

DECISION of the FEI TRIBUNAL

dated 15 February 2012

In the matter of

AZERBAIJAN EQUESTRIAN FEDERATION ("AZE-NF")

Appellant

vs.

FEDERATION EQUESTRE INTERNATIONALE ("FEI")

Respondent

Together, "the Parties"

1. COMPOSITION OF PANEL

Mr. Patrick A. Boelens, chair
Prof. Dr. Jens Adolphsen, panel member
Mr. Pierre Ketterer, panel member

2. SUMMARY OF THE CASE RECORD

2.1 Submissions and evidence before the FEI Tribunal

The FEI Tribunal duly took into consideration all written evidence, witness statements, submissions and documents presented in the case bundle, as well as the Parties' and their witnesses' oral presentations during the hearing.

2.2 Oral hearing: In-person on 19 January 2012 (FEI Headquarters, Lausanne, Switzerland).

Present: The FEI Tribunal Panel

For the AZE-NF:

Dr. Monika Gattiker, Legal Counsel
Dr. Ulf Walz, Legal Counsel
Mr. Bahruz Nabiyeu, Secretary General AZE-NF
Mr. Emin Aghayev, President of the AZE-NF Board
Mr. Javid Abdullayev, AZE-NF Board member
Ms. Leyla Naghiyeva, Gunay Bank

For the FEI:

Mrs. Lisa F. Lazarus, FEI General Counsel
Mr. Mikael Rentsch, FEI Senior Legal Counsel
Mr. Jonathan Taylor, Bird & Bird (external legal counsel)

2.3 FEI Statutes/FEI Regulations which are applicable:

FEI Statutes 23rd edition, effective 6 May 2011 ("**Statutes**").

FEI General Regulations, 23rd edition, effective 1 January 2009, updates effective 1 January 2011 ("**GRs**"),

Internal Regulations of the FEI Tribunal, effective 1 January 2012

2.4 The Relevant Legal Provisions

Art.100, 112, 163 and 165 of the GRs

3. FACTUAL & LEGAL BACKGROUND

- 3.1** As a preliminary matter, the Parties agreed explicitly that there were no objections of any kind against the composition of the Panel
- 3.2** The Azerbaijan Equestrian Federation ("AZE-NF") filed a Protest against the Decision of the FEI Secretary General of 27 November 2011 annulling all the Rolex Ranking Points obtained at the Events CSI4* Baku from 21-24 April 2011 and the CSI2* Baku from 21-24 July 2011 (the "Events"; the "Decision"). This Decision was based on the advice of the Equestrian Community Integrity Unit (the "ECIU") after completion of an investigation. This investigation was initiated following allegations from several sources that these Events were being manipulated to guarantee positive outcomes for Azerbaijani athletes. Because invitations were sent too late, it was made impossible for international riders to participate in these Events, which thus resulted in diminished competition so that the Azerbaijani riders succeeded in securing the vast majority of Rolex Ranking Points.
- 3.3** First of all, the FEI Tribunal points out that this matter should be considered as an Appeal (the "Appeal") according to Article 165 of the GRs and not as a Protest according to Article 163 of the GRs.
- 3.4** In its Appeal, the AZE-NF submitted the following motions:

- The FEI Tribunal shall confirm that the 'Decision' by the FEI Secretary General to annul the Rolex Ranking Points obtained at the CSI4* Baku 21-24 April 2011 and CSI2* Baku 21-24 July 2011 is null and void;
- Eventually the FEI Tribunal shall annul the 'Decision' by the FEI Secretary General;
- The FEI shall reimburse the retainer paid by AZE-NF and shall indemnify the AZE-NF for all costs, disbursements, damages related to this procedure.

3.5 According to the Appeal of the AZE-NF, the following questions were said to remain open:

- How can a report by the ECIU that is seriously flawed in several points be the basis for a sanction by the FEI?
- How can a sanction be imposed onto a NF and in fact also on riders concerned based on a flawed report by the ECIU, even though neither the NF nor the riders ever got the opportunity to give their comments on the ECIU Report?
- Which is the basis in the FEI rules that would authorise the FEI Secretary General to cancel Rolex Ranking Points?
- Do the FEI rules provide reason and a basis to cancel the Rolex Ranking Points in the current matter?
- Is the cancellation of the Rolex Ranking Points obtained at the Event proportionate?

3.6 In its responsive submission to the AZE-NF's Appeal and its Protest, the FEI requested that:

- The AZE-NF's Appeal be denied;
- In the alternative that the FEI Secretary General's Protest be confirmed;
- The AZE-NF's request for costs be denied; and
- A cost order in favour of the FEI reimbursing it for the costs associated with the ECIU investigation and defending the present Appeal/filing the present Protest be entered.

- 3.7** According to the FEI's responsive submission, the appealed Decision was based on the fact that it was brought to the attention of the FEI that a large number of International Events were organised in Baku (AZE) and that with respect to those Events, there was a lack of genuine invitations for foreign riders to compete. In 2011, the AZE-NF organised eight (8) International Events, whereas they had only organised two (2) International Events in the two (2) previous years. That at the eight (8) events organised by the AZE-NF in 2011, the results of the Azerbaijani athletes far outnumbered those of the foreign riders. Based on this data, the FEI concluded that these Events were organised to facilitate the rise of Mr. Jamal Rahimov, said to be Azerbaijan's best jumper, on the Rolex Ranking List in order to have him qualified for the 2012 London Olympics. The FEI did not specifically object against the number of Events, but saw the integrity of the sport biased by the fact that foreign riders were not invited to the Events, which placed these Events in violation of the FEI Rules and Regulations.
- 3.8** The FEI Secretary General is responsible for the FEI Calendar as stipulated in Article 26.2 (vi) of the FEI Statutes and Article 112 of the GRs, as well as for the observance of the FEI Statutes, the GRs and the Sports Rules, Article 26.2 (ix) of the FEI Statutes. Furthermore, Article 100 (1) of the GRs stipulates that the GRs are established so that individual Athletes and teams of Athletes from different National Federations may compete against each other under fair and equal conditions. It is clear that the FEI Secretary General has jurisdiction to take appropriate measures when the fair and equal conditions of a competition are not met during an Event under the FEI Rules and Regulations. One of these appropriate measures may be to take away the status of an International Event that does not meet the requirements or does not guarantee fair and equal conditions. One of the consequences of such a decision is the annulment of the Rolex Ranking Points that were obtained during that Event.
- 3.9** The FEI Tribunal agrees with the FEI that it is rather odd that a National Federation increases its number of International Events from two (2) to eight (8) in relation to previous years in the year when a qualification for the Olympic Games can be obtained. Nevertheless, all these Events appeared on the FEI's Calendar that was approved by the competent bodies and did not raise any suspicions or questions at that moment. The Rules and Regulations do not specify any quota of foreign riders that need to compete in an International Event in order to be considered as an International Event. The Schedule of an International Event nevertheless mentions the NFs that are invited to enter the Event

as well as the total number of riders and horses. The Rules and Regulations do not stipulate the number of foreign riders that are required to qualify the Event as 'International' although it is acceptable that more than two (2) NFs should be competing at an International Event, in order for that Event to qualify as a 2*.

- 3.10** The most important document for the FEI Tribunal to consider is the ECIU Report on which the appealed Decision was based. The FEI Tribunal has thoroughly studied the Report and was not able to find substantial proof for the allegations that lead to the appealed Decision. The only conclusion that is to be taken into consideration is the fact that during the investigation by the ECIU, the AZE-NF failed to disclose the documents and data that were repeatedly asked for, and did not cooperate in order to clarify the situation. During the meeting with Mr. Greenwood in Aachen in July 2011, the Secretary General of the AZE-NF should have been aware that his cooperation with the pending investigation might have allowed him to dismiss the serious allegations about the fact that his NF was presumed to facilitate the rise of one specific Azerbaijani rider in order to have him qualify for the 2012 London Olympics. By failing to cooperate with the ECIU, the AZE-NF is considered liable for the Decision of the FEI Secretary General that is now subject of these proceedings before the FEI Tribunal. Nevertheless, the ECIU Report does not substantiate in any way the allegations of organising events in order to bend the principles of a fair competition.
- 3.11** During the hearing on 19 January 2012, the FEI Director Jumping was heard as a witness and he provided the FEI Tribunal with information about the fact that many of the Schedules, submitted for approval, were late and that the same applied to the entries at International Events in Jumping. The FEI Director Jumping also declared that he did not get suspicious originally when the AZE-NF proposed eight (8) International Events on the Calendar instead of the usual two (2) per year. He thought that this number of Events was part of the development of equestrian events in that region. In the opinion of the FEI Tribunal, if the FEI's Jumping Department sees no problem in the sudden increase of International Events, there is no substantial proof for the allegations that lead to the appealed Decision of the FEI's Secretary General. During the hearing the Secretary General of the AZE-NF provided more information about the quarantine regulations that were a serious barrier for foreign riders to compete in Baku as their horses were kept for three weeks after the Event before they were allowed to travel abroad. There is also a lack of proof that some measures were deliberately taken to discourage foreign riders to compete in Baku, at least for the CSI4*. There is one rider whose witness

statement was not strong enough to be taken into consideration as the additional explanations during a telephone conference were even more vague and unclear. On the contrary, the situation for the CSI2* was somewhat different.

- 3.12** The Schedule of the CSI4* was approved by the FEI Jumping Department on 5 April 2011 and apparently no remarks were made about its late submission for approval. As the FEI's Jumping Department approved the Schedule the day before the Definite Entries were to be made, the presumption of any manipulation is not substantiated and therefore the Decision of the FEI Secretary General to annul the Rolex Ranking Points for this Event is to be reversed.
- 3.13** The situation is completely different for the CSI2* in July 2011 as the respective Schedule did not need the approval of the FEI's Jumping Department, but only needed to be communicated to the FEI's Jumping Department prior to the Event. This Schedule was to be approved by the AZE-NF and its Secretary General, who was also the Sports Director at the Event. This Schedule was approved on 29 June 2011 and this is 12 days after the date for the Definite Entries. As the Secretary General of the AZE-NF should be familiar with the Rules and Regulations and as he was also acting as Sports Director at the Event, he should have been aware that the late approval of the Schedule and the subsequently short period to send the invitations to the NFs that were supposed to participate might create a problem. Before approving the Schedule, the Secretary General of the AZE-NF might have imposed some alterations in the timeline in order to allow foreign NFs a more flexible period to send their entries. The Results, as annexed to the ECIU Report, show indeed that there is only one foreign rider who obtained a placing at the competitions and that all other placed riders were nationals. The Master list of the Event was not made available to the Tribunal but it appears that there was indeed a lack of 'international' competition as intended by the GRs so that the Event can hardly be considered as 'International'. Further, the documentary evidence in the case demonstrated that the AZE-NF's Secretary General did reject late foreign entries for the CSI2* Event. Therefore, the FEI Tribunal is of the opinion that the FEI Secretary General's Decision in regard to this Event to annul the Rolex Ranking Points is justified.
- 3.14** The FEI Tribunal is nevertheless of the opinion that the lack of cooperation by the Secretary General of the AZE-NF made the proceedings even more complicated than they already were and this caused the FEI to engage unnecessary costs and disbursements. The FEI Tribunal is of the opinion that the FEI's

request for a cost order in favour of the FEI reimbursing it for the costs associated with the ECIU investigation and defending this Appeal/filing the FEI's Protest is granted and is justified for the reasons as explained above.

4. THE DECISION

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

- 4.1** The Appeal of the AZE-NF against the Decision of the FEI Secretary General is granted for the CSI4* in Baku of April 2011; the Appeal of the AZE-NF against the Decision of the FEI Secretary General regarding the CSI2* in Baku of July 2011 is rejected.
- 4.2** The Rolex Ranking Points obtained by the competitors at the CSI4* in Baku are valid and to be attributed or reinstated.
- 4.3** As these proceedings could have been avoided if the AZE-NF had, from the beginning, agreed to fully cooperate with the ECIU's ongoing investigation, the AZE-NF is therefore held – partly - liable for the costs and disbursements incurred by the FEI to defend the Appeal.
- 4.4** Therefore the AZE-NF must contribute CHF 5,000 to the costs of the proceedings of the FEI.

5. DECISION TO BE FORWARDED TO:

- 5.1 The Parties to the proceedings: Yes**
- 5.2 Any other: No**

FOR THE TRIBUNAL



Mr. Patrick A. Boelens