



Arbitration CAS 2000/A/297 R. / International Olympic Committee (IOC), International Weightlifting Federation (IWF), National Olympic Committee of Bosnia and Herzegovina and Weightlifting Federation of Bosnia and Herzegovina, order of 30 August 2000

Arbitration agreement

On 23 August 2000, R. filed a statement of appeal with the Court of Arbitration for Sport challenging a possible decision of non-selection for the 2000 Olympic Games in Sydney. According to R., his coach notified him on 10 August 2000, that he would no longer be able to compete in Sydney on behalf of Bosnia and Herzegovina, although he earlier had been informed that he would represent the country at the Olympic Games.

R. puts forward that no explanation was given for this decision and no reasons were provided. He adds that he has not received any written decision informing him of his non-selection for the Olympic Games and he asserts that he is the Bosnian Weightlifting Federation's and the Bosnia Olympic Committee's selection to represent Bosnia in weightlifting at the Olympic Games considering that he received a letter signed by the President of the national Weightlifting Federation informing him that he will represent his country at the Olympic Games in Sydney.

R. raises that the jurisdiction of the Court of Arbitration for Sport in the present matter shall be admitted on the basis of Rule 74 of the Olympic Charter which provides that “*Any disputes arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-related Arbitration*”.

A copy of the statement of appeal has been transmitted to the Respondents identified by R., namely the International Olympic Committee (IOC), the International Weightlifting Federation (IWF), the National Olympic Committee of Bosnia and Herzegovina and the Weightlifting Federation of Bosnia and Herzegovina. These four bodies were invited by CAS to file any written comments related to the jurisdiction of CAS in the present matter.

By letter of 29 August 2000, the IOC replied that there was no arbitration agreement related to the present case between R. and the IOC. The same day, the Olympic Committee of Bosnia and Herzegovina also indicated that such an arbitration agreement between this NOC and R. does not exist. Furthermore, by letter of 29 August 2000, the IWF replied as follows:

“... we would like to state on behalf of the International Weightlifting Federation that R. did not qualify as a weightlifting participant at the Sydney 2000 Olympic Games.

Under the provisions of the IOC-SOCOG-IWF Olympic Qualification Rules, the Bosnia and Herzegovina National Olympic Committee did not win Olympic qualification as an NOC. Nor did R. qualify on an individual basis.

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Neither the NOC of Bosnia and Herzegovina, nor the Bosnia and Herzegovina Weightlifting Federation, nor the athlete himself has ever been invited by the IWF to participate in the Games, or received notification from the IWF to that effect”.

In view of the statement of appeal, it appears that the existence of a decision of non-nomination (or nomination) of R. is not established. Pursuant to Rule 49 of the Olympic Charter, the right to enter athletes in the Olympic Games rests with NOCs with a right of acceptance for the IOC Executive Board. Therefore, it is doubtful that the information of 10 August 2000, referred to by R. can be regarded as a final decision according to art. R47 of the Code of Sports-related Arbitration.

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In accordance with art. R47 of the Code of Sports-related Arbitration “*A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, 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 body*”.

Pursuant to art. R52 of the Code, the CAS shall take all appropriate actions to set the arbitration in motion, unless it is apparent from the outset that there is manifestly no agreement to arbitrate referring to the CAS. Therefore, the only issue to be dealt with in this decision is that of the existence of a *prima facie* arbitration agreement. In other words, the relevant test for purposes of this decision is not whether CAS has jurisdiction but only whether there is an appearance of an arbitration agreement referring to CAS. If there is such an appearance, then the Panel of arbitrators, to which this case may be referred, will have to rule on its own jurisdiction.

In his statement of appeal, R. declares that he is not in possession of any specific agreement providing for appeal to the CAS. This was confirmed by the IOC, the IWF and the Olympic Committee of Bosnia and Herzegovina. He has neither provided the Court with statutes or regulations referring to CAS arbitration. However, he puts forward that the CAS jurisdiction in this matter is based on Rule 74 of the Olympic Charter. The Court of Arbitration for Sport already had the occasion to express its opinion on the scope of Rule 74 of the Olympic Charter (see arbitration CAS NAG 1 *Puerto Ski Federation & David Quinn Steele Jr v. International Olympic Committee*). In particular, the CAS decided that “olympic” athletes, namely athletes duly accredited by the International Olympic Committee, were able to refer to Rule 74 of the Olympic Charter to submit a request for arbitration or an appeal to the CAS. The Court has considered that athletes with only an interest in taking part in the Olympic Games could not use this arbitration clause to justify the jurisdiction of CAS.

Therefore, in the present matter, it appears clearly that Rule 74 of the Olympic Charter cannot be considered as an arbitration agreement according to art. R52 of the Code of Sports-related Arbitration.

Accordingly, the Deputy President of the CAS Appeals Arbitration Division considers that the requirements provided by art. R52 of the Code of Sports-related Arbitration allowing the CAS to initiate an arbitration procedure are not fulfilled *in casu*.

The Deputy President of the Appeals Arbitration Division of the Court of Arbitration for Sport, ruling in camera, renders the following decision:

1. The Court of Arbitration for Sport cannot initiate an appeals arbitration procedure further to the statement of appeal filed by R. on 23 August 2000.

(...)