



Arbitration CAS 2014/A/3775 Federació Catalana de Bittles i Bowling (FCBB) v. Fédération Internationale des Quilleurs (FIQ), award of 29 April 2015 (operative part of 28 November 2014)

Panel: Mr Olivier Carrard (Switzerland), President; Prof. Massimo Cocchia (Italy); Prof. Miguel Angel Fernández-Ballesteros (Spain)

Bowling

Eligibility to participate in competitions

CAS jurisdiction

Time limit for filing an appeal

1. Three prerequisites have to be met in order for CAS to have jurisdiction, namely (1) the parties must have agreed to the competence of the CAS, (2) there must be a “decision” of a federation, association or another sports-related body and (3) the (internal) legal remedies available must have been exhausted prior to appealing to CAS. In this respect, the parties are bound by the arbitration agreement provided in the statutes of the federation in favor of the CAS. Then, an e-mail issued by an International Federation’s President who is the chief executive officer of that IF and has the ability to represent the IF in all legal matters must be deemed to have been issued by a *federation* in the sense of Article R47 of the CAS Code. Furthermore, an email clearly expressing the IF’s intention to decide on the acceptability of entry forms of a national federation does not amount to simple information since it contains a ruling and constitutes therefore a decision. Finally, where the statutes’ language of a federation provide for a *right* to appeal to an internal body as an alternative forum to the CAS, there is no obligation for the member federations to appeal to that body for an exhaustion of internal remedies.
2. In the absence of any challenge in due time brought before the CAS against the legality of a decision prohibiting a member from participating in competitions, said decision is final and fully binding.

I. FACTS

A. The Parties

1. Federació Catalana de Bittles i Bowling (hereinafter referred to as “FCBB”) is a sporting federation created in 1949 and aiming at promoting ninepin and tenpin bowling. FCBB has

its headquarters in Barcelona, Spain. It is a member of the Fédération Internationale des Quilleurs since 30 August 2007.

2. The Fédération Internationale des Quilleurs (hereinafter referred to as “FIQ”) is the world governing body for the sport of ninepin and tenpin bowling, recognized as such by the International Olympic Committee. FIQ is organized under the laws of the State of Colorado, USA.

B. *Facts of the case and origin of the dispute*

3. Below is a summary of the relevant facts and allegations based on the parties’ written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 7 January 2013, the Catalonia High Court decided that Catalan sports federations could participate directly in international sporting events provided that there was *“no confluence between the national interest held by Spanish federated sport and the interest of an autonomous community in the international projection of its sports activity”*.
5. On 29 May 2013, the Federación Española de Bolos (hereinafter referred to as “FEB”), which is a member of the FIQ, submitted a proposal to FIQ to expel FCBB as a member for alleged failures to satisfy certain membership criteria set forth in FIQ’s Statutes (hereinafter referred to as “the Statutes”).
6. On 2 September 2013, the Barcelona Court of First Instance issued an order requesting FCBB to refrain from taking part in any international bowling competition without seeking proper authorization by FEB, pointing out that failure to comply with court orders incurs a crime or offense of “disobedience” under the Catalonian Criminal Code.
7. On 14 October 2013, FIQ’s outside counsel asked FEB and FCBB to provide information relating to the Catalonia High Court Decision dated 7 January 2013.
8. On 18 October 2013, FEB responded that the judgment was final and binding.
9. On 29 October 2013, FCBB stated that an appeal against said judgment had been brought before the Spanish Constitutional Court on 26 October 2013.
10. On 27 December 2013, FIQ’s outside legal counsel sent to FEB and FCBB a legal opinion, dated 27 November 2013, addressing FEB’s proposal to expel FCBB from FIQ. The conclusion was as follows:

“Recommendation. *Based on the FIQ Statutes, it is our conclusion that FCBB’s membership in FIQ should not be terminated. However, although the CAS decision tells us that FIQ is not bound by local laws and judicial decisions, we cannot ignore the practical reality that the law in Spain may prohibit FCBB from participating in FIQ activities, particularly in the tenpin discipline. So, if FIQ receives a direct order from a Spanish court prohibiting FCBB’s participation, then FIQ must honor that order. Further if FEB issues a directive to FIQ that it will not approve FCBB participating in FIQ events, then FIQ should be inclined to honor that directive, unless FCBB can provide evidence or legal authority that it is not bound by the order of the court”.*

11. The cover letter sent to FCBB and FEB stated that any last information or arguments to be considered by FIQ’s Executive Board had to be submitted by 15 January 2014.

12. On 14 January 2014, FCBB sent to FIQ its observations on the legal opinion dated 27 December, 2013, stating *inter alia* the following:

“[...] FCBB agrees with the Memorandum and recommendation from the lawyer Mr Steven B. Smith, with what regards to the thesis that there is no single reason by which the FCBB membership within the FIQ must be terminated. [...] the Federació Catalana de Bitlles I Bowling hereby OPPOSES to any other recommendation or pronounce within the proceeding”.

13. On 23 February 2014, the FIQ informed FEB and FCBB about the results of the Executive Board’s votes:

“Based upon the proposal by Spain to remove Catalonia as a member of FIQ due to non-compliance with current membership requirements, and after an exhaustive review of the arguments of the parties, the Court Orders from Spain, the previous CAS decision and the FIQ statutes, the FIQ Executive Board has voted on the issues presented. The result of that vote are as follows:

- 1. Should FCBB’s (Catalonia) FIQ membership be terminated? No, FCBB remains a member of FIQ*
- 2. If FIQ receives a direct order from a Spanish Court prohibiting FCBB from participating in tenpin discipline activities, should FIQ abide by this Order? Yes, FIQ will abide by the Order*
- 3. If FEB (Spain) issues a directive to FIQ that it will not approve FCBB participation in FIQ tenpin events, should FIQ abide by that directive, unless FCBB can provide FIQ evidence or legal authority that it is not bound by the order of the court? Yes, FIQ will abide by that directive”.*

14. On 19 March 2014, FIQ’s Executive Board received a further legal opinion, dated 17 March 2014, drafted by FIQ’s external counsel analyzing which FIQ/WTBAS approved tournaments were impacted by the votes made on 23 February 2014. According to FIQ’s external counsel, the events impacted by the votes were, *inter alia*, the WTBA Official Competitions listed in article 4.2.1 of the WTBA Statutes.

15. On 19 May 2014, FEB sent a letter to FIQ stating the following:

“Pursuant to your letter of 19 March 2014, the SPANISH FEDERATION communicates:

1.- *The international representation of Spain in international competitions corresponds to Spanish National Federation.*

2.- *“FEDERACIÓN ESPAÑOLA DE BOLOS” prohibits FCBB (Catalonia) to participate in FIQ/WTBA/ETBF tenpin events.*

3.- *Therefore, the FEB prohibits participation of FCBB in EUROPEAN WOMEN CHAMPIONSHIPS, requesting the inclusion of SPAIN in the list of participants in this event”.*

16. On 4 July 2014, FIQ sent a letter to FCBB, FEB, the European Tenpin Bowling Federation (hereinafter referred to as “ETBF”) and the Icelandic Bowling Federation stating the following:

“You have all been advised of the FIQ decision regarding future participation in WTBA events by FCBB. You have also previously been advised that pursuant to our attorney’s review of the FIQ statutes, the events that are affected include all WTBA World Championships, World Games, Regional Games and ETBF European Championships. It does not include events such as the Qubica AMF World Cup, in which entry is not FIQ/WTBA/ETBF managed, and “teams” are not entered as such.

On May 19, 2014 I received a letter from FEB, directly FIQ/WTBA to prohibit FCBB participation in the affected events until further notice. All of you also received this letter, with the exception of FCBB; I apologize for my oversight, it is attached to this mail.

Therefore, please be advised that until such time as FIQ/WTBA receives a rescission of the May 19 [2014] letter, or FCBB brings to the attention of FIQ a subsequent Order of a higher Spanish appeals Court, FCBB is prohibited from participation in all WTBA and ETBF Championship events; in 2014 this would include the World Youth Championship, the World Men Championships and the European Champions Cup. WTBA is responsible for enforcement at the World Championship level, ETBF at the European level”.

17. On 15 September 2014, ETBF informed FCBB that it was not allowed to participate to the ETBF championships.
18. On 25 September 2014, FCBB sent an entry form for the World Championships that were to take place in Abu Dhabi between 4 and 15 December 2014.
19. On 29 September 2014, FIQ informed FCBB that it could not accept its participation in the 2014 World Men Championships:

“I regret to advise you that, due to the decision taken by the FIQ Executive Board earlier this year, you will not be allowed to participate in the 2014 World Men Championships. We cannot accept your entry.

As you have previously been advised, if FEB denies your proposal of separate entry into any WTBA or ETBF Championship event, then you are ineligible for that event. As you will recall, this advice was made to you prior to the 2014 European Women Championships, but FEB consented to your participation in that event. However, FEB will participate in the 2014 WMC and has advised that FCBB is not approved for separate entry”.

C. *Proceedings before the CAS*

20. On 14 October 2014, FCBB filed its statement of appeal and appeal brief with the following prayers for relief:

“- on the merits, the challenged FIQ decision is illegal and, therefore, FCBB is authorized to participate to the world Men Championships in Abu Dhabi;

- ex aequo et bono, FIQ is condemned to pay to FCBB an amount of 5.000 EUR as a contribution to FCBB’s costs of defense.

- all arbitration costs are to be born [sic] by FIQ (assessment of the Panel – by FIQ alone)”.

21. On 20 October 2014, the CAS Court Office acknowledged receipt of the Statement of Appeal and invited FIQ to provide its answer within twenty days of receipt of its letter.
22. On 3 November 2014, FIQ requested an extension until 24 November 2014 to file its answer.
23. On 6 November 2014, FCBB stated that it was ready to accept an extension until 15 November 2014.
24. On 7 November 2014, the CAS Court Office informed the parties that the deadline for FIQ to file its answer was extended until 17 November 2014.
25. On 14 November 2014, the CAS Court Office informed the parties that the Panel appointed to decide the case was constituted as follows:

President: Mr Olivier Carrard

Arbitrators: Prof. Massimo Coccia

Prof. Dr. Miguel Angel Fernández-Ballesteros

26. On the same day, the CAS Court Office informed the parties that, even though no expedited procedure had been implemented, an award was to be rendered by early December 2014 since the World Championships were scheduled on 4 December 2014.
27. On 17 November 2014, FIQ filed its answer brief and exhibits with the following prayer for relief:
- “FIQ respectfully requests FCBB’s appeal be denied, and that CAS award the FIQ its attorneys fees and costs in this matter, as well as any other orders which CAS may deem to be appropriate”.*
28. On 21 November 2014, FCBB filed a request for provisional measures with the CAS Court Office with the following prayers for relief, specifying that such request has to be considered also as the Appellant’s reply:

“Therefore, FCBB kindly requests the CAS to grant to FCBB (at the latest by 27 November 2014, due to the fact that the World Men Championships starts on 4 December) a provisional measure whereby “injunction is made to FIQ to allow FCBB to participate in the World Men Championships (Abu Dhabi, December 2014) and, given the urgency, to adopt all administrative/material measures that are necessary in order that FCBB participation be effective”.

29. On 24 November 2014, the CAS Court Office invited FIQ to file its rejoinder/answer to the request for provisional measures until 26 November 2014. On 26 November 2014, FIQ submitted its rejoinder/answer, asking the Panel to dismiss the request for provisional measures.
30. On 28 November 2014, the Panel, having considered the position of the parties on the need for a hearing (the Appellant being in favor of holding a hearing and the Respondent against), determined that it was sufficiently well informed and decided not to hold a hearing pursuant to Article R44.2 of the Code of Sports-related Arbitration (the “CAS Code”). Subsequently, the Panel rendered the operative part of the award, dismissing the appeal. On that same day, the CAS Court Office notified to the parties the operative part of the award issued by the Panel. The CAS Court Office also informed the parties that the Panel, having dismissed on the merits the FCBB’s appeal, was not going to deal with the request for provisional measures as it had become without object.

D. Overview of the submissions of the Parties

31. The following outline of the Parties’ submissions is illustrative only and does not necessarily comprise every contention put forward by the Parties.
 - a) FCBB (the Appellant)
32. FCBB’s appeal is directed against FIQ’s “decision” dated 29 September 2014 refusing to accept FCBB’s entry at the 2014 World Men Championships.
33. FCBB’s arguments may be summarized as follows:
 - a. FIQ’s decision dated 23 February 2014 was illegal. The decision contravenes to article 3.2.b of the Statutes which provides that each member federation shall have the right to take part in all FIQ activities with equal rights. Furthermore, the decision was adopted in violation of the voting rules applicable for the suspension of a member federation. As a result, the fact that the FCBB has not challenged the decision dated 23 February 2014 cannot be construed as entailing a loss of the right to challenge the FIQ decision dated 29 September 2014.
 - b. The conditions mentioned in points 2 and 3 of the FIQ decision dated 23 February 2014 are not fulfilled. Firstly, there was not direct order from a Spanish Court prohibiting FCBB from participating in tennis discipline activities. Secondly, FEB has not obtained any binding and enforceable court order restricting FCBB’s right of

participation in any FIQ/WTBA/ETBF international events. Furthermore, an appeal has been filed with the Spanish Constitutional Court against the decision of the Catalonia High Court dated 7 January 2013.

b) FIQ (the Respondent)

34. FIQ's arguments may be summarized as follows:

- a. FIQ's "enforcement letter" dated 29 September 2014 does not constitute an appealable decision. The only formal decision that could have been appealed to CAS was the February decision. As a result, CAS lacks jurisdiction to hear FCBB's appeals.
- b. FCBB failed to exhaust internal remedies because the Statutes provide that a joint arbitration commission shall hear disputes, including appeals between member federations and between member federations and FIQ, and that the CAS shall be the final forum for such disputes.
- c. FCBB is barred from obtaining relief, because it did not timely challenge the legality of FIQ's decision dated 23 February 2014 before CAS in accordance with article R49 of the CAS Code.
- d. FIQ's "enforcement letter" complies with point 3 of FIQ's decision dated 23 February 2014 since FEB issued a directive and FCVV has not provided evidence to establish that it was not bound by the order of the court.
- e. FIQ's decision dated 23 February 2014 is not illegal. It does not direct that FCBB be treated differently than any other FIQ member federation, but set forth guidelines approved by FIQ's Executive Board as to how FIQ should address the practical realities posed by the judgment of the Catalonia High Court dated 7 January 2013. If FIQ were to ignore the order issued by the Barcelona Court of First Instance and allow FCBB to participate in competitions and other events in violation of that order, FIQ could face criminal and civil charges in Spain. Furthermore, points 2 and 3 of FIQ's decision dated 23 February 2014 do not relate to the suspension or termination of FCBB's membership in FIQ.

II. LEGAL DISCUSSION

A. *Jurisdiction of the CAS*

35. In accordance with the Swiss Private International Law (Article 186), the CAS has power to decide upon its own jurisdiction.

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

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

37. There are three prerequisites that have to be met in order for CAS to have jurisdiction (cf. CAS 2011/A/2436; CAS 2009/A/1919), namely:

- the parties must have agreed to the competence of the CAS; and
- there must be a “decision” of a federation, association or another sports-related body;
- the (internal) legal remedies available must have been exhausted prior to appealing to CAS.

38. These three prerequisites will be addressed below.

a) Have the parties consented to CAS arbitration?

39. According to Article R47 of the CAS Code, there is consent to arbitrate if the statutes or regulations of the body which has issued the appealed decision, provide for a right to appeal to CAS.

40. In the case at hand, the parties are bound by the arbitration agreement provided in Article 5.1.b of the Statutes, which provides as follows:

“The Court of Arbitration for Sport shall be used as the final forum to resolve all disputes between FIQ and/or the membership disciplines and/or member federations and/or individuals and/or third parties. WTBA and WNB A shall form a joint Arbitration Commission which shall hear disputes referred under section 3.2”.

41. Hence, the Panel finds that the parties have agreed to the competence of the CAS.

b) Does the e-mail dated 29 September 2014 addressed by FIQ constitute an appealable decision?

42. In the Panel’s view, by reference to CAS jurisprudence which is inclined to choose a broad interpretation of the term “decision” (cf. CAS 2009/A/1919), the existence of a decision does not depend on the form in which it is issued (cf. CAS 2005/A/899; CAS 2007/A/1251).

43. The characteristic features of an appealable decision of a sport association or federation have been described as follows (cf. CAS 2008/A/1633): *“a communication of the association directed to a party and based on an „animus decidendi”, i.e. an intention of a body of the association to decide on a matter [...]. A simple information, which does not contain any „ruling”, cannot be considered a decision”.*

44. The Panel shall therefore consider these general principles and apply them to the present case.

45. FIQ contends that the e-mail dated 29 September 2014 sent by FIQ to FCBB (hereinafter “the e-mail”) was “*an enforcement of the original February FIQ Decision, whose Point 3 had been fulfilled by the Directive*”. It therefore considers that “*the only formal decision that could [have been] appealed to CAS [was] the February FIQ Decision*”.
46. The Panel notes that the e-mail was issued by the president of the FIQ. According to the Statutes, the president is the chief executive office of FIQ (article 6.5.a.i of the Statutes) and has the ability to represent FIQ in all legal matters (art. 6.5.a.iv of the Statutes). The e-mail must therefore be deemed to have been issued by a *federation* in the sense of Article R47 of the CAS Code.
47. Furthermore, the e-mail informs FCBB that FCBB’s entry forms for participation in the World Championships were not accepted because FEB did not authorize FCBB’s separate entry. Accordingly, the Panel considers that this communication clearly expresses FIQ’s intention to decide on the acceptability of FCBB’s entry forms. It does not amount to simple information which does not contain any ruling.
48. Therefore, the Panel rules that FIQ’s e-mail constitutes a decision in the sense of Article R47 of the CAS Code.
- c) Has the Appellant exhausted the internal remedies?
49. The relevant provisions of the Statutes are Article 5.1.b (2nd sentence), which provides:
- “WTBA and WNBA shall form a joint Arbitration Commission which shall bear disputes referred under Section 3.2.c”.*
- and Article 3.2.c which provides:
- “Each member federation shall have the right to appeal to joint Arbitration Commission in cases of controversies”.*
50. The wording of Article 3.2.c of the Statutes is clear: each member federation has a *right* to appeal to the joint Arbitration Commission. Hence, there is no obligation for the member federations to appeal to the joint Arbitration Commission. In addition, nowhere in the Statutes it is provided that the appeal to the joint Arbitration Commission is a precondition for an appeal to the CAS; in the Panel’s view, the Statutes’ language appears to provide the joint Arbitration Commission as an alternative forum to the CAS.
51. FCBB has therefore exhausted all legal remedies available.
52. Hence, the Panel finds that the requirement of Article R47 of the CAS Code are fulfilled and that, as a result, the Panel has jurisdiction to hear this dispute.

B. *Admissibility*

53. Article R49 of the CAS Code reads as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

54. The Statutes contain no provision setting out a deadline within which an appeal must be filed with CAS. Accordingly, the twenty-one-day deadline provided in Article R49 of the CAS Code applies.

55. In the case at hand, it is undisputed that the appealed decision was issued on 29 September 2014 and that the statement of appeal was filed on 14 October 2014. Accordingly, the appeal was lodged within the 21-day deadline provided in Article R47 of the CAS Code.

C. *Applicable law*

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

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

57. In the case at hand the applicable regulations are the Statutes and FIQ’s regulations. Moreover, the seat of FIQ is in the United States. The law of the United States is therefore applicable subsidiarily.

D. *Merits*

58. The Panel notes that, on 23 February 2014, FCBB was informed about the results of the Executive Board of the FIQ.

59. Moreover, on 4 July 2014, FCBB was made aware that, further to FEB’s letter dated 19 May 2014, it was prohibited from participating in any WTBA and ETBF Championship events, which, in 2014, would include the World Men Championship.

60. In these circumstances, the Panel considers that, at least from 4 July 2014, FCBB was perfectly aware of the fact that it was not allowed to participate to the World Men Championship that were to take place in Abu Dhabi between 4 and 15 December 2014. In this regard, the Panel notes that, at least from 4 July 2014, FCBB could have appealed to the CAS within 21 days against the legality of the decision prohibiting it from participating to all WTBA and ETBF

Championships events. As the deadline to appeal the FIQ's decisions communicated to FCBB on 23 February 2014 and 4 July 2014 expired long before the present appeal to the CAS, those decisions are nowadays final and fully binding on FCBB. Accordingly, the Panel finds that the arguments invoked against the decision made on 23 February 2014 are untimely.

61. In addition, the Panel notes that the decision rejecting FCBB's entry forms for the 2014 World Men Championships is fully in line with the previous decisions communicated to FCBB and is merely implementing what had already been decided. Therefore, the FIQ can rightfully rely on its previous decisions in order to justify its rejection of the FCBB's entry forms.
62. In light of the above, in the absence of any challenge brought against the decisions issued by FIQ on 23 February 2014 and 4 July 2014, the Panel finds that appeal filed against FIQ's decision to refuse FCBB's entry forms for the 2014 World Men Championships must be dismissed.
63. Given the above conclusion, all other or further arguments, requests or motions brought forward by the Appellant or the Respondent must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Federació Catalana de Bittles i Bowling on 14 October 2014 against the decision of 29 September 2014 by the Fédération Internationale des Quilleurs is dismissed.
2. (...).
3. (...).
4. All other or further requests or motions for relief are dismissed.