

**CAS 2014/A/3516 George Yerolimpos v. World Karate Federation**

**AWARD**

issued by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: The Hon. Michael Beloff M.A. Q.C., barrister in London, United Kingdom

Arbitrators: Mr Jean-Philippe Rochat, attorney-at-law in Lausanne, Switzerland

Mr José Juan Pintó, attorney-at-law in Barcelona, Spain

in the arbitration between

**Mr. George Yerolimpos**, Greece

Represented by Mr. Antonio Rigozzi, Lévy Kaufmann-Kohler, Geneva, Switzerland

-Appellant-

and

**World Karate Federation**, Madrid, Spain

Represented by Mr. Jorge Ibarrola, Libra Law, Lausanne, Switzerland

-Respondent-

## **I. Introduction**

1. This is a story about a power struggle within an international sporting body.
2. The Appellant, a citizen of Greece, is the former General Secretary of the World Karate Federation (“WKF”).
3. The Respondent is the World Federation governing the sport of karate, with its headquarters in Madrid (Spain). Its President is and was at all material times Mr Antonio Espinos (Mr Espinos’), a citizen of Spain.
4. The Appellant appeals the decision issued by the WKF Appeal Tribunal on 6 February 2014 (“the AT decision”) upholding the first instance decision issued by the WKF Disciplinary Tribunal on 30 October 2013 (“the DT decision”) and imposing upon the Appellant the disciplinary sanction of suspension of membership for six months, to expire on 30 April 2014.

## **II. Background Facts**

5. The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions of the parties, the evidence produced, and the hearing held on 7 August 2014. Additional facts may be set out, where relevant in connection with the legal analyses.
6. Since its official recognition by the IOC in 1999 following the election of Mr Espinos as WKF President, WKF has campaigned for the introduction of Karate in the Olympic summer programme.
7. In its first campaign for inclusion in the 2012 London Olympics, Karate obtained a simple majority of IOC’s members’ votes but not the two thirds majority required for such introduction.
8. In its second campaign for inclusion in the 2016 Rio Olympics, Karate led on the first round of voting, but in the end was out-voted by golf and rugby sevens.
9. On 29 February 2012, Mr Espinos emailed members of the WKF to inform them that he had for the third time engaged the Spanish firm X. as Olympic relations manager to conduct the campaign for Karate’s inclusion in the 2020 Tokyo Olympics entitled “The K is on its way” despite its involvement in the two previous unsuccessful campaigns.
10. In an email dated 12 February 2013 to Mr Espinos, the Appellant made it clear he was critical of certain aspects of the third campaign relating to the use of social media, and

the role that X. and Y., a campaign adviser, also selected by Mr Espinos, played in it. Z., an IT specialist employed in WKF's Athens office corroborated the Appellant's discontent with X.

11. On the same date Mr Espinos responded to the Appellant stating, inter alia, *“Your relationships with Y. must stay as always. He is just the messenger and we cannot forget that he is on our side. What we want is to unite forces and not split them. The situation is not going in the wrong direction. We have bad figures and have to improve them...” I have always told you that we need to address the issue of the website, the community manager etc. and I have offered you to outsource it sooner or later this has to be done”.*

12. On 13 February 2013 the Appellant emailed Mr Espinos stating, inter alia:

*“I didn't want to interfere in the process of X. and Y. until now in order to express my full confidence to you and only to you, staying in the shade, but now I feel that the situation is going in a wrong direction with wrong advisers and propositions and I want to express some points which you must take into account for a better design and smooth operation.”*

13. Karate was amongst the eight sports shortlisted by the IOC Olympic Programme Commission for the Tokyo Olympics. However, on 29 May 2013 following a presentation in St Petersburg, it was outvoted by one of the other short listed sports – baseball/softball – and therefore not retained among the three sports selected by the IOC Executive Board. The promotional video of ‘the K is on its way’ excited some-but certainly not universal-derision. The WKF's presentation was commended by Mr Jacques Rogge, then IOC President.

14. On 31 May 2013 Mr Espinos sent a circular email to WKF officials saying:

*“Dear all, I want to thank you for the support and for your encouraging messages received in these sad days after the IOC decision. For all of us it has been really tremendous to see that our hard work has not received the reward that we were all expecting.*

*I want in particular to acknowledge and thank the work support and loyalty of the General Secretary that has been shared together with me these not so good days in St Petersburg. The same for the rest of the whole WKF team that travelled to Russia ....).*

*Now it is time to settle down, to recapitulate and to see, and not only at WKF level, how to face the future, what are the right decisions to be taken and which is the best direction to follow. For this I count again on your support, hour guidance and your advice...”*

15. On the same day the Appellant responded by e mail to Mr Espinos, copying it into other senior WKF regional representatives in the following terms:

*“Dear Mr President*

*Thank you very much for the privilege to participate with you in the 2020 Bid Team and I thank all the Team for the excellent cooperation and the unique performance at St Petersburg. “The K is on its Way”, our support is very strong and the Olympic task is one of the WKF projects and nothing more. I fully agree with you that we need to focus on the “way of the K” or “The K Way” and continue developing the amazingly beautiful sport. I can assure all colleagues in the WKF EC that must be very proud for our sport as it is well understood to everybody that the K is by far the best candidate for 2020 although it was not selected for the short list for IOC politics.... We have a lot to do for our sport and you have all my support.*

*I take the opportunity to inform all the EC members that today in the election of the Sport Accord Presidency, the WKF candidate, Mr Vizer, were elected as new Sport Accord President and the WKF will play a main role in the up and coming sports reconstruction in total. Soon you will be informed of the changes which will put Karate in the centre of the changes and in high privilege position”.*

The Appellant asserts, but Mr Espinos denies, that this e mail was solicited.

16. On 23 June 2013, the Appellant emailed the WKF Treasurer, (hereinafter “A.”), saying *“The problem is bigger than I expected, “I am leaving now from Jakarta (Karate 1) where some leaders of AKF invited me in a breakfast and where I received a lot of questions about the Olympics, our campaign, also when are the next election WKF.” What Espinos will do?*

*“Where are we going now”? etc. I feel very uncomfortable with some questions....but more than this with some comments. My understanding is that a lot of people are speaking around and not only these Presidents of the present NFs..... and this situation is affecting all of us more and more. My understanding also is that if Asian people ask these kinds of questions in such a direct way this is very strange at a minimum. Their culture has nothing to do with direct questions and comments. Tomorrow afternoon upon my return I will phone you in order to discuss the situation.”*

17. Shortly after such a call took place. It is common ground between the Appellant and A. that the Appellant then raised questions about the financing of the 2012 campaign and sought information about it, although their recollections are not at one as to whether he had also done so previously. During their discussion, according to A., the Appellant used the phrase “I have it” which A. interpreted to mean that he had the support to topple Mr

Espinos. A. said that the Appellant actually had the information that he sought, but admitted that he did not make that obvious response to the Appellant's enquiry.

18. The Panel's understanding from the evidence overall is that whereas the headline figures were shared by the President with, inter alia, both the Appellant and the Treasurer, and also that the WKF Annual Report contained a single page, including IOC expenses, of financial information out of forty pages overall, what was not made available at any time to the Appellant was the underlying documentation.
19. On 22 July 2013, Mr Espinos sent to the WKF-EC a draft letter intended to be sent to all NF's members and inviting comments. It stated, inter alia:

*"I have considered it convenient to call for an extraordinary congress during the next world junior and cadet championships in Guadalajara with the single point in the Agenda "Report to the President" and where I intend not only to inform you about the general situation but also to receive your active feedback that will allow me an improved leadership of the WKF. The activity and the facts during 2013 have been relevant enough to decide me not to wait until the ordinary 2014 Congress and therefore to hold this extraordinary meeting".*

20. On 22 July 2013 the Appellant immediately responded:

*Dear Mr President and Dear Friends,*

*I support the idea to be called an extraordinary congress if this congress will give us something. To be more specific, I don't believe it is worth to call an extraordinary congress if this congress will give us something. To be more specific I don't believe it is worth to call an extraordinary congress in order to be given only a report. I believe that a possible congress like this must have a main task, the WKF members expressed their confidence to us, nothing else.*

*Dear Mr President and Dear Friends next year we will have general elections and I fully believe that this will come one year earlier and will not be a problem. In the opposite it will be a clear message to everybody that they can decide for their future and we care for the Karate future and not for our positions. If we decide to call an extraordinary congress then do it in the correct way. In order to prove that I mean what I mention I am ready to present my resignation to the GA in order to facilitate the progress.*

*I strongly believe that we must first be frank with ourselves protecting our dignity and more to give our members the opportunity to decide what direction they want with a fresh mandate to the Executive Board arising.*

*If this is not the case I don't feel the need for an extraordinary congress without substance."*

21. It is clear from the other responses to Mr Espinos's email that the Appellant's demand for a less restricted agenda at any Congress was not a solitary one.

22. In an email of 26 July 2013 B., President of the French Karate Federation, took a distinctive position, stating, inter alia:

*"I am not for the organisation of an extraordinary congress in Guadaljara and I think we should rather come together in an executive committee and discuss all about past and future problems. Then after that we could choose together the best communication that we would suit for our plans."*

23. On 30 July 2013 Mr Espinos emailed the WKF-EC stating, inter alia:

*"Thank you for your very active involvement in this issue. I take this communication from B. below as one that could help to summarise the different points of view. In the meantime I will start preparing a plan for presenting to the EC and also I have the intention to call for an Executive Bureau meeting as soon as possible to keep on working on this and other issues.*

*This last week has been rather clarifying and many things and many things are now clear enough to allow me to take the relevant decisions that the WKF President has to take in order to preserve the unity of the Federation. I can assure you that this will be my first priority and I will not spare any effort to preserve this unit. I know that some tough measures will have to be taken soon but I am very clear that this is one of my main responsibilities. The overwhelming support of the EC I always felt also this opportunity gives me the light and renewed energy to do so.*

*The WKF is a big federation and a very well organised body. This has been made clear once again in the recent world games celebrated in Calais (Colombia) where karate participation has achieved a great success. Internal and external and also the Colombian Karate Federation, to whose President, C., I want to once more express once more my thanks and my congratulations. Again the WKF has been showing as a model federation between the participating IFs."*

24. On 1 August 2013 Mr Espinos called a meeting of the WKF Bureau for the last part of August, stating in an email:

*"The last developments indicate that this is rather convenient and a number of decisions have to be taken and also some preparations before restarting the sporting session in September. The meeting will take place in Madrid on 25 August."*

25. On 1 August 2013 the Appellant sent an email to A. copying it to all Executive Committee Members. It provided in material part:

*“As General Secretary of the World Karate Federation I would like to make a formal request for a detailed breakdown of expenditure in all matters relation to the WKF Olympic Campaign of 2010/13 as in my repeated telephone questions to you I had no answer. In addition, I would be grateful if you could arrange to send me a copy of all contracts, in particular media contracts and the names of the signatories of those contracts.*

*I wish to establish who authorised those companies to act on behalf of WKF and whether the decision to engage their services was taken in a fair and transparent manner. Can you inform me what budget these companies were allocated and by whom. As Treasurer I assume you will have been given copies of this documentation for your accounting process.*

*I have asked the President for information relating to the campaign and I am very frustrated at the lack of cooperation I have received so far and therefore I am making this formal request to you as WKF Treasurer.*

*I am of the opinion that serious questions have to be answered not least why the President went against professional advice given to us at the London Olympics in 2012 and use an inexperienced Olympic bid, Spanish company to produce a widely criticised promotional video for our IOC presentation in St Petersburg. A serious misjudgement in my view and a decision that undoubtedly (sic) contributed to our failure.*

*As General Secretary I wish to distance myself from the decision making process that has been taken in relation to the campaign. Decisions, I believe, when unveiled, will reveal a pattern of serious mismanagement by the President that ignored the executive consultation.”*

A. described this vividly as a “dirty manifesto” designed to strengthen the Appellant’s position in his battle with Mr Espinos.

26. On the same day, i.e. 1 August 2013, the Appellant sent another email to the Presidents of all Karate National Federations informing them about his previous email to the WKF Treasurer. Such second email was also copied to all WKF Executive Committee Members. It read in material part:

*“Dear President*

*I copy to you my email to the WKF Treasurer for your information as I received a lot of questions from our members as concerns the Olympic bid campaign for the inclusion of our sport in the Olympic programme.”*

27. On 2 August 2013 Mr Espinos emailed the Appellant (“the revocation letter”). It stated, inter alia:

*“Dear Mr Yerolimpos*

*As a consequence of your last and surprising actions and behaviour showing a clear and evident lack of responsibility in the performance of your duties as Secretary General of the WKF that led me to a total loss of confidence in you and in order to preserve the coherence and smooth running of this Federation I inform you based on the statutory attributions that Article 14.7 is conferring to the President, my decision to revoke you in the position of Secretary general of the WKF. This decision is effective from the moment of reception of this communication.*

*Also I am requesting you to immediately proceed to transfer to the WKF headquarters office in Madrid all the documents you have belonging to the WKF, including all electronic files and website access (wkf.net).”*

28. On 2 August 2013 Mr Espinos emailed the WKF EC stating, inter alia, “attached you will find the letter I have just sent to (the Appellant) re the emergency situation created by his last actions and also his yesterday’s letter to the Treasurer and then to all WKF NF members which decided me to take this painful step, very painful at the personal level but necessary to protect the WKF that I have the honour to preside.

*This decision taken in the light of Article 14.7 of the WKF statutes is effective from now and will be on the Agenda of the next EC meeting for ratification following Article 13.8 of the said statute. The Executive Bureau will meet in the next weeks and will deal with the day to day necessary decisions to be taken; you will be kept duly informed.*

*I am very sorry that (the Appellant) decided to take this direction. He did not take into account that as General Secretary he could not and therefore it would have been much better to have resigned from the position instead of using it for personal reasons and not taking into account that the WKF general interests were his priority as Secretary General.*

*I will now actively start the search for a new Secretary General and I will hopefully be in a condition to propose to the EC .in its next Guadalajara meeting.*

*Thank you once again for your continued support.”*

29. On 2 August 2013 Mr Espinos sent an email to all WKF/NF members stating, inter alia:

*“Dear President,*

*Thank you for the overwhelming expressions of support that I have received. You can rest assured that the WFK Olympic Campaign has been a model and as such it has been understood by a vast majority of NFs and members of the Olympic Family, and has*

*given an unprecedented worldwide visibility for Karate. I have been, therefore, really surprised by this letter of the General Secretary where he is suddenly taking distance from the process. He has been part of the campaign and the Team from the very beginning to the very end and has been actively present in the coordination meetings with the company as well as in the presentations and other activities where he has always, as has the rest of the Team, praised the very efficient and efficient work done. This has nothing to do with not having been shortlisted. Those are the literal words of the General Secretary. After the last presentation in St Petersburg "Everything well done". "Karate was the best" etc.*

*Everything in the WKF has, as always, been done in a clear and transparent way. The GS has been and is not only aware of every single detail of every single detail but part of it. From the very beginning it has had all the information of everything in the relationship with the whole campaign. Can anybody believe that he now claims about "lack of cooperation of President"? Also the other members of the WKF Executive Bureau has been punctually informed and involved in all details. Also with the EC that will, course, as always be reported in the next meeting and the same with Congress*

*This sudden change of (the Appellant) for which position of General Secretary I proposed him in 2010, constitutes a serious breach in the necessary relationship of confidence with the President. He has not forwarded me a single phone call nor an email before sending his communication of yesterday below.*

*All this has created a very risky and dangerous situation for the smooth running of the WKD and in order to preserve the day to day running of the WKF and the application of Articles 14.7 and 13.8 of the statute I have decided to revoke the position as WKF General Secretary of (the Appellant). . As a consequence, ('the Appellant') is not any more the General Secretary of the WKF and of the EKF (European Karate Federation). This decision has just been communicated to (the Appellant) and is already effective. The Assistant General Secretary with the main support of the WKF HQ office will take over the secretarial duties until the appointment of a new General Secretary by the EC upon my proposal. The same for the European Karate Federation (EKF)..... Thank you again for your continuing support....*

30. On 5 August 2013 the Appellant sent another email to all Karate National Federations, stating, inter alia:

*"Dear President*

*The WK/EKF President is acting completely illegally and put the WKF, EKF and Karate on a very dangerous path. In Karate we have democracy and not the dictatorship of one. I have all rights to ask questions and have all rights to express my opinions. In the WKF/EKF I represent you and not myself. I deny to accept this illegal decision of a*

*WKF/EKF President. I am elected at the last congress which honoured me with the highest number of votes and I am also elected General Secretary from the EC unanimously. Only the body who elected me can replace me (Article 13.8 and 12 of our statutes) in a formal EC meeting and after a detailed discussion on the matter where I have the right to express my position and with a secret vote as the issue is personal. Until then I remain in my position as General Secretary serving the WKF in the best way as I did the last sixteen years. I renew my request for the financial report I asked of the Treasurer and I reserve all my rights for any damage that may be caused to my personality with actions or decisions that have already been taken or will be taken. For your information I expressed a lot of times my full disagreement of the way the campaign was going and the plan of the campaign company and I did also in writing to the President last February. But because the bid was on the way I was told nothing, I did my best to support the campaign as I didn't want to damage our effort. Now it is different, we need to speak frankly, I am ready to take all my responsibilities but not the responsibilities of others. For your information also I wasn't present at any of the meetings the President did with the IOC at any level. I had and I have no knowledge how much and to whom we pay for the campaign. It is my duty and right to ask is it also your right to know. I also asked a lot of times the President and the Treasurer to give me the size of what we spent in the campaign and the answers were respectively "a lot" and "I don't know. Ask the President" It is an unbelievable and unacceptable situation which I don't accept as it is against my dignity and my principles. I am sure also against yours. I am in the unpleasant position to withdraw my confidence to the WK/EKF President and I call him to resign immediately. He should have the dignity to do it after three failures in the Olympic Games and stop damaging Karate only in order to keep his position. Karate is above the personal interest and it is time for decisions and responsibility."*

31. On 6 August 2013 the Appellant wrote to his Asian colleagues *"In the last few days it has become obvious that the President's decision to remove me from the position of General Secretary of the WKF and EKF are not only illegal but also divide the whole organisation politically. I advised him of his intention to challenge the decision before the Court of Arbitration for Sport."*
32. Mr Espinos's action had many supporters (17 out of 22 EC members). Among the supporters was A. who on the next day 6 August 2013 emailed the President, *"I believe I was the first to answer"*.
33. On 13 August 2013 Mr Espinos proposed an electronic vote pursuant to Article 13.20 of the WKF statutes to ratify the revocation decision.
34. On 14 August 2013 Mr Espinos announced that the electronic votes had produced 16 votes in favour, one vote against and no abstentions, causing the Appellant to withdraw the appeal he had made to CAS on 8 August 2014.

35. On 25 August 2013 there was a meeting of the Executive Bureau including Mr Espinos, the Treasurer and the Acting General Secretary and the Sports Commissioner (B.).

Item 5 stated *“The President outlined the information he had regarding the outgoing General Secretary, specifically relating to sport accord and the IOC”*.

Item 6 stated *“In relationship to the recent actions of (the Appellant) on 1 and 5 August 2013 when he was the WKF General Secretary, the EB decided to transfer all the information on the case to the DLC Chairman”*.

### **III. Proceedings below**

36. On 26 August 2013, Mr Espinos emailed the Chairman of the WKF Disciplinary Legal Commission (DLC) stating, inter alia, *“The WKF Executive Bureau at their meeting yesterday, 25<sup>th</sup> August, agreed on asking the WKF DLC the commencement of disciplinary proceedings against (the Appellant) based on his communications addressed the last 1<sup>st</sup> and 5<sup>th</sup> August to the WKF EC and NF affiliated to WKF (...) as he is considered to have infringed what is stated in Article 9 of the WKF Statutes.*

*Consequently, I inform you on the adoption of this measure so that you, as WKF DLC Chairman, can proceed accordingly.”*

37. Steps were duly taken to constitute a Disciplinary Tribunal.
38. At the same time an independent legal opinion was sought.
39. Under Part D of that Opinion “Merits of the Proceedings”, Article 9.2 of the WKF statutes was cited and described as a *“wide ranging provision that has the potential to catch behaviour that is otherwise not proscribed in other rules of the sport.”* (para 27)
40. Article 13.25.3 was also quoted and it was stated *“Mr Yerolimpos can be charged for failing to “maintain relationships with the continental federations, with the affiliated national federations and without outside parties” and not maintaining “a demeanour commensurate with the activity performed.”* (para 30)

*By emailing national federations criticism, defamatory comments about the President of the WKF he is acting in a manner not commensurate with his role of supporting the WKF, which includes support for the President and fellow Executive Committee members.*

*Additionally, his actions are contrary to his role of maintaining the other mentioned relationships. The WKF to effectively function and be authoritative in the world of karate, national federations must have confidence in the efficient and harmonious work of the WKF.*

*This confidence is diminished when someone holding such an esteemed position within the organisation, having been appointed to this function by his fellow Executive Commission and therefore being held to a higher standard of responsibility, openly expresses his dissatisfaction with the work of the President and accuses the President of incompetence in his role without any basis”.*

*There are numerous ways that (the Appellant) could have aired his grievances prior to making such publically unacceptable comments. However, these grievances were not addressed to the President (the Appellant) aired these views to the Executive Committee by email and then without waiting for a response forwarded his correspondence to the National Federations, thereby nullifying the purpose of communicating with the Executive Committee first.*

*“In my opinion the behaviour of (the Appellant) went against his role as an Executive Committee member and his function as General Secretary and had the potential to create great disharmony within the world of karate. Therefore, in my opinion, the disciplinary proceedings have a reasonable chance of resulting in sanctions against (the Appellant).*

*If it is decided to proceed with the disciplinary proceedings in accordance with Article 3 of the WKF DLR, the Executive Committee must make a request to the WKF DLC in order for it to act.*

*In my opinion the WKF DLC has jurisdiction over the present matter. Furthermore, based on the facts and the preceding analysis, I am of the opinion that (the Appellant) can be considered in breach of Article 9.2 of the WKF statutes and can be sanctioned accordingly but proportionately.”*

41. On 9 October 2013 the Disciplinary Tribunal of the WKF Disciplinary Legal Commission (‘DT’) opened disciplinary proceedings against the Appellant in relation to the e-mails of 1 and 5 August 2013. (‘the charging letter’). It stated, inter alia, that they had been opened as “*requested by the WKF Executive Bureau*” following the decision adopted in the meeting held on 25 August. It referred to the Appellant’s e-mails of 1 and 5 August and continued “*it is our duty to decide whether the remittance of these communications infringes the WKF statutes, especially Article 9 thereof, and whether you should be penalized as a result.*”
42. On 18 October 2013 the Appellant, having been refused an extension sent his observations to the DT.
43. On 30 October 2013 the DT handed down its decision. It referred (at paragraph 24) to Article 13.2.5 3(b) of the WKF statutes (at para 24) and to Article 9 of the WFK statutes (at para 25) and continued:

- “26. Pursuant to such rules a WFK member shall adopt behaviour and conduct which must be adequate and appropriate to his function.
27. Sending emails with copies to the Karate National Federations, criticising openly and outrageously the WKF President’s actions is contrary to the conduct which one should expect from the WKF Secretary General. It violates the specific support that each WKF member must supply to the sport of karate. It is not acceptable to issue a serious criticism like the one at stake against the WKF President relying on mere subjective, unproven and unsubstantiated considerations.
28. The fact of publicising such subjective considerations about the actions of the WKF President without having previously debated them within the proper instances in the present case within the WFK Executive Bureau and, in particular, the fact of transmitting such considerations to the Karate National Federations, may cause a loss of confidence and disaffection by the latter to the WKF or at least towards its President.
29. It appears to be an even more serious offence to circulate the said communications to the Karate National Federation defaming and accusing blatantly the WKF Treasurer on non-transparent and suspicious financial practices supposedly with the WKF President’s approval. (The Appellant) has failed even within his written defence submitted within the present proceedings have proved such facts or even to supply any possible evidence supporting them.
- (...)
35. The DT suspended the Appellant from membership of the WKF and its Executive Committee for six months starting from the date of the Decision itself.
36. To reach such a verdict the Panel has considered a mere warning or reprimand would be exceptionally lenient in view of the facts reproached to (the Appellant). Besides the DT Panel has discarded any sporting or financial sanction as well as the expulsion of (the Appellant) which certainly appears disproportionate. Therefore suspension is the appropriate sanction to apply in this case.
39. The DT decision also stated, in apparent contradiction to the charging letter, that it acted on its own initiative and not upon the request of the WKF EC or any third party.”
44. On 8 November 2013 the Appellant appealed the DT decision to the AT.

45. On 4 January 2014 the Appellant submitted an additional brief to the AT.
46. On 6 February 2014 the AT handed down its Decision. The AT decision stated in material part:

*“31. This Panel considers the contents of the emails at stake lacking any evidential support and is prejudicial and defamatory. Accordingly, the communication to the Karate National Federation has caused substantial harm to the sport of karate and to its bodies and representatives triggering doubt about the management of the ‘WKF’ without having addressed such issue beforehand within the Executive Committee. This amounts to a breach of the Secretary General’s duty to maintain appropriate relationships with WKF members with the appropriate conduct.*

*32. Therefore the Panel concludes that by sending the above email to such addressees (the Appellant) has acted against the harm and the behaviour and loyalty that were requested from him to look after the interests of the sport of karate and of all the WKF members and particularly has prejudiced two of the most important and essential representatives of the WKF, namely its president and its Treasurer. This clearly amounts to a violation of Article 9 and.13.25 (3) of the WFK statutes.*

*(...)*

*35. The AT Panel cannot concur with (the Appellant) when he adduces that he was within the duties of Secretary General to send to the National Federation to send to the National Federation the litigious emails. Putting forward such serious allegations and accusations could have been deemed legitimate if the Appellant had done it during the meetings of the Executive Committee or the Executive Bureau. But spreading worldwide such disparaging information which was not corroborated which was prejudicial to the WKF, its representatives and the whole sport of karate does certainly not appear admissible.*

*36. Equally the Appellant may not argue it was acceptable for a Secretary General to send an email to all the WKF National Federations accusing openly the General Treasurer of questionable, misleading and quasi-illegal economic practices which were allegedly taken place within the WKF President’s complacency without offering the slightest hint of evidence or even of credibility.*

*Therefore the AT Panel concurs with the Disciplinary Tribunal considers that the sending of the three emails constitutes a violation of Article 9.2 of the WFK statutes”.*

47. The AT decision, in endorsing the DT’s decision as to penalty, referred expressly to the principle of proportionality which it considered to be satisfied (para 37).
48. The AT decision stated explicitly at para 23 that the disciplinary proceedings were initiated by the DLC Chairman.
49. On 4 February 2014 a second set of proceedings was initiated against the Appellant alleging unlawful retention of WKF property which he had been asked to return in the last paragraph of the revocation letter.
50. On 25 April 2014 the WKF TDC suspended the Appellant for a year for such allegedly unlawful retention (CAS is seized of an appeal against that suspension too).

#### **IV. Written Proceedings before CAS**

51. On 26 February 2014, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”), the Appellant filed his statement of appeal.
52. On 17 March 2014 in accordance with Article R51 of the Code, the Appellant filed his appeal brief.
53. On 1 April 2014, in accordance with Article R37 of the Code, the Appellant filed a request for provisional measures.
54. On 14 April 2014 the Respondent filed its answer to the Appellant’s application for provisional measures.
55. On 25 April 2014 the Panel issued an Order on Request for Provisional Measures, rejecting the Appellant’s application on the basis that the suspension resulting from the first set of proceedings ended on 29 April 2014 and hence the matter was moot. (It was unaware of the imminent fresh suspension of the same date referred to above).
56. On 27 April 2014, the Appellant filed a new request for provisional measures pursuant to Article R37 of the Code.
57. On 28 April 2014, the Respondent filed its comments to the Appellant’s new request.

58. On 28 April 2014 the Panel rendered the operative part of an Order for Request for Provisional Measures, rejecting the Appellant's application.
59. On 1 May 2014, the Panel instructed the Respondent to produce the complete disciplinary file relating to the present matter.
60. On 15 May 2014, the Respondent filed such file.

**V. Oral Proceedings before the CAS**

61. On 7 August 2014 a hearing took place at the CAS Headquarters in Lausanne, Switzerland.

The Panel sat in the following composition:

President: The Hon. Michael J Beloff QC, Barrister in London, United Kingdom  
Arbitrators: Mr Jean-Philippe Rochat, attorney-at-law in Lausanne, Switzerland  
Mr Jose Juan Pinto, attorney-at-law in Barcelona, Spain

The Appellant was represented by Antonio Rigozzi of Levy Kaufmann Kohler, Geneva, Switzerland.

The Respondent was represented by Jorge Ibarrola of Libra Law, Lausanne, Switzerland.

The following persons gave testimony:

For the Appellant

E., General Secretary of the Hellenic KF by telephone from Athens

Z. by telephone from Athens

For the Respondent:

Mr Espinos by video conference from Kuala Lumpur

A. the WKF Treasurer

62. The parties and their representatives raised no objection to the composition of the Panel at the outset of the hearing and confirmed that their right to be heard had been respected during it.

**VI. Jurisdiction**

63. The parties agreed to refer the present dispute to the CAS subject to the Code.

64. Furthermore, the provisions of Chapter 12 of the Swiss Private International Law Statute (PILA) shall apply, to the exclusion of any other procedural law.
65. The Appellant relies on Article 21.12 of the WKF Statutes and Article 33 of the WKF Disciplinary and Legal Rules as conferring jurisdiction on the CAS. The jurisdiction of the CAS is not contested by the Respondent and is confirmed by the signature of the Order of Procedure by the parties.

## **VII. Admissibility**

66. On or after 6 February 2014 the decision appealed was communicated to the Appellant. On 26 February 2014 the Appellant filed his Statement of Appeal. The appeal is therefore admissible.

## **VIII. Law Applicable to the Merits**

67. In accordance with Article R58 of the Code, the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged.
68. According to the WKF statutes Article.1.2 the domicile of the federation is where the President is.
69. As the current seat of the WKF is Madrid, Spain, Spanish law is applicable subsidiarily.

## **IX. The Legal Instruments**

70. WKF Statutes – Article 9 provides:

9.1 *National Federations and individual persons affiliated to the WKF shall undertake to comply with statutory norms, rules and regulations and all provisions issued by the Executive Committee.*

9.2 *Members shall undertake work in complete compliance with the rules governing the sport, maintaining a demeanour commensurate with the activity performed.*

9.3 *Any member in breach of the conditions as per points 9.1 and 9.2 above shall be liable to disciplinary action as set forth herein.*

71. WKF Statute 13.25.3 provides:

*'The duties of a General Secretary shall be:*

- (a) *Execute the decisions taken by the Executive Committee ;*
- (b) *To maintain relationships with the continental federations, with the affiliated National Federations and with outside parties;*
- (c) *Draw up and take care of the minutes of the Executive Committee and of the Congress Meetings.'*

72. WKF Disciplinary Legal Code Article 11 provides:

*The disciplinary penalties are:*

- *Warnings*
- *Reprimands*
- *Sport penalties (allowing for a temporary ban from participation in competitions, courses, Dan gradings etc*
- *Financial penalties*
- *Suspension*
- *Expulsion*

73. The WKF DLR Article 3 provides that “*The DLC will act in disciplinary matters either at its own initiative or upon request of the Executive Committee or of a third party*”.

74. WKF Rules, Regulations and Conditions provides by way of General Index:

1. *Anti doping rules.*
2. *Anti doping commission rules*
3. *Conflict of Interest Regulation*
4. *Rules of Protocol*
5. *Regulation of Downgrades Homologation.*
6. *Disciplinary and legal rules*
7. *Organisational rules*
8. *Medical rules*
9. *Rules of the Sports Commission*
10. *Rules of the Referee Commission*
11. *Rules of the Technical Commission*
12. *Rules of the Athletes Commission*

## **X. The Parties' Contentions**

75. The Appellant contends:

- (1) The disciplinary proceedings were not correctly initiated.

- (2) The WKF Regulations and in particular Articles 9 and 13.25.3 of the WKF statutes do not identify a relevant offence.
- (3) The Appellant has committed no violation of Articles 9 and 13.25.3 of the WKF statutes.
- (4) Sanctioning the Appellant would, in any event, constitute double jeopardy (violation of the principle ne bis in idem).
- (5) The way in which the DT and AT Panels sanctioned the Appellant constitutes a grievous violation of the due process and the decision should be set aside without allowing the President and the Respondent the benefit of a curing effect of Article R57 of the CAS Code.
- (6) The sanctions handed down by the DT and AT Panels constitute violations of the principle of proportionality.

76. The Respondent contends:

- (1) The WKF disciplinary proceedings were correctly initiated.

Article 3 of the WKF DLR provides that “*the DLC will act in disciplinary matters either on its own initiative or upon the request of the Executive Committee or the third party. In this latter case the DLC Chairman will decide upon the acceptability of the request. A decision taken can be appealed exclusively for the TAS/CAS.*”

Articles 9 and 13.25.3 of the WKF statutes constitute a proper legal basis. The WKF Secretary General like any individual related to the WKF is expected to act in the best interests of WKF and preserve the unity with its members.

- (2) Both Article 9 and 13.25.3 of the WKF statutes identified a relevant offence
- (3) The Appellant violated his obligations of loyalty and discretion in breach of Articles 9 and 13.25.3 of the WKF statutes.
- (4) The six month suspension imposed on the Appellant does not breach the legal doctrine of ne bis in idem.
- (5) The disciplinary proceedings were for conducting the appliance of the Appellant’s due process rights. In any event under Article R57 of the CAS Code the Panel has full power to review and the law and thus to hear the case de novo.
- (6) The sanction was proportionate.

## **XI. Analysis**

77. The Panel will adopt the same structure as the parties and address the issues under the following headings:
- (1) Initiation of Proceedings
  - (2) Relevant Offence
  - (3) Violation
  - (4) Ne bis in idem
  - (5) Due process
  - (6) Proportionality
78. Before dealing with the grounds the Panel considers it necessary to provide a framework of the facts found by the Panel over and over above those uncontroversially set out in the background facts. The Panel have the advantage (not enjoyed by the WKF Tribunal) of sight and sound not only of the key actors in the developing drama, the Appellant himself, and Mr Espinos but also the Treasurer, as well as the opportunity to test their various versions of events where divergent against the contemporary documents.
79. It was suggested to the Panel that it is compelled to indict one or other of the key protagonists as liars. The Panel would prefer to use the phrase given currency in an English criminal trial two decades ago that each was guilty of some: "*Economy with the truth*". It is not always easy to distinguish between wishful but imperfect recollection and conscious distortion especially when, as both officers appeared to be, someone is convinced of his own virtue.
80. The Panel sees this as a story not of black and white but rather in shades of grey. Its reconstruction of the salient significant events is as follows:
81. In the wake of the 3rd successive failure of the WKF to have Karate included in the Agenda for Tokyo 2020, there was predictably, as Mr Espinos acknowledged disappointment in the ranks of the WKF and equally predictably a search for scapegoat. The third bid had been objectively less successful than the second; the same X. team favoured by Mr Espinos and the video presentation at the critical IOC meeting had clearly excited some criticisms.
82. Mr Espinos for his part, sought to deflect possible criticism and to entrench his own position by looking to the future. The emails of Mr Espinos and the Appellant on 31<sup>st</sup> May 2103 seem to the Panel to represent an effort by Mr Espinos to persuade the members to concentrate on the future rather than on the past and to persuade the Appellant to present a show of unity at the summit of the federation in which the Appellant acquiesced.

83. In Jakarta in June 2013 the Appellant ascertained that there was a degree of disquiet among some Federations and he became a spokesman for their concerns about a perceived lack of transparency in the way in which the president and his coterie conduct the Federation's affairs. Whether or not the Appellant's cryptic observation to A. "I've got it"; referred to support for his pursuit for information or his own possible promotion, matters not. It is clear to the Panel that the camaraderie which had characterised the relationship of Mr Espinos and the Appellant over a number of years was no more.
84. In summary the Appellant who had been a not wholly supportive ally of Mr Espinos during the campaign, was conscious of the latter's potential vulnerability and sought to exploit the situation to his own advantage, by magnifying his concerns – and the concerns of others – about lack of transparency on financial matters and the cause of the triple failure into an assault on Mr Espinos's own position. The Appellant was seeking to hold Mr Espinos to account for the recent campaign by enlarging the agenda at any Congress to assess responsibility for past failure rather than - as Mr Espinos wished - to concentrate on the next campaign only, and to open up the leadership issue. Mr Espinos was resisting any move which might imply criticism of him.
85. The Appellants letter of 23rd July 2013 contained a triple threat to enlarge the agenda at any Congress to assess responsibility for past failure rather than - as Mr Espinos wished - to concentrate on the next campaign only, and to open up the leadership issue.
86. Mr Espinos's response in his letter of 30<sup>th</sup> July 2013 referred to the need for "tough measures" which may or may not have been targeted at the Appellant but could certainly have been perceived by him to be so. It was an odd phrase to use if all that was intended was to take steps to strengthen any future campaign for karate to be included in the summer Olympics.
87. In any event, the Panel has no doubt that this letter was the trigger for the Appellant's circulation of the list which led to his peremptory removal from his post as General Secretary, and coupled with his later diatribe against the President for that removal, to the disciplinary proceedings.
88. The Panel is not disposed to accept that the Appellants letter of 1 August and the complaints it made, were devoid of any conceivable foundation. It would have been folly for the Appellant to make allegations about absence of information that could be swiftly rebutted by providing chapter and verse of his privity to precisely that information; and it is not without interest that Mr Espinos chose not to seek to rebut them but rather to act against their author. A. confirmed to us that he, although he the Treasurer, had never been shown the primary contractual material relating to X. until the EB meeting of 25 August 2013 and agreed that he could not readily explain why he (or others) would be satisfied merely with a description of what had been agreed. A. also accepted that he had

been unable to respond to the Appellant's post-Jakarta questions and had been constrained to deploy diversionary phraseology to seek to ally the Appellant's expressed concerns.

89. In summary it is the Panel's impression that Mr Espinos too readily identified the interests of the Federation with his own. Moreover he had a praetorian guard of key supporters among whom A. was clearly one; the latter's email of 6 August cannot be interpreted as other than a desire to gain credit for his loyalty. It was revealing that Mr Espinos actually suggested to the Panel that the Appellant had invented the criticism of Asian members in Jakarta.
90. Additionally Mr Rigozzi sought to introduce only at the hearing itself historic correspondence dating back to 2002/2003 from an African WKF EC member, D., vigorously criticizing Mr Espinos for earlier autocratic behaviour. Given its lateness, said to be excused on the basis that it had only recently come into the Appellant's possession, the Panel admitted it "de bene esse" only and invited both parties to make written submissions on its significance. It has in the event concluded that it would not be fair to seek to evaluate such criticisms or to inquire into why sanctions were not imposed on Mr Abdullah so many years after the event. The Panel is after all concerned with whether The Appellant was properly sanctioned, not whether Mr Abdullah was treated with undue leniency. It did, however, note that Mr Espinos claimed to have no recollection at all of the correspondence, which fortified the Panel's view that not only did Mr Espinos not readily accept criticism but did not even acknowledge that it had been made.
91. The Panel make it clear that it does not suggest in any way at all that Mr Espinos was guilty of any dishonesty or corruption, nor did the Appellant's letter of 1 August so suggest expressly or by implication. The highest it is put is that the record once disclosed might indicate "serious mismanagement." In the Panel's judgment, Mr Espinos simply liked to have things his own way and keep his cards close to his chest.
92. In summary it is also the Panel's impression that the Appellant for his part too readily used his and others concerns as a means of furthering his own political ambitions and contriving a coup d'etat and that his claim that he had no interest in himself succeeding Mr Espinos cannot be accepted at face value.
93. The Panel, however, must focus not on the motives of the key protagonists but upon the way in which Mr Espinos and the WKF repelled the Appellant's challenge to Presidential authority.
94. The Panel notes that it is not seized of the revocation of the Appellant's post as Secretary-General. Mr Espinos clearly enjoyed the power to do what he did, and his exercise of the power commanded almost universal support among the WKF EC. The Panel appreciates

that there was no prospect of Mr Espinos and the Appellant working as a united team in the light of the latter's actions.

95. The issue, however, is whether the Appellant could additionally be disciplined for those self-same actions.

**A. Initiation of Disciplinary Proceedings**

96. The Appellant had two points, one a point of construction, the other a point of principle.

97. As to construction it is common ground that disciplinary proceedings could only be initiated in one of three ways: by the Disciplinary Commission of its own violation; by the EC; and by a "third party." The Respondent relied on the first, alternatively the third i.e. the EB. The Appellant said that the EB could not qualify as a "third party" within the rule; if it did the express reference to the EC would be redundant since it too, in the respondent's taxonomy, could be classified as a "third party". The Respondent retorted that the concept of a "third party" only excluded (necessarily) the DC and EC but was otherwise not susceptible of limitation. The Panel is inclined to favour the Respondents construction.

98. However, more importantly, the point of construction does not require resolution, since although the charging letter states that the DC was acting "at *the request of the EB*" (a phrase which the Respondent in its answer somewhat optimistically and unconvincingly says "*could have been clearer*").

The record i.e. the minutes of the EB meeting of 25 August 2014 discloses no such request but only the provision of information to the DC. In the Panels view, subject only to the point of principle, the DC was acting of its own volition, as it was indisputably entitled to do under the rule.

99. The point of principle can be summarised in this way. The initiation of the disciplinary process, even if formally compliant with the rules, was fatally flawed because of the motive behind it; hence it was an "abus de droit" (a concept recognized in Spanish-as in EU - law); and if so, questions as to whether the Decision was defensible to not arise at all-there should have been no decision.

100. Mr Rigozzi mounted a formidable case that the initiation of the disciplinary case part of a series of incidents with a single object, the (metaphorical) extermination of the Appellant and his extrusion from any WKF (or EKF) role. He relied, inter alia, on the following matters: the apparent engineering by Mr Espinos of the disciplinary process, the calculation of the first suspension period so that the Appellant could not attend the next congress, the imposition of the second suspension (not revealed at the material time to CAS) so as to make any stay by CAS of the first suspension moot.

101. The Panel has little doubt that as from 1st August 2014 Mr Espinos was indeed determined to rid himself of a potential rival. Indeed he candidly stated in answer to a question from the Panel that he could not envisage himself and the Appellant serving together in the counsels of the Federation. However that of itself does not involve the conclusion that the disciplinary proceedings were abusive.
102. It is one thing to initiate proceedings which have no possible objective justification and for a motive other than to ensure compliance with the relevant law or rules. It is another to initiate proceedings which are based on arguably a breach of the relevant law or rules even with a collateral motive. The Panel does not consider that these proceedings fell on the wrong side of the boundary. The Appellant had overplayed his hand by his extravagant publicizing of serious allegations without warning. On the face of it, ignoring for present purposes whether the WKF statute actually proscribed such behaviour, which the Panel considers later- there was a case for the Appellant to answer. Mr Ibarrola suggested that the argument of abus de droit was the last refuge of the forensic failure. Whether that be so or not, it is always a difficult argument to sustain, and in all the circumstances of the present case the Panel finds it has not been sustained. The outcome of the disciplinary process may have suited Mr Espinos but he did not contrive it.

## **B. Relevant Offence**

103. It is well established that a sports governing body ("SGB") such as the WKF may impose disciplinary sanctions upon its members if they violate the applicable rules and regulations. The power "*to impose such sanctions is based upon the freedom of associations to regulate their own affairs*" (advisory opinion CAS 205/C/976 & 986 FIFA and WADA Para 25).
104. It is, however axiomatic that before a person can be found guilty of a disciplinary offence, the relevant disciplinary code must proscribe the misconduct with which he is charged. Nulla poena sine lege. It is equally axiomatic for the relevant provision with which he is charged to be in breach first in accordance with the contra proferentem rule will be strictly construed. Nulla poena sine lege clara. (CAS 207/0/1381 RFEC and Valverde v. UCI Para 61 CAS 205/C/976 986 FIFA & WAD Para 126). It is not sufficient to identify a duty; it is necessary as well to stipulate that breach of such duty will attract disciplinary sanctions
105. The Panel accepts that disciplinary provisions are not vulnerable to the application of that rule merely because they are broadly drawn. Generality and ambiguity are different concepts. The panel has little doubt that the WKF sought, incumbently with other sports governing bodies, to draft a disciplinary provision of a reach capable of embracing the multifarious forms of behaviour considered unacceptable in the sport in question. The issue however for the Panel is not whether the WKF had such intention but whether, if it did, it achieved it.

106. The Appellant was charged with a breach of article 9. That article was indeed the only serious candidate proposed to show that the conduct alleged against the Appellant was a disciplinary offence. It is notable that the charging letter does not itself indicate how Article 9 could apply to that conduct: it does not even identify the allegedly offensive conduct.
107. The Panel has already set out Article 9.2 above. The English version is manifestly awkward but both it (and the French version) are clear at least that the second limb of the sentence is ancillary to and not free standing of the first. The word “maintaining” in French “gardant” inexorably links the two. Hence compliance with the rule of the sport is a necessary but not a sufficient fulfilment of the duty imposed by the article. Since compliance with such rules but with an inappropriate demeanour would be an offence as would simple failure to comply with such rules.
108. It is, however, a *sine qua non* of the Article that a rule of the sport can be identified. The Panel accepts that the rules of the sport should not be narrowly construed to refer only to the rules of karate itself, but can be taken to refer to any of the rules listed in no less than 12 Categories in the WKF Rules, Regulations and Conditions. However Counsel for the WKF was unable to locate any rule within that list which could relate to the conduct with which the Appellant was charged, nor could the Panel in its own researches.
109. The dissection of the article into two separate obligations, first compliance with the rules of the sport, second maintenance of an appropriate demeanour in any activity performed founders on the structure of the article as already explained and falls foul of any concept, moreover, of legal certainty since “performed activity” has no sensible or predictable meaning unless referring to an activity to pursuant to the rules of the sport, previously referred to. There is no free standing duty to maintain an appropriate demeanour in whatever a person subject to the rules may do.
110. Neither the DT nor the AT in their respective decisions engaged in any depth or detail with the issues of construction which arose in the context of the two articles relied on.
111. The WKF answer before CAS referred alternatively to:

*“the general duty to act in the best interest of the WKF and to avoid any action that might harm or endanger its unity is also common sense especially for individuals occupying a leading position”.* (para 77)

That that is not even a paraphrase of the article but a re-writing of *it*. Common sense cannot make a disciplinary offence something which it is otherwise not.

112. Had Article 9.2 actually deployed the concept of a duty to act in the best interests of the WKF, the submission that there was at least an offence to which the Appellants alleged conduct could be tied would have force but that is not what the article provides.
113. In oral submission Mr Ibarrola ingeniously revived a reference to article 13, which had been referred to in both the DT and AT decision and sought to characterise the Appellant's conduct as displaying an inappropriate demeanour in fulfilling his duties of maintaining relations with international federations. Apart from the insuperable difficulty of describing the General Secretary's duties under Article 13.2 as part of the rules of sport, it is not possible to characterise objectively the exercise on which the Appellant embarked in the two e-mails, the subject of the charges, as a form of fulfilment of the duty under that provision. It was rather a criticism of the President of which, inter alia, the national federations were addressees.
114. The Panel were informed that Spain has adopted a code of good governance for sports federations which refers to a duty on EC members "to act loyally with respect to the federation to which they belong". Breach of such duty is not, however, made a disciplinary offence under the WKF statutes so that this provision of that code carries the matter no further

### **C. Violation**

115. The question of whether the Appellant should properly have been found on the facts to be in breach of any rule and, if so, whether subject to any, and what sanction, are thus moot. The Panel, however, because of first the importance of the issues; secondly out of respect for the excellent way in which the submissions were presented, thirdly against the contingency of an appeal on the Panels conclusion on the absence of any relevant offence in the WKF code ,will deal with them succinctly
116. The Panel wishes to emphasise the importance of protecting - of course subject always to the limits imposed by law - freedom of speech and the right to criticize in good faith those in positions of authority even if there may be errors of fact in the criticism; the jurisprudence of the European Court of Human Rights is indicative, and, in jurisdictions to which it applies, compulsive. *Reynolds v Times Newspapers* 2001 .2 AC 127 and the Strasbourg cases cited at pp.203-204. Whistle blowers can perform a valuable service in exposing mismanagement (or worse) in the affairs of sports governing bodies as in other areas. Nor is ambition to achieve (or retain) high office within a sporting governing body of itself ignoble.
117. The Panel also wishes to emphasise that such critics or aspirants for office must not only act within the law but must show self-restraint. The Appellant, by now clearly embarked upon a power struggle ignored the internal procedures open to him to ventilate any

grievances, said more than he needed to and was too swift to seek, in the Panel's judgment, to canvas support among the dissenting constituency. It was all but inevitable that his stringent comments would be transmitted to a wider audience than the addressees of his emails, and damages in consequence the image of the WKF Worldwide. The Panel does not suggest that he acted in bad faith any more than it levels such a charge against Mr Espinos. However, like Mr Espinos, his motives were mixed and to the extent that he was pursuing a proper agenda, went about it in far less than perfect way.

#### **D. Ne Bis In Idem**

118. The Panel repeats that is not seized of any appeal against the Appellants removal from his post. It believes, however, that, on the premise that such removal was justified, disciplinary proceedings were a step too far.
119. This does not, however, mean that if proceedings were commenced, that to impose any penalty at all would violate the principle ne bis in idem. The law recognizes a distinction between preventative and punitive measures. The former designed to inhibit repetition in the future of what is perceived to be unacceptable behaviour, the latter to impose sanctions for behaviour in the past. The fact that both measures arise out of a single incident or series of incidents is not to the point. Each was imposed by reference to a different provision, by a different person, (or body) and for different purposes. The fact that each caused damage to the Appellant is insufficient to evoke the principle.
120. In Valverde, the Swiss Supreme Court 4A 386/2010 of 3 January 2011 left open the question of whether and, if so, to what extent the principle applies to SGBs paragraph 93, but made it clear that if a particular act allows for disciplinary as well as administrative consequences, there is no violation of the principle if both are applied. (ditto 9.3.2.)
121. The revocation of the Appellant's role as Secretary General was preventative; the sanctions imposed by the WKF disciplinary organisation were penal. Operating the former did not inhibit operation of the latter.

#### **E. Due Process**

122. It is well established in consistent CAS jurisprudence that, given the scope of the Panel's powers under R57 and an Appellant's enjoyment of a de novo hearing, procedural irregularities before the body whose decision is the subject of the appeal retain no resonance.

123. The Appellant made certain criticism of the composition of the two WKF disciplinary bodies. Nonetheless he participated in their proceedings; and has the benefit of a de novo hearing.

#### **F. Proportionality**

124. As to proportionality, the Panel does not enter into the debate as to whether there is in substance as distinct from form, any distinction between the various formulae used by predecessor panels as to the tests to be applied to a reviewed of a sanction imposed by a sport's governing body. Suffice to say, that while on its face the Appeal tribunal have ploughed a middle course between expulsion and reprimand, in fact the 6 months was carefully calibrated to prevent the Appellant from attending a Congress where he might further have ventilated his objections to the way the WKF was run.
125. If any suspension was to be imposed at all, the Panel would have opted for no more than three months and would have indeed preferred a severe reprimand.

#### **G. Conclusion**

126. In the light of the fact that the Panel does not identify a relevant offence embracing the conduct with which the Appellant was charged (see under B above), the WKF Appeal Tribunal decision of 6 February 2014 must be set aside.

#### **XII. Costs**

127. In accordance with Art. R65.2 of the Code, the present proceedings shall be free except for the Court Office fee of CHF 1'000 which was paid by the Appellant and which is retained by the CAS.
129. Furthermore, as a general rule, the award grants the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings.
130. Having taken into account the outcome of the arbitration and the conduct and financial resources of the parties, as required by Art. R65.3 of the Code, and in light of all the circumstances of the case, the Panel also recognised that there is an apparent disparity of resources between any ordinary individual and a governing body. Nonetheless, the Panel is not enamoured of the Appellant's conduct either as described above or in the appeal where it found some of his evidence unconvincing. The Panel is consequently of the view that the Respondent shall pay to the Appellant a total token sum of CHF 1'000.-- for the Appellant's expenses incurred in relation to the proceedings.

**ON THESE GROUNDS**

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr George Yerolimpos against the decision rendered by the WKF Appeal Tribunal on 6 February 2014 is upheld.
2. The decision rendered by the WKF Appeal Tribunal on 6 February 2014 is set aside.
3. The present award is rendered without costs, except for the Court Office fee of CHF 1'000 paid by Mr. George Yerolimpos which is retained by the Court of Arbitration for Sport.
4. The World Karate Federation shall pay to Mr George Yerolimpos an amount of CHF 1'000 towards the latter's legal costs and other expenses incurred in connection with the arbitration proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 6 October 2014

**THE COURT OF ARBITRATION FOR SPORT**

Michael J. Beloff QC  
President of the Panel

Jean-Philippe Rochat  
Arbitrator

José Juan Pinto  
Arbitrator