



**DECISION of the FEI TRIBUNAL**

**dated 7 November 2011**

**In the matter of**

**INTERNATIONAL DRESSAGE RIDERS' CLUB ("IDRC")**

**Appellant**

**vs.**

**FEDERATION EQUESTRE INTERNATIONALE ("FEI")**

**Respondent**

Together, "the Parties"

**1. COMPOSITION OF PANEL**

Prof. Dr Jens Adolphsen (one member panel)

**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, submissions and documents presented in the case bundle, as well as the Parties' oral presentations during the hearing.

**2.2 Oral hearing:** In-person on 3 November 2011 (Frankfurt, Germany).

Present: The FEI Tribunal Panel

For the IDRC:

Mr. Neil Kernon, Legal Counsel

For the FEI:

Ms. Lisa F. Lazarus, FEI General Counsel

### **2.3 Articles of the Statutes/Regulations which are applicable:**

Statutes 23<sup>rd</sup> edition, effective 6 May 2011 ("**Statutes**").

General Regulations, 23<sup>rd</sup> edition, effective 1 January 2009, updates effective 1 January 2011 ("**GRs**"),

Internal Regulations of the FEI Tribunal, effective 15 April 2007, updated 1 February 2008.

### **2.4 The Relevant Legal Provisions**

Article 29.10 of the FEI Statutes:

"Candidates to any Standing Committee can be proposed by such Standing Committee, the Bureau or National Federations, or, in the case of representatives of Athletes and Organisers, by the relevant FEI-recognized international Association."

Article 6.5.2 (iii) of the Internal Regulations of the FEI states:

"Where an applicable international Athletes' and/or Organizers' Association is recognized by the FEI for the given Discipline, these shall include one member (provided there is a qualified candidate) from each such association, though she may not serve as Chair or Deputy Chair during his/her term in this capacity."

## **3. FACTUAL & LEGAL BACKGROUND**

### **3.1 These Proceedings**

On 6 October 2011, the IDRC filed an Appeal pursuant to Article 165 of the FEI General Regulations seeking an interpretation of Article 29.10 of the FEI Statutes ("the Appeal"). The IDRC is an association recognised by the FEI and thereby enjoys Associate Membership status under Article 6 of the FEI Statutes. The Fédération Equestre Internationale ("FEI") is the international federation and governing body for equestrian sport. On 21 October 2011, the FEI replied formally opposing the Appeal and setting out its rationale for such opposition. The Parties agreed to an in-person hearing before the FEI Tribunal prior to the 11 November 2011 FEI Bureau Meeting in Rio de Janeiro where appointments to Standing Committees would formally be made by the FEI Bureau. The FEI Tribunal hearing at which the Appeal was heard took place on 3 November 2011 in a conference room at the Frankfurt Airport.

### **3.2 The Current Dispute**

The present dispute arose when the IDRC as well as two National Federations of the FEI each proposed a candidate to the FEI Standing Committee for Dressage ("the Dressage Committee") for the Athlete representative on the Dressage Committee. The FEI Nominations Committee reviewed all of the candidates proposed and recommended a candidate to the FEI Bureau proposed by one of the National Federations, and not the IDRC's candidate. The FEI Bureau, in appointing the Athlete representative to the Dressage Committee, is not bound by the Nominations Committee's recommendation. The IDRC believes that Article 29.10 of the FEI Statutes gives it an exclusive right to propose candidates to fulfil the Athlete representative position on the Dressage Committee while the FEI's view is that the Standing Committee itself, National Federations, and the FEI Bureau may also propose candidates. This difference in opinion forms the core dispute the FEI Tribunal has been asked to decide.

## **4. SUMMARY OF THE PARTIES' LEGAL ARGUMENTS**

**4.1** The Parties' pleadings were reviewed and considered by the FEI Tribunal prior to the 3 November 2011 hearing. At the hearing, the Parties had a full opportunity to highlight for the FEI Tribunal the key elements of their arguments and the FEI Tribunal had the chance to pose questions and ensure it understood all elements of the issues before it. The FEI Tribunal is satisfied that the issues were fully briefed and argued by the Parties.

**4.2** The IDRC argued that Article 29.10 of the FEI Statutes gives it an exclusive right to propose candidates to the FEI Dressage Committee and that therefore the candidates proposed by National Federations cannot be considered by the Nominations Committee nor ultimately by the FEI Bureau for appointment. The IDRC primarily bases its argument on the words, grammar and punctuation applied in the drafting of Article 29.10 of the FEI Statutes, along with its context within the FEI rules. Specifically, it claims that the use of the word "or" within the list of bodies indicates an exclusive right for the IDRC to propose the candidate when the condition is met, namely that the proposal is of an Athlete's representative. The IDRC's view is that this creates an exclusive class with the right to propose a candidate with the IDRC being the exclusive class since it is the recognised international Athletes' association for Dressage. Further, the IDRC claims that if it had been intended for the other bodies to be able to propose candidates, the word "and" would have been used in the drafting instead of "or".

**4.3** Conversely, the FEI argued that the plain language of Article 29.10 of the FEI Statutes and the use of the word "or" demonstrated that a list was intended and therefore all entities listed are entitled to "propose" candidates to the Dressage Committee. The FEI emphasized that the language of Article 29.10 of the FEI Statutes used permissive wording in "*can propose*" so that it was counter-intuitive to interpret an exclusive right from such permissive wording. The FEI contended that even if the language was ambiguous, it was the Appellant's burden to show that its interpretation was intended and that if an "exclusive" right had been intended that would have

been clear. Further, the FEI argued that the drafting history of the provision demonstrated that an exclusive right was not intended and that the Parties' conduct in years prior to the dispute showed that this was understood by both sides. Specifically, the FEI referred to a proposal in 2006 that the Internal Regulations include the following provision with regards to the specification of the make-up of the Dressage Committee: "One person proposed by the International Dressage Riders' Association recognized by the FEI." Since the FEI knew how to draft an exclusive right but did not, the FEI claims that an exclusive right was rejected. The FEI also emphasized that Article 29.10 of the FEI Statutes had to be considered in the overall regulatory framework of the FEI and that when it was considered alongside Article 6.5.2 (iii) of the Internal Regulations of the FEI and other rules an exclusive right could not be concluded. The FEI further highlighted that Article 6.5.2 (iii) of the Internal Regulations would be superfluous if an exclusive right were granted by Article 29.10 of the FEI Statutes. The FEI finally made the point that it is a membership organisation of National Federations and that it would be counter to the entire philosophy underlying its entire regulatory system to deprive National Federations of the opportunity to even "propose" a candidate for the Athlete's representative on the Dressage Committee.

## **5. DECISION**

**5.1** The FEI Tribunal is being asked to decide the narrow issue of whether Article 29.10 of the FEI Statutes should be interpreted to grant an exclusive right to the IDRC to propose the Athlete representative to the FEI Dressage Committee and no other issue. Neither Party opposed the FEI Tribunal's jurisdiction to hear and decide this dispute involving an interpretation of the FEI Statutes.

**5.2** The FEI Tribunal finds that there are only two possible interpretations of Article 29.10 of the FEI Statutes. The first possible interpretation is that any of the listed bodies can propose a candidate as the Athlete or Organiser representative on a Standing Committee, and the second is that only the recognised association can propose a candidate. The two interpretations cannot co-exist and therefore the FEI Tribunal must decide which is correct.

**5.3** The FEI Tribunal finds that notwithstanding the competent arguments of both sides, the language of Article 29.10 of the FEI Statutes is not clear and is ambiguous. Therefore, the FEI Tribunal must look to the other factors in the record to render its Decision.

**5.4** In referring to the FEI's argument about the drafting history of the relevant rules, the FEI has demonstrated that it knew how to draft an exclusive right but declined to do so. However, the FEI was unable to present any evidence explaining the reasons why the clause guaranteeing the exclusive right to the IDRC was not adopted and for that reason the Tribunal finds that this dispute cannot be decided on that basis.

**5.5** Since neither the language of the rule nor its history is dispositive, the FEI Tribunal must look to the overall regulatory system to decide the ultimate issue in this case. The FEI Tribunal considers the current Article

6.5.2 (iii) of the Internal Regulations of the FEI to be key to this Decision. That article guarantees that the Dressage Committee includes a "member" of the IDRC but it stops short of giving the IDRC the exclusive right to determine which member that will be. If an exclusive right was intended, the FEI Tribunal believes that Article 6.5.2 (iii) of the Internal Regulations of the FEI would not have been necessary as it appears to be a compromise between the IDRC's desire to have its candidate appointed and the FEI's view that the Athlete representative should be a member of the IDRC but not necessarily proposed by it. This also makes sense to the FEI Tribunal against the backdrop of Chapter II of the FEI Statutes (Membership) setting forth that membership in the FEI is for National Federations and clarifying the IDRC's status as an Associate Member. It is difficult for the FEI Tribunal to accept that there was an intention to deprive National Federations, who form the FEI General Assembly which is the supreme authority of the FEI, of the right to even "propose" candidates to be the Athlete's representative on the Dressage Committee.

**5.6** The FEI Tribunal therefore finds that it was the Appellant's burden to prove that an exclusive right was intended and this burden was not met. An exclusive right, if intended, must be clear and unambiguous. An exclusive right is also currently inconsistent with the overall regulatory scheme of the FEI, particularly Article 6.5.2 (iii) of the Internal Regulations of the FEI. It is not the FEI Tribunal's duty to rule whether or not an exclusive right is politically desirable. But the rules should be absolutely clear in this respect. The FEI should – as soon as possible – establish rules for nominations to Standing Committees that are understandable, clear and give no rise for disputes like the present case.

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

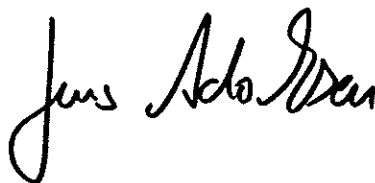
- 1. The Appeal is dismissed.**
- 2. Each Party shall bear its own costs.**

**6. DECISION TO BE FORWARDED TO:**

**6.1 The Parties to the proceedings: Yes**

**6.2 Any other: No**

**FOR THE TRIBUNAL**



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Prof. Dr Jens Adolphsen