



DECISION of the FEI TRIBUNAL
on Request for Interim Measures
Appeal by the Emirates Equestrian Federation
dated 6 May 2015

In the matter of

Emirates Equestrian Federation (UAE NF)

“the Appellant”

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI”)

I. COMPOSITION OF PANEL

Mr. Henrik Arle
Mr. Erik Elstad
Mr. Pierre Ketterer

II. SUMMARY OF THE FACTS

- 1. Memorandum of case:** By Legal Department.
- 2. Case File:** The FEI Tribunal duly took into consideration the Parties’ written submissions and communications received to date with regards to the Request for Interim Measures.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

- 1. Articles of the Statutes/Regulations which are applicable or have been infringed:**

Statutes 23rd edition, effective 29 April 2014 (“**Statutes**”).

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2015 ("GRs").

Internal Regulations of the FEI Tribunal, 2nd edition, effective 1 January 2012 ("IRs").

FEI Endurance Rules, Updated 9th edition, effective 1 August 2014 ("ERs").

FEI Code of Conduct for the Welfare of the Horse.

2. The relevant Legal Provisions

Statutes Article 8.3: "The Bureau may suspend a National Federation that has acted in breach of the principles in Article 2, provided it is afforded a right to be heard. The Suspension may be immediate and provisional in the event of material breach."

GRs Article 165.1: "An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see paragraph 2 below):

(...)

1.2 With the FEI Tribunal against Decisions of the Appeal Committee or any other person or body."

IRs Article 19.20: "In accordance with the powers conferred on the *FEI Tribunal*, a *Hearing Panel* (or the *FEI Tribunal Chair*, in urgent cases, before a *Hearing Panel* has been appointed) may, for good cause shown, grant an application for the *Provisional Suspension* of the *Respondent* (other than the FEI) or a Horse, or other interim relief, pending final determination of the *Claim*."

IRs Article 20.7: "Unless the *Hearing Panel Chair* orders otherwise, the *Decision* being appealed shall remain in full force and effect pending determination of the Appeal."

IV. DECISION

The below presents a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced with regards to the Request for Interim Measures. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence 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 in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 On 12 March 2015, the Appellant was notified of the decision of the FEI Bureau (taken on 10 March 2015) (the "FEI Bureau Decision") to suspend the Appellant with immediate effect, in accordance with Article 8.3 of the Statutes, as the FEI Bureau had found that the *"UAE NF had failed to comply with FEI Rules and Regulations and/or FEI decisions on several occasions."* Specifically, the letter set out six separate rule breaches by the Appellant in relation to (i) Fatality of a Horse competing during a rest period; (ii) Other Horses not complying with the rest periods; (iii) Not respecting ages of horses; (iv) Post Mortems; (v) CEI3* Endurance Cup, Dubai, 10 January 2015; (vi) Not cooperating with the FEI/answering FEI's queries.
- 1.2 Together with the Notification of suspension, the Appellant was informed that pursuant to Article 8.4 of the Statutes, during the period of its suspension, it may not attend or be represented at any session or meeting of any body of the FEI, nor may it organise International Events. That furthermore, while its members may not take part in International Events organised by the FEI or any other National Federation in the Endurance discipline, its athletes may take part under the FEI flag in International Events in other disciplines that are organised by the FEI or other National Federations outside the United Arab Emirates (the "UAE").
- 1.3 Furthermore, the Notification letter confirmed that the FEI Bureau had decided that the Appellant's suspension *"would remain in effect until the UAE NF signs an agreement with the FEI in which the UAE NF undertakes to take such action as the FEI Bureau deems necessary to assure the FEI and all stakeholders that the UAE NF is protecting the welfare of the horse and complying fully with the FEI Rules and Regulations moving forward"*.
- 1.4 On 10 April 2015, the Appellant was notified of the decision of the FEI Bureau (taken on the same day) that the FEI Headquarters would issue passports for non-Endurance UAE Horses *"in order not to hinder the participation of non-Endurance athletes to compete internationally"*.

2. Procedural Background

- 2.1 On 10 April 2015, the Appellant lodged an Appeal ("the Appeal") in accordance with Article 38.1 of the Statutes, Article 165 of the GRs and Article 20 of the IRs, with the FEI Secretary General, for referral to the FEI Tribunal. In the Appeal, in addition to requesting other general relief (which shall be dealt with in the main proceedings in relation to the Appeal) the Appellant requested the following Urgent Procedural Motions/Request for Interim Measures ("Interim Measures"):
 - "1. *That the execution of the decision of the FEI Bureau dated 11 March 2015 be stayed;*
 2. *To clarify that even if the decision of the FEI Bureau would not be lifted or annulled, in accordance with the FEI Rules, the suspension of the Appellant does not prevent the Appellant from issuing Horse*

passports for Horses participating in non-endurance competitions;

3. *That because of their urgency the interim measures requested in procedural motions 1 and 2 above be granted on an ex-parte basis, i.e. without giving notice to or first hearing the Respondent, and be upheld also in the event of an objection from the Respondent;*

4. *That an oral hearing is held."*

- 2.2 On 15 April 2015, the FEI addressed the Appellant's Request for Interim Measures, and requested that the Appellant's application for interim measures be dismissed. The FEI further requested that the Tribunal would not take any decision on the Request for Interim Measures prior to affording the FEI the right to be heard.
- 2.3 On 21 April 2015, the Tribunal decided to grant the FEI the right to be heard, in accordance with Article 19.22 of the IRs.
- 2.4 On 27 April 2015, the FEI provided its Answer to the Request for Interim Measures.
- 2.5 On 29 April 2015, the Appellant explained that it does not deem a Hearing on the issue of Interim Measures to be necessary, and confirmed that it maintained its Requests for Interim Measures.

3. Appellant's Request for Interim Measures

- 3.1 In essence, the Appellant requested the Tribunal to suspend the effects of the FEI Bureau Decision pending the determination of the Appeal, in accordance with Article 20.7 of the IRs. The Appellant argued that the specific circumstances of the case at hand justified, and further made the granting of the suspensive effect by the Tribunal even necessary. That allowing the FEI Bureau Decision to remain in effect until the conclusion of the Appeal proceedings would cause *"irreparable harm to the Appellant and would jeopardise the existence of equestrian sport of endurance in the country of the Appellant"*. Further, that the suspension was having a massive impact on the organisation of future events, and that the decision had a huge effect of destabilisation putting the whole equestrian sport in the UAE in danger. Moreover, that depriving riders to compete under the flag of their country was also a massive sanction that seriously hurt the pride and the personality of a rider. Finally, that the granting of such a stay was in line with the jurisprudence of the Court of Arbitration for Sport ("CAS"), where Panels had often preferred to postpone a sanction to the time when the sanction was imposed by a final CAS award, rather than having a potentially unjustified sanction in force during proceedings.
- 3.2 The Appellant further argued that the wording of Article 8.3 of the Statutes did not foresee a mandatory immediate effect of such a suspension. That the suspension of a national member association of the FEI was, after exclusion of a member, the second most far reaching

measure that the FEI could take against a member association. Further, that the effects of the FEI Bureau Decision was to basically deprive the Appellant of all its rights as a member of the FEI solely on the basis of a written decision of the FEI Bureau, which had been taken without exchange of written submissions and without a hearing. That therefore the harm caused by the sanction was both irreparable and extremely severe, as the Appellant was de facto "shut down" and put "out of game" before the Tribunal has had the chance to rule on the matter.

- 3.3 Moreover, the Appellant argued that its interest in having the FEI Bureau decision stayed was overwhelming, compared to the interest of the FEI, as even if the suspension was lifted pending the outcome of the proceedings, the Appellant would still be bound by the Statutes and FEI Regulations, and its members would still be obliged to abide by all applicable rules. That the granting of the stay would not have a negative effect on the FEI and would facilitate the Appellant and the FEI to resolve the issue regarding different views about the interpretation of some rules, and provide the Parties with opportunities to explore how the dispute at hand could be solved, keeping in mind the values of equestrian sport and the welfare of the horses. That the lifting of the suspension would certainly provide the Parties with a better background to discuss any future new arrangements and projects. Finally, that CAS' jurisprudence confirmed that sports associations were "minimally affected" if a suspension was stayed for the duration of a CAS procedure.
- 3.4 Regarding the issuing of passports for non-Endurance UAE Horses, the Appellant argued that the Appellant was still - even following the FEI Bureau Decision regarding the issuance of passports for UAE Horses - confronted with difficulties in relation to the issuance or the amendment of Horse passports. That the Appellant therefore requested the Tribunal for a clarification decision, to be promptly issued in the unlikely event that the Tribunal decided not to lift the suspension of the Appellant.

4. FEI Answer on Request for Interim Measures

- 4.1 Firstly, the FEI argued that the Appellant had not demonstrated (and not even argued) that the case was "urgent", and had therefore not fulfilled the key requirement of Article 19.20 of the IRs. That it was in accordance with generally-accepted (sports) arbitration practice, i.e. as expressly codified in Article R37 of the CAS Code, that interim measures may only be granted if the requirements of (i) prima facie case on the merits; (ii) urgency; (iii) irreparable harm; and (iv) balance of interests are met. That the Appellant however, who bore the burden of proof, had only addressed two of these requirements (irreparable harm and balance of interests), and that in the opinion of the FEI, none of the requirements for interim relief were met in the case at hand.
- 4.2 The FEI submitted that the FEI Bureau's decision in relation to horse passports would render the Appellant's prayer for interim relief n. 2 moot and, in any event, not urgent, as there was no possibility of non-Endurance UAE Horses/Athletes being hindered in any way from

participation in International Events while the Appellant was suspended.

- 4.3 Furthermore, the FEI argued that given that there were no International Events scheduled in the time period necessary for the Appeal proceedings to be completed, there was no urgency in having the FEI Bureau's decision stayed. Specifically that no International Endurance Events (CEIs) were scheduled to take place after 21 March 2015, and that the hosting of international Jumping Events – the second discipline the UAE was active in – was also unaffected by the Appellant's suspension, since the last event had been scheduled for 6-7 March 2015. That the Appellant itself had actually asked for a 30 day extension of the deadline to appeal the suspension, which request was incompatible with the urgency test. The FEI further submitted that the Appellant had not substantiated its claims of irreparable harm and the reasons for which the existence of Equestrian sport in the UAE would be endangered by the FEI Bureau Decision with facts, evidence and compelling arguments. Moreover, that the references to CAS jurisprudence made by the Appellant did not demonstrate how such jurisprudence applied to the facts of the case at hand, as no decisions referred to actually dealt with the suspension by a governing body of a member association. That, under Swiss law, the right of an association – such as the FEI – to regulate and determine its own affairs was considered as a cornerstone and as an essential feature for the association. Further, that the autonomy of Swiss associations was particularly evident with regards to determining the composition of their membership. Finally, that the Swiss Civil Code, for example, would grant associations significant discretion with respect to the exclusion of members, which was a significantly different sanction to the suspension of members, as the latter was much less serious.
- 4.4 Moreover, the FEI argued that the FEI Bureau Decision had been rendered to protect the Horse welfare, and that the welfare of the Horse was of paramount importance to the FEI. That therefore the decision to suspend the Appellant was both proportionate and justified in the circumstances at hand. That the FEI Bureau Decision had been the culmination of a long ultimately unsuccessful consultation process with the Appellant, and that the Appellant had been put on notice of the gravity of the matter, i.e. the Appellant had been informed in a letter from the FEI of 13 February 2015 (referred to further below) that the FEI Bureau had been considering the imposition of sanctions and *"that such sanctions could include suspension of the UAE NF"*. Moreover, that given the circumstances at hand where Horse welfare was at stake, in the opinion of the FEI, it had been reasonable for the FEI Bureau to impose an immediate suspension, and that the verb "may" in Article 8.3 of the Statutes, granted discretion to the deciding body.
- 4.5 The FEI further argued that, as the FEI Bureau Decision had been taken primarily on Horse welfare grounds due to consistent rule breaching by the Appellant the effects of which was jeopardising Horse welfare, and precisely because of the repeated failure of the Appellant to comply with the Statutes and Regulations, the FEI Bureau Decision had been and was still necessary. That therefore the interests of the Appellant in having the FEI Bureau Decision stayed did not outweigh those of the FEI in having it

immediately executed. Furthermore, that allowing the Appellant to regain full membership rights when serious questions regarding its record in relation to the Horse welfare and rule compliance in general were to be determined by the Tribunal, would have more than just a "minimal effect" on the FEI, and would in fact hinder it from safeguarding Horse welfare and put the health and lives of Horses in danger.

- 4.6 Finally, the FEI was of the opinion that there was no reason why the FEI and the Appellant could not solve the issues in a spirit of sportsmanship and fairness while engaging in discussions about the legally binding agreement as required by the FEI Bureau Decision. That from an FEI perspective, it was not enough for the Appellant to put appropriate measures/rules in place to address the issues but that the Appellant should also take steps to ensure that such measures/rules are implemented in practice. Finally, in light of previous non-cooperation by the Appellant with the FEI, and in particular its failure to sign a Memorandum of Understanding previously negotiated between the two parties, the FEI could not reasonably be expected to proceed on a mutual trust basis with the Appellant.
- 4.7 Together with its Answer the FEI submitted various supporting documents, including a letter, dated 13 February 2015, by which the FEI Bureau informed the Appellant that due to potential breaches of the Statutes and FEI Rules by the Appellant, it was considering the imposition of sanctions against the Appellant, which could include a suspension in accordance with Article 8.3 of the Statutes. The Appellant was further informed of its right to be heard (via written and/or oral submissions) prior to a FEI Bureau decision in this respect. The FEI argued that the Appellant had chosen not to make an oral or written submission.

5. Further proceedings

- 5.1 On 1 May 2015, the FEI informed the Tribunal (and Appellant's counsels) of a further letter (following the letter of 10 April 2015) sent to the Appellant by the FEI Secretary General on 30 April 2015, regarding the process for issuing Horse passports and FEI Recognition Cards for non-Endurance Horses.
- 5.2 On 1 May 2015, the Appellant further submitted that, as the letter of the FEI General Secretary dated 30 April 2015 was limited to non-Endurance Horses only, it did not solve all the passport issues, resulting from the suspension decision. That Endurance Horses had to be included in the passport issuing process, as otherwise the trade of horses was impossible, and that horses could not train in Europe during the UAE summer. Finally, that neither the prohibition of trade nor the impossibility of training in another country were measures in the interest of the horses.
- 5.3 On 1 May 2015, the FEI further argued that the Appellant's request/prayer of relief that Endurance horses were also to be included in the passport issuing process was entirely new and one for which the FEI did not previously have the opportunity to comment on/reply on. That it therefore

requested that the Tribunal did not consider this request in the context of the current Interim Relief proceedings.

6. Jurisdiction

- 6.1 The Tribunal has jurisdiction over the matter pursuant to the Statutes, GRs and IRs.

7. Admissibility of the Appeal

- 7.1 The Appeal submitted to it by the FEI Secretary General is admissible, as the Appeal arises from a Decision taken by the FEI Bureau against the Appellant, and as the Appellant had a "legitimate interest", as required under Article 165.1 of the GRs, and therefore the Appellant was entitled to lodge an Appeal. The Tribunal further finds that the Appellant has lodged its Appeal within the deadline foreseen under Article 165.5 of the GRs, and there were no reasons of inadmissibility in the meaning of Article 165.2 of the GRs. This remains undisputed by the Parties.

8. Decision

- 8.1 In a second step, the Tribunal has to decide whether to grant the Appellant's Request for Interim Measures for a stay of the execution of the FEI Bureau Decision. The Tribunal finds that, in accordance with Article 19.20 of the IRs, it may, for good cause shown, grant such application, pending final determination of the Claim. The Tribunal however holds, for the reasons set out below, that the Appellant has not demonstrated that the requirements for the granting of interim relief have been fulfilled. The Tribunal is therefore dismissing the Appellant's request for Interim Measures. Consequently, and in accordance with Article 20.7 of the IRs, the FEI Bureau Decision shall remain in full force and effect pending determination of the Appeal.
- 8.2 The Tribunal finds that – in accordance with Article 8.3 of the Statutes – the FEI Bureau may immediately suspend a National Federation – such as the Appellant – if that National Federation has acted in breach of principles outlined in the Statutes, and if this National Federation is afforded a right to be heard. The Tribunal takes note that the Parties dispute whether this right to be heard had actually been afforded to the Appellant. Whereas the Tribunal finds that a final decision in this respect will have to be taken with the merits of the case, the Tribunal holds that based on the documents submitted so far, the Appellant has not established that such right has not been afforded. In particular the Tribunal considers in this context that by letter of 13 February 2015, the Appellant had been informed of its right to be heard (via written and/or oral submissions) prior to any FEI Bureau decision on any type of sanctions. The Tribunal therefore finds that this argument does not justify a stay of the FEI Bureau Decision. Moreover, the Tribunal finds that whether the National Federation has acted in breach of the principles outlined in the Statutes, and further whether the FEI Bureau

Decision to suspend the Appellant was both proportionate and justified in the circumstances of the case at hand, will be decided with the merits of the case, and once the Parties have had the opportunity to submit their final arguments and evidence in this regard.

- 8.3 The Tribunal further takes note of the Appellant's claim that allowing the FEI Bureau Decision to remain in effect until the conclusion of the Appeal proceedings would cause irreparable harm to the Appellant and would jeopardise the existence of equestrian sport of endurance in the country of the Appellant. That furthermore, according to the Appellant, depriving riders to compete under the flag of their country might seriously hurt the pride and the personality of a rider. However the Tribunal understands that no International Endurance Events are scheduled to take place in the upcoming months, and that the Endurance season in the UAE typically runs from October to April. As a result the Tribunal finds that the Appellant has not established urgency, and neither its claim of irreparable harm caused. The Tribunal therefore finds that the absence of these grounds means that the Appellant has not met the requirements for the granting of interim relief and, in such circumstances, granting a stay of the FEI Bureau Decision is not justified.
- 8.4 With regards to the Appellant's claim that a lifting of the suspension could provide the Parties an opportunity to explore how the present dispute can be solved, keeping in mind the values of equestrian sport and the welfare of horses, the Tribunal is of the opinion that the Appellant has not established as to why the lifting of the suspension would be necessary for the Parties to further strive to solve the present dispute. The Tribunal has further taken note of the FEI's argument that the FEI Bureau Decision had been taken primarily on Horse welfare grounds, due to consistent rule breaching by the Appellant, the effects of which was jeopardising Horse welfare. Even though the Tribunal finds that whether or not Horse welfare had been endangered by the Appellant will have to be established and decided together with the merits, the Tribunal can only follow the FEI argumentation that the welfare of Horses is of paramount importance, and should not be risked under any circumstances. The Tribunal therefore finds that the Appellant's interest in having the suspension lifted does not outweigh the FEI's interest in protecting Horse welfare.
- 8.5 Regarding the Appellant's request to clarify that the suspension of the Appellant does not prevent the Appellant from issuing Horse passports for Horses participating in non-Endurance competitions, the Tribunal understands that a decision by the FEI Bureau (of 10 April 2015) had been taken, and that the FEI Headquarters would issue passports for non-Endurance UAE Horses "in order not to hinder the participation of non-Endurance athletes to compete internationally". The Tribunal further understands that the Appellant, even after the FEI Bureau decision of 10 April 2015, was still confronted with difficulties in relation with the issuance or the amendment of Horse passports. It is not for the Tribunal to give detailed and specific orders to the FEI on how to implement the decision of the FEI Bureau of 10 April 2015. The Tribunal however holds that the FEI should implement such decision in a proper way, and in order that it does "not limit or prevent the issuance or amendment of passports for non-

Endurance UAE Horses". The Tribunal therefore finds that the FEI Headquarters should continue to issue passports for non-Endurance UAE Horses, in accordance with the decision taken by the FEI Bureau on 10 April 2015. In this context the Tribunal takes note that by letter dated 30 April 2015, the FEI has informed the Appellant about the process for issuing Horse passports and FEI Recognition Cards for non-Endurance Horses. Finally, the Tribunal will not – at least at this stage - render any decision on the Appellant's "additional request" of 1 May 2015, to include Endurance horses in the passport issuing process as this request had not been part of the original request for Interim Measures, and the FEI did not have an opportunity to be heard on the question.

8.6 With regards to points 3. and 4. of the Interim Measures Request, the Tribunal takes note that the Appellant waived its hearing Request for Interim Measures. Further that it already decided to grant the FEI the right to be heard, in accordance with Article 19.22 of the IRs. The Tribunal therefore finds that these points need to be no longer addressed in this decision.

8.7 For the above reasons, the Tribunal therefore decides as follows:

1) Dismiss the Appellant's Request for Interim Measures.

2) The Parties are to bear their own costs and expenses.

8.8 According to Article 168 of the GRs this Decision is effective from the date of oral or written notification to the affected party or parties.

8.9 According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS) within 21 days of the present notification.

V. DECISION TO BE FORWARDED TO:

a. The Parties: Yes

b. Any other: No

FOR THE PANEL



The Chair, Mr. Henrik Arle