that the Appellant had not been dismissed. The FIP – through its Secretary General and Board of Directors – then arbitrarily and unjustifiably dismissed the Appellant from his post, thereby invalidating a resolution validly taken by the General Assembly. This constitutes a violation of the principles of good faith and *venire contra factum proprium*.
- The Appealed Decision violates the FIP Bye-laws and the principle of legal certainty. The FIP violated its own Bye-laws and the principle of legal certainty by invalidating and modifying a decision validly taken by the General Assembly six months earlier. Under Art. 64.1 of the Swiss Civil Code and Art. 16.22 of the FIP Bye-laws, the General Assembly is the sovereign body of the association and its decisions are immediately enforceable; there is no rule in the FIP Bye-laws or in Swiss law on which the President, the General Secretary or the Board of Directors can rely to invalidate a decision adopted by the General Assembly and entered into force six months earlier. The only option to challenge the General Assembly’s decision of 12 October 2017 would have been to file an appeal, the time limit for

which already elapsed under either Article R49 of the CAS Code or Article 75 of the Swiss Civil Code, thereby making the General Assembly's decision final and binding.

- The Appealed Decision violates the Appellant's fundamental rights. The FIP dismissed the Appellant exclusively for political and ideological reasons, which is discriminatory and a serious and flagrant violation of his fundamental rights (including the right to equal treatment). Supporting the Catalan independence referendum is not a criminal offense nor a reprehensible conduct; it is the exercise of a fundamental right recognized in all democratic countries and codified in constitutional texts (such as in Chapter 1 of Title 2 of the Federal Constitution of the Swiss Confederation).
- In any case, the FEP's proposal did not pass by the required two-thirds majority or even simple majority:
  - No two-thirds majority: At the General Assembly of 12 October 2017, as reflected in the minutes of that meeting, the General Assembly agreed that the FEP's proposal would require a two-thirds majority to pass. With 46 abstentions, this means that only 55 votes of the 101 had to be considered. Of those 55 votes, 37 of them had to be in favor of the Appellant's dismissal in order to meet the threshold of two-thirds majority. With only 31 votes in favour of the dismissal, the proposal thus failed.
  - No simple majority: According to Article 63.2 of the Swiss Civil Code (CC), an association cannot alter mandatory rules of law. Article 68 of the same – which is a mandatory rule of law – provides that members is excluded from voting on any resolution concerning a dispute in which it is directly involved. As the FEP proposed the dismissal and was directly involved in the dispute, it had no right to vote. Thus, the 12 votes of the FEP delegates should not have been counted and the final result should have been only 19 votes in favor of the dismissal and 24 votes against.
- Once the truth comes to light and the Appellant is reinstated, he plans on renouncing from the FIP Board of Directors.

## **B. Federación Internacional de Pádel**

49. In its motions for relief, the Respondent requests the CAS Panel to:

*“(i) Entirely reject the Appellant's appeal on the merits;*

*(ii) Order the Appellant to pay the full amount of the CAS arbitration costs;*

*(iii) Order the Appellant to pay a significant contribution towards the legal costs and other related expenses of the IPF, at least in the amount of EUR 50,000”.*

50. The Respondent's submissions, in essence, may be summarized as follows:

- The FIP General Assembly voted to dismiss the Appellant from the FIP Board of Directors. Unless otherwise expressly specified in the FIP Statutes, only a simple majority is necessary to pass a vote at the General Assembly. According to Article 16.21 of the FIP Bye-laws, abstentions are not to be included in calculating the results of a vote. The Parties did not decide at the General Assembly that the FEP's proposal required a two-thirds majority to pass. With 31 votes in favour of dismissal and 24 against, the proposal thus passed and, since there is no need for a formal communication of this decision, the Appellant's dismissal must be considered effective as of that date. The fact that doubt loomed about the calculation of the vote does not alter the result of the vote; the voting removed him and it is irrelevant that the delegates thought their abstention votes would count since *ignorantia juris non excusat*. By letter of 3 April 2018, the FIP merely confirmed that the Appellant had been removed from the FIP Board of Directors. The fact that the decision was communicated six months later does not alter that the decision on 12 October 2017 took place and *ipso facto* removed the Appellant from the FIP Board of Directors. Until 3 April 2018, the Appellant had illegally remained in function as a member of the Board of Directors. In any case, in the five meetings he attended, no concrete decisions were taken and he did not vote on any matters.
- The FIP was not precluded from applying Article 19.9 of the FIP Bye-laws to dismiss the Appellant. The FEP's letter of September 2017 shared with the General Assembly served only to contextualize the FEP's request (i.e. to explain why the FEP had decided to remove the Appellant from the FEP Board of Directors). The General Assembly was only presented with the general question of whether the Appellant should be removed from the FIP Board of Directors.
- The FEP did not have to abstain from voting. Swiss law is only applicable if there is a lacuna in the FIP regulations, which is not the case here. It was the intention of the drafters of the FIP Bye-laws to permit a member federation who makes a proposal to vote on that same proposal. Moreover, Article 68 CC does not apply here because (i) there is no conflict of interest between the FEP and the FIP, and (ii) the FEP delegates voting on the FEP's proposal would not result in any undue advantage for the FEP.
- In dismissing the Appellant under Article 19.9 of the FIP Bye-laws, the FIP did not make a decision based on his political ideology; it merely adhered, in accordance with the FIP Bye-laws, to its member federations' wish to accept the FEP's proposal to dismiss him based on a disciplinary sanction imposed on him at national level.

## VI. JURISDICTION

51. Article R47 of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or*

*if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.*

52. According to Article 31.1 of the FIP Bye-laws, “*Any dispute or difference not bound by the relevant handbooks or regulations of the various circuits and competitions of the Federation between a Member and the Federation or between the Federation and any other individual or organisation shall be referred to the Court of Arbitration for Sport, Lausanne, Switzerland. The rules of the Court of Arbitration for Sport shall govern the arbitration and the decision of the Court of Arbitration for Sport shall be final and binding on all parties concerned*”.
53. The Parties did not contest the jurisdiction of the CAS and confirmed it by their signature of the Order of Procedure. It follows that the CAS has jurisdiction to decide the present dispute.

## VII. ADMISSIBILITY

54. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document”.*

55. The FIP Bye-laws do not set a time limit for appeal. Therefore, the default time limit of twenty-one days must apply.
56. The Panel observes that there are two decisions related to the present dispute which could have been appealed by the Parties. The first decision was taken on 12 October 2017 by the General Assembly but was never appealed by any dissatisfied party. The second decision was taken, in the form of a letter of dismissal, on 3 April 2018 by the FIP President and Secretary General on behalf of the FIP Board of Directors. It is this second decision that the Appellant challenges.
57. The Panel notes that the Respondent did not challenge the actual character of “decision” of the Appealed Decision, and rightly so. Indeed, in the Panel’s view, the letter of dismissal of 3 April 2018 (see *supra* at para. 32) presents all the elements of an appealable decision under established CAS jurisprudence – see e.g. 2004/A/659, 2004/A/748, 2005/A/889, 2012/A/2750 – as it clearly conveyed the FIP’s *animus decidendi* and, in particular, its will to affect in a binding manner the legal situation of the addressee (the Appellant), who until the notification of such letter had been exerting all the rights pertaining to his position as a FIP Board member and, on the basis of that letter, was prevented from continuing to exert those rights.



58. As said, the Appealed Decision was notified on 3 April 2018. The Appellant lodged an appeal at CAS on 20 April 2018, i.e. within the twenty-one days allotted under Article R49 of the CAS Code. It follows that the Appellant's appeal is admissible.

#### VIII. APPLICABLE LAW

59. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

60. According to Article 31.3 of FIP Bye-laws, “*Any such Arbitration shall be governed by Switzerland Law*”.
61. With reference to the choice of law set forth by the FIP Bye-laws, the Panel observes that Article R58 of the CAS Code – which has been accepted by the parties when they chose the CAS as the arbitral forum to settle their dispute – mandatorily restricts the parties' freedom to choose the applicable law by imposing them to apply primarily “*the applicable regulations*” (i.e. the FIP regulations) and only subsidiarily the law chosen by the parties (see CAS 2014/A/3527 at para. 57, CAS 2014/A/3850 at para. 51, CAS 2013/A/3309 at para. 70, and CAS 2013/A/3407 at para. no. 66). Accordingly, the choice of Swiss law made by the FIP Bye-laws is to be considered only within the framework of Article R58 of the CAS Code, with the consequence that it only concerns the subsidiarily applicable law.
62. Therefore, in light of the above provisions, the Panel must decide the present dispute in accordance with, primarily, the FIP regulations (such as, in particular, the Bye-laws) and, subsidiarily, Swiss law.

#### IX. MERITS

63. The Appellant requests the Panel to set aside the Appealed Decision and reinstate him as a vice-president and member of the FIP Board of Directors. The Appellant argues that on 12 October 2017 the General Assembly rejected the FEP's proposal to dismiss him from the FIP Board of Directors and that the Appealed Decision violated the FIP's own Bye-laws and Swiss law principles. The Respondent, for its part, seeks to uphold the Appealed Decision. The Respondent submits that the General Assembly properly voted on and passed the FEP's proposal on 12 October 2017 which *ipso facto* removed the Appellant from the FIP Board of Directors from that date.
64. In light of the Parties differing positions, the Panel will address the following questions:
- A. On what grounds was the Appellant dismissed from the FIP Board of Directors?

- B. What did the General Assembly decide on 12 October 2017 with respect to the FEP's proposal?
- C. If the General Assembly decided to reject the FEP's proposal, did that decision become final and binding, thereby precluding the FIP from dismissing the Appellant on 3 April 2018 on the basis of the vote taken on 12 October 2017?

**A. Grounds for the Appellant's dismissal from the FIP Board of Directors**

- 65. The Appealed Decision does not explicitly set forth the reasons for the Appellant's dismissal. However, the Panel observes that the Appealed Decision does make reference to the FEP's proposal, submitted at the General Assembly of 12 October 2017, to dismiss the Appellant from the FIP Board of Directors. Indeed, the Appealed Decision opens by stating that "[a]s you are aware, on 12-10-2017, the annual meeting of the International Padel Federation's General Assembly was held in Málaga... [at which] the [FEP] informed the members present that you had been dismissed from your position on the FEP's Board of Directors, setting forward the bases for the foregoing, and requested that a vote be taken to dismiss you from your position on the FIP's Board of Directors". Given this clear reference to the vote held in the General Assembly of 12 October 2017, the Panel finds that the grounds for the Appellant's dismissal from the FIP Board of Directors must be those relied upon by the FEP in its proposal to the General Assembly.
- 66. The question then becomes: on what grounds did the FEP request the Appellant's dismissal? According to both version of the minutes submitted by the Parties, in support of its proposal to dismiss the Appellant from the FIP Board of Directors, the FEP President distributed to the members attending the General Assembly the letter the FEP sent to the FIP in September 2017 (see *supra* at para. 7). In this letter the FEP explained that the Appellant's support for Catalan independence and the related referendum was the reason for dismissing him from the FEP Board of Directors and requesting his dismissal from the FIP Board of Directors because he could no longer represent Spain in that body.
- 67. The Respondent argues that the reference in this letter to the Appellant's support of the Catalan independence and the related referendum was only made to contextualize the matter and to specify the reason why he was dismissed from the FEP Board of Directors. It was not, in the Respondent's view, meant to be understood as the underlying reason for the FEP's request to dismiss the Appellant from the FIP Board of Directors. Respondent asserts that the FEP simply sought to remove the Appellant from the FIP Board of Directors on a more general basis.
- 68. The Panel finds the Respondent's position to be untenable, in particular due to the following phrase of the letter of September 2017: "[...] due to the importance of the seriousness of the foregoing [i.e. his political ideas], this Spanish Padel Federation and the Spanish Government's High Council for Sports wish to substitute him on the FIP with another person proposed by the FEP [...]" (emphasis added). To the Panel, this phrase is a clear indication that the FEP sought to dismiss the Appellant from the FIP

Board of Directors for the very same reason behind his dismissal from the FEP Board of Directors.

69. Furthermore, the Panel does not consider that the grounds for the Appellant's dismissal from the Board of Directors were based on Article 19.9(vii) of the FIP Bye-laws, which reads: "*The office of a member of the Board of Directors shall ipso facto be vacated in the event that a member ...: (vii) have been sanctioned or disqualified by any national or international sport organisation for a period higher than ninety (90) days*". Indeed, the General Assembly discussed and voted on the FEP's proposal based on what was formulated in the FEP's letter of September 2017. That letter from the FEP's President (see *supra* at para. 7) made no mention of a disciplinary sanction or of Article 19.9(vii) of the FIP Bye-laws; as stated above, the FEP President grounded his request against the Appellant only on the latter's political ideas. The FEP President also mentioned in the letter that he had "dismissed" the Appellant from the FEP's Board – "*I have been bound to dismiss Pere Hernández as a member of our Board*" or in the Spanish original "*me he visto obligado a cesar a Pere Hernández como miembro de nuestra Junta Directiva*" – but, certainly, he did not make any reference to a disciplinary proceeding or to the fact that the Appellant had been "*sanctioned or disqualified*" as required by Article 19.9(vii) of the FIP Bye-laws (a rule that the Panel understands as making a clear reference to a disciplinary sanction issued as outcome of a disciplinary proceeding, given that the terms "*sanctioned or disqualified*" have an established meaning in sports law).
70. It is irrelevant to the Panel that Article 19.9(vii) of the FIP Bye-laws was later mentioned in the discussions immediately preceding the vote on the FEP's proposal (see *supra* at para. 16) because such proposal was tabled in writing and clearly stated the grounds thereof.
71. In light of the foregoing, it is obvious to the Panel that the Appellant's dismissal from the FIP Board of Directors was actually based on his political ideas.
72. The Panel considers it highly doubtful that the FIP could dismiss the Appellant from its Board of Directors on said basis. The Panel observes that under Article 17.2 of the FIP Bye-laws, "*Election as a member of the Board of Directors shall be personal, and no Director shall be accountable to the Member from which he is drawn or any Regional Association in respect of anything done or omitted to be done by him in his capacity as such Director*" (in the Spanish version: "*El nombramiento de un director será a título personal y ningún miembro de la Junta Directiva tendrá que rendir cuentas ante ningún miembro asociado que le haya nominado o asociación regional, respecto a lo que haya hecho o dejado de hacer en su capacidad de director*"). At the hearing, both Parties and Mr. Patti confirmed that this provision means that a member of the FIP Board of Directors is elected in his personal capacity in order to represent and protect the interests of the international federation, not the national federation that proposed him as a candidate.
73. In addition, article III(v) of the FIP's Memorandum of Association states that the federation must not make any unfair discrimination and must follow Olympic Principles, while the last sentence of article 1 of the FIP's Articles of Association states

that the general and fundamental principles of the Olympic Charter are applicable. The Panel reminds in this respect that, within the “Fundamental Principles of Olympism” enshrined in the Olympic Charter there is the exclusion of any discrimination based *inter alia* on “political or other opinion” (para. 6).

74. Therefore, the Appellant’s alleged political stance would not seem to be a valid reason for his dismissal under the FIP Bye-laws. The Panel, however, need not resolve on whether the Appellant’s rights were violated in this respect, because the Appealed Decision must anyway be set aside for the reasons that follow.

**B. The decision taken by the General Assembly on 12 October 2017**

75. The Parties disagree on what the General Assembly actually decided on 12 October 2017. The Appellant stresses that the General Assembly rejected the FEP’s proposal and that this result was immediately and publicly announced by the Secretary FIP General and immediately became effective. The Respondent, contrarily, contends that, as the abstentions in the General Assembly were ultimately correctly counted, the FEP’s proposal must be retroactively considered to have been actually accepted on 12 October 2017 and the Appellant to have been *ipso facto* removed from the FIP Board of Directors on that date, irrespective of the fact that such result was only announced by the letter dated 3 April 2018.
76. The Panel is comfortably satisfied that, on 12 October 2017, the General Assembly decided to reject the FEP’s proposal to dismiss the Appellant as a member of the FIP Board of Directors. In reaching this conclusion the Panel observes that:
- (i) Both versions of the minutes of the General Assembly – which are documents prepared by the FIP Secretary General in cooperation with the FPI President and the FIP staff – unequivocally state that the General Assembly rejected the FEP’s proposal to dismiss the Appellant. The version of the minutes that the Appellant submitted, which Respondent has confirmed to be the true first draft of the minutes circulated to the FIP Board of Directors, reports the following: “*The General Assembly decides not to accept the proposal to dismiss Mr. Pere Hernández I Ripoll presented by the FEP*”. Likewise, the subsequent version of the minutes that the Respondent has submitted in this arbitration states that “[...] *the Secretary General informs the Assembly that it has been decided not to approve the motion submitted by the FIP concerning the request for the removal of Mr. Pere Hernández I Ripoll from the FIP’s Board position*”. Messrs. Patti and Marín Cao also confirmed this in their testimony, each of them declaring that before the discussion on the legal value of abstentions – which, as will be explained hereinafter, the Panel views as informal in nature – the FIP Secretary General had announced that the FEP’s proposal had not passed. This is not confirmed by Mr. Silva Oliveira’s testimony, who testified that no decision was taken by the General Assembly because of the discussions related to the legal value of abstentions, even though he admitted that he did not recall whether or not, prior to the discussions, the Secretary General announced the decision.

- (ii) Decisively, the Appealed Decision – which is an official communication sent from the FIP’s Secretary General and the President on behalf of the FIP Board of Directors (see *supra* at para. 32) – unequivocally states the following: “*Once the voting ended and still during the Assembly, the abstention votes were considered to be valid for calculating the votes necessary to reach a majority, and the participants were notified that the request filed by the FEP had not obtained sufficient votes in favor and therefore had not passed*” (emphasis added; in the Spanish original: “*Finalizando la votación y aún durante la Asamblea se consideraron los votos de abstención como válidos para el cómputo de los necesarios para alcanzar la mayoría, comunicándose a los participantes que la solicitud presentada por la FEP no había alcanzado los votos a favor suficientes y por lo tanto no había procedido*”). Furthermore, according to the same Appealed Decision, it was not until 3 April 2018, nearly six months later, that it “*turned out that*” (“*resulta que*”) the FEP’s proposal was ruled to have been approved by a simple majority.
- (iii) Article 16.22 of the FIP Bye-laws provides that decisions taken at a General Assembly shall “*shall [...] become operative forthwith*” (in the Spanish version: “*entrarán en vigor de inmediato*”), with some exceptions that are not relevant in the case at hand (see *infra* at para. 82 the entire text of this provision).
- (iv) The FIP Board of Directors, in point of fact, interpreted the General Assembly’s decision of 12 October 2017 as not dismissing the Appellant from the Board. Uncontested written and oral evidence proves that the FIP Board of Directors continued to treat the Appellant as one of its member until 3 April 2018; indeed, as testified by Mr. Patti, the Appellant participated in weekly Skype Board meetings until that date. The Appellant confirmed, without being rebutted, that he acted as a full-fledged member of the FIP Board of Directors during that time (even though, according to Mr. Patti, no formal resolutions were adopted or voted on throughout that period).
- (v) In view of the above important evidentiary elements, the Panel is of the view that the discussion occurred at the end of the General Assembly with respect to the legal value of abstentions was merely an informal discussion that did not alter the outcome of the vote as had been publicly announced to the General Assembly. The informal character of that discussion is corroborated by the fact that in the first version of the minutes – drafted by the Secretary General and circulated by the President a couple of months after the General Assembly – there is no trace of such discussion. Moreover, the Panel notes that all three witnesses – Messrs. Patti, Marín Cao and Silva Oliveira – testified that the outcome of such discussion was that the final result of the vote would be subsequently vetted with the assistance of a Swiss lawyer. In the Panel’s view, this outcome was too indefinite to amount to a cancellation of the publicly announced rejection of the FEP’s proposal (especially considering that the decision was immediately operative under the above quoted Article 16.22 of the Bye-laws).

- (vi) The Panel has taken note that Mr. Silva Oliveira testified that no decision was adopted by the General Assembly – see *supra* within this paragraph, at the end of point (i) – but, on the basis of the totality of the evidence, is persuaded that: (a) the preponderance of the evidence contradicts such testimony and proves that the attendees at the General Assembly heard the FIP Secretary General’s announcement and understood that the Spanish proposal was rejected, and (b) the discussion following such announcement was, as said, merely of an informal character. Hence, the Panel is not prepared to rely on the testimony of Mr. Silva Oliveira and to do away with all the significant evidence to the contrary. The Panel is convinced that, according to the principle of trust, which rests on art. 2, para. 1 of the Swiss Civil Code (“CC”), the attendees, such as the Appellant, could legitimately rely on the announcement of the result made by the FIP Secretary General as the actual decision taken by the General Assembly.
77. The Panel recognizes that under Article 16.21 of the FIP Bye-laws “*when calculating the number of votes required to obtain a majority neither abstentions nor spoiled ballot papers shall be taken into consideration*” (in the Spanish version: “*Cuando se calcule el número de votos requeridos para obtener una mayoría, no se tendrán en cuenta las abstenciones o las papeletas que no sean válidas*”). Therefore, in principle, the abstentions should not have counted in tallying the vote on the FEP’s proposal. Notwithstanding, the Panel finds it irrelevant, in determining what decision the General Assembly took on 12 October 2017, that the General Assembly did not abide by this provision of the FIP Bye-laws. The fact of the matter is that, as confirmed above, the General Assembly did count the abstentions in its meeting of 12 October 2017 and, as announced publicly immediately after the vote, rejected the FEP’s proposal. As will be explained *infra* at para. 79 *et seq.*, if a Swiss association adopts a resolution in violation of its own statutes or the law, any aggrieved member of such association enjoys the right under Article 75 CC to challenge the legitimacy of such resolution before the competent Swiss judge. However, for reasons of legal certainty, that remedy must be exerted within one month (or, alternatively, 21 days if there is a CAS arbitration clause), failing which the resolution becomes final and binding and may not be challenged any longer.
78. The Panel also finds it irrelevant, in determining what decision the General Assembly took on 12 October 2017, whether or not the FEP delegates who voted on the FEP’s were precluded from doing so pursuant to the mandatory Article 68 CC, which reads “*Each member is by law excluded from voting on any resolution concerning a transaction or dispute between him or her, his or her spouse or a lineal relative on the one hand and the association on the other*” (and in the official French version: “*Tout sociétaire est de par la loi privé de son droit de vote dans les décisions relatives à une affaire ou un procès de l’association, lorsque lui-même, son conjoint ou ses parents ou alliés en ligne directe sont parties en cause*”). The fact of the matter is that the General Assembly did allow the FEP delegates to vote and counted their votes in reaching its decision on 12 October 2017. In any case, the Panel is doubtful that the mere fact the FEP proposed the Appellant’s dismissal would create a conflict of interest within the meaning of Article 68 CC and disqualify the FEP from voting on its own proposal.

**C. The General Assembly's decision of 12 October 2017 was final and binding**

79. Under Swiss law, as already mentioned, a decision by a Swiss association may be challenged before the Swiss judiciary pursuant to Article 75 CC, which so reads: “*Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof*” (the official French version reads: “*Tout sociétaire est autorisé de par la loi à attaquer en justice, dans le mois à compter du jour où il en a eu connaissance, les décisions auxquelles il n’a pas adhéré et qui violent des dispositions légales ou statutaires*”). Therefore, any association member who has not voted in favour of a decision has a mandatory deadline of one month to invoke a violation of the law or of the statutes of the association.
80. Alternatively, if the Swiss association is a sports federation that has accepted the jurisdiction of the CAS, the association member has 21 days, or the different deadline provided by the association statutes, to appeal the decision of such sports federation (Article R49 of the CAS Code).
81. As previously mentioned, the General Assembly decided on 12 October 2017 to reject the FEP’s proposal to dismiss the Appellant from the FIP Board of Directors. To this day, this decision remains unchallenged by any party. Only the Board of Director’s decision of 3 April 2018 was appealed against on 20 April 2018 by the Appellant.
82. Pursuant to Article 16.22 of the FIP Bye-laws, decisions taken by the General Assembly enter into force immediately:

*“Decisions taken at a General Meeting shall (unless provided in the relevant Resolutions or by this Constitution or any Regulations in respect of the international competitions of the Federation) become operative forthwith save that (and notwithstanding any other provision in the Constitution) Resolutions with regard to the acceptance of any application for Membership or for any increase or decrease of Class B votes, which shall become operative on 1st of January following the General Meeting”.*

In the Spanish version:

*“Las decisiones que se tomen durante una asamblea general entrarán en vigor de inmediato (a menos que se disponga lo contrario en las resoluciones pertinentes o en esta Constitución, o en cualquier reglamento de las competiciones internacionales de la Federación), con la excepción de (e independientemente de cualquier otra disposición de la Constitución) las resoluciones referentes a la aceptación de una solicitud de afiliación o un aumento o reducción de votos de clase B o C, lo que entrará en vigor el 1º de Enero siguiente a esa asamblea general”.*

83. Therefore, on 12 October 2017, the General Assembly’s decision to reject the FEP’s proposal entered immediately into force upon its public announcement, keeping the Appellant on the FIP Board of Directors. Since neither the FEP nor any other national

federation appealed the General Assembly's decision of 12 October 2017 within the time limits provided by Article R49 of the CAS Code or by Article 75 CC, the decision to reject the FEP's proposal has become final and binding— having a sort of *res judicata* effect – and may no longer be challenged, irrespective of the mistaken application of the FIP Bye-laws in counting the abstentions.

84. With the letter of 3 April 2018, the FIP Board of Directors, therefore, attempted to change a decision taken by the General Assembly that had already become final and binding and not subject any longer to challenges or litigation. The Panel finds it evident that the FIP Board of Directors did not have the legal authority to take such action and to dismiss one of its members. Indeed, the Panel observes that nothing in the FIP Bye-laws, including in Article 20 (“*Powers and Duties of Directors*” or “*Facultades y Obligaciones de los Directores*” in the Spanish version), or in Swiss law bestows such power to the FIP Board of Directors. Indeed, in accordance with Article 19.9(vi) of the FIP Bye-laws, a Board Member can only be removed from office by a valid resolution of the Council (delegates of all members assembled in a General Assembly), something which – as already indicated – did not occur in the case at hand.
85. In light of the foregoing, the Panel must set aside the Appealed Decision.

**D. Appellant's request to be “reinstated” to the Board of Directors**

86. The Appellant requests in his second motion for relief to be “*reinstated*” to the FIP Board of Directors (see *supra* at para. 47). In the Panel's view, the natural consequence of setting aside the Appealed Decision, as requested by Appellant's motion for relief no. 1, is that the Appellant was never removed from the FIP Board of Directors. It follows that the Appellant's motion for relief no. 2 is moot.
87. As mentioned *supra* at para. 43, at the hearing the Respondent's counsel informed the Panel that there is currently no functioning FIP Board of Directors, since all of its member either resigned or were dismissed. Putting aside the fact that the Panel does not have any proof of this alleged cessation of the FIP Board of Directors – at the date of the hearing, according to the Commercial Registry of the Canton of Vaud (a document available in the public domain and that was shown during the hearing), the FIP still had a Board of Directors, which even included the Appellant –, it is beyond the scope of the Panel's power of review to determine what effect, if any, the subsequent cessation of that organ may have on the Appellant's position at the Board.
88. The Panel also observes that the Appellant requests to be reinstated as member of the Board of Directors *and* Vice-President. Such request is also moot. Indeed, as evident from the Commercial Registry of the Canton of Vaud, apart from the President, Secretary General and Treasurer, all other members of the FIP Board of Directors are listed as administrative vice-presidents (in the French original: “*admin. vice-président*”). Therefore, the Appellant as a member of the FIP Board of Directors was legally never removed from his position as FIP Vice-President.



**E. Further or different motions**

89. All further or different motions or requests of the Parties are rejected.

**X. COSTS**

90. Article R64.5 of the CAS Code provides:

*“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties”.*

91. In exercising its discretion with regards to the costs and contribution the Panel decides as follows. Considering that the Appellant’s appeal was fully upheld, the Panel finds that Respondent shall be responsible to pay the full costs of the proceeding, as will be determined by the CAS and notified to the Parties in a separate communication. Additionally, in light of the activities carried out by the Appellant in these proceedings, the Panel deems it fair to hold Respondent responsible to contribute CHF 10,000 towards the Appellant’s legal fees and other expenses in connection with this arbitration.

**ON THESE GROUNDS**

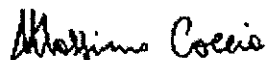
**The Court of Arbitration for Sport rules that:**

1. The appeal filed by Mr. Pere Hernández Ripoll on 20 April 2018 is upheld.
2. The decision of the *Federación Internacional de Pádel* dated 3 April 2018 is set aside.
3. Mr. Pere Hernández Ripoll is declared not to have been removed from his position as a member of the Board of Directors and Vice-President of the *Federación Internacional de Pádel*.
4. The costs of this arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne entirely by the *Federación Internacional de Pádel*.
5. The *Federación Internacional de Pádel* is ordered to pay Mr. Pere Hernández Ripoll a total amount of CHF 10,000 as contribution towards the expenses incurred in connection with this arbitration.
6. All further or different motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 19 February 2019

**THE COURT OF ARBITRATION FOR SPORT**



Massimo Coccia  
President of the Panel