



**TAS / CAS**

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

**CAS 2023/O/9541 International Biathlon Union (IBU) v/ Anders Besseberg**

## **ARBITRAL AWARD**

delivered by the

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Ms. Annett Rombach, Attorney-at-Law in Frankfurt am Main, Germany  
Arbitrators: Mr. Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in  
Hamburg, Germany  
Ms. Martina Spreitzer-Kropiunik, Judge in Vienna, Austria

between

**International Biathlon Union (IBU)**, Austria

Represented by Mr. Nicolas Zbinden and Mr. Adam Taylor of Kellerhals Carrard, Lausanne,  
Switzerland

**Claimant**

**and**

**Mr. Anders Besseberg**, Norway

Represented by Dr. Nobert Wess of WKK Law in Vienna, Austria

**Respondent**

## **I. THE PARTIES**

1. The International Biathlon Union (the “Claimant” or “IBU”) is the International Federation governing the sport of biathlon worldwide. The sport of biathlon combines cross-country skiing with rifle shooting. The IBU is based in Salzburg, Austria. In these proceedings, the IBU appears through the Biathlon Integrity Unit (the “BIU”). The BIU is an operationally independent and specialised unit of the IBU, which handles all integrity-related matters in the sport of biathlon.
2. Mr. Anders Besseberg (the “Respondent” or “Mr. Besseberg”), a Norwegian national, is the former President of the IBU, a position that he held from 1992 to 2018.
3. The Claimant and the Respondent are collectively referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. In 1992, the Respondent became the President of the at that time joint association of modern pentathlon and biathlon. In July 1993, the Respondent became the President of the newly founded IBU.
6. On 10 April 2018, the Austrian Federal Criminal Police raided the offices of the IBU in Salzburg, Austria, in connection with doping allegations.
7. On 12 April 2018, the Respondent stepped down from his position as President of the IBU.
8. In November 2018, the IBU External Review Commission (“ERC”) was established, chaired by Mr. Jonathan Taylor KC, in order to carry out a widespread and detailed investigation into corruption relating to the IBU, including as to improper Russian influence. In doing so, it liaised with the World Anti-Doping Agency (“WADA”) and with the criminal authorities in Austria and Norway.
9. On 3 November 2020, prior to the publication of the respective ERC report, the ERC gave the Respondent the opportunity to review the findings of the report in draft copy.
10. On 5 November 2020, the Respondent declined the invitation.
11. On 26 January 2021, the Respondent was notified by the ERC of the forthcoming publication of the ERC report on 28 January 2021 (the “ERC Report”).
12. On 28 January 2021, the ERC published its extensive findings in the ERC Report. The

ERC Report, having had “*unrestricted access to the IBU’s own electronic and physical files*”, identified “*evidence of systematic corrupt and unethical conduct at the very top of the IBU for a decade (2008 to 2018)*”. It concluded that the evidence established that the Respondent had a clear case to answer for breach of his duties under the IBU Constitution 2009 to 2016 (“IBU Constitution”), the IBU Disciplinary Rules 2009 to 2016 (“IBU Disciplinary Rules”) and the IBU Code of Ethics 2012 to 2016 (“IBU Code of Ethics”).

13. Following receipt of the ERC Report, and pursuant to Article 3 of Chapter E of the IBU Integrity Code 2021 (“2021 IBU Integrity Code”), the BIU commenced its own investigation into the Respondent’s behaviour as IBU President between 2008 and 2018.
14. On 25 April 2022, the BIU sent an initial notice (“Initial Notice”) to the Respondent, setting out the ethical violations that had potentially been committed by him, and the related facts and evidence, and it requested a response by 13 May 2022. In relevant part, the Initial Notice described the Respondent’s alleged misbehaviour as follows:

**“C. Receipt of gifts**

- 2.17. *Throughout the period from 2009 to 2018, the evidence collected demonstrates your acceptance of various financial benefits, including a watch with a value of approximately EUR 20,000 and regular hunting trips and trophies. You also received the services of prostitutes as a free benefit provided by others, and you placed yourself in various compromising scenarios arising out of your interest in the services of prostitutes provided by others.*<sup>6</sup>
- 2.18. *The benefits received appear to have been inappropriate, in their financial value, their regularity, the potential conflict of interest and/or perceived favouritism that their acceptance created, the lack of any concrete professional rationale for their provision, and the risk of the compromising of the IBU office of President that their acceptance created.*
- 2.19. *Furthermore, at the time that these events occurred, you should have been hardened against potential Russian bribery attempts, given your experience in 2008/2009 and in 2013 when Alexander Tikhonov attempted to bribe first Nicole Resch, with a jewellery box in return for not prosecuting Russian doping cases, and then Tore Bøygaard, with a EUR 500 note placed inside a wallet (as explained below). [...]*
  - (i) *Wristwatches*  
  
[...]
- 2.25. *The following section addresses the specific gifts of watches made to you.*
- 2.26. *In an interview with Norwegian police on 11 June 2018<sup>10</sup> (“**the Police Interview**”), you explained that you had received an Omega wristwatch of a red/orange colour that was relatively valuable, and that you had received it as a personal gift from Sergei Kushchenko on the occasion of the 100th IBU board meeting, at some point between 2010 and 2014. You explained that he was a very*

*rich Russian who was also a watch collector, and that he had a private watch collection worth many millions. You explained how you had seen a version of this watch at Geneva airport, after having received it from Mr Kushchenko, and that you had realised it was an expensive watch worth approximately EUR 20,000. You then asked Mr Kushchenko whether it was real gold, and he confirmed that it was. He stated that you should have such a watch because you were the president of the most important winter sport. Following this, you retained the watch.*

- 2.27. *In your written statement in the criminal proceedings dated 11 March 2019 (“the March 2019 Statement”),<sup>11</sup> you described this Omega watch gift and others of its sort as “absolutely common” in view of your role.*
- 2.28. *During the Police Interview, you explained that you had also received a watch from Alexander Tikhonov, in connection with a World Cup event in Holmenkollen. This watch had a blue dial. You were not sure of the name of the watch manufacturer but suggested that it was “Naprer” or similar. You admitted that “he was probably trying to grease me up there in Holmekollen with this used watch of his”<sup>12</sup>. Nevertheless, you accept that you retained the watch.*

(ii) Hunting trips and trophies

- 2.29. *In the Police Interview, you explained that whenever you were invited on hunting tours, you usually stayed in a hunting lodge, and that you did not pay either for the accommodation or for the physical hunt. You also explained that you regularly did not pay for trophies that you took away with you from these hunts. You provided examples, such as the hunting and trophy-retention of a bear, of a class 1 “capital” stag, and a wolf<sup>13</sup>.*
- 2.30. *You explained that you were regularly invited to hunts throughout the course of a year and that you usually accepted one or two invitations each year, in connection with the presidents or organising committees or individuals working in biathlon in the different countries.*
- 2.31. *You also explained that you had been invited to hunt in Russia, and that you had received trophies in connection with those hunts, including in the regions of Khanty-Mansiysk and in Tyumen, and including on the invitation of the local mayor or governor. You explained that you had hunted in each of these locations at least three times.*
- 2.32. *In the March 2019 Statement<sup>14</sup>, you stated that you had taken part in hunting trips in Germany, Hungary, Ukraine, Czech Republic, Slovenia, Slovakia, Austria, the USA and Russia, including at the invitation of political office holders.*
- [...]
- 2.34. *It therefore appears that you received numerous financial benefits in the form of free hunting trips and free trophies. The BIU also notes the pictures from the*

*Norwegian police of numerous hunting trophies displayed at your properties, and it does not believe that you have to date been asked to identify the source of each of these trophies, the value of each one, and whether each one was obtained at your own cost or at the cost of others. [...]*

(iii) Services of prostitutes

- 2.35. *In the Police Interview<sup>20</sup>, you admitted that you had used the services of prostitutes generally, including in the recent past. You stated that you hoped such matters would not become known to your family.*
- 2.36. *Firstly, you admitted receiving the services of prostitutes at your own expense. For example, in Salzburg, Austria, as recently as December 2017, your habitual practice would be to dial a telephone number and to pay cash to the woman in question on her arrival.*
- 2.37. *Secondly, you also admitted that you received the services of prostitutes in connection with and at the cost of Russian leaders and officials. In so doing, you received a financial benefit.*
- 2.38. *In particular, you admitted receiving the services of prostitutes from Sergei Kushchenko (or alternatively a member of the Russian organising committee) during a competition in Moscow between 2010 and 2014, when a Russian woman that you did not know knocked on the door of your hotel room, which led to sexual activity.*
- 2.39. *You also admitted having sexual activity with a Russian woman called Eva, including as recently as 2018, whom you had known for several years since a world cup event in Khanty-Mansiysk, who had received special accreditation to attend, and whose full name you did not know. Having first denied that she had a special relationship with any particular Russian official, you later admitted that you had liaised with IBU first vice-president Victor Maygurov in relation to Eva and whether she would be attending other biathlon events. You also admitted that you had only met her during official functions and that she had always been accompanied by other Russian officials. It is also noted that, during his interview with the ERC, Mr Maygurov denied knowing any woman named Eva and denied speaking to you at all on the subject of helping you to meet a woman and spend time with her during an event.<sup>21</sup>*
- 2.40. *You also admitted being offered the services of prostitutes by Evgeniy Redkin, including an episode at a World Cup event in Hochfilzen, when you went with him and two women up to an apartment, but were dissuaded by the presence of two unknown men in the apartment and the “type” of woman. There was also an episode, confirmed by phone records<sup>22</sup>, where Mr Redkin rang you and offered you the services of prostitutes with different hair and/or skin colour, in collaboration with Victor Maygurov. It is noted that, during his interview with the ERC, Mr Maygurov denied knowledge of any Russians providing the services of prostitutes to yourself.*

(iv) *In general*

[...]

- 2.43. *During the Police Interview<sup>26</sup>, you explained that you had received some gifts from the Russian Federation and that you had received some rather valuable gifts. In answer to a question as to whether you had received similar wristwatch gifts from other federations, you explained that you had received gifts from most federations. You explained that you had never found out the price of these gifts, but that they were gifts where the value was in excess of EUR 1,000. You explained that at your house there was an entire pile of presents, that you received gifts in relation to your 60th and 70th birthdays, and that individuals of various nationalities have even climbed up onto the podium at the end of an IBU Congress and presented you with gifts. You explained that some of these gifts would not have even been made known to the IBU.*
- 2.44. *Your conduct in this regard<sup>27</sup> appears to have been seriously out of step with accepted practice at that time within the IBU. As explained by Dr Jim Carrabre:<sup>28</sup> “In practice, however, only non-material gifts such as pennants or badges or, at most, a shirt were given and accepted by Executive Committee members, including myself, whereby this concerns openly presented gifts... In practice, however, only gifts of appreciation such as a jacket, a T-shirt or a bottle of wine were given as gifts. I have no perceptions among my colleagues on the Executive Board that high-priced gifts were accepted over and above this, nor did anyone ever mention anything of the kind in our discussions. This perception applies explicitly with the exception of Anders Besseberg.” He also added: “There was the possibility for all IBU representatives to report such gifts or gratuities that they would have considered improper.”*
15. On 16 May 2022, the Respondent provided a response to the Initial Notice, making procedural challenges, denying the allegations but making no response to the substance of the Initial Notice under reference to the ongoing criminal proceedings.
16. On 23 August 2022, the BIU replied to the Respondent’s response, rejecting the challenges made and offering a new deadline to respond to the substance of the Initial Notice.
17. On 12 September 2022, the Respondent made further procedural challenges but did not respond to the substance of the Initial Notice.
18. On 31 October 2022, the BIU sent a notice of charge to the Respondent (“Notice of Charge”), setting out the alleged ethical violations with which he was charged:
- “1.1. *By way of this letter (“the Notice of Charge”), the Biathlon Integrity Unit (“the BIU”) hereby notifies you that, following an investigation, it has concluded that you have a case to answer for violations of the IBU Constitution, IBU Disciplinary Rules and IBU Code of Ethics (in their respective editions 2009-2016), arising out of your conduct as IBU President in the period from 2009 to 2018.*

1.2. *This Notice of Charge is prepared in accordance with Article 5 of Chapter E of the IBU Integrity Code 2021, and should be read alongside the Initial Notice dated 25 April 2022.*

1.3. *On the basis of the facts already set out in detail within the Initial Notice, the BIU has now concluded that your conduct involved widespread unethical behaviour and a lack of integrity, including by the receipt of inappropriate gifts and benefits and the services of prostitutes. A number of the gifts and benefits received by you were provided by Russian individuals holding positions of power, including positions within Russian biathlon. Furthermore, you failed to take action to prevent, and even condoned, efforts by those Russian individuals to make inappropriate gifts to others involved in the world of international biathlon.*

[...]

5.5. *The BIU is satisfied that you have committed violations of the aforementioned provisions. In particular, you accepted various inappropriate financial benefits, including from Russian officials. The financial value of these was unacceptably high. You also condoned and/or failed to prevent similar financial benefits being given to others within the world of biathlon. [...]*

19. On 14 November 2022, the Respondent provided a response to the Notice of Charge, disputing the allegations and charges.
20. On 29 March 2023, the Norwegian criminal authorities issued an indictment against the Respondent as a result of previous investigations into essentially the same conduct that was investigated by the BIU (“Norwegian Indictment”). In the Norwegian Indictment, the Respondent was prosecuted for crimes involving the receipt of an undue advantage in connection with a position or office, with corruption of an aggravated nature, because it arose from breach of the special trust placed in him by virtue of his position, and because it resulted in a considerable financial advantage. The factual basis of the Norwegian Indictment included the Respondent’s alleged receipt of wristwatches, hunting trips and trophies, and the alleged services of prostitutes.
21. On 12 April 2024, the Respondent was found guilty for corruption in criminal proceedings against him in Norway and sentenced to three years and one month of imprisonment (“Criminal Conviction”). The Respondent has filed an appeal against the Criminal Conviction, which has been pending at the time of the issuance of this award.

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

22. On 29 March 2023, the Claimant filed a Request for Arbitration with the CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration (2023 edition) (“Code”). The Claimant proposed that the matter be submitted to a sole arbitrator and suggested English as the language of the procedure.
23. On 3 April 2023, the CAS Court Office acknowledged receipt of the Request for Arbitration and invited the Respondent to submit his Answer within twenty (20) days from receipt of the letter by email and to inform the CAS Court Office on its position with

regard to the Claimant's suggestion of a sole arbitrator and on the language of the proceedings within five (5) days from receipt of the letter.

24. On 6 April 2023, the Respondent informed the CAS Court Office that he did not agree with the Claimant's suggestion of a sole arbitrator and suggested to appoint a panel composed of three (3) arbitrators in accordance with Article R40.1 of the Code.
25. On 13 April 2023, the CAS Court Office acknowledged receipt of the Respondent's letter and noted that the issue of composition of the arbitral tribunal should be decided by the President of the Ordinary Arbitration Divisions, or her Deputy, pursuant to Article R40.1 of the Code.
26. On 21 April 2023, the Respondent filed his Answer.
27. On 28 April 2023, the CAS Court Office informed the Parties that the President of the CAS Ordinary Arbitration Division had decided to submit the matter to a three-member panel. The Claimant was invited to nominate an arbitrator by no later than 5 May 2023.
28. On 5 May 2023, the Claimant nominated Mr. Ulrich Haas, Professor of Law in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany, as arbitrator. On the same day, the CAS Court Office invited the Respondent to nominate an arbitrator by no later than 12 May 2023.
29. On 12 May 2023, the Respondent nominated Ms. Martina Spreitzer-Kropiunik, Judge in Vienna, Austria, as arbitrator. Subsequently, in accordance with Article R40.2 (third paragraph) of the Code, the arbitrators mutually agreed to nominate Ms. Annett Rombach, Attorney-at-Law in Frankfurt am Main, Germany, as the President of the Panel.
30. On 29 June 2023, in accordance with Article R40.3 of the Code and on behalf of the President of the CAS Ordinary Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

<u>President:</u>	Ms. Annett Rombach, Attorney-at-Law in Frankfurt am Main, Germany
<u>Arbitrators:</u>	Mr. Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany
	Ms. Martina Spreitzer-Kropiunik, Judge in Vienna, Austria
31. On 10 July 2023, the CAS Court Office invited the Claimant pursuant to Article R44.1 of the Code to submit its Statement of Claim within twenty (20) days from receipt of this letter. This time limit was later extended, upon the Claimant's request (and without any objection by the Respondent), until 15 September 2023.
32. On 15 September 2023, the Claimant filed its Statement of Claim.
33. On 19 September 2023, the CAS Court Office acknowledged receipt of the Claimant's Statement of Claim and invited the Respondent, pursuant to Article R44.1 of the Code, to submit his Response within sixty (60) days from the receipt of this letter.
34. On 17 November 2023, the Respondent filed his Response.



35. On 24 November 2023, upon a respective invitation by the CAS Court Office to the Parties to provide it with their preferences in respect of a hearing, the Claimant informed the CAS Court Office that it would prefer a hearing to be held in this matter. The Respondent did not provide his position in respect of whether or not he preferred a hearing to be held.
36. On 7 December 2023, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in this matter and that it proposed such hearing to take place via videoconference.
37. On 3 January 2024, after a respective consultation of the Parties, the CAS Court Office informed the Parties that the hearing would be held on 15 March 2024 (via videoconference).
38. On 16 January 2024, the CAS Court Office, on behalf of the Panel, transmitted the Order of Procedure, which was signed and returned by the Parties, respectively. The Respondent made the following additional, handwritten remark with respect to No. 1 (“Jurisdiction”) of the Order of Procedure:
- “The Respondent states the following for clarification: He agrees to the hearing on Friday, 15<sup>th</sup> March 2024. Any jurisdictional/disciplinary power of the IBU is nevertheless clearly disputed. Accordingly, the existence of the procedural prerequisites for the ongoing proceedings is also disputed!”*
39. On 14 February 2024, the Respondent informed the CAS Court Office as follows:
- “As his previous statements to the IBU and/or the CAS have clearly pointed out, there is no disciplinary power of the IBU in the given case. Thus, the proceedings before CAS lack a fundamental procedural prerequisite, which is jurisdiction. In this respect, the Court has only one legally correct option: to reject the IBU's request on the grounds of a lack of jurisdiction.*
- For this reason, Mr Besseberg will use the hearing on 15th March 2024 solely to present the findings necessary for the decision mentioned above. In order not to unnecessarily inflate the hearing, no witnesses will be disclosed.”*
40. On 5 March 2024, the CAS Court Office transmitted a tentative hearing schedule to the Parties. Furthermore, in response to the Respondent’s correspondence dated 14 February 2024, the Parties were informed as follows:
- “In light of the latest correspondence of the Parties, the Panel wishes to highlight (once again) that, absent any request or decision that the present arbitral proceedings be bifurcated, and for the sake of procedural efficiency, the hearing will deal with all elements of the dispute. That being said, the Parties are of course free to concentrate on any issues at the hearing that they deem necessary to present their case.”*
41. On 14 March 2024, the CAS Court Office requested the Claimant to produce a copy of the Respondent’s letter of 12 September 2022 (mentioned in the Request for Arbitration), which was missing from the case file. The Claimant provided said document on the same day. Still on the same day, the Respondent informed the CAS Court Office that the Respondent could not attend the hearing personally for medical reasons.

42. On 15 March 2023, a hearing was held via video-conference. In addition to the Panel and Mr. Fabien Cagneux, Managing Counsel, the following persons attended the hearing:

For the Claimant: Mr. Nicolas Zbinden, Counsel  
Mr. Adam Taylor, Counsel  
Mr. Greg McKenna, Head of BIU

For the Respondent: Dr. Nobert Wess, Counsel  
Dr. Thomas Pillichshammer, Counsel

The following persons were heard, in order of appearance:

Dr. Guido Bach, attorney-at-law in Vienna, Austria, expert witness called by the Claimant

Mr. Tore Bøygard, member of the IBU Executive Board, witness called by the Claimant

Mr. Max Cobb, witness called by the Claimant

Dr. Jim Carrabre, former member of the IBU Executive Board, witness called by the Claimant

Mr. Fredrik Lilleaas Ellingsen, Translator (provided for the assistance of Mr. Tore Bøygard)

43. At the outset of the hearing, the Claimant confirmed that it did not have any objections to the composition of the Panel. The Respondent referred to his previous objections raised in the procedure, without specifically mentioning any objection regarding the constitution of the Panel. Next, the Respondent was given the opportunity to clarify his objections raised during these proceedings.
44. Afterwards, the Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The witnesses were questioned by the Parties and the Panel.
45. Mr. Tore Bøygard, member of the IBU Executive Board and former President of the Norwegian Biathlon Federation (2006 to 2016), was examined as a witness who was subject to an alleged Russian bribery attempt in 2013, during the presidency of the Respondent. Mr. Bøygard's testimony can be summarized as follows:
- During the biathlon world cup final in Oslo (Holmenkollen) in 2013, Mr. Tikhonov (accompanied by his wife) approached him at a reception and gave him a wallet with the size of a credit card. He said that Mr. Bøygard was "a good man for biathlon". Mr. Bøygard took the wallet and put it in his pocket. He did not open the wallet until later when he went to his hotel room. When he opened it, he found EUR 500 inside. He returned to the reception and gave the wallet back to Mr. Tikhonov's wife saying that he did not want the money, and indicating that

this would not be appropriate for a person in his position. Mr. Tikhonov was not at the reception at that time.

- The following day, Mr. Bøygard received a call from Mr. Besseberg, who asked him to join a meeting with him and Mr. Tikhonov upon the latter's request. In a room next to the reception, Mr. Bøygard met Mr. Tikhonov and Mr. Besseberg. Mr. Tikhonov was quite furious and angry. He explained to Mr. Bøygard that it was normal in Russia that a wallet given as a present contained money and would never be given empty. Mr. Bøygard explained to Mr. Tikhonov and Mr. Besseberg that he understood that this culture may exist in Russia, but that EUR 500 was a big amount of money for him. Mr. Tikhonov showed him his wallet and said that he had no smaller notes therein. Mr. Bøygard said that he could not accept the EUR 500. Then, Mr. Besseberg confirmed to Mr. Bøygard that it was a normal procedure to have some money inside a wallet given as a present, and that a wallet would never been given empty. Mr. Bøygard reiterated that EUR 500 was a lot of money. Then he left the meeting and did not talk again to Mr. Tikhonov during that weekend. He also did not discuss the situation again with Mr. Besseberg.
46. Mr. Max Cobb, IBU Secretary General and former member of the IBU Executive Board (2016 to 2022), was examined as a witness regarding common practices within the IBU Executive Board and its members at events on the fringes of biathlon competitions. Mr. Cobb's testimony can be summarized as follows:
- When attending events at biathlon competitions, it was common for members of the IBU Executive Board to receive small gift bags. These gift bags usually contained local items such as food and drinks, pins or clothing. Mr. Cobb did not receive goods of a higher value. Had he received gifts of a higher value than the mentioned items, he would have clarified this with the Secretary General or the President of the IBU and would have returned it. In Mr. Cobb's view, anything that had significant monetary value and could be turned into cash would seem inappropriate to be received. Everybody who attended those events at biathlon competitions on behalf of the IBU received more or less the same things.
  - Regarding Mr. Besseberg's interaction with young women and prostitutes on the occasion of biathlon events, Mr. Cobb confirmed that he remembered incidents where young women were around and at the side of Mr. Besseberg (only one woman at a time). It was well known that Mr. Besseberg had been with prostitutes. This was also communicated by Mr. Besseberg himself to other people. This was nothing unusual for a long period of time especially in the early years of 2000. These situations occurred most frequently at competitions in Russia. The appearance of women who accompanied Mr. Besseberg, wearing short skirts and high heels, was odd and conspicuous at winter events. Mr. Cobb noticed Mr. Besseberg and the young woman only at receptions during competitions. He has no personal knowledge on how the prostitutes were paid.
  - In the early years of 2000, after the Olympics in Salt Lake City, Mr. Cobb was approached by Mr. Stefan Seykora, principal at APF Marketing (later Infront), who thought that it would be good for broadcast ratings if regular biathlon world cup events were held in North America. At one point during the discussions with Mr. Seykora in Ruhpolding, he asked Mr. Cobb what was required to get IBU to

have more events in North America. When asked what he meant by that he said that Mr. Cobb would know what the President of the IBU wanted. Upon further inquiry, he confirmed that he meant hunting trips, prostitutes and hookers for the President and that this is usually the way it worked with the IBU.

- At a world cup season closing event in Russia, Mr. Cobb was sitting with the Norwegian team leader when Mr. Besseberg came to have a conversation with the Norwegian team leader in Norwegian. After he had left, Mr. Cobb asked the Norwegian team leader what the conversation was about. He was told that Mr. Besseberg was drunk and wanted to know who won the races, which he had missed because he was on a hunting trip.
- During Mr. Cobb's time as a member of the IBU Executive Board, he occasionally had discussions about Mr. Besseberg's behaviour with other members of the IBU Executive Board. These other members laughed it off and said that this was just the way Mr. Besseberg was and that the Board members should not concern themselves with Mr. Besseberg's private affairs. In 2002, at a season closing party, Mr. Cobb confronted Mr. Besseberg (together with the US biathlon Vice President) after he had hugged a female athlete from behind and said to her "*Come to my room and we make our own world cup together*". After that incident Mr. Cobb's relationship with Mr. Besseberg was not in good place.

47. Dr. Jim Carrabre, current medical adviser of the IBU, involved with the IBU since 1998, former member of the IBU Executive Board (2006 to 2018) and former chair of the IBU Medical Commission (2002 to 2018), was also examined as a witness regarding common practices within the IBU Executive Board and its members at events on the fringes of biathlon competitions. Dr. Carrabre's testimony can be summarized as follows:

- At his time as a member of the IBU Executive Board, Dr. Carrabre sometimes received small value gifts. Occasionally, he received hats or clothes from the competition and/or its sponsors but nothing more substantial.
- It was well known that Mr. Besseberg loves to hunt. Usually, hunting trips were arranged for him at biathlon events by the local organisation committees. Dr. Carrabre never heard anything about the costs or how much the Respondent paid for such hunting trips or related trophies. He heard from other IBU members that Mr. Besseberg received trophies and memories of these hunting trips and that the IBU office had to arrange for their shipping to his house in Norway. Dr. Carrabre remembers that he once received an AK 47 rifle filled with Vodka. During a meeting in Canada (before the Vancouver Olympics), Dr. Carrabre also once witnessed a dialogue between the Respondent and a Canadian organizer, in which the Respondent said that he would not be interested in a hunting trip in Canada if it had to be paid by himself.
- It was common to see Mr. Besseberg with young woman at biathlon events. These women, aged between their late teens and early twenties, usually showed up in the evening and then accompanied Mr. Besseberg. Dr. Carrabre's impression was that these women were prostitutes because of their appearance and clothing. They were inappropriately dressed for winter events (short skirts and tops). No other women at these events were dressed like this. He never saw that these young

women had name tags or badges, stamps or accreditations. He never noticed that any of these women performed translation services for the Respondent. Dr. Carrabre could not recall these women accompanying the Respondent also during the day time of events. He noticed young women at Mr. Besseberg's side almost every time he attended events in eastern Europe and in Russia during the period between 1998 and 2018.

- In 2015, Dr. Carrabre attended the world junior championships as a representative of the IBU Executive Board. The organisation committee held a big dinner party for the volunteers at the end of the competition. At the dinner, a member of the organisation committee complained to Dr. Carrabre about Mr. Besseberg's ironical behaviour at the world cup a few weeks ago, where the Respondent had complained about immoral behaviour at a concert while at the same time and just a few hours earlier he himself had gone to hunting trips, and had used the service of prostitutes. At that time, Dr. Carrabre realised that the IBU had a serious problem with the President's behaviour. Mr. Besseberg's behaviour was discussed within the IBU Executive Board but he was never confronted about it. Dr. Carrabre believed that not all members of the IBU Executive Board felt that Mr. Besseberg's known conduct was sufficiently unethical to warrant his removal or expulsion as IBU President at that time.
48. After the Parties' final and closing submissions, the hearing was closed and the Panel reserved its detailed decision for this written award.
  49. At the end of the hearing, the Parties expressly confirmed that they had no objections in relation to their respective rights to be heard in these proceedings.
  50. By e-mail of 18 April 2024, the Claimant submitted a press article about the Respondent's conviction by Norwegian criminal courts (see above at para. 21) ("Post Hearing Submission").
  51. On 26 April 2024, the Respondent objected the admissibility of the Claimant's Post Hearing Submission.
  52. In reaching the present decision, the Panel has carefully taken into account all the evidence and the arguments presented by the Parties, even if they have not been summarised in the present Award. The Parties were afforded full opportunity to present their case, submit their arguments, and answer the questions posed by the members of the Panel.

#### **IV. THE POSITIONS OF THE PARTIES**

53. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

**A. The Claimant's Position and Request for Relief**

54. The Claimant submits the following in substance:

- The CAS has jurisdiction over the present dispute under Article R27 of the Code and Articles 8.1 and 8.2 of Chapter E of the 2021 IBU Integrity Code. The Respondent confirmed the jurisdiction of the CAS in his letter of 12 September 2022, in which he accepted that the 2021 IBU Integrity Code applied to him in relation to its procedural rules (which include reference of the dispute to the CAS Ordinary Division).
- During his time as IBU President between 2009 and 2018, the Respondent's conduct involved widespread unethical behaviour and lack of integrity. This conduct was of two main types: (a) the Respondent accepted inappropriate gifts and benefits, including those provided by Russian individuals holding positions of power (including positions within Russian biathlon); and (b) the Respondent failed to act to prevent, and even condoned, efforts by those Russian individuals to make inappropriate gifts to others involved in the world of international biathlon. The evidence collected against the Respondent through the investigations by the ERC, the BIU and the Norwegian criminal authorities demonstrates in particular the following with regard to

(a) Respondent's receipt of gifts and benefits:

- The Norwegian police located many wristwatches (more than ten) upon a search of the Respondent's properties, including several watches from luxury watch brands such as Ulysse Nardin, Hublot and Omega. The provenance of these watches has not been explained, save that the Respondent has admitted that he received an Omega wristwatch from Mr. Sergei Kushchenko (RBU Executive Director and IBU First Vice-President from 2010 to 2014), that he realised it was an expensive watch worth approximately EUR 20,000 after seeing a version of it at Geneva airport, that Mr. Kushchenko confirmed to him that it was real gold, and that he then subsequently kept the watch. The Respondent also admitted that he had received and kept a watch from Mr. Alexander Tikhonov (RBU President from 1995 to 2008 and IBU 1st Vice-President from 2002 to 2010);
- The Respondent received numerous free hunting trips and free hunting trophies, and he has a large number of hunting trophies at his properties, the origins of which remain unexplained. The Respondent admitted that whenever he was invited on hunting tours, he usually stayed in a hunting lodge, and that he did not pay either for the accommodation or for the physical hunt. He also explained that he regularly did not pay for trophies that he took away with him from these hunts. He admitted to taking part in hunting trips in Germany, Hungary, Ukraine, Czech Republic, Slovenia, Slovakia, Austria, the USA and Russia.
- The Respondent admitted receiving the services of prostitutes, both at his own expense and via Mr. Sergei Kushchenko (or alternatively a member

of the Russian organising committee). Such involvement often took place within the sphere of Russian influence linked to biathlon. The Respondent also admits to an attempt to receive the services of prostitutes via Mr. Evgeniy Redkin (a former Russian biathlete who later worked as a sports administrator and director of the biathlon complex in his Russian hometown of Khanty-Mansiysk). The Respondent admits to having received gifts from most national federations where the value of each gift was in excess of EUR 1,000, that he had an entire pile of such presents at his house, and that some of these gifts would not have even been made known to the IBU.

(b) Respondent's failure to challenge the giving of inappropriate benefits:

- First, the Respondent admitted to telling IBU Secretary Ms. Nicole Resch "*to forget about*" an incident in or around 2009 where Mr. Alexander Tikhonov offered her a jewellery box in exchange for not prosecuting Russian doping cases. The Respondent took no corrective or investigative steps at all in relation to the behaviour of Mr. Tikhonov.
- Second, in relation to an incident in March 2013 where Mr. Tikhonov tried to bribe the President of the Norwegian Biathlon Federation, Mr. Tore Bøygard, by making him a present of a wallet with a EUR 500 note inside it, the Respondent explained to Mr. Bøygard that this practice was usual in Russia, that gifts come with money inside, that a sum of EUR 500 was also usual and normal as a gift, and that Mr. Bøygard should in the normal course of things have accepted the EUR 500 note, as that was the normal way in which things were done in Russia.
- Aside from these main scenarios, the collected evidence also showed on other occasions the Respondent's general willingness and propensity to act unethically and to lie in his role as IBU President.
- The relevant rules of the IBU are applicable to the Respondent as they do not explicitly restrict their jurisdiction and applicability to active members and officials. The question - as to whether a former member or official of an association can be subject to disciplinary sanctions - is a question of interpreting the relevant rules. Contrary to the Respondent's interpretation, the relevant IBU rules cannot be interpreted in a way that they do not apply to him as a former member of the IBU. While both the IBU Disciplinary Rules and the IBU Code of Ethics contain initial sections addressing who the rules are intended to apply to, nothing within any of these sections refers to the rules' application being limited to active members. Rather, if the drafter of the IBU rules intended to restrict the rules to active members/officials, it would have been simple to have added the word "current" or "active" or similar wording to any of the types of individuals identified in Article 1.1 of the IBU Code of Ethics or in Article 2 or Article 3.2 of the IBU Disciplinary Rules as covered by the rules, but this was not done. In addition, also the relevant provision of the IBU rules (Articles 3.2, 3.3, 6.1, 6.2, 6.3, 6.6 of the IBU Disciplinary Rules) relating to the respective sanctions do not suggest any limitation to active officials.

- The Respondent's different view is wrong as it would be completely self-defeating if a member or official could avoid sanctioning by leaving the association or by the fact of no longer being a member or official of the association. That would create an escape route that would render the entire sanctioning regime meaningless and powerless. That would also in turn harm the association and prevent its proper functioning. That cannot be the assumed intention behind, and purpose of, the rules. A reprimand is not a warning, as the Respondent argues (in order to make his point that a warning is of no use towards a former member). Rather, a reprimand is a declaration of wrongdoing and has sanctioning character because it includes the sense of strong and official criticism. Also, the Respondent's argument that the interpretation of Article 6.6 of the IBU Disciplinary Rules must only apply to active members because the law allegedly (which is denied) only allows for the sanctioning of active members – is not an argument of interpretation at all, and is circular.
- The Respondent has therefore committed breaches of the IBU Constitution, the IBU Disciplinary Rules and the IBU Code of Ethics and is subject to the requested sanctions.

55. The Claimant requests the following relief:

1. *The CAS has jurisdiction to resolve this dispute.*
2. *Mr Anders Besseberg is found to have committed any and/or all of the violations specified within Article 3.3 of the IBU Disciplinary Rules 2009, 2010, 2012, 2014 and/or 2016, and/or Mr Anders Besseberg is found to have violated the introductory text and/or preamble, Article 1.2 and/or Article 2 of the IBU Code of Ethics 2012, 2014 and/or 2016.*
3. *Mr Anders Besseberg is sanctioned with:*
  - (a) a restriction from future periods of elected or appointed service, up to a lifetime ban (pursuant to Article 6.3 of the IBU Disciplinary Rules 2009 and/or Article 6.6 of the IBU Disciplinary Rules 2010, 2012, 2014 and/or 2016); and/or*
  - (b) a fine of up to 100,000 EUR (pursuant to Article 6.2 of the IBU Disciplinary Rules 2009, 2010, 2012, 2014 and/or 2016); and/or*
  - (c) a reprimand (pursuant to Article 6.1 of the IBU Disciplinary Rules 2009, 2010, 2012, 2014 and/or 2016).*
4. *Mr Anders Besseberg is ordered to bear the arbitration costs of these proceedings.*
5. *Mr Anders Besseberg is ordered to make a substantial contribution to the IBU's legal and other costs in connection with these proceedings."*



## **B. The Respondent's Position and Request for Relief**

56. The Respondent submits the following in substance:

- The present proceedings are inadmissible. The IBU lacks disciplinary power over the Respondent. In contrast to the comprehensive penal power of a state, to which everyone is subject, the disciplinary power of an association is accepted by the individual voluntarily through his membership. However, the IBU rules do not apply to him as he is no longer a member of the IBU. Any disciplinary authority of the IBU over the Respondent ceased at the time of his resignation from the IBU and therefore no further association sanctions can be imposed on him. There is no active membership, nor has the Claimant voluntarily committed himself in any way contractually to continue to be subject to the sanction regime of the IBU after the termination of his office. Furthermore, and contrary to the Claimant's view, such an intention cannot be inferred from the IBU's statutes. It is incorrect that IBU's disciplinary powers also apply to former members, unless otherwise regulated. The correct position is that the disciplinary authority of an association does not apply to former members unless otherwise contractually agreed, which is supported by the prevailing opinion in literature and case law.
- It is the prevailing and undisputed opinion in literature and established case law in Germany and Austria that if the association, when exercising its disciplinary power, refers to a membership obligation, the person concerned must still be a member of the association at the time the disciplinary sanction is imposed. A member of an association can, therefore, withdraw from the disciplinary authority by leaving the association in good time.
- The IBU rules applicable to the present case do not embrace a disciplinary power against former members. Neither the relevant versions of the IBU Disciplinary Rules nor the relevant versions of the IBU Code of Ethics contain any information on whether the rules remain applicable after resignation from office or termination of membership. Only as of 2021, the IBU Integrity Code, which replaced the IBU Disciplinary Rules and the IBU Code of Ethics, refers to former members. However, the substantive provisions of the 2021 IBU Integrity Code are not applicable to the Respondent. To the Respondent, only the IBU Constitution, the IBU Disciplinary Rules and the IBU Code of Ethics, in their versions 2009 to 2016, apply.
- In addition, the most recent version of the IBU Disciplinary Rules (2016) (which were in force already at the time of the Respondent's presidency), as well as its previous versions, provide only for a "Reprimand" (Art 6.1) and the "Removal from a Function" (Art 6.6) as a disciplinary measure for officials and staff of the IBU. Other disciplinary measures, i.e. "Fines" (Art 6.2) and the "Suspension of Member Federations" (Art 6.7), refer only to IBU member federations and not to individuals. This clearly indicates that disciplinary sanctions against IBU officials, as in the case of the Respondent, are only those that are directly linked to an active membership or to an existing, current function. Against a non-member or a person who does not exercise an IBU function (any more), no removal of this person – and subsequently: no restriction from future service – can be imposed as a

sanction. For this reason alone, Article 6.3 of the IBU Disciplinary Rules 2009 as well as Article 6.6 of the IBU Disciplinary Rules 2010, 2012, 2014 and 2016 cannot be applied in the given case and a request for a sanction under this provision fails. Also, there is no point to a “reprimand” in this context as the issuing of a reprimand in the sense of a warning to former members makes no sense at all and does not have any sanctioning effect.

- The Respondent denies any and all of the Claimant’s allegations and strongly disputes that he has received any improper gifts or benefits in connection with his former position as the President of the IBU. He also denies that he has allegedly failed to take action to prevent efforts from foreign individuals to make improper gifts to other persons of the IBU:
  - Regarding the alleged receipt of watches, the Respondent maintains that he was not aware of the value of these watches, and that these were normal gifts provided in appropriate situations. In one case, a watch was given openly to him by a board colleague on the occasion of his 65<sup>th</sup> birthday. In another case, he traded a watch for another. After the Respondent had realized their value, he alleges that wanted to return the watches, but that the givers refused.
  - Regarding the alleged receipt of free hunting trips, these were allegedly undertaken at transparent and arm’s length costs, and no one profited from them by any means. In particular, the Respondent did not award major events to any provider of a hunting trip. Neither the IBU Board nor the IBU President have any decision-making authority in awarding a World Championship to anyone. As for World Cup arrangements, this is formally decided by the IBU Board following a recommendation from IBU’s technical committee. The IBU Board has never gone against the committee’s recommendation. The fact that the Respondent received and accepted hunting invitations from a friend, Mr. Schmid, who also came hunting on the Respondent’s site in Norway, cannot be considered as an undue advantage. Especially given the fact that after 2004, the Respondent never participated in the negotiations of any sponsor contracts with APF Marketing Services GmbH (later: Infront Austria GmbH).
  - Regarding the alleged receipt of sexual services from a prostitute allegedly arranged for him by Mr. Sergey Kushenko, the Respondent withdraws his own statements made in the first police interview in April 2018. The Respondent maintains that he gave incorrect testimony at the time due to the difficult circumstances. It is true that he did have contact with the woman in question, but he did not accept any services from her whatsoever. There is no evidentiary basis for this allegation. Furthermore, the Respondent strongly rejects the allegations that the relationship between him and a woman called “Eva” involved “escort services”. He has never had any basis for assuming that the relationship has been of such a nature nor has he received any “benefits”.

57. In his Response, the Respondent requests as his relief that the Panel:

*“i. The Claimant’s Request for Arbitration and Statement of Claim are rejected a limine for inadmissibility due to lack of disciplinary authority;*

*in eventu*

*ii. The Claimant’s Request for Arbitration and Statement of Claim are dismissed on substantial grounds;*

*and*

*iii. The Claimant is ordered to bear the arbitration costs of these proceedings,*

*and*

*iv. The Claimant is ordered to bear Mr Anders Besseberg’s legal and other costs in connection with these proceedings.”*

## **V. JURISDICTION**

58. Article R27 of the Code reads as follows:

*“These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).”*

59. Article R27 of the Code addresses jurisdiction when the CAS acts as a true arbitral tribunal. In such case, the jurisdiction of the CAS principally requires that an arbitration agreement between the Parties, be it through an “*arbitration clause contained in a contract or regulations*” or through “*a later arbitration agreement*” be established.

### **A. CAS is a genuine Arbitral Tribunal**

60. It is undisputed and has been confirmed by the Swiss Federal Tribunal (“SFT”) repeatedly (see, e.g., SFT, judgement dated 20 February 2018, 4A\_260/2017; SFT, judgement dated 27 May 2003, 129 III 447 – “*Lazutina*”) that the CAS is a true and genuine arbitral tribunal which has the capacity to render decisions in the form of an arbitral award within the sense of Article 190 of the Swiss Private International Law (“PILA”). It is in this capacity that the CAS is usually seized to perform judiciary services on behalf of the parties, either through an (express or implied) arbitration agreement, or through a reference in a statute or regulation to which the parties have submitted themselves.

## B. Arbitration Agreement

61. In order for the CAS to act as a competent arbitral tribunal, there needs to be an arbitration agreement between the Parties that derogates the otherwise competent state courts and entrust the adjudicatory powers (in a final and binding manner) to a third party (i.e. the arbitral tribunal). This follows from the jurisprudence of the Swiss Federal Tribunal (“SFT”), 148 III 427, 431:

*“La convention d'arbitrage est un accord par lequel deux ou plusieurs parties déterminées ou déterminables s'entendent pour confier à un tribunal arbitral ou à un arbitre unique, en lieu et place du tribunal étatique qui serait compétent, la mission de rendre une sentence à caractère contraignant sur un ou des litige(s) existant(s) (compromis arbitral) ou futur(s) (clause compromissoire) résultant d'un rapport de droit déterminé (ATF 147 III 107 consid. 3.1.2; ATF 142 III 239 consid. 3.3.1; arrêts 4A\_64/2022 du 18 juillet 2022 consid. 6.3.1; 4A\_174/2021 du 19 juillet 2021 consid. 5.2.1; 4A\_676/2014 du 3 juin 2015 consid. 3.2.2). Il importe que la volonté d'exclure la juridiction étatique normalement compétente au profit de la juridiction privée que constitue un tribunal arbitral y apparaisse (ATF 142 III 239 consid. 3.31; ATF 138 III 29 consid. 2.2.3). Les effets de la convention d'arbitrage se caractérisent ainsi, d'une manière générale, par la dérogation à une compétence de jugement donnée et la prorogation d'un autre pouvoir décisionnel (arrêt 4C.44/1996 du 31 octobre 1996 consid. 2).”*

### Free translation:

*“An arbitration agreement is an agreement by which two or more specific or determinable parties agree to entrust an arbitral tribunal or a sole arbitrator, instead of the state court that would otherwise have jurisdiction, with the task of rendering a binding award in respect of one or more existing disputes (arbitration agreement) or future disputes (arbitration clause) arising out of a specific legal relationship (BGE 147 III 107 rec. 3.1.2; ATF 142 III 239 rec. 3.3.1; judgments 4A\_64/2022 of 18 July 2022 rec. 6.3.1; 4A\_174/2021 of 19 July 2021 rec. 5.2.1; 4A\_676/2014 of 3 June 2015 rec. 3.2.2). It is important that the intention to exclude the normally competent state court in favour of the private court constituted by an arbitral tribunal is apparent (BGE 142 III 239, para. 3.31; BGE 138 III 29, para. 2.2.3). **The effects of the arbitration agreement are thus generally characterised by the derogation from a given jurisdiction and the extension of another decision-making power (judgment 4C.44/1996 of 31 October 1996, para. 2).”***

[emphasis added]

### ***1. Submission to the IBU Rules and Regulations***

62. It is true that the Parties have originally submitted to the IBU rules and regulations, when the Respondent was an organ of the IBU, namely its President. In this respect, the Panel is guided by CAS 2017/A/5003, where the panel decided as follows (para 121):

*“On that day, the Executive Committee appointed the Appellant as a body (“organe”) of FIFA and he immediately assumed his role. Indeed, as recorded in the minutes of that meeting, the Appellant was invited into the meeting room, accepted his appointment as*

*FIFA General Secretary, thanked the FIFA Executive Committee for their trust, and declared it was an honour to be given the role to represent FIFA. It was at this time that the Appellant ipso jure submitted himself to the FIFA Statutes ... the Swiss Federal Tribunal (also indicated hereinafter as “SFT”) confirmed this analysis in the Platini case, by holding that Mr. Platini became ipso jure bound by the FIFA Statutes when he joined the FIFA Executive Committee (4A\_600/2016 of 29 June 2017, at para. 1.1.1): ‘comme le recourant a intégré le Comité exécutif de l’intimée en 2002, il a été soumis ipso iure aux statuts de cette association depuis lors’.*”

63. Thus, there can be no doubt that the Respondent, by accepting his mandate and acting as President of the Claimant, accepted to be submitted to the IBU rules and regulations (cf. also below para. 102).

## ***2. The alternative dispute resolution clause contained in the IBU Rules and Regulations***

64. It is questionable, however, whether the IBU Rules and Regulations contain an arbitration clause in favour of the CAS.

### **a. The contents of the IBU rules and regulations**

65. The 2019 IBU Constitution and the 2019 IBU Integrity Code (and all of their versions onwards) distinguish between anti-doping rule violations (for which the CAS ADD acts as IBU’s first-instance Disciplinary Tribunal) and other Integrity Code violations (for which the CAS Ordinary Division acts as the IBU’s first-instance Disciplinary Tribunal). The latter is the issue in the present case. The 2022 IBU Constitution illustrates the concurrency of internal dispute resolution for anti-doping matters and other integrity matters distinctly as follows:

#### ***“31 B Alleged violations of the IBU Integrity Code***

*31.2 Alleged violations of the IBU Integrity Code will be prosecuted by the BIU before a Disciplinary Tribunal, as follows:*

*31.2.1 where the alleged violation is of the anti-doping chapter of the IBU Integrity Code, the matter will be referred to the CAS Anti-Doping Division, which will appoint one or more CAS arbitrators to sit as the Disciplinary Tribunal that will hear and determine the case in accordance with the anti-doping chapter of the IBU Integrity Code, the CAS Code of Sports-related Arbitration, and the Arbitration Rules for the CAS Anti-Doping Division; and*

*31.2.2 where the alleged violation is of a different part of the IBU Integrity Code, the matter will be referred to the CAS Ordinary Division, which will appoint one or more CAS arbitrators to sit as the Disciplinary Tribunal that will hear and determine the case in accordance with the relevant provisions of the IBU Integrity Code and the CAS Code of Sports-related Arbitration [...].”*

66. The present case falls under Article 31.2.2 of the 2022 IBU Constitution. Just as the CAS ADD sits as IBU’s Disciplinary Tribunal in anti-doping matters, the CAS Ordinary Division sits as IBU’s Disciplinary Tribunal in all other integrity-related matters. This

includes the charges introduced against the Respondent by the BIU.

**b. The jurisprudence of the SFT**

67. In a case where the mandate of the CAS is not based on an agreement of the parties, but on the rules and regulations of a federation that unilaterally outsource the functions of an association tribunal to the CAS, the question arises whether the CAS is mandated to act as an association tribunal or as an arbitral tribunal.
68. The fact that the CAS in the case at hand decides the dispute according to the CAS Code provisions applicable to the Ordinary Arbitration Procedure is not in itself decisive to answer the above question what adjudicatory function the Parties have conferred upon this Panel. The view held here is supported by the jurisprudence of the SFT (ATF 148 III 427, 431 – “CAS ADD”) that held as follows:

*“5.2.3 Selon la jurisprudence constante du Tribunal fédéral, la décision rendue par l'organe juridictionnel d'une association sportive, cet organe fût-il dénommé tribunal arbitral, ne constitue en principe qu'une simple manifestation de volonté émise par l'association intéressée (ATF 147 III 500 consid. 4; ATF 119 II 271 consid. 3b; arrêt 4A\_344/2021 du 13 janvier 2022 consid. 5.2 et les références citées).”*

Free translation:

*“5.2.3 According to the established case law of the Swiss Federal Supreme Court, a decision handed down by the jurisdictional body of a sports association, even if that body is called an arbitration tribunal, is in principle no more than a simple expression of will by the association concerned (BGE 147 III 500, para. 4; BGE 119 II 271, para. 3b; judgment 4A\_344/2021 of 13 January 2022, para. 5.2 and the references cited).”*

[emphasis added]

69. A judicial body that calls itself “arbitral tribunal” may nevertheless act in a specific case as an association tribunal. This is illustrated by a recent decision of the SFT (judgement dated 22 December 2022, 148 III 427 – “CAS ADD”, quoted also above at para. 68). In that case the CAS Anti-Doping Division (“CAS ADD”) sat as the IBU’s internal “Disciplinary Tribunal”, in accordance with Chapter D, Article 8.1 of the 2019 IBU Integrity Code. The IBU had delegated its disciplinary powers in anti-doping matters to the CAS ADD, for the latter to act in replacement of the IBU’s internal body in place before. When qualifying the mandate of the CAS ADD acting in replacement of the IBU internal body, the SFT found as follows (SFT, 148 III 427, 433):

*“La seule question à résoudre ici est dès lors de savoir si, dans la présente espèce, la CAD TAS a effectivement agi en tant que tribunal arbitral et a, partant, rendu une véritable sentence arbitrale.*

*5.9.3 Il sied d'emblée de relever que la CAD TAS est l'une des divisions du TAS, lequel est une institution ayant principalement pour vocation de conduire des procédures d'arbitrage dans le domaine sportif. Il est également indubitable que la terminologie figurant dans le règlement de la CAD TAS, intitulé du reste "Règlement d'arbitrage", utilise de nombreuses expressions propres au domaine de l'arbitrage. Ainsi, le*

*règlement d'arbitrage de la CAD TAS fait, à plusieurs reprises, référence aux termes d'arbitrage, d'arbitre(s) et qualifie les décisions rendues par ladite Chambre de "sentence". **Cet argument purement littéral n'est toutefois pas décisif pour trancher la question litigieuse. On ne saurait en effet faire dépendre la nature juridique d'une autorité juridictionnelle de la façon dont celle-ci qualifie elle-même la procédure conduite sous son autorité et les décisions qu'elle rend.** Le Tribunal fédéral a ainsi reconnu que la décision rendue par un organe juridictionnel d'une association sportive, fût-il dénommé arbitral, ne suffit pas à faire de celui-ci un véritable tribunal arbitral (ATF 147 III 500 consid. 4 et les références citées). De même, il admet que la dénomination d'une décision attaquée n'est pas décisive pour déterminer s'il s'agit effectivement d'une sentence arbitrale (ATF 143 III 462 consid. 2.1; ATF 142 III 284 consid. 1.1.1). [...]*

*Pour résoudre la question litigieuse, il convient, bien plutôt, de se pencher sur le rôle assigné en l'occurrence à la CAD TAS, sur la nature du pouvoir exercé par elle et sur le fondement juridique de la compétence de la CAD TAS pour connaître du présent litige. A cet égard, il n'est pas inutile de rappeler que la définition jurisprudentielle de la convention d'arbitrage suppose que les parties aient voulu investir un tribunal arbitral du pouvoir de rendre une décision à caractère contraignant en lieu et place de la juridiction étatique normalement compétente. Or, on cherche, en vain, l'existence d'une telle volonté de la part de l'une ou l'autre des parties. Il appert que l'intimée, association de droit autrichien, a souhaité déléguer son pouvoir disciplinaire sur ses membres (directs et indirects), découlant du droit associatif privé, à une entité externe, chargée d'exercer semblable tâche en lieu et place de l'ancien organe juridictionnel interne de l'association concernée. [...] Il ressort en outre de la nouvelle réglementation édictée par l'intimée que la CAD TAS est conçue comme un "tribunal disciplinaire" (cf. l'art. 30.2 des statuts de 2019 et l'art. 8.1 du règlement antidopage de 2019). Il découle ainsi de ces divers éléments que **l'objectif poursuivi par l'intimée était d'externaliser son pouvoir disciplinaire sur ses membres en le déléguant à une tierce autorité juridictionnelle, à savoir la CAD TAS, laquelle n'avait pas vocation à se substituer aux tribunaux étatiques mais uniquement à remplacer l'organe juridictionnel de l'association en question.**"*

Free translation:

*"The only issue to be resolved here is therefore whether, in the present case, the CAD TAS actually acted as an arbitral tribunal and therefore issued a genuine arbitral award.*

*5.9.3 It should be noted from the outset that the CAD TAS is one of the divisions of the CAS, which is an institution whose main purpose is to conduct arbitration proceedings in the field of sport. There is also no doubt that the terminology used in the CAD CAS rules, which are also entitled "Arbitration Rules", contains numerous expressions specific to the field of arbitration. Thus, the CAD TAS arbitration rules refer on several occasions to the terms "arbitration" and "arbitrator(s)" and describe the decisions rendered by the said Chamber as an "award". **However, this purely literal argument is not decisive in deciding the issue in dispute. The legal nature of a judicial authority cannot be made dependent on the way in which it itself describes the proceedings***

*conducted under its authority and the decisions it issues. The Federal Court has thus recognised that a decision handed down by a jurisdictional body of a sports association, even if it is called an arbitral tribunal, is not sufficient to make it a genuine arbitral tribunal (ATF 147 III 500 rec. 4 and the references cited). Similarly, it accepts that the name of a contested decision is not decisive in determining whether it is in fact an arbitral award (ATF 143 III 462 rec. 2.1; ATF 142 III 284 rec. 1.1.1). [...]*

*In order to resolve the issue in dispute, it is more appropriate to consider the role assigned to the CAD TAS in this case, the nature of the power exercised by it and the legal basis for the CAD TAS's jurisdiction to hear the present dispute. In this respect, it is worth recalling that the case law definition of an arbitration agreement presupposes that the parties wished to invest an arbitral tribunal with the power to render a binding decision in place of the state court with normal jurisdiction. However, the existence of such an intention on the part of either of the parties is sought in vain. It appears that the respondent, an association under Austrian law, wished to delegate its disciplinary power over its members (direct and indirect), deriving from private associative law, to an external entity, charged with carrying out such a task in place of the former internal judicial body of the association concerned. [...] It is also clear from the new regulations enacted by the respondent that the CAD TAS is conceived as a 'disciplinary tribunal' (cf. art. 30.2 of the 2019 Articles of Association and art. 8.1 of the 2019 Anti-Doping Regulations). It thus follows from these various elements that **the objective pursued by the respondent was to externalise its disciplinary power over its members by delegating it to a third jurisdictional authority, namely the CAD TAS, which was not intended to replace the state courts but only to replace the jurisdictional body of the association in question.**"*

[emphasis added]

70. The SFT found that, under the IBU rules and regulations, the CAS ADD had been mandated unilaterally by the IBU and not by an agreement of the parties. Since the CAS' adjudicatory powers were not based on the parties' consent, the SFT found that the IBU could not delegate more powers than it had according to its rules and regulations. According to its rules and regulations, however, the IBU only assumed the powers of an association tribunal. Consequently, the SFT found that the CAS performed its judicial authority under the auspices of the IBU, and not as an arbitral tribunal, which meant that there was no arbitration agreement in relation to the CAS ADD.

### **c. The consequences of the above for the case at hand**

71. The present case is similar to the one underlying the CAS ADD decision of the SFT (ATF 148 III 427). By submitting to the rules and regulations of the IBU, the Respondent submitted to the internal jurisdiction of the IBU, which the latter delegated to the CAS. Consequently, when interpreting the rules and regulations of the IBU, the CAS was not mandated as an arbitral tribunal in replacement of the decision of an (otherwise competent) ordinary court. Rather, as explained in detail above (cf. section V.B.2.), the Rules and Regulations of the IBU only confer to the CAS the authority of a judicial body of the IBU (more precisely, the mandate of the Disciplinary Tribunal). In the words of the Swiss Federal Tribunal (SFT, judgement dated 22 December 2022, ATF 148 III 427 – "CAS ADD", quoted above at para. 68, 69), a decision handed down by the judicial



body of a sports association, even if that body is called an “arbitral tribunal”, is, in principle, no more than a simple expression of will (“*simple manifestation de volonté émise*”) by the concerned association.

**d. The authority of the CAS to assume the mandate of an association tribunal**

72. The Respondent challenges the mandate of the CAS to act as an association tribunal, because according to him he is no longer bound by the IBU Rules and Regulations *rationae temporis*. The Panel disagrees with the Respondent’s view. In principle, it is competent to hear the present disciplinary case under Article 31.2.2 of the 2020 IBU Constitution in conjunction with Articles 8.1 and 8.2 of Chapter E of the 2021 IBU Integrity Code, which read as follows:

Article 31.2 of the 2020 IBU Constitution:

***“31 B Alleged violations of the IBU Integrity Code***

*31.2 Alleged violations of the IBU Integrity Code will be prosecuted by the BIU before a Disciplinary Tribunal, as follows:*

*31.2.1 [anti-doping rule violations]*

*31.2.2 where the alleged violation is of a different part of the IBU Integrity Code, the matter will be referred to the CAS Ordinary Division, which will appoint one or more CAS arbitrators to sit as the Disciplinary Tribunal that will hear and determine the case in accordance with the relevant provisions of the IBU Integrity Code and the CAS Code of Sports–related Arbitration [...].”*

Chapter E, Articles 8.1 and 8.2 of the IBU Integrity Code:

*“8.1 If the Participant wishes to have a hearing before the Disciplinary Tribunal to contest liability and/or sanction, the Participant must provide a written request for a hearing to the BIU that is received by the BIU within fourteen (14) days of the Participant’s receipt of the Notice of Charge (or such longer period as may be specified in the Notice of Charge or agreed by the BIU). The request must explain how the Participant responds to the charge(s) and set out (in summary form) the basis for such response.*

*8.2 The BIU will refer the request to the CAS Ordinary Division, which will appoint one or more CAS arbitrators to sit as the Disciplinary Tribunal that will hear and determine the case in accordance with this Integrity Code and the CAS Code of Sports–related Arbitration.”*

73. The Respondent’s central argument is that the IBU ceased to have any sanctioning authority over him after he had stepped down as the IBU’s President on 12 April 2018 and that, as a result, the IBU was at no time thereafter entitled to prosecute him for alleged Integrity Code violations.
74. The Respondent’s defence that the IBU lacks disciplinary authority over him has double relevance: primarily, it is decisive for the question of whether the Respondent can be the

subject of sanctions being imposed against him by the IBU. This is a question relating to the merits of this dispute (and will be treated in respective section below). Secondly, it is relevant for the Panel's mandate, deriving from the IBU Constitution and the IBU Integrity Code. In respect to the latter, the Panel finds that it sufficient that it is – on an abstract basis – called to decide over the charges against the Respondent under the relevant rules and regulations.

75. For the limited purpose of the Panel's jurisdiction to act as the IBU's Disciplinary Panel in the present case, it is sufficient that the Panel was principally vested with respective competence through the IBU Constitution and IBU Integrity Code. The Respondent does not dispute that the above-quoted provisions principally result in the Panel's competence to hear Integrity Code violation cases.

### **3. *Interim conclusion***

76. Based on the rules and regulations of the IBU, this Panel is mandated to act as an association tribunal (but not as an arbitral tribunal).

### **C. Unconditional Appearance Before the CAS**

77. The competence of the CAS as an arbitral tribunal may not only be based on an arbitration clause (enclosed in the rules and regulations of a federation), but may also derive from the Parties procedural behaviour before the CAS. If a plea of lack of jurisdiction is not raised before an arbitral tribunal, the person concerned can no longer object to the arbitral tribunal's jurisdiction. Unconditional appearance before an arbitral tribunal, thus cures any defect of the arbitration agreement and establishes the jurisdiction of an arbitral tribunal (see e.g. *Göksu*, Schiedsgerichtsbarkeit 2014, para. 1204). This follows from Article 186(2) of the PILA according to which “[a]ny objection to its jurisdiction must be raised prior to any defence on the merits.”
78. The principles applicable to unconditional appearance do not only apply when there is no arbitration agreement. They also apply if the parties bring a dispute before an arbitral tribunal and do not object to the latter's jurisdiction despite the fact that the underlying agreement does not fulfil the mandatory requirements of an arbitration agreement. In the case at hand, the Parties have made an unconditional appearance before the CAS as an arbitral tribunal despite the fact that the underlying agreement only provides for the CAS to act as an association tribunal.
79. In order for a party to make an appearance within the above meaning, there needs to be a tacit or implicit acceptance of the tribunal to act as an arbitral body. The requirements for an unconditional appearance before an arbitration tribunal are no different from those before state courts (*Göksu*, Schiedsgerichtsbarkeit 2014, para. 1204; *Berger/Kellerhals*, International and Domestic Arbitration in Switzerland, 4<sup>th</sup> ed. 2021, para. 637). Reference can therefore be made in this respect to court practice on the corresponding provisions of Swiss civil procedural law (Article 18 Code of Civil Procedure and Article 6 PILA). According thereto, the jurisdiction of an otherwise non-competent arbitral tribunal is given as soon as a respondent has made a submission on the merits without first raising the plea of lack of jurisdiction (*Berger/Kellerhals*, International and Domestic Arbitration in Switzerland, 4<sup>th</sup> ed. 2021, para. 637; *Göksu*, Schiedsgerichtsbarkeit 2014, para. 1207). It is not decisive whether the respondent's conduct is intentional or unintentional. Once a

respondent has submitted without reservation, the plea of lack of jurisdiction is forfeited (*Berger/Kellerhals*, International and Domestic Arbitration in Switzerland, 4<sup>th</sup> ed. 2021, para. 637). In case a party has made an unconditional appearance, there is no need for the parties to comply with the any formal requirements (*Berger/Kellerhals*, International and Domestic Arbitration in Switzerland, 4<sup>th</sup> ed. 2021, para. 638).

80. In the present case, the Claimant has filed a “Request for Arbitration” before the CAS against the Respondent. In doing so, the Claimant clearly showed its intention to initiate a genuine arbitration procedure against the Respondent. Furthermore, in its “Request for Arbitration”, the Claimant referred to the CAS Code and the mandate of this Panel to act as an arbitral tribunal. The subsequent submission of the Respondent is entitled “Answer to the Request for Arbitration”. Thus, the Respondent understood that the Claimant initiated an arbitration procedure against it and addressed Claimant’s claim in his submissions. The latter were structured into the following sections:

- “A. Rejection of substantive allegations”, and
- “B. Claimant’s lack of disciplinary authority”.

81. Section B. of the Respondent’s “Answer to the Request for Arbitration” is premised on the assumption that a sports organisation has no disciplinary authority over former members and organs. This is an issue relating to the merits of the claim. Hence, the Respondent’s objection is directed solely to the merits of the Claimant’s case. Nowhere in the “Answer to the Claimant’s Request for Arbitration” did the Respondent challenge this Panel’s jurisdiction to act as an arbitral tribunal. Consequently, the Respondent failed to comply with Article 186 (2) of the PILA.

#### **D. Conclusion**

82. In conclusion, the Panel finds that it is vested with the mandate of a true arbitral tribunal following the unconditional appearance of the Respondent before this Panel. However, even if this was not the case, *quod non*, this Panel would still be mandated to resolve this dispute as an association tribunal. The latter would only impact the legal nature of this Award, but would have no influence whatsoever on the applicable procedure before this Panel or the law applicable to the merits. In any event, the provisions of the CAS Code relating to the Ordinary Procedure do apply in the present case.

### **VI. ISSUES RELATING TO ADMISSIBILITY**

#### **A. Admissibility of the Request for Arbitration**

83. The Claimant’s Request for Arbitration complies with the requirements of the Code. Specifically, there exists no procedural time limit for the filing of a Request for Arbitration in cases before the CAS Ordinary Division. The Respondent has also not disputed the admissibility of the Request for Arbitration (but for his principal challenge of the Claimant’s disciplinary authority over him). Accordingly, the Panel deems the Request for Arbitration admissible.

#### **B. Admissibility of the Claimant’s Post-Hearing Submission**

84. After the close of the proceedings, by e-mail of 18 April 2024, the Claimant filed its Post-

Hearing Submission regarding the Respondent's Criminal Conviction of 12 April 2024. The Respondent objected the admissibility of the Claimant's Post Hearing Submission.

85. In accordance with Article R44.2 of the Code, the Panel deems the Claimant's Post Hearing Submission admissible. First, the Claimant had no opportunity to introduce the Criminal Conviction earlier, as it was made after the hearing. Second, the Claimant submitted the information about the Criminal Conviction promptly after it became known. Third, the information was spread widely in public media and therefore principally available for any person reading daily newspapers.
86. In any event, the Panel takes note of the Respondent's remark that the Criminal Conviction has no bearing for the issue of the Panel's disciplinary authority in the present case, and that it has no binding effect for the Panel. The Panel agrees that it has to assess the charges at issue in the present case separately and independently, based on the evidence on file.

### **C. Alleged lack of Disciplinary Authority**

87. The Respondent alleges that the Claimant's claim is inadmissible because the IBU has no authority to impose sanctions on former organs (such as the Respondent). Whether and to which extent an adjudicatory body is competent to impose sanctions on (former) organs or members is a question of the association's disciplinary authority (denominated in Austria as "*Disziplinargewalt*" or "*Vereinsstrafengewalt*") over the concerned individual.
88. Whether a person is submitted to the disciplinary authority of a sport's organisation is first and foremost a question of the merits (cf. *infra*). Thus, the Panel will deal with this issue in the merits' section.

## **VII. APPLICABLE LAW**

89. According to the Claimant, the substantive aspects of this matter are governed by the IBU Constitution, the IBU Disciplinary Rules and the IBU Code of Ethics in force during the period in which the Respondent allegedly breached them, from 2009 to 2018. More specifically, the IBU refers to the following editions of the cited rules, which applied between 2009 and 2018:
- The IBU Constitution 2009, 2012, 2014 and 2016;
  - The IBU Disciplinary Rules 2009, 2010, 2012, 2014 and 2016;
  - The IBU Code of Ethics 2012, 2014 and 2016.
90. For the procedural aspects of the case, the IBU maintains that the 2021 IBU Integrity Code shall apply.
91. The Respondent argues that the substance of this case shall be assessed exclusively under Austrian law.
92. Because it is undisputed that the Respondent was the IBU President in the relevant period of time (between 2009 and 2018), *i.e.* that he was an organ of the association, the Panel finds that the IBU Constitution, the IBU Disciplinary Rules and the IBU Code of Ethics, in their relevant editions, apply to him. In addition, because the IBU has its seat in Austria,

and given that the rules referred to above, as well as the 2021 IBU Integrity Code, explicitly refer to the applicability of Austrian law, Austrian law shall apply subsidiarily.

## VIII. MERITS

93. In consideration of the Parties' submissions, the main issues to be resolved by the Panel are the following:

- A. Does the Claimant have disciplinary authority over the Respondent?
- B. In case the first question is answered in the affirmative, has the Claimant proved the alleged charges raised against the Respondent?
- C. In case the second question is answered in the affirmative, what are the sanctions to be imposed on the Respondent?

### A. Does the Claimant have disciplinary authority over the Respondent?

94. It is the central argument of the Respondent in these proceedings that the IBU cannot impose sanctions on Mr. Besseberg because it lacks disciplinary authority over former members. Mr. Besseberg, who stepped down as IBU President in April 2018, was – in his view – no longer subject to the IBU's sanctioning power at the time the charges against him were initiated.

95. The Respondent alleges that it is “*undisputed opinion in literature and established case law*” that the exercise of disciplinary authority refers to a membership obligation, and that the person concerned must still be a member of the association at the time the disciplinary measure is imposed. As a result, a member of an association can – in the Respondent's view – withdraw from the association's disciplinary authority by leaving the association in good time. The Respondent further submits that the IBU's own rules applicable to him during his Presidency failed to extend disciplinary authority to former members. They were simply silent. In contrast, the 2021 IBU Integrity Code, which is not applicable substantively to the Respondent, has introduced for the first time a rule (Article 3.4) under which former members remain bound by the Integrity Code regarding matters occurring prior to their retirement. The Respondent maintains that it follows, *argumentum e contrario*, that before the implementation of the 2021 IBU Integrity Code, disciplinary authority ceased to exist upon a member's leave of the association. Finally, the Respondent argues that the nature of the sanctions applicable to the Respondent under the IBU Disciplinary Code (reprimand and removal from function) confirms his legal view. These sanctions are only relevant for active members, and other sanctions which could possibly be relevant for former members (most importantly, a monetary fine) are limited in their subjective scope to member federations.

96. At the outset of its legal discussion, the Panel finds it useful to identify the uncontested legal premises for its analysis of whether Mr. Besseberg can be sanctioned by the IBU still after he gave up his position as President:

- It is uncontested that the sanctioning power of sports associations is a matter of civil law. This is the prevailing opinion in both Austrian jurisprudence (e.g. Austrian Supreme Court, judgement dated 10 February 1981, 5 Ob 507/81 with further references), CAS case law (e.g. CAS 2011/A/2426, para. 63 et seq.; CAS

2006/A/1102 & CAS 2006/A/1146, para. 21), and literature (e.g. *Fritzweiler/Pfister/Summerer*, *Praxishandbuch Sportrecht*, 4<sup>th</sup> ed. 2020, 3<sup>rd</sup> chapter, para. 465; *Sommeregger*, *Sportschiedsgerichtsbarkeit in Österreich*, 2009, p. 99 with further references). The Respondent expressly recognizes the civil nature of the sanctioning system applied by sports associations in this proceeding.

- It is uncontested, and expressly accepted by the Respondent, that a sports association may only exercise disciplinary authority over an individual if that individual submitted him- or herself to the association's respective authority (*Haas*, *Die Disziplinalgewalt gegenüber nicht (mehr) regelgebundenen Sportlern*, *Causa Sport* 2009, 1, with further references).
- It is uncontested, and expressly accepted by the Respondent, that an individual may submit him- or herself to the disciplinary authority of a sports association either through membership in the association or (otherwise) through a contract (see *Dehesselles* in *Reichert*, *Vereins- und Verbandsrecht*, 15<sup>th</sup> ed. 2024, C. 4. para. 1880; *Haas*, *Causa Sport* 2009, 1).

97. What has been subject to discussion amongst scholars for decades is the legal nature of disciplinary sanctions imposed by an association on individuals bound by its rules. This issue is closely related to the legal nature of the statutes of an association more generally. Principally, three theories, which were initially developed and discussed in Germany (see, e.g. the overview provided in *MüKoBGB/Leuschner*, 9<sup>th</sup> ed. 2021, BGB § 25 para. 13-15), are discussed in Austria as to how the statutes of an association are to be qualified (see, for Austria, *Druml*, *Sportgerichtsbarkeit*, 2017, p. 31 et seq.):

- Under the so-called “Theory of Norms” (*Normentheorie*), the statutes of an association form an objective legal framework grounded on the autonomy of the association, which has to be distinguished from the contractual formation of legal rules. The Theory of Norms is no longer representative in legal literature or case law today.
- In contrast to the Theory of Norms, the so-called “Contract Theory” (*Vertragstheorie*) considers the statutes of an association as an organizational contract governing the association's organs, as well as a contract based on the law of obligations, which governs the legal relationship between the association and its members.
- The so-called “Modified Theory of Norms” (*modifizierte Normentheorie*), which is prevailing in German jurisprudence (e.g. Federal Court of Justice, NJW 1989, 1724, 1726), combines the elements of the Theory of Norms and the Contract Theory. It explains that the statutes of the association are initially a contract between its founders, but upon the association becoming legally existent, those statutes evolve into objective law governing the life of the association.

98. The distinction between these theories is practically relevant, including for the present dispute. It is relevant for the interpretation of the statutes, for the applicability of contract law (e.g. with respect to defects of will) and – relevant for this case – for the legal qualification of disciplinary sanctions. Under a strict application of the Contract Theory,

a disciplinary sanction resembles a contractual penalty (which may be imposed even after the termination of the contract, to the extent that it relates to conduct occurring during the life of the contract), whereas, under the Modified Theory of Norms, the disciplinary sanction qualifies as an association penalty imposed on members as an expression of the association autonomy. The supporters of the Modified Theory of Norms argue preponderantly that if the association, when exercising its disciplinary authority, refers to a membership obligation, the relevant member must still be a member of the association at the time the disciplinary sanction is imposed. Accordingly, the association has no disciplinary authority over former members, see, e.g. *Dehesselles* in Reichert, Vereins- und Verbandsrecht, 15<sup>th</sup> ed. 2024, C. 4. para. 1882 (“*Da die Rechtsmacht zur Verhängung von Vereinsstrafen privatautonom durch Satzung begründet wird, endet die Sanktionierungsbefugnis des Vereins grundsätzlich mit der Beendigung der Mitgliedschaft*“).

99. However, even the supporters of the Modified Theory of Norms make a clear distinction between sanctions imposed on the basis of the membership of the relevant individual (*Vereinsstrafe*) and sanctions imposed on the basis of another contractual submission by the relevant individual under the statutes of the association (*Vertragsstrafe*), see, e.g. *Dehesselles* in Reichert, Vereins- und Verbandsrecht, 15<sup>th</sup> ed. 2024, C. 4. para. 1880, 1881:

*“Vereinsstrafen können nur gegen Mitglieder oder gegen solche Personen verhängt werden, welche die Vereinsordnungsgewalt durch Vertrag anerkannt haben.“*

[emphasis added]

100. The legal view that disciplinary authority may only be exercised over active (but not over former) members assumes that a member is sanctioned on the basis of his or her membership in the association. This is also the central premise of the Respondent’s argument. His citations to jurisprudence and literature refer to the membership of the sanctioned individual as the basis for the association’s disciplinary authority. Therefore, under the Modified Theory of Norms, “membership” is the decisive criterion for the view that the association’s disciplinary authority *rationae temporis* does not survive the termination of the membership.
101. Whether or not the dominant view in Germany also applies in Austria appears doubtful. In Austria – contrary to Germany – the Contract Theory (*Vertragstheorie*) is prevailing (see the references provided by *Druml*, Sportgerichtsbarkeit, 2017, p. 31, footnote 125). Even the Respondent principally acknowledges that the submission of an individual to the disciplinary authority of an association is contractual in nature (see, e.g., paras 11, 21, 22 of the Answer). The Panel is of the opinion that, in concurrence with the *Vertragstheorie*, persuasive arguments exist that the association’s disciplinary authority should *per se* survive the termination of an individual’s membership, and that former members should not be able to escape disciplinary sanctions for a breach of their membership obligations simply by withdrawing from the association (*Haas*, Causa sport 2009, 1, 4; in the same direction *MüKoBGB/Leuschner*, 9<sup>th</sup> ed. 2021, BGB § 25 para. 69, who classifies disciplinary sanctions as a contractual penalty).
102. However, in the end, it can be left undecided here whether the IBU’s disciplinary authority is to be assessed under the Modified Theory of Norms or under the Contract

Theory. Contrary to what the Respondent asserts, the principles applicable under the Modified Theory of Norms for the association's disciplinary authority over former members do not apply here, because Mr. Besseberg was not a member of the IBU, but an organ. Organs are not bound by the association's rules through membership. They are bound through a contract expressly or impliedly agreed with the association upon acceptance of their mandate. When Mr. Besseberg became President of the IBU (and each time he was re-elected), by accepting to take office, he impliedly accepted to be bound by the IBU Constitution, the IBU Disciplinary Rules and the IBU Ethics Code. Each of these legal frameworks provides for applicability to participants or person who act on behalf of IBU, e.g.:

IBU Code of Ethics, preamble:

*“The provisions of the IBU Code of Ethics (hereinafter “the Code”) are undertaken voluntarily and independently of the civil and penal laws of the various countries, though it shall seek to adhere and conform to them.*

*All those who act on behalf of the IBU must conduct themselves with due care and diligence in performing their assigned tasks, avoiding actions that might damage the reputation of the IBU and/or the sport of biathlon.*

*The obligations described in the Code are personal in nature. Individuals are responsible for their own conduct, though failure to conform to them is grounds for disciplinary action imposed by the relevant IBU institutions. [...]*”

IBU Disciplinary Code, Article 2:

*„The IBU Disciplinary Rules are applicable to all members of the IBU and to all participants in the activities of the IBU or of any of its member federations by virtue of the participant's membership, accreditation or participation in the IBU's or its member federations' activities or events.“*

[emphasis added]

103. It is widely recognized that a person who is elected as an organ and accepts to take the position impliedly submits to the association's rules to the extent they are applicable to organs (cf. CAS 2017/A/5003, para. 121 [cited above at para. 62]; *Hauschild/Böttcher*, Schiedsvereinbarungen in Gesellschaftsverträgen, DNotZ 2012, 577, 579; *Zöller/Geimer*, ZPO, 35th ed. 2024, § 1066 ZPO para. 4). Such “voluntarily acceptance” is contractual in nature. Legal obligations that have a contractual foundation can trigger effects post-termination. For example, if the conduct of an individual triggers a contractual penalty, such penalty can evidently be claimed and enforced even after the termination of the contract. In fact, a breach of contract triggering a contractual penalty will not infrequently result in the termination of the contract by the other party. It would fly into the face of the purpose of the penalty if said termination, provoked by a party's misconduct, would remove the basis for payment of the contractual penalty.
104. Because it is self-evident that a penalty triggered by misconduct committed during the life of the contract can be enforced after the end of the contract, it was not necessary that the IBU Rules expressly set out that the IBU's disciplinary authority to impose sanctions survives the cessation of the office.



105. In fact, contrary to what the Respondent asserts, the nature of one of the core sanctions under the IBU Disciplinary Code applicable to the Respondent at the time confirms the survival of the IBU's sanctioning power after the Respondent's leave of the IBU: pursuant to Article 6.6 of the 2016 IBU Disciplinary Rules, an organ may be "*removed*" from its IBU function for the remaining period of elected service, and "*may be further restricted from future periods*" of elected service, up to a lifetime ban. While the Respondent asserts that the word "*further*" indicates that such restriction for the future must be imposed still at the time the organ holds office, the Panel does not share this interpretation. It was clearly not the intention of the IBU to link its respective authority to ban unethical persons from future activities within the association to the rather arbitrary criterion of whether that person still holds the office it abused. In fact, the more serious a violation of ethical duties is, the more likely it is that the affected person will give up office rather sooner than later (as the example of Mr. Besseberg, who resigned as the IBU's President only two days after the initial search of the IBU's offices in Austria happened, plainly illustrates). Under the Respondent's theory, the IBU would be deprived from imposing the most important sanction for an unethical organ in the most severe cases. Such an interpretation would be paradox and must be rejected.
106. Based on all of the reasons stated above, the Panel finds that the IBU retained disciplinary authority over the Respondent even after he had stepped down as the IBU's President. Hence, the Panel, as the IBU's Disciplinary Tribunal, is authorized to impose sanctions over the Respondent.

**B. Has the Claimant proved the alleged charges raised against the Respondent?**

107. Next, the Panel has to determine whether, under the applicable standard of proof, the Claimant has demonstrated that the Respondent is guilty of the charges pursued against him. These charges, as described in the Initial Notice (quoted above at para. 14) and in the Claimant's submissions in these proceedings, can be categorized as follows:
- Receipt of gifts and benefits (wristwatches, hunting trips and trophies, services of prostitutes), hereinafter referred to as the "First Charge";
  - Failure to challenge the giving of inappropriate benefits (the "Tikhonov-Resch" and "Tikhonov-Bøygard" incidents), hereinafter referred to as the "Second Charge", and together with the First Charge the "Charges".
108. The Charges will be addressed, in turn, below at 3. and 4., after the Panel has established the applicable burden and standard of proof in the present case (below at 1.), as well as general considerations of evidence assessment (below at 2.).

***1. Applicable Burden and Standard of Proof***

109. Chapter E, Article 8.3 of the 2021 IBU Integrity Code, which applies to the procedural aspects of the present proceeding, reads as follows:

*"Unless otherwise specified in the relevant rules, the burden of proof will be on the party asserting the claim or fact in issue, and it will be required to prove that claim or fact on the balance of probabilities."*

110. The “relevant rules” (including the IBU Constitution, the IBU Disciplinary Rules and the IBU Code of Ethics) do not specify otherwise. Therefore, the Panel finds that the Claimant has the burden of proof and is required to demonstrate the Charges under the standard of proof of “balance of probabilities”. In other words, the Claimant must demonstrate, bearing in mind the seriousness of the allegations, that it is more likely than not that the Respondent is guilty of the Charges pursued against him.

## *2. Assessment of the Evidence by the Panel*

111. In terms of the evidence available in the present proceedings (to be addressed in more detail below), the Panel takes initial note of the fact that Mr. Besseberg personally did not provide any statements during the proceedings, and that he did not make himself available for (cross-)examination during the hearing. While he presented appropriate proof of sickness preventing his participation at the hearing, he did not request the adjournment of the hearing, but – instead – accepted the case to proceed without the opportunity to present his side of the story through (oral) testimony.

112. The Panel further notes that the Respondent waived his right to cross-examine the Claimant’s witnesses heard during the hearing. The Respondent, represented by legal counsel, limited his defense in these proceedings from the very beginning to his challenge of the IBU’s disciplinary authority. The Panel reminded the Parties in advance of the hearing that in the absence of a request for bifurcation, the hearing would address all aspects of the case (including the merits of the Charges, see above at para. 40). In full knowledge of the Panel’s instructions, the Respondent made a deliberate choice to limit his defense, throughout the entirety of the proceedings (including the hearing), to the issue of the IBU’s disciplinary authority. Therefore, but for its brief submissions on the merits of the Charges in the Answer (without, however, submitting any evidence in support thereof), the Respondent has not addressed or contested the evidence presented by the Claimant.

113. The Panel has, however, thoroughly assessed the comments and statements made by Mr. Besseberg during the prior investigations, to the extent written records of these comments and statements were made available in the present CAS proceedings. As a matter of principle, the Panel notes the following with respect to such evidence:

- Mr. Besseberg first commented on the allegations during the police interrogation conducted before an Austrian public prosecutor on 10 and 11 April 2018 (the “2018 Interrogation”). The records of the 2018 Interrogation demonstrate that Mr. Besseberg was repeatedly informed about his procedural rights as an accused person, including the possibility of consulting a legal representative, or the possibility of procedural assistance. Mr. Besseberg himself reserved the involvement of a legal representative initially, but later abstained from appointing one.
- In the course of the 2018 Interrogation, Mr. Besseberg admitted to some instances of misconduct, which the Claimant relies upon in the present CAS proceedings.
- In subsequent written statements, Mr. Besseberg firmly rejected the allegations raised against him *in toto*, clarifying that his statements during the 2018 Interrogation were incorrect and triggered by “*difficult circumstances at that time*”.

- However, Mr. Besseberg has not further explained what these circumstances were and why they provoked him admitting serious unethical and even criminal conduct. While the Panel appreciates that an extensive house search and subsequent police and public prosecution interrogations do not constitute an everyday situation, it cannot see why Mr. Besseberg would readily admit unethical and even criminal conduct that did not happen. The psychological and physical stress a public investigation may cause suggests more likely the opposite reaction: that the accused would flatly reject false allegations made against him, instead of wrongly admitting them.

114. Because Mr. Besseberg forewent the opportunity to explain and reconcile previous oral testimony in the present proceedings, and given that neither the Claimant nor the Panel had the opportunity to question him about the given inconsistencies, the Panel sees no reason to deviate from Mr. Besseberg's testimony given during the 2018 Interrogation. These statements reflect the most contemporaneous account of his personal testimony, which was provided by him in full knowledge of his procedural rights, shortly after he was confronted with the charges against him. No reasonable explanation has been proffered as to why these statements were wrong, and why Mr. Besseberg would incriminate himself when he was allegedly innocent.

### ***3. The First Charge: Receipt of gifts and benefits***

115. The Claimant submits that the evidence collected against the Respondent through the investigations by the ERC, the BIU and the Norwegian criminal authorities demonstrates the Respondent's receipt of numerous gifts and benefits the Respondent should not have accepted and kept.

#### **a. The wristwatches**

116. During the search of the Respondent's private home, a total of eight wristwatches were secured, which the Respondent admitted, in the 2018 Interrogation, to have received as gifts either at major events (World Cup races or World Championships) or on the occasion of birthdays. Most relevantly, amongst these watches was an OMEGA watch with an approximate value of EUR 20,000, and a valuable Ulysse Nardin watch.

117. Questioned about the OMEGA and Ulysse Nardin watches in particular, Mr. Besseberg explained that he had received the OMEGA watch from the 1<sup>st</sup> Vice-President of the IBU, Sergey Kushchenko, in the course of the 100<sup>th</sup> IBU Board Meeting, presumably between 2010 and 2014 (*"a very rich Russian who is a watch collector. I know that he has a private watch collection worth many millions and that he is always on the lookout for copies of the No. 1. And I got it from him as a private person at the board meeting of the IBU..."*). Although he happened to see at Geneva Airport that the OMEGA watch costs around EUR 20,000, Mr. Besseberg kept the gift. Mr. Besseberg further explained that he had received the Ulysse Nardin watch from Aleksandr Tikhonov, 1<sup>st</sup> Vice-President of the IBU until approx. 2014 during the Holmenkollen World Cup in 2014.

118. While Mr. Besseberg alleges that he reported the receipt of some of the watches to the IBU, this allegation is contradicted by the IBU's files, which only registers the receipt of one single OMEGA watch at a value of approx. EUR 17,500. In any event, it is irrelevant whether or not Mr. Besseberg informed the IBU about the receipt of these inappropriate

gifts. He was simply not entitled to keep them.

119. Similarly, Mr. Besseberg's contention that he had no clue about the significant value of the watches is contradicted by the record and also by general life experience. Mr. Besseberg himself admitted that he saw the OMEGA watch for sale at Geneva Airport, and that it was priced at approx. EUR 20,000. Furthermore, he knew that Mr. Kushchenko, from whom he received the OMEGA watch, collected expensive watches (*"I know that he has a private watch collection worth many millions"*).
120. In light of the significant value of the watches, which the Respondent received from high-ranked Russian biathlon officials at the occasion of biathlon-related activities, the Panel rejects the Respondent's view that these gifts were *"absolutely common"* and provided in a private context. If the Respondent really believed so, this demonstrates an attitude of remarkable ignorance towards his ethical and governance-related obligations as the highest organ of one of the largest winter sport federations. Such ignorance, however, does not exculpate the Respondent.
121. Rather, the Panel finds that the Respondent, through his receipt and retainer of at least two valuable wristwatches from other biathlon officials during biathlon-related activities, breached the following IBU Rules:

IBU Code of Ethics (2012, 2014, 2016):

Introduction (2012, 2014)/preamble (2016):

*"All those who act on behalf of the IBU must conduct themselves with due care and diligence in performing their assigned tasks, avoiding actions that might damage the reputation of the IBU and/or the sport of biathlon."*

Article 1.2, General Rule [2012, 2014] / Article 2.2 [2016]:

*"Persons and organizations as listed in Art. 1.1 [including elected, appointed or contracted IBU functionaries] are expected to be aware of the importance of their task and shall be aware of their obligations and responsibilities. They shall pledge to behave in a dignified manner. They shall behave and act with complete credibility and integrity. They may not abuse their position as part of their function to take advantage of their function for private aims or gains, or in any other way."*

Article 2, Conflicts of Interest [2012, 2014]:

*"All those acting on behalf of the IBU must make decisions in the interests of the IBU. All those whose personal interests might reasonably be perceived as being affected by a decision or policy concerning an IBU matter (including receiving material benefits) shall refrain from the decision-making process."*

IBU Disciplinary Rules 2009, 2010, 2012, 2014 and 2016:

Article 3.3:

*"Penalties and disciplinary measures will be imposed for:*

- *violation of the principles of fair play and unsportsmanlike conduct, especially for offenses against the IBU Event and Competition Rules and against the IBU Anti-Doping Rules as stated in the Anti-Doping Rules;*
- *violation of the Constitution and other Rules of the IBU including the Code of Ethics – and for violations of decisions of the organs of the IBU;*
- *endangering or impairing the reputation or the interests of the IBU and for impairing the contractual relations of the IBU;*
- *offenses against the IBU, its organs, its members, the organs of its members or persons belonging to its members.”*

**b. The free hunting trips and trophies**

122. The numerous pictures shown in the police report of hunted animals and hunting trophies found during the search in Mr. Besseberg’s house demonstrate that Mr. Besseberg has been a passionate hunter.
123. In principle, occasional reciprocal invitations amongst hunting friends in a private context appear not uncommon. However, as convincingly established by the Claimant, this was not the situation of the Respondent. The Respondent’s rather frequent acceptance of hunting invitations, sometimes in the context of (major) biathlon events, in particular in Russia, was non-reciprocal, and extended over a long period of almost ten years (between 2009 and 2018). This went far beyond any acceptable standard of private, occasional, and reciprocal invitations.
124. During the 2018 Interrogation, Mr. Besseberg admitted that he had been invited regularly to hunts. While he alleges that he covered the related travel expenses by himself, he admitted that he did not pay for the overnight stay in hunting lodges, the hunting itself and the trophies (meaning the production of the animal preparation of the shot piece) given to him as souvenirs. Only where he wanted to do a specific hunt, he would have borne all the costs by himself. Mr. Besseberg also explained that some of these invitations were held in the respective country in conjunction with official meetings or world cups, e.g. in Russia upon the invitation of the governor Aleksandr Filipenko. The former IBU Vice-President, Aleksandr Tikhonov, also confirmed in his police interview that he invited Anders Besseberg to hunts in Russia annually.
125. Remarkably, Mr. Besseberg even admitted during the 2018 Interrogation that he was aware that such invitations could have possible influences; for example, he insisted on being invited by a certain candidate only after the World Cup was awarded.
126. Witness Dr. Carrabre explained during his police interview – and confirmed at the CAS hearing – that although he had no personal perception of hunting trips, Mr. Besseberg himself and other board members have repeatedly mentioned that he was on hunting trips in Russia, Slovenia and other countries and that he was given trophies along the way. Before the 2010 Vancouver Olympics, a hunt should have been organized and Mr. Besseberg asked the organizer who would pay for it. After he had been told that he would have to pay for the trip himself, he no longer had any interest in the hunt. The Panel was able to verify Dr. Carrabre’s credibility, and the plausibility of his testimony, during the hearing. His testimony remained unchallenged by the Respondent.

127. Based on the facts and evidence introduced by the Claimant, the Panel is sufficiently satisfied that the Respondent received free hunting trips and trophies unduly and rather regularly, and sometimes even in direct context to biathlon events. He thereby violated relevant provisions of the IBU Code of Ethics and IBU Disciplinary Rules cited above at para. 121.

**c. The services of prostitutes**

128. During the 2018 Interrogation, Mr. Besseberg admitted to regular dealings with prostitutes, sometimes “*in connection with official Russians*” and pointed out that it is not punishable in Austria “*to go to prostitutes*”. He said that he paid for the service himself occasionally, but that sometimes the prostitutes’ services were also paid by Russian officials (e.g. Sergey Kushchenko).

129. He also admitted to contacts with a nightclub dancer named “Eva”, who spent a few days and nights with him in his hotel room during the World Cup in Khanty Mansiysk. However, he also explained that he had nothing to do with “Eva’s” accreditation for the World Cup. On the contrary, he had the impression that “Eva” was a great biathlon fan, most likely a former athlete and that she received accreditation for this reason. He also mentioned that he was offered prostitutes at the occasion of the World Cup in Hochfilzen, Austria.

130. Witnesses Mr. Cobb and Dr. Carrabre confirmed the Respondent’s regular dealings with prostitutes in their respective police interviews and during the CAS hearing (see, for a summary of their respective testimony, above at paras. 46, 47). The Panel was convinced of both Mr. Cobb’s and Dr. Carrabre’s credibility, and of the plausibility of their respective testimony, which remained unchallenged by the Respondent.

131. The IBU’s former Secretary General, Nicole Resch, who was not offered by the Claimant as a witness in the present proceedings, also confirmed in her police interview that Mr. Besseberg was in the company of unknown young women at various World Cups and that it was clear from their interactions that they had an intimate relationship. In an e-mail to Donatella Dalfollo dated 12 July 2017, Nicole Resch specifically mentioned that she “*has seen many prostitutes come and go this week*”.

132. In assessing the confirmed interaction of the Respondent with prostitutes, the Panel wishes to emphasize that, because prostitution is not criminal and not (any more) prohibited in Austria, and has even been regulated by the legislator, the mere fact that Mr. Besseberg used such services is not in itself relevant to establish unethical conduct within the meaning of the IBU’s rules. However, the Claimant has demonstrated, to the sufficient satisfaction of the Panel, that the receipt of prostitution services by the Respondent took place regularly within the sphere of Russian influence linked to biathlon. The Respondent did not keep his dealings with prostitutes private, but mingled his use of these services with his official duties at the IBU’s President, including by bringing prostitutes (sometimes paid by Russian stakeholders) to official events and receptions. In doing so, he violated the above cited provisions of the IBU Code of Ethics and the IBU Disciplinary Rules.

**d. Interim conclusion**

133. Upon its thorough review of all facts and the relevant sequence of events, in light of the evidence submitted by the Claimant, which was not challenged by the Respondent, the Panel is comfortably satisfied that the Respondent received gifts and benefits which were inappropriate due to their financial value, their regularity, the potential conflict of interest and/or perceived favoritism in which their acceptance aroused. Such behavior damaged the IBU's reputation in public. In this respect, the Panel notes that a criminal first instance court in Norway affirmed the same or very similar charges under the higher standard of proof of "beyond reasonable doubt", which applies in criminal proceedings. Given that the Norwegian judgement is not final and binding and has been appealed by the Respondent, the Panel, however, attributes only limited value to the Respondent's conviction in Norway.
134. In summary, the Panel concludes that the Respondent is found to have (i) committed violations specified within Article 3.3 para. 3 and 4 of the IBU Disciplinary Rules 2009, 2010, 2012, 2014 and 2016, and (ii) violated the introductory text, Article 1.2 and Article 2 of the IBU Code of Ethics 2012, 2014 and the preamble, Article 1.2 and Article 2 of the IBU Code of Ethics 2016.
135. On a side note, the Panel cannot but express its regret that the Respondent's grossly unethical conduct, which seemed to have been widely known within the sphere of the IBU and its Executive Board, could occur in the described gravity and frequency over a full decade without the IBU taking any steps to stop these actions. Upon questioning of the Panel, Mr. Cobb and Dr. Carrabre admitted to a culture of passivism and "closed eyes" towards the Respondent's conduct within the IBU at the time. This culture contributed to the reputational damage the IBU has suffered, and calls for the improvement of the investigation and prosecution of integrity issues under the IBU's new integrity system.

**4. The Second Charge: Failure to challenge the giving of inappropriate benefits**

136. The Claimant submits that the evidence collected against the Respondent through the investigations by the ERC, the BIU and the Norwegian criminal authorities further demonstrates the Respondent's failure to act to prevent efforts by Russian individuals to make inappropriate gifts to others involved in the world of international biathlon.

**a. The "Tikhonov-Resch" incident**

137. The fact that Nicole Resch, former Secretary General of the IBU, was offered by Aleksandr Tikhonov a jewellery box in exchange for not prosecuting Russian doping cases was admitted by Mr. Besseberg at the 2018 Interrogation: "[I]f maybe Nicole called me and informed me about it, I know that I definitely said forget about it and let the cases be conducted as they are".
138. Ms Resch confirmed Mr. Tikhonov's bribery attempt in her own police interview, the written record of which was submitted as evidence in the present proceedings. She also confirmed that Mr. Besseberg, although she informed him immediately about the incident, did not impose or request any consequences against Mr. Tikhonov. While Mr. Tikhonov denied the incident, the Panel is prepared to follow Ms Resch's testimony, given that there is no apparent reason – and the Respondent does not name one either –

why she should introduce wrong charges against Mr. Tikhonov, whereas it is evident that Mr. Tikhonov had compelling reasons to deny the charges to protect himself.

**b. The “Tikhonov-Bøygard” incident**

139. The situation is similar for Aleksandr Tikhonov’s attempt to bribe Tore Bøygard, President of the Norwegian Federation, by making him a present of a wallet with a EUR 500 note inside. Mr. Bøygard testified about the bribery attempt during the CAS hearing, and he coherently summarized the relevant chain of events in how he was given the wallet, found the money note inside, returned the wallet (and the EUR 500 note) to Mr. Tikhonov’s wife, which made Mr. Tikhonov angry (see the summary of his testimony above at para. 45).
140. Mr. Bøygard also testified on how Mr. Besseberg “reassured” him that such gifts were common in Russia and that he could safely accept it.

**c. Interim conclusion**

141. Based on the evidence on file, the Panel is comfortably satisfied that the Respondent failed to take appropriate action to prosecute Mr. Tikhonov’s repeated bribery attempts towards IBU officials. Having received the respective information from Ms. Resch and Mr. Bøygard, the Respondent, as the IBU President, would have been obligated to initiate investigations (including prosecution) of the apparent bribery attempts. The Respondent deliberately refrained from doing so and prevented others from filing a complaint. He thereby violated the IBU Code of Ethics and IBU Disciplinary Rules.

**C. What are the sanctions to be imposed on the Respondent?**

142. Having found that the Respondent is guilty of the Charges, the Panel moves to examining the consequences that must be drawn from such finding.
143. The IBU requests:

- “(a) **restriction from future periods of elected or appointed service, up to a lifetime ban** (pursuant to Article 6.3 of the IBU Disciplinary Rules 2009 and/or Article 6.6 of the IBU Disciplinary Rules 2010, 2012, 2014 and/or 2016); and/or
- (b) **a fine of up to 100,000 EUR** (pursuant to Article 6.2 of the IBU Disciplinary Rules 2009, 2010, 2012, 2014 and/or 2016); and/or
- (c) **a reprimand** (pursuant to Article 6.1 of the IBU Disciplinary Rules 2009, 2010, 2012, 2014 and/or 2016)”

[emphasis added]

144. The relevant rules of the IBU Disciplinary Rules read es follows:

Article 6 IBU Disciplinary Rules (2014, 2016)<sup>1</sup>

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<sup>1</sup> The same rules are contained in Article 5 of the 2010 and 2012 IBU Disciplinary Rules.



*“The following disciplinary measures may be imposed on persons listed under Article 3.2 above:*

**6.1 Reprimand**

*A reprimand may be given for insignificant offenses against the Constitution and Rules of the IBU or against decisions of the organs of the IBU, and for endangering or damaging the reputation or interests of the IBU.*

**6.2 Fines**

**6.2.1** *Fines up to €500 may be imposed by the competition jury on member federations that violate the IBU Event and Competition Rules.*

**6.2.2** *Fines up to €100,000 may be imposed by the IBU Executive Board on member federations that seriously violate the IBU Constitution, the IBU Rules or decisions of the organs or other competent bodies of the IBU, and on those who jeopardize or damage the interests or the reputation of the IBU.*

**6.2.3** *Fines up to €200,000 may be imposed by the IBU Executive Board on member federations that have committed a serious violation of the Anti-Doping Rules, and who by doing so have seriously damaged the interests or the reputation of the IBU.*

[...]

**6.6 Removal from a Function**

*Persons listed in Article 3.2 above who seriously violate the IBU Constitution, the IBU Rules or decisions made by the IBU Executive Board or other competent bodies of the IBU may be removed from their IBU function for the remaining period of elected or appointed service and may be further restricted from future periods of elected or appointed service up to a lifetime ban.”*

Article 3.2 IBU Disciplinary Rules (2016):

*“Disciplinary measures may be imposed upon coaches, trainers, officials and staff of the IBU and its member federations, individual members of the IBU and members of competition committees, and any other participant as defined in Article 2 above.”*

**1. Restriction from future periods of elected or appointed service**

145. Pursuant to Article 6.6 of the IBU Disciplinary Rules, persons listed in Article 3.2 (which include “*participants in the activities of the IBU*”, Article 2 of the IBU Disciplinary Rules), who seriously violate the IBU Rules, may be restricted from future periods of elected or appointed service up to a lifetime ban.
146. Undoubtedly, the Respondent’s conduct analysed in detail above amounts to a serious violation of the IBU Rules, including the IBU Code of Ethics and the IBU Disciplinary Rules. What is more, the Respondent has not shown any remorse or genuine regret, but seems to consider his behaviour as normal and “*absolutely common*”, or at least “*not forbidden in Austria*”.
147. In light of these circumstances, exercising its discretion, the Panel finds a restriction from

future periods of elected or appointed service for a lifetime to be the appropriate sanction in the Respondent's case. A person like Mr. Besseberg, who seems to have no understanding and appreciation at all for his ethical and integrity obligations as an organ at the very top of a sports association, and who has massively damaged the IBU's reputation in the past, should not be entrusted ever again with any function within the IBU.

## 2. *Fine*

148. The IBU also requests that a fine of up to EUR 100,000 be imposed against the Respondent under Article 6.2.2 of the IBU Disciplinary Rules. What is disputed between the Parties is whether the Respondent – as the IBU's former President – belongs to the group of addressees against whom a fine under this Article can be imposed.
149. Article 6.2.2 of the IBU Disciplinary Rules specifies that a fine may be imposed on "*member federations*" that seriously violate the IBU Rules, and "*on those*" who jeopardize or damage the interests or reputation of the IBU. The Claimant is of the opinion that the reference to "*those*" includes all persons listed under Article 3.2 of the IBU Disciplinary Rules and is not confined to member federations. In contrast, the Respondent argues that "*on those*" refers to "*member federations*", which means that only member federations can be subject to a monetary fine under Article 6.2.2 of the IBU Disciplinary Rules.
150. Based on its interpretation of Article 6.2.2 of the IBU Disciplinary Rules, the Panel finds that the fines addressed therein only apply to member federations, for the following reasons:
151. First, the use of the words "*and on those*" within the context of Article 6.2.2 of the IBU Disciplinary Rules suggests that "*those*" in the second part of the sentence refer to the "*member federations*" mentioned in the first part of the sentence. The first part of the sentence, clearly and undisputedly, only refers to member federations. Therefore, only serious violations of the IBU Rules committed by member federations can be fined by the Claimant under this part of the first sentence in Article 6.2.2 of the IBU Disciplinary Rules. The purpose of the second part of the sentence is to identify further scenarios beyond a serious violation of the IBU Rules that may trigger the imposition of a fine, namely the jeopardy or damaging of the interests or the reputation of the IBU. If the IBU's interpretation were correct, this would mean that under the first scenario (serious violation of the IBU Rules), only member federations can be fined, whereas under the second scenario (jeopardy or damaging of the interests or the reputation of the IBU) all other participants mentioned in Article 3.2 could also be fined. However, there is no plausible reason for such a distinction. Specifically, it is not plausible why the IBU should be entitled to impose a sanction on, *e.g.*, an organ of the IBU for conduct damaging IBU's interests, but not for a serious violation of the IBU's rules. Furthermore, Article 6.2.3, which addresses fines for Anti-Doping Rule violations, also includes the dichotomy between a serious rule violation and a serious damage of the IBU's interests or reputation, and it is very clear that the application of a fine is limited to member federations in this sub-paragraph.
152. Second, a systematic interpretation of Article 6 of the IBU Disciplinary Rules confirms

the Panel's interpretation that fines may only be imposed against member federations. Article 6.6 of the IBU Disciplinary Rules, which addresses the removal from a function, expressly identifies the possible subjects of this measure as the "[p]ersons listed in Article 3.2 above", instead of using the word "those", which would also have been possible grammatically. This demonstrates that, had the IBU intended to extend the possibility to impose a fine against others than member federations, it would have used, in the second part of the relevant sentence in Article 6.2.2 of the IBU Disciplinary Rules, the words "persons listed in Article 3.2 above", instead of "those". "Those" is used as a demonstrative determiner in Article 6.2.2 to refer back to the "member federations" in the same sentence, not to the "persons listed in Article 3.2" mentioned at the very beginning of Article 6.

153. Third, the addressees of a particular disciplinary measure are identified clearly and coherently in all other places of Article 6 of the IBU Disciplinary Rules. Sanctions applicable to anyone listed in Article 3.2 are indicated by use of the passive form without any further limitation (e.g. Article 6.1 – "[a] reprimand may be given") or by express reference to the "persons listed in Article 3.2" (e.g. Article 6.6). Articles 6.2.1 and 6.2.3, which also address monetary fines, likewise identify only "member federations" as addressees. This is another indication that the word "those" in Article 6.2.2 was used as a mere demonstrative to refer back to the "member federations" identified at the beginning of that sentence (just as the "member federations" are identified at the beginning of the respective first sentence in Articles 6.2.1 and 6.2.3).
154. Fourth, the Panel highlights the need for clarity, certainty and predictability to which sanctioning regimes must adhere, in light of their significant impact on athletes' and others' careers (see, in relation to anti-doping regimes, e.g., CAS 2023/A/9398 & 9493; CAS 2008/A/1545; CAS 2019/A/6278; CAS 2022/ADD/42). Clarity, certainty and predictability would have required the IBU to be clear on the addressees of a fine of a rather significant value of up to EUR 100,000. In the case of ambiguity, the principle *in dubio contra stipulatorem* shall apply whereby an unfavourable interpretation of any clause against the author has to be adopted, as he had the power when drafting the clause to make the meaning plain (see CAS 2013/A/3237).
155. As a result, the Panel finds that there is no basis in the applicable IBU Rules to impose a monetary fine on the Respondent.

### **3. Reprimand**

156. Pursuant to Article 6.1 of the IBU Disciplinary Rules, a reprimand may be given for insignificant offenses against the IBU Rules (including against organs a "participants in IBU's activities" within the meaning of Article 3.2 & 2 of the IBU Disciplinary Rules).
157. Given that the Respondent is already receiving a lifetime ban under Article 6.6 for a serious violation of said rules, the Panel sees no need to impose a reprimand in addition, also in light of the fact that the Respondent has left the IBU and will not hold an office therein in the future. The purpose of a reprimand is, *inter alia*, to remind the addressee that he must comply with his or her obligations and shall not commit the same violation again. In the case of the Respondent, who will not hold an office ever again at the IBU, a reprimand would have no purpose and is fully consumed by the much more severe

sanction imposed on the Respondent under Article 6.6 of the IBU Disciplinary Rules.

## IX. COSTS

158. Article R64.4 of the Code provides as follows:

*“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*

- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

*The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”*

159. Article R64.5 of the Code provides as follows:

*“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.”*

160. The Panel decides on the issue of costs *ex officio* and is not bound by the requests of the Parties. Given that the Claimant principally succeeded in these proceedings, in that it successfully established the unethical conduct of the Respondent, the Panel finds that the Respondent shall bear the costs of the arbitration in their entirety.

161. Furthermore, pursuant to Article R64.5 of the CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the Parties, the Panel rules that the Respondent shall pay an amount of CHF 5,000 to the Claimant as a contribution to its legal costs and expenses incurred in the present proceedings. Apart from that, each Party shall bear its own fees and expenses.

## ON THESE GROUNDS

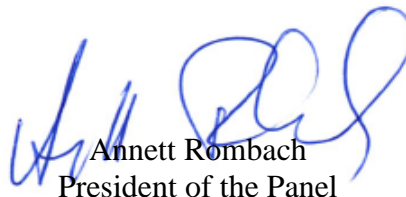
### The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has jurisdiction to entertain the Request for Arbitration filed by the International Biathlon Union on 29 March 2023.
2. The Request for Arbitration filed by the International Biathlon Union on 29 March 2023 is partially upheld.
3. Mr. Anders Besseberg is found to have breached the introductory text and Article 1.2 of the 2012 and 2014 IBU Code of Ethics, and the preamble and Article 2 of the 2016 IBU Code of Ethics.
4. Mr. Anders Besseberg is found to have breached Article 3.3 of the 2009, 2010, 2012, 2014 and 2016 IBU Disciplinary Rules by violating the IBU Code of Ethics and by endangering or impairing the reputation and interests of the International Biathlon Union.
5. Mr. Anders Besseberg is sanctioned with a restriction from future periods of elected or appointed services for a lifetime, according to Article 6.3 of the IBU Disciplinary Rules 2009 and/or Article 6.6 of the IBU Disciplinary Rules 2010, 2012, 2014 and/or 2016.
6. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office by separate letter, shall be borne in their entirety by Mr. Anders Besseberg.
7. Mr. Anders Besseberg shall pay an amount of CHF 5,000 (five thousand Swiss Francs) to the International Biathlon Union as contribution to its legal costs and other expenses incurred in the present proceedings.
8. Any other and further motions or prayers for relief are dismissed.


Seat of arbitration: Lausanne, Switzerland

Date: 6 March 2025

### THE COURT OF ARBITRATION FOR SPORT



Annett Rombach  
President of the Panel



Ulrich Haas  
Arbitrator



Martina Spreitzer-Kropiunik  
Arbitrator