

Tribunal/2022/05 A. Bozhilov vs Competition Jury Chisinau

DECISION

rendered by the

WORLD TRIATHLON TRIBUNAL

sitting in the following composition:

Single Judge: Barry Lipp (Australia)

in the appeal proceedings between

Mr Alexander Bozhilov
Represented by Mr Velislav Yonev**Appellant**

Against

World Triathlon Competition Jury
2022 Europe Triathlon Junior Cup
Chisinau**Respondent**

I. PARTIES

1. The Appellant, Mr. Alexander Bozhilov (hereinafter "**the Appellant**" or the "**Athlete**") is a Bulgarian athlete, represented during these proceedings by his attorney, Mr. Velislav Yonev.
2. The Respondent, the World Triathlon Competition Jury (hereinafter "**the CJ**") is the recognised appeal body for World Triathlon Events and other Games that do not include Olympics Games and is constituted of three persons appointed by the World Triathlon Technical Delegate.

II. BACKGROUND FACTS AND PROCEEDINGS BEFORE THE WORLD TRIATHLON TRIBUNAL

3. The elements set out below are a summary of the main relevant facts, as established by me on the basis of the written submissions, the exhibits filed, and the statements produced by the Parties in the course of the proceedings. While I have considered all the facts, allegations, legal arguments, and pieces of evidence submitted by the Parties in these proceedings, I refer in the present decision only to those I consider necessary to explain my reasoning.
4. The 2022 Europe Triathlon Junior Cup (hereinafter "**the Race**") took place on 7 August 2022 in Chisinau, Moldova.
5. At the finish line of the Race the Appellant was disqualified due to "*repeatedly leave the prescribed course and exiting the bike course in to the opposite traffic lane and causing danger to the other athletes*", as reported in the CJ's minutes.
6. The Appellant protested the disqualification to the CJ.
7. The CJ was composed of the following members:
 - 7.1. Alexander Kochetkov (LTU), Technical Delegate, CJ Chair;
 - 7.2. Pascal Salamin (SUI), Europe Triathlon Executive Board Representative, CJ Member;and,
 - 7.3. Dorian Doronceanu (MDA), National Federation Representative, CJ Member.
8. The CJ, after discussion with the Head Referee and review of the video and other evidence provided, decided that no hearing was needed, and stated that:
 - 8.1. "*all CJ members have agreed with the TO call and HR decision unanimously*"; and,
 - 8.2. *HR decision regarding the Disqualification of the athlete #3 Alexander Bozhilov stands. Athlete is disqualified.*"
9. On the 9th of August 2022, the President of the Bulgarian Triathlon Association (hereinafter "**BTA**"), Mr. Mario Iliev, sent a letter to World Triathlon Secretary General (hereinafter "**Secretary General**"), Antonio Arimany, complaining regarding the disqualification of the Appellant.
10. On the 10th of August 2022, the President of the BTA submitted an official complaint to the Secretary General, appealing the decision of the CJ.

11. On the 23rd of September 2022, the Chair of the World Triathlon Tribunal issued a Procedural Order (hereinafter "**PO**") N 1 stating that the case would be examined by me as the Single Judge.
12. On the 27th of September 2022, I issued a PO N 2 stating that due to the current status of the BTA, not yet being a member or provisional member of World Triathlon, the BTA was not entitled to any of the rights of members set out in Article 7 of the 2022 World Triathlon Constitution (hereinafter "**Constitution**"). Under the 2022 World Triathlon Competition Rules (hereinafter "**CR**"), appeals to the World Triathlon Tribunal (hereinafter "**Tribunal**") such as the appeal proposed by the BTA (rule 13.7, Level 2 Appeal Procedure) may only be admitted if they are supported by the Appellant's National Federation. However, in accordance with article 63.2 of the Constitution the Appellant's appeal could be supported by World Triathlon.

Therefore, in PO N 2 I issued the following:

- 12.1. *"The appeal of Mr Bozhilov, as supported by the BTA, against the decision of the Competition Jury on 7 August 2022 to dismiss his appeal in the 2022 Europe Triathlon Junior Cup, is inadmissible.*
 - 12.2. *Mr Bozhilov must inform the Tribunal within seven (7) days whether he wishes to proceed with his appeal, supported by World Triathlon, and if so, he must:*
 - 12.2.1. *provide his personal contact details, including email address, and contact details for his legal representative, so that the Tribunal may communicate with him and his legal representative directly; and*
 - 12.2.2. *inform the Tribunal whether he relies upon the submissions contained in Mr Iliev's letters dated 9 August 2022 and 10 August 2022 for the instigation of his appeal."*
13. On the 29th of September 2022, Mr. Boris Petrov Bozhilov, father and coach of the Athlete, submitted an answer to the PO N 2 stating that he fully supported the appeal and that Mr. Vilislav Yonev would represent the Appellant during the proceedings.
 14. On the 30th of September 2022, I addressed a letter to the parties acknowledging that the Tribunal would recognize Mr. Yonev as the Appellant's legal representative and requested the contact details for the Athlete and Mr. Yonev.
 15. On the 30th of September 2022, the Athlete's father provided the contact details for the Appellant and Mr. Yonev.
 16. On the 5th of October 2022, I confirmed the receipt of the contact details and requested confirmation from Mr. Yonev that his client intended to proceed with his appeal.
 17. On the 17th of October 2022, Mr Yonev confirmed the following:
 - 17.1. *"My representative Alexander Bozhilov wishes to proceed with his appeal, supported by World Triathlon, (in place of Bulgaria Triathlon Association); and,*
 - 17.2. *Alexander Bozhilov relies upon submissions contained in Mr Iliev's letters dated 9 August 2022 and 10 August 2022 for the instigation of his appeal."*
 18. On the 4th of November 2022, I issued PO N 3 requesting the CJ to provide any submission in response to the submissions of the Appellant.
 19. On the 14th of November 2022, Mr. Salamin (CJ member) provided his position on the matter: *"I always thought the sanction was too hard in the context (tight course, a bit improvised organisation) and if I had been TD in this context I would not have disqualified the athlete. On top of it, I haven't realised that this occurred many times during the event."*

20. On the 15th of November 2022, Mr. Kochetkov (Chair of the CJ) rejected the submissions made by Mr. Boris Bozhilov and Mr. Iliev on behalf of the Appellant, and stated briefly as follows:

- 20.1. That the CJ reviewed the video footage available, listened to the Chief bike and the Head Referee statements;
- 20.2. That the CJ took time and made its fair decision;
- 20.3. That the CJ accepted the protest even though it was submitted outside of the time limits provided by World Triathlon Rules.

21. On the 17th of November 2022, I issued PO N 4 requesting any further submission from the Appellant in response to the CJ statements.

22. On the 24th of November 2022, the Appellant submitted a response to PO N 4, disagreeing with facts as stated by Mr. Kochetkov in his rejection of the Appellant's submissions in his letter of 15 November 2022.

23. On the 28th of November 2022, Mr. Salamin provided further thoughts on the matter, stating that his opinion at the time was that the sanction was strong, but he couldn't say it was a mistake of the Head Referee and therefore he agreed to confirm the sanction. However, in hindsight, he considers that the sanction was too strong and would not have decided to disqualify the Athlete.

III. LEGAL ANALYSIS

A. JURISDICTION

24. The World Triathlon Tribunal has jurisdiction over this Appeal under:

- 19.1. Article 50.7 of the Constitution provides that: *"A panel or a Single Judge is responsible to handle and decide on all cases brought before the Tribunal in accordance with the Constitution, Rules, Regulations and Codes. Ethical issues shall be handled and decided exclusively by an Ethical Panel, not by a Single Judge. Disciplinary and appeal cases shall be handled and decided by either a Disciplinary or Appeal Panel, or by a Single Judge."*
- 19.2. Article 2.2 of the Disciplinary Rules (hereinafter "**DR**") provides that *"The Arbitration Tribunal recognizes recourses submitted to it according to the applicable articles outlined in the Constitution of World Triathlon."*
- 19.3. Article 13.7 (i) of the CR, stating that *"Decisions from any Competition Jury and any World Triathlon panel (except the World Triathlon AD Hearing Panel) may be appealed to the World Triathlon Tribunal;"*

25. Based on these provisions, a Single Judge has jurisdiction to decide this Appeal.

B. APPLICABLE LAW

26. Pursuant to Article 62.1 of the Constitution, "*The governing law of World Triathlon shall be Swiss law*". Article 1 of the DR states that "*These rules set out the applicable procedure before the ITU, within the limitations of Swiss law*".
27. As the Appeal against the CJ concerns a decision regarding an incident during a competition, the CR and DR govern this matter.

C. SCOPE OF PANEL'S REVIEW

28. According to Article 16 of the DR "*The Panel has full power to review the facts and the law*".

D. ADMISSIBILITY

29. Article 13.7 of the CR defines the procedure for Level 2 Appeals as follows:

"Level 2 Appeal Procedure:

The following procedure will be followed in the event of a Level 2 Appeal:

- (i) Decisions from any Competition Jury and any World Triathlon panel (except the World Triathlon AD Hearing Panel) may be appealed to the World Triathlon Tribunal;*
- (ii) Only appeals supported by National Federation will be admitted;*
- (iii) Appeals may be submitted up to thirty natural days after the Competition Jury met or within thirty natural days from the Competition Jury or Panel decision;*
- (iv) Appeals will be submitted in writing to the World Triathlon Secretary General and will be accompanied by a deposit of \$ 500 USD. It will only be refunded if the appeal is successful.;*
- (v) Level 2 appeal decisions may be appealed to CAS (Level 3 of Appeal)"*

30. Article 31.2 of the DR requires the Appeal to be submitted by mail or by email to World Triathlon headquarters, no more than thirty (30) days following the communication of the contested decision to the Appellant.
31. The conditions set above being fulfilled, I determine that this Appeal is admissible.

E. DISCUSSION

32. I have analysed the CJ's decision and statements, as well as the information and statements submitted by the Appellant.
33. In order to decide the case, I am of the opinion that the legal issues revolve around the following elements:
- a) Is the decision of the CJ a "Field of Play decision"?*
 - b) If yes, are there grounds for the Tribunal to review such a decision of the CJ?*
 - c) If there are such grounds, what are the consequences of such review?*

34. Accordingly, the above questions are analysed below:

a) Is the decision of the Competition Jury a “Field of Play decision”?

35. According to Article 13.1 (b) of the CR “Decisions from any Competition Jury and any World Triathlon panel may be appealed to the World Triathlon Tribunal, except:

(i) Decisions made by the World Triathlon Anti-Doping Hearing Panel;

(ii) Field of Play decisions.”

36. In accordance with Article 11.4 (c) of the CR (*emphasis added*):

“Duties of the Competition Jury:

(i) The Competition Jury rules on all appeals and all protests;

(ii) The Competition Jury has the authority to modify the competition results as a consequence of its decision on the appeal or protest. This results modification is a Field of Play decision;

(iii) The Competition Jury must be available starting before the Athletes’ Briefing until after the end of competition;

(iv) The Competition Jury Chair is responsible for filing a written statement on all appeals and decisions reached.”

37. I note that in defining the duties of the CJ, Article 11.4(c) of the CJ clearly establishes that in case of appeals and protests, any decision taken by such a body to modify the results amounts to a Field of Play decision. This means that, by analogy, a decision of the CJ to reject a protest and/or an appeal and thus to confirm the results of a race is equally to be considered a Field of Play decision.

38. Having established that the CJ decision on the Appellant’s protest is a Field of Play decision, I now need to analyse the next legal element:

b) Are there grounds for the Tribunal to review in full such decision of the CJ?

39. In order to answer the question as to whether there are grounds to review the CJ’s decision, I refer to the established jurisprudence of the Court of Arbitration for Sport [CAS] (see e.g. CAS 2004/A/727; CAS OG/12/010), in Lausanne, according to which decisions of referees are not reviewable unless there is evidence that the referee rendered (i) a decision in bad faith, (ii) an arbitrary decision or (iii) a decision, made not in appreciation of the state of affairs on the field at the time but in application of a wrong rule, or made by failing to apply the correct rule to the factual circumstances.

40. On this basis, and given that in taking its decision the CJ acted as a referee in the event, I must now analyse whether the CJ’s decision was (i) rendered in bad faith, (ii) was arbitrary or (iii) was made in the application of the wrong rules.

41. The minutes of the CJ’s decision in which it rejected the Athlete’s appeal against his disqualification by the Head Referee state as follows:

“Technical official (Chief Bike) has witnessed the athlete #3 repeatedly leave the prescribed course and exiting the bike course in to the opposite traffic lane and

causing danger to other athletes. Technical official has notified the Head Referee, following the evidence review HR has disqualified athlete #3”.

“Athlete has expressed his concern that the course was narrow and admitted hearing: he was entering the corners too fast, but stated he was going into opposite lane to avoid potentially crashing himself and creating hazard for the athletes behind him.”

“Head Referee - evidence was provided (video review), no hearing needed.”

“All CJ members have agreed with the TO call and HR decision unanimously.”

“HR decision regarding the Disqualification of the athlete #3 Alexander Bozhilov stands. Athlete is disqualified.”

42. The Appellant submits that:

“After considering all facts and after watching the live broadcast of the competition, carefully reviewing the world triathlon rules with our lawyers, and all available video and data hereby, BTA clearly states disagreement with his disqualification. The arguments of “surrounded cone” during the bike segment are unreasonable due to the following facts:

1) our athlete surrounded one cone only due to safety reasons - this cone creates a significant risk of falling in a very dangerous curve and makes it possible for injuries to occur for many athletes;

2) the surrounded cone does not shorten the distance on the bike segment and does not in any way create an advantage for the athlete;

3) the cone was obviously surrounded by many other athletes during the competition without any consequences for them;

4) most important, during the cycling segment, the referees did not identify a violation of the rules and did not punish him during the race. This cone was a turning point and according to WT rules, it requires a referee. The referee there did NOT conclude a rule brake and did impose any penalty on Alexander within the competition - no time penalty, no disqualification after the cycling segment.”

43. In his submissions in reply, Mr. Alexander Kochetkov, Technical Delegate and CJ Chair states that:

“Competition jury has reviewed the video footage available (has been provided to the Tribunal) and listened to Chief bike and Head referee statements, which confirmed multiple rule violation by Alexander Bozhilov by intentionally entering into the opposite traffic lane and clearly creating the danger for other participants in the event.”

“There was no technical official placed at the turn where violation has occurred. Chief Bike was riding the motorcycle behind Mr. Alexander Bozhilov and witnessed infringements personally, of which he has informed the Head Referee on the radio.”

“Mr. Alexander Bozhilov on opposite has repeatedly and intentionally violated the rules, trying to stay with another leading athlete and poorly executing the turns due to the lack of the bike handling skills, which he has admitted himself while giving his own statement to the Competition Jury.”

“Mr. Alexander Bozhilov was disqualified immediately after crossing the finish line. The only reason he was not disqualified earlier was because Head Referee, Chief Bike and Technical Delegate have carefully reviewed the violation (multiple occurrences), World Triathlon Rules and collected all available evidence to support the Disqualification.”

“As mentioned above, Mr. Alexander Bozhilov’s violations were noticed and registered by the Chief Bike during the bike segment of the race and were carefully reviewed by the Head referee. The turn where violations have repeatedly occurred was neither acute turn nor a U-turn, WT rules, EOM or any other official WT documents do not require for Technical officials to be present at every turn during the bike segment. Dangerous riding repeated intentionally results in athlete’s disqualification as per World Triathlon rules.”

44. Whilst the Appellant takes issue with the reasonableness of the Head Referee’s decision having regard to the conditions of the course, the Appellant does not dispute having committed the alleged infringement on at least one occasion, (on more than one occasion according to the CJ, after reviewing the evidence).
45. Moreover, the CJ rejected the Appellant’s assertion that his infringement was precipitated by the unsafe positioning of the cone in question, and instead found that his infringement was intentional, and caused danger to other athletes.
46. Having regard to the above, I am satisfied that after reviewing the evidence the CJ has made a reasoned decision to affirm the Head Referee’s disqualification, and there is no evidence before me to indicate that the CJ acted in bad faith or in an arbitrary manner. In fact, the Appellant made no such claim.
47. In this respect, for the avoidance of doubt, I recall CAS jurisprudence according to which terms *“such as “arbitrary” “bad faith”, “breach of duty”, “malicious intent”, “committed a wrong” and “other actionable wrongs” are used apparently interchangeably, to express the same test (CAS OG 96/006 and CAS OG 00/013). In the Panel’s view, each of those phrases means more than the decision is wrong or that no sensible person could have reached. If it were otherwise, every field of play decision would be open to review on its merits. Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each, of those phrases mean there must be some evidence of preference for, or prejudice against, a particular team or individual.”*
48. What remains for determination is whether the CJ’s decision to affirm the Head Referee’s disqualification of the Appellant was made in application of a wrong rule or made by failing to apply the correct rule to the factual circumstances.
49. From the Appellant’s submission, there is no indication that a wrong rule has been applied. On the basis of the Head Referee’s determination and the CJ’s finding of the Athlete’s repeated and intentional infringements causing a danger to other athletes, it was open to them to disqualify the athlete in accordance with items 25 and 84 of Appendix K in the CR.
50. In effect, what the Appellant seeks with the Appeal is a re-evaluation of the evidence by the Tribunal, and re-determination of the infringements.
51. In this respect, I recall CAS 2008/A/1641 according to which *“Traditionally, doctrine and judicial practice have always deemed that game rules, in the strict sense of the term, should not be subject to the control of judges, based on the idea that “the game must not be constantly interrupted by appeals to the judge” (judgement by the Swiss Federal Tribunal ATF 119 II 12/19).”*
52. I fully concur with the above-mentioned CAS case and believe that decisions on the field of play shall remain the competence of the officials not only in order to guarantee their

autonomy but also due to the relative lack of perspective and/or experience of judicial bodies, in comparison with that of officials.

53. Therefore, I consider that the CJ's decision was not made in bad faith, was not arbitrary, nor was made by applying a wrong rule, or by failing to apply the correct rule.
54. For all these reasons, I determine that the decision of the CJ cannot be changed, and thus is confirmed.
55. Having established all the above, I find that in view of the lack of reasons for the Tribunal to review the decision under appeal, the last legal element (i.e. what are the consequences of a potential review) does not need to be examined.
56. Finally, for the sake of completeness I wish to address the submissions of Mr. Salamin, CJ member, in which he stated that in hindsight he considers that the sanction was too strong and would not have decided to disqualify the Athlete. However, as he also noted, he could not say that the Head Referee had made a mistake, and at the time of the appeal he supported the CJ's decision, which was unanimous. Moreover, even if he had dissented at relevant time, the Head Referee's decision to disqualify the Athlete would still have been affirmed by majority of the CJ.
57. Having regard to all of the above, the Appeal is rejected.

IV. COSTS

58. I decide not to award costs.

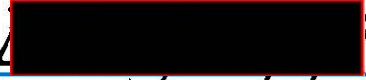
V. APPEAL FEE

59. Article 31.4 DR provides that, with respect to the appeal fee, "the amount paid will only be refunded if the appeal is successful".
60. I note that an appeal fee was paid by the BTA on behalf of the Appellant, but for the reasons referred to above, the initial appeal filed with the support of the BTA was inadmissible. In my view, these circumstances may not have been apparent to the BTA at the time the initial appeal was filed, and that notwithstanding Article 31.4 of the DR, in fairness to the BTA I decide that the appeal fee shall be refunded.

ON THESE GROUNDS

61. I rule that:
 - 61.1. The Appeal is admissible pursuant to Articles 33 and 34 of the DR and Article 13.7 of the CR.
 - 61.2. The decision under appeal was a Field of Play decision made in good faith, without any evidence that it was made arbitrarily, or with the application of an incorrect rule.
 - 61.3. The Appeal Fee paid by the BTA on behalf of the Appellant shall be refunded.

WORLD TRIATHLON TRIBUNAL


Barry Lipp (13/gen/2023 15:11 GMT+11)

Barry LIPP
Single Judge

Appeal to the Court of Arbitration for Sport (CAS)

According to Article 52.1 and 52.2 of the Constitution, as well as Article 45 of the DR, final decisions made by World Triathlon under the Constitution may be appealed exclusively to the CAS which will resolve the dispute definitively in accordance with the CAS Code of Sports-related Arbitration.

Any appeal must be filed with the CAS within twenty-one (21) days of the party's reception of the written, reasoned decision of the World Triathlon Tribunal in question.

Pending resolution of the appeal by the CAS, the decision being appealed shall remain in full force and effect unless the CAS orders otherwise.







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