



Arbitration CAS 2001/A/329 Gibraltar Badminton Association (GBA) / International Badminton Federation (IBF), order of 25 May 2001

Notion of country

Principle of non-discrimination against athletes or against a country

In view of the request for arbitration filed by the Gibraltar Badminton Association (GBA) on 21 May 2001, against the decision pronounced by the International Badminton Federation (IBF) on 16 May 2001;

In view of the application for provisional measures also dated 21 May 2001;

In view of the answer to this application for provisional measures filed by the IBF on 22 May 2001;

In view of art. R37, R48 and R52 of the Code of Sports-related Arbitration;

In view of the urgency of the case;

LAW

The President of the CAS Appeals Arbitration Division, ruling in camera, hereby considers

Whereas the Gibraltar Badminton Association (GBA) is member of the International Badminton Federation (IBF);

Whereas on 28 September 2000, the GBA submitted its entry form for the Sudirman Cup (the World Team Championships) to be held from 28 May to 2 June 2001 in Sevilla/Spain;

Whereas by letter of 20 February 2001, the IBF informed the GBA that the Spanish authorities were very sensitive about public recognition of Gibraltar and that the Organizing Committee of the World Championships suggested that the GBA players should not parade in any opening ceremony and that the flag of Gibraltar should not be displayed at any time during the event;

Whereas the GBA objected repeatedly to such proposal and requested that the GBA should have the same rights and conditions as other participating members;

Whereas on 11 May 2001, the IBF wrote a letter to the GBA with the following content: *“IBF was earlier this week informed that the Secretariat of the Foreign Affairs Ministry of Spain had intervened and, citing Spanish law, had ruled that Gibraltar may not take part in the event in any capacity. (...) Although we were informed that this decision was final, in a last effort to secure the playing participation of Gibraltar BA in the Sudirman Cup and World Championships 2001 we propose that players from Gibraltar BA be allowed to take part in the competition as an IBF team under the IBF flag but with no reference to Gibraltar”*;

Whereas on 13 May 2001, the GBA refused the conditions set out in the IBF letter of 11 May 2001;

Whereas on 16 May 2001, Mr. Cameron, IBF Chief Executive, sent a letter to the GBA stating that the Spanish Government had accepted Gibraltar's participation in the Sudirman Cup but only with neutral representation as an IBF team, under the IBF flag and with no reference to Gibraltar;

Whereas by letter of same day, Mr. Andrew Ryan, IBF Director of marketing, sent a letter to the GBA with the following clarifications:

- “1. *You will be able to attend the IBF AGM as Gibraltar.*
2. *Players from Gibraltar may be able to take part in the opening ceremony as members of an IBF entered team under the IBF flag but with no mention of Gibraltar.*
3. *You will not be able to wear your tracksuits that have Gibraltar embroidered on the back.*
4. *You will not be able to wear your competition shirts that have the name Gibraltar printed on the back.”*

Whereas on 21 May 2001, the Gibraltar Badminton Association filed an appeal against the IBF decision of 16 May 2001 before the Court of Arbitration for Sport;

Whereas the Appellant seeks the following relief:

- “a. *That the Tribunal reverses the decision of IBF and declares that GBA players be permitted fully to participate in the Tournament (including taking part in the Opening Ceremony) under their national flag, wearing their normal tracksuits and competition shirts.*
- b. *Alternatively, that there be no Opening Ceremony and no flags from any other country be flown and/or that all players wear tracksuits and competition shirts without reference to the players' nationality”.*

Whereas the IBF asks the CAS to dismiss this application for provisional measures;

Whereas in view of Rule 2.4 of the IBF Rules, the jurisdiction of the Court of Arbitration for Sport shall be admitted;

Whereas it is for the President of the CAS Appeals Arbitration Division to decide on the application for provisional measures, considering that the Panel has not been formed yet (art. R52 and R37 of the Code of Sports-related Arbitration);

Whereas, as a general rule, when deciding whether to stay the execution of the decision appealed from, it is necessary to consider whether the measure is useful to protect the Appellant from

irreparable harm, the likelihood of success on the merits of the appeal and whether the interests of the appellant outweigh those of the opposite party;

Whereas the Appellant must give the impression that the facts have a certain probability, and must also make summarily plausible that the rights cited exist and that the material conditions for a legal action are fulfilled;

Whereas Gibraltar is located on the southern coast of Spain and was ceded to Great Britain by Spain in 1713; whereas up to the present date, Gibraltar is considered to be an overseas territory of the United Kingdom and is therefore not recognized as an independent state by the international community;

Whereas the GBA is a member association of the IBF in accordance with art. 2 of the IBF Rules;

Whereas, as the international governing body of the game badminton, the IBF is entitled to “*control the game, from an international aspect, in all countries and to make regulations for all international competitions*” (art. 1.1 of the IBF General Competition Regulations [GCR]);

Whereas the Sudirman Cup is an event recognised by the IBF and organized under the auspices of the IBF (art. 2.1 and 2.4 of the GCR);

Whereas pursuant to art. 5.7 GCR, “*for any competitive event sanctioned by the IBF, a player shall not have his/ her entry refused for reasons of race, religion or politics. Refusal of entries for any reason other than that there are too many entries to be accommodated (Regulations 11.1 and 11.7) requires the specific written permission of the IBF*”;

Whereas it does not appear that such rule has been breached by the IBF as the GBA players are not prevented from participating in the Sudirman Cup in Sevilla;

Whereas the IBF has been informed by the President of Spanish Badminton Federation (member association responsible for the organization of the Sudirman Cup) that, after consultation with the Ministry of Foreign Affairs in Spain, the participation of Gibraltar in the World Championships was “*not feasible at all*” and that there was nothing else which could be done in this respect “*since there exists a law which specifically prohibits this situation*”;

Whereas it appears from the correspondence exchanged between the IBF, the Organizing Committee and the Spanish Badminton Federation that the Spanish authorities put some pressure on the IBF in order to avoid any representation of Gibraltar on the occasion of the Sudirman Cup;

Whereas it is established that the IBF was obliged to impose special conditions on the GBA in order to safeguard the participation of players from Gibraltar to the Sudirman Cup; the conditions set by the IBF are not their own conditions but are imposed on them by the Spanish authorities;

Whereas even if we accept the English law definition stated by the Appellant “*discrimination may be defined as treating someone less favourably than others without justification*”, there would be no discrimination

in the present situation because the IBF has good reasons to treat differently the participants in the Sudirman Cup;

Whereas, in view of the situation described by the Organizing Committee and the Spanish Badminton Federation, the participation of players from Gibraltar to the Sudirman Cup would be seriously called into question if the conditions imposed by the IBF would not be followed by the GBA;

Whereas, if the conditions imposed by the IBF were not applied, this would probably generate serious difficulties either for the GBA players or for all other participants in this tournament because the event could be jeopardized or even cancelled;

Whereas, in view of the Appellant's request for relief, it appears that any CAS award can only bind the parties in the case; therefore, neither the Spanish Badminton Federation, nor the Organizing Committee of the Sudirman Cup, nor the Spanish authorities or any third party would be obliged to enforce the award;

Whereas the Spanish authorities and the organizers would not be in a position to accept the cancellation of the Opening Ceremony and/or neutral uniforms for all participants;

Whereas the only order which could have been imposed on the IBF would have been the transfer of the Sudirman Cup to another country but such order is not sought by the GBA and, in any event, this would be impossible for time reasons (or would cause a disproportionate damage to the IBF);

Whereas it appears, *prima facie*, that the IBF has not breached its own regulations and in particular is not guilty of any discrimination against the GBA players and has not breached English law or the Human Rights Act, assuming that it is applicable in the present case;

Whereas it must be stressed that the IBF Rules recognise and apply the general and fundamental principles of the Olympic Charter (art. 3.2 of the IBF Rules);

Whereas the sixth fundamental principle of the Olympic Charter states that *“The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practised without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play”*;

Whereas the word “discrimination” can be understood as discrimination with regard to a country or a person on grounds of race, religion, politics, sex or otherwise (see Rule 3.2 of the Olympic Charter);

Whereas, in the Olympic Charter, the expression “country” means an independent state recognised by the international community (see Rule 34.1 of the Olympic Charter);

Whereas, in the light of the Olympic Charter, the IBF cannot be considered as guilty of discrimination against athletes (players) or against a country (as, per definition of the Olympic Charter, Gibraltar is not recognized as an independent state by the international community);

Whereas the conditions imposed by the IBF in its letter of 16 May 2001 can be considered as unpleasant for the GBA but must be considered as reasonable compared to the interest of the IBF and of all other players participating in the Sudirman Cup to have the organization of such event secured;

Whereas the arguments put forward by the Appellant in its request for provisional and conservatory measures are not sufficient to justify that the relief requested by the GBA be granted by CAS; therefore, the application for provisional and conservatory measures shall be dismissed.

The President of the CAS Appeals Arbitration Division, ruling in camera:

1. Dismisses the application for provisional and conservatory measures filed by the Gibraltar Badminton Association on 21 May 2001.
2. States that the present order is pronounced without costs.