



Arbitration CAS 2009/A/1957 Fédération Française de Natation (FFN) v. Ligue Européenne de Natation (LEN), award of 5 July 2010

Panel: Mr Hans Nater (Switzerland), President; Mr François Klein (France); Mr Alasdair Bell (United Kingdom)

Aquatics (water polo)

Disciplinary proceeding against a federation for failing to comply with the transfer regulations

Absence of violation of the procedural rights guaranteed by the ECHR

Compatibility of the transfer system with EC law

Deference to the discretion enjoyed by a sanctioning body

- 1. Procedural fundamental rights protect citizens against violations of such rights by the State and its organs and are therefore only applicable to a jurisdiction established by a State and not to legal relationships between private entities such as associations and their members. As a result, the European Convention on Human rights (ECHR) is not applicable to disciplinary proceedings before a sport association's jurisdictional bodies which cannot be qualified as "tribunals" within the meaning of the ECHR. In any case, any procedural failures before such bodies such as a violation of the right of the defense may be cured with the appeal *de novo* before CAS.**
- 2. For the time being, rules related to International Transfer Certificate (ITC) – which require that an ITC is issued before a player can move from one club to another club belonging to a different national federation and that accurate player records are maintained – have not been declared void, in particular, for the reason that they were not in compliance with EC law. With regard to the football player transfer system, the European Commission came to the conclusion that an international transfer system, based on the issuance of ITCs, was in line with both free movement law and competition law. Consequently, and without even determining whether a player can be considered as a "worker" under Article 39 of the EC Treaty or a "citizen" under Article 18 of the EC Treaty, the rules of another sport federation that are based on a similar system do not violate EU law on freedom of movement since these rules pursue a legitimate objective and may be considered proportionate.**
- 3. If a CAS panel does not see any reason to believe that a sanctioning body abused the discretion which it enjoys under the applicable regulations, there is no reason to amend the decision taken in this respect by that sanctioning body.**

The Fédération Française de Natation (“the FFN” or “the Appellant”) is the French governing body for Water Polo, Swimming, Synchronised Swimming, Open Water Swimming and Diving. It is a French association with corporate seat in Paris, France. It is affiliated to the Ligue Européenne de Natation.

The Ligue Européenne de Natation (“the LEN” or “the Respondent”) is the European governing body for Water Polo, Swimming, Synchronised Swimming, Open Water Swimming and Diving. It is a Swiss association with corporate seat in Geneva, Switzerland.

On 22 December 2008, the Respondent received a written complaint from the Czech Water Polo Federation (“the Czech Federation”) regarding, inter alia, the alleged unlawful transfer of the Czech Water Polo player K. (“the Player”) from the Czech Water Polo club Fezko Strakonice (“the Czech Club”) to the French Water Polo club, Olympic Nice Natation (ONN).

In particular, the Czech Federation complained that the Player had played for ONN in the Women’s European Water Polo Cup Competition 2008/09 (“the Women’s Champions Cup”) Qualification Round in Nice from 6 to 8 December 2008, whilst also playing for the Czech Club in its domestic competition.

The Respondent conducted its own internal investigations regarding the allegations of the Czech Federation. The Respondent discovered that the Player had not only played in six matches in the Qualification Rounds for ONN between 6 and 8 December 2008, after which she had returned to play for the Czech Club, but she had also played for ONN again on another three occasions in the Preliminary Round between 9 and 11 January 2009 (“the Matches”).

The Respondent had no record of the transfer of the Player from the Czech Club to ONN, and it appeared that no International Transfer Certificate (ITC) had been requested from the Czech Federation by the Appellant in order that the Player could properly be registered to play for ONN in the Matches.

However, it appeared that the list of players, containing the Player’s name, had been lodged by the ONN with the FFN and had been duly signed by the President of the FFN on 18 November 2008.

Having conducted its own investigations, the Respondent sent a letter to the Appellant on 1 June 2009 with the following content:

“Dear Friends,

This is to inform you that following a report and complaint by the Czech Water Polo Federation regarding potentially illegal water polo transfers, the LEN Panel for Disciplinary Matters & Disputes will meet and analyse the respective cases.

The players involved are as follows:

K. (CZE) from Fezko Strakonice (CZE) to Olympic Nice Natation (FRA)

G. (CZE) from Fezko Strakonice (CZE) to PVK Vrutky (SVK)

M. (CZE) from Fezko Strakonice (CZE) to PVK Vrutky (SVK)

Both receiving Clubs involved entered and played the European Water Polo Club Cup Competitions season 2008/2009 with these players in their ranks, however without taking into consideration LEN Transfer Regulations.

Please take note that the LEN Panel for Disciplinary Matters & Disputes will gather and conduct a hearing on:

Saturday, 20th June 2009, 14.00 hours

at the

LEN Financial Office

74, Rue de Merl

L-2146 Luxembourg

One representative of your Federation is kindly invited to attend the hearing. If this would be not possible by any instance we wish to request you to be so kind and express your arguments in written form and post it by registered mail to the address of the LEN Financial Office (74, Rue de Merl, L-2146 Luxembourg) at latest by Monday, 15th June 2009.

Hope to have informed you satisfactorily and we stay at your disposal in case of any further query you may have.

With best regards

Laszlo Szakadati

Director”.

None of the involved parties attended the hearing. However, the Slovak Water Polo Federation, ONN and Fezko Strakonice sent written statements. The Appellant did not provide the Respondent with a written response to its letter.

The LEN Panel for Disciplinary Matters & Disputes (“the LEN Panel”) met in Luxembourg and, after having considered all of the evidence submitted to it, ruled that the Appellant had failed to respect the Water Polo Transfer Regulations (“the WPTR”) as it did not request an ITC for the Player who had played for ONN.

The LEN Panel took into consideration a previous infraction by the Appellant of the WPTR relating to the Slovenian player, P. in February 2007. In that case, the Appellant had authorised the international transfer of P.’s registration from the Slovenian club AVK Maribor to the French club, Montpellier W.P.C without the requisite ITC. On that occasion, the LEN Panel issued a strong warning against the Appellant.

On 20 June 2009, the LEN Panel issued its decision (the LEN Panel’s decision) which can be summarised in essence as follows:

“(…) The facts in this incident are clear. All involved parties confirm what happened. K. was inserted in the players list and played for Olympic Nice Natation in European Water Polo Club Cup Competition (Women’s Champions Cup) 2008/2009. G. and M. were inserted in the players list and played for PVK Vrutky in the same competition.

The president of French Swimming Federation and General Secretary of Slovak Water Polo Federation certified the two lists.

There were no requests for International Transfer Certificates and no tracks of any transfer for the three players.

The Panel first considered the LEN Rules and Regulations applicable to this case. It concluded that the Constitutional Rules and Event Rules established the Panel's jurisdiction to determine this matter under Constitutional Rule C 9.2.1 (b).

All players registered with a club which is a member of a National Federation are subject to the LEN Water Polo Transfer Regulations. The three Czech players could only play for clubs of other National Federations with the releasing of International Transfer Certificates (ITC) (...).

The procedures with the players list are described in Rules for European Water Polo Cups, Club 6 Entries. The certifying Federation is responsible for the list according to Club 6.3.1. The signatures and stamp of French Swimming Federation and Slovak Water Polo Federation should be guarantee that the list is correct and that the players are affiliated to the club they are representing, ref Club 6.3.2. The French Swimming Federation represented by the president and Slovak Water Polo Federation represented by the General Secretary have thus violated the above mentioned rules. The Panel does not believe that the certification is an attempt to make a fraud, but more a result of procedures that can be improved. (...).

The Panel noted that the LEN Water Polo Transfer Regulations and Rules for European Water Polo Cups are subordinates and supplementary to the Constitutional Rules and General Event Rules. As such, the Panel considered that it has the discretion to impose a sanction in proportion to the facts of this case.

The Panel considered in general terms the imposition of a warning, a fine and/ or a suspension.

With regard to Olympic Nice Natation and PVK Vrutky, both clubs have used illegal players in the European Water Polo Cup for National Champions Women. The explanation that both clubs considered the participation of the three Czech players as legal without ITCs because their home club did not participate in the Cup, cannot be accepted. The use of illegal players is a very serious matter and justify (sic) the imposition of both a fine and a suspension from participation in future European Water Polo Cups for Women. The Panel discussed the period for suspension and decided that one year was the adequate period for both clubs. The Panel did not have any guidance on the amount of the fine, but the Panel considered that the suspension and a fine of 3.000 Euros was proportionate to the seriousness of the violation.

With regard to French Swimming Federation and Slovak Water Polo Federation, the violation of LEN Rules and Regulations were identical. The French Swimming Federation, however, has already received a strong written warning from LEN [on] 9th February 2007 for a violation of Water Polo Transfer Regulations. The Panel therefore decided to impose a substantial and higher fine upon the French Federation than the Slovak Federation.

An amount of 15.000 Euro and 7.500 Euro respectively was considered to be adequate sanction upon the two involved Federations.

The Panel considered that the sanctions would send a clear signal to other clubs and federations participating in Water Polo that LEN viewed the violation of Water Polo Transfer Regulations very seriously and was prepared to take actions against clubs and federations.

The Panel also considered sanctions against the three Czech players. After discussion, it decided that a strong warning would reflect their involvement in the incident”.

Based on the above, the LEN Panel decided that:

“(...) 4. The French Swimming Federation has already received a strong warning from LEN [on] 9th February 2007 for a violation of Water Polo Transfer Regulations. The Federation is therefore fined with fifteen thousand (15.000) Euro.

5. The Slovak Water Polo Federation is fined with seven thousand five hundred (7.500) Euro. (...)

French Swimming Federation and the Slovak Water Polo Federation [shall be charged for the costs of the LEN Panel] each 700 Euro (...).”

The LEN Panel's decision was notified to the Appellant on 2 September 2009.

The Appellant filed its Statement of Appeal, written in French, on 18 September 2009.

The Respondent objected within the deadline set by CAS submitting that the language of the arbitration should be English. On 15 October 2009, the President of the Appeals Arbitration Division rendered an order and decided that the language of the arbitration shall indeed be English.

On 2 November 2009, the Appellant lodged its Appeal Brief, written in English.

On 30 November 2009, the President of the Appeals Arbitration Division issued an order on the request for stay filed by the Appellant with its Statement of Appeal and held that the LEN Panel's Decision was not enforceable.

The Respondent filed its Answer on 10 December 2009.

The Order of Procedure was signed by both Parties before the Hearing, which was held on 15 April 2010.

The Appellant's submissions can be summarised as follows:

- The LEN Panel's Decision violated the Appellant's procedural rights according to article 6 ECHR.
- The LEN Panel's Decision violated the LEN's Constitutional Rules.
- The LEN's Rules do not comply with EC Law.
- The Penalty imposed by the LEN Panel on the Appellant was disproportionate.

Based on these submissions, the Appellant filed the followings requests for relief:

“Firstly:

- *Place on record that the decision of the LEN Panel dated 20 June 2009 has been suspended as a result of the appeal lodged with the CAS.*

[This first request was granted by the President of the Appeals Arbitration Division on 30 November 2009]

Secondly:

- *Cancel all aspects of the decision of 20 June 2009.*
- *Order the LEN to reimburse the FFN for the costs of this appeal, i.e. procedural costs, legal fees and travel expenses up to a maximum of € 15,000”.*

The Respondent’s submissions can be summarized as follows:

- The LEN Panel’s Decision did not violate the Appellant’s procedural rights according to article 6 ECHR.
- The LEN Panel’s Decision did not violate the LEN’s Constitutional Rules.
- The LEN’s Rules comply with EC Law.

LAW

CAS Jurisdiction and admissibility

1. Art. R47 paragraph 1 of the Code of Sports-related arbitration (“the Code”) provides that:
“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”.
2. The Appellant filed its Appeal to the CAS against a decision taken on 20 June 2009 by the LEN Panel for Disciplinary Matters and Disputes. This Appeal is an appeal against a decision of a federation.
3. As the Parties did not conclude a specific arbitration agreement, this Panel has to examine whether it is competent to decide the dispute on the basis of the LEN Constitutional Rules or Regulations.
4. The relevant articles of the LEN Constitutional Rules read as follows:
Article C 9.2.2:
“An appeal may be submitted against a decision taken by the LEN Panel according to C 9.2.1 a) and b) to the Court for Arbitration in Sport in Lausanne (Switzerland) within twenty-one (21) days after notification”.

Article C 9.2.1 b):

“The LEN Panel shall deal with cases which are under the jurisdiction of LEN and decide in cases put forward by the LEN Bureau about sanctions on a Federation, club or individual for violating Rules, Regulations or decisions by the Congress”.

Article C 9.2.1 d):

“The LEN Panel shall deal with cases which are under the jurisdiction of LEN and decide on disputes regarding a transfer of a Water Polo player, subject to the payment of a fee of five hundred (500) EURO to LEN. A representative of the LEN Technical Water Polo Committee not belonging to a Federation involved shall be heard”.

5. The Appellant claims that the LEN Panel’s Decision is governed by Article C 9.2.1 d) whereas the Respondent submits that the LEN Panel’s Decision falls under Article C 9.2.1 b).
6. In the Panel’s view, the LEN Panel’s Decision falls under Article C 9. 2.1 b). Before the LEN Panel, the Parties did not dispute the competence of the LEN Panel to decide on the matter that was put forward by the LEN Bureau. The LEN Panel passed sanctions against two Federations, two clubs and three individuals.
7. In the Panel’s view, the LEN Panel’s Decision does not relate to a “dispute” within the meaning of Article C 9.2.1 d). The case at hand is without doubt a disciplinary proceeding about sanctions being imposed on a Federation, club or individual for failing to comply with applicable LEN regulations concerning the international transfer of players. As such, the case falls within the parameters of Article C 9.2.1. b) rather than Article C 9.2.1 d) and is, therefore, subject to an appeal to the CAS. The Panel considers that the term “*dispute*” cannot refer to any disciplinary proceeding conducted by the LEN competent bodies but to a dispute between two Federations or two Clubs. This could be for instance the case when a Federation refuses to issue the ITC requested by another Federation. In such case, the LEN Panel would have to decide on the dispute between the two Federations according to C 9.2.2 b).
8. The Panel affirms its jurisdiction, as the requirements according to article R47 paragraph 1 of the Code have been met: The appeal to the CAS has been directed against the decision of a federation, and the LEN Constitutional Rules provide an appeal against the LEN Panel’s Decision taken on 20 June 2009.

Applicable law

9. Art. R58 of the Code provides the following:

“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”.

10. As the Respondent is member of the LEN and as the Appeal was lodged against a Decision issued by the LEN Panel, the Panel concludes that the LEN Constitutional Rules and Regulations, i.e. the LEN General Event Rules, the LEN Rules for European Water Polo Cups for Club Teams (“the European Cup Rules”) and the WPTR, are applicable, which is not disputed by the Parties. As the LEN is domiciled in Switzerland, the Panel shall apply Swiss law subsidiarily, which is also not disputed.
11. In accordance with the Swiss Federal Court’s jurisprudence on Swiss International Private Law, the Panel shall take into consideration the Parties submissions on EC law (see ATF 132 III 399).

Merits

12. The Appellant submits first of all that the Decision should be set aside for two procedural reasons:
 - The Decision violated the Appellant’s procedural rights according to article 6 ECHR.
 - The Decision violated the LEN’s Constitutional Rules.

A. Did the Decision violate the Appellant’s procedural rights under article 6 ECHR?

13. The Appellant claims that the ECHR, notably article 6 thereof, is applicable and was violated by the LEN Panel. On the other hand, the Respondent submits principally that the ECHR is not applicable and, even if it were, any violation of the procedural rights granted by the ECHR would be cured before CAS as the Panel has full power to review the facts and the law according to article R57 of the Code.
14. After having carefully reviewed the submissions of the Parties and the comprehensive jurisprudence provided with the Appeal Brief and the Answer, the Panel does not see any reason in the present case to depart from the line established in earlier jurisprudence, namely that the ECHR is not applicable to disciplinary proceedings before a Sport association’s jurisdictional bodies and that, in any case, any procedural failures before such bodies is cured with the Appeal *de novo* before CAS.
15. The CAS and the Swiss Federal Court’s jurisprudence confirm that procedural fundamental rights protect citizens against violations of such rights by the State and its organs and are therefore only applicable to a jurisdiction established by a State and not to legal relationships between private entities such as associations and their members (see notably CAS 2006/A/1146, p. 10).
16. According to Prof. Gabrielle Kaufmann-Kohler, “*under the classic concept of human rights the purpose of human rights is to protect the individual from the State, as the holder of public power. Human rights are not, from a classical perspective, intended to apply directly to private relations between individuals. It should be*

deducted from this view that human rights only apply to disciplinary proceedings carried out by sports governing bodies that act by virtue of a delegation of power from the State” (Legal Opinion on the Conformity of Certain Provisions of the Draft World Anti-Doping Code with Commonly Accepted Principles of International Law, 26 February 2003, para. 63).

17. It is not disputed that the LEN, a Swiss association governed by Swiss law, does not act by virtue of a delegation of power from the State.
18. The CAS has consistently held that the ECHR does not apply to an association’s disciplinary bodies, which cannot be qualified as “Tribunals” within the meaning of the ECHR (see CAS 2000/A/290). For instance, in anti-doping matters, the CAS has confirmed that *“human rights are, as such, inapplicable to doping controls carried out by sport governing bodies that are legally characterized as purely private entities”* (CAS 2005/A/895, p. 22).
19. The Federal Tribunal, with respect to article 8 ECHR, has held that an Athlete suspended by a Sport Federation is not subject to a measure taken by the State, which led to the result that this provision is inapplicable (ATF 127 III 429). The issue has not yet been brought before the ECHR, but one of its most eminent members, Judge Rudolf Bernhardt has expressed his personal view that the ECHR does not apply to the adjudication of doping disputes by private sports governing bodies. In this regard, he has observed that: *“the European Convention concerns the protection of the individuals from specific invasions by the States, the ECHR and other similar instruments are not directly applicable”* (BERNHARDT R., *Fairness-Garantien in den Europäischen Menschenrechten*, in Sport, Recht und Ethik, Stuttgart 1998, p. 54).
20. The situation would differ if the LEN had inserted into its Constitutional Rules and Regulations procedural rights based on the ECHR or if it had referred to the ECHR as applicable to disciplinary proceedings before its jurisdictional bodies. In such a case, the ECHR would be applicable based on the LEN’s own Rules and Regulations and LEN members could benefit from what could then be qualified as internal associative rights. But the LEN has not integrated the ECHR into its Regulations.
21. Another reason why article 6 ECHR should not be taken into consideration in the present case is because the Panel will judge the case *de novo* and therefore review the facts and the law. As such, any possible violation of the right of the defence before the disciplinary body of the association may be cured by the CAS. The Federal Tribunal has had the opportunity to confirm the view of the CAS according to which any violation of the right to be heard may be repaired before CAS (ATF 127 III 429). In the case at hand the Appellant admitted at the Hearing that the violations of the ECHR regarding the LEN Panel’s Decision have been cured by the CAS proceedings.
22. Finally, based on the facts of this particular case, even if the ECHR were to be deemed applicable to the matter and even if the procedure before CAS had not served to cure any alleged procedural deficiency at first instance, the Panel cannot, on the basis of the evidence and pleadings presented before it, find any reason to conclude that the fundamental procedural rights of the Appellant were not respected.

23. Based on the foregoing, the Appellant's submissions regarding any violation of the procedural rights guaranteed by the ECHR must be rejected.

B. *Did the Decision violate the LEN's Constitutional Rules?*

24. The Appellant contends that the LEN Panel violated its Constitutional Rules by (i) failing to hear a representative of the LEN Technical Water Polo Committee as provided under article C 9.2.1 lit. d) and (ii) by its Chairman's failure to nominate three Panel members as provided for in article C 9.3.1 of the LEN Constitutional Rules.

25. As regards the first argument based on article C 9.2.1 lit. d), the Panel first observes that the Appellant failed to demonstrate how this alleged failure could have impacted the Decision. The Panel also stresses that this alleged deficiency would, in any case, have been cured before CAS, not least since the Appellant had the possibility to call a representative of the LEN Technical Water Polo Committee if it was of the opinion that this could have had a material bearing on the outcome of the proceedings. Yet the Appellant did not make use of this possibility. Furthermore, the Panel has already established that article C 9.2.1 lit d) did not apply to this particular case in any event.

26. The second formal requirement that the Appellant claims to have been violated by the LEN Panel is linked to its composition. According to article C 9.3.1 of the LEN Constitutional Rules, "*the Chairman shall appoint three (3) members of the LEN Panel to adjudicate all matters in the specific case*". The Appellant argues that, the Chairman being a member of the LEN Panel which decided on its case, it obviously did not appoint three members but only two. The Decision should be set aside for this reason.

27. Here again, the Appellant fails to demonstrate what the practical consequences of this situation could have been and why this alleged violation of article C 9.3.1 is of such importance that it should logically lead to the annulment of the Decision.

28. Furthermore, the Panel considers that the alleged violation of article C 9.3.1 was cured by this appeal to the CAS. The appointment of three LEN Panel members is a procedural rule which aims at ensuring a fair trial. The right to a fair trial was guaranteed before CAS, which the Appellant did not dispute. Consequently, the submission has no weight.

29. The Panel also wishes to stress that it cannot follow the reasoning of the Appellant insofar as the LEN Constitutional Rules do not clearly exclude the possibility that the Chairman be a member of a LEN Panel. It notes that the Respondent has stated that this is very often the case and also notes that the Appellant has failed to demonstrate otherwise. Consequently, in the absence of any specific rule to the contrary, the Panel finds that the requirements of article C 9.3.1 were satisfied by Chairman's designation of two colleagues and himself as members of the LEN Panel.

30. Irrespective of the “curing effect” of the procedure before the CAS, the Panel therefore concludes that the LEN Panel’s decision respected the LEN’s Constitutional Rules.
31. The Appellant subsequently made two further sets of submissions of a more substantive nature, namely:
 - The LEN’s Rules do not comply with EC Law.
 - The Penalty imposed by the LEN Panel on the Appellant was not proportionate

C. *Do the LEN’s Rules comply with EC Law, notably article 18 and 39 of the EC Treaty?*

32. The Panel considers that the Appellant has standing to bring a challenge under EC Law. According to the consistent jurisprudence of the ECJ any third party, which can justify of a judicial interest may invoke articles 18 and 39 of the EC Treaty (see ITC Innovative Technology Center GmbH v. Bundesagentur für Arbeit, Case C-208/05). The Respondent’s submissions as to the standing of the Appellant on this point must therefore be rejected.
33. Accordingly, the Panel has to determine whether the International Transfer system put in place by LEN is acceptable under EC Law.
34. The LEN established a set of rules in order to manage international transfers, namely transfers of Water Polo Players from one national federation to another national federation. The procedure must be started by the new club of the player, which shall ask its national federation to file a request with the national federation of the previous club for the issuance of an ITC. In doing so, the national federations and LEN aim at ensuring that the LEN transfer regulations are respected, that sporting competition functions smoothly, and that all parties involved are aware of and agree with the transfer.
35. The Panel notes first that this system has been implemented by LEN for many years and that the Appellant is well aware of it, as it participated at around 220 procedures which led to the issuance of an ITC. The Panel notes as well that the system put in place by LEN is very similar if not identical to the systems implemented by other Sport Federations (such as FIFA, for instance).
36. To the best of the Panel’s knowledge, the LEN Rules or other rules related to ITC have never been declared void, in particular, for the reason that they were not in compliance with EC law. The Appellant fails to advance any precedent to the contrary. Furthermore, the Panel observes that the European Court of Justice has had occasion to consider player transfer regimes in reasonably analogous cases, most notably in *Lehtonen*, where, in relation to transfer “deadlines”, the Court stated as follows:

“Late transfers might be liable to change substantially the sporting strength of one or other team in the course of a championship, thus calling into question the comparability of results between the teams taking part in the championship, and consequently the proper functioning of sporting competition”(case C-176/96).

37. Similarly, the Panel notes that the European Commission has also considered the compatibility of the football player transfer system with EU law and came to the conclusion that an international transfer system, based on the issuance of ITCs, was in line with both free movement law and competition law (see e.g. IP/02/824 “Commission closes investigations into FIFA Regulations on international football transfers”).
38. In the present case, the Panel has heard nothing from the Appellant which would lead it to the conclusion that the LEN rules at issue are materially different to those other international transfer systems which have been accepted both by the ECJ and by the European Commission.
39. Consequently, and without even determining whether the Player in the present case can be considered as a “worker” under Article 39 of the EC Treaty or a “citizen” under Article 18 of the EC Treaty, the Panel is of the opinion that the LEN rules do not violate EU law on freedom of movement since these rules pursue a legitimate objective and may be considered proportionate.
40. It should also be noted that following the ratification of the Lisbon Treaty, the EC Treaty expressly provides for the “Specificity of Sport” pursuant to article 165 para. 2 of the EC Treaty. This new provision supports and reinforces both the jurisprudence of the ECJ and the practice of the European Commission, as cited above.
41. The Appellant is accused of infringing Rule TR3 of the WPTR and Rule Club 6.3.1 and 6.3.2 of the European Cup Rules. These rules require that an ITC is issued before a player can move from one club to another club belonging to a different national federation and that accurate player records are maintained. The Respondent submits that those rules are a perfect example of rules that are inherent in the conduct of an international high level sports event and which are needed for the smooth running of competition.
42. In an international tournament, there is no doubt that transfers of players must abide to certain rules in order to avoid that the fairness of the competition be jeopardised by abusive or opportunistic short term transfers. As many other sport federations, the LEN put in place a system which the Panel finds reasonable, proportionate and justified.
43. The Appellant claims that the “*sole purpose of these provisions is direct financial benefit for the LEN*”. Considering that the LEN gets paid by the club 150 Euro for the transfer of amateur players, the Panel rejects the Appellant’s argument that LEN is making a real financial benefit with this system, even if the amount were only to cover administrative costs and not also part of the Prize Money for the Women’s Champions Cup in the present case, as LEN submits without providing any evidence.
44. Based on the foregoing, the Panel finds that the system put in place by the Respondent complies with article 18 of the EC Treaty. Even if the Player could have been considered as a worker, the Panel would have drawn the same conclusion with respect to article 39 of the EC Treaty.
45. The Appellant’s submissions on EC law must therefore be rejected.

D. Is the penalty imposed by the LEN Panel on the Appellant proportionate?

46. The Appellant submits that the fine of 15,000 Euro imposed by the LEN Panel was disproportionate to the Appellant's rule infraction. It submits that the breach was minimal and that the lack of a scale of penalties violates the principle of the legality of penalties. Consequently, the LEN Panel's decision should be declared null and void.
47. In view of the Panel, the LEN Regulations required more active behaviour of the Appellant with respect to the ITC procedures. In accordance with Rule TR 3.2 of the WPTR, it was up to the Appellant to ask for the International Transfer Certificate. Furthermore, pursuant to Rule Club 6.3.1 and 6.3.2 of the European Cup Rules, it was the duty of the Appellant to verify the list. By signing the list of the ONN team where the Player was mentioned (although no ITC had been issued for her transfer) the Appellant played a key role in admitting the Player as a valid member of the ONN team, when in fact she was not.
48. This omission by the Appellant must be seen in perspective with its commitment to support the Respondent to achieve its objectives as provided under the LEN Constitutional Rule C 2.2.2 lit. b).
49. As considered by the LEN Panel, the fact that this was a second proceeding against the Appellant for the same type of violation is an aggravating circumstance. Even in the absence of a specific rule in the LEN Regulations on repeated offense, the Panel finds that the LEN Panel was fully entitled to distinguish between the Slovak Federation (which had committed a first offense) and the Appellant (which had already been sanctioned). In this respect one should note that the Slovak Federation was sanctioned with 7,500 Euro for a first offense, whereas the Appellant had only been sanctioned with a strong warning.
50. As to the Appellant's argument that the fine imposed on it is disproportionate in comparison with the Club's sanction of 3,000 Euro, the Appellant seems to disregard the fact that the Clubs were banned for one year from any European Competition. A suspension is clearly a strong sanction as compared to a fine in the scale of the disciplinary sanctions provided by the LEN Rules. It may, in general, be considered as a stronger sanction, since the main purpose of a Club or an Athlete is to participate to sport competitions. The Appellant's submission is therefore ill founded.
51. After having carefully read the Decision, the Panel does not see any reason to believe that the LEN Panel abused its legitimate discretion which it enjoys under the LEN Regulations. According to CAS jurisprudence, (see CAS 2005/A/958 nr. 50-51; CAS 2006/A/1154 nr. 19; CAS 2009/A/1918 nr. 106) it therefore sees no reason to amend the Decision in this respect.
52. As to the question of the absence of a minimum and a maximum amount of the fine, the Panel considers that this is a question for the LEN's Congress and not for a jurisdictional authority like CAS.

53. Finally, the Panel notes that the Respondent made an administrative error when issuing its first invoice however this cannot serve to undermine or otherwise impugn the validity of the Decision in this case.
54. Based on all the above, the Appeal must be rejected.

The Court of Arbitration for Sport rules:

1. The Appeal filed by the Fédération Française de Natation is dismissed.
 2. The decision of the LEN Panel for Disciplinary Matters and Disputes dated 20 June 2009, in so far as it has been appealed, is upheld.
- (...)
5. All other motions or prayers for relief are dismissed.